[29] Although in retrospect, there were a number of indications that storm clouds were gathering in their relationship, the problems escalated when Ms. McLean developed physical problems in 2002 that became serious in the fall of that year. She had been experiencing neck and shoulder pain as well as increasingly frequent migraine headaches, but had attributed these symptoms to being tired as a result of the hard work and long hours involved with the construction of the cottage.

[30] Around Labour Day 2002, Ms. McLean was painting on a ladder and felt very strong shooting pain from her shoulder which did not abate. She thought she had pinched a nerve which would go away. She had noticed previously that she had been having trouble using a (computer) mouse; thereafter, it [page581] was impossible. During the month of September, Ms. McLean consulted a number of medical professionals in an attempt to diagnose and remedy her situation, to no avail. At the end of September, she went on short-term disability. This was only the beginning of a painful and debilitating period which took a couple of years to diagnose. It was ultimately diagnosed as thoracic outlet syndrome. In June 2005, she underwent neurosurgery for this condition. This was major surgery and involved a lengthy rehabilitation.

[31] Ms. McLean claims that her physical condition was exacerbated by the hard physical work and long hours contributed during the course of the relationship, particularly during the construction of the cottage, and that, accordingly, she is entitled to spousal support as compensation for her worsened financial circumstances, which, she claims, was causally connected to the relationship or its breakdown.

[32] As I will detail more below in relation to the claim for spousal support, Ms. McLean was unable to work, for the most part, from the fall of 2002 until June 2006. She was receiving disability benefits for much of that time, although there were periods when she did not. There was a period of time during which she was unable to work before she began to receive long- term disability benefits in June 2006. Fortunately, the neurosurgery was successful and although she still requires treatment for a herniated disk in her neck, Ms. McLean is now able to work full time as a marketing communications specialist. Her full-time salary was $45,000, but she was advised in December 2008 that her hours were being reduced due to the economic downturn and her income, accordingly, has been reduced.

[33] Ms. McLean's uncontradicted evidence was that Mr. Danicic was very upset by her inability to work as she had before. According to Ms. McLean, Mr. Danicic complained to her that she was "dragging him down" and he refused to help her financially, telling her that she had "better figure something out". From the beginning of 2003, Ms. McLean borrowed money from her parents in order to continue paying her half of the mortgage payments and monthly bills. The relationship deteriorated very quickly from this point on until she moved out in October 2003.

[34] The last year of the relationship was very difficult. Ms. McLean described it as "up and down" though she also said that the good periods got shorter and less frequent and the bad periods got worse and more frequent. While Mr. Danicic was never, she testified, physically abusive, he was increasingly subject to angry outbursts and was verbally and emotionally [page582] abusive. To Ms. McLean's surprise, Mr. Danicic agreed to attend couples' counseling, but this was not ultimately helpful.

[35] Ms. McLean submitted a detailed estimate of the number of hours she worked on both properties. In what was filed as exhibit 4, Ms. McLean broke the estimated hours down as follows:
1998: 646 1999: 2860 2000: 2870 2001: 2776 2002: 1992 2003: 728

[36] The total of these hours is 11,872 over the period of the relationship. Having reviewed the hours in relation to her evidence concerning the amount and nature of the work she performed as I have set out above, I conclude that her estimates are reasonable and fair. I note particularly that the hours she estimates reflect both the most demanding periods and the fact that, during the last year of the relationship, Ms. McLean was physically unable to work as she had before. In addition, the hours claimed for 1998 reflect the fact that their relationship only began in the later half of the year and her involvement with Brown's Line only really began in the fall of that year.

[37] In her submissions, Ms. McLean claims a total number of 9,515 hours worked, which is approximately 20 per cent less than the total of the hours she estimates she worked over the six-year period. As I will discuss below, I accept this amount.

[38] The question of how to value Ms. McLean's work and/or contribution in relation to the increased value of Brown's Line is more difficult for a number of reasons, including Mr. Danicic's lack of co-operation and his failure to produce any evidence or documentation relating to his own financial and other contributions. The question of the value to be placed on Ms. McLean's contributions to the value of Brown's Line, and the appropriate remedy, will be addressed below, when I review the legal remedies available.

The post-separation period

[39] Although the initial period following the separation was painful, it seems that Mr. Danicic and Ms. McLean were on reasonable terms. Ms. McLean and Mr. Danicic communicated by e- mail and he told her he was seeing someone new. She stated that he had told her that he would sell Brown's Line and she would get her "piece" of it. In May 2004, Ms. McLean asked [page583] Mr. Danicic to meet her for coffee and raised the subject. According to her, she asked for something "simple" that would repay her and allow her to pay some debts. At that point he became enraged, stomped out of the coffee shop and told her to "be careful". Later that evening, he sent her the following e-mail:

Dear Mrs. McLean,

> I was very disappointed in your attempt to blackmail me today . . .
>
> Before you try to take my last comment today out of context. Allow me to reiterate. You obviously have received some poor advice, because if you do your own homework you will find that this crazy thing you have come up with shall be a waste of energy. Maybe try to find something productive you can be proud of to spend your time on. I say "be careful" because this may end up costing YOU money. Trust me I'm speaking from experience . . . I will gladly entertain any documentation your legal team will produce. . . Sincerely, Darko Danicic

[40] This marked the beginning of what can only be described as a downward spiral in terms of Mr. Danicic's conduct in the course of this litigation and towards Ms. McLean. To

the extent that the details are relevant to the heads of relief claimed, this conduct will be discussed in that context. It is useful, however, to summarize the chronology here to provide a full picture before discussing the particular issues.

[41] Ms. McLean commenced this application in January 2005. Before that, Ms. McLean's counsel had written to Mr. Danicic in an attempt to resolve the matter. His response was to deny the relationship. On March 14, 2005, the parties appeared before Justice Goodman at a case conference. She granted leave to bring a motion for certificates of pending litigation against both properties (which were granted pursuant to a motion heard on May 3, 2005). On March 15, 2005, Mr. Danicic withdrew $25,006.50 from the secured credit line on the Brown's Line property. He later claimed that he required this amount to repay a debt to his friend, Kevin McDermott.

[42] Early in 2005, Mr. Danicic contacted Manulife and advised that he had information related to a claim that was "fraudulent". He claimed to have information that Ms. McLean, who he said was a tenant in his house, had additional income that she was not disclosing. Mr. Danicic admitted to having done this when he was questioned. Manulife investigated, found the allegations to be groundless and did not discontinue the payments at any time. In the course of her testimony, Ms. McLean stated that she did earn a small amount of contract income while she was claiming disability but that this was within the level permitted by her claim. [page584]

[43] Between May 30, 2005 and November 2006, Mr. Danicic was represented by three different lawyers. During that period, there were numerous motions, mostly relating to disclosure and Mr. Danicic's continuing failure to comply with the court orders.

[44] In October 2006, Ms. McLean received a letter signed "concerned" that purported to be from a girlfriend with "some information you might find useful". The writer claimed that she and Mr. Danicic had been "hanging out" for the last six months and that recently he had "freaked out" and hit her, and also stated that she was too afraid to go to the police because "I know what he is capable of". The letter continued:

> He has talked to me allot [sic] about what he plans to do to you. He was constantly said that he will "personally put a bullet in her head" and "make sure she suffers first." I couldn't stand this kind of talk, and when I told him so, that's when he hit me and told me that if I ever told anyone he would "smash my brains in."

[45] The letter also went on to state that Mr. Danicic was lying about his finances and had "bragged regularly that your lawyer will never find out about this". It claimed that he had received insurance money from an accident which he had deposited to an account in the Bahamas where he claimed to own property.

[46] Ms. McLean was of course very upset about this. She took the letter to the police and advised them that she was sure that it was from Mr. Danicic. She testified that she did not believe anything about the money or property allegedly held in the Bahamas. Rather, she believed that he was trying to send her on a wild goose chase. In addition, and more importantly, she "believed that he was letting me know that he would do whatever it took to make me back off".

[47] In November 2006, Mr. Danicic's counsel at the time delivered a letter allegedly written by Kevin McDermott in which he claimed to have a 40 per cent interest in the cottage property. This ultimately necessitated the addition of Mr. McDermott as a party (ordered by Herman J. on February 15, 2007). Mr. McDermott was finally questioned on July 5, 2007. His answers are vague and evasive, and while he did not admit that Mr. Danicic wrote the letter, he retreated from any claim to an interest in the property. When asked if he was abandoning any claim to such an interests, he answered affirmatively. Mr. McDermott did not appear at the trial. I am satisfied on the basis of the evidence that the claim that Mr. McDermott had an interest in the cottage was initiated by Mr. Danicic in an attempt to obstruct or frustrate Ms. McLean's claim. [page585]

The criminal charges

[48] In January 2007, Ms. McLean received two threatening and humiliating packages in the mail. They included intimate sexual photographs of Ms. McLean and Mr. Danicic, taken while they were a couple, on Mr. Danicic's digital camera. Ms. McLean candidly admitted that the photos were taken with her consent, something that she now very much regrets. Mr. Danicic retained the photos after separation.

[49] Among other things, the note in the first package said:

> Because you are such an ignorant asshole, and find great satisfaction in attempting to ruin people's lives due to your own incompetence, we have decided it was about time you got a taste of your own medicine. Every time you piss us off further, we will be mailing a card or letter to the short list of addresses to start. . . . We will not stop until you cannot cross the road without people knowing what a truly disgraceful fucking fat pig you are.

[50] The addressees included Ms. McLean's grandmother, her parents, her doctor, hairdresser and others. The last addressee was a friend from high school with whom Ms. McLean had only reconnected after separation. This was disturbing to her as it suggested that Mr. Danicic had been following her or watching her. Ms. McLean stated that she was deeply shocked, distressed and frightened, in part because she had no idea at that point whether the packages had been sent to the addressees. She went to the police.

[51] Four days later, while she was still reeling from the first package, Ms. McLean received the second package. This time, the writer referred, in intimate and familiar terms, to sexual acts, saying, for example "Do you remember the time . . .". The letter again threatens to contact "Nana", which is the familial name for Ms. McLean's grandmother. The writing ends with the following words:

> No, this is what you bring upon on yourself when you are a greedy, conniving, fucking ignorant cunt, craving attention. Well enjoy your upcoming popularity. Then one day, somehow you come to terms with this, months or years later we're uncertain. You get away from the cock in your mouth finally. Finally it's behind you. Then out of the blue, it starts again. This time its much worse.

[52] Although the address on the envelope that enclosed the second package was that of Ms. McLean's apartment, the postal code was Mr. Danicic's.

[53] The tone of the writing in the second package is markedly more hostile than the first, and overtly threatening. Ms. McLean expressed no doubt that Mr. Danicic sent both packages to intimidate her. She stated that she thinks that he expected to [page586] get away with it because she would be too embarrassed and humiliated to go to the police. If so, he was wrong. Mr. Danicic was charged by the police with extortion, criminal harassment and attempt to obstruct justice, and released on bail approximately three days later. His trial was scheduled to take place in Superior Court on May 11, 2009 and has been adjourned.

[54] Having listened to the evidence and reviewed the material contained in the packages, I am satisfied on a balance of probabilities that Mr. Danicic sent these packages. The factors that lead me to this conclusion include a number of details. First, the addressees and the details such as the name "Nana" are ones that would only have been selected by someone who knew Ms. McLean well.

[55] Second, the fact that the postal code on the second package was Mr. Danicic's is too much of a coincidence. Third, the packages were delivered during a period in which he was under increasing pressure in the litigation through contempt of court motions and so forth. Fourth, his tone is similar, though significantly more angry, to the tone of the e-mail in May 2004, referred to above, in which he warned Ms. McLean to "be careful". Fifth, he had possession of the photos and there is no suggestion that anyone else did, or that anyone else would have had any reason to send such packages. There is no shred of evidence to suggest that there is anyone else who might have had this sort of animus against Ms. McLean. The tone of the writing is clearly highly personal. It is written by one person to another he has known intimately. Mr. Danicic's conduct, apart from this incident, manifested a very angry man who was determined to frustrate Ms. McLean's attempts to obtain any relief, beginning with his initial reaction when she raised the issue over coffee and the ensuing e-mail, to his denial of any romantic relationship with her, to the fabricated claim that Mr. McDermott held a 40 per cent interest in the cottage property. I agree with Ms. McLean that Mr. Danicic miscalculated her reaction in believing that she would be too embarrassed to go to the police.

[56] I also find that it is more probable than not that he either wrote or caused to be written the letter which purports to be from a girlfriend. I would not have so concluded if that had been an isolated incident, but within the context of the other incidents I am satisfied that Mr. Danicic either wrote or essentially dictated the letter as part of his campaign to intimidate and harass Ms. McLean. In the circumstances of this case, however, the claim of harassment is made out by the incidents relating to the criminal charges. [page587]

[57] I also note that during the latter half of 2006, Ms. McLean felt very strongly that she was being followed at times. She also reports receiving numerous telephone calls late at night. When she did reverse look-ups, she discovered that they were originating from Bell Canada pay phones. Most of these calls just were "empty air" before the caller hung up. A couple of them were more disturbing, featuring an altered male voice which sounded as though it was "on a loop". Most of it was difficult to make out, but Ms. McLean thinks that she heard the words "cervical vertebrae", "claim" and "get rid of this". She suspected Mr. Danicic as the timing of the calls was close to court dates and reported the calls to the police. Though I find Ms. McLean credible, given that the evidence is untested I make no findings of fact with respect to whether Mr. Danicic made these calls.

[58] While I think it is likely that Mr. Danicic made these calls, I reiterate that the claim of harassment would have been made out on the basis of the mailing the two packages to Ms. McLean that resulted in the criminal charges, quite independently of the calls. I will address the relief flowing from this below.

[59] Ms. McLean does not report any additional letters, calls or other incidents since the criminal charges were laid.

[60] As I indicated at the outset of these reasons, there were numerous court appearances, motions and adjournments, almost all of which were necessitated by Mr. Danicic's outrageously unreasonable conduct and refusal to comply with court orders. At one point, it appeared that the matter had settled before Archibald J. on July 12, 2007, but Mr. Danicic resiled from that settlement, resulting in even more costs thrown away. Finally, Czutrin J. ordered that Mr. Danicic's pleadings be struck out as a result of which the matter proceeded as an undefended trial before me commencing on February 18, 2009. Legal Analysis

[61] The relief sought by the applicant falls into several categories. First, she seeks the imposition of a constructive trust and/or in personam relief through a monetary award in recognition of her contribution to the value of the two pieces of property (Brown's Line and the cottage) held by Mr. Danicic. These claims are both remedies for unjust enrichment and I will discuss them both under the heading of unjust enrichment. Second, she claims an order for compensatory support and a vesting order relating to the subject properties pursuant to s. 34(1)(c) of the Family Law Act, R.S.O. 1990, c. F.3. Third, she claims damages for her pain and suffering. Fourth, she claims an order restraining Mr. Danicic or anyone acting on his behalf from harassing, [page588] molesting or annoying Ms. McLean, her counsel, Georgina Carson and Michael Stangarone, and the law firm of MacDonald & Partners LLP. Finally, she claims costs on a full indemnity basis as well as prejudgment interest. I will address these heads of relief in turn.

Unjust enrichment

[62] The landmark Supreme Court of Canada decision of Pettkus v. Becker, 1980 CanLII 22 (SCC), [1980] 2 S.C.R. 834, [1980] S.C.J. No. 103 established a new cause of action of unjust enrichment concerning the division of assets owned by one spouse or a spousal equivalent upon the dissolution of a marriage or similar relationship: see Peter Maddaugh and John McCamus, The Law of Restitution, looseleaf (Aurora, Ont.: Canada Law Book Inc., 2008); K. Farquar, "Causal Connection in Constructive Trusts" (1986-88), 8 Est. & Tr. Q. 161; R. Scane, "Relationships 'Tantamount to Spousal': Unjust Enrichment and Constructive Trusts" (1991), 70 Can. Bar Rev. 260. In order to establish unjust enrichment, it is necessary to establish that (i) there has been a benefit or enrichment conferred on the defendant; (ii) that there has been a corresponding deprivation to the plaintiff; and (iii) that there is no juristic reason for the defendant to retain the enrichment: see Peter v. Beblow, 1993 CanLII 126 (SCC), [1993] 1 S.C.R. 980, [1993] S.C.J. No. 36, at para. 64.

[63] Once the claim of unjust enrichment has been made out, the next issue is the appropriate remedy. The available remedies include the imposition of a constructive trust, a proprietary in rem remedy and monetary awards. As I have discussed above, it is clear on the evidence that Mr. Danicic has benefited from the contributions to the property at the expense of Ms. McLean. It is also clear that there is no juristic reason for him to retain

these benefits. As I have outlined, Ms. McLean worked long and hard on both Brown's Line and the cottage alongside Mr. Danicic. In addition, she worked and contributed income to the household in various amounts during the course of the relationship and assisted him with his business. They always contributed to mortgage and utility expenses equally. Her contributions to both properties were direct and partly in response to Mr. Danicic's assurance that it was not necessary for her to put money into RRSPs as their future lay in their property.

[64] For the foregoing reasons, I conclude that the claim of unjust enrichment is made out. Accordingly, the next issue is that of the most appropriate remedy. [page589]

Constructive trust or monetary award?

[65] There are a number of factors that the courts take into account in making this decision. The majority of the Supreme Court in Peter v. Beblow articulated a presumption in favour of monetary relief. It is clear since Pettkus v. Becker, supra, that a plaintiff must show a causal connection with an increase in the defendant's assets, but it remains less clear how important the "link" with the property or properties is. Given the amount of work and the circumstances in which the couple worked together, I am satisfied that there was a strong link or connection with both properties. The relationship was, however, of a shorter duration than that seen in the leading cases such as Pettkus v. Becker, supra; Sorochan v. Sorochan, 1986 CanLII 23 (SCC), [1986] 2 S.C.R. 38, [1986] S.C.J. No. 46; and Peter v. Beblow, supra. But see Krueger v. Banchev, [1992] O.J. No. 207, 1992 CarswellOnt 227 (Gen. Div.), where the parties cohabited for seven years.

[66] I conclude that this is a case in which a monetary award would be sufficient. Although the imposition of a constructive trust representing an interest in the property or properties is generally a stronger remedy than an in personam monetary award, that may not be true in the present case. The reason for this is the fact that there is some evidence that Mr. Danicic has, through his actions, depreciated the value of the assets since the date of separation. The applicant believes that his actions have been undertaken in order to defeat any claim she may have. At the time of writing these reasons, the mortgagor of Brown's Line is in the process of exercising its power of sale rights against that property. The applicant is also concerned that both properties have been neglected and or mistreated since the separation with a view to defeating her claims. She has, however, not been able to access the properties and so has not been able to verify these concerns. The point is that there is no way of assessing what the present value of any interest in the property or properties would amount to.

[67] An additional factor often cited in making this determination relates to the fact that a constructive trust, an in rem remedy, may prejudice third-party creditors. This is a case in which there is some indication that there may be such creditors and it would be unfair, in my view, to render a decision that could prejudice them unduly. I conclude that a constructive trust would not be appropriate in these circumstances.

What is the measure of the monetary award?

[68] The next issue is the approach to be taken to the quantification of the monetary award. [page590]

[69] As McLachlin J. indicated [at para. 30] in Peter v. Beblow, supra, and as discussed earlier, "it is more likely that a couple expects to share in the wealth generated from their partnership, rather than to receive compensation for the services performed during the relationship". This was true, in my view, of Ms. McLean and Mr. Danicic in the course of their relationship. Ms. McLean did not perform these services on the basis that she would be paid for her work in the usual sense. She performed these services as a partner in an enterprise or project who works with a view to participating in the enjoyment of the fruits of the labour and sacrifice. This would tend to suggest that the appropriate measure of a monetary award should be that of "value surviving" as at the end of the partnership, as opposed to quantum meruit or "value received", which assesses the value of the money, goods or services received at the time they were received, and does not consider any resultant increase they have had on the value of the assets, in this case, the house and the cottage: see McCamus, supra, at 30-29 s. 30:400.10.

[70] The question of whether the value surviving measure, as opposed to value received or quantum meruit, is available was not, however, completely resolved in Peter v. Beblow, supra, in which a constructive trust was imposed by way of relief.

[71] In that decision, McLachlin J. did state that the value received (or quantum meruit) measure is to be reserved for monetary awards. As McCamus discusses, however, McLachlin J. did not state that monetary awards may be made only in the value received (or quantum meruit) measure [McCamus, supra, at 30-30 s. 30:400.10]:

> McLachlin J. did not plainly assert that a monetary award could only be made in the value received meansure, though this might be thought to be implicit in her analysis. On the other hand, if, as McLachlin J. suggests, only monetary awards should be made unless they are insufficient for some reason and, further, that value surviving normally accords with the parties' expectations, it is surely the preferable view that monetary awards can be made in the value surviving measure.

[72] I would be inclined to see the value surviving measure, calculated as of the date of separation, as more appropriate in this case because it would accord more directly with the partnership nature of the relationship as I have discussed above. It would allow a court to crystallize the extent to which one partner has contributed to the increased value of an asset or assets at a particular point in time, express it in monetary terms and order its repayment as a monetary sum. This case, then, directly raises the question as to whether monetary awards may be made in [page591] the value surviving amount. While a number of provincial appellate courts have made monetary awards in the value surviving measure, the Ontario Court of Appeal held in Bell v. Bailey, 2001 CanLII 11608 (ON CA), [2001] O.J. No. 3368, 203 D.L.R. (4th) 589 (C.A.) that such relief is precluded by Peter v. Beblow. Accordingly, I am bound by Bell v. Bailey to order damages assessed on a value received or quantum meruit basis. I note that despite holding that the value surviving measure is unavailable with respect to monetary awards, Osborne J.A. held that the award "may, to some degree, reflect the extent to which the value of a particular asset was enhanced by the claimant's direct and indirect contributions" (at para. 37).

The quantum meruit assessment

[73] Although, as I indicated earlier in these reasons, Ms. McLean estimated that she had spent a total of 11,872 hours working on the properties (or performing functions that freed

up Mr. Danicic to work on the properties), she reduced the hours claimed in this application to 9,515. This is a reasonable claim, in my view, in light of the work she performed and in light of the difference it made to the value of both properties. As Osborne A.C.J.O. stated in Bell v. Bailey, supra, at para. 37, "I accept that the value received calculation of a monetary award may, to some degree, reflect the extent to which the value of a particular asset was enhanced by the claimant's direct and indirect contributions." I acknowledge that Ms. McLean would likely have received more in the marketplace for some of her skilled labour, including the managerial and secretarial services she provided to Mr. Danicic's business, and in staining, painting, sanding and varathaning Brown's Line and the cottage property. However, without more in the form of admissible evidence, I cannot award Ms. McLean higher compensation for her services. Thus, the hourly rate I applied was the minimum wage in Ontario during this period, which I can take judicial notice of.

[74] Ms. McLean is also claiming prejudgment interest and is entitled to that. For the purpose of calculating the prejudgment interest accruing up until the parties separated in 2003, the 20 per cent reduction from the total has been proportionately reduced by 20 per cent in each year between 1998 and 2003. The rate of 4.5 per cent interest has been applied, which is the average of the applicable Courts of Justice Act, R.S.O. 1990, c. C.43 interest rates for that period. The result is summarized in the following chart:
[page592]

[QL:GRAPHIC NAME="95OR3d570-1.jpg"/]

[75] In some of the cases in which courts have made quantum meruit awards, they reduce the claim to reflect benefits (typically in the nature of room and board) received by the plaintiff or applicant. This would not be appropriate in this case because Ms. McLean and Mr. Danicic shared household expenses. The work to which the quantum meruit relates is over and above the contribution she regularly made to living expenses.

[76] Those of Ms. McLean's contributions to costs of materials that have been documented as well as other expenses paid by Ms. McLean for Mr. Danicic should also be included in the quantum meruit assessment. These amounts add to $733.05.

[77] Accordingly, Ms. McLean is entitled to a monetary award in the amount of $76,124.63 as quantum meruit damages.

Compensatory support

[78] Ms. McLean seeks compensatory spousal support by means of a lump-sum award pursuant to s. 33(8) of the Family Law Act. At the heart of her claim is the argument that she made significant sacrifices in the course of the relationship, as a result of which she suffered economic disadvantages during and after its breakdown.

[79] Ms. Carson, for the applicant, acknowledged that this is not a case in which ongoing periodic support would be appropriate, but submitted that Ms. McLean should be entitled to some amount in light of the evidence that her medical condition at the end of the relationship was exacerbated by the work she was performing at the cottage and by Mr. Danicic's refusal to recognize or accommodate her disability, which made matters worse. In addition, his refusal to assist financially required [page593] her to borrow money from

her parents in order to continue paying her share of the mortgage and utility payments. I am satisfied on the basis of their evidence at trial that Ms. McLean's parents did borrow money to assist their daughter, and have continued to do so. I am also satisfied that a modest award is appropriate in order to "make fair provision to assist the spouse to become able to contribute to his or her own support" (s. 33(8)(c)) and to "relieve financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home)" (s. 33(8)(d)).

[80] Mr. Danicic's complete lack of co-operation has meant that it is virtually impossible to assess his real income for support purposes, either at present or at the time of separation. In Bracklow v. Bracklow, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420, [1999] S.C.J. No. 14, 1999 CarswellBC 532, at para. 15, the Supreme Court of Canada established the general framework for determining spousal support and recognized the contractual, compensatory and non-compensatory bases for spousal support. Compensatory support is intended to compensate a spouse upon relationship breakdown for contributions made to the relationship and to recognize sacrifices made and the advantages to one spouse and disadvantages to the other both during and after the breakdown of that relationship. There is a plethora of decisions that elaborate on the factors to be employed by the court in a consideration of spousal support:
see, also, Moge v. Moge, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813, [1992] S.C.J. No. 107; Linton v. Linton (1990), 1990 CanLII 2597 (ON CA), 1 O.R. (3d) 1, [1990] O.J. No. 2267 (C.A.); Halliday v. Halliday (1997), 1997 CanLII 737 (ON CA), 37 O.R. (3d) 475, [1997] O.J. No. 5241 (C.A.); Juvatopolos v. Juvatopolos, 1994 CanLII 7451 (ON SC), [1994] O.J. No. 2435, 8 R.F.L. (4th) 191 (U.F.C.), at p. 52.

[81] In my view, the pattern of dependency that arose in this case was short-lived and related to Ms. McLean's medical issues during the last year of the relationship, and to the fact that her work on the properties, particularly the cottage, contributed to the problem. She was able to collect disability insurance for much of the time she was not able to work. To her credit, she has successfully obtained and maintained employment since she has been physically able. In the circumstances, the amount of $15,000 should be set as lump-sum support. Harassment

[82] The applicant seeks damages for pain and suffering without specifically setting out a cause of action. Ms. Carson submitted that I could award damages for harassment because pain and suffering are compensable under the Family Law Act. She cited [page594] cases such as Singleton v. Leisureworld Inc. (c.o.b. Leisureworld Caregiving Centres), [2008] O.J. No. 1447, 2008 CarswellOnt 2128 (S.C.J.), at para. 5, for the general proposition. I note, however, that there are only two distinct circumstances where damages have been granted under the Family Law Act. The first is the situation as in Singleton, supra, where the plaintiff loses a loved [one] because of negligence or other misconduct of the defendant. In that situation, the plaintiff is compensated through damages for the loss of the loved one's services and or companionship. This does not apply here.

[83] The second circumstance where damages have been awarded under the Family Law Act is for "assaultive behaviour", as an additional award to claims under the Family Law Act upon relationship breakdown: Huismans v. Black, 2000 CanLII 22734 (ON SC), [2000] O.J. No. 3243, [2000] O.T.C. 560 (S.C.J.), at para. 17; Dhaliwal v. Dhaliwal, [1997] O.J. No. 5964 (Gen. Div.); Surgeoner v. Surgeoner, [1993] O.J. No. 2940, 44 A.C.W.S. (3d) 248 (Gen. Div.); Harris v. Cohen, [1994] O.J. No. 2142 (Gen. Div.).

However, these cases usually follow a criminal conviction for the (physical) assaults alleged and always involve a finding by the trier of fact that the assault actually occurred. The only evidence given by Ms. McLean on whether she was ever assaulted by Mr. Danicic was that he never hit her, although he did kick her in anger on one occasion and once pulled a timer out of a wall and threw it at her. Without more evidence, I am uncomfortable relying on these cases to ground a damages claim because the applicant does not allege that her damages resulted from those incidents. The real basis for her complaint of harassment, and the cause of the damages she claims, is Mr. Danicic's conduct after the relationship ended.

[84] More generally, s. 21.9 of the Courts of Justice Act grants a Family Court jurisdiction, with leave of the judge, to hear and adjudicate upon related matters. Thus, though not pleaded explicitly, I can award damages under the tort of intentional infliction of mental suffering and emotional distress as was done in MacKay v. Buelow, [1995] O.J. No. 867, 24 O.C.L.T. (2d) 184 (Gen. Div.). Because the allegations of fact in the statement of claim provide the basis for finding the necessary elements of the tort, I can consider whether the tort was in fact made out even though the tort itself was not pleaded.

[85] The the tort of intentional infliction of mental suffering involves the following three elements: (i) flagrant or outrageous conduct; (ii) calculated to produce harm; and (iii) resulting in a visible and provable illness (Prinzo v. Baycrest Centre for Geriatric Care (2002), 2002 CanLII 45005 (ON CA), 60 O.R. (3d) 474, [2002] O.J. No. 2712 (C.A.)). [page595] Mr. Danicic has pursued a relentless campaign of harassment against the applicant.

[86] As I indicated above, I conclude on a balance on probabilities that he sent or caused to be sent the October 2006 letter to Ms. McLean purportedly written by a girlfriend reporting his threat to "personally put a bullet in [Ms. McLean's] head". I also find that he sent or caused to be sent the two packages containing the photographs, the addresses of friends and relatives, as well as the accompanying threatening and frightening writing. These were clearly designed to threaten and intimidate. I am satisfied on the evidence given by Ms. McLean and her parents that they did so and have caused her much distress and suffering, resulting in her seeking medical attention and taking medication for anxiety related issues. I find that Mr. Danicic caused Ms. McLean to suffer acute anxiety, fearfulness and great distress. She continues to be fearful for herself and others, including her legal counsel and her family. She is particularly fearful of his taunt that one day it will start again and be much worse, contained in the second package she received.

[87] These two incidents in themselves justify a finding that Mr. Danicic intentionally inflicted mental distress upon Ms. McLean, causing her significant suffering, as I have indicated. In the circumstances, I order Mr. Danicic to pay general damages in the amount of $15,000 in compensatory and aggravated damages. This amount is to be subject to prejudgment interest from January 2007, which is when the two packages containing the photographs were sent. This award is intended to "indicate society's outrage at this conduct and to compensate the wife for the loss she has suffered", to use the words of Métivier J. in Dhaliwal v. Dhaliwal, supra, at para. 66.

[88] An order will also issue restraining Mr. Danicic from harassing, molesting or annoying Ms. McLean or her counsel, Georgina Carson or Michael Stangarone or any member or employee of the law firm of MacDonald & Partners. Costs

[89] Rule 24(11) of the Family Law Rules, O. Reg. 114/99 sets out the factors to be considered in awarding costs:
(a) The importance, complexity or difficulty of the issues;
(b) The reasonableness or unreasonableness of each party's behaviour in the case;
(c) The lawyer's rates;
(d) The time properly spent on the case, including conversations between the lawyer and the party or witnesses, drafting documents [page596] and correspondence, attempts to settle, preparation, hearing, argument, and preparation and signature of the order;
(e) Expenses properly paid or payable; and
(f) Any other relevant matter.

[90] It is hard to imagine a stronger case than this for the imposition of full recovery costs on the basis of bad faith. Section 24(8) states: "If a party has acted in bad faith, the court shall decide costs on a full recovery basis and shall order the party to pay them immediately."

[91] Mr. Danicic has had three lawyers and has represented himself for long stretches. His pleadings were ultimately struck because of his non-compliance with court orders, following a lengthy period during which he breached court orders continuously, causing unnecessary delays and cost increases. This conduct in itself would, in my view, have justified an order for full recovery of costs: see Biddle v. Biddle, [2005] O.J. No. 737, 2005 CarswellOnt 731 (S.C.J.), at para. 13; Piskor v. Piskor, 2004 CanLII 5023 (ON SC), [2004] O.J. No. 796, 2004 CarswellOnt 5313 (S.C.J.), at para. 9; Van Westerop v. Van Westerop, 2000 CanLII 22456 (ON SC), [2000] O.J. No. 3601, 2000 CarswellOnt 4312 (S.C.J.), at para. 7; Leonardo v. Meloche, 2003 CanLII 74500 (ON SC), [2003] O.J. No. 1969, 2003 CarswellOnt 1920 (S.C.J.), at para. 7. His actions have, however, extended far beyond that.

[92] As I have found earlier, he embarked on a campaign of threats and intimidation designed to coerce her into abandoning her claims. He withdrew $25,000 from the line of credit secured on the Brown's Line property the day after learning, at a case conference before Goodman J. on March 14, 2005, that Ms. McLean was about to bring a motion for a certificate of pending litigation. He took a number of actions, any of which, standing alone, would not justify a finding of bad faith but which, when considered in their entirety, reveal a pattern of conduct designed to delay and frustrate the proper resolution of this matter.

[93] These actions included bringing vexatious motions on short or improper notice, including motions for alleged contempt, reporting the applicant's counsel to the Law Society of Upper Canada and seeking her disbarment, and inciting the disability insurer to bring a motion against the applicant alleging fraud in relation to her disability claim. None of these actions was ever found to have any merit whatsoever. Mr. Danicic persuaded his friend, Kevin McDermott, to collude with him to defeat the applicant, by falsely claiming that Mr. McDermott had an interest in the property, requiring the addition of McDermott as a party and escalating legal expenses for motions, questioning, [page597] transcripts and service of documents relating to Mr. McDermott and his alleged claims.

[94] Mr. Danicic's initial assertion that Ms. McLean was only a tenant was clearly false and caused increased legal expenses as a result of the time that was required, both prior to

trial and in the course of the trial, to prove facts that should have been starting points in the matter. In addition, it is clear from a review of the evidence that he regularly denied receiving service of documents causing added delay and costs. A review of the case law on bad faith provides ample support for an award of full recovery costs: see Hockey-Sweeney v. Sweeney, [2002] O.J. No. 3166, 2002 CanLII 2721 (ON SC), 2002 CanLII 2721 (S.C.J.), at paras. 12, 27, 36-40; S. (C.) v. S. (M.), 2007 CarswellOnt 348 (S.C.J.), at paras. 19-26; Feng v. Philips, 2006 CanLII 13769 (ON SC), [2006] O.J. No. 1708, 2006 CarswellOnt 2608 (S.C.J.), at para. 32.

[95] At the very least, Mr. Danicic's conduct was calculated to obstruct the process and increase Ms. McLean's legal fees in the hope that she would abandon her claim. There can be no question that an order for full recovery costs is justified.

[96] Mr. Danicic currently owes $28,500 in unpaid court ordered costs. Ms. McLean's total fees have been $252,384. She seeks an order for costs in the amount of $200,000.

[97] In considering a costs award, the court must consider the quantum sought and the means of the party who is to pay. Mr. Danicic has, when it has suited him, insisted that he has very limited means, but his persistent failure to document this (as court orders repeatedly ordered him to do) has meant that there is very little in the form of reliable evidence before the court. It would, in my view, be unconscionable for the court to permit him the benefit of a reduced costs award on this basis.

[98] Having said that, however, the proportionality of the costs sought in relation to the amounts in issue must also be considered. In normal circumstances, an award of $200,000 would be excessive. These are not normal circumstances. The escalation of costs in this case lies largely at Mr. Danicic's feet. It would, in my view, be unconscionable to require Ms. McLean to effectively bear the costs consequences of his conduct when she and her counsel have made every effort to obtain an efficient and cost-effective resolution of the issues. In my view, the claim of $200,000 in costs is reasonable, especially in light of the fact that Ms. McLean's actual fees have been in excess of $252,384.

[99] Accordingly, having considered the factors set out in rule 24(11), I order the amount of $200,000 in costs payable forthwith by Mr. Danicic. [page598]

[100] The applicant also seeks to have this order payable as a support order. An order for the payment of money may be enforced as a support order through the Family Responsibility Office (the "FRO"). Section 1(1) of the Family Responsibility and Support Enforcement Act, 1996, S.O. 1996, c. 31 (the "FRSEA") provides as follows:

> 1(1) a "support order" means a provision in an order made in or outside Ontario and enforceable in Ontario for the payment of money as support or maintenance, and includes a provision for . . . . .
> (g) interest or the

payment of legal fees or other expenses arising in relation to support or maintenance....

[101] The cases of D. (A.M.) v. P. (A.J.), 2003 CanLII 48241 (ON CA), [2003] O.J. No. 3, 2003 CarswellOnt 17 (C.A.), at para. 16, and Wildman v. Wildman (2006), 2006 CanLII 33540 (ON CA), 82 O.R. (3d) 401, [2006] O.J. No. 3966, 2006 CarswellOnt 6042 (C.A.), at paras. 54-59, provide authority for the making of this order. One advantage of an order made under the above provision is that the Order will not be discharged in a bankruptcy.

[102] However, here, unlike the situation in Wildman, the claim for support is auxiliary to the claim for unjust enrichment. While I appreciate Thomson Prov. Ct. J.'s view (and the Court of Appeal's endorsement thereof) that it is "impractical and inappropriate to suggest that this court should attempt to dissect cost awards in order to determine which part of the award relates to the support aspect of the proceedings", it would be wrong, in my view, to attach the entire cost to the relatively small support order. Furthermore, since the only likely prospect of recovery of the applicant's costs is through the vesting of the properties in dispute in any event, as I will address below, I can use a vesting order to secure the costs order to secure costs instead of potentially overly extending s. 1(1) of the FRSEA. Vesting Order

[103] The court has a broad power under s. 100 of the Courts of Justice Act to make a vesting order. Section 100 states as follows:

> 100. A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

[104] Section 34(1)(c) of the Family Law Act also confers the power to grant a vesting order on an application for support. [page599]

[105] In Regal Constellation Hotel Ltd. (Re) (2004), 2004 CanLII 206 (ON CA), 71 O.R. (3d) 355, [2004] O.J. No. 2744, 242 D.L.R. (4th) 689 (C.A.), the Ontario Court of Appeal stated that the vesting order is a creature of statute, although it has its origins in equitable concepts regarding the enforcement of remedies. In Chippewas of Sarnia Band v. Canada (Attorney General) (2000), 2000 CanLII 16991 (ON CA), 51 O.R. (3d) 641, [2000] O.J. No. 4804 (C.A.), the Ontario Court of Appeal observed the following [at para. 281]:

> Vesting orders are equitable in origin and discretionary in nature. The Court of Chancery made in personam orders, directing parties to deal with property in accordance with the judgment of the court. Judgments of the Court of Chancery were enforced on proceedings for contempt, followed by imprisonment or sequestration. The statutory power to make a vesting order supplemented the contempt power by allowing the Court to effect the change of title directly . . . "

[106] A vesting order therefore has a dual character. It is on the one hand a court order allowing the court to effect the change of title directly, and on the other hand a conveyance of title vesting an interest in real or personal property in the party entitled to the interest under the order: Courts of Justice Act, s. 96.

[107] In Lynch v. Segal (2006), 2006 CanLII 42240 (ON CA), 82 O.R. (3d) 641, [2006] O.J. No. 5014, 2006 CarswellOnt 7929 (C.A.), the Ontario Court of Appeal stated that the vesting power permits the court to deal with property in accordance with the judgment of the court. The jurisdiction is elastic. A vesting order in the family law context is in the nature of an enforcement order. Accordingly, the court will make a vesting order where the previous conduct of the person obliged to pay, and his or her reasonably anticipated future behaviour, indicate that the payment order will not likely be complied with in the absence of more intrusive measures. A person taking title by way of a vesting order must take the property subject to any existing executions against it.

[108] In this case, a vesting order is necessary to ensure compliance with the respondent's obligations in light of his past conduct: Lynch v. Segal, at paras. 27-33.

[109] The difficulty with s. 34(1)(c) of the Family Law Act, however, is that its ambit is restricted to applications for support. While there is clear authority for orders vesting property in the payor spouse as security for the payment of support (see Kennedy v. Sinclair, 2001 CanLII 28208 (ON SC), [2001] O.J. No. 1837, 2001 CarswellOnt 1634 (S.C.J.), at para. 44, affd 2003 CanLII 57393 (ON CA), [2003] O.J. No. 2678, 2003 CarswellOnt 2507 (C.A.); Thoo v. Daoust, [1995] O.J. No. 1386, 1995 CarswellOnt 1634 (Gen. Div.)), it is less clear that s. 34(1)(c) may be read broadly enough to permit the making of a vesting order to secure [page600] amounts representing the value of contributions made by a cohabiting but unmarried spouse, as in the present case. However, in the circumstances of this case, s. 100 of the Courts of Justice Act can legally ground each of the vesting orders sought.

[110] At the time of trial, the mortgagee had commenced enforcement procedures against the Brown's Line property. It is trite, of course, that this vesting order can do no more than put Ms. McLean in the position previously occupied by Mr. Danicic vis-a-vis any creditors. Depending on the stage of the process, however, it may enable her to take steps to improve the condition of the property (or at least of the cottage) and thus augment any amounts realized on its sale.

[111] Accordingly, an order will issue for vesting orders in favour of the applicant to authorize the vesting of title in her so that she may sell the properties with a view to satisfying the amounts owing to her by Mr. Danicic. In the event that the sale of the properties results in the realization of more than the amount ordered to be paid by the respondent to the applicant, she will pay such excess over to him. Conclusion

> [112] As a result of the foregoing analysis and conclusions, the applicant will be entitled to judgment for the following amounts:
> (a) Quantum Meruit damages in the amount of $76,124.63 and prejudgment at the Courts of Justice Act rate from the date of date of commencement of this application, and post- judgment interest; (b) compensatory support in the amount of $15,000 and prejudgment interest at the Courts of Justice Act rate from the date of commencement of this application, and post- judgment interest; (c) general damages in the amount of $15,000 in compensatory and aggravated damages for intentional infliction of mental suffering and emotional distress, subject to prejudgment interest [at] the Courts of Justice Act rate from January 2007, and post-judgment interest; (d) a continuing restraining order against Mr. Danicic preventing him from harassing Ms. McLean or her

counsel; (e) costs in the amount of $200,000, in addition to the costs previously ordered against Mr. Danicic that remain outstanding. [page601]

[113] The applicant is also granted vesting orders to secure the payment of these amounts, plus pre- and post-judgment interest where indicated, in the two properties.

Application granted.
