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I. INTRODUCTION [§1.1]

Family law matters can be complex for a variety of reasons. Not only can there be difficult interpersonal issues between spouses and children, but there are often many legal issues to consider. Family lawyers must understand the legal issues surrounding divorce, guardianship, parenting time, child support, spousal support, and the division of assets.

In most family law matters, the lawyer will be faced with at least some financial issues: the separating or divorcing parties likely own a home, RRSPs, and vehicles and earn income from employment. Determining whether such assets are family property, their value, and an appropriate division, as well as determining income for support purposes, are matters that family law lawyers encounter daily. These fundamental issues are covered extensively in other CLEBC publications, such as *Annotated Family Practice* (CLEBC, 2026), *Family Law Sourcebook for British Columbia*, 3rd ed. (CLEBC, 2002–), and *Family Law Agreements: Annotated Precedents*, 3rd ed. (CLEBC, 1998–).

In more financially complex family law matters, clients and their spouses may own property and earn income in less straightforward ways. The client or spouse may be a business owner, have an interest under the terms of a family trust, or earn income from sources other than an employment relationship.

It is essential that the family law lawyer understand the legal nature or structure of the property involved in a financially complex family law matter. With that understanding, the lawyer will be able to:

(1) identify and understand the pertinent financial issues and information associated with the property and the income derived from it; and

(2) know when and why to seek the advice of experts.

If a business is involved, the lawyer will need to know the nature of ownership in the business (i.e., is it an incorporated business with shareholdings, a partnership, or a proprietorship?) The legal structure of the business will guide the lawyer on issues ranging from which business-related documents should be reviewed to how the business interest can be divided between the parties. If an interest in trust is involved, the lawyer must understand the basic nature of the interest (i.e., is it a fixed or discretionary interest?). This will guide the lawyer in determining whether the trust interest can properly be characterized as family property and whether and how the spouse derives income or capital from the trust.

The lawyer will also need to become familiar with some basic terminology and tax concepts (see "Key Terms" and "Basic Tax Concepts", both in this chapter).

Once the basics are understood, the lawyer's task includes:

(1) reviewing the law on the characterization of business and trust interests as family property (see chapter 2 (Essential Legal Issues in Financially Complex Family Law Matters));

(2) obtaining the documents and information that help to characterize and value the property and determine income, including if child/spousal support are in issue (see chapter 2 (Essential Legal Issues in Financially Complex Family Law Matters));

(3) reviewing and understanding the key documents (chapters 3 (Financial Statements of the Business) and 5 (Trust Settlement and Valuation of the Trust Interest));

(4) reviewing and understanding evidence or expert opinions on the value of the assets (see chapters 4 (Valuation of the Business) and 5 (Trust Settlement and Valuation of the Trust Interest));

(5) considering the most appropriate method of division and understanding the tax consequences of such division (see chapters 2 (Essential Legal Issues in Financially Complex Family Law Matters) and 6 (Tax Aspects of Division of Family Property)); and

(6) obtaining evidence on income, if child and/or spousal support are in issue (see chapter 7 (Determining Income for Child and Spousal Support Purposes)).

This publication does not attempt to provide a comprehensive explanation of financial accounting, trust law, or tax law. Rather, it aims to:

- provide the family law lawyer with a basic understanding of concepts regarding the business or trust interest so they are able to recognize when specialized advice is required;
- prepare the family law lawyer to deal with the experts and interpreting expert opinions; and
- offer guidance on the division of family property and the determination of income in more complex situations.

For illustration purposes, this publication includes sample documents, such as financial statements, business valuations, and a trust agreement, with annotations explaining important considerations.

This introductory chapter outlines the legal structure of the property commonly involved in financially complex family law matters and provides a basic understanding of the applicable key terms and concepts.

II. LEGAL STRUCTURE OF THE PROPERTY [§1.2]

A. THE BUSINESS [§1.3]

When one of the parties has disclosed a business interest, it is necessary to ascertain the legal structure of that business. This may not become clear without some initial disclosure being provided. It is important to understand the type of business at issue, as this affects the methods of obtaining disclosure, the type of financial information and documents available, the provisions of the Federal Child Support Guidelines, SOR/97-175 (the "Guidelines") and Spousal Support Advisory Guidelines that apply to determine income, whether the assets or shares of the business will be divided, and the tax consequences flowing from any such division.

For a brief explanation of the three basic legal structures of a business, see "Proprietorship", "Partnership", and "Corporation" in this chapter.

1. PROPRIETORSHIP [§1.4]

Where an individual carries on a business alone and without any corporate entity, the business is a sole proprietorship. A proprietorship is not a legal entity separate from the proprietor. There is no formal legal organization to a proprietorship.

The general characteristics of a proprietorship are:

(1) the proprietor conducts the business, receives the profits from the business, and pays the income taxes on the profits of the business;

(2) the proprietor writes off any losses from the business against personal income; and

(3) the proprietor is personally liable for the debts of the business.

With the exception of certain specific circumstances set out in s. 88 of the *Partnership Act*, R.S.B.C. 1996, c. 348, a proprietorship is not required to file a registration statement (a brief description of the business) with the registrar of companies, nor is a proprietorship required to maintain a records office or provide public access to its records.

A non-owning spouse's claim to a business structured as a proprietorship will be a claim to an interest in the business as family property pursuant to s. 84(2)(b) of the *Family Law Act*, S.B.C. 2011, c. 25 (the "*FLA*").

The valuation of a proprietorship is largely akin to valuing a corporation. In particular, consideration for goodwill may apply equally to a proprietorship.

Note that from a valuation perspective, the financial statements prepared for the proprietorship may be less reliable than the financial statements prepared for a registered company, as information is typically provided by the proprietor and is not audited or otherwise verified by the accountant for accuracy.

A sole proprietor's income under the Guidelines may be subject to revision pursuant to s. 19(1)(g) of the Guidelines, if the proprietor has unreasonably deducted expenses from their income. What may be a legitimate deduction under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "*ITA*") may not be reasonable for the purposes of income determination in the family law context (Guidelines, s. 19(2); *B. (D.M.) v. L. (D.W.A.)*, 2018 BCSC 1254 at para. 147, supplementary reasons 2019 BCSC 4). For additional discussion of issues related to the determination of income under the Guidelines, see chapter 7 (Determining Income for Child and Spousal Support Purposes).

Procedurally, it is not necessary to name the proprietorship in the court action since the spouse and proprietor are one and the same. As a result, the court's orders will also bind the spouse in their capacity as sole proprietor. For commentary on what to look for in a sample financial statement, see "Sample Financial Statements: Proprietorship" in chapter 3.