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# PENSION VALUATORS OF CANADA

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Attention: Family Law Lawyers

Bulletin No. 118

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## Pension Plan Entitlements on Bankruptcy

It was recently suggested to us that on marriage breakdown, a person's pension plan entitlements no longer enter into the calculation of family assets.

Section 18 (1) (a) of the Pension Benefits Standards Act (Canada) states, in part, "...a pension plan shall provide ..that no benefit provided under the plan is capable of being assigned, charged, anticipated or given as security or confers on a member or former member, that person's personal representative or dependant or other person any right or interest therein that is capable of being assigned, charged, anticipated or given as security;....".

Section 66 (1) of the Pension Benefits Act (Ontario) states "Money payable under a pension plan is

exempt from execution, seizure or attachment.....".

A leading Canadian bankruptcy trustee informs us that these sections make it impossible for the trustee to seize or otherwise deal with a bankrupt's pension plan entitlements.

Based on the foregoing, it is obvious that a person's pension plan is not affected on bankruptcy, thereby leaving it as an asset that **is** shareable on marriage breakdown provided the bankruptcy occurred prior to the separation date.

Of course if the separation date is before the bankruptcy it could be argued that the debt created by the equalization has been extinguished by the bankruptcy.

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If you have any questions please call Pension Valuers of Canada at **1-800-891-9122** or fax us at 1-705-749-6762.

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