**Wealth Preservation**

When couples separate with significant assets that may form part of their family property, some issues may arise. In these cases, the use of corporation, partnerships, and trusts, can make it difficult to discern a parties net worth. More importantly, a parties income may be difficult to quantify when it comes from family corporations or trusts.

One common issue in high net worth separations, is the tax implication of disposing of assets. The use of a business valuator us crucial in determining the value of assets. One common problem raised in these cases, is the ability of the spouse with the assets to organize them in such a manner that they are ‘untraceable’. This is a common concern, and one that can be addressed by experienced counsel. It is important to act quickly in retaining a lawyer to assist in having all family assets valued and protected.

Our office has successfully acted for clients that have been victimized by parties attempting to hide assets. In a recent case of *Hevey v Hevey*, Drury Law was able to restrain a party from depleting assets. In addition, we were successful in having a forensic auditor appointed to examine a litigants assets structure.

**Jurisdiction**

Jurisdiction dispute can be complex issues that typically arise when one parties attempts to relocate with a child to another province, or country. They also arise when one parties attempts to abscond with a child, with or without notice.

These cases require swift action. Courts are prepared to address these issues typically on an urgent basis. There is a common theme in the caselaw, self-help will not be condoned by the Court. Our office has represented litigants with extra-jurisdictional issues in Ontario, Alberta, British Columbia, Michigan, Kansas, Illinois, Florida, and Europe.

There is a international mechanism for the return of children. A number of countries have signed a treaty called the Hague Convention on the Civil Aspects of International Child Abduction. This agreement provides a process by which parents can seek to have their children returned to the home country.

There are also provisions in the Hague Convention that deal with issues of ongoing access to children, by two parents that live in different countries. Countries that are members of the Hague Convention are as follows:

* Albania
* Argentina
* Armenia
* Austria
* Bahamas
* Belarus
* Belgium
* Belize
* Bosnia and Herzegovina
* Brazil
* Bulgaria
* Burkina Faso
* Canada
* Chile
* Colombia
* Costa Rica
* Croatia
* Cyprus
* Czech Republic
* Denmark
* Dominican Republic
* Ecuador
* El Salvador
* Estonia
* Fiji
* Finland
* France
* Georgia
* Germany
* Greece
* Guatemala
* Honduras
* Hong Kong (China)
* Hungary
* Iceland
* Ireland
* Israel
* Italy
* Japan
* Latvia
* Lithuania
* Luxembourg
* Macau (China)
* Malta
* Mauritius
* Mexico
* Moldova, Republic of
* Monaco
* Montenegro
* Netherlands
* New Zealand
* Nicaragua
* Norway
* Panama
* Paraguay
* Peru
* Poland
* Portugal
* Republic of Korea (from 1 June 2015)
* Romania
* Saint Kitts and Nevis
* San Marino
* Serbia
* Singapore
* Slovakia
* Slovenia
* South Africa
* Spain
* Sri Lanka
* Sweden
* Switzerland
* Thailand
* The Former Yugoslav Republic of Macedonia (FYROM)
* Trinidad and Tobago
* Turkey
* Turkmenistan
* Ukraine
* United Kingdom
* United States of America
* Uruguay
* Uzbekistan
* Venezuela
* Zimbabwe.

**Trusts**

Some families may seek to hold certain assets in trusts. In most cases, family trusts are set up in such a manner that the beneficiaries of the assets are the children. There can thus be a layer of complexity when dealing with trusts when attempting to negotiate the terms of a separation.

Matters can be further complicated when trusts are held in foreign countries, and perhaps with assets that are not easily valued.

However, there is a significant body of caselaw that address how trusts are to be dealt with when attempting to equalize assets under the appropriate Family Law legislation. Trusts can actually be a fantastic tool for the preservation of wealth during a relationship and following the breakdown in a relationship.

**Pensions**

Some parties have the good fortune to work for an organization that has a pension benefit plan. There are essentially two types of pensions, a defined benefit pension and a defined contribution pension. As the names suggest, a defined benefit pension is a type of pension that accepts contributions from its members, and has a set amount of payout following retirement.

In contrast, a defined contribution pension, is one that requires a certain contribution from the pension members. Following the retirement of defined contribution pension members, they will receive a payment from the pension fund that is based on how their contributions grew over time.

When working through property after separating, pensions will need to be valued to determines its value for the purposed of calculating the total family property. In addition, a careful review of the each parties financial position will be necessary to determine any tax implications on pensions. When a party has to make an equalization payment to their spouse, in large part because of their pension value, they may be entitled to deduct ‘notional tax’ from the value of their pension. Notional tax is a mechanism used to account for the fact that a pension member does not actually have the funds available to them, and would likely have to pay tax on any monies paid to them through a pension plan.

**Tax Consequences**

Almost all assets have disposition consequences. The sale of a jointly held home may result in a capital gain tax. The disposition of a business will result in a number of taxes from the Canadian Revenue Agency.

Moreover, it is imperative that parties understand the implication of taxes when considering the value of assets. A Registered Retirement Savings Plan (RRSP)may not have a value equal to its balance. Instead, a consideration the consequences of withdrawing those funds needs to be considered in determining Family Property.

Ensuring that your receiving the appropriate tax advice, when negotiating a property settlement is essential to post separation success.

**Jointly-held property**

When separating couples jointly hold property, there are a number of options available in addressing these assets. A jointly held home can be listed for sale and the proceeds from dale divided. In contrast, one party can purchase the other party’s interest in the home. In order to purchase the interest of your separating spouse, it is usually necessary to complete a real estate appraisal.

When dealing with a jointly held business, a valuation is typically necessary if one of the parties intend to purchase the others interest. However, separating couples can also list the business for sale and agree to divide the proceeds thereafter. One uncommon option is for the separating spouses to continue to run the business pose-separation. In this final, and rare, option, typically the parties may want to consider a comprehensive share holder agreement that will address a situation where a disagreement arises.

The problem with jointly continuing to run a business without an shareholder agreement in place, is the only available mechanism to settle a dispute is the engagement of the Court Process. It is extremely costly to engage in commercial litigation that may have the unintended consequence of winding up a lucrative company. It is for this reason, that parties separating with jointly held business should consider the necessity of addressing their interests throughout the negotiation of their property issues.

Matrimonial Home

The matrimonial home is a unique asset that is treated somewhat differently under the Family Law Act then other assets. The matrimonial home is typically exempt from date of marriage deductions.

In addition, the manner in which the matrimonial home is held, will dictate how that asset is accounted for post-separation. Even if the matrimonial home is only in one spouses name, the other spouse has certain rights to possess the property by virtue of marriage.

Elder Law

Common Law Couples Property Interest

Family Corporations

Mediation

Collaborative Law

Contempt/ Breach

Child Support

Special Expenses

Parenting Arrangements

Separation Agreements

Prenuptual Agreements

Postnuptual Agreements

Cohabiation Agreements

Spousal Support

Our office successfully represented a client against a high-handed father who attempted to proceed with a custody application in Michigan with no notice to our client. In addition, the father had scheduled a hearing to decide the issue of custody during a trip the child was supposed to take in Michigan. The scheduling of the hearing was a significant concern, because if he was successful at his hearing, he would be able to keep the child in Michigan and have the support of a Michigan Court order. This was done despite the child residing in Ontario for 12 years, with little to no regular parenting time with the father.

Within a few days of being retained, our office brought an urgent motion seeking a finding that Ontario was the proper jurisdiction. We also sought to suspend the father’s parenting time to prevent the child from being in Michigan for the scheduled date of the hearing. The Court was persuaded and ordered Ontario as the proper jurisdiction to settle parenting issues. In fact, our client was awarded their legal fees against the former spouse. When the Michigan Court was served with the Ontario Court Order, they dismissed the application on the basis of the Order from the Ontario Superior Court.

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Mr. Drury has handled matters involving Texas, Florida, Michigan, California, Kansas, and Illinois. If you have concerns about your former partner taking matters into their own hands, reach out for a consult today. It is imperative to move quickly in ensure the best possible outcome when dealing with extra-jurisdictional issues.