

Important Decisions

Pension Valuers of Canada

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Bennett v. Bennett - continued

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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.

Last month we dealt with the first three points.

Spousal Support

Mr. Bennett was 61 years old at the date of separation and Mrs. Bennett was 57. Mr. Bennett had a reduced life expectancy. Both parties had to encroach on capital to meet their expenses. Mr. Bennett's encroachment was by way of the combined income and capital payment he was receiving from his pension. Mrs. Bennett's encroachment was reducing her investments. However, Justice Aston concluded that because of Mrs. Bennett's younger age, gender and good health, she would not afford to encroach on her capital as much. He considered this to be a factor under section 15.2 (6) (d) of the Divorce Act. The Court of Appeal said that she should encroach on her capital to meet her living expenses.

Justice Aston ordered a review of the spousal support payments in 2005 when the parties incomes would be affected by CPP and OAS payments. He also pointed out that pensions are valued based on estimates of the future rates of interest and assumed life expectancy. He then said that "measurable departure from these fac-

tors might constitute a material change in circumstances entitling the non-pensioned spouse to access, for spousal support purposes, the income stream which has not been equalized in the property determination." These comments could open up a flood of applications for increased support provided one knows how to do the calculations. (Please contact us for such calculations.)

Justice Aston then reduced the support payable by the premium being paid by Mr. Bennett for life insurance where Mrs. Bennett was the beneficiary.

Pre Judgment Interest

Pre judgment interest was deemed to be appropriate but because of the time required to obtain information and valuations and assess the rights and obligations it was ordered that it should not start to run until nine months after the valuation date. It should be possible to argue this deferred in every case.

Summary

Based on this case:

1. Adjustment of the pension value for increased mortality must be based on proper medical evidence and testimony from a medical expert.
2. The value of the survivor benefit should not be pro rated.
3. It should be possible to argue for higher support based on change of circumstances in

many more cases where a pension is involved. Later valuations of the pension will often show that more of it is available for support without double dipping.

4. Pre judgment interest (if there is any) should not start until nine months after the date of valuation.

For a complete copy of *Bennett v. Bennett*, please contact us at:

Email: jernst@pension.ca

Phone: (800) 981-9122

Fax: (705) 749-0947

Mail: 785 The Kingsway, Peterborough, ON K9J 6W7

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