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LAW FIRM

## Farming and Family Law: Income and Support

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The family law legislation in Manitoba applies equally to everyone throughout the province. Over the years, however, I have noticed that there are some aspects of the family law legislation that come as a particularly unwelcome surprise to our farming clients. I often find myself thinking that I wish our farming clients understood at the outset of their relationships, rather than at the end of their relationships, how the family law legislation could apply to them and impact their farming operation so that they could set up their farm operation and, in some instances, transition the family farm, accordingly. In this article, I identify and explain income and support issues that often come as a surprise to our farming clients going through a separation.

The legislation stipulates that as general rule, a person's income for the purposes of calculating their child support or spousal support obligation is based on their "total income" as indicated on their income tax return ("ITR"). There are, however, exceptions to this general rule, to account for parents or spouses whose total income on their ITR does not reflect the actual resources they have available to them that could be used for support purposes.

In the case of a farmer operating as a sole proprietor or in a partnership, their total income as indicated on their ITR is often lower than the actual funds available to them. This is because they are able to deduct certain amounts from their income for tax purposes. There are three main categories of expenses to be considered: (1) out-of-pocket business expenses, such as fuel, licence fees, machinery repairs, and feed, that are actually spent by the farmer on the business operations; (2) out-of-pocket personal expenses, such as personal use of a vehicle, home office expenses, cell phone, and meals, that can be written off for income tax purposes but are personal in nature; and (3) optional adjustments and allowances, such as the full capital cost allowance and optional inventory adjustment, that are not actually spent by the farmer and therefore do not reduce the farmer's available cash.

When a farmer's income is being assessed for support purposes following separation, any deductions that are considered to be personal expenses or those that are not truly paid by the farmer are often added back into their income, the result being an increased income for support purposes. The farmer can claim these deductions pursuant to Canada Revenue Agency (CRA) policy, but when it comes to the family court system, it is common for a portion of the deductions to be added back into their income for support calculations.

In the case of a farmer operating through a corporation, their total income as indicated on their personal ITR is typically not the only income used to determine their income for support purposes. This is because it is common for the farmer to only pay themselves a dividend or an employment income of what they personally need from the corporation and to leave the

remaining funds in the corporation each year. This is permitted by CRA but when it comes to the family court system all of the farmer's resources are considered when calculating their income.

I often hear farmers say that they thought when they set up their corporation that their corporate income would not be considered if they ever separated because the corporation is a separate entity from them. While this is true for income tax purposes, it is not true for support purposes in the event of separation. As such, the farmer ends up needing to provide full disclosure of their personal and corporate income and often ends up having their income set at a higher amount than the amount indicated on their personal ITR.

The above principles also apply to other business owners. It is not the case that every farmer's income is going to be set at a higher amount than their ITR total income, but it is almost always the case that the income of a farmer (or other self-employed person) is going to be analyzed carefully when child or spousal support is at issue, and there is often at least one ground upon which to set the farmer's income at a higher amount than their ITR income. This often comes as an unpleasant surprise to many going through a separation, so it is best to know at the outset that this is a possibility.

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