

But for the Plan

(Family Law: Clearing Up Pension and Bankruptcy Issues)

Lilly (not her real name) had separated from her former spouse many years ago. At that time she hired a private lawyer, outside of the Plan, to help her obtain a share of her former spouse's pension. Unfortunately, that lawyer suffered from an illness, and was only able to complete a portion of the file. She told Lilly that she had not yet done what was necessary to obtain a share of the former spouse's pension, and said that she could not help her anymore.

Almost ready to give up, Lilly decided to contact Paul Vayda at our Oakville office. When Paul read through the file it became clear that it was now going to be more difficult for Lilly to get her share of her former spouse's pension. There were a number of potential road blocks.

The Court case between Lilly and her former spouse had concluded with a Final Order, in 2010, that did not address the pension. In 2012, the Ontario government passed a new law for pension division, and it only applied to separations prior to 2012 if there was no Final Order. But Paul successfully encouraged the former spouse's pension department to allow Lilly to receive her share of the pension, because the 2010 Final Order did not address the pension and its file for the pension division was opened before 2012.

Another problem was that Lilly and her former spouse had each declared bankruptcy after their separation, so Paul had to investigate both bankruptcy proceedings. He then obtained a letter from the former spouse's bankruptcy trustee, stating that the former spouse's pension was exempt from the bankruptcy, and a letter from Lilly's bankruptcy trustee, permitting her to have the pension money, and not her creditors.

A third issue was that Lilly's former spouse's pension plan had changed after separation, from a company-funded plan to a mixed company-funded and employee-funded plan. By convincing the pension administrator to value both plans, Paul helped Lilly receive twice as much money as she was told she would receive by her former lawyer.

The final hurdle was getting Lilly's former spouse to sign the pension documents. He did not have a lawyer, did not initially want to co-operate, and had questions concerning child support and his pension. Paul did not want to speak with him directly other than to advise him to get independent legal advice. So, under Paul's guidance, his assistant, Julie Quinn, worked through Lilly's former spouse's concerns with him, and eventually he agreed to co-operate.

Ultimately, many years after separation, Lilly's goals were achieved. She finally obtained her fair share of her former spouse's two pension plans.

But for the Plan, it is likely that Lilly would have given up when her original lawyer said that she could not help her anymore.