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**Submitted via the FSRA website**

Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard St. W., Suite 100
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January 19, 2024

**Re: FSRA Consultation Paper: Potential FSRA Rule on Family Law Matters**

We are writing in response to the Consultation Paper: **Potential FSRA Rule on Family Law Matters.**

We thank the Financial Services Regulatory Authority of Ontario for the opportunity to comment on their consultation paper.

With almost 350 employees, working from six offices in Canada, Eckler Ltd. is the country's largest independent actuarial consulting firm. Our roots trace back to 1927, making us one of the oldest firms in the industry. Eckler has supported pension administration needs for 55 years and provides pension administration services to more than 150 pension plans across Canada. We offer all models of pension administration – from full outsourcing to third-party delivery, to ad-hoc consulting and review – and we have an unparalleled committed to quality service.

We have addressed certain topics covered in your consultation paper and have structured our comments in the same order you provided in Appendix A of the consultation paper.

**Topic #2: Fees that plan administrators may charge for a DB Statement of Imputed Value**

The current maximum fee of $600 for DB benefits is generally not sufficient to cover the costs of producing the required calculations and statements. **We recommend the maximum for DB benefits be raised to an amount in the range of $750 – $1,000 and the maximum for plans where members receive DB and DC benefits be raised to an amount that is $250 – $450 more than the maximum set for DB benefits.** While we recognize that this may not be sufficient in all cases to cover plan costs, it is a balance between covering plan costs and keeping costs reasonable for plan members going through a marriage breakdown. We acknowledge that marriage breakdowns can put plan members under financial stress and we would like to keep the costs of providing the information they need about their pension plans at a reasonable level. We do not want to inhibit members by way of cost from coming forward to request necessary and pertinent information in the event of a marriage breakdown.

We do not recommend that special considerations be made for low-income applicants. This would add the additional task of assessing a member's need for a lower fee to a process that already often costs more than can be charged to the plan member. In addition, pension plans generally do not have the need for this type of process (a low-income assessment) for other aspects of administration. This would generally be an entirely new type of process for the plan and may cause the plan extra expenses, such as legal opinions or system changes. Instead, we recommend that wording be added to the rule reminding administrators that this is the *maximum* fee, and encouraging administrators to set the fee for their plan at a level that takes into account what their particular plan members can reasonably afford.

The key to keeping the costs of producing these statements lower is providing clear guidance for their completion and removing unnecessary steps out of the process. Ontario marriage breakdown rules are generally clear and the process is methodically laid out; we appreciate this clarity and efficiency and support FSRA's efforts to bring more clarity as we believe this is the best way to help plans get closer to covering their costs with relatively modest maximum fees.

One other item of note is that the appropriateness of the maximum fee charged for a statement of imputed value should be evaluated more frequently than has been in the past. We recommend the maximum fee is reviewed at least once every 3 years, or the Pension Benefits Act and Regulations should include a mechanism for periodic increases to the maximum fee, or set a schedule of prescribed increases to the fee over the near term.

**Topic #3: Payment of arrears – division and revaluation of a retired member's pension**

We agree that uncertainty exists with respect to the division and revaluation of a retired member's pension where spouses have made arrangements outside of the pension plan to share pension amounts prior to its actual division. We support FSRA **expanding on its guidance** to address this issue by specifically **giving administrators the freedom and flexibility to take into account any arrangements spouses have made outside the plan** to share pension amounts between the FLVD and the date when the pension is actually divided.

**Topic #4: Payment of interest on lump sum transfers**

The *Heringer* decision is clear on the treatment of interest for lump sum transfers to a member's spouse and plan administrators are familiar with the guidelines as outlined in section 8.3 of FSRA's Administration of Pension Benefits Upon Marriage Breakdown Guidance. The challenge is that the parties drafting domestic contracts, family arbitration awards and court orders (the "Settlement Instrument") are not consistently aware of the decision. Administrators often receive ambiguous documents that are difficult to interpret under the guidelines. For example, both a percent and a dollar amount may be specified, or wording is vague and states that the pension is to be shared equally. Furthermore, since the FLV as well as the maximum transfer value are stated as a dollar amount, a Settlement Instrument may simply refer to these amounts directly without addressing any interest which may unintentionally reduce the benefit to the former spouse.

The various FSCO Form 4s and Form 5 prior to the November 2021 changes included clear wording about the treatment of interest consistent with the *Heringer* decision. At a minimum, adding such wording back to the forms would more clearly alert members, former spouses, and their legal representatives to the issue of interest in any settlement decision.

Rather than leaving it to the discretion and understanding of the individual drafting the settlement terms, a rule from FSRA that sets out consistent treatment of interest for all lumps sums (except when explicitly addressed in a Settlement Instrument) would resolve the issue of equity when a decision is made to divide the pension. For example, Alberta legislation requires that the settlement document specify a percentage (not a dollar amount) and if the division occurs more than 180 days after the date of separation, the CV is recalculated on a current basis within 30 days of division to protect the plan and remaining members from large (potentially unfunded) interest payments if division occurs years after the fact.

Under the current *Heringer* framework, further guidance is required for administrators in interpreting legal documents that are silent on the treatment of interest with both a percentage and dollar amount or that give instruction to divide/share the pension 'equally'. Direction on when a Settlement Instrument must be amended before the division can proceed would also be helpful to ensure consistent administration across plans.

**Topic #5: Forms**

Following up with members due to incomplete or incorrect forms adds administrative expense and lengthens the calculation and division process. Simplifying and clarifying the forms is a preferred approach to address this problem rather than allowing administrators more flexibility to create their own forms. Using non-standard forms would increase the time and expense for legal and actuarial firms to prepare and/or review forms for their diverse clients.

Appendix A and B of the Family Law Form FL-1 are the most common sources of errors. The starting date of the relationship and the family law valuation date appear in multiple sections resulting in inconsistencies across the various pages. Some members are unclear on when to use the appendices and in some cases they cannot agree on the start date of the relationship as well as the end date, resulting in the member having to complete two FSRA Family Law Form FL-1s. Having all dates listed once and signed off by both parties one time would simplify the application process and reduce the need to return forms for corrections. The application is long (7 pages), making it time consuming for members to complete; it could benefit from some consolidation and streamlining.

Finally, the FSCO forms prior to the November 2021 changes included supplemental instructions on the treatment of interest as well as user guides for each of the forms which were invaluable to administrators for guidance on handling non-routine situations like excess contributions due to the 50% rule. Researching technical calculation requirements that are infrequently encountered is time consuming and costly. The guides were also helpful in answering common questions members had about the forms. Updating and reissuing these guides would reduce the time and cost of valuing and dividing a member's pension upon marriage breakdown.

**Topic #6: Variable benefits**

The Pension Benefits Act provides separate rule-making authority for family law matters relating to plans that offer variable benefits, which generally mirror the authority provided for plans with non-variable benefits. We support FSRA developing a rule that addresses the area of variable benefits within family law to bring consistency with any other potential changes discussed in your consultation paper.

**Conclusion**

We thank you again for the opportunity to provide our comments on the FSRA Consultation Paper: **Potential FSRA Rule on Family Law Matters**. Should you have any questions on the topics discussed above or wish to discuss any other aspect of the consultation, please feel free to contact either Shannon Tesluck or Melanie Grace.

Best regards,


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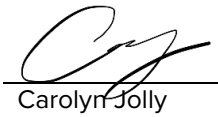

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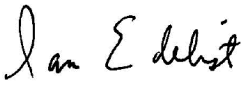

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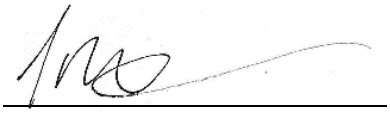

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