

Clerk's stamp:

COURT FILE NUMBER:

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE:

PLAINTIFF(S): (Non-Pension Plan Participant)

DEFENDANT(S): (Pension Plan Participant)

DOCUMENT: **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: (Insert address and contact information)

**DATE ON WHICH ORDER
WAS PRONOUNCED:**

**NAME OF APPLICATIONS JUDGE/
JUDGE WHO MADE THIS ORDER:**

[CHOOSE FROM THE FOLLOWING OPTIONS A OR B:]

(A) If member participates in the Provincial Judges and Applications Judges Registered and Unregistered Pension Plans.

UPON hearing read the Pleadings herein; AND UPON hearing what was alleged by Counsel; AND UPON seeing endorsed hereon the consent of Counsel for the Plaintiff and the consent of Counsel for the Defendant; AND UPON it appearing that the Defendant has an employment pension pursuant to the terms of the **Provincial Judges and Applications Judges Registered and Unregistered Pension Plans** (the "Pension Plan"); AND UPON it appearing that the parties wish to divide the Defendant's pension and benefits earned during their marriage pursuant to the provisions of the *Provincial Court Act*, R.S.A. 2000, c. P-31, the *Court of Queen's Bench Act*, R.S.A. 2000, c. C-31, the *Interpretation Act*, R.S.A. 2000, c. I-8 and the *Provincial Judges and Applications Judges Registered and Unregistered Pension Plans Regulation*, A.R. 196/2001, all

as amended from time to time (the "Governing Provisions"), and the *Family Property Act*, R.S.A. 2000, c. F-4.7, as amended from time to time,

(B) If member participates in the Members of the Legislative Assembly Pension Plan

UPON hearing read the Pleadings herein; AND UPON hearing what was alleged by Counsel; AND UPON seeing endorsed hereon the consent of Counsel for the Plaintiff and the consent of Counsel for the Defendant; AND UPON it appearing that the Defendant has an employment pension pursuant to the terms of the **Members of the Legislative Assembly Pension Plan** (the "Pension Plan"); AND UPON it appearing that the parties wish to divide the Defendant's pension and benefits earned during their marriage pursuant to the provisions of the *Members of the Legislative Assembly Pension Plan Act*, R.S.A. 2000, c. M-12, as amended from time to time, and the *Family Property Act*, R.S.A. 2000, c. F-4.7, as amended from time to time,

IT IS ORDERED THAT:

1. It is declared that the Plaintiff has an ownership interest in the Defendant's pension benefits acquired pursuant to the Pension Plan (the "Plaintiff's Share").
2. The Plaintiff's Share is to be calculated at the time of payment of any benefit from the Pension Plan by multiplying _____ [*insert the percentage to which the Plaintiff is entitled*] times the ratio represented by the total years of recognized service under the Pension Plan and used by the Pension Plan in calculating the amount of any benefit under the Pension Plan, which have been credited during the total years of marriage (the "Total Years of Recognized Service Under the Pension Plan Credited During the Marriage") over the total years of pensionable service recognized by the Pension Plan and used by the Pension Plan in calculating the amount of any benefit under the Pension Plan (the "Total Years of Recognized Service under the Pension Plan") and by further multiplying that product by the gross amount, indexed if applicable, of any benefit, at the time of payment, to be paid under the Pension Plan (the "Gross Amount Payable").
3. In mathematical terms, the Plaintiff's Portion at any given time is represented in the following manner:

$$[insert \%] \times \frac{\text{Total Years of Recognized Service Under the Pension Plan Credited During the Marriage}}{\text{Total Years of Recognized Service Under the Pension Plan}} \times \text{Gross Amount Payable}$$

[Clause 2 sets out in words the "McAlister formula" which is often used in the division of pensions in Alberta, while clause 3 provides the mathematical version of that formula. Lawyers should advise their clients that this formula contemplates calculation at the date of payment. Further, it would be prudent for lawyers to ask their clients if, during the marriage, the Defendant (the Pension Plan member) bought back any years of service in the Pension Plan. If the Defendant purchased service in the Pension Plan, whether served during or outside the marriage, the Defendant should be advised that the words "credited during the marriage" effectively include those years in the division. If this is not in accordance with the parties' intentions, the numerator should be altered.]

4. The "Total Years of Recognized Service Under the Pension Plan Credited During the Marriage" for the purposes of this Order is _____ *[insert number of years]* years.

[This clause is intended to provide certainty to the administrator in calculating the portion of benefit entitlements of each party. In some circumstances, the number of years the parties were married can simply be inserted here. Alternatively, dates can be inserted, for example, from [day, month, year] to [day, month, year]. In other situations, particularly where the member has purchased prior service under the Pension Plan, the administrator should be contacted for assistance in determining the total years of recognized service credited during the marriage.]

5. The Plaintiff's Share of the Pension Plan is declared to be the Plaintiff's property.
6. If one party receives any of the other's share, he or she shall immediately pay it to the other.
7. A certified copy of this Order shall be filed with the administrator of the Pension Plan.
8. This Order is a family property order within the meaning of the *Family Property Act*, R.S.A. 2000, c. F-4.7, as amended from time to time.
9. Nothing in this Order is intended to or does amend, vary, contradict or in any way affect the terms of the Pension Plan as amended from time to time including, without limitation, the creation of any additional entitlement under the Pension Plan for either the Plaintiff or the Defendant.

10. Each of the parties shall promptly deliver to the other copies of all correspondence between themselves and the Pension Plan’s administrator. This Order constitutes each party’s authorization to the Pension Plan’s administrator to provide to any of the parties all information, and copies of all correspondence, related to any benefit payable from the Pension Plan.

[Please note: depending on the form of pension chosen at retirement, you may need to include provisions as to what is to occur upon the death of the first of the Plaintiff or Defendant. For example, if the pension payable is a joint-life pension, and the Plaintiff dies, under this form of Order, a portion of the remaining pension paid will continue to be paid to the Plaintiff’s estate. The reason for this is that the Plaintiff’s Share is the Plaintiff’s property and the property right to the pension devolves upon the Plaintiff’s estate after the Plaintiff’s death.]

Justice of the Court of King’s Bench of Alberta

CONSENTED TO this *[Insert Date]*

Per:

Solicitors for the Plaintiff

Per:

Solicitors for the Defendant