

SEPARATED OR GETTING DIVORCED:

What happens to your dental practice?

Separation and divorce are disruptive on every level. I know firsthand. There are parenting schedules to work out, spousal and child support obligations to assess, a matrimonial home to deal with — all while trying to keep your vibration high.

For dentists, there is an added layer of anxiety that often overshadows everything else: what exactly happens to my dental practice?

Do you automatically get to keep it if your ex-spouse is not a dentist? Can you be forced to sell it? Do you have to give your ex-spouse ownership? If they already own some of it, do they get to keep their stake or can you force them to sell it (and if so, at what price and terms)?

Dentists commonly (mistakenly) assume that because only dentists and their immediate family members are permitted to own shares in an Ontario dentistry professional corporation (DPC), their practice must be shielded from family law claims. And perhaps going one step further: dentists should be free to do as they like with their DPC. Unfortunately, these assumptions are dead wrong.

While dental laws restrict who may own a DPC, family law focuses on the division of economic value. Understanding that distinction is critical to protecting your livelihood in the event of separation and divorce. Let's discuss how Ontario family law treats dental practices in these circumstances, when a dentist may be forced to sell, and how they can try to preserve their practice.

A common separation and divorce scenario

First, let's assume your dental practice is owned through your DPC. The DPC owns the dental equipment, computers, furniture, patient records, goodwill, leaseholds, and has the employment



agreements and premises lease in its name.

Second, let's assume your DPC is relatively clean. No real estate, excess cash, securities, investments, interests in other businesses, loans receivable, whole term life insurance products, etc. Aside from modest working capital, its primary asset is the dental practice itself.

Third, let's assume the non-dentist ex-spouse does not own voting or equity shares in the DPC. Or at most, they hold only nominal-value special or preferred shares that can be redeemed (bought back by the DPC) for a small amount of money (e.g. \$10 in total). And let's finish by assuming that the DPC doesn't owe them money either.

How property is divided in Ontario

In Ontario, married spouses (not merely cohabiting couples) are entitled to share equally in the increase in value of their respective property during the course of their marriage. This is done through a process called equalization of Net Family Property ("NFP"). It does not mean splitting every asset in half. Instead, it equalizes each spouse's net growth in wealth over the course of the marriage.



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Each spouse calculates their own NFP. It starts with the total value of everything they owned on the date of separation, including real estate, bank accounts, investments, pensions, and businesses, minus debts on that date. For dentists, this includes the value of their DPC shares (which would be, in our example, based on the value of the dental practice, plus any cash in the bank account).

Here, a professional valuation is required. This should be prepared by a qualified business valuator (like Dental Strategy) with experience valuing dental practices. Informal estimates or real estate agent opinions are insufficient and can lead to legal disputes.

From the separation-date net value, each spouse deducts the value of property owned on the date of marriage. This reflects what each party brought into the relationship.

Once both NFP figures are calculated, the spouse with the higher NFP must pay the other spouse half of the difference. This is known as the equalization payment. Unless the parties agree or a judge orders otherwise, this is a cash payment. The goal is to share financial growth, not to transfer ownership of specific assets.

Why dentists sometimes have to sell

When a dentist is the sole shareholder of their DPC, the increase in value of their shares during the course of their marriage gets included in their NFP unless it has been properly excluded via a domestic contract (discussed below).

A dental practice — much like business interests and real estate — carries a lot of economic value. As such, a dentist may owe a substantial equalization payment despite the ex-spouse having no ownership interest in the practice.

Ontario family law does not require a dentist to sell their practice simply because they are divorcing. But if the dentist does not have sufficient liquid assets or borrowing capacity to fund the equalization payment, a sale to a third party may become the only practical option.

In other words, the risk is not legal ownership — it's liquidity. A practice can be retained only if the equalization obligation can be satisfied without selling.

Domestic contracts and excluding the practice

As aforementioned, dentists can reduce their NFP and any resulting equalization payment by a significant amount through a “domestic contract”.

A domestic contract is a private agreement that

allows spouses to modify or bypass the typical family laws that apply on separation and divorce. A domestic contract can be in the form of a prenuptial agreement (entered into before marriage), a marriage contract (entered into during the marriage), or a separation agreement (entered into while the parties are separated and getting divorced).

A properly drafted domestic contract can exclude the value of the dental practice from equalization. If effective, the growth in value of the dental practice (and thus the dentist's shares in the DPC) is excluded from their NFP calculation.

That said, for a domestic contract to be valid and enforceable, it must meet strict requirements. Both parties must have proper legal capacity at the time of signing. There must be no duress or undue influence and the resulting contract must not be an unconscionable (one-sided) bargain. The contract must also be in writing, drafted clearly, signed by the parties and witnessed. The parties must also make full financial disclosure of significant assets (including significant financial income streams) and significant debts or other liabilities before entering into the contract. And the parties should have received independent legal advice so that they understand their legal rights and obligations (specifically the nature and consequences of entering into a domestic contract).

Dentists often agree to give their non-dentist spouse equity shares in the DPC during their marriage in order to multiply the use of lifetime capital gains exemption on sale. Doing so can result in significant tax savings.

Failure to meet these requirements can result in the contract being set aside. When that happens, the default family law rules apply, and the dental practice value is back on the table.

Remember: even where a practice is excluded from a dentist's NFP, if they still owe an equalization payment and don't have the funds available, they still may need to sell their practice. Bottom line: domestic contracts are a powerful tool to preserving the dentist's wealth, but they don't guarantee the dentist gets to keep their practice.

What changes if the ex-spouse owns equity shares?

The situation becomes more complex when a non-dentist ex-spouse owns common (i.e. equity) shares in the DPC. Non-dentist spouses can legally own 99% of the non-voting common shares (i.e. most of the equitable interest, albeit not controlling shares) in a DPC in Ontario.

Side note: dentists often agree to give their non-dentist spouse equity shares in the DPC during their marriage in order to multiply the use of lifetime capital gains exemption on sale. Doing so can result in significant tax savings. For example, in 2026, each shareholder who owns common shares in a DPC (that meets several asset and other tests) can avoid paying capital gains taxes on the first +\$1.250-million of purchase price for their shares. If you're interested in learning more, best to speak with a dental lawyer and accountant.

If your ex-spouse owns non-voting common shares, they will eventually need to relinquish their shares as part of the equalization process. Only married spouses of the dentist can legally own those shares.

When it comes to how the ex-spouse disposes of their shares, having a "shareholders agreement" in place can be helpful. A shareholders' agreement is a private contract between the shareholders that typically includes buy-sell mechanisms upon certain events happening. Like forcing an ex-spouse to sell their shares upon separation and divorce to the DPC or the dentist shareholder (assuming they have enough funds to purchase). Or forcing the ex-spouse to be dragged along into a sale if the dentist decides to accept an offer from a third party. Or putting mechanisms in place to value the practice (and thus the DPC's shares).

To be clear, a shareholders agreement protects

the dental practice from disruption by dictating who can own and control the shares, but it does not replace a valid domestic contract or override family laws. Nor can it eliminate or reduce a spouse's equalization claim or declare that a shareholder's shares have 'no value' for family law purposes.

Even after a buy-back or sale, equalization calculations still occur. Sale proceeds do not automatically resolve family law obligations. Additional equalization payments may still be required.

The bigger picture

Family law does not care that dentistry is a regulated profession. It cares about economic fairness between spouses. Dental practices are often the largest marital asset and they are treated as such.

Timing matters. Early planning, proper corporate structuring, and valid domestic contracts can preserve a practice for the dentist. Waiting until separation is underway significantly narrows the available options.

Dentists navigating separation or divorce should obtain coordinated advice from family law and dental law counsel (like DMC LLP). The cost of early planning is almost always far less than the cost of an avoidable sale. If you are facing separation or divorce and are concerned about your dental practice, speak with advisors who understand both family law and dental practice transactions. ✧

References

- 1 Section 55(1) of the Family Law Act, RSO 1990, c F.3.
- 2 See *Horner v. Horner* (2004), 2004 CanLII 34381 (ON CA), 72 O.R. (3d) 561 (Ont. C.A.), at para. 77; and *Tadayon v. Mohtashami*, 2015 ONCA 777, 341 O.A.C. 153, at para. 23.
- 3 Section 56(4) of the Family Law Act, R.S.O. 1990, c. F.3. See also *Martin v. Sansome*, 2014 ONCA 14.

