



**LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO**

**BACKGROUNDER
Division of Pensions Upon Marriage Breakdown**

When marriage breakdown occurs, often one of the most important and difficult issues to be dealt with concerns a spouse's pension.

Although the *Family Law Act* requires that pensions be included in the valuation and division of family property upon marriage breakdown, a pension is inherently difficult to value and divide. Generally pension rights cannot be transferred or cashed in, and estimating their value requires the making of numerous assumptions about future events.

Ontario law in this area is widely acknowledged to be complex, confusing and fraught with difficulties, leading to unnecessary expense and administrative burdens. Lawyers, judges, pension plan administrators and separating couples have all pointed to a need for change in the law.

Two main approaches to reform have been identified, and most other Canadian provinces have adopted one or the other in their family law legislation. The Immediate Settlement Method (ISM) would value the pension of the member spouse as if that person had had his or her employment terminated as of the date of marital breakdown, and would permit immediate settlement from the accrued pension. The Deferred Settlement Method (DSM) generally envisions the division of the member spouse's pension at the point when the pension begins to be paid out. There has been extensive debate as to which of these approaches is the most fair and appropriate. Adoption of the DSM would require that pensions be divided separately from the family property equalization process under the FLA. With the ISM, pension division could take place either under or outside the equalization provisions. Adoption of either method will require consideration of collateral issues such as taxation, implications where there are subsequent spouses and valuation methods (though valuation may not always be required with the DSM).

The Law Commission of Ontario has undertaken a project with the aim of bringing clarity to this area of the law. The LCO will be consulting lawyers, pension plan administrators, actuaries and other experts, but also welcomes submissions from all Ontarians who have a view on the issues. Following the consultations, the LCO will release a Report with recommendations.

The LCO has prepared a Consultation Paper on this issue and would welcome your comments and suggestions. We may be contacted at:

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