

Marmer Penner Inc. Newsletter

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Date of Marriage Prior Support Obligation

In a paper presented at the Ontario Bar Association's Sixth Annual *Bread & Butter Issues* in 2015, this author wrote about the possible inequity of ignoring an existing periodic support obligation as a date of marriage liability in the case of a second marriage. Fortunately, the *Lefebvre* decision, from just prior to COVID entering our lexicon, has arrived to deal with this issue.

John Lefebvre separated from Doris, his first wife, in 2000 and married Barbie, his second wife, in 2004. By 2007, John and Doris settled any future spousal support with a one-time \$500,000 payment consisting of RRSP and non-RRSP amounts. John and Barbie separated in 2015. Barbie took the position that the \$500,000 John paid in 2007 should be a date of marriage liability in calculating his net family property as it represented John's future support obligation. She relied on an earlier decision of the Court of Appeal that a contingent liability is to be taken into account if it was reasonably foreseeable. John and Doris were married twelve years and had two children. Accordingly, a support obligation was reasonably foreseeable. But, while the court found a support obligation to be foreseeable, it did not find the payment of the lump sum to be foreseeable. Now, of course, whether a support obligation is paid periodically or in one lump sum should not affect its nature as a date of marriage liability because two years of monthly \$1,000 payments of non-deductible support and a number slightly lower than \$24,000 all at once are about the same obligation. Accordingly, the court also considered whether the present value of a periodic support obligation should be considered a date of marriage liability.

The court found that this issue had been addressed in a previous case where the judge determined that, in order to be a date of marriage liability, there must be a “corpus” or debt principal that exists. In the case of periodic support, it depends on the quantum of future income and accrues in the future month-to-month. While the court did not say it like this, it is as if the support is another form of tax on income. And, we all know that we are going to earn future income from our work efforts and pay tax thereon but we do not accrue this as a liability.

The court concluded that neither the date of marriage support obligation nor any portion of the \$500,000 lump sum John paid in 2007 was a date of marriage liability. With hindsight, John’s income rose significantly after 2007 and, had he not paid that lump sum, he might have paid more in after-tax periodic support payments so Barbie was not financially hurt by that 2007 settlement with Doris.

This newsletter is not intended to substitute for proper professional planning. It is intended to highlight areas where professional assistance may be required or enough to discuss at the next hoedown. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.