

Friday, January 19, 2024

Financial Services Regulatory Authority of Ontario (FSRA)
5160 Yonge Street
16th Floor
Toronto ON
M2N 619

Dear Guidance Committee:

Re: Potential FSRA Rule on Family Law Matters

This letter is in response to FSRA inviting sector stakeholders and the general public to submit feedback on the FSRA Consultation Paper: *Potential FSRA Rule on Family Law Matters*.

We would like to thank the Guidance Committee for their continued work in improving and reducing the administrative burden for plan administrators, plan members and beneficiaries, and their advisors, when they are completing a Family Law Valuation due to a marriage breakdown.

Outlined below are comments submitted by TEIBAS as the administrator for the IBEW Local 353 Pension Plan to most of the questions in the consultation paper.

Topic #1: Lift and Shift

Q1. Would creating a new rule and moving some, but not all, provisions currently in the Regulation into a rule via the “lift and shift” approach achieve the desired outcome of reducing uncertainty and improving efficiency? Please provide feedback as to whether FSRA should adopt a “lift and shift” approach with respect to all areas over which it has rule-making authority, subject to government decision-making, or whether a potential FSRA rule should only include requirements in areas where policy changes are being considered.

TEIBAS does not have a comment on this question as we are uncertain whether lifting and shifting regulations where there is rule making authority, may, or may not, achieve the desired outcomes depending upon the execution of the exercise.

Topic #2: Fees that plan administrators may charge for a DB Statement of Imputed Value

Q. Are the existing maximum fees currently set out in regulations under the PBA sufficient to recover the costs incurred in preparing statements?

The Regulation sets out the maximum application fee that can be charged by plan administrators for a Statement of Family Law Value. The existing fees were established in 2012 and have not been updated since that time. As we are a multi-employer plan, fees incurred by our plan to complete a Family Law Valuation (FLV) are currently negotiated but are expected to increase over the next couple of years.

Current fees charged to complete a FLV are insufficient at this time. Administration fees incurred to calculate the valuation by the plan, along with ongoing communication with related parties, printing and mailing costs are more than the current maximum fees of \$600 outlined in the PBA.

Q. If not, what should the new maximum fees be? Please provide any details relating to cost experience (e.g., administrative, and professional service costs associated with the statements) which may be relevant to support your responses.

As fees have not increased in over 10 years, TEIBAS suggests that fees be increased at this time to account for ever increasing administration costs. The actual cost of a FLV for our plan is close to \$1,000. Further, after increasing the fee maximums, FSRA should consider reviewing fees every five to eight years to account for inflation and overall annual administration cost increases.

Q. Should special considerations be made for low-income applicants (e.g., a fee waiver) in order to mitigate the impact of the revised maximum fees?

Pension plans like ours do not distinguish fees that members are charged based on individual income levels. TEIBAS suggests that a standard fee apply to all individuals requesting a FLV to treat all individuals requesting a FLV equally and to be consistent.

Topic #3: Payment of arrears – division and revaluation of a retired member’s pension

Q. Do you agree that uncertainty exists with respect to the division and revaluation of a retired member’s pension where spouses have made arrangements outside of the pension plan to share pension amounts prior to its actual division?

TEIBAS agrees that there is uncertainty as to how administrators should address the division and revaluation of a retired member’s pension where spouses have made arrangements outside of the pension plan to share pension amounts prior to its actual division.

Q. If so, should FSRA make a rule to prescribe how this must be done or expand on its Guidance to address the uncertainty?

TEIBAS agrees that FSRA should provide a rule to prescribe how pension plan administrators should handle these situations. FSRA should also provide administrators the flexibility and guidance on how to account for such arrangements.

In addition to providing a prescribed rule, further details and guidance should be outlined in FSRA’s *Administration of Pension Benefits Upon Marriage Breakdown Guidance*, outlining what information the parties should provide the plan administrators with, as well as what steps plan administrators should consider when processing an FLV lump sum payment.

Topic #4: Payment of interest on lump sum transfers

Q. Is there uncertainty as to when interest should be added on a lump sum transfer to a member's spouse as a result of *Heringer*?

The treatment of when to apply interest to a lump sum transfer may be understood by pension plan administrators, but **yes**, there continues to be confusion of when to apply interest amongst individuals filing a division of pension assets due to a marital breakdown.

The Ontario Superior Court of Justice's 2014 decision in *Heringer v. Heringer* determined the issue of when interest should be added on a lump sum transfer to a member's spouse. We have seen on a number of occasions that the parties involved, and their advisors, may not be aware of the *Heringer v. Heringer* decision. This gap in knowledge can result in the parties not including details in their separation agreement on how to handle interest on lump sum payments. This in turn creates inequities in results.

Q. If so, could this uncertainty be adequately addressed by revisions to the Administration of Pension Benefits Upon Marriage Breakdown Guidance or new FSRA Interpretation Guidance?

FSRA's *Administration of Pension Benefits Upon Marriage Breakdown Guidance* already outlines the requirements to be included in a separation agreement if the parties wish to apply interest to lump sum transfer payments. Based on TEIBAS' experience, the involved individuals generally do not review the Guidance published by FSRA, and as a result, there would be no change in outcome.

Q. If not, should FSRA propose a rule that sets out the treatment of interest as described in the *Heringer* decision such that:

- a. Interest is to be applied where the amount to be transferred is expressed as a percentage of the imputed value, and
- b. Interest is not to be applied where the amount to be transferred is expressed as a specified amount unless the settlement instrument expressly requires that interest be added.

FSRA should not propose a rule that sets out the same treatment of interest as the *Heringer* decision, as described above.

Q. If you disagree that FSRA should propose a rule that sets out the same treatment of interest as the *Heringer* decision, as described above, should FSRA propose a rule that provides for an alternative treatment of interest? If so, what should that treatment be?

FSRA should propose a rule that is consistent and clearly states that interest either applies or does not apply to all lump sum payouts. This would result in all FLV transfers being treated equally.

Topic #5: Forms

Q. Should FSRA allow for greater flexibility with respect to forms used by stakeholders. If so, what should be the scope of that expanded flexibility?

No, FSRA should not allow for greater flexibility with respect to the FLV forms provided by FSRA. The revised forms introduced by FSRA in November 2021 were a major improvement from previous forms. The current FLV forms are clear and concise and outline the information and documents required for the related parties to provide administrators to have an FLV processed.

Topic#6: Variable Benefits

We do not have a comment on this question as we administer a SOMEPP.

We would like to thank you once again for allowing us the opportunity to participate and provide feedback on this guidance.

Should you have any further questions or comments, you may contact me either by email at kim@teibas.com or by telephone at (416) 637-8370.

Sincerely,



Kim Macpherson
CEO, TEIBAS
Protecting Your Future