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Attention: Family Law Lawyers

Bulletin No. 122

PREJUDGMENT INTEREST

In Ontario, where the valuation date is often years before the date of settlement, the question of whether prejudgment interest should apply to that portion of the equalization payment attributable to the pension is extremely important. Unfortunately, the issue has not received much attention in the courts.

In the case of *Best vs. Best*, Rutherford J. stated:

"Ordinarily the beneficiary of a judgement debt due 5 years ago would be entitled to prejudgment interest thereon. However, in view of the interim arrangements in this case and the fact that the equalization payment derives directly from the valuation of Mr. Best's pension, the tangible benefits of which are all in the future for him, I do not think prejudgment interest is appropriate here."



With respect, this approach cannot be justified if the time intent of Part 1 of the Family Law Act is to share equally the pension attributable to the years the parties were together. The fact that the plan member does not actually receive the interest or growth being generated within the plan on a current basis should not be a determining factor. What is more relevant is the fact that the pension is growing in value; and the non-member spouse should be entitled to the growth on that portion of the pension being reflected in the equalization payment. (Catherine D. Aitken - "Pensions Under Family Law - Help")

For further information or a copy of our extensive brief about any or all of these please call Pension Valuers of Canada at **1-800-891-9122** or fax us at 1-705-749-6762.

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