

Worried about the break up of your marriage? *It doesn't have to result in a vicious battle.*

Make your situation better. Read the wise advice in this article series authored by experienced family lawyers. Then consider how you'll proceed in the best interests of yourself and your family.

Article 9: Resolving your family law dispute: family assets – dividing the pie.

This is the ninth of ten articles designed to help people understand the complex area of family law. The articles are not a substitute for legal advice. They are meant to help you focus on the issues that you should consider when faced with family conflict.

At first glance, the law regarding the division of family assets seems straightforward. Family assets consist of all assets of the parties that are used for a family purpose. The family home, automobiles, furniture, boats, snow machines, motorcycles, bank accounts, RRSP's, investments... the list is broad and inclusive. Pension credits and pensions are family assets. The family business and business interests are considered family assets where both spouses have made a contribution to the business. That contribution can include contribution of home making tasks that enabled the business owning spouse to build up the business.

The Family Relations Act says that in a marriage, both the husband and the wife own all family assets as to an undivided one half interest. The court has discretion to distribute property differently based on a number of fairness principles, but in longer marriages it is our experience that each person should begin negotiations with the assumption that all their assets are owned equally by both of them.

In a common law relationship, there are no presumptions of community ownership of property. If you are in this situation you should consult a lawyer about your rights.

Within the bounds of a fairness test, you and your spouse have a wide discretion as to how you choose to divide family property. If you consider the distribution of property together with spousal support, you'll both have an opportunity to structure your affairs in the most tax efficient manner possible.

We like to tell people that they should consider that they have a pool of assets and a stream of income. They have present needs and plans for the future. The exercise should be to distribute property and income in a tax friendly manner that maximizes the ability of both of you to get on with your lives.

Ronald J. Smith and Glenda Peacock are family lawyers and mediators based in Kelowna, BC. They wrote this article series to help people learn about preparing for collaborative and constructive solutions to the legal issues involved in marriage breakup.

You can contact Smith Peacock for a consultation by phoning 250.860.7868 or 888.787.6484.

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