

Pension Commission

Update #17 Validity of Pre-1992 Opting Out Agreement

Revised January 2002

Reference: *The Pension Benefits Act Sections 31(2)-(8), Regulation Section 24*

The Court of Appeal in *Campbell v. Campbell*, 107 Man. R. (2d) 137, recently ruled upon the validity of a 1986 separation agreement in which the parties had waived any interest in each other's pension benefits and the effect of the 1992 amendments to Section 31 of The Pension Benefits Act (the "Act") on such an agreement. The Court of Appeal found that the parties were bound by the 1986 separation agreement and that the pension benefits did not have to be divided.

The facts of this case were as follows:

1. The parties had married March 12, 1955 and separated January 15, 1986. They were divorced on March 2, 1987.
2. On April 22, 1986, Mr. Campbell and Mrs. Campbell entered into a Separation Agreement. Mr. and Mrs. Campbell each received independent legal advice prior to signing the Separation Agreement; however, no formal financial disclosure was exchanged prior to the signing of the Agreement.
3. The Separation Agreement acknowledged each party had a pension plan and that each party released the other from any claims that he or she may have to the other's pension plan and that neither party would make a claim to these pension plans.
4. At the time of signing the Separation Agreement, each party was aware of Section 27 (now 31(2)) of the Act pertaining to the division of pension benefit credits and each party was aware that the value of Mrs. Campbell's pension was greater than that of Mr. Campbell.
5. Notwithstanding the Separation Agreement, Mr. Campbell made claim to Mrs. Campbell's pension and relied upon Section 31(2) of the Act in support of his right to a division of the pension benefit. Mr. Campbell alleged that the parties had failed at the time of executing the Separation Agreement to comply with the subsequently enacted provisions of Section 31(6). That is that the parties had not received independent legal advice after the passage of the 1992 amendment and that he had not received a statement of the commuted value of the pension benefit.

The Court of Appeal ruled that the Agreement not to split pension benefits was binding on the parties.

Since the Campbell decision, plan sponsors and administrators have been approaching the Pension Commission to ascertain what, if any, effect this decision has on them. Specifically, plan sponsors and administrators want to know the effect the decision has on parties who have

entered into agreements prior to June 24, 1992 under which they have agreed not to divide pension benefits.

Plan sponsors and administrators have also asked what steps, if any, the member and former spouse or common-law partner must take to give effect to the Separation Agreement or written agreement not to divide pension benefits.

The Pension Commission is of the view that if plan sponsors and administrators are faced with a Separation Agreement or written agreement, which predates June 24, 1992, they are wise to consult with their legal counsel to determine if they can rely on the Campbell decision to not divide pension benefits.

Plan sponsors and administrators could suggest that the member and former spouse or common-law partner execute the Pension Benefits Spousal/Common-law Partners Agreement in accordance with Section 31(6) of the Act to waive the division of pension benefits under Section 31(2).

In the event the plan sponsor and administrator cannot determine if Campbell applies, or the parties are not prepared to execute the [Pension Benefits Spousal/Common-law Partners Agreement](#), recourse to the Courts for a determination is advisable.

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.