

Pension Commission

Update #0 Sader vs. Sader

Issued February 1989 / Revised August 2004

Subsection 31(2) Division of Pension Benefits on Breakup
Suit No. 87-01-11901

Subsection 31(2) of The Pension Benefits Act states as follows:

31(2) Division of pension benefits on breakup

Subject to subsection (3), (4), (6) and (8), where

- a. pursuant to an order of the Court of Queen's Bench made under *The Family Property Act*, family assets of a person are required to be divided; or
- b. pursuant to a written agreement between spouses or common-law partners, family assets of the spouses or common-law partners are divided between the spouses or common-law partners;

the pension benefit credit of the spouses or the parties, as the case may be, in a pension plan, or any payments due to them under a pension plan, shall be divided between them, and the division shall be made in the manner prescribed in the regulations notwithstanding that the order or the agreement, as the case may be, may require the division to be made in a different manner.

On December 16, 1988, Mr. Justice Hanssen of the Court of Queen's Bench delivered a judgment regarding a Notice of Motion which was filed by Mrs. Sader in June, 1988. The Saders' had petitioned the Court requesting that their employer not be required to divide their pension benefits according to subsection 31(2) of The Pension Benefits Act of Manitoba. The parties contended this subsection did not apply in their case as there existed no property order pursuant to The Marital Property Act (now referred to as *The Family Property Act*) and they both had sworn affidavits declaring they had not agreed to any division of family asset.

In his Order, Mr. Justice Hanssen states that as neither of the prerequisites as set out in clauses (a) and (b) of subsection 31(2) of the Act had been met, a division of Mr. and Mrs. Sader's pension benefits was not required at this time. However, he cautioned that should the parties involved ever enter into an agreement to divide the family assets, their pension benefits must be divided.

Please refer to amended section 31(2) in the consolidated version of the Act.

Should any plan sponsor/administrator be requested by a plan member or members that there be no division of their pension benefits due to the breakup of the marriage or common-law relationship for reasons similar to those mentioned above, the Commission recommends the plan member and their former spouse or common-law partner themselves, apply to the Courts for a determination as to the application of subsection 31(2) in their case.

Further, it should be noted that this provision of The Pension Benefits Act is under review by the Pension Commission.

This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.