**CITATION**: Sadlier v. Carey, 2015 ONSC 3537
**COURT FILE NO.:** FS-14-19528
**DATE:** 20150602



**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** ROSEMARY JEAN SADLIER, Applicant

**AND:**

JAY ALFRED CAREY, Respondent

**BEFORE:** C. Horkins J.

**COUNSEL:** *Ryan Aalto*, for the Applicant

*Dion McClean*, for the Respondent

**HEARD at Toronto:** May 26 2015

## ENDORSEMENT

[1] The applicant wife brings a motion seeking the following relief:

- An order for interim disbursements of $25,000 to retain AP Valuations Ltd to value the respondent's business (Carey Health Services Ltd) and his income for spousal support purposes.
- An order requiring the respondent to fully cooperate with AP Valuations including providing all necessary documentation and information to value the business and determine income.
- An order that the respondent post a $1M bond as security for equalization and/or spousal support.
- An order that the respondent surrender his Canadian and Bermudian passports pending further order of this court.
- An order that the respondent pay costs for not complying with previous court orders.

- An order that the respondent provide proof that the applicant is an irrevocable designated beneficiary under the life insurance policies that are listed on the financial statement that he has not filed.

- An order that the respondent provide the applicant with copies of all correspondence that he or Carey Health Services Ltd received from Revenue Canada from October 18, 2014 to date.

[2] The motion material was served on the respondent on May 6, 2015. This motion was scheduled to be heard on May 19. It was adjourned at the request of the respondent to May 26, 2015.

**Adjournment Refused**

[3] Once again, the respondent requested that this motion be adjourned. He was granted an adjournment on May 19 and has not filed any material. He is not entitled to a further adjournment. As these reasons show the respondent has a habit of asking for adjournments to cure his default. After an adjournment is granted, he does nothing to cure his default.

[4] His counsel submits that the motion is premature because there is a settlement conference set for June 3, 2015. As a result, he says that it may not be necessary to proceed with this motion. It seems that the respondent is suggesting that his compliance with court orders and the *Family Law Rules* , O. Reg. 114/99, be placed on hold while the parties attempt to settle their dispute at the settlement conference. It is always open to parties to discuss settlement of a dispute, however, the applicant's right to pursue this motion should not be adjourned.

[5] I refused the respondent's request to adjourn the motion. The relief that the applicant seeks arises from the respondent's long standing non-compliance with the *Family Law Rules* and court orders. The parties appeared before me on January 22, 2015. At that time, I stated that the nature and extent of the respondent default was "serious". It remains very serious. The respondent is self-employed and he has failed to provide the disclosure that the courts have ordered and has yet to file an Answer and a sworn financial statement that complies with the *Family Law Rules*.

[6] The respondent cannot dictate what he will produce to the applicant and when. Orders are not suggestions. The respondent has had ample time to comply with the *Family Law Rules* and the court orders. The primary objective of the *Family Law Rules* is to enable the court to deal with cases justly (Rule 2). An adjournment of the applicant's motion would be grossly unfair to the applicant.

**Background**

[7] The applicant filed a lengthy affidavit. The respondent did not file an affidavit in response and so the applicant's evidence is not challenged. If the respondent has an explanation, he has chosen not to provide it to the court. He has had ample opportunity to do so. As a result, for the purpose of this motion I accept the applicant's evidence as fact.

[8] The parties had a long term 32 year marriage. They separated on December 22, 2013 and have been living separate and apart in the matrimonial home since that date. The parties have three adult children. The youngest is still attending post-secondary school.

[9] There is a significant income discrepancy between the parties. The applicant has earned less than $8,000 a year since 2012. The respondent has not produced any income tax returns. He is a self-employed Optometrist. For the purpose of ordering interim spousal support, Justice Stewart used a "very conservative" income of $170,000.

[10] The respondent has worked as an optometrist since 1985. He operates his optometrist practice through a company called "Carey Health Services Ltd." The practice is located at 3300 Bloor St. W., Suite 112 in Etobicoke, Ontario. The practice has three employees and he earns a substantial income.

[11] The respondent's practice has operated at the Etobicoke location since around 1996. The respondent has an associate Optometrist who either pays him rent or a percentage of his billings, This is another source of revenue for the respondent.

[12] The respondent leads a very comfortable lifestyle. He drives a high-end Mercedes sport utility vehicle and travels frequently. He has dinner out with his girlfriend on a nightly basis and he buys a lot of expensive clothes at high-end stores such as Holt Renfrew, Brooks Brothers, Cole Haan and Harry Rosen.

[13] His counsel states that the respondent has not filed personal or corporate income tax returns since 2009. Just recently, he hired an accountant to prepare these returns.

[14] The applicant issued this application on May 29, 2014 and the respondent was served on July 14, 2014. He served the applicant with an Answer and financial statement on January 26, 2015. The Answer and financial statement have not been filed with the court. The financial statement that he served does not comply with the *Family Law Rules* in many respects. It includes no income information and several items are listed with no value and marked "TBD".

[15] On November 18, 2014, the applicant brought a motion for disclosure and various relief including spousal support. Justice Frank ordered the respondent to provide extensive disclosure by December 19, 2014. The rest of the motion was adjourned to January 22, 2015. On January 22, 2015, the motion was returned before me. The respondent requested another adjournment that I granted on terms. I noted that "[t]he nature and extent of the [respondent's] default is serious." I ordered the respondent to provide his outstanding disclosure by January 27, 2015 at 4 p.m. The motion was adjourned to February 5, 2015.

[16] The respondent did not provide the financial disclosure that I ordered. Instead of complying with the order and the deadlines that I set, his counsel gave the applicant's counsel some disclosure that consisted of the respondent's financial statement sworn January 26, 2015 and a book of bank statements. As noted, the financial statement is replete with 'TBD''s and does not comply with the *Family Law Rules*. This disclosure was late and did not comply with the court orders. The disclosure did not provide any proof of the respondent's income

[17] The applicant's motion proceeded before Justice Stewart on February 5, 2015. The respondent arrived in court with Profit & Loss Statements for Carey Health Services Ltd. for 2012, 2013, and 2014. These documents were not attached to an affidavit that was filed with the court. In fact, the respondent did not file an affidavit in response to the motion.

[18] Justice Stewart ordered that the respondent pay spousal support in the amount of $6,000.00 per month. The basis for this order is recorded in the following excerpt from the court's endorsement:

> Unaudited Profit and Loss Statements very recently produced by the Respondent show gross retail sales in 2014 of $645,779.20. Monthly bank statements recently produced by the Respondent show deposits in 2014 of close to $1,000,000.00. Although it is difficult to determine with precision at this time what the Respondent's actual income is from his business and other sources, it is apparent that his income-earning ability is substantial.

[19] The order of Justice Stewart dated February 5, 2015 is without prejudice to either party's entitlement to bring an order to vary it prospectively once full financial disclosure has been made and/or the living circumstances of the parties' changes. Justice Stewart also ordered that the respondent fully comply with all outstanding disclosure requirements and orders for same. He has not done so.

## THE APPLICANT'S MOTION

### 1. Interim Disbursements

[20] The applicant seeks an order pursuant to rule 24(12) of the *Family Law Rules*, directing that the respondent pay her $25,000. She needs this money to hire an expert valuator to value the respondent's business and his income.

[21] The respondent's lack of disclosure significantly prejudices the applicant in her ability to assess the value of the respondent's business and his income. The minimal disclosure that the respondent has provided raises several questions about what he earns. These questions and concerns are set out in the applicant's affidavit.

[22] Clearly, the applicant cannot count on the respondent to be forthcoming. This is obvious from his conduct to date. In many cases a business valuator is required in a self-employed situation to value the business and determine income. The need is heightened in this case because of the respondent's conduct.

[23] The applicant wishes to retain AP Valuations. She has provided a letter from AP Valuations dated April 24, 2015. AP has reviewed the limited financial disclosure from the respondent and has identified two areas of concern.

[24] First, there is a significant discrepancy between the gross business income that the respondent declares in his unaudited Profit and Loss Statement and the actual funds that are

deposited into his business bank account in a calendar year. This was noted by AP Valuations in their letter as follows:

> Forensic analysis may be required in this regard as Carey Health's 2014 Profit & Loss Statements include revenues of $645,779.60, which appears to present an inconsistency between the financial statements and the business bank statements.

The respondent's monthly bank statements record deposits well in excess of $645,779.60. The business account registered to Carey Health Services Ltd., RBC Royal Bank Business Account No. 00002-107-615-7 shows that in 2014 the deposits totaled $977,946.48.

[25] The 2012 and 2013 calendar years reveal the same discrepancy: the annual bank deposits to the respondent's business account exceed the gross business income on the Profit & Loss Statements.

[26] Second, the 2013 Expenses by Vendor Summary for Carey Health show that expenses were paid to the respondent and Jenne Carey (the parties' daughter). AP Valuations states that a forensic analysis may be required to approximate discretionary expenses, if any, for the respondent and/or his family members and/or salaries that may have been paid to non-arm's length individuals at uneconomic rates.

[27] The applicant does not know what happened to the money that was withdrawn from this RBC account. The respondent has not disclosed any bank account or investment account where money may have been deposited. The applicant believes that there is a material risk that the respondent is siphoning the money to bank account(s) that he has not disclosed in his sworn financial statement dated January 26, 2015.

[28] The respondent has not disclosed any bank accounts or investment accounts other than his RBC Royal Bank Business Account and his RRSP account. He lists the value of the RRSP on his financial statement as "TBD."

[29] The respondent set up a family trust called the "Carey Family Trust". Justice Frank ordered him to provide particulars of same, as set out below. The respondent has not complied with this order. Aside from the existence of this trust, no information is available.

[30] AP Valuations provided a rough estimate to prepare a Valuation Report, for equalization purposes, and an Expert Report for income analysis. AP Valuations estimates that it will cost in the range of $5,000 to $10,000 for each report plus disbursements. This is only an estimate and the cost could be higher. Obviously, if the respondent does not promptly prepare past financial statements for his business and file the personal and corporate income tax returns, the cost of this expert analysis will grow.

[31] The applicant does not have the funds to hire an expert.

[32] The applicant seeks an order under *Family Law Rule*, rule 24(12) directing that the respondent pay $25,000 for interim disbursements, payable to her counsel Gottlieb Law Firm

LLP. She requires this money to retain an expert to value the respondent's business and determine his income.

[33] Rule 24(12) states as follows:

> The court may make an order that a party pay an amount of money to another party to cover part or all of the expenses of carrying on the case, including a lawyer's fees.

[34] Rule 24(12) is discretionary. In exercising discretion under rule 24(12), the court must ensure that the primary objective of fairness as set out in rules 2(2) and (3) is met. Specifically, the court must deal with cases justly and ensure that the procedure is fair to all parties.

[35] I agree with the court in *Stuart v. Stuart*, [2001] O.J. No. 5172 at paras. 9-13 as follows:

> 9) … The discretion should be exercised to ensure all parties can equally provide or test disclosure, make or consider offers or possible go to trial. Simply described, the award should be made to level the playing field.
>
> 10) An order under section 24(12) should not immunize a party from cost awards. The order is to allow the case to proceed fairly and should not be such that a party feels a license to litigate.
>
> 11) Certainly the proof of the necessity of interim disbursements would be critical to the successful claim. The claimant must clearly demonstrate that the disbursements are necessary and reasonable given the needs of the case and the funds available. In particular, if an expert is the subject of a requested disbursement, the claimant must demonstrate there is a clear need for the services of said expert.
>
> 12) The claimant must demonstrate that he or she is incapable of funding the requested amounts.
>
> 13) The claim or claims being advanced in the case must be meritorious as far as can be determined on the balance of probabilities at the time of the request for disbursements.

[36] As Mesbur J. stated in *Ludmer v. Ludmer*, 2012 ONSC 4478 at para.14, "[o]ne of the primary themes of the case law is that orders may be required in order to 'level the playing field' between the litigants."

[37] This is a clear case for an order under rule 24(12). The applicant is literally in the dark about the value of the respondent's business and his income. It is obvious from the respondent's conduct in this litigation that she cannot rely on him to be forthcoming with financial disclosure.

[38] The applicant has a claim for equalization and spousal support. Her ability to pursue these claims will be severely prejudiced if she is unable to retain an expert. Currently, the playing field is seriously tilted in favour of the respondent. He has full access to his financial information, he refuses to honour his financial disclosure obligation and has left the applicant with minimal disclosure and a financial statement that does not comply with the *Family Law Rules*. An interim disbursement order is required to level the playing field. Allowing this relief addresses the primary objective of the *Family Law Rules*: "enable the court to deal with cases justly." (Rule 2)

[39] In court, the respondent's counsel stated that his client has now retained an accounting firm to prepare the financial statements and file the income tax returns that he has not filed for 2009 to date. He asks that AP Valuations not commence its work until the financial statements and income tax returns are prepared.

[40] The respondent knows that preparation of these documents is required. His accountant, Mr. Goldberg, wrote a letter dated October 18, 2014 stating that he was engaged to provide the financial statements and corporate and personal income tax returns. The letter states that it will take about 5 to 6 weeks to do the work. Last fall, the respondent said he was in the process of having his personal and business taxes completed for the past few years. On this motion, the respondent's counsel told the court that Mr. Goldberg was just starting to do the above work. The respondent has not prioritized his obligation to produce the company financial statements and the corporate and personal income tax returns. Apparently the work is now underway.

[41] The applicant agrees that she will not instruct AP to commence their work for 30 days. This will give the respondent and his accountant ample time to prepare the missing financial statements and income tax returns. If the respondent fails to get his financial house in order, he runs the risk of the applicant seeking a further amount for interim disbursements since the task for AP Valuations will be more extensive.

[42] The respondent shall pay $25,000 to the applicant's counsel Gottlieb Law Firm LLP. The money shall be paid by certified funds no later than June 12, 2015 at 4 p.m.

[43] The respondent shall fully cooperate with AP Valuations and provide all necessary documentation and information that AP Valuations requires.

**2. <u>Post a Bond and Surrender of Passports</u>**

[44] To secure her rights against the respondent, the applicant seeks an order directing that the respondent post a $1M bond. She also seeks an order that he surrender his Canadian and Bermudian passports pending further order of the court. The applicant relies on s. 9(1)(b) and (d) and s. 34(1)(b), (c), (e) and (k) the *Family Law Act*, R.S.O. 1990, c. F.3.

[45] The applicant believes that the respondent may leave Canada. He has roots in Bermuda where he was born and raised. His father, brothers and sister all reside in Bermuda. The respondent is very secretive about his finances and the applicant is concerned that he will syphon

financial resources off-shore to avoid supporting her and paying the applicant her fair share of the net family property.

[46] The respondent's father resides in 5-bedroom home in Bermuda with the respondent's brother. The respondent stays with his father when he travels to Bermuda. There is plenty of space for the respondent to reside there.

[47] The respondent has a valid Bermuda passport and a valid Bermuda drivers' licence. He holds dual Canadian and Bermuda citizenship and is eligible to work in Bermuda. He can work there on a tax-free basis.

[48] In the past, the respondent has frequently spoken of opening an Optometry practice in Bermuda. He has investigated the possibility of buying a practice from an Optometrist, Dr. M. Keyes, in Bermuda. The respondent has also consulted with Dr. Leonard Teye-Botchway, Optometrist about practicing in Bermuda.

[49] The respondent's niece who resides in Toronto is a licenced Optometrist. He may be seeking to sell his practice to his niece. The respondent also has an associate who he may be seeking to sell his practice to.

[50] Recently, the respondent has traveled to Bermuda with increased frequency. He has taken three trips to Bermuda in the past few months as compared to the past, where he might make one trip a year.

[51] The applicant asks the court to draw an inference that the respondent may move to Bermuda to avoid his spousal support and equalization payment obligations.

[52] Neither party provided the court with any case addressing whether the court has jurisdiction to order the relief requested under s. 9 or s. 34 of the *Family Law Act*.

[53] Section 9 (1)(b) and (d) of the *Family Law Act* does not give the court the power to order that the respondent post a bond or direct the surrender of the respondent's passports. This section states as follows:

> 9. (1) In an application under section 7, the court may order,
>
> (b) that security, including a charge on property, be given for the performance of an obligation imposed by the order;
>
> …
>
> (d) that, if appropriate to satisfy an obligation imposed by the order,

> (i) property be transferred to or in trust for or vested in a spouse, whether absolutely, for life or for a term of years, or
>
> (ii) any property be partitioned or sold.
>
> [Emphasis added]

[54] The s. 9 powers arise when an application is made under s.7 of the *Family Law Act*. Section 7 allows the court to "determine any matter respecting the spouses' entitlement under section 5" (equalization of net family property).

[55] In this application, the applicant seeks equalization of net family property. However, equalization is not being determined on this motion. As a result, the powers of the court in s. 9 are not engaged. Section 9(b) and(d) are used to enforce "the performance of an obligation imposed by the court" arising from equalization. Such obligation has not yet been quantified and imposed.

[56] Section 34 of the *Family Law Act* provides the court with the power to make an interim or final order in the context of an application under s. 33 of the Act. Section 33 deals with a claim for child support and spousal support.

[57] The applicant seeks spousal support and the respondent is paying her $6,000 a month pursuant to the order of Stewart J. There may be arrears. When the applicant swore her affidavit for this motion she stated that the respondent owes spousal support arrears of $7,500 as of April 7, 2015 The respondent did not pay anything for the month of February, 2015 and he paid $1,500 less than the ordered amount for April 2015. This is confirmed by a statement of arrears from the Family Responsibility Office.

[58] The applicant relies on ss. 34(1)(b), (c), (e) and (k) as follows:

> 34. (1) In an application under section 33, the court may make an interim or final order,
>
> ….
>
> (b) requiring that a lump sum be paid or held in trust;
>
> (c) requiring that property be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
>
> ….
>
> (e) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the dependant's benefit;

….

(k) requiring the securing of payment under the order, by a charge on property or otherwise.

[59] Section 34(1)(k) allows the court to order security for a spousal support order. There is no doubt that the posting of a bond is security under this section. This subsection does not refer to passports being deposited with the court as security. I conclude that the word "otherwise" captures this form of security and I adopt the reasoning of Justice Sherr in *Jones v. Hugo,* 2012 ONCJ 211 at paras. 85-91 and *H.F. v. M.H.*, 2014 ONCJ 450 at paras. 61-62.

[60] In *Jones v. Hugo,* the applicant requested security for the respondent's support obligations first by making a non-depletion of property order and second, by requiring the respondent to deposit his passport with the court. Justice Sherr concluded that he had the power under s. 34(10)(k) of the *Family Law Act* to order the deposit of the passport. I agree and adopt Justice Sherr's reasons in *Hugo* at paras. 86-88 as follows (the same reasoning was applied by Justice Sherr in *H.F. v. M.H.*):

> 86 The deposit of a passport is not a charge on property. The issue is whether the deposit of the passport can qualify as "or otherwise" for requiring the securing of payment under the order. I find that it does.
>
> 87 This clause of the Act should be considered and interpreted within the context of the entirety of the Act, as well as other legislation enforcing support orders. One of the objectives of the legislation is to ensure that payors pay support ordered by the court and not abscond from the jurisdiction in order to avoid their support obligation. This is reflected in section 43 of the Act which reads as follows:
>
> **Arrest of absconding debtor**
>
> **43**. (1) If an application is made under section 33 or 37 and the court is satisfied that the respondent is about to leave Ontario and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Act, the court may issue a warrant for the respondent's arrest for the purpose of bringing him or her before the court.
>
> **Bail**
>
> (2) Section 150 (interim release by justice of the peace) of the *Provincial Offences Act* applies with necessary modifications to an arrest under the warrant.
>
> 88 Section 43 of the Act permits the court, by warrant, to have a support payor arrested and brought to the court if it has reasonable grounds to believe that he or

> she will abscond from the jurisdiction in order to avoid his or her support obligations. The court is permitted under subsection 43 (2) of the Act to impose bail terms. In such situations, the deposit of a passport would likely be a critical term of release.
>
> [Emphasis in original.]

[61] I also agree with Justice Sherr that the court should be cautious in ordering a party to deposit a passport. In *Hugo* at para. 90 the court stated:

> The court should be cautious before ordering the deposit of a passport into court as security for support due to its restriction on a person's mobility rights. However it isn't an exceptional remedy. The Family Responsibility Office would have had the power to seek a suspension of the respondent's passport if he had a Canadian passport.

[62] I turn next to consider if I should grant the relief that the applicant requests. In *Kumar v. Kumar,* [1998] O.J. No. 35 (S.C) the court reviewed the criteria that should be considered when security for spousal support is requested. This criteria is summarized as follows:

(a) where there is a history of dissipation of assets;

(b) where the payor is likely to leave the jurisdiction;

(c) where the payor has in the past refused to honour a support obligation;

(d) where the payor has a poor employment history, has threatened to leave employment, lacks income, or has been uncooperative with the payee in the past;

(e) where there are assets in Ontario capable of forming the basis of a security order or;

(f) where the payor has declared he will not pay a support order.

[63] As the court stated in *Boisvert v. Boivert*, [2007] O.J. No. 2555 (S.C.) at para. 79 "[o]ther conduct such as: lying to the court, violating earlier court orders, and removing of assets in contravention of an agreement is also quite relevant."

[64] In addition the *Family Law Rules* guide the court on this motion. In particular, I rely on rule 1(8). This is relevant to the security that the applicant requests for spousal support and her claim for equalization.

[65] Rule 1(8) states that where a party "fails to obey an order …, the court may deal with the failure by making any order that it considers necessary for a just determination of the matter". Rule 1(8) lists various orders that a court may make. While the list does not include surrendering passports or posting security, the list is not exhaustive. It is open to the court to make other types

of orders that are "necessary for a just determination of the matter." This is consistent with Rule 2.

[66] The primary objective of the *Family Law Rules* is to deal with cases justly (Rule 2) and the court has a duty to promote this primary objective. Rule 2 (3) states that dealing with a case "justly" includes:

> (a) ensuring that the procedure is fair to all parties;
>
> (b) saving expense and time;
>
> (c) dealing with the case in ways that are appropriate to its importance and complexity; and
>
> (d) giving appropriate court resources to the case while taking account of the need to give resources to other cases.

[67] For the reasons that follow, the applicant is entitled to security. Making such orders promotes the primary objective of the *Family Law Rules*.

[68] I start with the respondent's conduct in this application. He has demonstrated that he has no respect for court orders. The details of his non-compliance have been set out above.

[69] Justice Stewart ordered $6,000 a month for spousal support based on an imputed income of $170,000 which she described a as a "very conservative estimate of the respondent's income." The respondent could owe the applicant far more than $6,000 a month. For example, the respondent told the applicant that he has gross revenue of $50,000 to $60,000 a month.

[70] The respondent's conduct continues to seriously interfere with the applicant's ability to determine his true income for spousal support purposes. He has still not filed his Answer and a proper financial statement with the court. Significant disclosure is missing despite court orders. The applicant is left in the dark concerning the respondent's income and the nature and value of their property that must be equalized.

[71] I recognize that the respondent is now paying spousal support. There are some arrears. The respondent delayed paying spousal support for as long as he could. He has yet to provide personal and business income tax returns and financial statements for the business. On this motion, the respondents' counsel told the court that the respondent's accountant is about to start preparing the income tax returns for 2009-2014 and the financial statement for the business. The respondent has no sense of urgency.

[72] The respondent's conduct in this application must be considered along with the unchallenged evidence of the applicant. She has good reason to believe that the respondent may sell his business and move to Bermuda. I refer to the applicant's evidence that is set out above. The respondent has the ability to move to Bermuda and he has taken steps that are consistent with the applicant's fear that he will sell his business and leave the country.

[73] The respondent had ample time to file a responding affidavit. The motion was adjourned at his request and yet he filed no affidavit. The seriousness of the applicant's motion should have been obvious to him. The applicant detailed why she believes the respondent may sell his business and leave the country. If such concerns are unfounded he ought to have said so in an affidavit. The respondent has given the applicant no reason why she should trust him. His silence leads me to draw an adverse inference against him. The business is the respondent's source of income. It is also a significant asset that must be equalized. The applicant is entitled to a form of security that will protect her interests.

[74] The applicant requests an order directing that the respondent post a $1M bond as security for the spousal support and equalization. It is difficult to assess if $1M is a reasonable amount. The value of the property to be equalized is unknown.

[75] The matrimonial home is worth about $900,000. There is a mortgage on the property of about $260,000 and a $30,000 line of credit that may be registered on title. It appears that there is about $600,000 of equity in the matrimonial home.

[76] What is the value of the spousal support that should be secured? The applicant is 63 years old. If she lives until 85 then she is owed 22 years of spousal support. Using $6,000 a month, this is worth about $1,584,000. This is a rough calculation. The respondent could owe more for spousal support. This demonstrates that the request for a $1M bond is fair.

[77] I make the following orders:

(i) The respondent shall deposit his Canadian and Bermudian passports with this court by 3 p.m. on June 5, 201, pending further order of the court.

(ii) The respondent shall not apply for a new Canadian or Bermudian passport while his passports are deposited with the court.

(iii) The respondent shall post a $1,000,000 bond with the court as security for equalization and spousal support. The respondent shall post this bond no later than 4 p.m. on June 11, 2015.

## 3. Miscellaneous Relief

[78] The applicant requests an order directing the respondent to pay costs for not complying with previous court orders. Costs have been issued for the previous motions. The court cannot go back and deal with costs for these prior events. The court can and will deal with costs of this motion.

[79] The respondent lists three insurance policies in his January 26, 2015 financial statement (this is the financial statement that has not been filed). The polices are described as Desjardin PR876122-5, Desjardin PR878881-5 and Great West Life 10 year term. The applicant is entitled to proof that she is the designated irrevocable beneficiary under the life insurance polices. This was ordered by Justice Frank and the respondent did not comply. The applicant wants an order

naming her as the sole irrevocable beneficiary. Obviously, she cannot trust the respondent and so an irrevocable condition is necessary.

[80] I order the respondent to maintain the three life insurance policies: Desjardin PR876122-5, Desjardin PR878881-5 and Great West Life 10 year term. If any of these policies have been cancelled, I order that the respondent shall obtain life insurance so that he has policies with a total face value of $1,200,000. The respondent shall designate the applicant as the sole irrevocable beneficiary under the life insurance policies. He shall maintain this insurance as directed pending further order of the court.

[81] The respondent has received correspondence from Revenue Canada. The applicant is entitled to receive copies of all correspondence that he or Carey Health Services Ltd. have received from Revenue Canada from October 18, 2014 to date. This is relevant to the determination of his income and the valuation of his business.



**Costs**

[82] The applicant seeks costs of this motion on a substantial indemnity basis in the amount of $10,876.25 inclusive of fees disbursements and HST.

[83] Rule 24 of *Family Law Rules* deals with costs. Rule 24(1) states that the successful party is presumed entitled to costs.

[84] Rule 24(11) of *Family Law Rules* states that in setting the amount of costs the court shall consider the following factors:

> (11) A person setting the amount of costs shall consider;
>
> (a) the importance, complexity or difficulty of the issues;
>
> (b) the reasonableness or unreasonableness of each party's behaviour in the case;
>
> (c) the lawyer's rates;
>
> (d) the time properly spent on the case, including conversations between the lawyer and the party or witnesses, drafting documents and correspondence, attempts to settle, preparation, hearing, argument, and preparation and signature of the order;
>
> (e) expenses properly paid or payable; and
>
> (f) any other relevant matter.

[85] In awarding costs, I must identify an amount that is fair and reasonable in the circumstances. Two decisions from the Court of Appeal emphasize this approach: *Boucher v*.

*Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.) and *Moon v. Sher*, [2004] O.J. No. 3942 (C.A.).

[86] I have taken the above factors into consideration as follows.

[87] The respondent disputes these costs and says that sufficient detail has not been provided in the Bill of Costs. I disagree. Sufficient detail is provided. Counsel spent 20 hours preparing the motion material that was filed with the court. In addition, time was incurred to attend in court on the motion. A rate of $350 an hour was used and this is fair.

[88] The motion was necessary because of the respondent's conduct. It was an important motion that raised issues of moderate complexity. I find that the time spent and fees charged were reasonable. The applicant was successful on her motion and is entitled to costs.

[89] I order the respondent to pay the applicant costs that I fix at $10,876.25 inclusive of fees disbursements and HST.

**CONCLUSION**

[90] I make the following orders:

(1) The respondent shall pay $25,000 to the applicant's counsel Gottlieb Law Firm LLP. The money shall be paid by certified funds no later than June 12, 2015 at 4 p.m. and shall be used to retain AP Valuations

(2) The respondent shall fully cooperate with AP Valuations and provide all necessary documentation and information that AP Valuations requires.

(iv) The respondent shall deposit his Canadian and Bermudian passports with this court by 3 p.m. on June 5, 2015, pending further order of the court. The respondent shall not leave Canada upon receipt of this decision.

(3) The respondent shall not apply for a new Canadian or Bermudian passport while his passports are deposited with the court.

(v) The respondent shall post a $1,000,000 bond with the court as security for the applicant's right to equalization and spousal support. The respondent shall post this bond no later than 4 p.m. on June 11 2015.

(4) The respondent shall maintain the three existing life insurance policies: Desjardin PR876122-5, Desjardin PR878881-5 and Great West Life 10 year term. If any of these policies have been cancelled, the respondent shall obtain life insurance so that he has policies with a total face value of $1,200,000. The respondent shall designate the applicant as the sole irrevocable beneficiary under the life insurance policies. He shall maintain this insurance as directed pending further order of the court.

(5) The respondent shall provide the applicant with copies of all correspondence that he or Carey Health Services Ltd. have received from Revenue Canada from October 18, 2014 to date.

(6) The respondent shall pay the applicant costs that I fix at $10,876.25 inclusive of fees disbursements and HST. This is payable on or before June 30, 2015.

C. Horkins J.

**Date:** June 2, 2015