

Financial Disclosure in Divorce: How Much is Enough?

By Warren S. Jennings

warren@calgaryfamilylawyers.com

The law has one simple rule – full and complete financial disclosure is required by both spouses. What does this mean? It means that if you need information from your spouse in order to make a decision on the division of your property or the payment of support, you are entitled to receive it. This can include confirming a value, verifying the number of RRSP accounts, or to get more information on the family company, for example. There are no secrets; you and your spouse must be satisfied with your knowledge of the family finances when you reach an agreement.

When you go to a lawyer, one of the first questions you should be asked is “What disclosure have you seen?” We do this because we want to make sure nothing is accidentally missed, there has not been a misunderstanding of the property or its value, and to make sure there is no active misrepresentation or non-disclosure. Without seeing the disclosure and reviewing it, your lawyer cannot help you avoid these problems.

This does not mean that every method of confirming disclosure and investigation contained in the Rules of Court need be exhausted for every separating couple. Like all issues in a divorce, the level of disclosure is up to you and your spouse, provided that you are both satisfied with the information exchanged. If you can say that you understand the financial situation of you and your spouse, that there is nothing missing and that you do not suspect that anything is hidden, then you are ready to formalize the deal.

It does mean, however, that you cannot withhold information that would affect your divorce and separation agreement, to the detriment of your spouse or children. Good faith negotiation is the only way to approach all of your dealings with your spouse when you separate. If you deliberately fail to disclose an asset or its value, your contract is subject to being overturned, and you are subject to court imposed penalties.

The Supreme Court of Canada has confirmed the entitlement of both spouses to a full understanding of the family finances; if one spouse wants disclosure, he or she is entitled to it. There are penalties for not providing disclosure; see my article “A Case for the Contract: The Supreme Court case of Rick v. Brandsema”, which you can find here: <http://www.islandfamilylawyers.com/documents/FinancialDisclosureInDivorce.pdf>.

What level of disclosure is right for you? Here is a list of levels of disclosure to consider when you are going through your finances on separation:

1. Full disclosure. You and your lawyer have exhausted all avenues of disclosure, and are confident on not only what exists, but what does not exist. Values are confirmed, sometimes by expert opinions, and questions are answered under oath by way of affidavit or examination. This step involves utilizing the Rules of Court to confirm the family finances. Some of these rules involve Affidavit of Records, Examinations for Discovery, Notice to Reply to Written Interrogatories, Notice to Admit, Notice to Produce, and Notice to Disclose.

2. Extensive disclosure. Source documents for a period of time are exchanged and reviewed by both parties and their lawyers. The information is confirmed by way of statutory declaration, expert valuation, and verifying documents. It involves follow up investigation of items, including tracing assets or bank transfers, verifying the value of assets, or seeking an explanation of a part of the finances which may not be clear based upon the documents. Real estate appraisals, business valuations and actuarial valuations of pensions fall into this level of disclosure.
3. Basic disclosure, reviewed by your lawyer. Standard documents are exchanged by the parties and provided to their lawyers for review. Answers to questions are voluntarily given. The lawyers will highlight inconsistencies, questionable transfers, unusual sources of income or expenses, and advise when independent third party appraisals are required. Good for individuals who want the added element of comfort of their lawyer to be satisfied that there is nothing out of the ordinary happening with their finances.
4. Basic disclosure, not reviewed by your lawyer. Standard documents are exchanged by the parties for their personal review, to their satisfaction. The parties are satisfied with their own review, and do not wish their lawyers to provide verification or a high level review of the documents exchanged. Good for individuals who have straightforward finances, or by individuals who have a good understanding of their own income, investments, property and debt. Not necessarily appropriate when complicated items, such as privately held companies, pension plans, and complicated investments are involved, or self-employed individuals whose income may be difficult to calculate.
5. None. A general knowledge of the family finances may be sufficient for both parties to move forward with resolving their issues. This is appropriate for those parties who have little in the way of assets and debts, or who are both intimately involved in the family finances. The big risk here, of course, is that you miss something that would change what deal you want to make. Not usually recommended by lawyers, but sometimes pursued by individuals who want to minimize the divorce and separation process and costs.

Your lawyer can help you decide which level of disclosure is right for you. Discuss it with your lawyer, as you are better off knowing your legal position before finalizing your negotiations. Take a look at my article “Why Do I Need a Lawyer When I Want to Do My Own Divorce and Separation Agreement”, which you can find here:

http://www.islandfamilylawyers.com/documents/do-it-yourself_divorce.pdf.

Need help? Give me a call. I successfully help people work through their separation and resolving their disputes in the way that respects individual interests and maintains dignity throughout the process.

Warren is a family law lawyer who practices at Moe Hannah McNeill LLP in Calgary, Alberta. Warren’s approach to family law emphasizes effective and dignified problem solving, empowering his clients to deal with their legal issues at separation. Read Warren’s bio at http://www.calgaryfamilylawyers.com/warren_jennings.html.

Contact Warren at warren@calgaryfamilylawyers.com, or phone him at (403) 264-9480.