Case In Point

Ontario Superior Court Affirms that Pension Payments to a Non-Member Spouse Cease Upon Death

Date: October 28, 2019

In *Meloche v. Meloche*, the Ontario Superior Court held that, following a pension division under the Ontario *Pension Benefits Act* (PBA), payments do not continue to the estate of a non-member spouse who predeceases the member spouse.

The parties separated in 2017 after 30 years of marriage. The respondent teacher retired in 2015, and elected a joint pension with a 60 percent survivor benefit administered by the Ontario Teachers' Pension Plan (Plan). The applicant spouse suffers from a degenerative disease and has a reduced life expectancy.

The parties agreed that the Court should order the Plan to pay the spouse 48.99 percent of the member's monthly pension payments during the life of the spouse. At issue was whether the Plan should continue to pay the spouse's estate the same portion of the pension should he pre-decease the member.

The Court concluded that payments to the spouse should stop at his death, and that benefits should not continue to be paid to his estate. In reaching this conclusion, it noted that section 67.4 of the PBA directs divided pension payments only to the member's spouse, and section 67.5 prohibits any other divided pension payments.

The Court went on to note that subsections 44(3) and (3.1) of the PBA make clear that upon the death of either the member spouse or the non-member spouse, the remaining pension reverts back to the survivor. It also found that subsection 65(1) of the PBA specifically prohibits the type of assignment or bequest at issue.

The Court ordered the Plan to pay the spouse 48.99 percent of the member's monthly pension payments, commencing retroactively from the 2017 separation or valuation date, in accordance with the PBA. The spouse's motion was dismissed in all other respects.

This decision runs counter to previous Financial Services Commission of Ontario guidance that had indicated the member and spouse could obtain a court order or family arbitration award or agree in a separation agreement to continue payments to the spouse's estate.