

Who is eligible to benefit from Bill 133?

- Bill 133 comes into effect in Ontario on January 1, 2012. If you are a member of a provincially registered pension plan, and the pension had not yet commenced at separation, you will now be permitted to transfer funds from the plan to a locked-in retirement savings vehicle of your former spouse up to a pre-determined limit sufficient to effect equalization of the value of the pension itself.
- If you are a member of a provincially registered pension plan and the pension had already commenced at separation, instead of the transfer of a lump sum to a locked-in retirement savings vehicle of your former spouse, Bill 133 mandates that the plan set up a separate pension for your former spouse that will commence immediately and be paid to them for their lifetimes even if you predecease them.
- Previously, if there were not sufficient non-pension assets to pay this equalization, a so-called “If and When” agreement was necessary that provided for the former spouse receiving part of the pension payments “if and when” you eventually retired.
- If you are a member of a federally registered pension plan, (that is, you work for a federal government agency, the post office, a telephone company or broadcaster, a railway, or a bank among others), you already have the right to transfer a lump sum to a former spouse’s locked-in retirement savings vehicle on separation.
- If you are a member of a non-registered pension plan, you will not be able to transfer a lump sum from the plan to your former spouse’s locked-in retirement savings vehicle.

Must I transfer a lump sum from my pension plan to my former spouse’s locked-in retirement savings vehicle?

- While the law permits funds to be transferred from provincially registered plans come January 1, 2012, (and federally registered plans as well now), to the locked-in retirement savings vehicle of a former spouse, the law does not compel it.
- Whether such a transfer will be made will typically be negotiated between the parties and set down in the separation agreement.
- There is potential for conflict over the source of equalization as transferred funds will be locked in, (with perhaps some limited exceptions, particularly for hardship and terminal illness), typically until the age of 50 or 55, whereas non-pension assets given to a former spouse will be accessible immediately.
- However, a transfer can be compelled without the plan member’s consent, or without a spouse’s consent, through a court order or an arbitration award.

Should I transfer a lump sum from my pension plan to my former spouse’s locked-in retirement savings vehicle?

- Whether you would wish to exercise the option to transfer funds from your pension plan to your former spouse’s locked-in retirement savings vehicle will depend on how this impacts your resources available for retirement versus those

- available to provide a new home for yourself after separation or for other purposes.
- In a separation a matrimonial home is typically involved, which is frequently sold leaving both parties with half the equity in the former matrimonial home. Owning a paid for home is a foundation of financial security both before and after retirement. Retaining sufficient funds for at least a down payment on a new home is a desirable goal.
 - For those plan members who have several decades remaining in their careers, the loss of approximately half the pension accrued during marriage is a relatively small amount compared to the full pension that will be accrued by eventual retirement, and likely will not change when they can or intend to retire.
 - For those only a few years away from retirement however, perhaps as much as almost half of pension at retirement will be lost, and retirement may be unaffordable at the intended age. In this circumstance, a projection of the pension that will be available at differing retirement ages, including of its purchasing power at advanced ages in the face of inflation, and an estimate of the funds necessary to provide housing or other requirements needs to be made. It may be necessary to adjust aspirations and expectations.
 - It should be noted that the maximum amount available for transfer need not be utilized, and that equalization with respect to a pension can be effected through a combination of a transfer and non-pension assets.

Is it to a spouse's advantage to receive equalization as a transfer of pension funds?

- There are actually two issues here. One is of whether equalization using locked-in pension funds versus equalization using immediately available non-pension assets is preferable.
- The second issue stems from the fact that Bill 133 will authorize but not require provincially registered pension plans, (as federally registered ones are currently authorized), to use the sum available for transfer to provide the former spouse with a separate pension in their own right payable from the plan instead of the transfer. It is at the plan's discretion whether it chooses to offer this option. It is at the former spouse's discretion whether to receive a transfer or a pension.
- The same considerations of retirement hopes versus owning a home or other outlays as were discussed above also apply to the former spouse. For the former spouse, the main concern may be the availability of non-pension funds immediately versus waiting for pension funds to become unlocked or attempting to unlock them.
- Receiving a pension in lieu of a transfer removes concerns about investing the proceeds oneself and of outliving one's assets.
- However, if one has health conditions that lead one to believe that one will not live until normal life expectancy, then retaining a lump sum that could be passed on to heirs on premature death could be advisable.
- Otherwise, receiving a pension for life, especially from a plan that provided full inflation indexing, would be a cornerstone of financial security in retirement.

Conceivably part of equalization due could be received in immediately available non-pension assets, and part could be left with the plan, (if it so permits), to provide the former spouse with a pension of their own.