**FINANCIAL DISCLOSURE IN ONTARIO’S COURTS:**

**WHAT’S THE BIG FUSS ABOUT?**

**Webinar Presentation by Gene C. Colman, 25 June 2020**

*With guest panelist, Shmuel Stern*

**[SLIDE 9] OUTLINE OF TOPICS TO BE COVERED**

1. **WHY:** Why do we need to disclose assets, liabilities and income?
2. **WHAT:** What do we need to disclose in a family law case?
3. **RESOURCES:** What resources are available to help make full disclosure?
4. **CONSEQUENCES:** What consequences can we face if we fail to disclose?
5. **SUMMARY AND CONCLUSIONS**

**[SLIDE 10] PART 1: WHY DO WE NEED TO DISCLOSE ASSETS, LIABILITIES AND INCOME?**

**[SLIDE 11] Reasons:** There are at least three very good reasons to fully disclose your finances in a timely manner:

1. **Understanding:** You must understand your own and the other side’s financial circumstances so that you can make well-informed decisions.
2. **Increase Legal Costs:** If you don’t disclose fully and if you delay, then you are just drawing out the litigation process and in doing so, you are increasing your legal costs.
3. **Later Challenge to the Deal or Order:** Failure to fully disclose has a hidden “ouch” factor. That is, failure to properly disclose can potentially undermine possible settlement or even lead to an unfair settlement. And if there is an “unfair settlement” entered into as a result of less than candid disclosure, then that settlement could ultimately be set aside.

**[SLIDE 12] Basic Principles:** Case law has established some rather **basic principles** when it comes to the duty to disclosure your finances:[[1]](#footnote-1)

1. The parties have an obligation to make **full disclosure** and to produce **all relevant** **documents**.
2. Disclosure should be full and **frank**, meaning complete, **detailed and timely**. Partial disclosure just might not “cut it”.

*Regardless of how complex the husband’s financial situation was, his breach of court orders, particularly regarding financial disclosure, was a deliberate attempt to frustrate the wife’s efforts to determine spousal support and equalization*— [*Mullin v. Sherlock*, 2018 CarswellOnt 21609, 2018 ONCA 1063 (Ont. C.A.)](http://canlii.ca/t/hwqr0), varying 2017 CarswellOnt 17979, 2017 ONSC 6762 (Ont. S.C.J.). The evidence supported the motion judge’s determination that there was an intentional breach by the husband of court orders. Partial compliance with some orders was not sufficient.

1. **[SLIDE 13]** The duty to disclose is **immediate and ongoing**. Ongoing means you must continue to disclose new and updated information at every stage of the litigation process.

The obligation exists prior to any court orders, conferences or court attendances. See [​](http://nextcanada.westlaw.com/Link/RelatedInformation/Flag?documentGuid=I34e4dd8872934f20e0540021280d7cce&transitionType=Document&contextData=(sc.DocLink)) [*Manchanda v. Thethi*, 2016 CarswellOnt 8951, 2016 ONSC 3776 (Ont. S.C.J.)](http://canlii.ca/t/gs15j)

1. **[SLIDE 14]** You are the one who has the information. You are the one who has the onus to provide the financial disclosure. It’s not supposed to be a game of **hide and seek**.

**[SLIDE 15]** In [Chernyakhovsky v. Chernyakhovsky](https://nextcanada.westlaw.com/Link/Document/FullText?findType=Y&pubNum=6615&serNum=2006304526&originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)), 2005 CarswellOnt 942 (Ont. S.C.J.) the court described the nature of the disclosure process in family law cases as follows [para 6]:

The new approach to fact finding under the Family Law Rules has been to make disclosure a given. Fact finding is not to be a battleground. There ought to be an orderly, prompt request for disclosure with an organized speedy reply. The process is not to go on forever and the case is to move on because the facts point to a resolution or to the necessity of a trial. Obtaining the factual evidence is no longer a game of hide and seek.

See [*Roberts v. Roberts*, 2015 CarswellOnt 9247, 2015 ONCA 450 (Ont. C.A](http://canlii.ca/t/gjlc2).): The most basic obligation in family law is the duty to disclose financial information. This requirement is immediate and ongoing. Failure to abide by this fundamental principle impedes the progress of the action, causes delay and generally acts to the disadvantage of the opposite party. It also affects the administration of justice. Unnecessary judicial time is spent and the final adjudication is stalled. Financial disclosure is automatic. It should not require court orders to obtain production.

**[SLIDE 16]** If you take the position that these principles do not apply to you, then you run the very real risk that you will suffer very dire consequences at the hands of the court. (See Part 4.)

**[SLIDE 17] SUMMARY TO THIS POINT:**

To sum up this part of our talk:

* We have to understand what your financial situation is.
* We want to keep your legal costs down. So let’s have your financial disclosure.
* We don’t want any deal or order challenged later.

**[SLIDE 18]** What comes from these principles?

1. You have to make full disclosure.
2. Your disclosure has to be frank, detailed and timely.
3. Your obligation is immediate and it continues throughout the case.
4. You’re the one holding the cards. Play them. It’s not “hide and seek”.
5. There are very real consequences for the uncooperative.

**[SLIDE 19] PART 2: WHAT DO WE NEED TO DISCLOSE IN A FAMILY LAW CASE?**

When it comes to family law, there are certain elements of one’s finances that we need to disclose. We need sufficient information to determine one’s income. We need sufficient income to determine one’s net family property. Where there are other financial claims, we need sufficient information to determine those issues.

**Income is King:** Child Support is calculated largely based upon one’s **income**. Where the payor is employed by a third party who is arm’s length, it is fairly easy to determine his/her income. Look at the income tax return. Look at the Notice of Assessment. If there is a significant variation over the last three years, then perhaps there will be averaging.

**Last Three Years:** The *Family Law Rules* require minimum information: **last three years income tax returns and notices of assessment**. You also have to produce proof of your recent pay - normally with **pay remittance advice** showing year to date totals.

If your case spans tax season, then you need to produce the added tax return for the year and the Notice of Assessment when you receive it.

For the employed person, it’s usually pretty straight forward.

**Minor Adjustments:** Sometimes, we need to make some **minor adjustments** to one’s income. Programs such as Divorcemate allow those adjustments to be made easily and relatively seamlessly. For example, did you know that an employed person can deduct their union dues from their income? Adjustments are made for taxable dividends and taxable capital gains so that we consider only the actual money that you received on a net basis. Divorcemate helps give you the correct numbers.

There are some other more esoteric deductions that are available to employed individuals. These are set in section 1 of Schedule III to the *Federal Child Support Guidelines*.

For most employed individuals, a look at the last three years’ worth of tax returns and notices of assessment along with up to date payroll information should be sufficient.

In most cases to determine the standard table amount of child support, all we need is the above information that I have mentioned.

**[SLIDE 20]** There are **exceptions**.

**Shared Parenting Time:** Where a parent has actual parenting time of at least 40%, then we have to consider both parents’ incomes. Section 9 of the *Federal Child Support Guidelines* directs us to how to calculate child support in that situation. That could be the topic of another webinar. For our purposes this evening, just know that where you have a joint custody situation in terms of parenting time, then both parents are payors and recipients and both parents need to disclose.

**The Children who are 18 and over:** Calculating child support for kids who are legally adults is a bit more complex. While in first instance we are directed to conduct the same analysis as with the younger offspring, the *Federal Child Support Guidelines* tell us [section 3(2)(b)] that there is room for greater discretion. If that first straight up calculation is deemed by the court to be “inappropriate”, then we can look at the “condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child”. That allows us to look at not merely the income of the parent, but also the income and assets of both parents, the income and assets of the child, and any other factor that a judge might deem relevant. There are many reported case decisions showing that the *Guidelines* certainly did not erase from Canada all conflict over child support.

The point here is this: There are instances ***where both parents have to disclose their income and in the case of adult kids, their assets and liabilities as well***. And there are situations where we need full disclosure even from college and university students.

**Section 7 Expenses:** What about special and extraordinary expenses? Section 7 expenses? The *Federal Child Support Guidelines* tell us that there are these extra expenses that are not covered by the standard table amount. There is a large amount of case law that discusses just what qualifies as a section 7 expense and what does not. For our purposes this evening, we must note that the *Guidelines* take into consideration both spouses’ incomes.

So, ***where there are section 7 expenses, both spouses are obliged to disclose*** all documents relating to their income.

**[SLIDE 21] Spousal Support:** Where there is a claim for spousal support, you are required to disclose the same income information as with child support. But here the obligations for disclosure can be more extensive.

Spousal support involves more complex factors. We look at such factors as the history of earnings during the marriage, the economic and child care roles assumed during the marriage, the economic effects of the marriage and relationship breakdown, the extent of assets gained and liabilities incurred during the marriage. It can be a wide ranging exercise indeed.

Since the factors that the law considers when it comes to spousal support are so wide ranging, so too is the obligation to disclose even more documents similarly wide ranging.

**[SLIDE 22]** It is legitimate to ask for such things as:

* Credit applications
* Credit card statements going back years
* Bank statements going back years
* Loan statements going back years
* Investment statements (eg. RRSP) going back years

**[SLIDE 23] SSAG is not the be all and end all:** Assessing the spousal support obligation both with respect to entitlement and amount is not as simple as just plugging in numbers into the software that gives us the *Spousal Support Advisory Guidelines* spousal support projections. First off, I should note that the SSAG do not determine entitlement. Secondly, the SSAG are advisory only; they do not trump the factors set out in the *Divorce Act* and the *Family Law Act*.

It follows that the obligation to produce documents, that could possibly be relevant to the various factors that go into entitlement, length of support and amount of support, is a very wide ranging and comprehensive exercise. If you want to claim that a specific request for disclosure of documents is not relevant, you first have to ask yourself is it worth defending a motion on that issue that you might lose?

The obligation to disclose all documents connected with your income applies whether you are married or not. The *Divorce Act* covers married people; the provincial *Family Law Act* covers not married people.

When addressing spousal support claims, we need to determine if there is entitlement to spousal support. If there is entitlement, then we need to determine amount of support and length of time for which such support is to be paid. It follows that the range of factors that go into these determinations is very wide.

**Assumption to produce:** If there is an assumption, it is that the documents asked for should be produced. Unless the documents being requested are entirely irrelevant to any possible legal argument or unless the disclosure request is out of all proportion to the issues in the case, then the default position should be to produce, produce, produce.

We have covered income. What about property?

**[SLIDE 24] Property:**

**Net Family Property:** For married couples, in Ontario we have the concept of **Equalization of Net Family Property**. We equalize the increased wealth accumulated during the marriage. We take one measurement of your net worth at the date of marriage. We take a second measurement at the date of separation. Whoever has more pays one half of the difference between the two to the other.

**[SLIDE 25] The Basics:** There are all sorts of commutations and permutations on the very over simplified statement that I have made here describing what equalization of NFP is. But all you need to know for the purpose of this Financial Disclosure presentation is this:

1. We need to identify all assets and liabilities at the date of marriage.
2. We need to identify all assets and liabilities at the date of separation.
3. We need to attach a “fair value” to each item.
4. In the case of “was it a gift or was it a loan?” – we need documents that surround the transaction.

It follows that the range and type of documents is as varied as the types of situations that we face in these cases.

**[SLIDE 26] Pensions**: If you have a pension it must be valued in accordance with the procedures laid out in a Regulation passed under the *Family Law Act*. We are not going to discuss the ins and outs of pension valuation this evening. For our purposes tonight, just know that in order to secure a pension valuation that there are forms that you need to complete, that the other spouse has to sign one of those forms to confirm the marriage date and the separation date, that you have to submit the completed forms to the pension administrator, and that it sometimes takes a bit of time to receive back the valuation. Without the pension valuation, we cannot calculate the equalization of net family property.

So, there is no reason to delay. Get the forms right off the bat and get that process started.

<https://www.fsco.gov.on.ca/en/pensions/Family-Law/Pages/familylawforms.aspx>

**[SLIDE 27] Onus:** Again, the assumption should be is that you produce. When it comes to proving the existence of your own assets and liabilities – the onus is on you. When it comes to fixing the value of those assets and liabilities – again the onus is on you.

**Businesses:** Everything that I have stated to this point applies in spades to businesses. You will need to provide business financial statements, business tax returns and notices of assessment, bank statements, etc. etc.

This can be overwhelming for many, especially where their business records consist of slips in a shoe box.

You need to produce **credible looking financial statements**. If you don’t have them, you need to hire an accountant to help you create them. Of course, these statements have to be accurate and not just professional looking.

You will have to **produce certain internal documents** that relate to your business financial statements so why not just get them together from the get go? - Shareholder Loan Account, Meals and Entertainment, Promotion, Automobile expenses – those are a few areas that we lawyers tend to focus on right from the beginning since they tend to be inflated. You might get something past the CRA but you won’t likely get it past an experienced family law lawyer.

Does your bank require you to keep a **certain level of capital inside your business bank account**? If so, then get the documents that will prove that.

Your income for purposes of child support and spousal support is NOT what you decide to pay yourself by way of salary and/or dividend. We are required to look at the profitability of the business and to impute to you income that you could have used had you chosen to.

Business financial disclosure can be very extensive.

It’s best to get on top of that issue from the beginning of the case and be proactive about producing everything that is relevant. You should not wait for the other side to ask. You should anticipate what might be asked for and you should put it together in an organized format.

**[SLIDE 28]** Business documents are relevant to determining **what is your true income for support purposes**. But they are also relevant to help determine the **value of your business at marriage date and at separation date**. In most cases, you are obliged to secure a professional valuation of your business as at those two dates. And in many cases you may be obliged to secure a professional income valuation – ie. what do you really earn?

Gathering together the documents at an early stage serves to facilitate both the business valuation and the income valuation.

If you have a business, it is usually a bad idea to represent yourself and try on your own to adequately disclose and secure professional valuations.

**[SLIDE 29] SUMMARY OF PART TWO CONCERNING WHAT WE’VE LEARNED ABOUT WHAT WE NEED TO DISCLOSE**

1. You need to produce your last three years’ tax returns and notices of assessment (business too if you are incorporated). That’s the minimum.
2. If you are an employee, then we need your year to date pay remittance advice.
3. With this information, we can normally calculate your income.
4. We can then make adjustments and calculations where we have shared parenting time of at least 40%, where we are dealing with children who are really adults already, and where we have additional special and extraordinary expenses. Of course, for all these three areas there are other elements of information and documents that we need but your lawyer can get to that later. It’s really the tax returns that we need to get the ball rolling.
5. Spousal support has more than just past income factors impacting on this issue. There is further information and there are further documents that will help us assess the spousal support claim.
6. When we examine how we are going to evaluate your property situation, how we are going to calculate the property settlement, we need even more documents relating to date of marriage and date of separation.
7. If you have a pension, there are forms to be completed so that we can have the pension valued.
8. You are the one who owns the assets, has the liabilities, or owns the business. You have the onus of proving your numbers.

**[SLIDE 30] PART 3: RESOURCES: WHAT RESOURCES ARE AVAILABLE TO HELP MAKE FULL DISCLOSURE?**

**My Blog Post:** Don’t forget to read my blog post: “Timely Financial Disclosure is Essential”

<https://www.complexfamilylaw.com/blog/2019/10/timely-financial-disclosure-is-essential.shtml>

**[SLIDE 31] CRA My Account:** You don’t have your tax returns and notices of assessment? Open a CRA “My Account” where you will be able to access your documents on line. You need to complete some on line questions. You need to have in front of you your last income tax return that you did as they are going to ask you to fill in one of the numbers from the form. They will then mail to you a security code. Then you will get full access.

<https://www.canada.ca/en/revenue-agency/services/e-services/e-services-individuals/account-individuals.html>

**[SLIDE 32] Divorcemate** has a cornucopia of free resources:

<https://www.divorcemate.com/articles>

They have a fully annotated version of Form 13.1. There are very detailed instructions that target clients or self reps. [Ontario - Draft 13.1 Financial Statement with Instructions to Client - Updated July 2015](https://www.divorcemate.com/assets/docs/articles/Ontario%20-%20Draft%2013.1%20Financial%20Statement%20with%20Instructions%20to%20Client%20-%20Updated%20July%202015.pdf) I recommend that you use this when starting your court form Financial Statement.

There are many articles on various aspects of support and property division. Divorcemate is really fortunate to have on staff Christine Montgomery. She has written these articles. Christine has been with Divorcemate for as long as I can remember. She is highly knowledgeable. Lawyers can call her directly if you are stumped. Self reps (and lawyers) can access her expertise via her many excellent and concise articles.

I highly recommend the Divorcemate website to clients and to lawyers.

**[SLIDE 33] Ontario’s Ministry of the Attorney General** has a booklet that gives some decent information re financial disclosure procedures. This booklet also has some useful links:

[https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/part\_4.html#](https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/part_4.html)

Another useful source is the **Steps to Justice** website:

<https://stepstojustice.ca/questions/family-law/what-financial-statement-what-documents-do-i-have-give-my-partner>

**[SLIDE 34]** There is the **Law Society of Ontario** website that gives pointers as well:

<https://lso.ca/lawyers/practice-supports-and-resources/practice-area/family-law/how-to-prepare-a-financial-statement>

**Limited Scope Services Project:** This is a very new project. You can access lawyers who will over unbundled services for specific tasks.

<https://www.familylawlss.ca/>

**My Support Calculator:** You can do basic support calculations on line.

<https://www.mysupportcalculator.ca/>

**[SLIDE 35] Lawyer Assistance:** Your own lawyers and their staff have experience in obtaining, organizing and presenting financial disclosure in the proper format.

I recommend that you first use the Divorcemate annotated guide to help complete the first draft of your Financial Statement and use it to help your first attempt at document compilation. Then try some of the other resources. Then present your lawyer with a draft Financial Statement and the documents that you have so far.

With the resources that I have outlined just now and with your own lawyer’s assistance, you should be able to successfully tackle this admittedly somewhat daunting task while hopefully not spending huge amounts of money. What we find costs our clients so much money is that we spend huge amounts of time just chasing after our clients to complete some very basic steps. We don’t want to be chasing you like that. Please just cooperate!

**[SLIDE 36] Shmuel Stern’s New Service:** Shmuel has put together a website and service that helps people complete their court form Financial Statements and organize their disclosure.

<https://disclosureclinic.ca/>

Shmuel also has another incredible page with tons of resources:

<http://protopage.com/corollaryrelief> It’s called the “Corollary Relief Matrimonial Home Page” and it has just about everything (only a slight exaggeration) that a lawyer and even a self rep would need to get started on any family law issue. The key statutes are there. There are legal research links. The pension forms link is there. I particularly like Shmuel’s “Curated Family Law Case Summaries” which is basically his twitter feed (yes I subscribe to his twitter feed).

I’ll turn over the podium to Shmuel now who will tell us a bit more about his “Disclosure Clinic” and how it can help you.

[*Shmuel speaks now*.]

There is free help out there. It is clear, detailed, it is free. For a modest fee, Shmuel can help you get going on the right foot. Use the resources that are out there!

**SUMMARY TO THIS POINT CONCERNING WHAT WE HAVE LEARNED RE THE GREAT RESOURCES OUT THERE TO HELP US**

We have learned in the past few minutes that there are online resources out there to help you to complete your court form Financial Statement. The Divorcemate guide is likely the best and most detailed. You would be well served to consider Mr. Stern’s service as well.

**[SLIDE 37] PART 4: CONSEQUENCES: WHAT CONSEQUENCES CAN WE FACE IF WE FAIL TO DISCLOSE?**

Ontario’s *Family Law Rules* have many options available to the party who has been stymied in her/his efforts to obtain full information. Rules 19 and 20 set up the process.

**Rule 19** is entitled “Document Disclosure”. It lays out some of the basic principles and remedies. For example, without a court order you can ask the other side to list all of their documents. Rule 19(10) reminds us that if you don’t comply with other parts of R. 19, then you can apply under other rules for a wide ranging order and you could even get an order saying that you don’t have a disclose another thing until the other guy discloses.

**Rule 20** is entitled “Questioning a Witness and Disclosure”. Rule 20 gives you all sorts of effective tools to conduct a cross examination of the other party.

**Rule 13(13)** allows you to question the other side without a court order in advance.

There are **effective sanctions** for failure to comply with a disclosure order and even for failure to comply with the *Family Law Rules*. See Rules 1(7.1), 1(7.2), 1(8), 1(8.1), 1(8.2), 1(8.4)

**What are some of the consequences for failure to obey the Rules and/or failure to obey a disclosure order?**

**[SLIDE 38]**

1. **INCOME IMPUTATION:** The court may impute income to you.

**Cash Income; Income Imputation:** Where you are a business owner and especially where you have cash income, you have a positive duty to provide clear and cogent evidence to the court as to what [your] income is. [*Iacobelli v. Iacobelli*, 2020 CarswellOnt 8126](http://canlii.ca/t/j883b), at para 45 (Ont. S.C.J. – **10 June 2020**) In this case the husband claimed that his most recent income was $51,836; the court imputed income to him of $142,000.

A court may impute income where there is inadequate disclosure—[*Bodine-Shah v. Shah*, 2014 CarswellBC 1354, 2014 BCCA 191 (B.C. C.A.).](http://canlii.ca/t/g6wpp) See also [​](http://nextcanada.westlaw.com/Link/RelatedInformation/Flag?documentGuid=I9e677adb1c973809e0440021280d79ee&transitionType=Document&contextData=(sc.DocLink)) [*Gagne v. Gagne*, 2011 ONCA 188, 2011 CarswellOnt 1476 (Ont. C.A.)](http://nextcanada.westlaw.com/Link/Document/FullText?findType=Y&pubNum=7146&serNum=2024767764&originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) and [*Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453, 2010 CarswellBC 2740 (B.C. C.A.)](http://nextcanada.westlaw.com/Link/Document/FullText?findType=Y&pubNum=7675&serNum=2023374930&originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)).

In [*Sabeeh v Syed*](http://canlii.ca/t/hsd4t)the court found that the father, who was the sole shareholder in a corporation, failed to disclose enough information to support his claimed annual income. The court imputed his income to an amount $90,000 greater than his claimed income because he failed to disclose personal bank accounts and other documents supporting his claimed income/expenses.

In the case of **salaried employees**, it is rare for a court to focus on the person’s lack of financial disclosure and use that as a ground to impute more income. But where you as a salaried employee seem to have other sources of income and you did not make even the most basic disclosure in a complete fashion (for eg. you did not provide all the pages in your tax returns or your Notices of Assessment), and if you failed to comply with previous disclosure orders, then at trial you run the risk of having income being imputed to you. See: [*N. v. P*., 2020 ONSC 3098](http://canlii.ca/t/j7v2z) (May 19, 2020). The judge wrote:

[88] The test for imputing income for child support purposes applies equally for spousal support purposes: *Rilli v. Rilli*, [2006] O.J. No. 4142 (Sup. Ct.). Based on Ms. P’s failures to disclose information that she is legally obligated to provide, I find this an appropriate case to impute income to Ms. P. Ms. P’s failures to disclose and inability to be forthright about her finances lead to an inference that she has undisclosed income and/or assets.

**[SLIDE 39]** [89] Not only was Ms. P statutorily obligated to produce complete financial disclosure, there were court orders that specifically required her to do so. ***Parties are not free to disregard court orders. Court orders are to be obeyed. Non-compliance with court orders must have consequences:*** *Cirinna v. Cirinna*, 2018 ONSC 4831, 14 R.F.L. (8th) 138, at para. 22; *Taylor v.Taylor*, [2005] O.J. No. 4593 (Sup. Ct.), at para. 3. [emphasis added]

**[SLIDE 40]**

1. **STRIKE PLEADINGS:** The court may strike out your pleadings. In other words, you may have no further right to participate in the proceedings and ultimately, the court will make a final order without hearing from you.

Where the husband had been put on notice of the consequences if he failed to comply with the order to make the requisite disclosure within 30 days, it was appropriate to strike his pleadings—[*Burke v. Poitras*, 2018 CarswellOnt 21167, 2018 ONCA 1025 (Ont. C.A](http://canlii.ca/t/hwklc).).

**[SLIDE 41]**

1. **PENALTIES:** The court may impose a periodic penalty on you as an incentive to comply.

Where “a party commits an ongoing abuse of a central facet of the *Family Law Rules*, a resulting fine or monetary payment does not punish that party as an affront to the Court.”— [*Granofsky v. Lambersky*, 2019 CarswellOnt 8706, 2019 ONSC 3251 (Ont. S.C.J.)](http://canlii.ca/t/j0q9v). The wife had not sought a finding of contempt. The court determined that it had jurisdiction to order a fine or penalty under R. [1(8)](http://nextcanada.westlaw.com/Link/Document/FullText?findType=Y&pubNum=135386&serNum=0280318229&originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.DocLink)) where the husband had failed to provide financial disclosure. The wife’s proposal that the husband pay her **$500 per day** for non-compliance with the order to make financial disclosure was reasonable and was so ordered.

Where the husband had consistently disclosed only financial information that was advantageous to his position, and repeated admonishments and financial penalties had not been successful, a final and specific order was made—*[Palkowski v. Palkowski](http://canlii.ca/t/j49x5)*[, 2019 CarswellOnt 21277, 2020 ONSC 24 (Ont. S.C.J.).](http://canlii.ca/t/j49x5) The husband demonstrated he was capable of complying with the disclosure requirements but had chosen not to. The wife required the missing disclosure to accurately advance a claim for equalization. Failure to comply within the court-ordered timeframe would result in the husband’s pleadings being struck. Daily penalties of **$300 per day** continued to accrue.

In [*Malik v Malik*, 2019 ONSC 117 (Ont. S.C.J.)](http://canlii.ca/t/hwvfz) the judge ordered that the non-disclosing party pay the other party $5,000 per month for each month of non-disclosure back to the date that the order was made and ongoing until he complies.

In [*Hutcheon v Bissonnette*, 2017 ONSC 1108 (Ont. S.C.J.)](http://canlii.ca/t/gxjx9) the judge required that the party who was in breach of the disclosure order had to pay $100 per day back to the date of the order ($24,900) to the opposing party.

**[SLIDE 42]**

1. **Contempt:** You could be found to be in contempt of court.
2. **Set agreement or order aside**: Failure to fully and accurately disclosure your financial circumstances can also affect an agreed upon out of court settlement. Inaccurate, incomplete or misleading financial disclosure will constitute grounds to set aside a Separation Agreement or Marriage Contract or court order.

The court is likely to vary a spousal support provision retroactively in the parties' domestic agreement where there was inadequate and misleading financial disclosure— [​](https://nextcanada.westlaw.com/Link/RelatedInformation/Flag?documentGuid=If9f460ed4dd20a59e0440021280d79ee&transitionType=Document&contextData=(sc.DocLink)) [*Seed v. Desai*, 2014 CarswellOnt 6616, 2014 ONSC 3329 (Ont. S.C.J.)](http://canlii.ca/t/g6wvg). The parties' separation agreement included a review provision for spousal support. When the husband asked the court to review the issue of spousal support, the wife requested that the agreement be set aside on the basis that the husband's financial disclosure had been incomplete and inaccurate. The husband testified that the annual income of $85,000 he had imputed to himself was not actually an income figure, but rather a sum upon which he had decided he could afford to base support payments. He had not explained this process to the wife at the time. This self-imputed income did not correspond to the income he declared on his tax return, which was $136,374, an amount which also did not accurately reflect his income according to a Canada Revenue Agency audit. The wife asked that spousal and child support be retroactively increased from the date of separation in keeping with the amount revealed by the CRA audit as well as a report. The court found that the amount of spousal support the parties had agreed to could not stand in light of the husband's misleading disclosure, but that weight could be given to the intention to pay and review spousal support at a high level by retroactive order. The court awarded support at the high end of the SSAG range based on the husband's tax return information.

1. **Other Consequences:** Costs order; Claim dismissed; You will not be allowed to use some documents in the case; If you come up with the document later, tough luck - You can’t use it; Postpone any step in the case; and, anything else that strikes the judge’s fancy.

**[SLIDE 43]**

**SUMMARY TO THIS POINT RE WHAT WE’VE LEARNED ABOUT RE NEGATIVE CONSEQUENCES FOR NON OR ONLY PARTIAL FINANCIAL DISCLOSURE**

1. The Rules are meant to be obeyed. Court orders are meant to be obeyed. Those who act as if the Rules and orders do not apply to them may very well face rather drastic consequences.
2. Remember that the onus is on you to prove your income. If you leave more questions unanswered than answered, then the court may simply impute income to you.
3. Do you want to be allowed to continue to participate in your own case? I hope so. If you disobey financial disclosure orders, your pleadings could be struck.
4. More recently courts have chosen to levy daily financial penalties on the non disclosers.
5. The contempt remedy is always there. Nobody wants to be found to be in contempt of court. A contempt finding could be a prelude to having your pleadings struck. It also tells the trial judge that you are a person with about zero credibility.
6. If you do succeed to hide income and/or assets and the other side finds out later, then all that hard work that went into achieving a Separation Agreement or court order could be for naught. Non-disclosure is an accepted ground for cancelling out the previous agreement or order.
7. And if the above remedies don’t scare you enough, then do not despair. There are other remedies available as well.

**PART 5: SUMMARY AND CONCLUSIONS (OVERALL)**

1. **Optional?:** Financial disclosure is not optional. You should get right on it. Don’t delay. Don’t make your lawyer chase you for it.
2. **Yes, it’s relevant and necessary!:** Recall that I tried to explain just how various elements of financial disclosure are relevant to the most common family law issues. There are some very good reasons for providing disclosure as fully as possible and as early as possible. The lawyers and parties cannot possibly accurately evaluate their positions without the disclosure.
3. **Come Clean:** You must disclose fully, accurately, and in a timely manner.
4. **Early bird gets ….:** Start preparing financial disclosure early on. Compile all documents that explain your income, assets, and liabilities.
5. **Keep Going!:** Your financial disclosure obligation continues throughout the case.
6. **Save Money:** Save your own money. Do what your lawyer asks you to do the first time. Even better, don’t wait for your lawyer to ask. Just use the on line and other resources and get the job done as best you can.
7. **But she knows what I have already!:** Even if you think the other party knows and understands your financial situation, you must provide supporting information and documents. Even if you and the other party agree on support and property, you must still disclose. Otherwise, this deficiency leaves your agreed upon settlement vulnerable to be overturned later.
8. **Don’t let the judge kill you:** Courts have wide ranging remedies to force you and to punish you. Don’t let yourself be a victim. Take control of your case from the outset. As the radio advertisement says, “If you could have done it alone, you would have done it already.” If you can’t do it alone, get help.
9. **Great resources:** There are some great resources out there to help you. The Divorcemate annotated Financial Statement can be a big help. For the self reps, try Shmuel Stern’s service – Disclsoureclinic.ca And don’t forget your own lawyer.

In closing, Financial Disclosure may not be much fun, that’s for sure. But you have to do it! We assume that you want your family law nightmare over sooner rather than later. In our office, we have found that the delays due to our own clients’ (let alone the other side’s) inability or whatever to come to grips with these issues constitutes the single most significant cause for delay in reaching a final resolution.

This evening I have tried to put the challenges into perspective. I have tried to provide some degree of assistance to the webinar attendees. This is all with the intention to encourage you to approach the financial disclosure requirements with a better understanding of the context within which we resolve these issues. Now that you hopefully understand the legal context and now that I have reminded you of some of the resources that are available, you will hopefully be able get this unpleasantness out of the way in a much more expeditious manner. By doing so, you will have saved yourself time and money.

Thank you.

We will first take questions and comments from Shmuel Stern and we will then have Rob McNeillie pass along any questions from the attendees.

**[SLIDE 44]**

**PART 6: QUESTIONS AND DISCUSSION**

1. “What are a party's obligations of financial disclosure in order for the court to make an accurate determination of spousal support?” WestlawNext Canada, 23 March 2020, CARS5MEMO-ONM 12670 [↑](#footnote-ref-1)