

Agriculture Issues That Integrate with Family Law

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All That Touches Family Law

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INTRODUCTION

I have been asked to present this afternoon on two matters that are related to the agriculture family and how they integrate with the normal issues faced when we as lawyers are consulted by clients regarding family law questions. They are: Valuation of Agriculture type assets when someone is seeking a distribution of property either in a Separation Agreement or in a Divorce Action and secondly: how do we calculate the “actual or real” level of income for the farming client when we are seeking either Child Support or Spousal Support under the Federal Child Support Guidelines (“the Guidelines”).

The subjects addressed in this paper may not apply to every farm divorce but I am hoping that each reader will take at least one point from this paper to apply to the next divorce file. There is no definitive method of arriving at either the “real” income of a Farmer or the value of certain farming assets but I believe that the methods provided herein will assist you with the next settlement meeting, matrimonial property statement or the next Chambers application that has either of these issues at heart.

VALUATING FARM OR AGRICULTURAL ASSETS

I will start with the valuation issue as I was asked to focus the majority of my time on determining farming income but I wanted to offer a few comments at what I encounter when I am calculating a division of matrimonial property.

Mines and Minerals

Owners of titles to Mines and Minerals are very protective of that ownership. If they are selling the interest, it is usually to a close family relative or friend because they want to keep that potential strain of income in the family and away from the Government. Owners of such interest believe that the interest will eventually revert to the Government. This is not true. The Land Titles Act¹ only restricts the transfer of Mines and Minerals if such interest is less than an undivided 1/20 of the whole interest in the Mines and Minerals. Ownership of Mines and Minerals is becoming less and less as the population ages and the generations are slowly handing down ownership of the Farm and its related assets.

¹ Land Titles Act, RSA 2000, c-A, s.52

I have used the following procedure to value Mines and Minerals for the purpose of the Affidavit of Value attached to the Transfer of Land with the assistance from the client's accountant. Obtain the last 5 years of income received from the interest in the Mines and Minerals from the client's accountant - average that number and then multiply by 5 to obtain the value of such interest. Depending on the fractional interest owned by such client will of course be reflected in the value of the interest.

I have dealt with many titles to Mines and Minerals that were handed down through the estates of either their parents or their grandparents. Or been faced with titles to Mines and Minerals that were never addressed in a deceased relative's estate and now the living beneficiary has been approached by an Oil Company interested in entering into a lease regarding the Mines and Minerals. The estate of the deceased owner of the interest must then be re-examined and often re-opened to determine how ownership to the Mines and Minerals will be transferred. This often leads to the need to probate the estate of deceased holding title to the Mines and Minerals and is difficult, as information may not be easy to obtain.

If you are dividing an interest in Mines and Mineral and the result is going to be less than a 1/20 interest, then a suggestion should be made for the family to enter into a Trust Agreement if they wish to transfer such interest. The Trust Agreement directs that one child will hold such interest on trust for his or her siblings (or other beneficiaries to the interest) and then disburse any income from that Trust. The value of the income from such interest must be sufficient to warrant the cost associated with the Trust Agreement and having one child manage the monies coming in and the taxes to be paid before distribution of any income.

If there has been no monies received from the interest in the Mines and Minerals but the client just wants to transfer ownership anyway, you must still value the interest for the purpose of the Transfer of Land and Canada Revenue Agency ("CRA"). If an extremely low value is used for the Affidavit of Value in the Transfer of Land, this will most likely raise a red flag with CRA. Accountants have suggested that a nominal value of \$5,000 - \$10,000 be used for Mines and Minerals that are not producing at the time of transfer, depending on the fractional interest. With the current state of our economy in Alberta at the present, Oil Companies are hesitant to develop or enter into more leases with the owners of Mines and Minerals and hence the values of such interest is low. I guess time will tell.