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Attention: Family Law Lawyers

Bulletin No. 123

CAN THERE BE TWO VALUATION DATES???

Recently we have been asked to value pensions on more than one date because the parties separated more than once. Deducting the amounts that accrued during the periods of interim separation from the equalization value was the purpose. This is faulty because there is only one valuation day - the date of final marriage breakdown, and the value of the pension from the date of marriage to this final breakdown is subject to equalization.

Valuation day is determined when, in the minds of both spouses, there is no reasonable prospect that they will reconcile.

These cases illustrate the point:

Livermore v. Livermore, 43RFL (3d) 163 (Ont. Gen. Div.). The parties were married in 1975 and first separated in 1982. In 1983 they signed a separation agreement and then reconciled in 1984, resuming their normal married life and

pooled resources. A final separation occurred some time after this date. It was held that the separation agreement was terminated when they reconciled, and the valuation date was set as the date following the last separation.

DeMornay v. DeMornay, 34RFL (3d) 101 (Ont. Gen. Div.). The parties were married in 1983 and developed marital troubles in 1986. They eventually separated for the last time in 1988. It was held that the valuation date, despite what happened during the marriage, was the final date of separation.

In *Oswell v. Oswell*, 28RFL (3d) Ont. HC 10, the parties married in 1977 and petition for divorce was served in 1988. The husband stated he wanted a separation in 1984 when he discovered his wife had committed adultery. They shared the same bedroom from time to time throughout the period ending 1988, took counseling to try to communicate better, and continued to interact in society together. It was held that the parties must show clear evidence of intention to end the marital relationship and the valuation date was fixed at the date the husband petitioned for divorce in 1988.

For further information please call Pension Valuers of Canada at **1-800-891-9122** or fax us at 1-705-749-6762.

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