PENSION TREATMENT AT DIVORCE AND SEPARATION

10 KEY POINTS YOU MUST KNOW
SECOND EDITION

JACK PATTERSON
In Ontario and certain other provinces, when a couple is divorcing, each person must figure out his or her net worth. This is done by adding up the value of assets (what you own, such as the family home), and the value of liabilities (what you owe, such as the mortgage on the home). Then the total applicable liabilities are subtracted from the total applicable assets to get the net worth. The person with the largest net worth pays half the difference to the other person so that they both have the same net worth. This is known as equalization of family assets.

The advantage of equalization of family assets is that pension plan aspects are cleared up at the date of separation. Any other treatment of pension ties the couple together financially for years in the future. Ontario and Saskatchewan tend to favour equalization of assets. Other western provinces treat equalization as one of a number of alternatives. In any province a couple may agree on a lump sum equalization payment but in provinces such as Newfoundland this would happen less frequently.

The value of the part of the pension plan accrued during the marriage is frequently the largest single asset. However, there are many ways to calculate this value. The value of the same pension can range from $50,000 to $200,000 depending on the method chosen.

It is essential to retain a good lawyer who knows the wording of the law dealing with pensions, one who has tried similar cases in court, and who can argue the best method on your behalf.

It is also important to retain a good actuary who has years of experience doing such valuations and who has successfully explained actuarial valuations to the court on many occasions over a long period.

When the Family Law Act of Ontario was changed in 1990 to include equalization of family assets, I wrote a book entitled Pension Division and Valuation – Family Lawyers’ Guide. It is available in the library of every courthouse in Ontario and is the authoritative source of information on the valuation of pension plans for equalization. It is widely read by family lawyers and is now in its second edition. However, it is over 500 pages long. This short book summarizes most of the important points of the main book that you should know. It will refer to the book frequently. If you want further explanations of any point you can buy the book from Canada Law Book or read it in your lawyer’s office.

You will see by the following key points that this is a complicated matter. You will need the services of an experienced and knowledgeable actuary, and this involves paying actuarial fees. Usually the pension plan member must pay these fees but often the non-member spouse will want his or her own actuarial valuation done. If you cannot afford to pay large fees we will value most pension plans for a fee of $500.00, including GST, provided that we are paid in advance, that you provide the information we need with the fee, and you request one valuation date only. This does not apply to a few of the most complicated plans such as those for salaried employees in the automotive industry. In such cases we will return your cheque. There are two specific plans, the Ontario Teachers’ Pension Plan and the Ontario Municipal Employees Retirement System (OMERS) where we accept an advance of only $400, including GST.

We reserve the right to change these fees after December 31st, 1999.

The valuation date is usually the date of separation. It is defined in the Family Law Act. Your lawyer will explain it to you.

Page 9 of this book lists the information and other data we need from you.
The plan member cannot share the full value of the pension because he or she will pay taxes on the pension once it commences. The pension valuation should allow for this fact.

The tax calculation should not be based on the tax rate the member is paying while still working, but on the anticipated tax rates paid after retirement, including all other sources of income such as Old Age Security (OAS) and the Canada Pension Plan (CPP). It is important to know that under the Income Tax Act tax rates go up over the years. This is because our tax brackets and tax credits do not fully recognize inflation but are adjusted each year by 3% less than the year’s increase in inflation. Most pensions are indexed each year to fully reflect inflation prior to retirement and many continue to reflect inflation after retirement.

However, personal tax credits as a percentage of the taxable pension go down over the years, so that the overall tax rate is increasing each year. This is the law and Revenue Canada may never give up this source of taxation.

Most actuarial valuations do not reflect this important point. They are based on current tax rates and do not fully reflect the details of the Income Tax Act. The plan member should insist that the pension valuation should reflect this important point. If your average tax rate based on current tax rates is 25%, the long-term tax rates will be 35% or more; so as the plan member you should share only 65% of the pension value and not 75%. This amounts to a reduction of nearly 15% in the net value of your pension after tax.

Read Appendix 4 of this book for more detail. Sample calculations of tax aspects are in Appendix 7 of Pension Division and Valuation – Family Lawyers’ Guide.

The most common type of plan is the final average salary plan where the pension is based on the average of the best five years’ or six years’ salary.

Another common type of plan is one negotiated by a union with the employer. Pension benefits are flat benefits, that is, the amounts are not tied to salary amount and are calculated in a form such as $35 per month for each year of credited service.

Pension plans reward long-time employees who stay with the employer to retirement, and so take into account the fact that your dollar will buy less in the future because of inflation. Union members who have flat dollar pensions now providing $35 monthly per year of service can depend on their union to make sure that this value is adjusted every few years to reflect inflation.

However, once an employee quits, the employer is no longer concerned with that person. Except for public service pension plans, the employer will give the employee who quits only the minimum pension, starting at age 65, that is required by the Provincial Pension Commission.

In fact, the employee who quits is encouraged to transfer the value of this minimum pension to a self-directed RRSP so that it is no longer the employer’s responsibility.

This transfer value can be much less (often 50% less) than the amount that the pension plan is required by law to hold for continually active employees.

In a divorce case, many pension plans will suggest this low transfer value as the value of the pension. 
The spouse of the plan member should never accept this value for purpose of equalization of assets.

Public sector employees, including teachers, share in a pension which fully reflects inflation both before and after the date the pension starts whether or not they terminate employment early.

This is important because inflation has been substantial over the years. Over the last 30 years it has averaged 5 1/2% per year. If inflation continues to average 5 1/2% over the next 30 years, a 30-year old plan member will see the pension increase by a factor of 5.0 by age 60. If you need $100 weekly for groceries today, you may need $500 weekly for groceries 30 years from now.

Now, no one can forecast inflation. It could be higher or lower than 5 1/2% per year, but it still has a substantial effect.

When it comes to the members of final average private sector plans, those who terminate employment early receive no indexing for future inflation, while those who stay employed until retirement will receive full indexing to allow for inflation. Should the value for equalization reflect no pre-retirement indexing, full pre-retirement indexing, or a combination?

In some provinces the law states that full pre-retirement indexing be used. However, early case law in Ontario chose no pre-retirement indexing. Ontario case law has only recently chosen to reflect full pre-retirement indexing. If the non-indexed method is used at the time of the divorce, and the plan member continues to work and gets a full pension based on average salary at retirement, the equalization payment the spouse received earlier would not have taken into account that a dollar could buy less at the date of retirement than at the date of separation. However, the spouse who is married to a member of a public service plan which does provide full indexing to the date of retirement would have received an equalization payment reflecting inflation. So the private sector spouse would not have been dealt with fairly.

The spouse of the plan member should insist that the actuary show the results of both calculations, no pre-retirement indexing and full pre-retirement indexing. The first result should be used if it is likely that the plan member could be laid off soon after the date of separation. The second is appropriate if it is likely that the plan member will stay employed until retirement. The final settlement discussions or arguments should try to reach a compromise between these extremes.

Appendix 3 of this book discusses this point in full detail. In the book Pension Division and Valuation – Family Lawyers’ Guide Chapter 18 and Appendix 4 are devoted entirely to this subject.

**Key Point**

**Date of Commencement of Annuity**

All pensions specify a normal retirement date. This is usually age 65 but in certain occupations such as police, fire fighters and air crew it is usually age 60. In the Canadian Forces the retirement age varies by rank. A plan member can retire early but often the normal retirement age pension is reduced because the pension will be paid for a longer period. Nevertheless, more and more pensions are giving a full unreduced early retirement pension once the plan member meets certain requirements such as total age plus service equals 90 years. In fact, hourly employees in the automotive industry with 30 years' service can retire on an increased pension for the first few years.

For pension valuation for equalization purposes we are only considering the part of the total pension for service from the date of marriage to the date of valuation. It does not reflect any service earned after the date of valuation.

The value of the pension, assuming it starts at the earliest unreduced early retirement age, which may be age 50 or 55, can be twice the value of the pension had the member waited until the normal retirement age or later. Under family law, the annual amount of the pension is the same in both cases but the earlier pension is payable for a much longer period.

In fact, many pension plans increase the pension paid from the early retirement age to age 65, by an extra “bridging” pension until the OAS and CPP start at age 65.
All actuaries who are Fellows or Associates of the Canadian Institute of Actuaries, will quote pension values for a range of ages from the earliest unreduced early retirement age to the normal retirement age. It is then left to the divorcing couple and their lawyers to negotiate a compromise value depending on a retirement age which may have been already chosen and other facts of the case.

Further information on the age at which the plan member starts to collect the pension and its effect on the pension valuation may be found in Chapter 12 of Pension Division and Valuation – Family Lawyers’ Guide.

**Key Point**

### Post-Retirement Indexing for Inflation (Advantage to Spouse of Plan Participant)

Most pension plans adjust the retiree’s pension to fully or partially compensate for the effect of inflation after retirement.

Most public service pension plans provide 100% indexing for inflation after the retired member reaches the indexing age.

The only exception in Ontario is the OMERS pension. This guarantees post-retirement indexing of 75% of the increase in the Consumer Price Index but attempts to use 100% in as many years as possible, depending on investment returns. Some actuaries give a value using both 75% and 100%. Actually, since the plan has tried to index wherever possible by 100%, the use of 75% is no longer realistic. It is our practice to use 90% as a conservative long range average.

In federal public sector plans, when a retiree reaches age 55 and age plus service totals 85 years, or once a retiree reaches age 60, the pension plan is fully indexed for inflation from then on. If the pension started before the age when indexing starts, a single retroactive adjustment for all lost indexing is made at that age for future payments. If you are a member of the Canadian Forces Superannuation this becomes an important point. Check that the pension valuation reflects the fact that from the date you retire there is a period of time before any indexing to reflect inflation begins.

In the case of private sector plans, post-retirement indexing of pensions varies greatly from plan to plan.

Many plans have specific rules for indexing pensions after retirement. These rules are not necessarily described in the pension booklet and may only be found in the more complete pension plan document filed by the pension plan with the pension benefit authority (either the Provincial Pension Commission or Office of the Federal Superintendent of Financial Institutions).

It is important for the spouse of the plan member to track down the document describing the rules for post-retirement indexing as it has a substantial effect on the pension valuation.

Many other plans do not have any specific rules for post-retirement indexing but are nevertheless adjusted by the plan trustees or the board of directors of the sponsoring employer from time to time. A record of this “ad hoc” indexing should be obtained and supplied to the actuary who will try to find a pattern for anticipating future ad hoc indexing.
Key Point 5

Minimum Values Reflecting Employee Contributions
(Advantage to Spouse of Plan Participant)

There are laws governing all pension plans in Canada. Most public service pension plans are governed by separate laws such as the federal Public Service Superannuation Act. Plans of private sector employers such as banks and railroads operating in all provinces are governed by the federal Pension Benefits Standards Act. Other pensions are governed by the applicable provincial Pension Benefits Act. The Ontario Teachers' Pension Plan and OMERS are partially regulated by the Ontario Pension Benefits Act.

One important point is that, for those plans that employees contribute to, minimum values are stipulated. For service up to 1986 the value of the member’s pension benefit cannot be less than the total of the member’s required contributions in that period plus interest to date. For service from 1987 on, in any plan which defines the specific pension plan benefits (defined benefit plan) the minimum value is slightly more involved.

Generally, if the member’s required contributions made after December 31, 1986, together with interest, exceeds 50% of the value of the pension benefit credit for membership in the plan after December 31, 1986, the pension benefit to the member shall be increased to reflect that excess.

In the Province of Saskatchewan the above excess is based on all required contributions, not just those made after December 31, 1986, and may be returned to the former member or reflected in an increased pension.

The Ontario Pension Benefits Act states this another way. A former member is entitled to a lump sum payment from the pension fund equal to the amount by which the former member’s contributions made on or after January 1, 1987 together with interest exceeds one-half of the value of the former member's pension accrued for the period from January 1, 1987.

The effect of these provisions is to increase the value of the pension benefit in the case of most contributory pensions.

If the value of the pension plan is determined by an actuary, this feature will automatically be reflected in the valuation.

There are a few computer programs which claim to determine the value of the pension benefits without the need to use an actuary. However, if you use such a program, you must know all aspects of pensions in great detail. I have never seen a proper valuation prepared by such a program. Errors can occur if you input incomplete data and because these programs rarely reflect subtle points such as minimum pension values depending on employee contributions. I know of no such program that reflects Key Point 1 and follows the partial indexing specified in the Income Tax Act.

Chapter 7 of Pension Division and Valuation – Family Lawyers’ Guide discusses all aspects of employee contributions to the pension.

Key Point 6

Value of Pension At Date of Marriage

If the marriage occurred before the date the member joined the pension plan, the date of marriage is not used when calculating pension values.

However, if the marriage occurred after joining the pension plan the value of the part earned before the marriage must be subtracted from the total earned to the valuation date. There are two methods of valuing such pension accrued to the date of marriage.

The added value method looks at historical records of the terms of the pension plan and the amount of the accrued annual pension as of the date of marriage. The present value is then calculated as of the date of marriage.
The pro rata method simply calculates a proportion of the value of the plan at the date of separation, the proportion being the ratio of the period from plan entry to marriage divided by the period from plan entry to separation.

In both cases the result is subtracted from the value of the pension at the date of separation.

The added value method is specified in the Ontario Family Law Act but creates several problems for actuaries. The marriage date could be 30 or 40 years prior to the separation date. A dozen eggs that cost $2.00 at the date of valuation might have only cost $0.40 at the date of marriage. Because of differences in inflation there is no logic to subtracting amounts in the dollars of 30 years ago from today's dollars. Once the actuary has determined the value in the dollars at the date of marriage, he or she would prefer to adjust this by a factor of 5 to represent 30 years' inflation before subtracting it from the value of the pension at the valuation date. However, another serious problem is that it is difficult to find records of the terms of the pension plan and the amount of accrued annual pension at the date of marriage. There is hardly ever enough data on which to calculate using the added value method.

The pro-rata method favours the plan member as it takes off a larger value for the pension earned before the marriage.

It is our practice always to present results based on the pro rata and also on the added value method when sufficient data is available.

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**Key Point 7**

**Death and Survivor Benefits of a Pension Plan**

In many provinces, if the plan member is married when he or she starts receiving the pension, it must be in the form of a joint and survivor pension paying at least 60% of the pension to the survivor after the death of the plan member unless the survivor has waived rights to such joint and survivor feature. This is frequently a reduced pension equal in value to the full normal single life pension. The survivor who benefits by this is generally the person to whom the member was married at the date of retirement. The plan member has no right to later rename the person to receive such survivor pension.

It is extremely important that the retired plan member knows that this survivor benefit is a distinct asset of the spouse. It should be valued as a separate pension asset to be added to the net worth of the spouse.

In the case of pre-retirement death benefits, any death benefits are frequently lump sum payments equal in value to the pension at the date immediately prior to death. For deaths prior to 1987 the plan member usually chose the beneficiary to receive the death benefit. However, for service from 1987 on, where there is a spouse living with the member, death benefits are payable to that spouse. Calculations of the present value of pension rights usually exclude from the plan member's assets the present value of any survivor annuity benefits and any other form of death benefits for which it is not the member's choice of who the beneficiary will be.

More information on the proper treatment of death benefits may be found in Chapter 13 of *Pension Division and Valuation – Family Lawyers' Guide*.

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**Key Point 8**

**Non-Vested Pensions**

There is a short period of time after joining a pension plan where employer contributions are forfeited if the employee terminates employment. This is called the vesting period. However, after this minimum vesting period, full employer contributions become the property of the employee. For all pension benefits
earned after January 1, 1987 in many provinces, vesting is required after two years' service. For benefits earned before this date, the law is less strict about required vesting but there must be full vesting after 10 years' service or when the employee reaches age 45, whichever is the later date. Nevertheless, many pension plans now vest all pension benefits after two years of participation in the plan.

Since the employee will probably meet the vesting requirements, there are some good arguments for including all or a large percentage of rights in net family property, depending on how close the vesting date is, particularly with contributory plans where the member has been making contributions to the plan.

This is an area where careful study of case law by your lawyer might be to your advantage. If the member does not quit early, all the benefits will ultimately vest. In many cases all benefits will have fully vested by any trial or settlement date.

Full details of vesting aspects of the pension may be found in Chapter 10 of *Pension Division and Valuation – Family Lawyers’ Guide*.

**Key Point 9**

We have already described the two most common types of pension plans, the final average salary plan and the flat benefit plan usually negotiated between employers and unions.

Another common type of plan is the career salary plan. In theory, this plan provides a lower pension because it is not based on the final average salary at the time of retirement but on the career salary earned over the working lifetime. However, many of these plans turn out to be equal to or better than final average salary plans because from time to time they are updated to reflect the average salary of the last few years instead of the career salary earned to the date of the update. In the case of the Toronto Transit Commission Plan updates are usually based on the last four-year average salary and are higher than most final average earnings plans which usually reflect earnings for periods of five years or longer.

In the case of a plan such as the TTC's, where there is a history of frequent updates to a current earnings basis, we present results that expect frequent updates in the future.

There are pension plans which do not give amounts of any benefits to be provided by the plan but only define the annual rate of employer contributions. These are called defined contribution plans. The fund, including any employee contributions, is invested and interest accrues to the member regularly. At retirement the funds are usually transferred to a life insurance company to buy an annuity for the member’s lifetime. The plan administrator can supply the figure for the accumulated contributions plus interest at the date of valuation and as of the date of marriage (if applicable). Where the law permits, serious consideration should be given to requesting the transfer of the spouse's share in the member's accumulated funds to a locked-in RRSP for the spouse. This solves the tax problem in a situation where it is impossible to forecast the appropriate tax rate after retirement.

Now and then you will find a defined contribution plan where the employer matches the employee's contributions but where a minimum defined benefit is applicable. The Sears pension plan is an example. Have the actuary check whether or not the present value of the minimum pension is more than the amount in the accumulated fund.

Where one or both parties have RRSPs, the value of the RRSPs are determined as of the date of valuation and one-half the difference earned during the marriage is transferred to the spouse with the lower value.

In the case of Canada Pension Plan benefits, you simply advise the Canada Pension Plan authorities of the date of the marriage breakdown, and they will automatically transfer part of the Canada Pension Plan from the one spouse to the other.

There are a few special extra pension plans involved with star athletes or star performers or high-
ly placed executives. It is important to determine if these apply and advise the actuary.

**Severance Benefits**
Many employers provide severance benefits to the employee, on top of pension benefits, either in a lump sum or in instalments for a limited period.

The value should be determined as of the valuation date and, after a tax adjustment, should be included in the employee’s net family property.

These benefits can be deferred profit sharing, unused accumulated sick leave credits, accumulated vacation leave and many other forms.

The plan administrator should be consulted on this point.

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**Key Point 10**

**Miscellaneous Items**

**Credited Service**
You cannot necessarily calculate the employee’s years of credited service as the period from the date of joining the plan to the date of valuation. A female employee may have had maternity leave which reduces her credited service. A worker in a steel factory may have received extra credited service over and above the actual time spent to reflect a bonus for forge work. The right credited service must be obtained from the annual pension information statement.

**Substandard Mortality**
If the member has some medical or other condition which will reduce normal life expectancy, the actuary should be informed with copies of hospital records and other medical papers. The study of substandard mortality aspects will increase actuarial fees.

**Assets Insufficient to Cover Half the Value of the Pension**
If the plan participant doesn’t have sufficient assets to cover half the value of the pension, the alternative is to wait until if and when actual retirement takes place and request that the plan administrator pay a proportion of the pension to the non-member spouse. The proportion is

\[
\frac{\text{Credited years in plan while married}}{\text{Total credited years until retirement}} \times \frac{1}{2}
\]

The amount of the full pension and the proportion to be used cannot be determined until retirement.

If the plan participant dies before retirement, the beneficiary may have changed. It is important for the plan participant to purchase and assign life insurance to the non-member spouse at the date of valuation to provide the appropriate value of the pension at the date of death.

If the plan administrator agrees to issue one T4 for the employee’s share and another T4 for share of the non-member spouse (reporting each separately to Revenue Canada), tax aspects are automatically dealt with. If not, the plan participant pays the full tax, and there must be an agreement for the non-member spouse to reimburse the proper share of the taxes each year to the retired member.
Data We Need from You

We require three sources of data.

- The provincial Pension Benefits Acts require each pension plan to issue an annual information statement to each plan participant on the current status of the plan. The name of the member appears on this statement. This is usually prepared as of December 31st of each year. We like to have the statement for the date closest to the valuation date (date of separation). We can work with one within two or three years of such date. We have to make adjustments for inflation and service for the period from the statement date to the valuation date. Usually this is fairly accurate unless, for example, some credited service was lost in this period, possibly for maternity leave.

The most common type of plan is the final average salary plan where the pension is based on the average of the best five years' or six years' salary. In this case the data must include

- the appropriate average salary for the five or six year period immediately preceding the statement date,
- the years (and fractions) of credited service to the statement date,
- the accumulated employee contributions with interest (if any) accrued to the statement date, and
- the monthly pension earned for such service payable from age 65 on.

If the marriage occurred after joining the plan try to obtain as much of this data as possible as of the marriage date as well.

Another common type of plan is one negotiated by a union with the employer. Pension benefits are flat benefits not tied to salary amount and are expressed in a form such as $35 per month for each year of credited service. Here the data must include

- the years (and fractions) of credited service to the statement date and
- the monthly pension earned for such service payable from age 65 on.

These flat plans rarely have employee contributions. If the marriage occurred after joining the plan try to obtain data as of the marriage date as well.

- We also need a copy of the pension booklet as of the valuation date and if possible a copy of the pension booklet as of the marriage date. This is a short booklet highlighting the main terms of the plan. The name of the member will not appear on the booklet. An even more useful source is the full pension plan document filed with the applicable provincial or federal pension authority.

Many pension plans index the pension annually after retirement to fully or partially reflect inflation, possibly by 90% of the increase in the Consumer Price Index (CPI). Frequently, this information does not appear in the pension booklet, but it is important to obtain from the pension plan a statement of any post-retirement indexing practice.

We are familiar with all the major government pensions including that for teachers. You do not have to supply booklets in this case.

We also have a supply of the booklets of all the major pension plans but they may be out of date. Please supply booklets for all private sector pension plans where possible.

- Finally, we require completion of our checklist of data giving us the balance of the required information. A checklist is provided at the end of this book. You should photocopy the one in the book and the copy should be completed as much as possible.

- If the plan member is already retired or has terminated employment but has a vested right in a deferred pension plan, please supply a copy of the letter supplied by the pension plan administrator at the date of retirement or termination showing precisely how the pension was calculated from credited service, average salaries, and other information.

- If any part of these three sources of data is not available please write a letter to a specific person involved in the administration of your pension plan or that of your spouse signed by the plan participant authorizing release of data to us and send us a copy. Writing the pension plan involves extra work on our part and increases our fees. See our general fee schedule later in this book.

More complete information on data required may be found in Chapter 15 of Pension Division and Valuation – Family Lawyers' Guide.
Get the right value for your pension based on knowledge and thirty years experience in actuarial evidence and pensions.

Call Jack Patterson, F.S.A., F.C.I.A.
Author of Pension Division and Valuation: Family Lawyers’ Guide

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Quick Summary

Our basic fee structure is as follows for a single valuation date.

I If paid in full by the lawyer retaining us and proper data is submitted:

<table>
<thead>
<tr>
<th>Pension Plan</th>
<th>Normal Fee</th>
<th>Discounted Fee if paid within 4 Weeks of Our Billing</th>
<th>Lowest Fee if Paid in Advance</th>
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</thead>
<tbody>
<tr>
<td>Ontario Teachers Pension</td>
<td>$555.55</td>
<td>$400.00</td>
<td>$400.00</td>
</tr>
<tr>
<td>Ontario Municipal Employees Retirement System</td>
<td>555.55</td>
<td>400.00</td>
<td>400.00</td>
</tr>
<tr>
<td>Ontario Teachers Sick Leave Gratuity</td>
<td>487.80</td>
<td>400.00</td>
<td>400.00</td>
</tr>
<tr>
<td>Most pensions (Except salaried plans in automotive industry)</td>
<td>811.00</td>
<td>665.00</td>
<td>500.00</td>
</tr>
<tr>
<td>Salaried Plans in Automotive Industry Need details of plan, usually:</td>
<td>1,219.50</td>
<td>1,000.00</td>
<td>N/A</td>
</tr>
</tbody>
</table>

II If we have to collect half from each lawyer for a single valuation

All the above totals are increased by $120.00.

To save $60.00 from each spouse, we recommend that one lawyer retain us to value the pension plan of his or her own client specifying in the retaining letter that he or she will be responsible for our full fee for the valuation of the pension involved. He then collects half from the spouse's lawyer.

III If Client, rather than Lawyer, is Responsible for Our Fees

Same fees, but fees required in advance.

IV GST

An additional 7% is charged in addition to the above fees for GST, except that in the case of fees paid in advance, the above rates include GST.

Our valuation can be performed within these fees if with the retaining letter each lawyer submits:
1. Pension plan booklet (not required for public service plans such as Ontario Teachers).
2. Completion of our checklist found on the last two pages.
3. Copy of annual information statements (usually December 31 or January 1) submitted by the pension plan to the member. (Preferably as of the date nearest the valuation date, but if not available, a later one will suffice.)

Full Details including

court appearance
several scenarios
several pension plans
value of spouse pension on death of retiree
proof of our tax calculation
review of other actuary's work
correction or completion of data
can be found on pages 2 to 6 or our full Current Schedule of Rates, available on request.
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C H E C K L I S T

Complete and mail this list of data together with a copy of the pension plan booklet and the latest annual pension information statement, and an actuarial report on the present value of pension rights split, where possible, into accrual before and after the marriage will be mailed to you.

1. Name(s) of person or persons engaging us
2. Firm name:
3. Address:
4. City, province, postal code
5. Your file reference
6. Name, sex and other data for person whose pension is to be valued:
   (a) Name: ________________________________  (b) Sex: _______
   (c) Date of Birth: Day _____ Mo. _____ Year _____
   (d) Paid: □ Hourly, or □ Salaried  (e) Current Annual Earnings: $___________
   (f) Date of Employment: Day _____ Mo. _____ Year _____  (g) Province of Residence: __________
7. Is there a decision by a court or by the parties involved of the age at which we are to assume the active plan member is to retire? □ Yes □ No
   If so, please state the age at which counsel or the court directs us to assume the pension will commence. Age_________
   If the answer to the question is “No” our report will include a range of ages.
8. Name of employer or pension plan
9. For whom is this report being prepared? (Select One):
   □ Plan member,  □ Spouse of member,  □ Both. We normally supply an objective report.
10. Is plan member:
    □ Actively employed and participating in plan?  □ Already retired?
    □ Terminated with vested annuity starting at normal retirement?
    If not actively at work, date of actual retirement or termination: Day _____ Mo. _____ Year _____
11. Name and date of birth of spouse:
    (a) Name ________________________________  (b) Date of birth: Day _____ Mo. _____ Year _____
    (c) Date of marriage: Day _____ Mo. _____ Year _____
12. Date as of which present value actuarial calculations are required: (i.e. the valuation date): Day _____ Mo. _____ Year _____
13. Unless you specify otherwise, we normally calculate an allowance for taxes the retiree will pay on his/her pension.
    Investment and other income after retirement, except pensions, which affect taxation: $ __________
14. Accumulations of
    (a) Voluntary Contributions $__________
    (b) Locked-in Transfers $__________

(continued over)
15. Please submit with this list a copy of the latest pension plan booklet and try to complete the following:

Pension at retirement reflects (select one):

☐ career lifetime earnings
☐ average earnings of highest few years.
☐ other, please describe ___________________________________________ (supply evidence to support)

Increase in pensions after retirement (select one)

☐ will remain flat after retirement
☐ will have full indexing for inflation (nearly 100% of public sector pensions)
☐ will have pattern between these two extremes – determine from employer.

16. Please submit with this list a copy of the annual pension information statement (for a date close to the valuation date) supplied to the plan member by the plan administrator. Please try to complete the following information to check that all the data we require are shown on this statement.

Date of Statement: Day ______ Mo. ______ Year ______

Credited years (and fractions) of service to date if shown in statement: ______ years.

Pension commencing at age 65
accrued for service to date of statement: $__________ per month x 12 = $__________ per year.

If retirement before age 65,
additional pensions to age 65, if any: $__________ per month x 12 = $__________ per year.

If plan is contributory, accumulated
required employee contributions with interest $__________

Date of accumulation if different from statement date: Day _____ Mo._____ Year ______

Part of such accumulation arising from
contributions made after December 31, 1986, (if available) $__________

If data on accrued pension is not available, please supply T4's from the applicable employer for 6 consecutive years ending with the year of valuation. Where such amounts include substantial overtime, please indicate what proportion for each year would represent overtime.

17. If the marriage occurred after the date of employment, please supply, if possible, a copy of the pension plan booklet in force at the date of marriage and corresponding answers to the questions in section 16 above as of the date of marriage.
Appendix 1

Confusion Created in Pension Valuation for Family Breakdown Case Law by the Use of the Expressions “Termination Method” and “Retirement Method”

1. Problems With Recognition of Future Productivity in Excess of Inflation

The use of the expressions “Retirement Method” and “Termination Method” has created much confusion in case law on pension valuations for family law. The expression “Retirement Method” has been used to represent at least three entirely different concepts. Until these terms are finally abandoned and replaced by more specific expressions, case law will continue to be vague and appear to be inconsistent from case to case.

When actuaries are working for a pension plan calculating employer contributions, it is considered to be good practice to recognize that salaries increase over time to recognize these two factors:

- salaries increase to reflect increases in the Consumer Price Index and the decreasing purchasing value of the dollar; and
- salaries also increase to reflect promotions and other evidences of future productivity over and above inflation.

If either of these features is not recognized, the pension plan is likely to become seriously under-funded.

When equalization of family assets was first introduced in Ontario, some early actuarial reports continued to use estimates of future salary increases which combined both factors. The Standard of Practice of the Canadian Institute of Actuaries defines the term “Retirement Method” to include estimates of such salary increases.

The Ontario courts immediately and consistently rejected this particular “Retirement Method”* for the following reasons:

- it involved speculative unsupported future estimates of the effect of future promotions and other evidences of productivity of the plan participant after the valuation date over and above the effects of inflation;
- in some cases the salary of the plan participant in the year of the trial was actually lower than the estimate the actuary had made earlier on the date of valuation (the method was obviously inaccurate); and
- it is not the intention of the Family Law Act** to consider future productivity after the valuation date. Even in the case of a participant in the Canadian Forces Superannuation, with a history of rapid promotions, any attempt to recognize promotions after the valuation date would be rejected.

Since this particular “Retirement Method” was so clearly inappropriate, a vague expression “Termination Method” emerged to represent the alternative of not reflecting future productivity in excess of inflation.

What this term really implies is that, in the case of final average salary plans, the pension to be valued should be based on the average salary for a period ending at the valuation date, as if employment had terminated at the valuation date, reflecting no speculative allowances for future promotions and other productivity.

It would have been far better to have been more specific and to have created terms that more clearly expressed the problems the courts were trying to avoid. The terms “recognition of future productivity” and “no recognition of future productivity” express more precisely the specific issues which the courts were addressing.

Another vague use of the terms “Termination Method” and “Retirement Method” could be replaced by the more precise use of the terms “no recognition of post-valuation date credited service” and “recognition of post-valuation date credited service” in the determination of such plan features as the earliest unreduced early retirement date.***

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*Early cases allowing no productivity. The basic pension to be valued should be based on earnings prior to the valuation date, with no speculative allowances for future productivity.

Humphreys v. Humphreys (1987), 7 R.F.L. (3d) 113 (Ont. H.C.)

**R.S.O. 1990, C.F.3.

One important problem created by the use of the expression "Retirement Method" is that it has fostered the opinion that it is also inaccurate to reflect the effect of future pre-retirement inflation measured by increases in the Consumer Price Index.

2. Calculations of Present Values of Pensions Usually Accurately Reflect Inflation

It is incorrect to believe that such a calculation is inaccurate. It is actually more accurate to reflect inflation than to try to calculate values which do not reflect inflation.

In the area of damages for personal injuries, an accurate allowance for future inflation is provided in Rule 53.09 of the Ontario Rules of Civil Procedure**. For over 25 years it has been recognized by investors and by the courts that there is no way to forecast annual inflation. It could drop to zero or it could increase to over 10%. Investors realize, however, that interest rates have historically always tended to exceed inflation by a small margin averaging 2 1/2% to 3 1/4% per year, referred to as the "real" rate of return on investments. Without this real rate of return, there would be no point in investing money. If interest rates simply matched inflation, the purchasing power of the investment would never increase.

The investor depends on the fact that, if inflation were to increase to 10%, interest rates would grow to average 12 1/2% to 13 1/4%.

When an actuary determines the present value of future pension payments or future costs of care to be provided for a disabled plaintiff, it is realized that if inflation grew to 10% the amount of money required in the future would be more substantial, but to offset this, the interest return to be expected in the future on the funds awarded would also be substantial so that a smaller amount is needed to be invested today to provide for the large future need for money. These two facts offset each other precisely. The present value required remains the same whether inflation declines to zero or increases to 10%.

The actuary makes the simple assumption that there will be no future inflation but that, as a result, interest rates will decline to 2 1/2% (or such other low discount rate as is required for personal injury damages in the specific province) or 3 1/4% (as required for pension valuation for equalization purposes with minor modifications for relatively few years after the valuation date). This is an accurate method for providing for future inflation in spite of the fact that such future inflation is unknown.

Calculations can only become speculative when an attempt is made to provide for productivity in excess of inflation by guessing the level of future salaries.

3. Public Sector Pension Plans (Government Employees and Teachers)

It is extremely important to recognize that there is a vast difference between public sector pension plans and private sector pension plans. Most public sector pensions are governed by two acts. For example, the Public Service Superannuation Act describes the basic terms of the pension plan for federal government employees and the Supplementary Retirement Benefits Act governs the additional terms of the pension plan which are designed to reflect inflation for federal government employees.

In the case of all public sector pension plans, full indexing for pre-retirement inflation, measured by increases in the Consumer Price Index, applies not only to those plan members who stay in the plan until retirement, but also to those plan members who terminate employment for any reason prior to retirement. On the other hand, it is extremely rare to find any allowance for pre-retirement inflation in a private sector pension plan once a member has terminated employment prior to retirement.

For example section 79 of Schedule 1 of the Teachers' Pension Act in Ontario provides as follows:

79-(1) Every retirement pension, disability pension, survivor pension, child's pension and beneficiary's pension shall be adjusted for inflation in accordance with section 80.

### References

Derno v. Derno (1990), 28 R.F.L. (3d) 86 (Ont. H.C.)

***Cases where, instead of assuming termination of employment at the valuation date, the member was assumed to continue employment, earn further service credit toward qualification for early retirement, and retire at one of a number of later dates, including the earliest unreduced early retirement date. However, the principle of no speculation of post-valuation productivity was preserved.

**R.R.O. 1990, Reg. 194

Derno v. Derno (1990), 28 R.F.L. (3d) 86 (Ont. H.C.)

(2) Every deferred pension payable under the pension plan shall be adjusted for inflation in accordance with section 80 for the period beginning at the end of the last month for which the member has credit under the plan and ending when the pension begins.

(3) No pension or deferred pension shall be adjusted under this section for inflation in respect of a period before the 1st day of January 1990.*

Section 80 includes the following definition:

“basic ratio”, for a year, means the ratio expressed to three decimal places that the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year bears to the average for the Consumer Price Index over the first twelve months of that period....*

The full text of Section 80 can be summarized by stating that each year on and after January 1, 1990 the pension is adjusted by the basic ratio with a maximum of 1.08 and a minimum of 1.00, with any basic ratio falling outside this range adjusted in later years by a carry forward formula. Similar indexing for the period prior to January 1, 1990 was provided by the Superannuation Adjustment Benefits Act.

When the concept of placing values on pension plans for equalization purposes was first introduced, only a few actuaries had any experience with providing advice on public sector pensions. The vast majority of actuaries had confined their attention to private sector sections where pre-retirement indexing for inflation ceased on termination of employment. (The deferred pension provided for the private sector terminated member was not indexed for any further inflation prior to retirement.) A few early incorrect valuations of public sector plans found their way into case law, but after a few months all actuaries were properly reflecting full pre-retirement indexing for inflation in public sector pensions.

In those provinces where salary projection is not appropriate because family law never accepted speculative future productivity for promotions, all actuaries now recognize pre-retirement inflation in the case of all public sector pension plans by the accurate method of choosing a low “real” discount rate. Marsham v. Marsham was an early example of this technique in Ontario but the same technique is now applied to all public sector plans** There is no real need to bring evidence to support pre-retirement indexing.

It is the consistent conclusion of all case law in Ontario that, in the case of public sector plans, it is essential to reflect full pre-retirement indexing for inflation as required by the precise terms of these plans but that it is inappropriate to reflect any future productivity in excess of such inflation.

Although those actuaries valuing the total liabilities of the pension plan for funding purposes will usually recognize both inflation and productivity in excess of inflation in developing salary scales, this technique can be considered inappropriate for family law purposes.

4. Hilderley v. Hilderley

In Ontario, Hilderley v. Hilderley is often quoted as an illustration that the “Termination Method” is to be preferred over the “Retirement Method”.

Lawyers should remember however, that these two expressions have come to have several definitions and must look more closely at the particular definition intended.

The “Termination Method” sometimes implies that the employee terminated employment on the valuation date and that it would be inappropriate to include any allowance for any pre-retirement inflation.

This definition does not apply in Hilderley v. Hilderley because Mr. Hilderley was a school principal, participating in the Ontario Teachers’ Pension Plan, a public sector plan where, by the definition of the plan, future increases to reflect pre-retirement inflation automatically apply whether Mr. Hilderley terminated employment on the valuation date or continued employment until later retirement.

The “Retirement Method” sometimes implies that it is appropriate to allow for pre-retirement inflation and future productivity by projecting the

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*R.S.O. 1990. c. T.1, s. 79 and 80

**Public sector cases allowing no productivity but with plan terms correctly reflected by adjusting the basic pension by an allowance for full pre-retirement indexing. The actuary would have chosen to use a low interest rate assumption representing the balance remaining, after subtracting from the total interest rate that part required to cover inflation, and would probably have explained this low real interest rate assumption in court.

likely future earnings of the employee until the assumed retirement date and then determining the appropriate part of the deferred annuity so calculated which is applicable to the period of marriage.

Hilderley v. Hilderley was clearly rejecting this “Retirement Method” because such method allowed the spouse to share in the fruits of the employee's labour after the marriage had ceased and because it involved speculative projections of future salaries. The ultimate point established by Hilderley v. Hilderley is that the recognition of the pre-retirement inflation indexing required by the plan (regardless of whether the employee terminated employment on the valuation date or remained in the plan until retirement) must be calculated by a method that uses the deferred annuity accrued to the valuation date, as if employment had terminated at the date of valuation, without any speculative projection of salaries, and avoids any post-valuation productivity reflecting the fruits of the employee's labour after the valuation date. This is accomplished by adopting the simple expedient of using a low discount rate.

Now that it is established that, for all plans in Ontario, no recognition should be given in Family Law Act calculations to any productivity of the plan participant after the valuation date, there is no longer any need to continue the confusing expressions “Termination Method” and “Retirement Method” in the specific case of public sector plans. The result of the “Termination Method” is identical to the result of the “Retirement Method” except for rare plans where the deferred annuity arising from an early termination is indexed prior to retirement, but not indexed after retirement.

In both cases full pre-retirement indexing must be used. The actuarial valuation is based on the pension accrued to the valuation date reflecting the average of the best five years earnings prior to the valuation date using a low discount rate to reflect the fact that most of the interest earned will be required to provide for the effect of inflation. As stated earlier, it would be better to employ more specific terms such as whether or not “speculative productivity” in excess of inflation should be recognized.

5. Public Sector Case Law is Inappropriate for Private Sector Plans

Over 95% of all reported case law deals with the large public sector plans where the question of whether or not the plan participant terminated employment on the valuation date is of no concern in the choice of pre-retirement indexing, as the actuarial valuation is the same regardless of the answer to the question, and the use of the ambiguous term “Termination Method” has led to so much confusion. Such case law should not be used as illustrative of appropriate case law for private sector plans, particularly since, as long as the actuarial evidence demonstrated that the low “real interest” discount rate could be used to accurately reflect inflation, there is no case law deliberately rejecting pre-retirement indexing for inflation.

This confusion was originally created by incomplete actuarial evidence. Any future decisions which purport to create or reverse case law for private sector pensions using case law developed for public sector pensions will invariably be found to be based on incomplete actuarial evidence or incomplete arguments.

6. Private Sector Pension Plans

Private sector plans are the only plans where the question arises of whether or not to allow for pre-retirement indexing, and where there is any real reason to present evidence on whether it is appropriate to reflect pre-retirement inflation.

7. Employer Contributions to the Assets of Final Average Plans Reflect Pre-Retirement Indexing

All pension plans must retain an actuary at least every three years to calculate the liability required as sufficient to pay all future plan benefits, and to calculate the appropriate employer contributions required to increase the current plan assets to the point sufficient to cover such liabilities.

Pension authorities review these calculations. For example, in Ontario, the Superintendent of Financial Services is responsible to the Ontario Minister of Finance for enforcing the Ontario Pension Benefits Act.*

In the case of final average salary plans the actuary is required to calculate liabilities allowing for future pre-retirement indexing. The actuary is never permitted to make the unrealistic assumption that all employees will terminate employment on the valuation date.

This implies that the calculation of employer contributions reflects full pre-retirement indexing. The plan is holding assets for every plan member sufficient to provide full pre-retirement indexing for inflation. Once employer contributions have vested, all the benefits derived therefrom (including full indexing of the pension up to retirement in the case of a final average salary plan) are the property of the employee. To

*R.S.O. 1990, c. P.8
protect the solvency of the plan, employer liabilities, and consequently employer contributions, are calculated taking into consideration the assumption of indexing for inflation prior to retirement.

The required plan liabilities applicable while employees are still active are considerably higher than the low transfer values that would be paid if the plan member terminated employment prematurely.

In the case of family law, it is important to introduce evidence to explain that indexing for inflation required for final average earning plans can be accurately reflected by the use of a low discount rate. There is no Ontario case law, where such evidence has been given, which deliberately required the elimination of pre-retirement indexing for inflation, should the member remain in the plan to retirement – only case law rejecting future productivity in excess of inflation. When we turn to the Ontario Family Law Act, it includes employer contributions (and their dependence on pre-retirement indexing) in the definition of family property as it reflects the pension plan values. RSO, 1990 c F.3, s.4.

“property” means any interest, present or future, vested or contingent, in real or personal property and includes, ...

(c) in the case of a spouse’s rights under a pension plan that have vested, the spouse’s interest in the plan including contributions made by other persons.

We can condense this section in one sentence:

The value of a vested member’s pension at the valuation date is defined by the Family Law Act to reflect not only the employee contributions but also the employer contributions; in effect, this is the total liability defined by the provincial Pension Benefits Act to provide for all future benefits to the member for service during the marriage, including the recognition of the fact that the ultimate benefit at retirement will reflect full pre-retirement inflation.

8. Ontario Case Law on Private Sector Plans

The only appropriate case law in Ontario for private sector plans is based on the relatively few reported cases such as Halman v. Halman and Bascello v. Bascello* which deal specifically with private sector pension plans.

In these two cases clear evidence was presented that

- the calculation of employer contributions invariably takes into consideration full pre-retirement indexing;

- this can be accurately reflected by using a low real interest rate

(In rare cases, where the actuary was not familiar with this technique and incorrectly stated that speculative salary projections were required whenever it was assumed the employed would continue to participate in the plan, this speculation was rejected.)

- had termination occurred on the valuation date, there would have been no further pre-retirement indexing of the deferred pension commencing at retirement, but that

- should the employee remain in the plan until retirement, full pre-retirement indexing for inflation would be appropriate for these final average salary plans.

In other words, a range of possibilities should be considered. In both these cases the court agreed there were two extremes and that a compromise value between the two was appropriate.

In the case of Bascello v. Bascello the value was obtained by first selecting the value based on full pre-retirement indexing and then reducing such value by a contingency deduction equal to 30% of the difference between: (1) the value based on full pre-retirement indexing; and (2) the value based on no pre-retirement indexing, to provide for the contingency that the plan member might terminate employment prior to the age at which a retirement pension would have been available.

It is my opinion that, in the case of private sector plans, the actuary should present pension values for family breakdown based on two assumptions:

- no pre-retirement indexing; and

- full pre-retirement indexing.

The first is completely biased in favour of the plan participant and is appropriate only if there is an imminent risk of he or she being laid off. The second is biased in favour of the spouse of the plan participant and is appropriate only if the plan member stays employed to retirement. The two sides should negotiate a reasonable compromise between these two extremes, just as they would negotiate a reasonable compromise between values assuming different retirement ages.

Appendix 2

The Concept of Discounting Family Law Pension Valuations for Service Required to Meet Criteria to be Eligible for Early Retirement

The Problem – Public Sector Plans

All actuaries present their values of public sector pension plans for family law purposes assuming at least two retirement ages:

- the earliest unreduced early retirement age (which could be age 57 based on the plan criteria for determining such age) and
- the normal retirement age (usually age 65).

Should the plan member terminate employment before eligibility for immediate retirement, the pension is deferred and usually starts at normal retirement. The normal retirement age value is appropriate for early termination.

At the valuation date, the member may not yet qualify for unreduced early retirement. If early termination were to occur, the retirement age 65 value would apply. Once the member reaches age 57, the retirement age 57 value would apply, which is a larger value because the pension earned during the marriage would be paid for eight more years.

How do we adjust the larger retirement age 57 pension value to reflect the fact that the necessary criteria for a pension starting at age 57 have not yet been met?

Solution Allowing Maximum Flexibility for Court Room and Mediation Proceedings

The correct procedure is for the actuary to present values for a range of retirement ages (including the average retirement age 61) as if the member actually remained in the plan until one of a number of specific retirement ages, and then to make the parties aware of this problem, and to leave the final choice of values to the settlement discussions or the mediation process.

The lawyers can then recognize the possibility of terminating employment before meeting the required criteria by interpolating between the age 57 value and the age 65 value but reflecting the actual facts of the case.

If the plan member has stated that it is the planned intention to retire as soon as unreduced retirement criteria are met and if the chances of being laid off are unlikely, the earliest unreduced early retirement age would be chosen. If the support payments are such that the plan member must work until normal retirement, the normal retirement age should be chosen.

Otherwise, the parties may agree on the use of the value for the average retirement age 61, not necessarily because they assume the member will retire at age 61, but only because it represents a compromise between age 57 and age 65.

If the employer has a history of layoffs, such history could colour this choice.

An Alternative Which Could Seriously Ignore the Actual Facts

In an effort to expedite mediation, some valuators feel compelled to determine a specific service discount to be subtracted from the value for the earliest unreduced early retirement age 57, in an attempt to reflect the probability of early termination of employment before the plan criteria are met.

The introduction of the average retirement age already recognizes that frequently there should be some compromise between the two extremes.

It is not necessary to reduce the value for the earliest unreduced early retirement age by a discount to allow for the fact that the plan member may terminate employment before meeting the criteria. The effect of using such a discount would depend on specific termination assumptions chosen, but the result after such a discount will usually be found to be very close to the result for the average retirement age before applying any service discount. Frequently the difference is less than 2 1/2 %.

The reason actuaries avoid making any assumptions of the probability of terminating employment before meeting the necessary criteria is that speculative assumptions of termination rates by year must be chosen which may not necessarily reflect the actual facts. Accurate assumptions should depend on the actual employer and more particularly on the situation of the specific individual. It is really inappropriate to use arbitrary assumptions.
Actuaries do not want to leave the impression that any service discount is an accurate figure when, in fact, it is based on a single choice assumption which may have nothing to do with the actual facts of the case.

They also do not want to deprive judges and mediators of the choice of the full value for the unreduced early retirement age.

They prefer to leave the choice of the assumed actual date of retirement to settlement discussions and mediation so that such facts can be recognized.

**Differences Between Public Sector Plans and Private Sector Plans**

In all family law valuations in Ontario and certain other provinces, case law, in particular *Hilderley v. Hilderley*, requires that the amount of pension to be valued for a final average salary plan be based on the average salary of the period ending at the valuation date, as if employment had terminated at the valuation date. No speculative allowances are made for promotions and other productivity.

In the case of practically all public sector plans that pension is fully indexed for inflation whether we assume actual termination of employment at the valuation date or we assume the member actually remains in the plan until qualification for retirement at a later date. The actuary allows for such inflation indexing by choosing to discount for interest using a low interest rate to reflect the fact that most of the interest earned on investments is required just to offset inflation leaving a relatively low net rate of return to the investor. This is similar to the provisions of Rule 53.09 of the Ontario Rules of Civil Procedure used in determining damages for personal injuries and fatal accidents.

However, in the case of private sector plans, although full indexing for inflation would apply if the member remained in the plan until eligible for retirement, no further pre-retirement indexing for inflation would apply to the deferred annuity commencing at normal retirement if the member were to terminate employment before eligibility for retirement.

**Applicability of Discounting for Service Needed to be Eligible for Early Retirement in the Case of Private Sector Plans**

When we come to private sector plans there is a twofold requirement to allow for the probability that the member may yet not meet the criteria for early retirement. Not only should the actuary display a broad array of retirement ages, including the average retirement age, but the actuary should also display the results of the calculation on two separate assumptions:

- No pre-retirement indexing for inflation
- Full pre-retirement indexing for inflation.

If the member were to terminate employment before meeting early retirement criteria the valuation results should be based on no pre-retirement indexing. If the member actually retired after meeting the required criteria, the full pre-retirement indexing assumptions should be used. In mediation or settlement discussions, usually a choice would be made between the two extremes.

Since this is more complicated, it is my practice to illustrate such a discounting process with an example of how this is to be done, but with the qualification that this is an illustration only, and that the final adjustment should be based on making a choice between the two extremes which reflects the actual facts of the case. See Tables 1 and 2.

By having completed my main summary values on the two separate assumptions, I have supplied enough data to allow maximum flexibility. In conclusion, discounting pension valuations to reflect the fact that required eligibility for early retirement may not yet be met is an important point, but the method of reflecting this discounting should be left to the parties concerned as it is so sensitive to the facts of the individual case.
Pension Treatment at Divorce and Separation – Ten Key Points You Must Know

Sample Summary of Values – Table 1

Mr. James T. Law  
Barrister & Solicitor  
Pension of William L. Jackson  
Ciba-Geigy Canada Ltd. (Ciba) Pension Plan

This is a private sector plan. The first column below (Termination Value) provides the value of the unreduced deferred pension starting at normal retirement, assuming the member actually terminated employment at the valuation date. The other columns provide the values assuming the member remains in the plan to various retirement ages as specified by the Standard of Practice of the Canadian Institute of Actuaries.

Valuation as of Jan. 21, 1994.

Post-retirement indexing: 60% of CPI. The annual amount of pension earned from the date of employment to the date of valuation in 1994 dollars starts at 28273.00 and reduces after age 65 to 25298.00. This is based on the average salary of the best 3 years prior to the valuation as if employment had terminated at the valuation date. There are no speculative allowances for future promotions or other productivity.

<table>
<thead>
<tr>
<th>Age at which payments commence</th>
<th>Termination Value</th>
<th>Normal Retirement</th>
<th>Average Retirement</th>
<th>Earliest Unreduced</th>
</tr>
</thead>
<tbody>
<tr>
<td>65.00</td>
<td>65.00</td>
<td>63.17</td>
<td>61.34</td>
<td></td>
</tr>
</tbody>
</table>

PART I: Calculated Values Assuming NO PRE-RETIREMENT INDEXING For Inflation

<table>
<thead>
<tr>
<th></th>
<th>termination Value</th>
<th>Normal Retirement</th>
<th>Average Retirement</th>
<th>Earliest Unreduced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add excess contributions increase:</td>
<td>2972.</td>
<td>2972.</td>
<td>0.</td>
<td>0.</td>
</tr>
<tr>
<td>Value prior to tax adjustments</td>
<td>61524.</td>
<td>61524.</td>
<td>73181.</td>
<td>90198.</td>
</tr>
<tr>
<td>Income tax rate</td>
<td>41.77%</td>
<td>41.77%</td>
<td>40.72%</td>
<td>39.66%</td>
</tr>
<tr>
<td>Subtract Income Tax</td>
<td>25698.</td>
<td>25698.</td>
<td>29797.</td>
<td>35776.</td>
</tr>
<tr>
<td>Value of pension accrued from entry date to valuation date after tax adjustment:</td>
<td>35826.</td>
<td>35826.</td>
<td>43384.</td>
<td>54422.</td>
</tr>
</tbody>
</table>

Subtract the value of the pension accrued to marriage expressed in 1984 dollars when each dollar had a much larger purchasing power (added value method):

| Value of pension accrued to marriage | 2800. | 2800. | 2850. | 2901. |
| Value of pension accrued after marriage | 33026. | 33026. | 40534. | 51521. |

Subtract pension accrued to marriage adjusted to the comparable purchasing value of a dollar in 1994 (pro rata method):

| Value of pension accrued to marriage | 7714. | 7714. | 9816. | 12313. |
| Value of pension accrued after marriage | 28111. | 28111. | 33568. | 42109. |

PART II: Calculated Values Assuming FULL PRE-RETIREMENT INDEXING For Inflation

<table>
<thead>
<tr>
<th></th>
<th>termination Value</th>
<th>Normal Retirement</th>
<th>Average Retirement</th>
<th>Earliest Unreduced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add excess contributions increase:</td>
<td>0.</td>
<td>0.</td>
<td>0.</td>
<td>0.</td>
</tr>
<tr>
<td>Value prior to tax adjustments</td>
<td>113458.</td>
<td>134543.</td>
<td>157336.</td>
<td>157336.</td>
</tr>
<tr>
<td>Income tax rate</td>
<td>41.77%</td>
<td>40.72%</td>
<td>39.66%</td>
<td></td>
</tr>
<tr>
<td>Subtract Income Tax</td>
<td>47391.</td>
<td>54781.</td>
<td>62405.</td>
<td></td>
</tr>
<tr>
<td>Value of pension accrued from entry date to valuation date after tax adjustment:</td>
<td>66067.</td>
<td>79762.</td>
<td>94931.</td>
<td></td>
</tr>
</tbody>
</table>

Subtract the value of the pension accrued to marriage expressed in 1984 dollars when each dollar had a much larger purchasing power (added value method):

| Value of pension accrued to marriage | 7562. | 9091. | 10785. | 10785. |
| Value of pension accrued after marriage | 58505. | 70671. | 84146. | 84146. |

Subtract pension accrued to marriage adjusted to the comparable purchasing value of a dollar in 1994 (pro rata method): Value of pension accrued to marriage | 14948. | 18046. | 21479. | 21479. |
| Value of pension accrued after marriage | 51119. | 61715. | 73452. | 73452. |
Sample Summary of Values – Table 2

<table>
<thead>
<tr>
<th></th>
<th>Termination Value</th>
<th>Normal Retirement</th>
<th>Average Retirement</th>
<th>Earliest Unreduced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age at which payments commence</td>
<td>65.00</td>
<td>65.00</td>
<td>63.17</td>
<td>61.34</td>
</tr>
<tr>
<td>Calculated values assuming full pre-retirement indexing for inflation:</td>
<td>113458.</td>
<td>134543.</td>
<td>157336.</td>
<td></td>
</tr>
<tr>
<td>Calculated values assuming no pre-retirement indexing for inflation:</td>
<td>58552.</td>
<td>58552.</td>
<td>73181.</td>
<td>90198.</td>
</tr>
</tbody>
</table>

The first set of values gives no recognition to the possibility of the plan member being laid off before payments start. The second set gives no recognition for future inflation should the plan member stay in the plan until payments start.

A discount should be applied to the first value to allow for the contingency that the plan member may terminate employment between the valuation date and before payments commence. We illustrate using 30% of the difference between the two. You may feel that an alternative possibility better fits the facts of the case.

Discount off line 1 for early service termination: 16472. 18409. 20141.

Balance after discount: 58552. 96986. 116134. 137195.

Add excess contributions increase: 2972. 892. 0. 0.

Value prior to tax adjustments: 61524. 97878. 116134. 137195.

Income tax rate: 41.77% 41.77% 40.72% 39.66%


Value of pension accrued from entry date to valuation date after tax adjustment: 35826. 50861. 61630. 74359.

Subtract the value of the pension accrued to marriage expressed in 1984 dollars when each dollar had a much larger purchasing power (added value method):

Value of pension accrued to marriage: 2800. 6134. 7219. 8420.

Value of pension accrued after marriage: 33026. 50861. 61630. 74359.

Subtract pension accrued to marriage adjusted to the comparable purchasing value of a dollar in 1994 (pro rata method):

Value of pension accrued to marriage: 7714. 12778. 15577. 18729.

Value of pension accrued after marriage: 28111. 44216. 53271. 64049.

Value prior to tax adjustments: 61524. 97878. 116134. 137195.

Add excess contributions increase: 2972. 892. 0. 0.


Value of pension accrued after marriage: 35826. 50861. 61630. 74359.

Discount off line 1 for early service termination: 16472. 18409. 20141.

Balance after discount: 58552. 96986. 116134. 137195.

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Value of pension accrued to marriage: 2800. 6134. 7219. 8420.

Value of pension accrued after marriage: 33026. 50861. 61630. 74359.

Subtract pension accrued to marriage adjusted to the comparable purchasing value of a dollar in 1994 (pro rata method):

Value of pension accrued to marriage: 7714. 12778. 15577. 18729.

Value of pension accrued after marriage: 28111. 44216. 53271. 64049.

Credited service from marriage to valuation is 9.66667 years.

Credited service from employment to valuation is 12.49333 years.

Male age 45.17.

Birth: Nov. 6, 1948.


Two Alternatives

In determining the present value of pension rights for purposes of determining an equalization payment for a family breakdown, there are two alternatives for those plans where the pension is a percentage of the average salary of the best five years and where public service does not apply.

The first is to assume the pension member will actually terminate employment on the valuation date and the value is determined based on the average salary of the best five years prior to the marriage breakdown.

The other is to assume that the member will not terminate employment at the marriage breakdown but will continue participating in the pension until a later retirement date. It is assumed that the average salary of the best five years at retirement can be determined by indexing the average salary at marriage breakdown to allow for inflation from marriage breakdown to retirement.

The Standard of Practice ("SOP") of the Canadian Institute of Actuaries defines these alternatives as the "Termination Method" and the "Retirement Method" respectively.

Some Ontario actuaries think that it is necessary to assume termination of employment at the valuation date, because otherwise the value for marriage breakdown purposes would exceed the transfer value that would have been available had the employee terminated employment on the valuation date. If the member chose to terminate employment shortly after the equalization payment had been made, he or she would be surprised if the transfer value were lower than the value that was used for family breakdown purposes.

Such actuaries may say that since valuation methods that reflect future indexing for inflation will result in an overstatement of the pension's equalization value compared to its transfer value in the event of termination prior to retirement, it necessarily follows that the strict termination method is the appropriate one to use. They believe it is self-evident and should be accepted actuarial practice that values for equalization purposes must reflect the assumption of termination of employment on the valuation date.

While it might be desirable to avoid this problem by using no indexing assumptions for marriage breakdown, I find this approach to be completely biased in favour of the pension plan member. The member might not terminate employment until retirement (and never require a transfer value).

If the non-indexed method is used and the plan member continues to work to retirement on a full pension based on average salary at retirement, the equalization payment received by the spouse involved in a private sector pension makes no provision for inflation and the decreasing purchasing value of the dollar from the date of separation to the date of retirement. This method is seriously inconsistent with treatment of the equalization payment in the similar case of a spouse where the pension involved is a public service plan which does provide for future inflation to the date of retirement. A value based on no indexing to retirement is so unfair to the spouse of the plan member that there will be an incentive to press for benefit splitting under s. 51 of the Pension Benefits Act, R.S.O. 1990, c. P.8 by delaying action until retirement and sharing in the full pension determined at that date in order to derive credit for the effects of future inflation to retirement. This result will tend to defeat the main purpose of equalization which is to create financial independence of the parties.

Standard of Practice for Marriage Breakdown Computations

The SOP defines the "approved principles by which an actuary shall determine the value of the entitlement of a plan member ... This standard of practice represents a basis that is not biased in respect of either the plan member or the spouse of the plan member."
It is a binding standard for actuaries to follow for all actuarial reports prepared or actuarial evidence given after September 1, 1993 on the value to be used for the pension entitlement on marriage breakdown.

The SOP, which defines “accepted actuarial practice,” does not specify the exclusive use of the assumption of termination of employment on the valuation date or the exclusive use of no pre-retirement indexing.

The SOP does not preclude the use of the retirement method with full pre-retirement indexing for private sector final average salary plans.

In British Columbia, for example, Regulation 77/95 s.11, governing the Family Relations Act, R.S.B.C. 1979, c. 121, and the Family Relations Amendment Act, 1994, S.B.C. 1994, c. 6, requires that compensation payments under ss. 52, 55.92(1) or 55.92(4) reflect both the termination and retirement methods. This requirement implies that the use of full indexing for inflation to retirement is certainly part of accepted actuarial practice in that province.

The SOP does state that “practices in the relevant jurisdiction (i.e., case law) may determine whether the actuary should utilize the termination method vs. the retirement method... The actuary should not use a method or an approach that is inappropriate for the applicable jurisdiction.”

In the formative stages of case law dealing with the subject of pensions as family property, decisions in Ontario tended to reflect the termination method. Unfortunately, the term “retirement method” was used as a single term for several different meanings, one of which was clearly inappropriate for family law purposes. This usage tended to foster the opinion that the termination method was the only appropriate method.

However, starting in 1993, the same year that the SOP was introduced, these ambiguities began to be recognized in case law. Halman v. Halman (1993), 1 C.C.P.B. 268 (Ont. Gen. Div.), for example, rejected the strict termination method in favour of the hybrid approach. This judgment referred to other cases that rejected the strict termination method. It was recognized that exclusive use of the termination method was biased in favour of the pension plan member.


In any event, the wording of the SOP requires the actuary to keep up to date on case law. Accepted actuarial practice varies from one jurisdiction to another and reflects actuarial interpretation of the law rather than actuarial theory.

Of course, if actuarial reports show values based exclusively on the termination method, the courts will have no evidence on retirement method values, which results, to some extent, in a tendency to perpetuate the termination method in case law in Ontario.

Since some case law has started to reject the exclusive use of the termination method and no pre-retirement indexing, actuaries should reflect the various approaches of case law by presenting results for both no pre-retirement indexing and also full pre-retirement indexing.

Since all decisions in law should be made ultimately by lawyers, and since lawyers are intelligent and can take into account such concerns as transfer values being less than values for marriage breakdown, why should actuaries leave out valuable information?

After all, the choice between the two is the prerogative of the court and the court should have full information in order to properly perform its responsibilities, particularly when it is necessary to support equitable treatment of the spouse of the plan member.

The SOP, which was adopted after a vote of the CIA membership as a whole, wisely admonishes the actuary to become familiar with the practices and requirements of the relevant jurisdiction for the case. If there is any doubt, the SOP requires the actuary to give sufficient details to allow maximum flexibility in settlement discussions or in the court proceedings. The SOP never intends the actuary to limit the data supplied.

The court cannot abdicate its responsibility for making the final decisions in law to practices of an outside body.

The choice of assumption is a matter of law and frequently depends on the facts of an individual case. After the lawyers have settled the law, the actuaries perform the calculations required by the lawyers unless to do so would be inconsistent with plan terms.
**Ontario Family Law Act – Vested Employer Contributions**

Section 4 of the Ontario *Family Law Act* defines property, in the case of a spouse's rights under a pension plan that have vested, as including employer contributions.

Once an employee's rights in a pension plan have vested, both employer and employee contributions should be included in net family property. After all, once the employer contributions have vested, all the benefits derived therefrom (including full indexing of the pension up to retirement in the case of a final average salary plan) are the property of the employee.

It is a fact of life that the liabilities held on the books of the pension plan for a particular member are well in excess of transfer values, regardless of vesting status. To protect the solvency of the plan, employer liabilities, and consequently employer contributions, are calculated taking into consideration the assumption of indexing for inflation prior to retirement.

The SOP states that the actuary should become familiar with the requirements of the relevant jurisdiction for the case and should endeavour to meet fully these requirements. Since the wording of the *Family Law Act* implies use of full indexing prior to retirement, the actuary must display the retirement method as well as the termination method.

**Assuming Actuaries Display Both Methods, How are these to be used by Lawyers?**

Lawyers should recognize that the exclusive use of no pre-retirement indexing is completely biased in favour of the plan member and that the exclusive use of full pre-retirement indexing is biased in favour of the spouse of such member. We need a valuation that lies between these two extremes.

**Valuation for Equalization Purposes**

In the case of determining equalization payments, the Ontario Law Reform Commission ("OLRC"), in its "Report on Pensions as Family Property: Valuation and Division" recommends, beginning on p. 104 of the report, the use of a modified retirement method.

Given the uncertainty with respect to application of the termination and retirement methods in pension valuation, it is desirable to prescribe one approach to the treatment of post-separation salary increases and plan improvements. It is the Commission's opinion that the retirement method of valuation for defined benefit plans is the most appropriate for family law purposes.

The intention is not to use the retirement method directly. The value so determined is to be modified to reflect the possibility of the member terminating plan membership prior to retirement. The OLRC suggests this be handled by a discount. In the Bascello v Bascello decision, a contingency deduction was applied. The decision to reject the strict termination method was made by the OLRC after careful research. Not only is full indexing to retirement implied by the wording of the *Family Law Act*, but many other opinions were quoted. For example, the OLRC report points out on p. 103 that an earlier report of the Ontario Ministry of Financial Institutions, "Building on reform: Choices for tomorrow's pensions," while not specifically recommending either a retirement or a termination approach to pension valuation, was generally critical of the termination approach to valuing defined benefit plans.

Also, Ms. E. Diane Pask in her paper "Drafting Pension Division Legislation: An Overview of Selected Issues," which was presented at a joint meeting of the Federal-Provincial Family Law Committee and the Family Law Section, Canadian Bar Association, argued that the application of the termination method to final or best average plans may not share, in a fair manner, the pension property accrued during marriage because it fails to reflect the true value of the pension.

It would be confusing to lawyers to have accepted actuarial practice involved with matters that are the prerogative of the law and decisions made in court.

**Pension Benefits Act – Transfer Values**

Of course, there cannot be any conflict between pension legislation and the *Family Law Act*.

The 1995 OLRC report recognizes on p. 215 of Chapter 7 that the plan administrator must determine any spousal transfer value according to applicable pension legislation.

**Consistency With Pension Benefits Act**

The OLRC report will ultimately be reviewed by the Attorney General and other Cabinet members. Since the use of the termination method is so unfair to the spouse of the plan member, it is to be hoped that the OLRC suggestion of a modified retirement method be given serious consideration, particularly since this is more consistent with S. 51 of the Pension Benefits Act.
If you are a lawyer representing the pension plan member in a family law dispute, you should not accept tax calculations lightly. It is most important to insist on tax calculations reflecting the precise wording of the Income Tax Acts.

Most public sector pension plans are fully indexed for inflation. However, Section 117.1 of the federal Income Tax Act provides that the annual changes in tax brackets and tax credits only partially reflect the increase in the Consumer Price Index for the year. These changes are indexed at a rate 3% less than inflation. This produces significantly higher taxes than would be the case if such tax brackets and credits were fully indexed for inflation. Even when pensions just keep pace with inflation, more and more of the pension will be taxed in a higher tax bracket. Also, personal and other tax credits will become an increasingly smaller percentage of the pension.

The bite of taxes in your client’s purchasing power is going to increase substantially over the years.

Your client is bound to pay taxes on the pensions after retirement. It would be unfair to add the full pre-tax value to his or her net worth. Taxes must be reflected. However, it is even more important to provide an adequate allowance for taxes.

It seems that over half the pension valuations for equalization purposes ignore the wording of the Income Tax Act and ignore this partial indexing for inflation each year, producing an inadequate allowance for tax and an overstatement of the after-tax value of the pension.

If the average Consumer Price Index for the 12-month period ending late in 1996 is 135.0 and if such average for the 12-month period ending late in 1997 turns out to be 140.0, then the inflation factor for that period will have been

\[
\frac{140.0}{135.0} = 1.037
\]

However, if this were the case, our tax brackets would increase from 1997 to 1998 by only 7/10%:

\[
1.037 - 1.03 = .007
\]

<table>
<thead>
<tr>
<th></th>
<th>1997</th>
<th>1998</th>
</tr>
</thead>
<tbody>
<tr>
<td>17% tax applies up to</td>
<td>$29,590</td>
<td>$29,797</td>
</tr>
<tr>
<td>26% tax on next</td>
<td>29,590</td>
<td>29,797</td>
</tr>
<tr>
<td>29% tax on excess over</td>
<td>59,180</td>
<td>59,594</td>
</tr>
<tr>
<td>Personal tax exemption</td>
<td>1,098</td>
<td>1,106</td>
</tr>
<tr>
<td>Pension exemption</td>
<td>170.0</td>
<td>171.2</td>
</tr>
<tr>
<td>Maximum tax credit for age over 65</td>
<td>592.0</td>
<td>596.1</td>
</tr>
</tbody>
</table>

If the increase factor is negative, tax brackets and exemptions remain unchanged.

This may seem to be a picayune difference in any one year but your client may have many years prior to retirement and may then survive for many years after retirement. The ultimate post-retirement average tax rate using the precise partial indexing could be 12% to 20% higher than a tax calculation assuming full indexing of the tax tables for inflation, resulting in a lower after-tax value for your client.

This can be illustrated easily. Let us assume a long-term inflation rate of 5%. This is the inflation rate investors anticipate when they buy long-term Government of Canada Bonds currently yielding 7.6%. This implies that tax brackets and tax credits will only grow by 2% per year. (In the first few years because of adjustments in the age credit, total personal tax credits will actually decrease.)

We will assume your client plans to retire 12 years after the separation date, and that anticipated pensions in the dollars of the year of valuation are $33,774.96 and in dollars of the years of retirement are $56,444.

It is our practice to assume your client will continue to remain in the pension plan (or move to an employer with a comparable pension plan) until retirement and will also receive full Canada Pension Plan and Old Age Security retirement benefits in addition to employer pensions. This is the only realistic method of estimating taxable income after retirement.

I developed the taxes to be paid for each future year in Appendix 7 of my book Pension Division and Valuation – Family Lawyers’ Guide. This appendix shows several examples of each individual detail of the calculation with results summarized in Tables 3 and 4. Selections from these tables are shown at the
end of this appendix. Highlights of these tables are as follows:

<table>
<thead>
<tr>
<th>Year of Retirement</th>
<th>Year 13</th>
<th>Year 25</th>
<th>Year 37</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First</td>
<td>Thirteenth</td>
<td>Twenty-Fifth</td>
</tr>
<tr>
<td>Pensions Payable in the Year</td>
<td>$56,444</td>
<td>$101,366</td>
<td>$182,039</td>
</tr>
<tr>
<td>Result of Basic Tax Table Calculations</td>
<td>11,429</td>
<td>22,535</td>
<td>44,089</td>
</tr>
<tr>
<td>Percentage of Pension</td>
<td>20.25%</td>
<td>22.23%</td>
<td>24.22%</td>
</tr>
</tbody>
</table>

Resulting federal tax, reflecting the effect of partial indexing on tax credits and also federal surcharge:

<table>
<thead>
<tr>
<th>Year of Retirement</th>
<th>Year 13</th>
<th>Year 25</th>
<th>Year 37</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9,875</td>
<td>21,312</td>
<td>43,947</td>
</tr>
<tr>
<td>Percentage of Pension</td>
<td>17.50%</td>
<td>21.02%</td>
<td>24.14%</td>
</tr>
</tbody>
</table>

Final total tax assuming valuation date precedes the latest major amendment in Ontario:

<table>
<thead>
<tr>
<th>Year of Retirement</th>
<th>Year 13</th>
<th>Year 25</th>
<th>Year 37</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15,447</td>
<td>34,727</td>
<td>73,165</td>
</tr>
<tr>
<td>Percentage of Pension</td>
<td>27.37%</td>
<td>34.26%</td>
<td>40.19%</td>
</tr>
</tbody>
</table>

A corresponding tax rate assuming full indexing of the tax tables rather than the actual partial indexing of the tax tables would be 20.00%.

Final total tax assuming the valuation date follows the latest major amendment in Ontario:

<table>
<thead>
<tr>
<th>Year of Retirement</th>
<th>Year 13</th>
<th>Year 25</th>
<th>Year 37</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>25.15%</td>
<td>32.04%</td>
<td>38.05%</td>
</tr>
</tbody>
</table>

A corresponding tax rate, according to current Ontario tax rate, assuming full indexing of the tax tables rather than the actual partial indexing of the tax tables would be less than 20.00%.

Of course, it is unlikely that your client will survive to the twenty-fifth year of retirement unless retirement occurs at a very early age. The tax rate of the twelfth or thirteenth year is a more realistic average. Appendix 7 of the main book gives the best method for weighting these rates. However, the result still can be at least 12% higher than the results using the assumption of full indexing of the tax tables for inflation.

Our example uses the case of an employee within 12 years of retirement. If the employee still has 24 years to retirement this differential could grow to nearly 20%.

Our examples use a long-term inflation assumption of 5% per year. We have made other tests choosing to use 4% or 6%. There are hardly any differences in the results.

The main purpose of the tax adjustment referred to in this article is to deal with the pension at retirement. If this is a final average salary plan, pensions for our tax purposes will be indexed fully for inflation prior to retirement.

Public sector pensions, Old Age Security and the Canada Pension Plan are indexed by 100% of the Consumer Price Index after retirement. However, many pension plans only index the pension after retirement by 50% or 75% of the annual increase in the Consumer Price Index.

In this case, we would modify the tax calculation post-retirement to allow for the partial indexing of the employer pension. However, we would still be performing a year by year tax calculation and we would still be treating the tax brackets and tax credits as partially indexed for inflation so that the result will still differ from that assuming fully indexed tax tables.

It is my practice to use consistently this partial indexing for inflation not only for family law purposes but also for personal injury cases. Sometimes the difference between partial indexing compared to full indexing for inflation can produce differences of $100,000.

The side favouring full indexing for inflation will tend to introduce an economist who would argue that the public would revolt if Revenue Canada did not reverse its policy. However, the only professionals who can meaningfully comment on any likelihood of changing the Income Tax Act are full time tax consultants of large accounting firms who carry on a perpetual conversation on tax matters with Revenue Canada. It is my experience that such experts will state that, now that this continually increasing source of taxes is in place, Revenue Canada will never reverse this type of taxation unless it is accompanied by an equally demanding form of taxation which will extract the same tax dollars. For trial purposes I can recommend such a tax consultant to check our taxes and to give evidence on the likelihood of changes in the Income Tax Act.

It is only fair to the plan participant to reflect the actual taxes which will ultimately be paid. The partial indexing approach precisely reflects the terms of the Income Tax Act. Any other calculation does not. When you are representing the plan participant it is best to retain an actuary who uses software that recognizes partial indexing in the tax calculations and that can be used to produce tables similar to Tables 3 and 4 for the particular details of your case whenever you require them. Such software should be
updated with each Federal and Provincial Budget Speech which affects taxation and should be updated annually as the tax deductions for the new year are announced.

Selections from Table 3 and Table 4 of Appendix 7 of the Main Book

### Table 3
**Application of Tax Table**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Pensions</th>
<th>On The First</th>
<th>Tax Is</th>
<th>On The Excess</th>
<th>26% or 29% Tax</th>
<th>Total Tax Table</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 2004</td>
<td>56,444</td>
<td>36,070</td>
<td>6,132</td>
<td>20,374</td>
<td>5,297</td>
<td>11,429</td>
</tr>
<tr>
<td>14 2005</td>
<td>59,267</td>
<td>36,791</td>
<td>6,254</td>
<td>22,476</td>
<td>5,844</td>
<td>12,098</td>
</tr>
<tr>
<td>15 2006</td>
<td>62,230</td>
<td>37,527</td>
<td>6,380</td>
<td>24,703</td>
<td>6,423</td>
<td>12,803</td>
</tr>
<tr>
<td>16 2007</td>
<td>65,342</td>
<td>38,278</td>
<td>6,507</td>
<td>27,064</td>
<td>7,037</td>
<td>13,544</td>
</tr>
<tr>
<td>17 2008</td>
<td>68,609</td>
<td>39,043</td>
<td>6,637</td>
<td>29,566</td>
<td>7,687</td>
<td>14,324</td>
</tr>
<tr>
<td>18 2009</td>
<td>72,039</td>
<td>39,824</td>
<td>6,770</td>
<td>32,215</td>
<td>8,376</td>
<td>15,146</td>
</tr>
<tr>
<td>25 2016</td>
<td>101,366</td>
<td>91,491</td>
<td>19,671</td>
<td>9,875</td>
<td>2,864</td>
<td>22,535</td>
</tr>
<tr>
<td>37 2028</td>
<td>182,039</td>
<td>116,033</td>
<td>24,947</td>
<td>66,006</td>
<td>19,142</td>
<td>44,089</td>
</tr>
</tbody>
</table>

### Table 4
**Balance of Tax Calculations**

<table>
<thead>
<tr>
<th>Year</th>
<th>Tax Credit Personal</th>
<th>Pens.</th>
<th>Basic Federal Tax</th>
<th>Federal Tax</th>
<th>Ontario Tax</th>
<th>Total Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 2004</td>
<td>1,634</td>
<td>208</td>
<td>9,587</td>
<td>9,875</td>
<td>5,572</td>
<td>15,447</td>
</tr>
<tr>
<td>14 2005</td>
<td>1,623</td>
<td>212</td>
<td>10,263</td>
<td>10,571</td>
<td>6,042</td>
<td>16,613</td>
</tr>
<tr>
<td>15 2006</td>
<td>1,610</td>
<td>216</td>
<td>10,977</td>
<td>11,306</td>
<td>6,539</td>
<td>17,845</td>
</tr>
<tr>
<td>16 2007</td>
<td>1,640</td>
<td>220</td>
<td>11,684</td>
<td>12,034</td>
<td>7,031</td>
<td>19,065</td>
</tr>
<tr>
<td>17 2008</td>
<td>1,672</td>
<td>224</td>
<td>12,428</td>
<td>12,801</td>
<td>7,549</td>
<td>20,350</td>
</tr>
<tr>
<td>18 2009</td>
<td>1,705</td>
<td>228</td>
<td>13,213</td>
<td>13,645</td>
<td>8,096</td>
<td>21,741</td>
</tr>
<tr>
<td>25 2016</td>
<td>1,960</td>
<td>263</td>
<td>20,312</td>
<td>21,312</td>
<td>13,415</td>
<td>34,727</td>
</tr>
<tr>
<td>37 2028</td>
<td>2,485</td>
<td>333</td>
<td>41,271</td>
<td>43,947</td>
<td>29,218</td>
<td>73,165</td>
</tr>
</tbody>
</table>