

2012 ONSC 4021  
Ontario Superior Court of Justice

Boutros v. Boutros

2012 CarswellOnt 9134, 2012 ONSC 4021, [2012] W.D.F.L. 5916, [2012] W.D.F.L. 5917, [2012] W.D.F.L. 5948, [2012] W.D.F.L. 5953, [2012] W.D.F.L. 5977, [2012] W.D.F.L. 6023, [2012] W.D.F.L. 6024, 219 A.C.W.S. (3d) 618

**Farid Boutros, Applicant and Hoda Boutros, Respondent**

Greer J.

Heard: April 16-30, 2012  
Judgment: July 9, 2012  
Docket: FS-10-362089

Counsel: Paul McInnis, for Applicant  
**Andrea Di Battista**, for Respondent

Subject: Family; Property

**Related Abridgment Classifications**

Family law

III Division of family property

III.8 Factors affecting equal or unequal division

III.8.g Multiple factors considered

Family law

III Division of family property

III.10 Matrimonial home

III.10.b Order for possession

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IV.1 Spousal support under Divorce Act and provincial statutes

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IX Custody and access

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Family law

IX Custody and access

IX.6 Joint custody

IX.6.c Factors to be considered

IX.6.c.xii Miscellaneous

**Headnote**

Family law --- Custody and access — Joint custody — Factors to be considered — Multiple factors considered

Parties were married 16 years and had three children — Older child was in high school — Two younger children attended private school costing \$45,000 each per year — Parties agreed to have joint custody of older child — Parties disputed date of separation — Mother stopped working after birth of children — Parties had nanny assisting family — Father sought joint custody, sale of matrimonial home, and equalization of net family properties — Mother sought spousal support, sole custody, child support, and unequal division of net family properties — Mother sought exclusive possession of matrimonial home and freezing of father's assets — Mother sought sale of family property but not matrimonial home — Parties separated in 2009 — It was not financially possible for wife to remain in matrimonial home and be given exclusive possession of it — Wife's intention to stay home to care for two younger children made it more imperative to sell matrimonial home to provide liquidity to each party to start over — Matrimonial home was ordered to be listed for sale — Older child was free to make own arrangements with parents — Parties were to have joint custody of two younger children — Parenting schedule was put into place — There was no evidence to show father had beneficial interest in monies from Egypt sent by sister — Monthly child support if all of overage was calculated was \$8,169 — Father's monthly child support payments were reduced to \$5,000 per month given costs of tuition fees of two younger children — Wife was entitled to unequal division on equalization payment — Father accessed joint line of credit without mother's signature or discussion with mother to pay tuition fees — Line of credit was secured against matrimonial home — Father lost \$75,000 on Ferrari — On equalization mother was entitled to additional \$80,750 which father was to pay out of father's portion of equity on closing — Mother was entitled to spousal support — Father was to pay for additional courses or up-grades mother might take over next three years — Father was to pay \$12,000 per year over three years to help mother achieve financial independence.

Family law --- Custody and access — Joint custody — Factors to be considered — Miscellaneous

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Family law --- Division of family property — Matrimonial home — Order for possession — Factors to be considered by court — General principles

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Family law --- Division of family property — Factors affecting equal or unequal division — Multiple factors considered

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Family law --- Support — Spousal support under Divorce Act and provincial statutes — Entitlement — Economic disadvantage of marriage — Traditional marriage

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## Table of Authorities

**Cases considered by Greer J.:**

*Abaza v. Abaza* (2001), 2001 CarswellOnt 1283, 16 R.F.L. (5th) 1 (Ont. S.C.J.) — referred to

*Donovan v. Donovan* (2000), 2000 CarswellMan 440, 190 D.L.R. (4th) 696, [2000] 10 W.W.R. 214, 9 R.F.L. (5th) 306, 2000 MBCA 80, 150 Man. R. (2d) 116, 230 W.A.C. 116 (Man. C.A.) — considered

*Drygala v. Pauli* (2002), 29 R.F.L. (5th) 293, 2002 CarswellOnt 3228, 61 O.R. (3d) 711, 219 D.L.R. (4th) 319, 164 O.A.C. 241 (Ont. C.A.) — referred to

*Hunt v. Smolis-Hunt* (2001), 286 A.R. 248, 253 W.A.C. 248, [2001] 11 W.W.R. 233, 205 D.L.R. (4th) 712, 2001 ABCA 229, 2001 CarswellAlta 1357, 20 R.F.L. (5th) 409, 97 Alta. L.R. (3d) 238 (Alta. C.A.) — distinguished

*Lake v. Lake* (1988), 11 R.F.L. (3d) 234, 1988 CarswellNS 34, 82 N.S.R. (2d) 357, 207 A.P.R. 357 (N.S. C.A.) — referred to

*Oswell v. Oswell* (1990), 1990 CarswellOnt 278, 74 O.R. (2d) 15, 28 R.F.L. (3d) 10 (Ont. H.C.) — followed

*Oswell v. Oswell* (1992), 43 R.F.L. (3d) 180, 12 O.R. (3d) 95, 1992 CarswellOnt 306 (Ont. C.A.) — followed

*Rosenthal v. Rosenthal* (1986), 1986 CarswellOnt 288, 3 R.F.L. (3d) 126 (Ont. H.C.) — considered

*Silva v. Silva* (1990), 1990 CarswellOnt 319, 30 R.F.L. (3d) 117, 1 O.R. (3d) 436, 42 O.A.C. 5, 75 D.L.R. (4th) 415 (Ont. C.A.) — referred to

*West v. West* (2001), 18 R.F.L. (5th) 440, [2001] O.T.C. 422, 2001 CarswellOnt 1936 (Ont. S.C.J.) — considered

**Statutes considered:**

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s. 30 — referred to

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)  
Generally — referred to

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Generally — referred to

**Regulations considered:**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)  
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Generally — referred to

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s. 17(1) — considered

s. 19 — referred to

**Greer J.:**

1 The Applicant, Farid Boutros ("the Husband"), brought on an Application dated August 30, 2010, and served the Respondent, Hoda Boutros ("the Wife"), asking for a Divorce, joint custody of the parties' three children or sole custody if the Wife refuses to agree to joint custody. He also asks for an Order for the sale of the parties' matrimonial home and for an Order dispensing with the Wife's consent to the sale if she refuses to co-operate, if the Court orders such sale. Lastly, the Husband asks for an equalization of the parties' net family properties.

2 In her Answer, the Wife asked that the Husband's claim be dismissed with Costs. She then makes claims of her own. The Wife is agreeable to the Divorce proceeding but not until after all claims are settled or determined. She asks for spousal support for herself, sole custody of the children, child support, an unequal division of the parties' net family properties, exclusive possession of the matrimonial home and its contents, a freezing of the Husband's assets, and a sale of family property (but not the matrimonial home). Lastly, the Wife asks for guardianship of the children's property, although there was none at the time of Trial.

### **Some background facts**

3 The parties were married on August 1, 1993. The Wife says they separated in July 2008 and the Husband says they separated in January 31, 2010. There are three children of the marriage, namely Jacqueline now 16 years of age, and the twin sons, Zachary and Jacob, who are now 11 years of age. The parties continue to both occupy the matrimonial home at 89 Forest Grove Drive, Toronto ("the home"). The Wife is 46 years of age and the Husband 47 on June 10, 2012.

4 The Husband was born in Cairo, Egypt. He has one sister who was also born in Egypt and lives there with her husband their two daughters. The sister is a Pharmacist. The Husband's two parents now live in Canada and he sponsored them to come to live here. He continues to support them financially.

5 The Husband is a medical doctor, having graduated from medical school in Egypt. He took up family medicine for one year. He then applied for residency in general surgery and spent two years at it before he came to Canada in 1993. He met his Wife when she was visiting in Egypt in 1992. They married on August 1, 1993. After arriving in Canada the Husband specialized in endocrinology and metabolism. He practices medicine at the Scarborough General Hospital. From September 2007 to July 2009, the Husband was the Chief of Medicine at that Hospital. He says that this position was extremely demanding and left him with little time for his family.

6 The Wife grew up in Thunder Bay, Ontario, where her father was a Professor at Lakehead University. In 1989 the Wife obtained her Bachelor's degree in Psychology and Sociology. After graduation, the Wife began working for the Canadian Government in Citizenship and Immigration and continued working there before the twins were born. She stopped working in 2000. She says she earned about \$33,000 a year at that job. She lived with her parents until she and the Husband married and paid no expenses while she lived there.

7 During the period after the Wife ceased working, the parties had a nanny for 7 years assisting the family. It is the Husband's position that the Wife should now be working to assist the family financially. The Wife says that given the learning issues the twins have, she is required to remain at home to assist with them.

8 The Wife says she greatly assisted her Husband while he was obtaining his specialization as an Endocrinologist. She claims she saved her money while working and gave it to her parents, so that she had \$40,000 coming into the marriage. There is no evidence to support this contention. In 1998, when the parties purchased their first home at \$335,000 they put \$90,000 down with \$40,000 from her parents, she says, \$40,000 from her savings held by parents, and \$20,000 from her RRSP. The Husband concedes that he only put \$10,000 towards the down payment on the house. The Wife said the down payment in total was \$90,000 but her figures add up to \$100,000. There is an evidentiary problem in crediting the Wife with money coming into the marriage, as she only has evidence of her RRSP of \$4,466.22.

9 The parties lived with the Wife's parents for the first two years of their marriage, says the Wife. She also says she looked after everything while the Husband worked towards his specialist qualification in Ottawa. They then leased an apartment there for him for two years and the Wife says she paid all the expenses and looked after everything. The Wife lived in Toronto with her parents and was there when Jacqueline was born.



10 The twins are currently attending the Merle Levine Academy, a private school, and have been there since September 2009. The basic cost of the Academy is \$45,000 per year per child. They are enrolled in the Academy for the 2012 school year beginning in September.

11 The parties' daughter, Jacqueline, is completing Grade 10 at Earl Haigh High School. The Husband describes her as very mature and able, achieving an average over 90%. The Wife says that Jacqueline is very involved in extracurricular activities in high school and involved in several clubs. She is a well-adjusted child who seems to get along well with both parents.

### **The date of Separation of the parties**

12 The Wife says that parties separated in July 2008. She has chosen that date, given that they stopped occupying the same bedroom then. It was also the month, she says, that her Husband removed her name from the parties' joint VISA and told her "you're done." The Wife does acknowledge that the Husband bought her a nice jewellery set in August 2008 for her birthday, which was actually in July. The Wife acknowledges that the family had a pass to Wonderland that summer but says it did not include her.

13 The Wife says he told her in November of 2008 and then in May of 2009 that she was "no longer my wife". She claims he said that he might go to Dubai or back to Egypt. In addition, in July of 2009, in the presence of her brother, the Wife says the Husband spoke to her and her brother offering 3 written options with respect to the settlement of their issues arising out of their marital breakdown. She also says that some time in 2009, the Husband removed her name from the payroll of his company," Dr. Farid Boutros Medical Corporation."

14 The Husband acknowledges that the parties stopped having sexual relations some time in 2009. The Wife, however, says it was in 2007.

15 The Husband sees the separation date as January 21, 2010 but is prepared to accept a January 31, 2010 date. He claims that the parties did not argue about separating back in 2008. They had just purchased their new home in February 2008. He says he purchased her an anniversary gift of jewellery at a cost of \$2,800 in August of that year. He acknowledges that in July 2009 they sought counselling about their marriage but says that the Wife never said to him that they had separated in July 2008. He says they first spoke about separating in February/March of 2009. He agrees that the Wife got in touch with a counsellor at some point and may have gone once. There were verbal accusations in the house between the parties, and by December 2009, the Wife had retained counsel who had written to the Husband's counsel about their marital situation.

16 On December 18, 2009, the Wife's counsel, Mr. Burke, wrote to Mr. McInnis, the Husband's counsel and asked him to work on a Financial Statement, and to pay the parties' reasonable living costs as well as something towards the Wife's legal fees. The Husband acknowledges that his counsel replied to the Wife's counsel on January 28, 2010 to say that the Husband intended to move forward on the separation. This is why the Husband chose the end of January 2010 as the separation date. He believes that earlier there had been a chance of reconciliation but that was gone by the end of January 2010.

17 The Wife, at one point in time in her Financial Statement said that the date of separation was September 2009. After the Application was issued she changed her mind and decided that the date was now July 2008.

18 The Wife's brother, Hany Isbat gave evidence at Trial. He is an IT Manager with RBC, and he has worked for 27 years with the bank. He says he has a close relationship with his sister. There are no other siblings. He says he had a conversation with both parties at the same time in August 2008. His mother was there also and there was a discussion about the parties' situation and marriage. She was unaware at this time, he says, that the parties were having matrimonial difficulties. He says the Wife told him that the Husband told her that she "was on her own." After that date, says the brother, he never saw them together at functions.

19 The brother confirms the Wife's version of the parties' separation. He agrees that he met with the Wife and the Husband with respect to options regarding their property issues in July of 2009. He says a presentation was made about property and an amount was proposed on paper. He says, "My impression was that the marriage was over."

20 The Husband acknowledges that he met with the brother and the mother of the Wife in August 2008 but it was merely a discussion about the children. He also acknowledges that in 2009 he severed the joint bank account with the Wife. He also removed the Wife's name from his medical coverage of the family. It took nearly a year to get the coverage reinstated at a cost of \$9,000 per year. This arose out of an interlocutory Court Order after separation. He also acknowledges that he took his name off the parties' joint VISA in 2009. The Wife says it was in 2008, however, neither presented evidence to show the date it became the Wife's account.

21 The parties were obviously having marital problems in 2008 because the Husband made a Will and signed it on November 26, 2008, leaving the Wife a half interest in the house and his sister, not his children, was the alternate beneficiary of assets. This does not, however, mean they had separated.

### **The Child-related Issues**

22 The parties are in agreement that they shall have joint custody of Jacqueline, who is to be allowed to have input into her access with both parents. Each agrees that there will be a space for Jacqueline in whatever residence each occupies. Jacqueline has one more year of high school before she goes on to post-secondary education. She is free to make her own arrangements with both parents.

23 The parties are, however, far apart on what should be done with custody and parenting of the twins. They are far apart on the issues of the twins' education, medical treatment and counselling. The Wife sees herself as always having been primarily responsible for raising the children, given that the Husband has always worked long hours at the hospital, including extra "on-call" time. She says she has devoted herself to the care of the children and the household.

24 When the twins were born, the Wife says that they experienced developmental difficulty, academically and socially. She says she kept after the Husband to have the twins tested. She was of the view that since the boys did not speak until they were two years old, that they were affected by something on the autism spectrum. The Husband thought this was wrong.

25 The Husband did, however, arrange for the twins to be seen by Dr. Cartagna, the head of paediatrics at Scarborough General Hospital ("the Hospital"). The neurologist said that there was no spectrum of autism. He said the twins suffered from severe speech and developmental delay.

26 It was the Wife's concern that the children receive special funding for help, which would be available in the public school system for special support for the twins. That funding would be given if the twins were classified as autistic. Dr. Cartagna said the twins required occupational and behavioural therapy and the parties worked towards this.

27 The Wife says that when the twins were not showing any progress in the public school system, so she searched out other alternatives. She says that she found the Merle Levine Academy ("the Academy"). The children were enrolled in the Academy and began making progress at last. They had hearing deficiencies, as well, that were aided by special devices used by their teacher in the classroom, which also greatly helped them.

28 The Husband looks forward at the progress the twins have made since they were moved to the Academy. Their Report Cards show great progress. While they are now functioning at a Grade 5 level academically, their math is somewhat below that level. Many pictures were entered as evidence showing the twins progress socially and in sporting activities. The Husband is an excellent soccer player and he has the twins enrolled in two soccer clubs, where they do well. He sees a significant level of maturation in the twins since they enrolled in the Academy.

29 In the beginning of their enrolment at the Academy, the twins had one teacher to themselves for the first year. The cost for that year was \$70,000. They were then moved into a class of 9 at \$44,000 each and in September 2012, they are enrolled at a cost of \$45,000 each.

30 The twins' Report Cards show the significant improvement from 2010 to 2011. In 2010 Zachary's Card says the he sometimes does not make the right choices and he is still easily distracted and "struggles with recalling information." The 2011 Card says that he is "working independently at a grade three/four level in his academic skills. Continued language



therapy is imperative.”

31 Jacob’s Report Cards say similar things to those found in Zachary’s Cards. The teacher says that Jacob needs to use his words more often. His Card also says that while Jacob “still struggles with sudden changes to his environment or schedule, when it is explained to him why these changes happen, he is now much more understanding and accepting of change. Jacob’s reading fluency is improving at a steady rate and he now “takes pride in his typing.”

32 The twins, says the Husband are “very neat and organized”. They like things to be in a certain order, consistent in what is done and efficient in their manner. He says that the Wife is too concerned about how the twins’ orderliness in where and how their possessions are organized.

33 The Wife denies that she ever said the twins were autistic. If the twins were diagnosed as such, there was funding available in the public school system to get teaching help to assist the twins in school. She points to the fact that Dr. Cartaga signed a form saying that diagnosis was “tentative”, so that they could get help in the school. She says, “I didn’t care about a label, I just wanted them to receive services.”

34 It is clear that the parties had different viewpoints on how the twins should receive their education. The Wife says she tried to get the Husband to obtain further valuations of the twins with Dr. Cartaga but he refused to do so. The twins did receive some speech and language therapy while they were at St. Gabriel’s School from Ms. Aboubakr but it ceased in 2006 when the Husband wanted it stopped. The Wife agrees, however, with the Husband that there was no socialization for the twins at this school.

35 The Wife found the Merle Levine Academy for the twins, which has resulted in their marvellous progress academically, with the Husband encouraging them in their achievements in soccer. Jacqueline was involved in soccer and also in swimming. The twins also went to camp around 2008/9 and managed to cope with the change.

36 The Wife expresses concerns about the twins being unable to readily adapt to change and how they should not be pushed into new activities or moves that will aggravate and upset them, as they were diagnosed as moderately developmentally delayed. The Wife says that the twins do not like to have changes of clothing, or changes in their routines. She worries about up-rooting the twins from their current home, and does not want it sold for that reason. She also worries about the twins being “pulled out” of their schooling with the Merle Levine Academy, although the Husband says in his evidence that he has no plans to do this.

37 The Wife sees Zachary as the more sensitive of the twins and she concerned that he seems unhappy about the divorce proceedings and appears frustrated in life. He stayed home on a trial basis for three months. I assume he received schooling at home.

38 Ms. Jehan Aboubakr (“Aboubakr) gave evidence at Trial. She has been a speech and language therapist since 1985. She received her education in Cairo and came to Canada in 1985. She received a call from the Wife and became involved with the twins in January 2005, when they were 5 years old and she stopped treating them in 2006 when they started school. The school, she says, had access to a speech pathologist. The twins were brought back to see Aboubakr in 2009 and she says, “they remain my clients.” She confirms that the twins were not on the autism spectrum scale. She sees them separately for one hour every second week.

39 Aboubakr says that the Wife brings the twins to the sessions and the Husband never comes. She says the sessions have helped the twins make progress in their speech communication. She says that early on in the therapy, she conferred with Ms. Levine of the Academy. By July 2011, she said she thought Zachary was losing his “grip”. While she says she does not do formal reports for parents of children she works with, she did one for the Wife in August 2010. She says the Wife wanted her to put something in her report about the twins’ ability to adapt to transition and their ability to adapt to change.

40 Aboubakr says she spoke to Brown on two occasions about the twins, but he “misquoted her” about the Wife’s over-protectiveness. She says she was terminated in November 5, 2011 by the Husband, who had been observing the twins’ session. She identified the Husband’s e-mail to her, which said, “There will be no future/further booking for Zachary and Jacob Boutros.” This was in response to her e-mail to him of November 4, 2011, in which she set out 5 things that disturbed

her about his unannounced appearance at the twins' session on the 4th.

41 Aboubakr did not fare well under cross-examination about her report and the session. Although she denied that her report "to whom it may concern" was going to be used by the Wife for litigation purposes, I am not convinced, as it was filed in the Court proceeding and was not seen by the Husband for 6 weeks after it was sent to the Wife. She eventually said she would not have sent it had she known it was going to be used in litigation.

42 The twins are now receiving therapy from Robyn Weddepohl, an Adolescent Psychotherapist and Social Communication Therapist. The Husband sees them as progressing much better than they did under Aboubakr. In an e-mail to the parents, dated November 17, 2011, she asks them to keep her informed in advance when they are going to inform the twins of the divorce and changes in their schedule. She says they will need help in understanding this in advance and some social stories to describe to them what is happening. She says from her experience, in dealing with situations like this, it is best to "find some balance and some consistency in parenting styles as well as to have ongoing communication with any involved with your children."

43 The Wife has accepted the fact that the Husband has moved the twins to a new therapist but seems to prefer Aboubakr's method of dealing with them, which the Husband sees as juvenile and not in keeping with the twins' age and developmental skills. The Wife, without consulting with the Husband asked Aboubakr to prepare a Report to update her on the ability of the twins.

44 While separated but living in the home together, the parties did not see eye to eye on the raising of the children. They do not communicate well, as can be seen by the fact that the Wife hired Ms. Aboubakr to prepare a report without telling the Husband after he had "fired" her earlier from dealing with the twins. The Wife, when Jacqueline injured her finger playing soccer, did not take her to the Husband's hospital but went to another Emergency hospital ward instead.

### **The Barry Brown Report**

45 On December 29, 2010, Mr. Justice Czutrin ordered that an Assessment pursuant to S.30 of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12 be undertaken by Barry Brown. He said Brown was, on a focused basis, to assess and report to the Court on the needs of the children, particularly with respect to an appropriate residential schedule for the children and appropriate transitioning to his recommended schedule.

46 The Brown Report is dated October 18, 2011. Brown also gave evidence at Trial. Brown points out on p. 5 of his Report that the parents are far apart on how they see the parenting schedule operating. The Wife, says Brown, wants the final decision-making authority in all areas, whether medical/professional, education, activities and religion in the lives of the twins, in the event the parties disagree on what should be done in these areas of the twins' lives.

47 Brown provided on June 9, 2011 to the parents, a "Parenting Schedule Proposal", which sets out a four stage schedule to be followed by the parties. Attached as "Schedule A" to this Judgment is the Proposal. For example, in Stage I, the parties are to follow a set-schedule for three months. It begins with the twins residing with their father, every Saturday and Sunday, from the morning at 10:00 a.m. to the following dinner at 7:30 p.m., allowing for variations on the starting time and ending time but for the full two days. The twins would also reside in the care of their father two weekday afternoons/evenings such as Tuesday and Thursday from 4:00 p.m. until after their dinner to 7:00 p.m. The parties would then meet with Brown to discuss the status. If this stage worked, the parties would move to Stage II.

48 Stages II, III and IV sets out what parenting the Husband shall do and on what days and for what length of time, working up to the twins residing with the Husband every second weekend from Friday to Monday morning, and with one overnight per week. The balance of the time the twins would reside with the Wife.

49 Brown's full Report focused specifically upon the matters of, "Custody, and a responsible Parenting Schedule" on behalf of the twins. He observed the twins at the Academy, interviewed the parties and their counsel, the twins' teachers. He did not, however, interview the twins themselves. He notes that the Wife sees her mother as the "substitute caregiver" instead of the Husband. He says the Wife rejects the Proposed Parenting Schedule.

50 Brown says on p. 6 of the Report that the Husband wants the twins to “continue to mature in adequately balanced care with their father and mother, much in contrast to the wishes of their mother.” He says the Husband sees the Wife as being overly protective of the twins and has not been sufficiently firm with them. He feels that his Wife is keeping the children “in a bubble” to protect them. He believes in time the twins will be absolutely normal.

51 It is the Husband’s wish that eventually both parents will have equal parenting time, yet he recognizes at this point that the twins have not been away from the Wife for any overnight period. The Wife does not see the twins as having any overnights with the Husband “for the foreseeable future.” She outright rejects Brown’s whole proposal, including Stage I.

52 The parties are far apart on what activities they think the twins should be enrolled in or allowed to participate in. The Husband wants the twins to be active athletically and they are enrolled in two soccer clubs. The pictures shown to me, with the twins in their soccer gear, in my view, exemplify how much they enjoy the sport of soccer. The Wife, on the other hand, allows the twins to watch a great deal of television, and programmes, which the Husband says are for younger children and not age-related for the twins.

53 Brown, in interviewing the twins’ teachers, says the teachers agree that the twins have real potential, but see the Wife as being overly protective and needs, “another *raison d’etre*”.

54 Brown gave evidence at Trial. He says that the Husband focuses more on the twins’ achievements and the Wife less so, in that the Husband sees the twins as being able to manage change in their lives, which they did when they moved schools, went to summer camp and moved homes. He sees both parents as “astute and devoted” to their children and recommends that they share joint custody of the children.

55 Brown sets out on p.p. 21 and 22 of his Report how custody should operate between the parties and how they should co-operate in making any major decisions in the twins’ life. He recommends that if the parties disagree regarding major educational decisions, they should consult with an impartial third party professional.

56 Brown, at Trial, says that the twins’ soccer coach sees them capable of adapting to change, noting that they were able to go to camp on a bus instead of being driven by a parent. He says that the twins’ teachers see them as more capable of change than does the Wife. He sees the children as progressing in a socio-emotional way and in their ability to extrapolate their thoughts. He says the twins had been at AB and now have progressed to C. He read in reports that Zachary is a “natural athlete”.

57 When asked about the four stages of parenting as set out in his Report, Brown says that it allows the children to acclimatize to changes and be comfortable with the changes. It is also a check to see how the twins progress at each stage involving them and what progress is made. He sees the plan as “cautious and conscientious”, that is, if the twins are not progressing as quickly as the stages are set out, there is the flexibility of the twins not moving to the next stage until they are comfortable with it. He also says that the twins need on-going consistency.

58 In cross-examination, Brown confirmed that he did not interview the two parties together but did meet them together at the disclosure meeting. He says when parents are at opposite poles regarding issues, it is not purposeful to try to interview them together. He says he is aware that the Wife does not want the twins to have immediate overnight access with the twins when any parenting schedule is put in place. He says that the Husband had assured him that he would be available to care for the twins when they were to be with on overnights. He agrees that there is always the issue of a physician’s availability when “shifts” are set up in emergency or on-call situations. When he was cross-examined about the Husband’s work schedule, Brown finally said that he set up the schedule so as to ensure that the twins had time with their father without the mother being present.

59 Brown also said he is aware that the Husband thought the Wife did not encourage the twins to socialize enough and allowed them to play with younger children instead of children their own age. He acknowledges that he was surprised that the Wife wanted sole custody of the twins. His words were, “I was surprised at educated people thinking this.” He also acknowledged that the Husband had terminated Aboubakr’s speech therapy sessions with the twins. He did not interview Aboubakr but did speak to her by telephone.

60 Brown acknowledges that there is a certain amount of discomfort in a home such as the Bourtras home where both parties have remained under the same the same roof for an extended period of time, such as the current situation with the parties. He is also aware that the Husband taped the Wife's verbal anger with him while they occupied the home but says he does not have a problem telling both of them to carry tape-recorders, in the circumstances. What he did say, however, that the parties do not have to be in each other's fan clubs to maintain a parenting plan for the twins.

61 Brown refused to answer questions relating to the parties' financial matters, saying this was not his area set by the Court. He did say that all the children were bonded to both parents but the Wife was overprotective of the twins in not providing more firm and forceful directives to them and, not providing them with sufficient opportunities outside school.

62 The Husband has accepted all of Brown's recommendations and the parenting schedule he has produced for them.

63 The Wife totally rejects every aspect of the Brown Report. She says there are a number of factual errors in the Report and that there are a number of issues not raised in the Report at all. She says these include the following:

1. The Husband's denial of the twins' abilities and delayed development.
2. The blame the Husband places on her for all things wrong in their marriage and her feelings about all of it.
3. His failure to mention an exact diagnosis of the twins' delay problems and what their abilities are, as this all goes to the issue of custody of the children. She says, "the Father of my children is not accepting their disabilities."
4. He omitted all the pertinent information I have about the children in his Report.
5. There are factual mistakes such as referring to her mother as her sister, about mentioning her high blood pressure but not the Husband's Mediterranean fever.
6. He mentions her over-protectiveness yet the Husband says I have to stay and look after the twins.
7. She says, "I find everything if false" in his Report.

64 It is the Wife's position that the Husband does whatever he wants, and that prior to 2008 she could at least approach him but after 2008, she could not.

65 When asked what she thought about Brown's recommendations on p.21 and 22 of the Report, the Wife did not agree on the Joint Custody recommendation under 1(a). She agrees with 1(b) that both parents co-operate and confer on major medical decisions, with 1(c) that they have equal right to confer with physicians and professionals about the children, with 1(d) (e) and (f) regarding second and third medical opinions, medical emergencies and major educational decisions. She does not agree with 1(g) that should they be in disagreement regarding major educational decisions, that the select and meet with a neutral third party. She says she should be able to make the final decision in this regard. She says that while they should be able to agree on this, "I need to have some security against a powerful person like the Father." She agrees with 1(h) and (i) about receiving mail from the schools and conferring about children's extracurricular activities. She does not agree with 1(j) where Brown recommends that if there is a disagreement about these activities that they agree on a mediator/arbitrator to address the matter to conclusion. She says she should have the final decision in this regard. She does not agree with 1(k) since there is no parenting schedule in place yet. She agrees with 1(l) and 1(m) respecting the children's religion and the Christian faith and they equally participate in any rite of passage.

66 When questioned about the Parenting Schedule recommended by Brown, the Wife disagrees with the whole plan and every stage as set out in the plan. She says the Husband currently still resides in the home and so has no place for the children to go to as in the plan. She disagrees with him having them every weekend. She says she would "assist him" if he could not keep a schedule but she prefers to have her mother help if she needs someone to cover when the children are with her. She does not believe that the Husband will be able to keep up with any sort of schedule, or drop-offs and pick-ups. She says the children need consistency and the Husband will not be able to accommodate himself to such a schedule. She says he knows that he cannot give an unrealistic amount of time devoted to the children, and to give him an entire week with the children is

unrealistic.

67 The Wife rejects every Stage of the parenting plan and says that Brown “does not put my ideas forth “in his Report. The Husband, she says, should not have overnights right away but she is not opposed to two nights per week for visits but not overnights. She would be prepared to agree to every second weekend access for the Husband but not right away.

68 The Wife says she never received a copy of a Bill from Brown and does not think she should have to pay half of it, despite the Court’s Order that she was to do that. She says she does not accept the Report and did not want Mr. Justice Czutrin to the make the Order he did that such a Report should take place.

## **The Financial Issues**

### ***1. The early years***

69 During the Husband’s early years as a doctor specializing in endocrinology, he had a modest income of around \$45,000 in 1997 to \$55,000 in 1999. In 2000, the year the twins were born, the Husband was not earning enough to keep the 5 family members and so he took a locum with Sunnybrook Hospital to earn more money. He did continue with work, however, at U of T during that period. In 2001, the Husband earned \$158,090.05, mainly through work at the hospital.

70 The Husband’s income began increasing when he joined the staff at Scarborough General Hospital and earned the following:

2002 - \$220,510

2003 - \$210,312

2004 - \$253,558.14 plus other income for a total of \$377,425.33. During this period he began to income split with the Wife receiving \$7,491 allocated to her that year

2005 - \$294,721.70 plus other income for a total of \$438,450 gross income

2006 - \$248,173.01 with a gross income of \$315,215.18, with the drop in income this year caused by less work due to an employee strike in the hospital. From this year on, there was a group of “on call” doctors and funds from the Ministry to fund locums but all group money went to the hospital and it paid for the locums

71 In 2007, the Husband became Chief of the Hospital at a greatly increased amount with extensive responsibilities. He sees this as a natural progression of his work and the opportunity to put some of his ideas into place for better administration of the hospital in general. With the two jobs, the Husband’s income increased to \$646,987.62 with \$23,094.70 as “solo”.

72 In 2008 those income figures jumped to \$746,221.61 plus solo of \$27,283.64, and in 2009, \$639,326.34 plus solo of \$10,176.74. It was at this point, that the Husband says he was worrying about the twins and the fact that they were not doing well in the Catholic School system. He says that as Chief of Staff, his duties had expanded, and he learned that there was only going to be one Chief for two hospitals (the Grace Hospital was to be included with Scarborough General). He says he had accomplished what changes he had wanted and had added to the staff a number of new doctors.

### ***2. The current years***

73 In 2010, the Husband’s income reduced to gross income of \$524,000.43 plus solo of \$356.62. This was reduced further in 2011 to gross income of \$506,924.08 with no solo income. He denies that there was any intention on his part to reduce his income. He says it was not until January of 2010 that the parties separated.

74 During the 2012 months before the Trial began, the Husband’s monthly income fluctuated from between



approximately \$57,200 to \$40,100, depending on the amount of time he had to spend preparing for Trial. Dr. G. Nagai, the current Chief of Medicine sets out in his letter of February 6, 2012, that there are no additional monies being paid in 2012 except for on-calls and confirms the Husband's evidence that these go back to the Hospital to be paid by it out to the doctors working the on-calls.

### ***3. The Paula White Report on the Husband's Income***

75 Paula White ("White") of Duff & Phelps prepared an Income Determination for the Husband's 2010 Income. Her Report is dated November 25, 2010. She has determined that the Husband's income for Guidelines purposes is \$366,000.

76 White analyzes the Husband's private corporation financial statements for his medical practice for the years ending July 31, 2007 through 2010, being the date he says the parties separated. This time period includes the two years the Husband spent as Chief of Staff, noting that he resigned as such in September 2009. She also notes that the Husband's income decreased after his resignation.

77 In order to comply with the *Guidelines*. White added an additional \$80,000 to the Husband's income based on her estimate of personal benefits he received through the operation of his company. These discretionary expenses included advertising and promotion, donations, meals and entertainment, and telephone expenses for the daughter. White added back 100% of these expenses. With respect to car insurance and vehicle use, White added back 75% of these two items as personal use. These figures come to \$42,823, and with a gross-up for income tax of \$37,071 added to that figure, the add-on is \$79,894 or rounded up to \$80,000. Therefore White says that the Husband's income for 2010 is \$446,000 for *Guidelines* purposes.

78 White was a witness at Trial. She is both a Chartered Accountant and a Business Valuator. She is an expert in the area of income estimates and approximately 80-90% of her practice over the past 5 years relates to family law matters and *Guidelines* support and income calculations. She says that during 2011 she was engaged to do 25 to 30 valuations in that year. She has been active over the past 10 years in this field. She provided two reports for the Husband.

79 It is White's evidence that the determination of the Husband's income is simple, given that he only has one main source of income, namely OHIP payments, which flow through his private corporation. She says that the Husband, having incorporated his practice in 2009, gave himself an income tax advantage, whereby his income in the corporation is taxed at 16%, whereas direct income paid to him is taxed at about 46%. When the income is flowed out to him, it is personally taxed at 32%, thus the tax saving.

80 White's second report dated October 13, 2011, analyzes the Husband's income for 2011. She says it is \$364,000. White used the same method in 2011 for add-backs as she used the previous year. With the gross-up, these add-backs came to \$85,899. When this is added to his income, as calculated, his income for *Guidelines* purposes. When cross-examined about the difference in income in these 2 years from those when he was the Chief of Medicine, it is White's view that in those years the Husband's work as constituted was far over and above what he would have been working when not a Chief.

### ***4. The Husband's Corporation***

81 The Husband incorporated his private company on August 1, 2006, in order to take advantage of the corporate tax rates. From then until the parties' separated, the Husband had the company purchase two condominiums and a 2008 Ferrari automobile. The Financial Statements show the value of these assets as \$1,521,041.02, subject to debts of \$1,011,189. The medical practice, which is part of the company has no value says White. It simply funnels the OHIP payments into the company and the company pays the Husband what it wants to pay him. Anything not paid out stays in the company as retained earnings.

82 The two condominiums were purchased in 2009. They are both in the same building at 650 Sheppard Avenue, East. Unit 423 was purchased for \$340,000 on October 5, and #702 at \$640,000 on September 3. The Bank financed most of it by way of two mortgages totalling \$980,000. The smaller unit, #423 has been rented for about \$1,500 per month and is currently rented at \$1,800 per month, with the lease extended to June 30, 2012.

83 The larger unit #702 has never been rented due to problems with the ceilings, since it is a penthouse. The problem may be a structural defect, says the Husband. It is currently listed for sale.

84 The Ferrari was purchased in November 2008 for \$233,355. It was not \$206,500 as the Husband first suggested. He acknowledged on cross-examination that he was allowed a trade-in of \$37,000 but paid GST on the lower amount, bringing it up to \$233,355 as noted in the cancelled cheque. On the other hand, had there been no trade-in, with taxes it would have cost \$280,000. The Wife was shocked that the Husband had purchased a Ferrari, when they had just purchased a house subject to a mortgage of about \$2,000,000. She says he left pamphlets around the house about the Ferrari and when she asked why he bought it, she says he said, "I deserve it." In addition, says the Wife, the Husband in May of 2009, leased a Porsche.

85 The company also holds a GIC, which had a face value of \$377,163.73 on January 2010. There was \$3,877.29 in the bank account and loans and a line of credit totalling \$1,011,189. The Ferrari was sold for \$160,000 on January 20, 2010 for \$160,000. There was a \$10,000 commission payable to the broker who sold it. The money from it went into the GIC account, says the Husband. Of that amount, the Husband says he paid out \$128,000 for various legal and household expenses.

86 In 2009, the Husband also leased a Porsche with a 5-year lease. The company made the lease payments and paid the insurance for it. At this point, the Wife was already driving a leased BMW X5, again with the expenses paid through the company. The Wife eventually traded it in for a smaller version. The Husband also utilized a Line of Credit through the Bank starting in July 2008, which today is up to approximately \$249,000.

87 The Husband also attended Conferences, the expenses of which were paid out of the company. In 2008, he went to one in Germany and took a side trip to Italy for a few days. After he returned, however, he opened a new VISA account in his name alone, leaving the Wife with their joint one.

88 Larry Himelfarb C.A., the Husband's Accountant gave evidence at Trial. He has prepared the Husband's Income Tax Returns since about 2001, and now does the company's Financial Statements as well. He says he has many doctor clients and is used to them bringing in documentation to back-up bookkeepers' data kept by the doctors. He met with White and Rosen the Wife's valuator. Himelfarb acknowledges that he does not examine each chit for every expense. Instead, he examines the bank and visa statements, using a General Ledger and other ledgers to prepare the Financial Statements.

89 Himelfarb confirms much of White's evidence about the assets, income and expenses of the company. He also says that there is no value to the Husband's medical practice, since there is a shortage of doctors so they do not need to buy patient lists.

90 Himelfarb acknowledges that he also prepared the Wife's personal Income Tax Returns over the years. He says he normally dropped their Returns off together but in 2010, he personally dropped the Wife's off to her for the 2009 tax year. He also confirms that the Husband's company did income splitting with the Wife of a certain amount of corporate income. When cross-examined about why the company was not fully audited, he said that he had never seen a medical practice where that had taken place.

### **The Wife's Valuator's Report about the Husband's Income**

91 The Wife hired Lawrence Sydney Rosen ("Rosen") as her expert witness and forensic accountant. He has appeared many times over the years in this role. He appeared first in a matrimonial case in the 1980's and has appeared about 3 times since that date in matrimonial matters. He says he has looked at the Child Support Guidelines but could not recite the sections. He agrees he spoke to Himelfarb about the Notice to Reader in his report, which many use in the preparation of tax returns.

92 Rosen says that he did not have much to work on as there were many uncertainties in the statements and there was not much supporting information available. He was unable to figure out the various transfers back and forth in the Husband's banking records. While he agrees he received some basic information, he says Himelfarb had no back-up materials.

93 Rosen said he has had a lot of doctor clients and was concerned about the lack of Notices of Reassessment for the

Husband's income tax returns, and no review engagement letter to show what was required in the White Report. He was not able to resolve the bank accounts due to lack of information, and there was no data on the ownership of the Ferrari. He said he was not able to resolve what was happening with the monies and transfers from Egypt. He said the Husband's professional records were better than his personal ones. He said he did not have enough detail about the related party transactions and the income splitting and he was not comfortable with Himelfarb's answers. He says he did not get answers nor did he see a final set of books.

94 Rosen says a Summary of missing documents was sent out by counsel to try to get further disclosure. Some further disclosure was made but not enough to satisfy Rosen's concerns. He had many concerns about the RBC records regarding the Husband's sister's account and transfers. He could not determine if the money remained in Canada when the account was transferred to the sister's name only. He also said the same problems were experienced by him trying to trace the parties' two lines of credit and where the funds were being moved to.

95 On P. 2 of his Report dated January 16, 2012, Rosen states:

Separate books of account and financial statements for Dr. Boutros personally, were not prepared, so as to enable us to trace financial inflows and outflows among the related entities. The external public accountant did not conduct an audit or a "Review Engagement" of the medical practice, or trace back to what are typically called "source documents", or third party evidence.

This statement shows the difficulty Rosen had in trying to determine what the Husband's true income is. On P.7 of that Report, Rosen says, "I am not in a position to render a professional opinion on Dr. Boutros' financial transactions in recent years and his financial worth and income and status."

96 Rosen also said he could not figure out why the Husband did not pay down the lines of credit with the GIC's in his company. He also found it difficult to trace the losses on the two condominiums owned by the Husband's corporation. He expressed concern about the Husband's significant decline in income over the last few years. He agrees that the Husband's personal use of the automobiles was much more than what was used for business purposes. At one point, three vehicles were being used. In sheer frustration, Rosen said, "too many loose ends on this whole situation." He questioned why the Husband was paying \$99,000 per year in insurance of various sorts.

97 Rosen prepared a second Report dated March 15, 2012. On p. 2 of that Report, Rosen says "I have not been provided with sufficient information so as to be able to assemble a thorough, reliable, credible and complete tabulation of Dr. Farid Boutros' income and net asset structure and financial picture." He says on p.5 that invoices for the medical practice have largely not been provided nor have the accounting records (books of account). OHIP summaries were provided.

98 With respect to the matrimonial home, Rosen says that the large mortgage on it requires a comprehensive explanation, given the high interest costs involved, and the existence of other assets that generate no or minimal cash receipts, which could have been used to reduce the mortgage.

99 Rosen says on p.10 that in his opinion, the 2010 and 2011 Duff and Phelps calculations documents cannot be relied on. On p.14, he sets out the figures provided by the Ministry regarding income over 2006 to 2011. Rosen shows how the expenses deducted are broken down into salaries, wages and management fees, and subtracts those from the total expenses, to show that in 2011, there were other expenses of \$248,293 from what is the Husband's really sole source of income. He does the same type of calculation on p. 16 for the condominium expenses. He says roughly \$60,000 to \$90,000 could be added to White's calculation of income for in 2011 for Dr. Boutros.

100 On cross-examination, Rosen said that "What may be adequate to White, is not adequate to me. My conclusions after talking to her is she is unfamiliar with the facts."

101 Rosen, on p.p. 17, 18, 19 and 20 of his Report, outlines several scenarios that could be looked at to help determine what the Husband's true income is for purposes of child and spousal support. In one scenario, Rosen added back \$265,000 to the income the White Report said was the Husband's \$364, 000 income for those purposes in 2011. This would bring the income to \$629,000. Another scenario would bring it to \$564,000.

102 When White was called in Reply after Rosen was cross-examined, she said that she has never seen audited financial statements for a medical practice. No one does it, she says. She says one cannot audit things like car expenses and vehicle personal use versus professional use. You rely, she says, on what data you are given by the doctor about this. She says she did not see the lack of perfect bank statements to be a hindrance to her analysis.

### **The Husband's Joint Bank Account and Investment Account with his Sister**

103 The Husband's sister Nizia and her husband, live in Egypt. They were married there in 1995. The sister is a pharmacist and her husband a businessman with some assets in real estate. They have two children. At some point around 2003 or 2004, the couple began to apply to emigrate from Egypt to Canada, since her parents had moved to Canada under the sponsorship of the Husband, so they were the only remaining family in Egypt.

104 In 2006, the sister opened up a bank account. She received advice that since 9/11 foreigners could not have bank accounts solely in their names in Canada. The Husband says the sister was advised to put the account in her name and that of the Husband at the RBC. This evidence is confirmed by Michael Stoltz, a representative of RBC, and a witness at Trial. A letter from RBC sent by Elaine Sequeira dated August 5, 2011, to the Husband, sets out the history of the account and the transactions made therein.

105 The Wife has questioned whether the Husband had a real interest in these funds and whether monies had been sent by him to his sister to be invested together. A total of approximately \$432,380 U.S. came into the account during the 2006-2007 years. RBC says that several GIC's were invested in over the years. The Husband denies having any interest in any of these funds.

106 There is no evidence before me to show that the Husband had any legal or beneficial interest in these funds and no evidence to prove the Wife's suspicions that the monies belonged to anyone other than the sister. The Husband produced his bank statements. None showed any transfer of funds into the joint account. The Wife, however, insists that there is no way the sister could have accumulated all that money at that time, given her age and given what she would be paid as a pharmacist in Egypt. She believes all the money belongs to the Husband. She also believes that when the Husband went to Germany and Switzerland while attending a Conference in Germany, he transferred money into Swiss banks.

107 On cross-examination, the Wife agreed that she has no direct information or knowledge to refute that evidence given by the Husband at Trial that his sister and her husband own a property in Cairo and that they have 2 beach homes they rent out.

108 Michael Stoltz gave evidence at Trial. He became the Husband's account manager at RBC in 2006 and he met with the Husband and the sister about opening the joint account. He confirms that all funds were transferred to Canada from Egypt. He says the account was opened using the Husband's social insurance number, since the sister was a non-resident. It remained in the joint names until February 2008, when the account was solely in the sister's name. He says he understood that the funds were the sister's and her husband and he had no reason to think otherwise. He says that there is no merit in what the Wife is saying and in what she wrote to the Bank.

109 There is also a statement produced by RBC dated January 31, 2010, which shows that there were additional amounts added by the sister in 2009 and 2010. The sister and her family did stay in Canada for nearly a year in 2009. The family returned to Egypt in October of 2010 but may return to Canada, in the future, says the Husband.

### **The Matrimonial Home**

110 The parties purchased their first matrimonial home on Citation Drive for \$335,000. It was sold for \$780,000 when they purchased their current home. The mortgage on that home had been paid off, says the Wife, in 2006. They moved into their current home on 89 Forest Grove Drive in early 2008. The Wife questions why only \$600,000 of what they received on the sale of the previous home went into the new home. The Husband says the balance went to pay the real estate commission, the land transfer tax and about \$20,000 into repairs. He says all the money is accounted for.

111 The new home was purchased for \$2,620,000. It is subject to a \$2,000,000 mortgage, which eventually in the Trial was explained to be really two separate mortgages of \$1,000,000 each. The parcel register shows the transfer of the house into the parties' two names and both are registered as mortgagors. On the Register, the charge seems to be only one charge, with RBC as the mortgagee.

112 By July 2009, the Husband had taken \$100,000 from the parties' Line of Credit against the home. The Wife says she knew nothing about it. The Husband says he used it to fund the twins' tuition fees at the Academy. The Wife believes that the Husband is dissipating the parties' assets. She says that all information by mail goes to the Husband's office and does not come to the home.

113 The Wife twice moved before the Court for exclusive possession of the matrimonial home but these Motions were adjourned, as the Brown Report was late in coming. The parties, when the Trial came on before me, were both still occupying the home but living separate and apart in it. The Husband has asked for an Order that the home be sold, and the Wife wants exclusive possession of the home for herself and the children.

114 The Wife says the Husband wanted to buy the new house in 2008. She said he made it clear that they must move to the new home. She thinks he did this intentionally and then put the children in an expensive school at a cost of \$80,000 and then put the house in their joint names, all a part of a plan by the Husband. He then took money from the joint line of credit secured against the home to pay for the education, without her consent.

### **The Wife's Financial position**

#### ***Before Separation***

115 After the twins were born in 2000, the Wife never went back to work. Her Husband, she says, told her that "this is your full-time job now", that is raising the three children. She eventually received a severance from the government in July 2005, after having been on a leave of absence. Her severance package, she says, was worth about \$10,000.

116 The Wife's Income Tax Returns show the following as her gross earnings:

1. 2005 - \$46,530
2. 2006 - \$50,814
3. 2007 - \$60,000
4. 2008 - \$60,775.16
5. 2009 - \$770
6. 2010 - \$769

The Income Tax Returns are very helpful. Firstly, they show that the Husband was income splitting with the Wife, as all her T4 income was from his private company. Secondly, they help the Court in determining what the date of separation was between the parties. In both 2008 and 2009, the Wife states on her Return that her status is "married". It can be seen that in 2009, there is no longer any income splitting taking place, and by 2010, the Wife's status is said to be "separated".

117 The Wife says that her Returns were always prepared by Himelfarb, her Husband's accountant. He always gave the copies to the Husband, she says, except in 2010, when she called and asked him to do her Return that year. It is the Wife's evidence that although the income splitting took place on the Returns, she never received a cheque for the money alleged split with her on her Return. All money from that split, she says, went into the parties' joint account.

#### ***After Separation***



118 The Wife says that she had to stop using her VISA after separation, as the Husband objected to her buying a fur coat using the VISA card. She claims the coat was for her mother and she gave it to her. The parties' joint bank account was closed in April 2010 and the Wife opened her own account. She says the Husband only provided her with \$500 per month for a few months and then stopped. She says she has had to borrow \$80,000 (later shown as \$55,000) from her mother and her brother. She has not said how she intends to pay them back, nor has she produced any evidence of this.

119 The Wife then found out that the Husband had taken her off his medical coverage and she was without coverage for prescriptions she needed. It took nearly a year to get the Wife's coverage re-instated and the cost is approximately \$9,000 says the Husband.

120 The Wife also says that the Husband has reduced his life insurance coverage by \$2,000,000, which leaves her in a precarious position if he dies.

121 The Wife believes that the Husband was able to secret money away to perhaps Switzerland or in his sister's name, because she says they did not live a lavish life style, did not take vacations, did not go out for dinner or spend much on entertainment, and he did not buy her expensive jewellery. She sees them as mainly living in a frugal manner.

122 The Wife's Financial Statement sworn on April 24, 2012 shows her only income is \$500 per week or \$2,165 per month, being enforced by the FRO. The Husband pays all of the mortgage, utilities and housing expenses, taxes at \$7,219 plus car expenses of \$1,300 plus insurance of \$9,000 monthly. The Wife's expenses total \$2,012.77 per month. This includes \$800 per month for groceries and \$216.50 for meals outside the home. As well, the Wife pays \$300 per month on her VISA debt.

123 The house is in joint tenancy and has a value of \$2,600,000, or \$1,300,000 each. The Wife's one-half of the mortgage debt is currently two mortgages of \$444,357.71 and \$441,005.12. The Husband, however, keeps up the payments. There is also a joint line of credit against the home. The Wife's half is shown as \$114,550. The Wife has RRSPs of approximately \$156,000 but shows the loans made by her mother and brother as an \$80,000 debt. She has removed as her asset the jewellery she received from her mother and says she only has a lifetime use of it.

### **The parties' Net Family Property Statements**

124 The parties have submitted for the Court's consideration, two different sets of NFP Statements, one for the Wife's separation date of July 31, 2008 and one for the Husband's at January 31, 2010.

125 The Husband says he owes the Wife an equalization payment of \$176,000 as of July 31, 2008. From that amount, however, the Husband has deducted the sum of \$128,750, which includes \$122,500 under various Court Orders from 2010 to 2012 plus 1/2 of the fee for the final Brown Report of \$7,250. Thus the balance owing would be \$47,850. The Husband, using his valuation date of January 31, 2010, with the same deductions made, says the balance owing is \$69,973.37.

126 The Wife's July 31, 2008 Financial Statement shows her NFP as \$367,340.26 and as of January 31, 2010 as \$342,830.79. She then produced two separate NFP statements, with one labelled 100% and the other 50%. The first one shows the Husband as owning the sister's full investment account of \$476,923.63. It also shows the Husband's professional corporation as having a value of \$437,000. She gives herself a credit of \$49,342.70 for assets brought into the marriage. Also, the line of credit is not shown on this Statement. In this scenario, the Wife says the Husband owes her \$508,267.70 as an equalization payment.

127 The Wife's second Statement shows the Husband as owning 1/2 the sister's investment account or \$238,461.82. All other numbers remain the same. This one says that Husband owes the Wife \$454,984.08 as an equalization payment.

### **Child Support and Spousal Support**

128 Child support will be based on the Husband's income as I determine it for child support purposes. The main S.7 expense is the twins' tuition to be approximately \$90,000 in 2012. Jacqueline attends a public school and is going into Grade 11. She has certain S.7 expenses and the twins have soccer and camp. The parties gave little in the way of evidence about these expenses.

129 The Wife claims spousal support. She sees herself as having "basically nothing." She wants income attributed to the Husband in the amount of \$740,000, basing it on the time when he was Chief of Medicine. She believes that the Husband can earn far more money than he has been the last two years. She says he has full control over his own schedule and can take on more work. She says he is very ambitious and loves being a doctor. It seems she would like to see him apply again to be the Chief of Medicine.

## **Analysis**

### ***1. Date of Separation***

130 I have set out in this Judgment the parties' positions on what each sees as their date of separation. In weighing and balancing their evidence, I have come to the conclusion that the proper date of separation of the parties is July 2009. It was during July that the Husband says that they sought counselling about their marriage, having earlier in February/March first spoke about separating. There is no concrete evidence that the parties separated in 2008, even if they were no longer having sexual relations then, as the Wife says. The Wife did say at one point that the separation date was September 2009. Further, by December 2009, the Wife had retained counsel, thereby taking the positive step to say they were separated.

131 The Husband, in July 2009, severed the joint bank account with the Wife, thereby taking a positive financial step to become separate and apart financially. He had earlier taken his name off the parties' joint VISA, and stopped in 2009 income splitting with the Wife. These steps add to the parties' separation financially.

132 The Wife's brother's evidence is that he never saw the parties together at functions after the August 2008 meeting he and his mother had with them. It was not, however, until July 2009, says the brother, that a paper was produced about the parties' financial affairs. His evidence is that at that date, "My impression was that the marriage was over." There was no reasonable prospect of reconciliation after that July 2009 date.

133 I adopt the reasoning in *Oswell v. Oswell* (1992), 43 R.F.L. (3d) 180 (Ont. C.A.) and (1990), 28 R.F.L. (3d) 10 (Ont. H.C.), where the husband and wife remained in their home while separated under circumstances similar to the case at bar. One of the issues was the date of separation. There the Court took into account a number of factors, including when the parties split their financial affairs and sought legal advice, and when they no longer attended family and other functions together.

### ***2. The Matrimonial Home***

134 While I understand the Wife's reasons for wanting to remain in the matrimonial at 89 Forest Grove Drive, and be given exclusive possession of it, I find on the evidence before me that it is not financially possible. Since separation, the parties have both remained there until the Trial took place. In my view, the situation has become untenable, and while Jacqueline knows the parties are really separated, it is not clear just what the twins know about their parents' relationship. They must be told now in order for them to accommodate themselves to the changes, which will be coming in their lives.

135 The home was bought in 2008 for \$2,620,000 at a time when the Husband was earning more than he is now. The Husband was able to work a sweet deal with the RBC to provide the mortgage financing of \$2,000,000, which I am told was in two tranches of \$1,000,000 each or so, although registered as one mortgage on the title to the home. Further, there is also a line of credit for over \$127,000 registered against the home. The debt load for all these encumbrances is huge. The Husband may have had illusions of grandeur in purchasing such a home, as it appears that the couple did little in the way of entertaining or socializing from the evidence before me. In any event, the illusion cannot go on any longer.

136 The parties are joint owners of the home. The Husband says it is a *prima facie* case for a partition and sale of the

property under the *Partition Act*, R.S.O. 1990, c.P.4 ("*the Act*") as amended. See: *Silva v. Silva* (1990), 30 R.F.L. (3d) 117 (Ont. C.A.).

137 The Court does not have the power to order the Husband to transfer the property solely into the Wife's name. Even if it did have such a power, in the circumstances of this case, it would not be financially feasible. In these proceedings, the Wife twice brought on Motions for exclusive possession of the home, which did not proceed, and would have, in my view, been unsuccessful, given the parties' financial situation.

138 The Court has the ability to order a sale of the home for equalization purposes. The mortgage on the home comes due in 2013, at which time the interest rate will increase if it is renewed. The Husband has had to use the line of credit in order to fund the twins' private schooling at a cost of nearly \$90,000. The equity in the home, which is about \$600,000 without taking into account the line of credit, will all get eaten up if the expenses of operating and financing the home continues in this manner. This is not, in my view, a case where the Court would even consider vesting the title solely in the Wife's name.

139 The Wife has clearly said that she does not intend to work outside the home as the twins need her there. This makes it even more imperative that the house be sold to provide some liquidity to each party to start over again. In *Rosenthal v. Rosenthal* (1986), 3 R.F.L. (3d) 126 (Ont. H.C.) at p.137, the Court examines what happens when one party takes an unrealistic view about the results of marriage breakdown. On p. 137 the Court said:

Mrs. Rosenthal in her evidence stated quite clearly that in her view, her choice of living standards should not in any way be affected by her husband's situation. This, of course, is an entirely unrealistic view of the result of a marital breakdown.

The Court then went on to say that is axiomatic that two people can live cheaper together than they can apart. It also said it was apparent that the parties were living beyond their means before separation.

140 The Wife has suggested that the Husband simply move into the unoccupied 2-bedroom condominium owned by the Husband's corporation. This is not feasible, given that the Husband is trying to get deficiencies fixed by the condominium builder/owner. It also does not have 3 bedrooms, which will be required by each of the parties to accommodate the children on their residency with each parent.

141 The Wife also says that the twins do not cope with change and should remain in the home for a few more years. There is evidence they are coping with changes now, having moved once already.

142 An Order shall go under the *Act* that the matrimonial home of the parties be listed for sale before the end of August through a brokerage firm agreed to by the parties and with an agent they both can work with. Within a week of any impasse between the parties on the listing of the property for sale, they shall attend before the Court on an emergency Motion and each provide the Court with a letter of valuation and an outline by each agent as to what the property should be listed at. The Court may then make an Order as to which firm shall carry the sale and make other arrangements to move the sale ahead.

143 In the meantime, the parties should each begin searching for alternate accommodation to meet his or her needs.

### **3. Child Access and Custody**

144 The parties are in agreement that they have joint custody of Jacqueline, now 16 years of age. She is very smart and sounds very intelligent for a young woman her age. I am satisfied that Jacqueline is able to structure her own access schedule with both parents, and each has undertaken to ensure that each has a room for her in their homes. She may freely move between the parties' residences, as it suits her and them.

145 The Wife asks the Court to make an Order giving her sole custody of the twins, or in the alternative, if a joint custody Order is made, that she be given the final say on all issues that she and the Husband do not agree on, whether educational, recreational, religious or medical. In my view, the Wife is overlooking the twins' need to be with their father and to participate in sporting activities with him. Secondly, the Wife is overlooking the fact that at the moment, the Husband is the

sole provider for all the family's financial needs and he has medical expertise that is invaluable in understanding any family member's health issues and in obtaining prompt expert medical advice from other doctors.

146 I order that the parties have joint custody of the twins. While the Wife may have been the primary parent for the twins when they were young, it is clear from the evidence before me that the Husband is fully committed to parenting the twins together with her. The twins are approaching puberty and teenage years, where the Husband's input is as equally important as the Wife's input is. This has been recognized by Barry Brown in his Report and in his Parenting Schedule for the twins.

147 I am fully aware that the Wife has totally rejected the Brown Report, has refused to pay her equal share of the cost of the Report and has adamantly said she will have nothing to do with Brown's recommendations. Interestingly enough, as can be seen in this Judgment, when the Wife was questioned about various aspect of the Report, it appears that she seems to be able to accept some aspects. Brown sees the Wife as being overly protective of the twins, even though the Wife sees herself becoming less protective. Given the manner in which the Wife dealt with the Brown Report on her examination-in-chief and on cross-examination, I do not see that the Wife is becoming more flexible.

148 The Husband, on the other hand, is in agreement with the all of Brown's recommendations. The Wife thinks that the Husband will not live up to the terms of the parenting schedule and will not be available at certain times due to "on-calls". The Husband says he can make arrangements in this regard with the hospital, if needed.

149 In my view, the Husband should be given the chance to meet the Parenting Schedule as proposed by Brown, with some modifications. The Wife thinks it is too soon for the Husband to have overnights with the twins, and that overnights should be eased in. Brown, in my view was looking at the twins as now being more flexible and less resistant to change, so that the Schedule could work. Given the Wife's concerns, I make the following adjustments to Brown's Parenting Schedule in Stage I:

1. Paragraph (a) is to be amended so that the twins spend every Saturday from 10:00 a.m. through to the evening, returning to the Wife's residence following their dinner at 8:00 p.m. This shall continue for one month when the original plan shall commence with the two evenings on the weekends for the balance of the three months.
2. Paragraph (b) is to be amended so that the twins spend only one mid-week dinner with the Husband for one month, when the original plan of two evenings shall commence for the balance of the three months.

The balance of Stage I. shall remain the same. Brown sees the plan as "cautious and conscientious", and I agree with him.

150 Stages II, III and IV shall remain the same, leaving the parties to determine, as set out therein, whether the twins are ready to proceed to the next Stage. In my view, Brown has carefully organized this Schedule to accommodate the twins' need for more time with their father but also to realize that the twins, themselves, like schedules and organization in their lives, as witnessed by their need to neatly arrange things in their lives. While all of these changes will be coming to their lives at once, that is the parties' separation, the new living arrangements, and their approach to their teenage years, there is enough structure in what is taking place to help the twins accommodate to these changes.

151 I therefore order that the Brown Parenting Schedule be put into place with the changes I have noted above. The parties shall co-operate with one another if changes need to take place due to the Husband's medical schedule, or emergencies he may have to attend to or other unforeseen happenings. They shall look to each other first to take on the access changes, when necessary. The Parenting Schedule is looking forward to the future.

152 With respect to Brown's other recommendations, the parties shall co-operate and confer on all major decisions set out in Brown's recommendation. When they cannot agree on major educational issues, I order that they return to Court on a Motion, unless they can agree to hire the services of a neutral third party to assist them. The Court is not entitled to delegate access jurisdiction under the *Divorce Act*. See: *Lake v. Lake*, 1988 CarswellINS 34 (N.S. C.A.). With respect to the children's recreational activities, Brown recommends using the services of a mediator or arbitrator. If the parties cannot agree on one, they shall return to Court. The parties are in agreement about the children's religious upbringing.

153 The issue of the twins' speech therapy has been a difficult one for the parties. The Wife prefers to have the twins see

Aboubakr and the Husband has forbidden it. In my review of the evidence, I have come to the conclusion that the twins have best progressed under the tutelage of Robin Weddepohl and they shall continue to take therapy with her. In hearing the evidence given by Aboubakr at Trial, I conclude that it would not be in the twins' best interest to continue with her. I found her e-mail to the Husband to be arrogant and over-bearing and not something he could have overlooked.

154 The parties are in agreement, and have enrolled the twins again in the Academy, which has produced remarkable results for the twins' progress educationally and socially. The twins are to be encouraged to continue with their soccer and other team sports they may be able to enjoy. It is important that they be kept active and busy doing things that give them success. Both parties shall participate as parents and as observers in any such activities no matter who the twins may be residing with on those occasions. The Wife is to be commended for finding such an excellent school for the twins.

#### ***4. The Husband's Joint Bank Account and Investment Account with his Sister***

155 I have set out in some detail what the parties' evidence is on this issue. There is no evidence to show that the Husband ever had a beneficial interest in the monies which came from Egypt and which were sent by his sister. Both the Husband and the witness, Mr. Stoltz of RBC, gave plausible explanations for what had taken place. The Wife has no first-hand knowledge of the sister's and her husband's financial affairs.

156 Perhaps the Husband should have been more cautious about what he was doing when he let his social insurance number to be used so the account could be opened for the sister. Secondly, I understand Rosen's concerns when he began examining the Husband's financial affairs, to find that the paper trail was not as neat and clear as it should have been. The letter of RBC explains when the monies came from Egypt and in what amount. What is not clear is what happened to the money after the Husband's name came off the account.

157 I find on the evidence before me that the Husband had no beneficial interest in any of those monies, and other than the NR4 slip for about \$1,900 that was issued early on after the account was opened, there is no evidence to prove that any of the Husband's money went into that account. The Wife's entry on her NFP Statement as to 100% or 50% of this money belongs to the Husband is wrong and must be deleted.

#### ***5. The Husband's Income for Child and Spousal support purposes***

158 The Husband's expert, White, has determined that the Husband's income for 2010 is \$446,000 for purposes of *Guidelines* support for child and spousal support purposes, with the one add-back of automobile expenses and its gross-up included in that amount.

159 The Wife's expert, Rosen, was unable to come to any final number for the Husband's income, given the lack of supporting information, missing bank statements, and the lack of clarity as to where money went when it came out of the Husband's corporation and where it went. There was some evidence that the Husband was paying his parents money, under his citizenship sponsor of them after they emigrated to Canada, but even that was not clear.

160 After reading Rosen's report and hearing his evidence, it seemed clear to me that Rosen is a forensic accountant who is used to doing true audit work, with all voucher, cancelled cheques and clear records available to him. This does not seem to be the way private medical corporations for doctors operate. I can understand his frustration and I sympathize with his position. He did, however, in my view, make a very important observation in his Report on p.14 as to how the Husband's expenses relating to salaries, wages and management fees were deducted, leaving "other" expenses of \$248,293, all of which could not have strictly related to the Husband's medical practice.

161 Rosen says that roughly \$60,000 to \$90,000 of those expenses could be added to White's calculation. He also points out that the Husband did not use his income wisely in the corporation. At one point, the corporation was paying for three automobiles, a Ferrari, a Porsche and a BMW, either on lease or owned by the corporation. All automobile expenses and insurance was run through the corporation and Rosen says at least 75% of those deductions should be added-back with a gross-up.



162 The corporation also owns 2 condominiums, only one of which is rented, so all those expense flow through the corporation, including mortgage payments, utilities, property taxes. Neither seems to have appreciated in value and the unrented one has a roofing issue, as it is on the penthouse floor. The Corporation lost about \$75,000 on the sale of the Ferrari. The money the Husband puts into these assets in his corporation, should have been used to pay down the parties' mortgage on the matrimonial home.

163 In coming to a conclusion on what income should be attributed to the Husband for *Guidelines* purposes, I take the White figure of \$446,000 and add to it Rosen's figure of \$90,000 as a reasonable add-back without a gross-up since it is a gross figure. I find the Husband's 2010 income to be \$536,000 for these purposes.

164 There are three children in the family. The Amended *Guidelines* for an income of \$150,000 is \$2,611 plus 1.44 percent on the overage. This amounts to monthly child support of \$8,169 if all of the overage is calculated. The situation, however, is different in this case, given the private school expenses for the twins.

165 I am of the view that the Husband's child support monthly payments should be reduced to \$5,000 per month from the *Guidelines* support, given the cost of the twins' tuition fees, which will have to promptly be paid by the Husband now, if they already have not been paid. In addition, there will be therapy expenses to be paid and camp fees and other S.7 expenses for both children' which will have to be shared by the parties in accordance with their incomes, once set. A temporary/interim Order therefore shall go that the Husband pay to the Wife as child support for the children the sum of \$5,000 per month commencing the first of the month until the sale of the house closes. It shall continue for one year from that date, when it shall be reviewed, taking into account the parties' financial circumstances, their new residences, and what are the educational and medical expenses for the twins. A review shall take place 1 year after the house sale closes.

166 S.17(1) of the *Guidelines* states that if the Husband's income as determined under S.16 would not be the "fairest determination" of that income, the Court may look at the income over the last three years and determine an amount that is fair and reasonable in light of the income fluctuations over the years. I have chosen not to do the averaging.

167 The Court has the power, under S.19 to impute income to a spouse as it considers "appropriate in the circumstances".

168 The Wife has raised the spectre of whether the Husband is deliberately under-employed. His income was certainly greater when he was Chief of Medicine, than when he was not. The amount he received for taking on those extra duties was added to the Husband's regular OHIP billings. In addition, he set up certain programmes for the Hospital, did on-call work and sometimes lectured. He is no longer involved with extra work. He says that the twins needed more of his time as they grew up. He has involved himself in their soccer and other activities.

169 In *West v. West* (2001), 18 R.F.L. (5th) 440 (Ont. S.C.J.), Mr. Justice Perkins in para. 38 sets out the indicia one looks at to determine whether a spouse is under-employed. He says:

The claimant must, however, present an evidentiary basis justifying the imputation amounting to more than just the assertion that greater income is available (though I would add that the burden of adducing evidence about the reasonableness of the income level of a self-employed professional, who is the only one with knowledge must fall at least in part on the professional, who is the only one with knowledge of the peculiar factors affecting his or her practice.)

He points out that the needs of two households are always greater than one. An evaluation of the evidence available must be done to see if it is reasonable. See also: *Drygala v. Pauli*, 2002 CarswellOnt 3228 (Ont. C.A.) paras. 25-36.

170 In this case, I have "added-back" certain deductions to come up with the estimated income of \$536,000. I see no way to, in addition to what I have already done, impute further income to the Husband. OHIP is his main source of income. He is a specialist and needs referrals from other physicians. His patients are often persons who are gravely ill with cancer so they are not on-going patients as family physicians home. His income is therefore bound to fluctuate. He is not taking large blocks of time off for vacations.

171 I do not see this as a classic case of intentionally being under-employed as is set out in *Hunt v. Smolis-Hunt*, [2001] A.J. No. 1170 (Alta. C.A.). As is pointed out in *Donovan v. Donovan* (2000), 9 R.F.L. (5th) 306 (Man. C.A.) in para. 18,

“Payor spouses area still entitled to make decisions in relation to their career path so long as those decisions are reasonable at the time they are taken considering all the circumstances.”

172 In the case at bar, the Husband will be providing the Wife with copies of his personal Income Tax Returns each year, copies of any Notices of Assessment or Re-assessment, and copies of the financial statement for his corporation. If the income goes up in any given year, adjustments will be made to support figures in place under an Order of this Court.

### **6. The Equalization Issue**

173 Since I have found that the parties’ actual separation date is July 2009, I am unable to determine an exact figure for each parties’ NFP figures. What I can determine, however, is what amounts are to be included in the various categories used to determine those figures, and what amounts must be excluded.

174 With respect to the Husband’s NFP statements for 2008 and 2010 dates of separation, he has said that the Wife’s jewellery is worth \$9,000. The Wife has now said that this jewellery is only “on loan” from her mother, and while it can be worn by her, it does not belong to her and is to be passed down in the family. I received no evidence of any cultural tradition to support this, and the mother was not called as a witness. On the other hand, the parties have only one daughter, so presumably it will be passed down to Jacqueline. In addition, if the mother requires funds in the future, it would not be hers to sell. I therefore have removed the jewellery figures from both parties’ NFP Statements.

175 The parties have agreed that the 25% figure for taxes incurred on notional disposition of RRSP’s is acceptable.

176 The Wife’s NFP Statements include an amount of 50% or 100% of the money that was in the Husband’s sister’s investment account while both of them were signatories and using his social insurance number to have the account opened, since the sister was then a non-resident. Since there is no evidence to support the Wife’s proposition, this amount must be removed from the Husband’s column on her NFP Statement.

177 The Wife has also included as one of the Husband’s assets at separation, using her 2008 date, the sum of \$476,923.63, which was money held by him in his corporation. The corporation must be valued as existed on July 2009 and its liquidated value less notional tax, must be included in the Husband’s asset.

178 The Husband has no value down for his medical practice. He does show a deduction for taxes on a notional disposition of his corporation, which he says has net worth of \$509,892, with a notional tax liability of \$166,059. He also says he owes his corporation the sum of \$8,363, as it is shown as a debt or other liability.

179 There is an issue between the parties as to what deductions each had coming into the marriage. The Wife says she should be allowed a \$40,000 deduction as savings she accumulated before the parties’ marriage took place. There is no evidence to support this. The Wife says that is because she handed it over to her parents to keep for her. There is no banking evidence from the mother to prove this. On the other hand, the Husband agrees that he only put \$10,000 into the purchase of their first home and acknowledges that \$80,000 came from the Wife and/or her parents. It is unlikely that the parents provided the full \$80,000, as the father had been a University professor and they raised and educated two children. I therefore accept the Wife’s evidence that she had accumulated \$40,000 of her money while working and before marriage. She is therefore entitled to that deduction when she prepares a new NFP Statement.

180 With respect to household goods and personal effects coming into the marriage and on separation, in my view the appropriate way to deal with it is to have no value of those for either party. Again, the Wife has no list of articles or copies of bills when things were bought and there is no list of items on separation because the parties remain living in the home together. They can divide the household goods between themselves when the house is sold.

181 The parties are ordered to each prepare a new NFP Statement as of the July 2009 separation date. They shall exchange the same before the end of August with a view to settling the figures. The parties shall then arrange to attend before me to finalize the terms of the Judgment, including the equalization issue.

182 On the evidence before me, I conclude that the Wife is entitled to an unequal division on the equalization payment.

See: *Abaza v. Abaza*, 2001 CarswellOnt 1283 (Ont. S.C.J.). The Husband accessed the joint line of credit with the bank, without her signature or any discussion with her, to pay for the twins' tuition fees. What he should have done was use the GIC in his corporation and/ or sell assets in the corporation in order to even lend the funds to himself (which would later become taxable in his hands). This would have meant that an additional \$100,000 would be equity in the house when sold. Since the line of credit is secured against the house, the Bank will be paid out of the net proceeds of the house. The Husband also lost \$75,000 on the Ferrari. On the equalization, the Wife shall be entitled to an additional \$80,750, which I order the Husband to pay to her out of the Husband's portion of the equity on closing.

### **7. Spousal Support**

183 The Wife is entitled to spousal support, which must be reasonable in the circumstances of this case. The Wife says that she has been marginalized in the parties' marriage because she stayed home to raise the children. She says that she was the primary parent in raising the twins and dealing with their developmental issues and finding the appropriate teachers and medical personnel to deal with the twins. The Wife has now been out of the workforce for 12 years.

184 The parties' marriage is just on the cusp of a long-term marriage, since it is a 16 year marriage. The Wife has no plans to return to the workforce, thinking that her task is to continue to raise the twins to adulthood. The twins, however, will soon be teenagers and it becomes a matter of knowing in 3 years' time whether they will be able to return home after school to be on their own, if the Wife is working.

185 The Wife is 46 years of age, which gives her still marketable time to work until retirement. I cannot see this happening for at least three years. In the meantime, however, the Wife should be up-grading her computer skills, learning new technology and perhaps taking courses, which may assist her to get back into the same type of government work she did before the twins were born.

186 The Wife was educated when the parties married. She did not give up a profession or delay her own education to help the Husband. She did, however, assist him while he was obtaining his specialization in medicine and she has remained in the home since 2000 for ten years. The Husband shall therefore pay for any additional courses or up-gradings the Wife may take over the next three years. He shall give her the sum of \$12,000 per year taxable in her hands over 3 years to help her achieve some financial independence. In the meantime, she should still seek at least part-time work to prepare herself for the future.

187 Counsel for the Wife prepared a number of Divorcemate calculations for consideration by the Court in determining what would be appropriate spousal support. One shows the Husband's income as \$536,000. It takes into account S.7 expenses, tax credits flowing from dependant and medical expenses. It also shows the child support at \$8169, as I have noted. The SSAG's using those figures produces a range of spousal support from \$8,903 to mid \$10,016 and a high of \$11,126. In my view, the mid-range of \$10,016 per month is the appropriate amount, given all of S.7 expenses facing the parties. An Order shall go that the Husband commence paying the Wife \$10,016 per month spousal support on a final basis from September 1, 2012. This gives the Wife an income of \$120,192 per year. I do not think this is a case for retroactive spousal support and I order none.

188 The parties may arrange to attend before me on the issue of Costs to be set by me after the sale of the house closes.