



ANDERSONS
S O L I C I T O R S

LawTalk Blog



My husband cheated on me. What are my options in Family Law?

Date: Monday July 22, 2013

How do I make my husband pay for his infidelity and can I get extra from a property settlement for his unfaithfulness?

Scenario:

Conrad and Victoria have been married for 20 years. The first 19 years of their relationship were loving and caring. However, over the last 12 months their relationship has been fraught with arguments, poor communication and resentment toward each other. Last month Victoria discovered a romantic note in Conrad's briefcase from his secretary Ashley. Upon confronting Conrad with the note, Conrad admitted to Victoria that he had been having an extra-marital affair with Ashley for the past 8 months and that he wanted to separate. Victoria felt disgusted by his infidelity and agreed to separate from Conrad immediately..

Victoria is now pursuing her family law property settlement and is still seething about Conrad's affair. She wants to know if she can get extra money or assets from the property settlement based on Conrad's unfaithful actions. Surely he has to pay for betraying her and breaking their marriage vows?

Answer:

Family Law in Australia operates under a "no fault" jurisdiction, meaning that there are no penalties or adjustments made to any of the parties of a marriage for a matrimonial property settlement regarding whose "fault" it was that the marriage broke down.

For the court to place blame on one party for the breakdown of a marriage and then adjust the distribution of the matrimonial assets on that basis, would result in significant evidentiary issues for the Court, particularly as most cases involve a "he said - she said" or a "his/her word against mine" element. Further it would be virtually impossible for the court to apportion a percentage split of the matrimonial assets based on an extra-marital affair. What would the court base such adjustment principles on?

- The length of the affair?
- The type of affair (sexual or emotional)?
- The level of betrayal felt by the innocent party?

Such reasoning would be a hindrance to the current tangible principles for the division of property in a matrimonial property settlement, which are based on looking at the contributions of each party throughout the course of the marriage, adjustments for "needs factors" and just and equitable division.

In this scenario Victoria would not get an adjustment in her favour simply based on the fact that Conrad had an affair.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.