

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

Protecting business interest on separation.

Question: I have spent many years building up my business. I suspect that on separation I will have to split everything 50/50 with my wife, but I think this is completely unfair. Is there anything I can do to protect my interest in my business, if we were to go our separate ways?

Answer: Without careful planning, you may have a serious problem. But be aware of how your business interest is regarded in Ontario Family Law. Your business interest will be valued as of the date you separated. It will then form part of your total “net worth” (called “net family property”). If the value of your wife’s net worth is less than yours on the date you separate then you will pay her half the difference between your net worth positions. However, in doing so you don’t include the value of her net worth (net family property) on the date you got married. The value of your “net worth” on the date of marriage is deducted from your total net worth on the date of separation. If on the date of marriage you had \$100,000 in assets and \$30,000 in debts, then you deduct \$70,000 from your “net worth” as of the date of separation. The general philosophy is that you only have to share with your wife the “increase” in your net worth from the date of marriage until the date of separation. So, if you owned the business on the date you got married, then it is only its increase in value that you may have to share with your wife, if you separated right away. However, shrewd businessmen intentionally wind down their business over a reasonable period of time prior to a separation so that the value of the business on the date of separation is considerably less than it might be ordinarily. Others intentionally expand business operations and take on large debt to do so at a reasonable time before the separation. This then “decreases” the equity in the business just in time for it to be valued in the husband’s favor. As long as one can demonstrate sound business reasons for the expansion a court may find it difficult to find that the deal was contrived, particularly if one has partners who insist upon spending the money in order to make more money. However, preplanning for a separation to protect your business interests can be a suspicious tactic. It should not be done without sound legal and accounting advice.

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