



Pensions and Relationship Breakdown – An Administrator's Perspective

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Kaely Zettel, Vice President, Legal

Brad Prokop, Vice President, Pensions



From Separation to Settlement

How to deal with your client's pension

Starting the process

1. Once your client's separation date is established, have your client request a statement from TRAF by filling out a Marriage/Common-Law Breakdown Calculation Request form.

Sample calculation request form

TRAF		TEACHERS' RETIREMENT ALLOWANCES FUND		Marriage/Common-Law Breakdown Calculation Request	
Please print. Personal Information Completed by Member:					
<input type="checkbox"/> Miss	_____	Last Name	_____	First Name	_____
<input type="checkbox"/> Mr.	_____	Former Last Name(s)	_____	Address	_____
<input type="checkbox"/> Mrs.	_____	_____	_____	City	_____
<input type="checkbox"/> Mr.	_____	_____	_____	Province	_____
<input type="checkbox"/> Other	_____	Postal Code	_____	Home Phone	_____
		_____	_____	Business Phone	_____
		Social Insurance Number	_____	Date of Birth (m/d/y)	_____
		_____	_____	Employed By	_____
Solicitor Information:					
		Solicitor's Name	_____	Name of Firm	_____
		Address	_____	City	_____
		_____	_____	Province	_____
		Postal Code	_____	Business Phone	_____
Former Spouse/Partner Information:					
		Last Name	_____	First Name	_____
		_____	_____	Middle Name	_____
		Former Last Name(s)	_____	Address	_____
		_____	_____	City	_____
		Postal Code	_____	Home Phone	_____
		_____	_____	Business Phone	_____
		Social Insurance Number	_____	Date of Birth (m/d/y)	_____
		_____	_____	Employed By	_____
Solicitor Information:					
		Solicitor's Name	_____	Name of Firm	_____
		Address	_____	City	_____
		_____	_____	Province	_____
		Postal Code	_____	Business Phone	_____
Confirmation of Dates:					
		Date of Marriage or Declaration of Common-law Relationship:	_____		
		Date of Cohabitation, if earlier:	_____		
		Date of Separation or Termination of Common-law Relationship:	_____		
		Province of Residence on Date of Separation:	_____		
Authorization:					
		Completion of this form authorizes TRAF to proceed with the calculation of the member's pension benefit credit, or if the member's pension has already commenced, the member's monthly pension earned during the relationship. On completion of this calculation, TRAF will notify all parties.			
		Member Signature	_____	Date	_____
		Signature of Witness	_____		
		Former Spouse/Partner Signature	_____	Date	_____
		Signature of Witness	_____		
<small>Johnston Terminal • 330 - 25 Furke Market Road • Winnipeg, Manitoba R3C 4S8 Fax: (204) 944-8361 • Phone: (204) 949-0048 • Toll Free: 1-800-782-6714 Email: info@traf.mb.ca • Website: traf.mb.ca</small>					

The Marriage/Common-Law Breakdown Calculation Request form is on TRAF's website at:

<https://www.traf.mb.ca/forms/activedeferred-members>

Starting the process (continued)

2. Information regarding the value of the pension and the options available (Relationship Breakdown Statement, along with an accompanying letter), will be forwarded to both the member and their former partner.

Starting the process (continued)

The Relationship Breakdown Statement will include:

- (a) the information used to calculate the pension values (e.g., enrollment date, relationship start and end date);
- (b) pension value information (e.g., total value, value of the former partner's entitlement, impact to member's pension if divided).

Sample relationship breakdown statement

RELATIONSHIP BREAKDOWN STATEMENT

1. Information Used to Calculate Pension Values

Member's Name:
Member's Date of Birth:
Member's Plan Enrollment Date:
Member's Plan Termination Date:
Former Partner's Name:
Relationship Start Date:
Relationship End Date:


2. Pension Value Earned During Relationship

Commuted Value During Relationship:
Additional Voluntary Contributions & Interest:
Excess Contributions & Interest:
Total Pension Value during Relationship:
Partner's 50% Portion of Commuted Value:
Partner's 50% Portion of Voluntary & Excess Contributions:
Partner's Total 50% Portion at [Date of Separation] *
Partner's Total 50% Portion at [Date Pension Started] **
Member's Pension will reduce by:

* This amount is based on interest rates known prior to the date of the request and is an estimate only. The final value will be determined at the payment date and will be calculated based on actual rates of return. The amount payable could be higher or lower than the amount shown.

** Cost of living adjustments increase the member's pension reduction between the date of separation and the date the pension starts. ~~An actuarial equivalent adjustment may also be made to this amount.~~

Before agreeing to a division of less than 50% of the value of the pension your former partner should seek the following:

 (i) legal advice with respect to family law entitlements; and
(ii) financial advice as to the implications of agreeing to receive less than a 50% share of the pension.

Prepared on:

NEW: As of October 1, 2021, the Relationship Breakdown Statement will include a recommendation to the former partner to seek legal advice and financial advice if agreeing to take less than their 50% entitlement.

Options available pre-October 1, 2021

1. Divide the pension 50/50.
2. Divide net difference between the two pensions if both partners have pensions.
3. Opt out of a division of the pension.

1. Divide the pension 50/50

For relationship breakdowns with a separation date prior to October 1, 2021, **pensions can only be divided 50/50**. This is accomplished by:

- (a) the parties entering into a written agreement stating the pension will be divided;
- (b) the parties entering into a written agreement dividing family assets; or
- (c) by court order stating the pension will be divided or family assets will be divided.

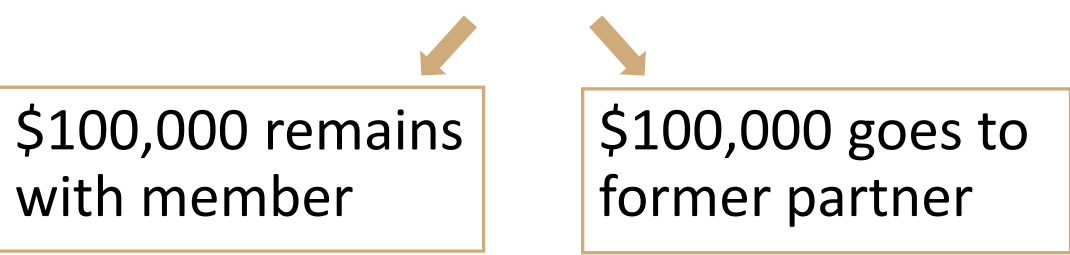
Note: A written agreement or court order dividing family assets, **even if the pension is not referred to**, means the pension will be divided 50/50, subject to a party's right to opt out of division.

2. Divide net difference between the two pensions if both partners have pensions

Example:

- Value of TRAF member's pension is \$300,000
- Value of former partner's pension is \$100,000
- Net difference is:

$$\begin{array}{r} \$300,000 \\ - \$100,000 \\ \hline \$200,000 \end{array}$$



\$100,000 remains
with member

\$100,000 goes to
former partner

2. Divide net difference between the two pensions if both partners have pensions (continued)

	Member	Former partner
Before division	\$300,000	\$100,000
Net difference	-\$100,000	+\$100,000
After division	\$200,000	\$200,000

(\$100,000 divided by \$300,000 = 33%)

- Member's pension is reduced by 33% of the pension accrued during the relationship.
- Former partner's pension is not divided.
- If your client is considering this option, we will prepare a net difference statement.

3. Opt out of a division of the pension

The parties can opt out of a division of the pension by:

- (a) specifying the pension shall not be divided in a written agreement or court order¹; or
- (b) executing a standard form opting out agreement.

¹ If the Relationship Breakdown Statement was **not** obtained prior to executing a separation agreement, an opting out agreement must be executed after the Relationship Breakdown Statement is received.

Requirements to opt out (s. 31(6) of *The Pension Benefits Act*)

1. A Relationship Breakdown Statement showing the value of the pension must be received by the parties.
2. Independent legal advice must be obtained.

Options available post-October 1, 2021

1. Divide the pension **up to 50%**.
2. Not divide the pension.

1. Divide the pension up to 50%

Requirement to divide:

The parties must enter into an agreement or obtain a court order specifying the percentage of the pension to be paid.

[S. 11.4(1) of the Pension Benefits Regulation]

Prior to entering into a written agreement to divide the pension, the parties should receive a Relationship Breakdown Statement showing the value of the pension.

However, if they fail to do so, the pension will still be divided if the written agreement or court order specifies the percentage to be paid to the former partner.

Note: If dividing the net difference, this can be accomplished by determining the percentage to be paid; there is not a separate net difference process (see sample calculation on slide 10, where 33% would be the specified percentage).

2. Not divide the pension

Parties can decide not to divide a pension by specifying the pension shall not be divided in a written agreement or court order. [S. 11.4(1.2) of the Pension Benefits Regulation]

If the parties enter into a written agreement or obtain a court order dividing family assets and do not address the pension (or do not specify the percentage to be paid), section 31(2) of the *Pension Benefits Act* is triggered; however, to fully address the pension the specified percentage to be divided must be provided to the administrator (0%-50%).

Recall: Pre-October 1, 2021, a written agreement or court order dividing family assets automatically resulted in a 50/50 division of the pension (subject to an opting out agreement also being executed).

Completing the process

1. Documents required to complete division:

- T2151 – To transfer to another pension plan, RRSP, RRIF, LIRA or PRPP.
- Locked-in Agreement Transfer of Funds – Financial institution confirms funds will remain locked in.
- If transferring to another pension plan, a letter confirming they will accept the transfer.
- Non-locked-in payment authorization (additional voluntary and excess contributions, and small values¹).
- Beneficiary designations
- Statement of Compensation – Applies post-retirement only, when there is a delay between the date of separation and the date of division.

¹ Amounts below a certain threshold are not locked in and may be transferred to an RRSP or RRIF or payable as cash, less withholding tax.

Completing the process (continued)

2. A “30-day letter” will be sent to both parties once all required documents are received or upon TRAF being provided with an agreement or court order specifying the pension will not be divided. This letter notifies both parties that:
 - (a) the pension division will be completed; or
 - (b) our file is being closed with a note that there will be no pension division,unless we are provided with a written notice of objection, with supporting evidence, within 30 days.

Disputing pension division

Should you wish to dispute a pension division/agreement not to divide a pension, you must provide TRAF with a written notice of objection within 30 days of receipt of TRAF's "30-day letter"

[S. 11.14(3), S. 11.14(4) and S. 11.14(5) of the Pension Benefits Regulation]

Grounds for objection

The member may provide the administrator with a written notice of objection to the division on any of the following grounds:

- (a) that the agreement or order has been varied or rescinded;
- (b) that the terms of the agreement or order are being satisfied by other means;
- (c) that proceedings have been commenced in a court of competent jurisdiction to challenge or vary the terms of the agreement or order.

Supporting evidence must be provided with respect to the above.

If the administrator is of the opinion that the agreement or order cannot be complied with, or if the administrator receives a notice of objection under subsection 11.14(3), the administrator may delay the division of the member's pension benefit credit or pension until the administrator receives

- (a) a new or revised agreement or court order; or
- (b) directions from the court on how the division is to be made.

Common Pitfalls

1. A separation agreement or court order states “the parties shall keep all assets in their possession, free and clear from any claim from the other”

Pre-October 1, 2021

- The pension will be divided 50/50.

[W.L.K. v V.J.K., 2006 MBQB 66]

Post-October 1, 2021

- The pension cannot be fully addressed until the requirement to specify the percentage of pension to be divided is provided (0%-50%).

[S. 11.4(1) of the Pension Benefits Regulation]

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2. Pension values are not requested and the parties have proceeded without pension values or have relied on an annual member statement or some other calculation to determine the value of the pension.

Pre-October 1, 2021

- Where the parties want to waive division, a Relationship Breakdown Statement will be provided and an opting out agreement must be executed.
- Where the parties have agreed to a division, the pension will be divided 50/50 regardless of whether a Relationship Breakdown Statement was received.

*A division of the pension is 50/50 regardless of value so a division will proceed in the normal course, even if the value used in the agreement is incorrect or not specified.

Post-October 1, 2021

- Where the parties have agreed to a division, a Relationship Breakdown Statement will be provided. The parties will have 30 days to respond or a division, as specified in the agreement, will proceed.
- Where the parties have agreed to not divide the pension, a Relationship Breakdown Statement will be provided. The parties will have 30 days to respond or TRAF will close the file. An opting out agreement does not need to be executed.

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3. A separation agreement is signed or a court order is obtained but a copy is not provided to TRAF in a timely manner.

This causes headaches down the road when the member discloses a prior relationship breakdown and can no longer locate the documents or their former spouse, or their former spouse has passed away.

Legal counsel should send documents to the administrator in a timely manner so TRAF can make a note on the file and any deficiencies can be dealt with immediately.

Contact Us



TEACHERS' RETIREMENT
ALLOWANCES FUND

Website: www.traf.mb.ca

Email: info@traf.mb.ca

Phone: 204-949-0048

Toll-free: 800-782-0714

Fax: 204-944-0361

Johnston Terminal

330 – 25 Forks Market Road

Winnipeg, Manitoba

R3C 4S8

*Our hours are 8 a.m. to 5 p.m. Monday through Friday (8 a.m. to 4 p.m. in July and August) and one Saturday each month during the school year. Visit **traf.mb.ca** for specific dates and exceptions.*