



Pension Rights & the Protection of Non-Member Spouses

Across the Life Cycle — Marriage, Retirement, Divorce and Death

M Tlale & U Budeli

University of the Witwatersrand · ASSA Retirement Matters Seminar



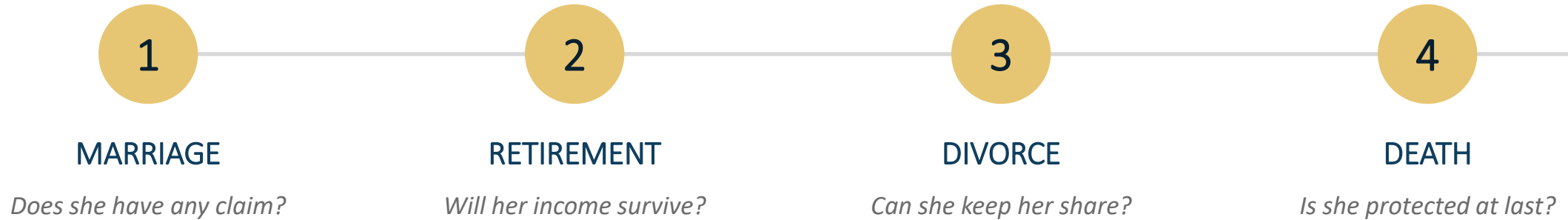
Protected in death. Exposed in life.

WHILE MARRIED & ALIVE
Weakest protection

AFTER A PARTNER DIES
Strongest protection

Protection rises exactly as the relationship ends. Why?

Roadmap: One life. Four moments. Three jurisdictions.



Compared across three jurisdictions:

SOUTH AFRICA

ENGLAND & WALES

CANADA (ex-Quebec)

Same three-pillar structure — very different choices about protecting a spouse

The building blocks



Three pension pillars · the marital regimes that decide who owns what

Pillar 1

State / social grants

Basic floor — smaller in SA

Pillar 2

Occupational (DB / DC)

Employer fund

Pillar 3

Private savings

Top-up

South Africa — marital regimes

In community

one joint estate — shared 50/50

Out of community

estates stay separate

Out + accrual (1984)

share the GROWTH during marriage

Remember “accrual” — sharing the growth.

Canada builds its entire fairness system on it.

During marriage, she is invisible



Theirs in effort, his in law — the pension is the member's separate property

Pension interest: Portion of the member's pension entitlement the law treats as forming part of the marital estate.

Built together...

Member spouse earns the salary

Non-member spouse runs the home, raises the children, steps back from her own career



THE PENSION
Legally: his alone

...owned by one

- No legal claim while married — only at divorce
- Member spouse alone controls it — he can spend or withdraw it
- Non-member spouse receives nothing, though it came from the joint estate

There's a significant structural gap — built together, but owned and controlled by one.

A road not taken



Other systems let a spouse share the pension during the marriage

CANADA (ex-Quebec)

CPP — sharing during the marriage

A share of the member's pension can be assigned to the spouse by joint application, while the marriage is intact — and it reaches common-law partners after one year.

ENGLAND & WALES

Old Basic State Pension

A spouse could boost their own pension using a partner's National Insurance record — independent of divorce or death. Scaled back since 2016; now closer to SA.

SOUTH AFRICA

LOCKED

No claim during marriage

The pension stays the member's separate property until divorce — and even the two-pot savings can be withdrawn without her consent.

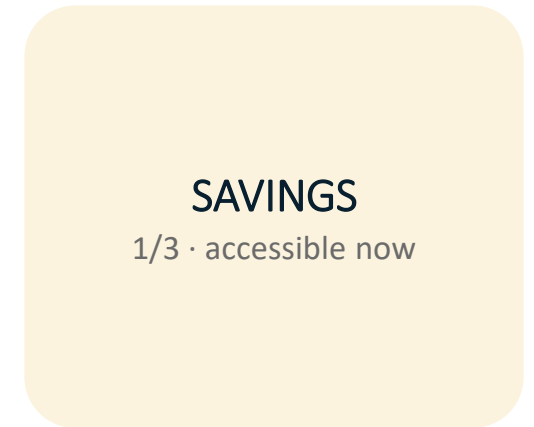
The two-pot leak

MARRIAGE · SOUTH AFRICA

Since September 2024 — flexibility for the member, exposure for the spouse



Withdrawn before
retirement — no spousal consent



Joint-estate money can leave the household quietly; one hand on the tap.

Whose income survives?



One election at retirement decides whether the survivor keeps an income

Single-life stops at the first death · joint-and-survivor keeps paying the survivor — so the choice IS the protection.

No spousal consent required

SOUTH AFRICA

Neither the Pension Funds Act (1956) nor the Income Tax Act (1962) requires the spouse to agree — the member can elect single-life alone.

ENGLAND & WALES

Same position — neither the Finance Act 2004 nor the FCA / TPR rules require spousal consent before a single-life choice.

CANADA (ex-Quebec)

Canada is different

A pension to a member with a spouse **MUST** be joint-and-survivor. Single-life is allowed only if **BOTH** sign a written waiver — the spouse is at the table, by law.

So how much must keep flowing?
→ the reversion rate

The reversion rate



How much income keeps flowing to the survivor — and what each system mandates

100%

survivor income unchanged

66⅔%

often the optimal utility

50%

lowest survivor share

CANADA (ex-Quebec)

≥ 60%

mandatory — unless BOTH
waive

SOUTH AFRICA

NONE

no mandate · no signature

Lower isn't always worse: a rate below 100% can raise utility per rand — the survivor needs less once shared costs fall (Brown & Poterba).

Canada guarantees a floor; South Africa mandates nothing, and asks for no signature at all.

The clean break



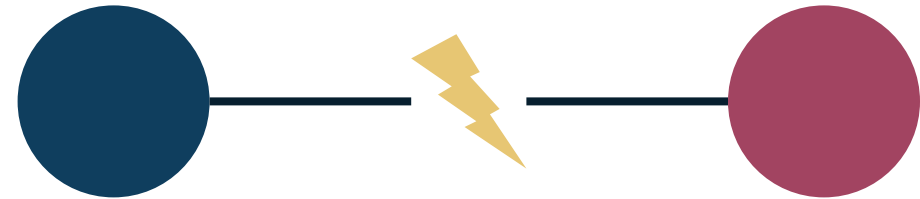
Divorce, at last, gives her a real claim

Before 1989



Tied together for decades — she waits until he exits the fund

Clean break



Paid out NOW — her own account or preservation fund

Genuinely progressive law — she walks away financially independent.

So the system works... right?

MARRIAGE

RETIREMENT

DIVORCE

DEATH

Beating the clock



“Pension interest” only exists if the member is still in the fund on divorce day



Real cases:

CN vs NN (2023)

Elesang v PPC Lime (2006)

Resign before the order is signed and the benefit “accrues” — falling outside the statute.

Systems that don't leak



The share attaches to value built in the marriage — so quitting can't erase it

ENGLAND & WALES

Pension-sharing order + Cash Equivalent Transfer Value

The fund is valued at the cash equivalent transfer value and a set % is carved into a pension in HER OWN name.

Non-member spouse's immediately — regardless of when the member spouse retires.

CANADA (ex-Quebec)

Deferred community property

Growth DURING the marriage is a family asset — shared, capped at 50%.

Valued against the fund itself, not whether he still works there.

SOUTH AFRICA

South Africa leaks: the share is tied to the member still being IN the fund on divorce day...

...so a resignation and cash-out before the order empties the claim — the value simply walks out.

MARRIAGE

RETIREMENT

DIVORCE

DEATH

Death: where the law is strongest



Section 37C actively works FOR the spouse — the one place it does

Section 37C

PROTECTS

- ✓ The benefit skips the will — it never falls into the estate
- ✓ Shielded from creditors — dependants are paid first
- ✓ Trustees must actively seek out and provide for dependants
- ✓ A spouse is always a dependant (a former spouse too, with a maintenance order)
- ✓ Split equitably — need, dependency, relationship — within 12 months
- ✓ Outside the estate → no estate duty (tax-efficient)

The one moment the system actively protects her — and even then, only before retirement.

Where the shield cracks



37C doesn't reach everything



Living annuities

Bought from an insurer → governed by the contract, not 37C



The GEPF

Own law — follows the member's chosen beneficiaries
Introduction of COFI Bill



After retirement

37C protects before retirement, not elections made later

Du Plessis (2024): a 0% spouse's pension + “unmarried” declaration erased a qualifying partner's benefit.

Rights on paper aren't rands in hand



Information & access decide who actually gets paid

- She may not know the fund exists
- Appropriate wording of the divorce order
- Legal help is costly and not necessarily accessible

The enforcement gap is structural — and gendered.

ENGLAND & WALES

Not just South Africa:

13%

of divorcing couples consider pensions

28% vs 17%

of women vs men waive their rights

24%

didn't know a spouse had a pension

The paradox resolved



Three life events · three countries · one clear pattern

	South Africa	England & Wales	Canada (ex-Quebec)
Marriage	No claim; two-pot leak	Old basic pension (scaled back)	CPP sharing during marriage
Divorce	Clean break — timing loophole	Sharing order via Cash Equivalent Transfer Value	Deferred community, ≤50%
Death	Strong Section 37C — post-retire cracks	Discretionary trust; tax-efficient	Survivor pension ≥60%
Annuity consent	Not required	Not required	Mandatory ≥60% unless both waive

Closing the gaps



Three targeted reforms

1

Redefine “pension interest”

Catch benefits withdrawn after summons but before the order — attach the share to marital-period value.

Fixes the divorce loophole

2

Require spousal consent

No single-life annuity without the spouse’s written consent — Canada’s rule.

Fixes the annuity gap

3

Protect during marriage

Extend an accrual-style claim (cf. s8 Matrimonial Property Act) so she isn’t invisible.

Fixes the marriage gap

What reversion rate fits a dual-income world?



Canada's 60% was set for the single-income households of the 1990s

1990s — one earner

A dependent spouse → a high mandated rate made sense.

Today — two earners

Both build pensions → the right rate is no longer obvious.

Too high → over-insured & costly

?

Too low → the spouse is exposed

Not a legal question — an actuarial one. Exactly what this profession is built to solve.



Protect her at every stage —
not only after one has ended.

The clean break proved we can legislate fairness — the same will can protect her while the marriage is still alive.

Thank you

Questions

M Tlale - masi.tlale@icloud.com

U Budeli - uzwotheb@gmail.com