



WOMEN'S LEGAL EDUCATION AND ACTION FUND  
FONDS D'ACTION ET D'EDUCATION JURIDIQUES POUR LES FEMMES

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**For Immediate Release**

## **SUPREME COURT DECIDES PENSION CASE**

### ***Boston v. Boston* shows need for law reform, says women's group**

**(Toronto, July 12, 2001)**- The Supreme Court of Canada today released its decision in the Ontario case, *Boston v. Boston*.

The Bostons were married for 36 years. Willis Boston worked in the public education system while Shirley Boston maintained the home and care for the children. In 1994 they agreed to separate and divided their assets; as well, Willis agreed to pay Shirley \$3200 a month in spousal support. As required by Ontario law, Willis' pension was included in the calculation of the couple's assets.

In 1996, Willis Boston retired and began receiving a pension of \$8000 per month. He applied to a court for a variation of his support payments. He argued that, because most of his pension had been "equalized" in the separation agreement, that portion should not be included as part of his income from which he would have to pay support. Otherwise, he argued, his former wife would be "double dipping", or accessing the pension twice. An Ontario judge agreed and lowered the \$3200 monthly payments to \$950. On appeal, the Ontario Court of Appeal raised the support payment to \$2000. Willis Boston appealed this order to the Supreme Court. The wife argued that the Ontario Court of Appeal's judgment was reasonable and should be maintained.

**The Women's Legal Education and Action Fund ("LEAF")** intervened at the Supreme Court because it was concerned about the availability of spousal support for elderly women, particularly those who, like Shirley Boston, worked within the home during marriage and could never obtain the financial security of a pension. LEAF argued that the Court should avoid imposing a strict rule against "double dipping", and argued instead for an analysis of spousal support on a case by case basis.

The Supreme Court was divided on how much spousal support Shirley Boston was entitled to receive. Seven justices ruled that the figure of \$950 a month was correct, while two justices sided with the Court of Appeal's amount of \$2000. The main difference between the two opinions was that the majority excluded consideration of that portion of Mr. Boston's pension income that was considered to have been "equalized." The majority accepted LEAF's primary submission that there should be flexibility within family law to deal with support issues generally, including allocating support from pension income. However, while the majority held

that "double recovery" might sometimes be necessary, it did state that the practice was generally to be avoided.

"LEAF is disappointed that the majority chose, as a starting point, to avoid 'double dipping' when possible. But we are pleased that the Court did not permanently bar women from accessing support from their husbands' previously equalized pension," said LEAF's counsel Nicole Tellier. "The facts of the *Boston* case were unusual in that there was a precise valuation of the pension and the assets of the marriage were substantial. This is often not the case, so it is important for judges to retain flexibility. The Court's decision today does maintain that flexibility."

Writing the dissenting opinion, Justice LeBel cautioned against use of the term "double dipping" and argued that the case raised "straightforward" issues of the "means and needs of former spouses." He also noted that "the process of the division of assets and determination of spousal support must remain fair, but should also attempt to address in a realistic way the consequences of the breakdown of a marriage, in the context of the life experiences of the spouses." LEAF agrees that both spouses are entitled to a reasonable standard of living to be determined with reference to the lifestyle enjoyed during the marriage.

The Court acknowledged that the treatment of pensions on separation and divorce is in need of legislative reform, stating that "the issue of how a payor spouse is to settle his equalization obligation would benefit from overdue and much-needed legislative attention." LEAF agrees that it is time for lawmakers to reform the way pensions are treated in family law so that couples are not forced into protracted and expensive legal proceedings. "Pension issues within separation and divorce, and after retirement, are incredibly complicated," said Ms. Tellier. "Legislative reform that will provide certainty and fairness is essential, and LEAF calls upon all governments in Canada to turn their attention to this critical issue."

Counsel for LEAF were Nicole Tellier and Joanna Radbord.

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