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**ONTARIO REGULATION**  
made under the  
**PENSION BENEFITS ACT**  
**FAMILY LAW MATTERS**

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## INTERPRETATION

### Family law matters

1. This Regulation relates to the family law matters governed by sections 67.1 to 67.6 of the Act.

### Interpretation

2. (1) In this Regulation,

“General Pension Regulation” means Regulation 909 (General) of the Revised Regulations of Ontario, 1990 made under the Act.

(2) Expressions used in this Regulation have the same meaning as in the General Pension Regulation, unless the context requires otherwise.

(3) Where this Regulation refers to section 3500 of the *Canadian Institute of Actuaries Standards of Practice*, the reference is to section 3500 (“Pension Commuted Values”) of the *Standards of Practice* of the Actuarial Standards Board, dated January 2011, published by the Canadian Institute of Actuaries, which section is described in the *Standards of Practice* as being effective February 1, 2005 and revised May 1, 2006, December 8, 2008, March 26, 2009 and June 3, 2010.

## PRELIMINARY VALUATION (SUBSECTIONS 67.2 (1) TO (4) OF THE ACT)

### Overview of preliminary valuation

3. (1) For the purposes of section 67.2 of the Act, the preliminary value of pension benefits, a deferred pension or a pension is determined in accordance with the requirements set out in this section and in sections 4 to 13 of this Regulation.

(2) For the purposes of a preliminary valuation, the following must be determined using the methods and actuarial assumptions that are consistent with section 3500 of the *Canadian Institute of Actuaries Standards of Practice*:

1. The commuted value of pension benefits that are defined benefits.
2. The commuted value of a deferred pension or a pension that is provided with respect to defined benefits.
3. The commuted value of ancillary benefits.

(3) Additional voluntary contributions are not included in a preliminary valuation of pension benefits or a deferred pension.

(4) A lump sum payable under subsection 39 (4) of the Act is not included in a preliminary valuation of pension benefits, a deferred pension or a pension.

**Preliminary value of member’s pension benefits (defined contribution benefits)**

4. The preliminary value of a member’s defined contribution benefits is the total amount of the contributions, and the interest on the contributions, paid by or for the credit of the member and determined on an individual account basis as of the family law valuation date. However, if that amount cannot be determined as of the family law valuation date, it must be determined as of the last day of the month immediately preceding the family law valuation date.

**Preliminary value of former member’s deferred pension (defined contribution benefits)**

5. The preliminary value of a former member’s deferred pension that is provided with respect to defined contribution benefits is the total amount of the contributions, and the interest on the contributions, paid by or for the credit of the former member and determined on an individual account basis as of the family law valuation date. However, if that amount cannot be determined as of the family law valuation date, it must be determined as of the last day of the month immediately preceding the family law valuation date.

**Preliminary value of member’s pension benefits (defined benefits)**

6. (1) The preliminary value of a member’s pension benefits that are defined benefits is determined using the following formulas, in which “A”, “B”, “C” and “T” have the meaning assigned by subsection (2):

1. If “T” for the member is at least zero but less than 10,

$$(0.1T/10) \times A + [(4 - 0.04T)/10] \times B + [(6 - 0.06T)/10] \times C$$

2. If “T” for the member is at least 10 but less than 20,

$$[(0.3T - 2)/10] \times A + [(4.8 - 0.12T)/10] \times B + [(7.2 - 0.18T)/10] \times C$$

3. If “T” for the member is at least 20 but less than 30,

$$[(0.45T - 5)/10] \times A + [(6 - 0.18T)/10] \times B + [(9 - 0.27T)/10] \times C$$

4. If “T” for the member is 30 or more,

$$(0.85 \times A) + (0.06 \times B) + (0.09 \times C)$$

- (2) In the formulas used in subsection (1),

“A” is the commuted value of the member’s accrued pension benefits,

- (a) determined as if the member had terminated employment or membership in the plan on the family law valuation date,
- (b) determined in accordance with the terms of the pension plan on the family law valuation date and without consideration of future salary, benefits or changes to the plan and regardless of whether the member’s entitlement to the pension benefits is vested under the plan on the family law valuation date,
- (c) determined assuming that if, as of the family law valuation date, the member has met all eligibility requirements under the plan necessary to choose one or more dates on which he or she may commence a pension, the member will choose the date that results in a pension with the greatest commuted value, and
- (d) adjusted to include the commuted value of any ancillary benefit for which, as of the family law valuation date, the member has met all eligibility requirements under the plan necessary to exercise the right to receive the benefit;

“B” is the commuted value of the member’s accrued pension benefits,

- (a) determined as if the member had terminated employment or membership in the plan on the family law valuation date,
- (b) determined in accordance with the terms of the pension plan on the family law valuation date and without consideration of future salary, benefits or changes to the plan and regardless of whether the member’s entitlement to the pension benefits is vested under the plan on the family law valuation date, and

- (c) determined assuming that the member's pension will commence at the normal retirement date under the terms of the plan;

“C” is the commuted value of the member's accrued pension benefits,

- (a) determined as if the member had terminated employment or membership in the plan on the family law valuation date,
- (b) determined in accordance with the terms of the pension plan on the family law valuation date and without consideration of future salary, benefits or changes to the plan and regardless of whether the member's entitlement to the pension benefits is vested under the plan on the family law valuation date, and
- (c) determined assuming that the member's pension will commence, without reduction,
  - (i) at the earliest date at which he or she would be eligible, without the administrator's or employer's consent, to be paid an unreduced pension if his or her employment or membership in the plan continued on the same terms to that date, or
  - (ii) if the administrator's or employer's consent is an eligibility requirement for the member's entitlement to be paid an unreduced pension, at the earliest date at which the member would be eligible, with the administrator's or employer's deemed consent as described in subsection (3) or (4), to be paid an unreduced pension if his or her employment or membership in the plan continued on the same terms to that date, and
- (d) if the plan provides bridging benefits, adjusted to include the commuted value of the bridging benefits as determined in accordance with subsection (5); and

“T” is the number of years during the period that begins on the member's family law valuation date and ends on the earliest date on which the member would be eligible, or would be deemed in accordance with subsection (3) or (4) to be eligible, to be paid an unreduced pension under the pension plan if his or her employment or membership in the plan continued on the same terms to that date.

(3) For the variables “C” and “T” in subsection (2), if the administrator's or employer's consent is an eligibility requirement for an unreduced pension before the normal retirement date and if the administrator or employer is otherwise deemed to have consented for any other purpose under the Act, the administrator or employer is also deemed to have consented for the purposes of the preliminary valuation.

(4) For the variables “C” and “T” in subsection (2), if the administrator’s consent is an eligibility requirement for an unreduced pension before the normal retirement date and if the administrator is not otherwise deemed to have consented for any other purpose under the Act, the administrator is deemed to have consented for the purposes of the preliminary valuation if all of the following conditions are satisfied:

1. The member would meet all of the other eligibility requirements for his or her entitlement to be paid the unreduced pension, if he or she continues his or her employment or membership in the pension plan on the same terms to the earliest date on which the unreduced pension could commence.
2. The administrator has consented in respect of at least 80 per cent of the instances where consent was required within the three fiscal years of the plan before the family law valuation date.

(5) For the variable “C” in subsection (2), if the member would be entitled to bridging benefits when payment of the unreduced pension begins, the variable “C” includes the commuted value of the bridging benefits,

- (a) as accrued for service up to the family law valuation date and as payable from the earliest date on which the member would be eligible to be paid the unreduced pension, in the case of bridging benefits determined with reference to the length of the member’s service; or
- (b) as prorated by the ratio that the member’s actual period of employment or membership in the plan up to the family law valuation date bears to the period of employment or membership that would end on the earliest date on which the member would be eligible to be paid the unreduced pension and full bridging benefits, in the case of bridging benefits that are not determined with reference to the length of the member’s service.

(6) For the variable “T” in subsection (2), the number of years during the specified period must include one-twelfth of a year for each full month during the period.

(7) For the purposes of clause (5) (b), the period of employment or membership in the plan is measured in months and must include one-twelfth of a year for each full month of employment or membership during the period.

**Preliminary value of former member’s deferred pension (defined benefits)**

7. The preliminary value of a former member’s deferred pension that is provided with respect to defined benefits is the commuted value of the deferred pension, as of the family law valuation date, adjusted to include the commuted value of any ancillary benefits for which, as of the family law valuation date, the member has met all eligibility requirements necessary to exercise the right to receive the benefit.

**Preliminary value of retired member's pension (defined benefits)**

8. (1) This section applies if payment of the first instalment of a retired member's pension that is provided with respect to defined benefits is due on or before the family law valuation date.

(2) The preliminary value of the retired member's pension that is provided with respect to defined benefits is the commuted value of the pension, as of the family law valuation date,

- (a) adjusted to include the commuted value of any ancillary benefits that the member was receiving as of the family law valuation date; and
- (b) adjusted to exclude the value of any pension payable to the spouse upon the death of the retired member.

**Preliminary value of spouse's survivor benefit (defined benefits)**

9. (1) This section applies with respect to the pension payable to the spouse of a retired member of a pension plan upon the death of the retired member.

(2) The preliminary value of a pension payable to the spouse of a retired member of a pension plan upon the death of the retired member is the commuted value, as of the family law valuation date, of the pension.

**Special circumstances — no vested entitlement**

10. If the entitlement to the pension benefits is not vested under the pension plan on the family law valuation date, the preliminary value of the pension benefits as otherwise determined is reduced by 50 per cent.

**Special circumstances — shortened life expectancy**

11. (1) This section applies if, on or before the family law valuation date, the administrator receives an application for the withdrawal of the commuted value of pension benefits, a deferred pension or a pension from the pension fund in circumstances of the shortened life expectancy of a member, former member or retired member.

(2) The preliminary value for family law purposes of the pension benefits, deferred pension or pension is the same as their commuted value as determined for section 49 of the Act if, on or before the family law valuation date, the administrator has approved the application for the withdrawal but the commuted value of the pension benefits, deferred pension or pension has not been withdrawn from the pension fund.

**Special circumstances (defined benefits) — wind up or partial wind up of pension plan**

12. (1) If the pension plan is being wound up in whole and if the effective date of the wind up is on or before the family law valuation date, the preliminary value of pension benefits, a deferred pension or a pension is the same as their commuted value as of the effective date of the

wind up, accumulated with interest from the effective date of the wind up to the family law valuation date.

(2) If the pension plan is being wound up in part, if the member, former member or retired member is affected by the partial wind up and if the effective date of the partial wind up is on or before the family law valuation date, the preliminary value of pension benefits, a deferred pension or a pension is the same as their commuted value as of the effective date of the partial wind up accumulated with interest from the effective date of the partial wind up to the family law valuation date.

(3) However, if the effective date of the wind up or partial wind up is after the family law valuation date, the preliminary value of the pension benefits, deferred pension or pension is determined without reference to the wind up or partial wind up.

(4) For the purposes of subsections (1) and (2), the interest to be accumulated is calculated at the same interest rate used in calculating the commuted value of the pension benefits, deferred pension or pension on the effective date of the wind up or partial wind up.

### **Special circumstances (defined benefits) — entitlement to surplus**

**13.** (1) If the Superintendent's consent is required for payment of surplus out of a pension fund to a member, former member or retired member, and if the following conditions are satisfied, the value of the surplus is added to the preliminary value of the pension benefits, deferred pension or pension as otherwise determined:

1. The Superintendent consents on or before the family law valuation date to the payment of surplus.
2. The surplus has not been paid to the member, former member or retired member on or before the family law valuation date.

(2) If the Superintendent's consent is not required for payment of surplus out of a pension fund to a member, former member or retired member, and if the following conditions are satisfied, the value of the surplus is added to the preliminary value of his or her pension benefits, deferred pension or pension as otherwise determined:

1. On or before the family law valuation date, the terms of the pension plan were amended to permit the payment of surplus to a member, former member or retired member.
2. On or before the family law valuation date, the member, former member or retired member is entitled to payment of a specified amount of the surplus.
3. The surplus has not been paid to the member, former member or retired member on or before the family law valuation date.

(3) In any other case, for the purposes of a preliminary valuation of pension benefits, deferred pension or pension, the value of the surplus to which a member, former member or retired member may be entitled is nil.

IMPUTED VALUE FOR FAMILY LAW PURPOSES  
(SUBSECTION 67.2 (5) OF THE ACT)

**Overview re imputed value**

**14.** For the purposes of subsection 67.2 (5) of the Act, the imputed value, for family law purposes, of each spouse’s pension benefits, deferred pension or pension, as the case may be, is determined in accordance with sections 15 to 17 of this Regulation.

**“Starting date” for the imputed value**

**15.** (1) If the imputed value is being determined for the period described in clause 67.2 (5) (a) of the Act, for the purposes of an order under Part I (Family Property) of the *Family Law Act*, a reference in section 16 of this Regulation to the “starting date” for the imputed value means the date of the spouses’ marriage.

(2) If the imputed value is being determined for the period described in clause 67.2 (5) (b) of the Act, for the purposes of a family arbitration award or domestic contract, a reference in section 16 of this Regulation to the “starting date” for the imputed value means the following date:

1. If Part I (Family Property) of the *Family Law Act* applies with respect to the spouses,
  - i. a date chosen jointly by the spouses, which cannot be earlier than the date on which their cohabitation began or later than the date of their marriage, or
  - ii. if the spouses do not jointly choose a date described in subparagraph i, the date of their marriage.
2. In any other case,
  - i. a date chosen jointly by the spouses, which cannot be earlier the date on which the spouses’ cohabitation began, or
  - ii. if the spouses do not jointly choose a date described in subparagraph i, the date on which their cohabitation began.

**Imputed value of pension benefits, etc.**

**16.** The imputed value of a member’s pension benefits, a former member’s deferred pension or a retired member’s pension is the amount calculated using the formula,

$$D \times E / F$$

in which,

- “D” is the preliminary value of his or her pension benefits, deferred pension or pension,
- “E” is that portion of his or her period of employment or membership that is credited under the pension plan for the purpose of calculating the pension benefits, deferred pension or pension and that falls within the period that begins on the starting date for the imputed value and ends on the family law valuation date, and
- “F” is the entire period of his or her employment or membership that is credited under the pension plan for the purpose of calculating the pension benefits, deferred pension or pension as of the family law valuation date.

**Imputed value of spouse’s survivor benefit**

17. The imputed value of the pension payable to the spouse of a retired member of a pension plan upon the death of the retired member is equal to the preliminary value of that pension.

STATEMENT OF IMPUTED VALUE  
(SUBSECTIONS 67.2 (6) TO (9) OF THE ACT)

**Application for statement of imputed value**

18. (1) An application under subsection 67.2 (6) of the Act for a statement of imputed value must be made on a form approved by the Superintendent and must be accompanied by the material that is specified in the form.

(2) The application form must require the applicant to provide the following information and material:

1. Particulars identifying the pension plan, the employer and the administrator.
2. The name and contact information of the applicant and of his or her spouse. The application must also indicate which spouse is the member, former member or retired member of the pension plan and, if applicable, which spouse is entitled to a pension payable on the death of the retired member.
3. Each spouse’s date of birth. Proof of the date of birth must be provided.
4. The spouses’ date of marriage, if applicable. Proof of the date of marriage must be provided. The only acceptable forms of proof are a joint declaration, signed by the spouses, attesting to their date of marriage, a certified copy of their marriage certificate or a certified copy of a domestic contract indicating their date of marriage.

5. The date on which the spouses' cohabitation began, if the starting date for determining the imputed value is not their date of marriage, if any. Proof of the date on which their cohabitation began must be provided. The only acceptable forms of proof are a joint declaration, signed by the spouses, attesting to that date or a certified copy of a domestic contract indicating that date.
6. The date, if any, chosen jointly by the spouses as the starting date for determining the imputed value, if it is not their date of marriage, if any, or the date on which their cohabitation began. Proof of the jointly-chosen date must be provided. The only acceptable forms of proof are a joint declaration, signed by the spouses, attesting to that date or a certified copy of a domestic contract indicating that date.
7. The spouses' family law valuation date. Proof of the family law valuation date must be provided. The only acceptable forms of proof are a joint declaration, signed by the spouses, attesting to their family law valuation date or a certified copy of a domestic contract indicating their family law valuation date.

#### **Maximum fee payable for application**

**19.** The following is the maximum fee that may be imposed by an administrator for an application for a statement of imputed value:

1. \$200, if the pension plan provides defined contribution benefits to the member, former member or retired member.
2. \$500, if the pension plan provides defined benefits to the member, former member or retired member.

#### **Statement of imputed value — form and contents**

**20.** (1) A statement of imputed value, to be provided under subsection 67.2 (9) of the Act, must be set out on a form approved by the Superintendent.

(2) Background information: The following background information must be included in the statement:

1. Particulars identifying the pension plan, the employer and the administrator.
2. The name and date of birth of each spouse. The statement must also indicate which spouse is the member, former member or retired member of the pension plan and, if applicable, which spouse is entitled to a pension payable on the death of the retired member.
3. The employment and membership status, for the purposes of the pension plan, of the spouse who is the member, former member or retired member. The statement must

also indicate when he or she became a member and, if applicable, when he or she became a former member and retired member, respectively.

4. The starting date used for determining the imputed value of the pension benefits, deferred pension or pension. The statement must indicate whether the starting date is the spouses' date of marriage, the date on which their cohabitation began or another date chosen jointly by the spouses.
5. The spouses' family law valuation date.

(3) Preliminary valuation: The preliminary value for family law purposes of the pension benefits, deferred pension or pension and the particulars of the information used and assumptions relied upon to determine the preliminary value must be set out in the statement.

(4) Imputed value: The imputed value of the pension benefits, deferred pension or pension must be set out in the statement.

(5) Related financial matters: The following additional information about related matters must be included in the statement:

1. The accumulated amount of any additional voluntary contributions made by the member or former member on or before the family law valuation date, including interest on those contributions. The dates on which additional voluntary contributions were made must also be indicated.
2. The amount of any lump sum payable to the former member or retired member under subsection 39 (4) of the Act, determined as of the family law valuation date.

(6) Options for spouse: The following information about the options available in the circumstances to the former spouse of a member, former member or retired member must be included in the statement:

1. If applicable, a description of the options available to the former spouse under subsection 67.3 (2) of the Act for transferring a lump sum from the pension plan. The statement must also indicate how the former spouse applies for a transfer and indicate the information that he or she will be required to provide in such an application.
2. If applicable, a description of the option available to the former spouse under subsection 67.4 (10) of the Act to request payment of a single pension instead of payment of a share of the retired member's pension and payment of a pension on the death of the retired member. The statement must also indicate how the former spouse applies for payment of a single pension and indicate the information that he or she will be required to provide in such an application.

(7) General information: The following general information about the pension plan must be included in the statement:

1. An explanation of the provisions of the plan that apply to the member, former member or retired member or to a spouse entitled to a pension payable on the death of the retired member.
2. The transfer ratio of the plan as of the valuation date of the most recent report under section 3 or 14 of the General Pension Regulation that was filed with the Superintendent before the family law valuation date.
3. If applicable, particulars relating to the wind up of the pension plan if the effective date of the wind up is on or before the date of the statement of imputed value.
4. If applicable, particulars relating to a partial wind up of the pension plan if the member, former member or retired member is affected by the partial wind up and if the effective date of the partial wind up is on or before the date of the statement of imputed value.
5. If applicable, particulars of any application to the Superintendent on or before the family law valuation date for payment of surplus out of the pension fund to a class of employees that may include the member, former member or retired member, if the Superintendent has not consented to the application on or before the family law valuation date.

(8) A certificate of the administrator — certifying that the information in the statement is accurate, based on the information provided by the applicant and the information contained in the records of the pension plan — must be included in the statement.

### **Deadline for providing statement**

**21.** The statement of imputed value must be given to both spouses under subsection 67.2 (9) of the Act within 60 days after the administrator receives the completed application for the statement, accompanied by the required documents and the application fee, if any.

## TRANSFER OF A LUMP SUM FOR CERTAIN FAMILY LAW PURPOSES (SECTION 67.3 OF THE ACT)

### **Application for transfer of lump sum**

**22.** (1) An application under subsection 67.3 (2) of the Act by an eligible spouse for the transfer of a lump sum must be made on a form approved by the Superintendent and must be accompanied by the material that is specified in the form.

(2) The application form must require the applicant to provide the following information and material:

1. Particulars identifying the pension plan, the employer and the administrator.
2. The name and contact information of the applicant and of his or her spouse.
3. The applicant's date of birth. Proof of the date of birth must be provided.
4. The applicant's direction to the administrator to make a transfer described in subsection 67.3 (2) of the Act, specifying the type of transfer under that subsection, and the particulars required to enable the administrator to make the transfer.
5. A certified copy of a domestic contract, family arbitration award or court order setting out the information described in paragraphs 4 and 5 of subsection 67.3 (1) of the Act concerning the applicant's entitlement to the transfer and the amount to be transferred. In the case of a family arbitration award or court order, the applicant must also certify that the award or court order is final and is not subject to appeal or review by a court.

#### **Transfers to prescribed retirement savings arrangements**

**23.** The following types of retirement savings arrangements are prescribed for the purposes of paragraph 2 of subsection 67.3 (2) of the Act as the prescribed retirement savings arrangements into which a lump sum may be transferred:

1. A life income fund that is governed by Schedule 1.1 of the General Pension Regulation.
2. A locked-in retirement account.

#### **Restrictions on transfer of lump sum**

**24.** (1) The restrictions set out in this section are prescribed for the purposes of subsection 67.3 (3) of the Act as restrictions that apply with respect to the transfer of a lump sum under section 67.3 of the Act.

(2) The administrator is not required to make the transfer if, after the administrator gave the statement of imputed value to the spouses but before the eligible spouse gave the administrator the completed application for transfer, the member's pension benefits or the former member's deferred pension, as the case may be, ceased to be available for apportionment for family law purposes as a result of a transfer or otherwise.

(3) The following restrictions apply if the transfer relates to pension benefits that are defined benefits or if the transfer relates to a deferred pension provided with respect to defined benefits:

1. The same restrictions that apply under subsections 19 (2), (3) and (6) to (7.2) of the General Pension Regulation with respect to the transfer of the commuted value of the member's pension benefits or the former member's deferred pension, as the case may

be, also apply with necessary modifications with respect to the transfer of a lump sum under section 67.3 of the Act.

2. For the purposes of applying the restrictions under those subsections of the General Pension Regulation to the transfer of the lump sum, a reference to “commuted value” in those subsections means that portion of the imputed value to which the eligible spouse is entitled.

(4) If the pension plan is being wound up in whole and if the administrator receives the application for the transfer before any assets attributable to the member or former member are distributed,

- (a) the transfer of the lump sum is subject to the same restrictions on the wind up of the pension plan as the distribution of the member’s pension benefits or the former member’s deferred pension, as the case may be; and
- (b) the maximum lump sum that may be transferred is 50 per cent of the member’s or former member’s entitlement on the wind up, including any amount guaranteed by the Guarantee Fund.

(5) Subsection (4) applies with necessary modifications if the pension plan is being wound up in part, if the member or former member is affected by the wind up and if administrator receives the application for the transfer before any assets attributable to the member or former member are distributed.

### **Deadline for making the transfer**

**25.** (1) The lump sum must be transferred under subsection 67.3 (4) of the Act within 60 days after the administrator receives the completed application for the transfer, accompanied by the required documents.

(2) Despite subsection (1), if the transfer is subject to a restriction described in subsection 24 (3) of this Regulation, the deadline for transferring the remaining portion of the lump sum is the same as the applicable deadline in subsection 19 (7) of the General Pension Regulation.

(3) Despite subsection (1), if the transfer is subject to a restriction described in clause 24 (4) (a) of this Regulation on the wind up of the pension plan, the deadline for transferring the lump sum is the same as the deadline under section 72 of the Act for making other transfers in respect of the wind up.

### **Updating the imputed value re maximum percentage for transfer**

**26.** (1) The imputed value of pension benefits or a deferred pension must be updated in accordance with this section for the purposes of subsection 67.3 (6) of the Act.

(2) The imputed value of pension benefits or a deferred pension accumulates interest from the family law valuation date to the beginning of the month in which the lump sum is to be transferred under section 67.3 of the Act.

(3) The rate of interest is calculated in accordance with the following rules:

1. If the pension benefits are defined contribution benefits, or if the deferred pension is provided with respect to defined contribution benefits, the rate of interest is calculated as the average, over a reasonably recent period that does not exceed 12 months, of the yields of five-year personal fixed term chartered bank deposit rates as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V122515 compiled by Statistics Canada and available on the website maintained by the Bank of Canada.
2. If the pension benefits are defined benefits, or if the deferred pension is provided with respect to defined benefits, the rate of interest is the same as the rate of interest used to calculate the preliminary value of the pension benefits or deferred pension.

**Overview re adjustment of benefits, etc., following transfer of lump sum**

27. For the purposes of subsection 67.3 (8) of the Act, the benefits and entitlements of a member or former member are to be adjusted in accordance with sections 28 to 30 of this Regulation upon the transfer of a lump sum under section 67.3 of the Act.

**Adjustment of pension benefits or deferred pension (defined contribution benefits)**

28. If the member's pension benefits are defined contribution benefits, or if the former member's deferred pension is provided with respect to defined contribution benefits, the adjusted amount of his or her pension benefits or deferred pension upon the transfer of the lump sum is determined using the formula,

$$G - H$$

in which,

“G” is the total amount of contributions, and interest on the contributions, paid by or for the credit of the member or former member and determined on an individual account basis immediately before the transfer of the lump sum, and

“H” is the amount of the lump sum that was transferred.

**Adjustment of member's pension benefits (defined benefits)**

29. (1) If the member's pension benefits are defined benefits, the adjusted amount of his or her pension benefits is determined in accordance with this section.

(2) All calculations required by this section are to be made as of the date on which the member terminates employment or membership, except where otherwise indicated.

(3) The adjusted amount of the member's accrued pension benefits, other than bridging benefits, if any, is determined in accordance with the following rules:

1. Transferred portion: As of the date of the transfer of the lump sum, calculate an amount representing the transferred portion of the member's accrued pension benefits (other than bridging benefits, if any) using the formula,

$$J \times (E/F) \times (K/L)$$

in which,

“E” has the same meaning as in section 16,

“F” has the same meaning as in section 16,

“J” is the amount of the member's accrued pension benefits as of the family law valuation date, excluding any bridging benefits,

“K” is the amount of the lump sum that was transferred, and

“L” is the imputed value of the member's accrued pension benefits as updated under section 26.

2. Indexation of transferred portion: If the terms of the pension plan, as they read on the family law valuation date, provide for the indexation of a deferred pension, increase the amount of the transferred portion as calculated under paragraph 1 for indexation on the same basis as a deferred pension of a former member who terminated employment or membership as of the family law valuation date, for the period beginning on the family law valuation date and ending on the date on which the member terminates employment or membership.
3. Pre-adjustment amount of the member's accrued pension benefits: Calculate the amount of the accrued pension benefits (other than bridging benefits, if any) to which the member is entitled on the date on which he or she terminates employment or membership.
4. Adjusted amount: Calculate the adjusted amount of his or her accrued pension benefits (other than bridging benefits, if any) using the formula,

in which,

“M” is the pre-adjustment amount of the member’s accrued pension benefits (other than bridging benefits, if any) as calculated under paragraph 3, and

“N” is the amount of the transferred portion as calculated under paragraph 1 or 2, whichever applies.

(4) The adjusted amount of the member’s accrued bridging benefits, if any, is determined in accordance with the following rules:

1. Transferred portion: As of the date of the transfer of the lump sum, calculate an amount representing the transferred portion of the member’s accrued bridging benefits, if any, using the formula,

$$P \times (E/F) \times (K/L)$$

in which,

“E” has the same meaning as in section 16,

“F” has the same meaning as in section 16,

“K” has the same meaning as in paragraph 1 of subsection (3),

“L” has the same meaning as in paragraph 1 of subsection (3), and

“P” is the amount of the member’s accrued bridging benefits, if any, as of the family law valuation date.

2. Pre-adjustment amount of the member’s accrued bridging benefits: Calculate the amount of the accrued bridging benefits to which the member is entitled on the date on which he or she terminates employment or membership.
3. Adjusted amount: Calculate the adjusted amount of the member’s accrued bridging benefits, if any, using the formula,

$$Q - R$$

in which,

“Q” is the pre-adjustment amount of the member’s accrued bridging benefits as calculated under paragraph 2, and

“R” is the amount of the transferred portion as calculated under paragraph 1.

(5) For greater certainty, the period of employment credited under the pension plan to the member is not reduced by an adjustment under this section.

**Adjustment of former member’s deferred pension (defined benefits)**

**30.** (1) If the former member’s deferred pension is provided with respect to defined benefits, the adjusted amount of his or her deferred pension is determined in accordance with this section.

(2) All calculations required by this section are to be made as of the transfer of the lump sum, except where otherwise indicated.

(3) The adjusted amount of the former member’s deferred pension, other than bridging benefits, if any, is determined in accordance with the following rules:

1. Pre-adjustment amount: Calculate the amount of the former member’s deferred pension (other than bridging benefits, if any) as of the family law valuation date, increased for any indexation provided by the terms of the pension plan for the period from the date on which he or she terminated employment or membership to the family law valuation date.
2. Transferred portion: Calculate an amount representing the transferred portion of the former member’s deferred pension (other than bridging benefits, if any) using the formula,

$$S \times (E/F) \times (U/V)$$

in which,

“E” has the same meaning as in section 16,

“F” has the same meaning as in section 16,

“S” is the pre-adjustment amount of the former member’s deferred pension (other than bridging benefits, if any) as calculated under paragraph 1,

“U” is the amount of the lump sum that was transferred, and

“V” is the imputed value of the former member’s deferred pension as updated under section 26.

3. Adjusted amount: Calculate the adjusted amount of the former member’s deferred pension (other than bridging benefits, if any) using the formula,

$$S - W$$

in which,

“S” is the pre-adjustment amount of the former member’s deferred pension (other than bridging benefits, if any) as calculated under paragraph 1, and

“W” is the amount of the transferred portion as calculated under paragraph 2.

(4) The adjusted amount of the former member’s bridging benefits, if any, is determined in accordance with the following rules:

1. Pre-adjustment amount: Calculate the amount of any bridging benefit to which the former member was entitled as of the family law valuation date.
2. Transferred portion: Calculate an amount representing the transferred portion of the former member’s bridging benefits using the formula,

$$X \times (E/F) \times (U/V)$$

in which,

“E” has the same meaning as in section 16,

“F” has the same meaning as in section 16,

“U” has the same meaning as in paragraph 2 of subsection (3),

“V” has the same meaning as in paragraph 2 of subsection (3), and

“X” is the pre-adjustment amount of the former member’s bridging benefits as calculated under paragraph 1.

3. Adjusted amount: Calculate the adjusted amount of the former member’s bridging benefits using the formula,

$$X - Y$$

in which,

“X” is the pre-adjustment amount of the former member’s bridging benefits as calculated under paragraph 1, and

“Y” is the amount of the transferred portion as calculated under paragraph 2.

(4) For greater certainty, the period of employment credited under the pension plan to the former member is not reduced by an adjustment under this section.

DIVISION OF A PENSION FOR CERTAIN FAMILY LAW PURPOSES  
(SECTION 67.4 OF THE ACT)

**Application for division of pension**

**31.** (1) An application under subsection 67.4 (2) of the Act by an eligible spouse for the division of a pension must be made on a form approved by the Superintendent and must be accompanied by the material that is specified in the form.

(2) The application form must require the applicant to provide the following information and material:

1. Particulars identifying the pension plan, the employer and the administrator.
2. The name and contact information of the applicant and of his or her spouse.
3. The applicant’s date of birth. Proof of the date of birth must be provided.
4. The applicant’s direction to the administrator to divide the retired member’s pension under section 67.4 of the Act and the particulars required to enable the administrator to implement the direction.
5. A certified copy of a domestic contract, family arbitration award or court order setting out the information described in paragraphs 4 and 5 of subsection 67.4 (1) of the Act concerning the applicant’s entitlement to the division and to payment of the share of the pension. In the case of a family arbitration award or court order, the applicant must also certify that the award or court order is final and is not subject to appeal or review by a court.

(3) The application may include a written waiver under subsection 67.4 (8) of the Act, in a form approved by the Superintendent, that the eligible spouse waives his or her entitlement to a pension payable upon the death of the retired member.

(4) The application may include the applicant's request under subsection 67.4 (10) of the Act for payment of a single pension from the pension plan instead of payment of a share of the retired member's pension and payment of a pension upon the death of the retired member.

### **Restrictions on division of pension**

**32.** (1) The restrictions set out in this section are prescribed for the purposes of subsection 67.4 (3) of the Act as restrictions that apply with respect to the division of a pension under section 67.4 of the Act and the payment of the eligible spouse's share under that section.

(2) The administrator is not required to divide the pension and pay the eligible spouse's share to the applicant if, after the administrator gave the statement of imputed value to the spouses but before the eligible spouse gave the administrator the completed application for division of the pension, the retired member's pension ceased to be available, as a result of a transfer or otherwise, for division and payment.

(3) If the pension plan is being wound up in whole and if, before any assets attributable to the retired member are distributed, the administrator receives the application for division of the pension and payment of the eligible spouse's share,

- (a) payment of the eligible spouse's share to the applicant is subject to the same restrictions on the wind up of the pension plan as the payment of the retired member's pension; and
- (b) the maximum share of the retired member's pension that is payable to the eligible spouse is 50 per cent of the retired member's pension entitlement on the wind up, including any amount guaranteed by the Guarantee Fund.

(4) Subsection (3) applies with necessary modifications if the pension plan is being wound up in part, if the retired member is affected by the wind up and if, before any assets attributable to the retired member are distributed, the administrator receives the application for division of the pension and payment of the eligible spouse's share.

### **Deadline to begin payments to eligible spouse**

**33.** Payment of the eligible spouse's share of the pension under subsection 67.4 (4) of the Act must begin within 60 days after the administrator receives the completed application for division and payment, accompanied by the required documents.

### **Overview of division and revaluation, etc.**

**34.** (1) For the purposes of subsection 67.4 (4) of the Act, a retired member's pension is to be divided and revalued in accordance with section 35 of this Regulation.

(2) For the purposes of subsection 67.4 (10) of the Act, the single pension payable to an eligible spouse is to be determined in accordance with section 36 of this Regulation.

(3) The calculations required by sections 35 and 36 must be done using methods and assumptions that are consistent with section 3500 of the *Canadian Institute of Actuaries Standards of Practice*.

(4) For the purposes of the calculations required by sections 35 and 36, the rate of interest is calculated as the average, over a reasonably recent period that does not exceed 12 months, of the yields of five-year personal fixed term chartered bank deposit rates as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V122515 compiled by Statistics Canada and available on the website maintained by the Bank of Canada.

### **Division and revaluation of retired member's pension**

**35.** (1) The following rules govern the division and revaluation of the retired member's pension:

1. Retired member's initial (notional) pension: Determine the amount of the pension instalment payable to the retired member immediately before the family law valuation date.
2. Eligible spouse's initial (notional) share: Determine the amount of the pension instalment payable to the eligible spouse, under the order, family arbitration award or domestic contract referred to in subsection 67.4 (1) of the Act, as of the family law valuation date.
3. Retired member's revalued (notional) pension: Subtract the eligible spouse's pension instalment, as determined in paragraph 2, from the retired member's pension instalment, as determined in paragraph 1.
4. Lump sum arrears in eligible spouse's (notional) share: Determine the total of the pension instalments, with interest, payable to the eligible spouse from the family law valuation date to the date as of which the retired member's pension is divided under subsection section 67.4 (4) of the Act.
5. Arrears expressed as pension instalments: Determine the amount of a pension instalment payable for the life of the retired member, commencing as of the payment date that falls on or immediately after the date as of which the retired member's pension is divided, such that the commuted value of this pension is equal to the amount determined in paragraph 4.
6. Eligible spouse's share of the pension: Add the amount of the pension instalment as determined under paragraph 5 to the amount of the pension instalment as determined under paragraph 2. This is the eligible spouse's share of the retired member's pension.

7. Retired member's revalued pension: Subtract the amount of the pension instalment as determined under paragraph 5 from the amount of the pension instalment as determined under paragraph 3. This is the retired member's revalued pension.

(2) The eligible spouse's share of the retired member's pension, as determined in paragraph 6 of subsection (1), is payable as of the payment date that falls on or immediately after the date on which the retired member's pension is divided under subsection 67.4 (4) of the Act, and is payable for the life of the retired member.

(3) The retired member's revalued pension, as determined in paragraph 7 of subsection (1), is payable as of the payment date that falls on or immediately after the date on which the retired member's pension is divided under subsection 67.4 (4) of the Act, and is payable for the life of the retired member.

### **Combining payments into a single pension**

**36.** (1) If an eligible spouse requests payment of a single pension under subsection 67.4 (10) of the Act, and if the pension plan permits payment of a single pension to the spouse in the circumstances, the amount of the single pension is determined in accordance with the following rules:

1. Eligible spouse's share of the retired member's pension: Determine the eligible spouse's share of the retired member's pension in accordance with section 35.
2. Commuted value of eligible spouse's share: Determine the commuted value of the eligible spouse's share of the retired member's pension.
3. Commuted value of eligible spouse's survivor benefit: Determine the commuted value of the pension payable to the eligible spouse upon the death of the retired member.
4. Total commuted value of both: Add the commuted values determined under paragraphs 2 and 3.
5. Eligible spouse's single pension: Determine the amount of a pension instalment payable for the life of the eligible spouse, commencing as of the payment date that falls on or immediately after the date as of which the retired member's pension is divided, such that the commuted value of this pension is equal to the amount determined in paragraph 4. This is the single pension payable to the eligible spouse under subsection 67.4 (10) of the Act.
6. The commuted values referred to in paragraphs 2, 3 and 5 are to be determined as of the date on which the retired member's pension is being divided.

(2) The single pension payable to the eligible spouse under subsection 67.4 (10) of the Act, as determined in paragraph 5 of subsection (1), is payable as of the payment date that falls on or immediately after the date on which the retired member's pension is divided under subsection 67.4 (4) of the Act, and is payable for the life of the eligible spouse.

OTHER TRANSITIONAL MATTERS  
(SECTION 67.6 OF THE ACT)

**Calculation re maximum percentage**

**37.** (1) For the purposes of subsection 67.6 (4) of the Act, the pension benefits accrued during the period a member, former member or retired member had a spouse shall be determined as if the member terminated employment at the valuation date in accordance with the terms of the plan at that date and without consideration of future salary, benefits or changes to the plan but with consideration for the possibility of future vesting.

(2) In this section,

“valuation date” means the valuation date as defined in subsection 4 (1) of the *Family Law Act*.

**Notice re spouse's entitlement to options**

**38.** (1) This section applies if the administrator is given a certified copy of a court order, family arbitration award or domestic contract described in subsection 67.6 (1) of the Act that was made before the date on which that subsection of the Act comes into force and that entitles the spouse of a member to a payment under section 5 of the *Family Law Act*.

(2) If the member named in the court order, award or contract terminates employment, the administrator shall give the following information and documents to the spouse within 30 days after receiving notice of the termination:

1. Notice that the member has terminated employment.
2. A copy of the statement given to the member by the administrator.
3. Information about the options available to the spouse under subsection 67.6 (7) and section 42 of the Act.

MISCELLANEOUS MATTERS

**Inspection of administrator's records**

**39.** (1) The administrator of a pension plan is required by clause 29 (1) (c.1) of the Act to make the prescribed records available for inspection without charge by a former spouse, within the meaning of sections 67.1 to 67.6 of the Act, of a member, former member or retired member,

- (a) if the former spouse has applied under subsection 67.2 (6) of the Act for a statement of imputed value; or

- (b) if his or her spouse has applied under subsection 67.2 (6) of the Act for a statement of imputed value.

(2) However, the administrator is not required to make the prescribed records available to the former spouse after the earlier of,

- (a) one year after the date on which the administrator gives the statement of imputed value to the former spouse or to the member, former member or retired member, as the case may be, under subsection 67.2 (9) of the Act; and
- (b) the date on which the administrator transfers a lump sum to the former spouse under subsection 67.3 (4) of the Act or begins payment of a share of the retired member's pension to the former spouse under subsection 67.4 (4) of the Act.