



Article

Family Law

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Why the court is blocking an Alberta man's request for a quick divorce so he can remarry

If he had put as much effort into fulfilling his disclosure obligations as he did in trying to divorce his first wife, he would long ago have been remarried

By Laurie H. Pawlitza

The Divorce Act allows a divorce to proceed once certain criteria have been met, one of which is that the couple must have been separated for at least one year. A divorce is, however, just one of the claims made in family litigation. Other corollary relief includes claims for property and support.

As corollary proceedings may go on for several years, it is common for family litigants to ask that the court “sever” the divorce from the other claims once the year’s separation has passed. In the ordinary course, the court will do so, and the remaining claims in the litigation continue on.

That is what the husband asked an Alberta court to do in August 2020 after the end of his four-year marriage. Given the brevity of his marriage and that he and his wife had no children, a divorce usually follows a year after separation. But in this case, heard by the Alberta Court of Queen’s Bench, the husband has been blocked from getting his divorce.

The couple had earlier resolved some of their issues, but a claim for spousal support from the wife and a claim by the husband against the wife for money he said was owing to him remained unresolved.

Although he was not yet divorced, the husband set a date in September 2020 to remarry and asked the court in August to sever his claim for a divorce from the remaining legal issues between him and his wife.

In Alberta, the Court of Appeal has decided that a divorce can be severed from other relief in a family law proceeding when “it is fair in the circumstances.” Courts usually grant severance unless insufficient arrangements have been made for child support.

In this case, the wife opposed the severance on the basis that the husband had not provided all of his financial disclosure to her, and because he owed unpaid costs to her.

This was not the first time the husband had asked for severance. In 2019, severance was denied by the court in an oral decision, but no reasons for that decision are available.

When the husband brought his latest motion to the court, the judge directed him to provide the outstanding disclosure or explain why it could not or should not be answered. But when the husband returned to court two weeks later, he didn't provide any additional information, saying everything necessary had been provided.

After considering earlier cases where severance was granted or denied, the judge dismissed the motion, holding that the husband's disclosure shortfall precluded the wife from pursuing spousal support. The judge also observed that if he granted a divorce, it would likely eliminate the husband's incentive to deal with the remaining claims.

Despite that, the husband had a wedding venue booked for just 10 days later. The judge found that the prejudice to the husband was self-imposed: he alone chose to book and plan his second wedding knowing that his wife opposed severance.

Undeterred, a day after the judge made his decision, the husband decided to try again.

He provided further written materials to the judge, taking the position that he had – with one exception – provided all the required information or had taken sufficient steps to respond by inviting the wife's lawyer to look at his documents at his premises.

The judge was not impressed by the husband's efforts, as all of the information the husband had provided on Sept. 10 was available to him at the Sept. 9 hearing; the husband had simply chosen not to provide it.

Quoting the Supreme Court of Canada, the judge held that "a litigant ... is only entitled to one bite at the cherry. An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner."

He found the husband's further effort an abuse of process and, as a result, his third attempt to sever the divorce was dismissed.

Nevertheless, the husband persevered. A little more than two months later, he brought yet another application seeking severance and also asked the court to dismiss the outstanding claim by his wife for spousal support for delay, since she had not proceeded with her claim.

On the husband's fourth attempt, he told a new judge that he actually did not need to comply with many of the disclosure requests, and, to the extent he would comply, as his wife's lawyer's refusal to meet with him in person to review the documents, he had been unable to do so.

After hearing arguments from the wife's counsel, the judge ascertained that much relevant disclosure remained outstanding.

The judge agreed that if severance was granted and a divorce followed, the husband was unlikely to deal with spousal support and the remaining property claims. Not surprisingly, the judge also determined that the wife could not proceed with her spousal support claim because the husband had not provided disclosure.

The judge dismissed the motion for severance as well as the husband's request to have the wife's spousal support claim dismissed for delay.

The court also ordered the husband to pay costs of more than \$6,700 within two weeks and refrain from making personal attacks and derogatory statements when communicating with the wife's lawyer. Finally, the husband was not allowed to bring a further severance application without first obtaining leave of the court.

It seems obvious if the husband had put as much effort into fulfilling his disclosure obligations as he did in trying to divorce his first wife, he would long ago have been married to his new love.

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