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FINANCIAL PRINCIPLES OF FAMILY LAW

Andrew J. Freedman
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Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

This reference comprehensively brings together such varied family law financial issues as valuation, taxation, Federal Child Support Guidelines, income determination, and case law analysis. Preparation for examination for discovery and cross-examination of other experts on valuation issues is supported by a detailed analysis of valuation concepts, terminology, and methodologies for the valuation of business interests and other types of assets and liabilities.

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Highlights

This release features caselaw updates to Chapter 7 (Goodwill), Chapter 8 (Minority Interests Versus Controlling Interests), Chapter 20 (Privately-Held Business Interests), and Chapter 38 (Spousal Support). Also included are updates to Appendix WJP (Words and Phrases).

General Valuation Terms and Concepts — Valuation Concepts — Minority Interests Versus Controlling Interests — Case Summaries — The value of the family contracting company was zero at time of trial. The trial judge held that the husband had total control over the company and had distributed all of its income and assets to himself, depleting it between the time of separation and trial. Therefore, reapportionment was justified. The Court of Appeal dismissed the husband's appeal and held that the trial judge was aware of the difference between valuation of a family asset and reapportionment. The trial judge understood the presumptive valuation date was the date of trial, and she attempted to determine that value. The trial judge considered the value of the company at the time of trial and noted the lack of evidence in that regard, and was of the view that accepting the husband's position would be significantly unfair given the company's much higher value at the time of separation, justifying reapportionment. No basis existed for interference with the trial judge's findings of fact that, by the time of trial, the husband had taken benefit of retained earnings and the shareholder loan account, leaving nothing to distribute to the wife. The trial judge correctly held that the business had inherent value despite the financial statements, and that it would be significantly unfair not to reapportion \$85,000 of other family property in her favour to account for the depletion in value of the business: *Zilic v. Zilic*, 2021 BCCA 107, 2021 CarswellBC 645, 331 A.C.W.S. (3d) 338 (B.C. C.A.).

Property Valuation — Business Interests — Privately-Held Business Interests — Case Analysis — Valuation of Business Interests — Throughout the marriage, the husband was employed as president of VC Inc., which was an importer, wholesaler and distributor of men's clothing. After the parties separated, the husband's mother incorporated a separate company VT Inc., which was an importer, wholesaler and distributor of men's clothing. The husband held 50 percent of all outstanding and issued shares in VC Inc. and his sister held other 50 percent of those shares. The trial judge ordered the husband to pay the wife an equalization payment of \$95,967.85 based on the difference between the value of the parties' net property of \$191,935.71. The husband's appeal was dismissed, as his argument that the trial judge made inconsistent findings with respect to the valuation of VC Inc. as at the dates of separation and marriage for the purpose of the equalization calculation failed to take into consideration the findings concerning deficiencies in the evidence and the lack of credible financial disclosure. There was no credible evidence that the husband was owed anything or that the proffered financial documentation was correct. The trial judge's decision to adopt different methodologies for valuation of VC Inc. at the date of marriage and the date of separation did not give rise to any inconsistency necessitating appellate intervention. There was expert evidence before the trial judge that changing circumstances could necessitate changing methods of valuation: *Mahtani v. Mistry*, 2021 ONCA 492, 2021 CarswellOnt 9553, 333 A.C.W.S. (3d) 592 (Ont. C.A.).

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