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Marmer Penner Inc. Newsletter

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Value of Books of Business: Contrary Decisions or Consistent?

The recent case from the Supreme Court of British Columbia, *Lightle v. Kotar*, is a curious one, which found that the husband's (Mr. Kotar) book of business was not an asset that was available for division under B.C.'s family law rules. What is most curious about this decision is that there had been recent arm's length values placed on the book of business at two different times prior to the date of separation, which was in 2006. In finding that the asset need not be sharable, the Court relied on the case *C. (R.A.) v. C. (V.L.)*, an earlier case from British Columbia, which also found that a book of business was not property. We note that these two cases, perhaps due to the differences between B.C. and Ontario law, are contrary to most of the Ontario Court's findings¹, which have found that books of business are property that should be subject to equalization.

In 2000, Mr. Kotar was a young investment advisor, who paid \$175,000 to an older, retiring investment advisor at Scotia McLeod. In 2004, Canaccord recruited him away from Scotia McLeod and advanced Mr. Kotar "a forgivable loan" for exactly the amount he paid for the book of business four years earlier. While it seems strange for a Court to find that there is no value at all to be associated with an asset with a track record of negotiated arm's length prices, the rationale for the finding appears to be consistent with the book of

¹ We certainly do not claim to be experts in B.C. law or Ontario law. Perhaps it is just a coincidence that these two cases are from B.C. See the Ontario cases *Fitzpatrick v. Fitzpatrick*, *McLean v. McLean*, *Mavis v. Mavis*, *Dunn v. Dunn*, among others.

business cases in Ontario where the Courts have shown a willingness to at least discount the asset to reflect the fact that the value of the book will not be realized until some point in the future, i.e. typically retirement.

The main reasons given by the Court in B.C. for finding that the value of Mr. Kotar's book of business should not be divisible were:

- 1) The investment assets being managed belong to the client, not the advisor
- 2) It was unlikely that an advisor will purchase a book of business from another advisor who intends to remain in the business. Therefore, Mr. Kotar cannot assure a notional buyer that he/she will retain the clients (because he is not retiring)
- 3) Moreover, Mr. Kotar was being sued by a client for damages, making the book of business less marketable

Although the finding that the book of business is not a sharable asset is not consistent with other cases from Ontario, the notion about the value of a book of business today vis-à-vis the investment advisors' length of career and timing of retirement is consistent with the rationale in the cases from Ontario that suggest discounting is required to reflect the timing of realization. At some point, hopefully, a higher Court will provide more clarity as to whether a book of business is property and what, if any, discounting on current value is appropriate.

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.