

Date: 20010214  
Docket: CA 164975

**NOVA SCOTIA COURT OF APPEAL**  
**[Cite as: Croitor v. Croitor, 2001 NSCA 37]**

**Bateman, Hallett and Saunders, J.J.A.**

**BETWEEN:**

LOIS MARIANNE CROITOR

Appellant

- and -

ANDREW GEORGE CROITOR

Respondent

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**REASONS FOR JUDGMENT**

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Counsel: Lorne J. MacDowell for the appellant  
Elizabeth Jollimore for the respondent

Appeal Heard: February 1, 2001

Judgment Delivered: February 14, 2001

**THE COURT:** Appeal dismissed per reasons for judgment of Hallett, J.A.; Bateman and Saunders, J.J.A. concurring.

**HALLETT, J.A.:**

- [1] This is an appeal from a decision of Wilson, J. of the Nova Scotia Supreme Court (Family Division). He dismissed the appellant's application for a division of the respondent's pension benefits pursuant to the **Pension Benefits Division Act**, S.C. 1992, c. 46, Sch. II. The appellant asserts that she is entitled to a division of the benefit pursuant to the **Act**. Justice Wilson found that the application for division is not to the Court but to the Minister. He held that he had no jurisdiction to entertain the application.
- [2] The notice of appeal raises a number of issues including the submission that Justice Wilson erred in finding that he had no jurisdiction to entertain the application.

**FACTS:**

- [3] The parties were married in 1958. The respondent was in the Armed Forces. He retired in 1976 after 20 years of service. He then began to draw his pension. In 1979 the parties separated. Divorce proceedings were commenced in 1983. In 1984 the appellant filed an application for division of marital property under the **Marital Property Act** of New Brunswick. The proceedings were consolidated by consent order. In 1994 the respondent's monthly pension income was \$339.73. Upon retirement from the armed services he was employed as a technician servicing business machines. The appellant's monthly income in 1984 was \$961.05. Both parties were represented by counsel.
- [4] The *Decree Nisi* in the divorce proceedings was issued on March 15<sup>th</sup>, 1985. It ordered that the parties have joint custody of the children and that the respondent pay the appellant \$350.00 maintenance. There was no order for maintenance of the children whose primary residence was with the appellant.
- [5] On the same date an order was made under the **Marital Property Act** requiring the respondent to pay the appellant \$12,500.00 and upon payment the appellant was required to transfer her interest in the marital home to the respondent.
- [6] The *Decree Nisi* was made absolute on June 24<sup>th</sup>, 1985. Neither of the parties appealed from the orders made by the New Brunswick Court.
- [7] On November 2<sup>nd</sup>, 1999, the appellant filed an application in the Supreme Court of Nova Scotia (Family Division) for division of the respondent's pension benefits pursuant to the **Pension Benefits Division Act**.

**PENSION BENEFITS DIVISION ACT:**

[8] The following sections are relevant with respect to the issues raised on the appeal:

4. (1) A member of a pension plan or a spouse or former spouse of a member may, in the circumstances described in subsection (2), apply to the Minister to divide the member's pension benefits between the member and the spouse or former spouse.

(2) The circumstances in which an application may be made are:

(a) where a court in Canada of competent jurisdiction, in proceedings in relation to divorce, annulment of marriage or separation, makes an order that provides for the pension benefits to be divided between the member and the spouse or former spouse; or

(b) where the member and the spouse or former spouse have lived separate and apart for a period of one year or more and, either before or after they commenced to live separate and apart,

(i) a court in Canada of competent jurisdiction makes an order that provides for the pension benefits to be divided between them, or

(ii) the member and the spouse or former spouse have entered into a written agreement that provides for the pension benefits to be divided between them.

...

4. (4) An application must

(a) be made in writing and contain the prescribed information; and

(b) be accompanied by a certified true copy of the court order or spousal agreement and such other documents as are prescribed.

[9] Section 6(1) of the **Act** permits an interested party to object to the division on the grounds described in s. 6(2) which are as follows:

(a) that the court order or spousal agreement has been varied or is of no force or effect;

(b) that the terms of the court order or spousal agreement have been or are being satisfied by other means; or

(c) that the proceedings have been commenced in a court in Canada of competent jurisdiction to appeal or review the court order or challenge the terms of the spousal agreement.

7. (1) Subject to subsections (2) and (3), the Minister shall, as soon as is practicable after the Minister is satisfied that an application meets the requirements of this Act, approve the division of the pension benefits for which the application is made.

(2) If an interested party submits a notice of objection to the Minister in accordance with section 6, the Minister shall

(a) where the grounds for objection are the grounds referred to in paragraph 6(2)(a) or (b), defer any decision on the application until such time as the Minister is able to ascertain to the Minister's satisfaction whether those grounds have been established; and

(b) where the grounds for objection are the grounds referred to in paragraph 6(2)(c), defer any decision on the application until the final disposition of the proceedings on which those grounds are based.

(3) The Minister shall refuse to approve the division of the pension benefits if

(a) the application is withdrawn in accordance with the regulations;

(b) where an interested party submits a notice of objection to the Minister in accordance with section 6 and the grounds for objection are the grounds referred to in paragraph 6(2)(a) and (b), the Minister is satisfied that those grounds have been established and that they provide sufficient reason to refuse the division;

(c) where an interested party submits a notice of objection to the Minister in accordance with section 6 and the grounds for objection are the grounds referred to in paragraph 6(2)(c), the court order or spousal agreement is of no force or effect as a result of the proceedings on which those grounds are based;

(d) the period subject to division cannot be determined under subsection 8(2) or (3); or

(e) the Minister is satisfied based on evidence submitted to the Minister, that it would not be just to approve the division.

(4) ...

(5) ...

(emphasis added)

#### **DISPOSITION OF THE APPEAL:**

[10] The **Act** applies to pension plans provided by a number of federal statutes as enumerated in the definition of “pension plan” in the **Act** (s. 2). The statutes specified include the **Canadian Forces Superannuation Act** and the **Defence Services Pension Continuation Act**. The respondent is a member of the Canadian Armed Forces.

[11] Effect must be given to the plain meaning of the **Act**. The application to divide pension benefits of a member of a pension plan to which the **Act** applies is to the Minister, not to a superior court (s. 4(1); s. 7).

[12] The **Act** provides the Minister with a mechanism for dividing the pension benefits of a member if the applicant for such division can bring herself or himself within the circumstances described in s. 4(2) of the **Act**. It is for the Minister to decide such questions (s. 7).

[13] An application to the Minister cannot be made by a formerly married spouse of a member of the Armed Forces unless the applicant possesses an order from a court of competent jurisdiction, made in proceedings in relation to divorce, that provides for a division of pension benefits (s. 4(2)(a)).

[14] Pension benefits of members of pension plans to which the **Act** applies are matrimonial assets. The jurisdiction of a judge of the Supreme Court of Nova Scotia to make a division of matrimonial assets arises from ss. 12 and 13 of the **Matrimonial Property Act**, R.S.N.S. 1989, c 275. It is under the **Matrimonial Property Act** that an application for the division of such pension benefits is made. In ordering a division of the pension benefits of a member of the Armed Forces, a judge of the Supreme Court of Nova Scotia does not exercise jurisdiction pursuant to the **Act**. That **Act** simply

facilitates division at source, once ordered, subject to application to the Minister.

- [15] There was a division of property ordered in the proceedings related to the divorce of the parties. There was no order for the division of the member's pension benefits. The order respecting the division of property was not appealed and is final.
- [16] There is no basis in the **Act** for a formerly married spouse such as the appellant, who has been a party to a proceeding in relation to a divorce which has been finalized by a court order that does not provide for a division of the member's pension benefits, to make an application to the Supreme Court of Nova Scotia to divide those pension benefits pursuant to the Act.
- [17] Justice Wilson did not err in finding that he did not have jurisdiction to entertain the appellant's application.

[18] The appeal ought to be dismissed without costs.

Hallett, J.A.

Concurred in:

Bateman, J.A.

Saunders, J.A.