

## MILNE SELKIRK PRESENTS “YOU AND THE LAW”

### Splitting the Business a Family Affair

In a divorce, is a stay-at-home wife entitled to a share of her husband’s business assets? When does a spouse’s business interests become a family asset? How should the business be divided between the two? When a couple divorces, one of the most hotly-argued issues is the splitting of a spouse’s business assets.

BC’s *Family Relations Act* says that you start with the presumption that all of a couple’s assets used for a family purpose are family assets to be divided equally upon divorce. The definition of a “family asset” includes your spouse’s interest in a venture or business to which you contributed directly or indirectly. If your spouse disagrees with classifying his or her business interests as a family asset, then he or she must prove that the asset isn’t a family asset and that it should be considered a “business asset” or “non-family asset” instead.

Business assets are not divided between the spouses. To qualify as a business asset, your spouse must show that you had no ownership interest in the asset, that it was used primarily for business purposes, and that you made no direct or indirect contribution to the acquisition or management of the business.

Over the years, spouses have had difficulty claiming that their business or company shares are business assets and not family assets. This is partly because the *Family Relations Act* goes on to say that a spouse’s indirect contribution to the business includes “savings through effective management of household or child rearing responsibilities.” So, for example, in one case, where the wife’s main responsibilities in the marriage were homemaking, entertaining and childcare, the husband’s restaurant business was classified as a family asset. In another case, where the wife was also responsible for looking after the household, managing the family finances and raising her son from her first marriage, the husband’s shares in a company were likewise considered a family asset. The non-owning spouse’s participation in household management and

child-rearing, thereby freeing the other spouse to pursue the business, is deemed to be a contribution to the business.

Although a business interest may be considered a family asset, it may not be divided equally. The *Family Relations Act* allows the court to reapportion each spouse's presumed 50/50 share, depending on the length of the marriage, when the interest was acquired, whether the business was inherited, and other factors. Thus, in a third case, the court reapportioned the husband's corporate assets (worth over \$3 million), giving 65% to the husband and 35% to the wife. One factor was that the husband's dental laboratory practice was already very successful before he got married.

Recently, however, the Supreme Court of Canada has thrown doubt on whether a spouse's business or business interests will, in fact, be divided at all. In the Hartshorne case, the court said that the husband's law practice was not a family asset and his wife had no claim to it. Mind you, there were other bigger reasons for the decision, e.g., the wife, who was herself a lawyer, had signed a pre-nuptial agreement waiving her rights to her husband's property against the strong advice of her own lawyers.

Still, the law on splitting a spouse's business interests isn't as clear as it was before. You will need good legal advice and representation to claim a share of your spouse's business or to defend your spouse's claim that you are not entitled to share in the business.

***This article was written by Janice Mucalov, LL.B. with contribution by Gordon Neate of MILNE SELKIRK. A version of this was previously published in the Langley Times. Copyright by Janice Mucalov. "You and the Law" is a registered trade-mark. Please call James MacLean (604-882-5015) if you have any questions or for legal advice.***