



Bankruptcy & Family Law Matters

by Kelli Potter

Often times when people separate and divorce they experience financial difficulties. The cost of living, managing more than one household, paying debt and the payment of child and/or spousal support can create a drain on financial resources. As a result, it is not unusual for clients to ask their lawyers about bankruptcy and what, if any, impact declaring bankruptcy will have on their separation and divorce proceedings.

Recently, the Supreme Court of Canada had to consider this issue. In this case, a husband and wife had started their divorce proceedings shortly before the husband declared bankruptcy. The husband was a farmer and his main asset was his farmland. The farmland was in the husband's name alone and not jointly owned with the wife.

It is important to know that in Manitoba, spouses do not necessarily "jointly own" all of the property that they acquire together during their cohabitation and marriage. The

law says that spouses do however have an interest in the "value" of the property that was acquired during their time together. For example, a wife will not own half of the husband's tractor, but she will have an entitlement to one half of the value of the tractor. When a couple separates they must calculate the value of all of their property and debts and make sure that they each have an equal amount of property or, one makes a payment to the other to equalize what each has.

The law also says that farmland is exempt from bankruptcy proceedings. This means that if you're a farmer and you declare bankruptcy, the Receiver might be able to take your 5th wheel camper, but they cannot take the land on which you grow your canola.

In this case, the lower Court told the husband that he had to pay the wife \$40,000.00 to equalize their property. The husband disagreed and said that his bankruptcy meant that he did not have to pay the wife anything. At the end of the day

the Supreme Court agreed with the husband. The Court said that the equalization payment was basically just like any other unsecured debt. Therefore, when the husband declared bankruptcy, his debt to the wife made her just like any other unsecured creditor and as a result, the husband not only did not have to pay the equalization payment to the wife he was able to keep the farm property. The wife, unfortunately, was left with virtually nothing.

The Court did point out however, that had the wife been seeking an order for spousal support, bankruptcy does not apply to support payments. Ultimately, if a spouse declares bankruptcy they may find that they do not have to pay a property equalization payment to their former spouse, but that they are on the hook for ongoing spousal support payments. This may provide some compensation to the spouse who loses out on a fair property division settlement because of bankruptcy.

Interestingly enough, The Supreme Court acknowledged that this result seemed unfair to the wife. The problem is that the Court is bound by the law and until that law is rewritten, the Courts will have to abide by it. This means that for the time being, spouses of farmers may be vulnerable to the perils of bankruptcy.