

Pension Commission

Update #33 Foster vs. Foster

Revised March 2008

Reference: *The Pension Benefits Act, Section 31(2) and Regulation 24*

Division of a pension earned during the period of marriage

On July 7, 2006 the Court of Queen's Bench in Foster v. Foster (2006) MBQB 171 found that in order to determine the pension benefit credit accrued under section 24(3) of the Pension Benefits Regulation, the pension benefit credit must be valued on the basis that the member's employment terminated as of the date of marriage and as of the date the parties began living separate and apart.

The facts are as follows:

1. The parties had married on June 22, 1987 and separated March 1, 1998.
2. Mrs. Foster requested a division of her pension entitlement based on the final order of the court which stated that for purposes of sharing their employment pensions between them, the period to be used shall be from the date of marriage to the date of separation.
3. Mrs. Foster filed an application with the Court of Queen's Bench for a declaration that she was entitled to share in the interest accrued during the marriage on the contributions earned prior to the marriage when she was advised that her entitlement under the defined contribution plan was $\frac{1}{2}$ of the contributions made by the member during their marriage, together with interest on those contributions.

On appeal the Manitoba Court of Appeal ([2007] M.J. No. 298) recently affirmed the Court of Queen's Bench decision relating to section 24 of the Pension Benefits Regulations indicating that section 24 is consistent with provisions of *The Family Property Act* that stipulate that the appreciation in the value of family property (which includes pension), during the marriage, of an asset acquired before marriage, is shareable.

Plan sponsors and administrators may wish to seek legal advice regarding any implications this judicial decision may have in relation to their pension plan.

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.