

# **“Freedom 55”**

## **The Effect of Early Retirement on Spousal Support Payments**

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### **The Effect of Early Retirement on Spousal Support Payments**

Some years ago a large life insurance company and a very talented advertising agency developed an ad campaign. Palm trees swayed in tropical breezes, middle aged couples walked hand in hand on wave swept white sand beaches or sipped afternoon cocktails on the deck of a luxury yacht. Our taste-buds for early retirement salivated and hope sprang eternal.

Alas, this idyllic picture contradicted the social and legal norms and expectations of the day. Most government and private pension plans were not within our grasp until age 65. Indeed, members of the judiciary could work until 75 before they were pushed out to pasture.

Many of the baby boomers however bought into the new and enticing idea. Why work until death only to leave the sum of their life's work or pension benefits to their children?

For those happy couples who made it to early retirement in an intact relationship, around the world cruises and extended vacations in temperate climates became reality for many. If, however, the relationship failed and the marital estate divided, the dream of early retirement faded away like the Calgary Flames in the playoffs. Those who insisted on hanging on to their images of an easier life at an early age ran afoul of the accepted standards for a working life. Sixty-five was and remains the benchmark age for retirement.

A second group of workers also ran into conflict with the accepted age of retirement. The recessions of the early eighties, mid nineties and 2000-2001 saw mass layoffs due to employment cuts to maintain margins and due to redundancies created by mergers and acquisitions. Early retirement packages were offered to many middle aged and older members of the work force as an enticement to leave voluntarily and be replaced by younger less expensive employees.

In today's economic circumstances the dream of early retirement for a few remains. More real however is the threat of the severance package as corporations nation wide strive to find a way to return to profitability. These financial realities give rise to numerous situations where previously agreed or ordered monthly payments of spousal support are no longer maintainable

and we as family law lawyers are consulted to help find the new acceptability or equity in reduced payments and lowered financial expectations.

It is in this context that a review of the law as it relates to the payment of spousal support impacted by either voluntary or involuntary early retirement is timely.

### **The Cases**

A review of five cases, two appellate level and three from the trial courts, provides ample overview of the application of the provisions of the *Divorce Act* RSC 1985 Chapter 3 2<sup>nd</sup> Supp. to the issues of retirement or early retirement and the payment of spousal support.

#### **1. *Strang v. Strang* [1992] S.C.J. No. 55**

The Supreme Court of Canada on appeal from the Court of Appeal of Alberta. Judgment delivered by Justice Cory.

The parties were married in 1954, separated in 1981 and were divorced in 1993. A 29 year marriage. Spousal support at the conclusion of a contested trial was awarded at \$1,000.00 per month. The husband earned \$66,500.00 per annum. A traditional marriage with the wife not working outside of the home for a period of 22 years. She earned \$12,000.00 per year from part time employment at the time of trial. The husband's government pension plan was divided at the time of trial on the basis of the husband's contributions not on the basis of its worth as a future asset.

Five years after trial, at age 58, the husband was forced to take early retirement. His salary at that time was \$72,228.00 while the former wife was 59 and earned \$16,400.00 annually.

The husband applied for a variation pursuant to Section 17 of the *Divorce Act*.

Both the Chambers Justice and the Alberta Court of Appeal found that the forced retirement of a person 58 years of age was a change in the condition, means, or other circumstances of the applicant husband within the meaning of Section 17(4) of the *Divorce Act*. Support was reduced to \$500.00 per month on an annual pension of \$28,800.00.