

January 17, 2024

Financial Services Regulatory Authority of Ontario (“FSRA”)
25 Sheppard Avenue West, Suite 100
Toronto, Ontario, M2N 6S6

Dear Sir or Madam:

Re: FSRA Consultation Paper: Potential FSRA Rule on Family Law Matters

Thank you for providing us the opportunity to comment on the topics set out in the FSRA Consultation Paper: Potential FSRA Rule on Family Law Matters, dated November 14, 2023 (the “Consultation”).

The Board of Trustees of the Ontario Public Service Employees’ Union Pension Plan (“OPTrust”) is the administrator of the Ontario Public Service Employees’ Union Pension Plan (the “OPSEU Pension Plan” or the “Plan”). OPTrust serves over 106,000 members and retirees and manages nearly \$25 billion of net assets. We are submitting comments on some but not all of the topics set out in the Consultation.

Topic #1: Lift and Shift

In our view, creating a new FSRA rule and moving some, but not all of the provisions currently in O. Reg. 287/11 (the “Regulation”) would not reduce uncertainty or improve efficiency. In general, our view is having all rules in one “place” simplifies matters. Given that amendments would be required to the *Pension Benefits Act* (“PBA”) and the Regulation to achieve a full “lift and shift,” it seems preferable for FSRA to limit its rule making in family law matters to those areas that are “gaps” or not addressed under the PBA.

Topic #3: Payment of Arrears – Division and Revaluation of a Retired Member’s Pension

FSRA notes in the Consultation that some stakeholders have raised concerns that the text of section 39 of the Regulation, if read independently of the broader PBA context, may be interpreted to require the plan administrator to include arrears for the period from the family law valuation date (“FLV date”) to the date the pension is actually divided, even where the parties have reached an agreement to divide the pension



payments in the interim. In our view, it would be helpful if FSRA published guidance or rules providing more flexibility on this issue. For example, it would be helpful if FSRA expanded its guidance or established rules regarding the start date of the arrears calculation allowing retired members and their former spouses to clearly specify a start date for the arrears in their settlement instrument.

In addition, FSRA should consider publishing guidance to help retired members and their former spouses understand the tax implications of dividing the retired member's gross pension from the FLV date as compared to a specified date after the FLV date. If the retired member's net pension were divided outside of the plan, the retired member would be responsible for the income tax payable on the total gross pension. However, if the retired member's pension were divided through the plan administrator from the FLV date, the former spouse would be responsible for the income tax payable on their portion of the pension during the arrears period.

Topic #4: Payment of Interest on Lump Sum Transfers

As noted in the Consultation, the rules regarding the payment of interest on lump sum transfers were clarified in *Heringer v. Heringer*, 2014 ONSC 7291:

1. Where the parties' settlement instrument expresses the lump-sum transfer as a specified amount, no interest should be added by the plan administrator unless the settlement instrument expressly requires that it be added; however,
2. Where the amount is expressed as a percentage or a proportion of the imputed value, interest is required to be added to the amount to be transferred.

In general, it does not appear that a great deal of uncertainty surrounds these rules. In our experience the rules on interest have become reasonably well understood within the pension industry and the family law bar. Accordingly, we do not think FSRA needs to establish a rule to clarify the above.

Topic #5: Forms

While we appreciate FSRA's consideration on giving plan administrators more flexibility in the design or customization of the family law forms, we are comfortable using the FSRA forms without customization. As FSRA is well aware, the family law rules under the PBA are technical and their application can be complex. In general, having the industry use the same forms promotes increased understanding and consistency in the application of the rules.



Thank you again for providing us the opportunity to comment. If you have any questions please do not hesitate to contact the undersigned.

Regards,

A handwritten signature in black ink that reads "Julie Belair".

Julie Belair
Vice President, Actuarial Services and Plan Policy

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