Drafting Divorce, Cohabitation and Marriage Agreements for High Net Worth Clients

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Introduction

High net worth clients often have complex financial portfolios that include some or all of the following assets:

1. Investments;
2. Corporate shares;
3. Business assets;
4. Land;
5. Savings; and
6. Pension assets.

These assets are often located in different provinces in Canada, or different states in the USA. Occasionally, in Medicine Hat, we have clients who own significant assets in other countries as well. In our geographic area it is often in Great Britain as the British Army has a large military base very close to Medicine Hat and the soldiers posted to this base frequently return to live in Medicine Hat when they are discharged from the British Army.

When these clients live with or marry a partner, or separate from or divorce a partner, their complex financial situations drive complex negotiations. Hopefully these negotiations result in clear, legally sufficient and durable agreements that address their complex financial issues and provide a practical plan for financial protection on separation, divorce and death.

This paper focuses on some of the complex financial issues these clients may have and specific examples of possible terms for agreements to address these complex financial issues. This paper presents templates my law partners Cathy Regier, Malcolm Pritchard and I have created over a number of years.

This paper does not deal with complex pension issues as that is the focus of a recent LESA Family Law Seminar with excellent materials.

These Agreements require in-depth consultation among family law lawyers, corporate and estate planning lawyers and accountants with experience in helping individuals and businesses create a plan that will meet their needs for the future. This is how we created the templates presented in this paper.

The examples presented in this paper are a combination of Malcolm’s, Cathy’s and my work with assistance from colleagues in the other jurisdictions where there are terms arising from other jurisdictions.

Cathy and I also facilitate a group of Family Law lawyers from Medicine Hat and Brooks who work together on a common Divorce and Property Agreement template. We meet every year or so, to do a major overhaul of our Divorce and Property Agreement template which we share with each other and with other lawyers who wish to review or use our template. We have inserted fields and have created a data base for our template so client data can be efficiently merged into fields in the Agreement. Our template also has drafting warnings and suggestions noted throughout the Agreement.
Our Medicine Hat group has just completed and circulated our last review and update of our Divorce and Property Agreement template. If you are interested in having access to our template and our data base, LESA will be providing all registrants with instructions on how to access the template and data base by email, following this seminar.

We are happy to share our template with you on the condition that if you use it and improve it you share your improvements with us. You can do that by emailing me at jpritchard@pritchardandco.com.

We are committed to drafting clearly and in plain language. We welcome suggestions for improvement in both legal sufficiency and clarity of drafting. We have been working together on our Agreement template for about fourteen years, and at the same time, we don’t have all of the answers. There is always room for improvement in our template, both in legal sufficiency, especially as the law evolves, and in using plain and clear language clients can understand.

High net-worth clients are asking more and more frequently for Cohabitation or Marriage Agreements. They are often careful and private about their wealth, whether they are on their way into a relationship or they are on their way out of a relationship. Often they have parted with assets and income on a prior separation or divorce and they wish to make a practical plan for the future with their new partner. We are experiencing this as a significant growth area for our Family Law practice.
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Templates

The balance of this paper provides a number of templates that were created from agreements drafted for clients with different complex financial situations. The names, identifying details and fact patterns have been altered in each situation.

1. Divorce template for one high net asset spouse and one professional spouse with good income who works part-time

- Closely-held family business involving three generations of family -fathers, sons, brothers and first cousins. Fourth generation business.
- Holding companies owning shares in the operating company
- Tensions among the different family members with holding companies that own the shares in the operating company about growth (keeping the money in to grow the company and getting money out for retirement, divorce and death)
- Mutual waiver of spousal support as spouses have approximately equal incomes
- Need a formula to calculate Guideline Income for paying parent
- Two different types of corporate transactions – before divorce and after divorce
- One spouse taking less than MPA entitlement

AGREEMENT 1

Bill Arthur Smith and Mary Joanne Smith agree as follows:

Part 1 – Background to the Agreement:

Bill Arthur Smith is called Bill in this Agreement.

Mary Joanne Smith is called Mary in this Agreement.

1. Factual background

1.1 Bill and Mary were married at Medicine Hat, on July 18, 1997.

1.2 Bill and Mary separated on March 31, 2011 and there is no possibility of reconciliation.

1.3 Bill and Mary are the parents of two children of their marriage. The names, dates of birth and ages of their children are: