

The New Family Lawyer and Spousal support Releases – Are You asking Your Clients the Right Questions?

By Malerie Rose and Victoria Starr – Starr Family Law, Barristers and Solicitors

Many agreements that our clients are being asked to sign these days, whether they are marriage contracts or separation agreements, contain a clause which is deemed to be a final release or waiver of spousal support (the “Release”). The Release is essentially the client's agreement to release their spouse from any claim he or she actually or may have now, or which he or she may acquire in the future for any support from their spouse, forever. Based on the fastidiousness with which releases are being drafted nowadays, the Release will likely contain provisions that will, if executed, live up to its intention, and bar the client who gives the Release from ever being able to make a claim for financial support against her spouse.

No doubt all of us advise our clients, in no uncertain terms, about the finality of the Release, but how many of us actually take the time to ask the client the kinds of questions we, and they, should be asking. I mean, let’s face it, the client, who actually has no idea about what the future has in store for them, is about to sign something that will forever cut them off from the financial support that he or she may someday desperately need.

For inexperienced lawyers the challenge will start with asking the right questions. Here are some of the questions and factors that we at Starr Family Law ask our clients to consider when faced with the prospect of a final spousal support release:

- a) after all is said and done what are the respective assets and means of you and your spouse;
- b) what is the capacity of your spouse to provide support for you?;What will your capacity be to provide support for your spouse;
- c) what are your respective ages and physical and mental health;
- d) what was the length of time that the two of you cohabited (lived together or were together as spouses);
- e) what was the standard of living you each enjoyed while you were together and can you achieve or maintain the same standard of living on your own (i.e. Do you need financial help to achieve an approximation of a similar standard of living?);
- f) what are the measures available to you and your spouse to allow each of you to attain economic self-sufficiency within a reasonable period of time following the date of separation and the length of time and cost involved to enable each of you to attain economic self-sufficiency;
- g) Whether you or your spouse has a legal obligation to provide support for another? person;
- h) what was the contribution made by either of you to the realization of the other's career potential;
- i) what was the effect of the responsibilities assumed during cohabitation upon either yours or your spouse's earning capacity;
- j) do either of you have any other legal entitlement to support from a person, other than out of public money;

- k) What are the economic advantages or disadvantages to each of you arising from the marriage or its breakdown and any economic hardship arising therefrom;
- l) what is the possibility of changes occurring which materially and substantially affect the ability of either of you to support yourself.
- m) There may be future changes in your financial situation due to such things as employment or health, that you don't yet know about and cannot or do not foresee. Can you, on your own and with what has already been provided, achieve and maintain the standard of living that you have now at the time when you are considering agreeing to give this Release?
- n) If something happened in your life (next week, next year, in five years, or in 15 years), that had a significant, profound, or catastrophic effect on your financial situation would you be able, either through your own resources or the resources of third parties other than your spouse, still be able to achieve and maintain the standard of living that you have now at the time when you are considering agreeing to give this Release?.

If you're new to the practice of family law and spousal support releases consider using the list above as a starting point and guide to the type of information you should be gathering from your client the next time you are faced with an agreement that contains a full and final spousal support release. Obviously, this list does not by any means exhaust the questions that one ought to be asking the client's to consider so we encourage you to expand on them and to explore the client's answers to each questions in more depth with them well before she signs the release and preferably, before you even start negotiating spousal support.