

## Paying Spousal Maintenance While Totally Disabled

In **Raine [2013] FamCA 362** the characterisation and treatment of the husband's entitlements under a disability insurance policy was a significant issue.

Shortly prior to the parties' separation, the husband's total disability claim was accepted by the insurer and he commenced receiving payments of \$3,756 per week.

A Court appointed valuer found the present value of the husband's insurance payments to be \$1.6M after taking account of the tax he would have to pay and assuming the payments continued until he was aged 70.

However the valuer also observed that there were various reasons why the policy benefits could cease or reduce before the husband turned 70 such as:

- he might die;
- he might resume employment;
- the insurer may determine that he was capable of returning to work whether or not he did so; or
- the insurer may rely upon the terms of the policy to reduce or cease payments for any one of a myriad reasons,

which led the valuer to conclude that even applying a discounted cash flow approach the 'present value' figure did not represent the true value to the husband of the entitlements.

Accordingly **Aldridge J** concluded that the present value of the entitlement was as an income stream rather than either property or a financial resource.

However the entitlements constituted a valuable income stream which was amenable to a spousal maintenance order particularly as it arose from insurance premium payments made during the marriage from the parties' funds.

When the policy was taken out it was a joint decision by the parties to divert part of their income to the disability policy premiums for their joint benefit. It was envisaged by both of them at the time that should the husband become disabled the payments would be available to them both for the maintenance of their joint lifestyle.

As it was established that:

- the wife had financial needs which she could not adequately meet from the limited investable assets available to her after the division of the parties' assets and her \$30K annual income; and
- the husband's income from his disability insurance exceeded his expenses by such an amount as to be able to pay spousal maintenance to the wife,

it was appropriate to make a periodic spousal maintenance order of \$534 per week for an initial period of five years, conditional upon the husband continuing to receive the amount to which he was entitled while totally disabled.

Finally the Court concluded that if the husband's insurance payments ceased or were reduced, the issue of the wife's entitlement to spousal maintenance would have to be considered afresh.