

# Fact Sheet

SPOUSAL RELATIONSHIP  
BREAKDOWN

JANUARY 2012



## Spousal Relationship Breakdown

### YOUR PENSION AND DIVIDING YOUR FAMILY ASSETS

Effective January 1, 2012, there is a change to the method for dividing a pension asset for family law purposes when a spousal relationship ends in Ontario. This change applies to anyone who is involved in a spousal relationship breakdown (same or opposite sex) in a common-law relationship or legal marriage with a court order, domestic contract or family arbitration award dated on or after January 1, 2012.

If your domestic contract, court order or family arbitration award was made before January 1, 2012, please contact OPTrust or visit our website to download the fact sheet [\*Spousal Relationship Breakdown: Your Pension and Dividing Your Family Assets before 2012\*](#).

**Please note:** if your original domestic contract, court order or family arbitration award was made before January 1, 2012, and then amended on or after January 1, 2012, where the amendment was to change the method to divide the pension plan assets the *Pension Benefits Act* stipulates that the pre-2012 rules continue to apply. OPTrust will not be able to administer the amended terms.

### IN THIS FACT SHEET

- Key features of the new law
- How the law works
- Starting date of spousal relationship
- Family law valuation date (date of separation)
- How much can OPTrust pay my former spouse?
- What happens if...
- Determining the value of your pension
- Buybacks and transfers
- Can my pension be divided in some other way?
- Inflation protection
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*This fact sheet includes important information about your OPTrust pension to assist you during this difficult period, whether your relationship ends before or after retirement.*

*It also describes OPTrust's policy relating to both family and pension law but it does not provide legal advice. You and your former spouse may want to obtain independent legal counsel and share this fact sheet with a lawyer.*

## KEY FEATURES OF THE NEW LAW

- > Only one method is used to divide pension assets in Ontario for court orders, domestic contracts or family arbitration awards dated January 1, 2012 or later.
- > **Separation before retirement**
  - the option to transfer a lump sum amount from your OPTrust pension to your former spouse’s locked-in retirement savings arrangement or pension plan (if allowed by the plan).
- > **Separation after retirement**
  - the option to divide your OPTrust pension by paying a portion to your former spouse.
  - If you die before your former spouse, he or she is entitled to a survivor pension based on 60% of your pension before it was split.
- > OPTrust will provide a valuation for you, as a pension plan member, and your former spouse within the prescribed time limits. You and your former spouse are no longer required to retain an actuary to value your OPTrust pension.

## HOW THE LAW WORKS

Ontario’s *Family Law Act* sets out requirements for spouses when a spousal relationship ends. The law outlines a process for you and your former spouse to determine the value of your family assets – including pension benefits – acquired during the relationship. A defined benefit pension plan such as the OPSEU Pension Plan can account for a significant portion of your family assets. Depending on the value of your OPTrust pension, this may have a considerable impact on how your other assets are divided.

For common-law relationships, there is no family law requirement to divide family property. If you live together in a common-law relationship, your OPTrust pension does not have to be divided unless you agree to it. The rules only apply if you decide to divide your pension with your former spouse.

## STARTING DATE OF SPOUSAL RELATIONSHIP (MARRIED OR COMMON-LAW)

This can be any **one** of the following:

- the date of marriage
- the date when you and your former spouse started living together in a common-law relationship
- the date that is **jointly** chosen by you and your former spouse which cannot be earlier than the date when you started living together in a common-law relationship or later than the date of marriage
- the date specified in a court order or family arbitration award.

## FAMILY LAW VALUATION DATE (DATE OF SEPARATION)

To calculate the division of your pension, OPTrust needs to know your “family law valuation date.” This is the date when you separated with no reasonable prospect of reconciliation, agreed to by you and your former spouse or established in a family law document.

## HOW MUCH CAN OPTRUST PAY MY FORMER SPOUSE?

Pension law limits the amount OPTrust can pay your former spouse. The law does not permit payment of more than 50% of your OPTrust pension earned during the spousal relationship to a former spouse to divide family assets. **This limit applies even if a separation agreement, court order or other document states a higher amount.** However, if your relationship ends after retirement, the law requires the payment of any pension arrears to your former spouse. Please see the section “What happens if my relationship ends after retirement?” for more details.

**Please note:** If your valuation date occurs after a divestment, your service between the divestment date and valuation date is used to calculate your right to a pension benefit under the OPSEU Pension Plan.

## WHAT HAPPENS IF MY RELATIONSHIP ENDS BEFORE RETIREMENT?

Regardless of your age or your former spouse's age, there are two options for his or her portion of your pension:

- transfer to a locked-in retirement savings arrangement
- transfer to another Canadian pension plan; but only if the other pension plan will accept the transfer.

The amount paid to your spouse will reduce your pension benefit when your plan membership ends. It will not affect your eligibility for early retirement. Your *Annual Pension Statement* will show your adjusted pension amount.

## WHAT HAPPENS IF MY RELATIONSHIP ENDS AFTER RETIREMENT?

In retirement, your former spouse is eligible to receive a share of the pension you are receiving. If, according to your domestic contact, court order or family arbitration award, OPTrust is required to pay a portion of your pension to your former spouse, OPTrust can only do so on a go forward basis. The law requires that, in addition to dividing your pension on a go-forward basis, your former spouse must be paid for any undivided pension installments paid to you from your family law valuation date to the month in which OPTrust divides your pension. **While only a maximum of 50% of your pension benefit can be paid to your former spouse as of the family law valuation date, the additional arrears can mean that your spouse will receive more than 50% of your monthly pension on a go-forward basis.**

## WHAT HAPPENS IF I DIE AFTER RETIREMENT?

If you die during retirement, your former spouse's share of your divided pension stops.

However, if your former spouse met the definition of "eligible" spouse at date of retirement, then he or she is entitled to a survivor pension, even if you are divorced or separated at the time of your death, unless he or she has waived that benefit.

### ELIGIBLE SPOUSE

Under the OPSEU Pension Plan, a spouse is defined as one of two individuals who:

- are married to each other, or
- are living together in a conjugal, common-law or same-sex relationship for at least three years, or
- have a relationship of some permanence and are the natural or adoptive parents of a child.

To qualify as an "eligible" spouse, he or she must have been the spouse of the member on the date that the first pension payment was made.

The survivor pension paid to your former spouse is calculated based on the pre-division amount of your pension.

## DETERMINING THE VALUE OF YOUR PENSION

*OPTrust will provide you, the plan member, and your former spouse with the family law value and the maximum amount payable to your former spouse. We will disclose all pension data including membership, employment and contribution information as of the family law valuation date. OPTrust will also provide the actuarial assumptions used to determine the pension value for active members and retirees.*

**Please note:** *This detailed valuation will require time to process. OPTrust will provide the family law value within 60 days of receipt of a completed application. Please consider this time required when you file a request with OPTrust.*

## BUYBACKS AND TRANSFERS

*If, during your spousal relationship you paid for a buyback for a period of service before or during your spousal relationship, the earned service is subject to equalization. Any service transferred to OPTrust from another registered pension plan is also subject to equalization, if it was earned during your spousal relationship.*



## CAN MY PENSION BE DIVIDED IN SOME OTHER WAY?

*No. The rules set out in this fact sheet are the only way a pension benefit may be divided where the court order, domestic contract, or family arbitration award is made on or after January 1, 2012.*

*After the value of your pension is determined, you and your former spouse may decide that you keep your pension entitlement while he or she receives other property or assets of equal value. Your OPTrust pension benefit does not always need to be divided to achieve an equal division of family assets.*

## INFLATION PROTECTION

OPTrust pensions – including those payable to a former spouse – are adjusted every year for the cost-of-living. Your former spouse will receive the same inflation protection as you.

OPTrust will adjust your and your former spouse's pension from the valuation date to the date of the first payment and annually thereafter. The maximum increase in any one year is 8%. Any increase above 8% is rolled forward into the next year, to be used when the adjustment is less than 8%.

## INSURED BENEFITS

The Government of Ontario provides insured benefits to eligible OPTrust pensioners in retirement. You may be entitled to insured benefits, if you meet one of the following criteria:

i) you are receiving a pension based on at least 10 years of credit in the OPSEU Pension Plan or its predecessor, the Public Service Pension Plan (PSPP)

**or**

ii) you are receiving a pension based on at least 10 years of continuous employment and have some credit in the OPSEU Pension Plan for at least some part of each of those ten years.

Insured benefits are not extended to your former spouse once you are divorced or end your common-law relationship. If a separation agreement or court order requires you to provide insured benefits, you must purchase this coverage from an insurance provider. If your family law valuation date is after the date on which your pension payments commenced, your former spouse is eligible to receive a survivor pension upon your death, insured benefits are extended to your former spouse as part of that pension (if eligible).

**For more information about insured benefits, you or your former spouse should contact an insurance provider.**

## FOR MORE INFORMATION PLEASE CONTACT OPTRUST

This **Fact Sheet** is intended as a summary description of the OPSEU Pension Plan. The Plan text contains numerous provisions not described here that may apply to you. In the event of any conflict between this Fact Sheet and the OPSEU Pension Plan text, the Plan text will govern.



## HOW TO REACH US

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