Fisherman Life – Legal Desk

August 2004

Family Matters

Part I: Spousal Support

Many fishermen have in common the fact that they are separated or divorced, or in the process of becoming such. "Liberated" to some, "abandoned" to others, it is perhaps only the sea that can be more cruel to a seamen than the emotional and financial torment of family breakdown. Wait, I forgot about taxes. Indeed, separated families have become more the norm than ever before, especially in an industry that requires us to be away from home for long periods.

It is with this in mind, along with my own personal and professional experience, that the *Legal Desk* embarks on a series of articles on family law issues. This month we will look generally at the law of spousal support in British Columbia. In future articles, we will look at topics like division of assets, child custody and support, and access and visitation with children (all in light of fishermens' often unpredictable income and schedules). For disinterested readers, do not fear, these family issues will not dominate the *Legal Desk* in future issues.

As is too often the case, traditionally speaking, it is the female spouse that brings a claim for spousal support after a separation. At law, a "spouse" is someone who is married, or someone who has lived in a marriage–like relationship for at least two years. The two fundamental legal principles governing spousal support, after separation or divorce, are that the spouses are entitled to similar standards of living after separation (through the payment of support), and that spouses have an obligation to become self-supporting after separation. It is a myth that a spouse can rely on spousal support indefinitely, though this is often the tact taken by former spouses and their lawyers.

In British Columbia, the law of spousal support comes from three sources: the provincial *Family Relations Act*, the federal *Divorce Act*, and the common law (cases that have been decided by the Courts and that serve to guide judges in later decisions). The *Divorce Act* provides that a court order for spousal support should:

1. recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
2. apportion any financial consequences arising from care of the children, over and above any child support obligation;
3. relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
4. promote the economic self sufficiency of each spouse within a reasonable period of time.

In practical terms, this means that if a husband and wife decide during their marriage that the wife should stay at home to raise the children, and she foregoes pursuing her own career, a court order for spousal support must recognize that the wife's ability to become self-supporting after the separation may have been hampered. For example, a spouse that has spent 18 years at home raising children will likely be entitled to a longer term of spousal support than a wife who spent 4 years doing so, and more than a wife who had no children at all. Not having children does not mean that a spouse is not entitled to spousal support, but will often reduce the time they are entitled to it. Support is contingent on the spouse's reasonable ability to find employment after the separation – the former spouse's *motivation* to find employment is another matter entirely.

The general principle, when a single-income family breaks up, is that each spouse is entitled to approximately the same standard of living after the separation. This often means two households are being supported on the same income that previously supported just one household (and often just barely). In many cases the fisherman can surrender half of their monthly income post-separation – a fact that can make paying rent or a mortgage difficult at best. Tie this to the perception that this obligation to pay spousal may run indefinitely, and separation can seem like a poverty sentence.

The most contentious consideration that goes into a court order for spousal support is the fourth point above, that the order should promote self-sufficiency in a reasonable period of time. Many fishermen grimace at the idea that they may have to pay spousal support for 5, 10 or even 15 years after separation. Many pray that their former spouses will find good jobs, or remarry, to relieve them of this burden. It is important in these circumstances to remind the former spouse (and their lawyer), when it is appropriate, of the ongoing duty for them to become self-supportive. Reminding them frequently, or aggressively, can be harassment, and often a lawyer is used to convey this message appropriately.

There are many horror stories of former spouses making little or no effort to become self-supportive. If this is the case, objective evidence (not opinion evidence) of malaise can be presented to the court, who can then amend a spousal support order (by reducing the spousal support amount) to encourage the former spouse to become more proactive in supporting themselves. The evidence must be overwhelming, however. Do not be discouraged if your former spouse, or their lawyer, take the position that the spousal support should carry on indefinitely – this is a common tactic for lawyers – rest assured you can revisit this issue with the Court once sufficient time has past for the spouse to begin generating income.

In negotiating your obligation (or entitlement) to spousal support, either with your former spouse, or before the Court, always remind them who you are: a Fisherman. Fisherman rely on unpredictable variables like weather, tides, openings, quota and breakdowns for their income. We don't get a bi-weekly salary. One year you make $100,000 fishing, and the next year $10,000. Avoid setting a support obligation that relies on a high historical income. Try to incorporate a term in the agreement that reflects the uncertainty and inflexibility of fishing income.

This being said, it is far better, in almost every case, to stay as far away from Court as possible. Both parties will typically come out further ahead if the separation and spousal support issues are agreed on outside of court, such as by mediation. If this is the case, make sure any agreement is in writing, and have a lawyer review the details, even if it is by way of a free consultation. You can often get free legal advice about a proposed agreement by asking the lawyer for a "consultation", which typically lasts 30 minutes. You may want to get multiple opinions on the same agreement in this manner, but don't mention my name in reference to this approach.

In cases where separating parties cannot come to an agreement between themselves as to division of property or spousal support (if any), the Courts must be called into play. Depending on the circumstances, the court will either be the Provincial Court of B.C. or the Supreme Court of B.C. It is the Supreme Court of B.C. that has exclusive jurisdiction over divorce and division of property, so all formal marriages, or any division of assets, must proceed through B.C. Supreme Court. However, if the parties have not been married, and division of property (such as a house) is not at issue, the matter can proceed through Provincial Court. Provincial Court is generally less complicated, cheaper, and quicker that the Supreme Court, and geared for non-lawyers.

In all cases it is vastly preferable to settle a spousal support claim out of Court, but always in writing. In closing, do not be discouraged or angered if it *appears* you will be paying spousal support forever. Remind yourself, that in exchange for your obligation to pay spousal support, your former spouse has an obligation to become self-supporting. It is more in your interests to be encouraging, creative and helpful in this regard, than it is to be discouraged or upset.

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