

Respecting the bargain

The case of Stairs v. Ontario Teachers' Pension Plan Board may have made administration somewhat easier for pension plan sponsors.

By Ari Kaplan

ONE OF THE FEW AREAS OF PENSION LAW THAT DOES NOT polarize stakeholders along management-employee lines is where spousal entitlements are involved. Pension plan sponsors understandably would prefer to stay out of the bedroom. However, pension administrators sometimes reluctantly become involved in family disputes. The case of *Stairs v. Ontario Teachers' Pension Plan Board* is one such illustration.



Anne Stairs and Roger Mowbray divorced in 1991. For most of their 29-year marriage, he was a member of the Teachers' Pension Plan. In their divorce settlement, Roger assigned to Anne a pro-rata interest in his pension that was accrued during their marriage. One essential term of their

agreement was that should Roger die prior to retirement and have another spouse at that time, Anne would nevertheless be entitled to a share of any pre-retirement death benefits payable from the plan. Almost prophetically, Roger did die before retirement and, moreover, had married again. Anne applied to the plan administrator, Teachers', for her pro-rata share of the death benefit in accordance with the agreement. But the Board paid the entire death benefit to Roger's new wife, Catherine, reasoning that the agreement cannot take priority over the plan text. The plan awards death benefits to the person who was the member's spouse on the date of death.

Nine years of litigation between Anne and the Board followed from 1995 to 2004. The Ontario Court of Appeal ruled in Anne's favour. On the essential issue, the Court agreed that Roger was able to transfer to Anne half of his pension credits earned during the marriage as a way to satisfy his equalization obligations on marriage breakdown. The fact that the pension benefit was ultimately paid in the form of a death benefit (and thereby payable to Catherine) did not prevent Roger from transferring these credits to Anne. Why not? Because the death benefit was derived from Roger's own service in the plan: they were still "his" pension credits. In the

result, Teachers' was bound to honour the agreement and pay a pro-rata share of the death benefit to Anne.

MINIMAL TRANSACTION COSTS

What does this mean to Ontario pension administrators that receive family court orders or agreements that divide pensions? Most importantly, administrators must "respect the bargain" set out in the agreement, subject to certain limitations in the Pension Benefits Act. The only restrictions the Court found in the legislation are that an administrator cannot pay to a former spouse a pension benefit calculated with more than one-half of the credits earned during the marriage. Second, the benefit payable to the former spouse cannot commence in payment earlier than the date the benefit would otherwise become payable under the plan. But the Court specifically ruled that the assigned benefit is valued and calculated based upon the terms of the plan at the date the benefit becomes payable (in this case, the date of Roger's death) and, secondly, should be paid to Anne as an independent pension for her lifetime.

Pension administrators are prone to gravitate toward solutions that minimize transaction costs. The *Stairs* decision does precisely that by bringing much-needed clarity and certainty to the law in Ontario in connection with how to divide, calculate and administer benefits for former spouses. The decision is broad in scope and has implications beyond death benefits. The Court essentially ruled that a former spouse should be imported into the plan as a quasi-deferred member based on the years of credited service assigned to her in the separation agreement. This makes her entitlement more efficient to administer and also cost-neutral to the pension fund in that the sum of the commuted values of the two divided pensions will not exceed the commuted value of the member's original benefit. While Teachers' did not advocate this approach, we can nevertheless thank it for producing a ruling from which all pension stakeholders can now benefit.

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