

Important Court Decisions

Pension Valuers of Canada

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Bennett v. Bennett

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The case of Bennett was an interesting case that dealt with:

- Increased risk of mortality,
- Pro rating the survivor benefit,
- Double dipping is sometimes okay,
- Spousal support,
- Deferred pre-judgment interest.

Background

This was a long term marriage. Mr. Bennett had suffered a heart attack and had retired before their separation. Mrs. Bennett had also taken early retirement. In addition to their pensions they had accumulated almost \$300,000 savings, another \$300,000 in their matrimonial home, and a farm. Mrs. Bennett's estimated expenses were \$2,926 per month and Mr. Bennett's were \$2,596. Each required that they encroach on capital because they did not have sufficient income to cover their ongoing expenses.

Increase Risk of Mortality

A pension valuation usually assumes normal life expectancy. Mr. Bennett had suffered a heart attack leading to major surgery eight months before the date of separation. He had taken medication, exercised and followed a regular cardiac rehabilitation program.

One doctor testified that in his opinion Mr. Bennett's long term life expectancy would be normal. Another doctor testified that his opinion is that Mr. Bennett's life expectancy would be reduced by 25%. Justice Aston accepted the opinion of the second doctor. In doing so he emphasized that such a decision should only be made based on expert medical evi-

dence and opinion.

The result was a double whammy. This reduced the value of Mr. Bennett's pension and increased the value of Mrs. Bennett's survivor benefit.

Pro Rating the Survivor Benefit

Mr. Bennett had earned part of his pension before the marriage and accordingly part of the value had then been accorded to the pre-marriage through the use of the pro rata method. Mrs. Bennett argued that therefore part of the value of her survivor benefit should also be accorded to the pre-marriage period by the use of the pro rata method.

Justice Aston disagreed with Mrs. Bennett. He said, "In my view, the pre-marriage portion should not be deducted for Mrs. Bennett's survivor benefit. The amount to be paid to Mrs. Bennett is not at all dependant upon the date of marriage. She acquired a vested interest in the survivor benefits that will pay her the same monthly amount whether she married Mr. Bennett for 37 years or 37 days before they separated. She had no interest in the pension before marriage. She only acquired her interest in the plan as a consequence of the marriage."

Double Dipping

Justice Aston came up with some unusual reasoning for allowing what might otherwise be considered to be double dipping. He carefully reviewed the case of Walker v. Walker (2001) O.J. No. 4081, where the facts were somewhat similar. Justice Aston then pointed out that because of the de-

ferred survivor benefit payable to Mrs. Bennett on her husband's death, Mr. Bennett was able to reduce the equalization payment. Justice Aston then concluded that to the extent that the value of Mr. Bennett's pension had been offset by the value of Mrs. Bennett's survivor benefit, that percentage of his pension was available for support without double dipping.

Next months newsletter will deal with the issues of spousal support and deferred pre-judgment interest in *Bennett v. Bennett*.

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