Fido 3:20 PM 50%

288

From: Deirdre Moore

DM

To: JW Kiska Hide

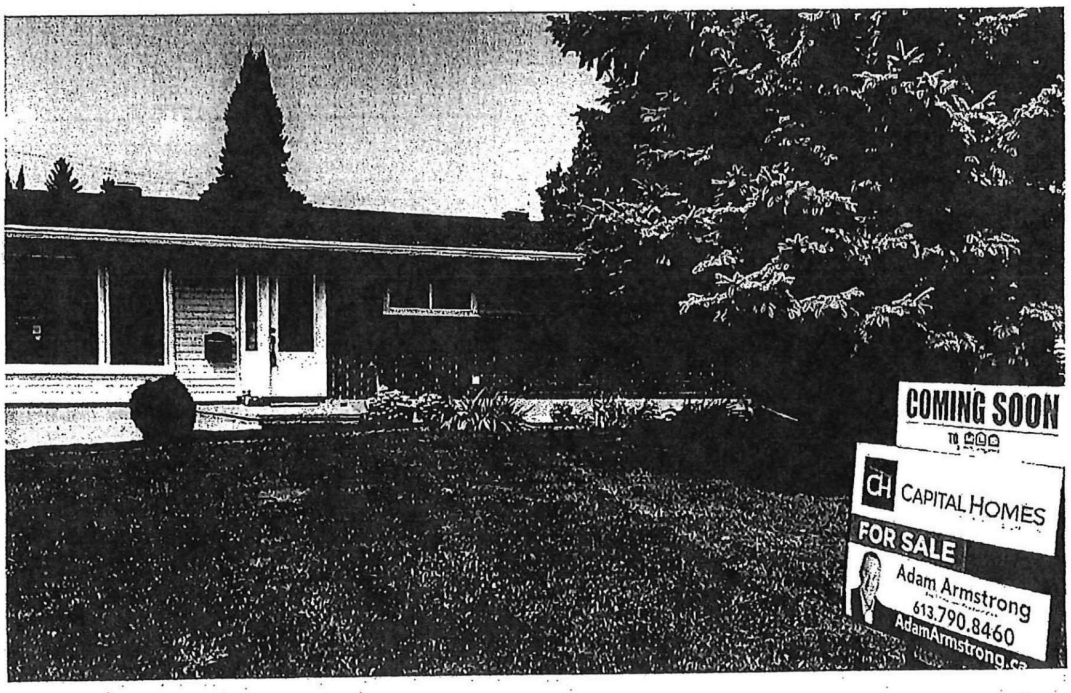
Cc: wsmith@bellbaker.com

The day after the sign goes up ...

Today at 1:37 PM August 28 / 2018

.... is not the time to offer a "solution". see D4/8 & D5/8

If you think that it is, then you should get some counselling.



D1/8

From: Deirdre Moore deirdre_m@icloud.com
Subject: Re: Request for phone call >> Re: New contact info for me
Date: Aug 28, 2018 at 1:31:17 PM
To: John Kiska jonathankiska@gmail.com

I asked for a note vs. a phone call.

I have done a great job preparing the kids. They just saw the house that I came across a couple of weeks ago. They are now excited about it because the rooms are a bit bigger and Sean still has his man-cave.

Your "solution" (however you may have defined that word to yourself) arrives too late. I am not disappointing the kids just because you have knoodled a new way to torment me.

I'll pick up your note regardless .. more for a souvenir than anything else.

Sent from my iPhone

> On Aug 28, 2018, at 1:10 PM, John Kiska <jonathankiska@gmail.com> wrote:
>
> U asked for a note.
>
> The note provides a solution.
>
> On Tuesday, August 28, 2018, Deirdre Moore <deirdre_m@icloud.com> wrote:
>
> > Just a note?
> >
> > You chose to miss three good times to list Lampman for sale which I have every right to get you to do.
> >
> > You chose to mislead the Courts, and now the OCL, for months and months and months.

DT/B

The kids and I are in a desperate situation until I land on my feet professionally or with my NFP initiative.

And now, the day before my motion documents are due, you all of a sudden feel that you have something to say/write that I should be influenced by.

The kids have been preparing for this move that you have forced.

I am not sure what you think your "note" will do.

Sent from my iPhone

> On Aug 28, 2018, at 10:51 AM, John Kiska <jonathankiska@gmail.com> wrote:
>
> Note in box.
>
> On Tuesday, August 28, 2018, Deirdre Moore <deirdre_m@icloud.com> wrote:
> > Why would I subject myself to a phone call with you?
> >
> > You have placed us in this situation as you well know.
> >
> > Feel free to leave a note with anything you have to say in the Lampman mailbox and I will pick it up. Obviously your words have no meaning though ... so unless there is a very large certified cheque in there, I am not sure what it is that you are hoping to accomplish.
> >
> > Sent from my iPhone
> >
> > > On Aug 28, 2018, at 6:30 AM, John Kiska <jonathankiska@gmail.com>

wrote:

Call me this morning if you want re Vanson. ← Aug 28/18

On Tuesday, August 21, 2018, Deirdre Moore <deirdre_m@icloud.com> wrote:

> This email address
> with phone number (819) 329-9064
>
> Sent from my iPhone

D 4/

Fido 5:13 PM 32%

289

From: Deirdre Moore

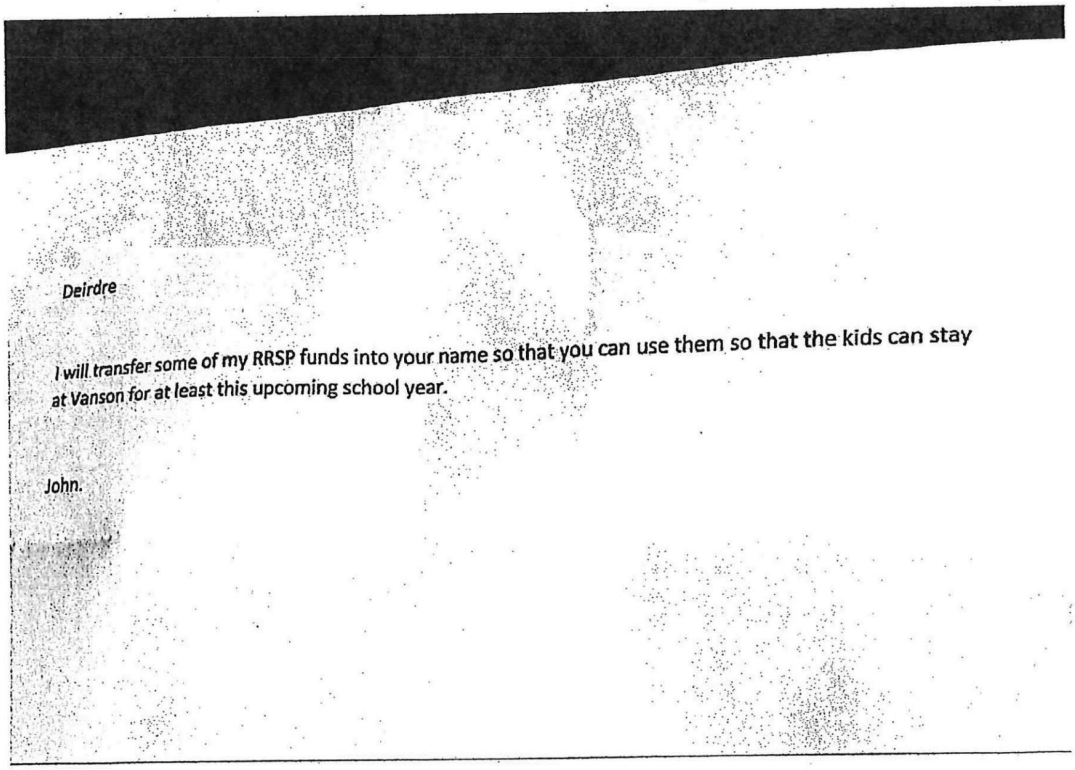
DM

To: JW Kiska Hide

More taxable "income" creation? to continue to avoid spousal support

Today at 4:44 PM August 28/2018

I can't believe that you actually put this vague, self-serving and last minute plan in writing. Plus you didn't sign it. No surprise there.

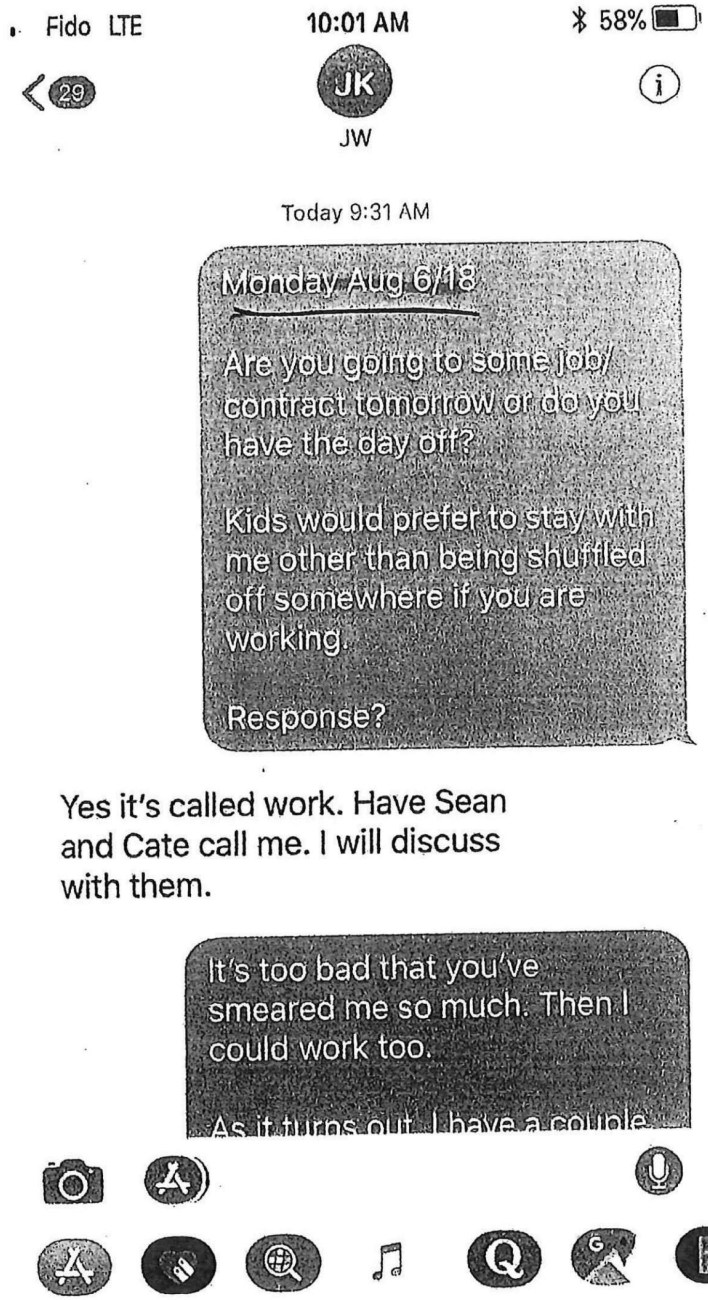


Deirdre

I will transfer some of my RRSP funds into your name so that you can use them so that the kids can stay at Vanson for at least this upcoming school year.

John.

D5/6



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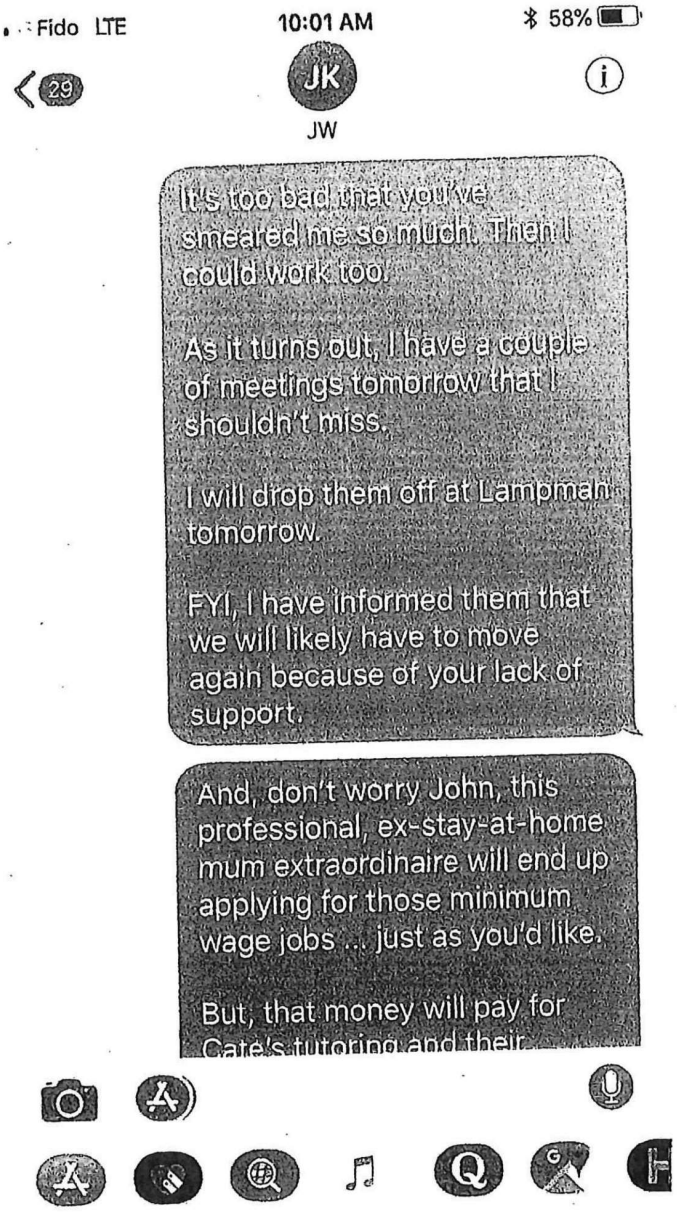
D 6/8



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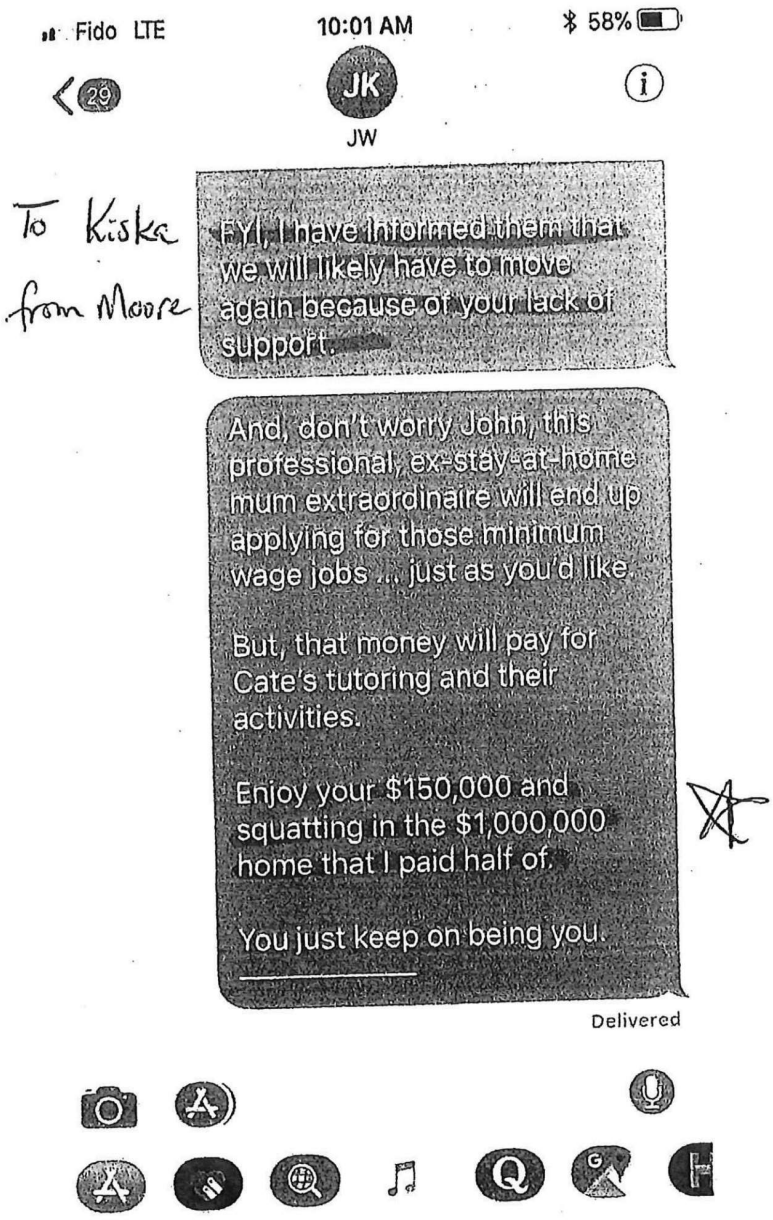
▷ 7/8



Sent from my iPhone

D 8/8

CITATION: Purcaru v. Purcaru, 2010 ONCA 92
DATE: 20100203
DOCKET: C50549

COURT OF APPEAL FOR ONTARIO

Laskin, Armstrong and Lang JJ.A.

BETWEEN

Felicia Purcaru

Applicant (Respondent)

and

Dan Purcaru

Respondent (Appellant)

Warren W. Tobias, for the appellant

John Legge, for the respondent

Heard: October 30, 2009

On appeal from the judgment of Justice Victor Paisley of the Superior Court of Justice dated May 6, 2009.

Lang J.A.:

E 1/26

I. OVERVIEW

[1] This appeal challenges two decisions made in a family law case, one the disposition of a motion made at the beginning of trial and the other the disposition of the proceeding after trial.

[2] At the opening of trial, the respondent wife, Felicia Purcaru, brought a motion to strike the pleadings of the appellant husband, Dan Purcaru, alleging multiple, continuing and egregious breaches of various non-depletion, non-disposition and restraining orders. After hearing oral evidence about the alleged breaches, the trial judge struck Mr. Purcaru's pleadings and financial statements and precluded him from participating in the trial other than as an observer.

[3] Immediately after giving his ruling, the trial judge began the trial and heard evidence from Ms. Purcaru and her expert. He granted Ms. Purcaru a divorce and monetary relief.

[4] In my view, in the unusual circumstances of this case, it was open to the trial judge on the motion to exercise his discretion to strike Mr. Purcaru's pleading and thereby restrict his participation at trial. In deciding to do so, the trial judge was cognizant of the proper principles and the severity of the sanction he imposed.

[5] Before exercising his discretion, the trial judge gave Mr. Purcaru the opportunity to consult counsel. He ensured that Mr. Purcaru understood the difference between a motion to strike pleadings and a contempt motion and that the former could well operate

to deprive him of an opportunity to present his case. To prevent such an outcome, the trial judge repeatedly suggested to Mr. Purcaru that he remedy or explain his defaults. Mr. Purcaru was also familiar with motions to strike because Ms. Purcaru had brought several similar motions during the nearly five preceding years of litigation. In light of Mr. Purcaru's denial of wrongdoing, his intransigence and all the other circumstances, there was ample evidence for the trial judge to conclude that, despite his protestations, Mr. Purcaru would neither remedy his misconduct nor comply with his disclosure obligations. On the basis of Mr. Purcaru's misconduct, the trial judge was entitled to impose a remedy that would provide a strong disincentive against breaching court orders. At some stage, this type of extreme misconduct will result in the loss of the recalcitrant litigant's right to participate in the proceedings. The trial judge decided that it did in this case.

[6] In addition, the trial judge noted that Mr. Purcaru's participation at trial would only prolong the trial proceedings and, in fairness to Ms. Purcaru, the only appropriate remedy was to strike Mr. Purcaru's pleadings.

[7] The trial judge explained his decision this way:

> The likelihood that any realistic light would be shone on the matters in issue if the [husband] continues in my view is so slim as to be unrealistic. My preference would be to have both parties participate so that a correct factual determination could be made as to the assets to be divided and the appropriate level of child and spousal support in arrears, if any, to be fixed and calculated. But without a willing participant, the chances of doing that are nil.

[8] In my view, it was appropriate for the motion judge to impose the extreme sanction of denying Mr. Purcaru trial participation. I also am not persuaded that the trial judge made any reviewable error in the corollary relief he granted to Ms. Purcaru at the conclusion of the trial. Accordingly, for the reasons that follow, I would dismiss the appeal.

II. BACKGROUND

[9] The parties apparently cohabited for some time before marriage and were married for 7.5 years. They separated in 2003. They had two children. Their daughter, now aged 10, was born with significant medical problems that required major surgery and ongoing care, particularly during her early years. She is now able to fully engage in life, although she will have permanent medical issues that will require monitoring. The parties' son is now age 7. Both children are doing well, including academically. They are in their mother's custody with the father's consent.

[10] Mr. Purcaru and Ms. Purcaru, who are age 44 and 37 respectively, are well-educated and successful computer analysts and consultants. After their immigration to Canada, the parties started a computer consulting company. In 2002, Ms. Purcaru began, and subsequently obtained, her Masters of Business Administration.

[11] The parties' post-separation litigation began in September 2004, when Ms. Purcaru applied for a divorce and corollary relief. The litigation was both acrimonious and protracted with numerous court attendances and interlocutory orders. In the course

of the interlocutory motions, Ms. Purcaru repeatedly alleged that Mr. Purcaru had substantial unreported income and assets. There were many disclosure problems. A June 2008 trial date was adjourned. The same month, Mr. Purcaru attempted suicide. Also during 2008, Mr. Purcaru undertook studies at the University of Toronto for a MBA and graduated in April 2009.

1. The proceedings

[12] Shortly before the scheduled June 2008 trial date, Ms. Purcaru changed her expert accountant to Mr. DeBresser of Marmer Penner. Mr. DeBresser composed a list of dozens of disclosure questions for Mr. Purcaru to answer, which were in addition to those that were already outstanding. At Ms. Purcaru's request, and with the consent of then counsel for Mr. Purcaru, the June 2008 trial date was adjourned. The adjournment gave Mr. Purcaru a further opportunity to complete his disclosure and to retain his own accounting expert. He was also given the opportunity to deliver an expert's report, provided he did so by October 15, 2008.

[13] On June 18, 2008, Mr. Purcaru was admitted to hospital following his attempted suicide. He was diagnosed with major depressive disorder. Further medical investigation revealed a brain "lesion in his parietal lobe". After his release from hospital, Mr. Purcaru was treated with anti-depressants, initially by his family doctor and then by a psychiatrist. The psychiatrist, Dr. Canella, explained that a MRI suggested that Mr. Purcaru "suffers from either a slow-growing tumor or demylenation" that was likely

responsible for some of his symptoms. For many months, Mr. Purcaru pursued medical advice about his brain lesion, including opinions from doctors in his country of origin, Romania. Eventually, Mr. Purcaru came to accept the consistent advice of his Canadian doctors that his lesion required observation, but not surgery.

[14] Mr. Purcaru filed numerous financial statements during the five years preceding trial. Those statements raised more questions than they answered. They also failed to include significant assets. In particular, Mr. Purcaru's early statements failed to disclose his 2005 acquisition of an interest in two properties on Gloucester Street in Toronto. His later statements failed to disclose that he had obtained an interest in a third Gloucester Street property. Ms. Purcaru only learned of these acquisitions through property searches conducted on her behalf.

[15] Mr. Purcaru also fell far short of his disclosure obligations. He did not provide an expert report by the October 2008 deadline. Two months after the deadline, Herman J. wrote an endorsement in which she observed that Mr. Purcaru's explanation was that he could not afford to retain an expert. Nonetheless, by the time of the trial in May 2009, Mr. Purcaru had retained an expert and sought to rely on his expert's evidence, although still without appropriate supporting documentation for the expert's opinion.

[16] During 2006, 2007, and 2008, the court had issued a total of four non-depletion and restraining orders against Mr. Purcaru. Mr. Purcaru's breaches of these orders became glaringly obvious on the eve of the May 2009 trial date, when he filed a further

financial statement. In that statement, he disclosed for the first time that he had obtained a $500,000 line of credit secured against his interest in the Gloucester Street property. At trial, Mr. Purcaru testified that he applied for the line of credit in April 2008 (although post-trial material suggests it may have been as late as May 5). Mr. Purcaru apparently used the proceeds of the line of credit to repay his former girlfriend a "loan" of $165,000 in June 2008 and to "lend" his brother in Romania $325,000 in September 2008. In addition, Mr. Purcaru's updated financial statement demonstrated that he removed approximately $97,000 from his RRSPs between January and May 2009.

2. The motion

[17] Upon receipt of Mr. Purcaru's trial financial statement, counsel for Ms. Purcaru sought and obtained a brief recess in order to serve a motion to strike Mr. Purcaru's pleadings and his financial statements as well as a motion for contempt. After much discussion, the contempt motion was adjourned until after the trial. We are told that it has now been further adjourned pending disposition of this appeal.

[18] Before hearing the motion to strike, the trial judge ensured that Mr. Purcaru appreciated the potentially serious consequences of his conduct and that he was aware that he could and should retain counsel. In addition, the trial judge repeatedly suggested that Mr. Purcaru could remedy any breach by paying money into court. Despite these cautions, Mr. Purcaru indicated that he was prepared to proceed with the motion.

[19] Both Mr. Purcaru and his recently retained expert chartered accountant then gave oral testimony, which was confined to the issue of the breaches of the non-depletion and restraining orders. In his testimony on the motion, Mr. Purcaru acknowledged that he was present when some or all of the orders at issue were pronounced. He was also represented by counsel when certain of the orders were granted. Despite his awareness of the court orders, and his significant level of education and sophistication, Mr. Purcaru testified that he did not appreciate the encompassing nature of the orders or the meaning of the word "encumber". In his view, as long as his total current assets exceeded the value of his assets at the time of separation, he had not contravened the orders. It was his position that he was entitled to change the financial mix of his asset position as he saw fit, including by lending $325,000 to his brother overseas and by paying the alleged debt to his former girlfriend. The testimony given by Mr. Purcaru's expert did not assist the court concerning the breaches of the court orders. This was in part because Mr. Purcaru apparently had not provided the expert with all the source documents necessary to evaluate his assets and liabilities properly.

[20] On ample evidence, the trial judge concluded that Mr. Purcaru had "defied the court orders to the detriment of the [Ms. Purcaru]" and that he had attempted to conceal his substantial breaches until the eve of trial. This conclusion is not challenged on appeal. The remedy is challenged.

[21] In addressing the appropriate remedy for Mr. Purcaru's egregious misconduct, the trial judge took into account Mr. Purcaru's failure to remedy his breaches, the dim

prospect of future disclosure, and the impact of his continuing non-disclosure. In the trial judge's view, the approach Mr. Purcaru was taking to the case was unproductive and unhelpful and his decision not to retain counsel, despite the clear need to do so and his ability to pay, would result in the unnecessary prolongation of the trial. Moreover, Mr. Purcaru's trial participation would serve no useful purpose; it would only increase the costs for Ms. Purcaru. It is in these circumstances that the trial judge precluded Mr. Purcaru from participating in the trial other than as an observer.

3. The trial

[22] The trial proceeded immediately after the ruling on the motion to strike. Ms. Purcaru testified. She relied upon the contents of her application and her affidavits of June 26, 2008. She testified about her children's circumstances. She said that she had provided all her books and records relevant to their expenses to Mr. DeBresser. She also testified about a tax liability, of which she said Mr. Purcaru's share was $140,000. She attested that the liability arose from Mr. Purcaru's failure to declare part of the parties' corporate income and that he diverted the money from the company to himself without Ms. Purcaru's knowledge.

[23] Mr. DeBresser's evidence was brief. He relied on his reports and worksheet calculations. He explained how he arrived at values for Mr. Purcaru's assets, liabilities and income in the absence of disclosure. As an example, Mr. DeBresser explained that he was unable to account for the source of $82,000 of the $469,000 that Mr. Purcaru paid

for the Gloucester Street properties in 2005. In the absence of any explanation from Mr. Purcaru, Mr. DeBresser attributed the $82,000 to him as an undisclosed asset at the 2003 date of separation.

[24] Mr. DeBresser's evidence benefitted Mr. Purcaru in one respect. In his opinion, Mr. Purcaru overstated the value of his companies in his 2005 financial statements and the consulting companies, in fact, had no value. He took this opinion into account in arriving at the amount of an equalization payment, which after subsequent adjustments, totalled $165,840.

[25] Mr. DeBresser also testified about his calculations for child support, including section 7 expenses. Those calculations were based on Mr. Purcaru's income for the relevant years: $493,000 in 2005; $227,000 in 2006, and $626,000 in 2007. These figures were based on the amounts in Mr. Purcaru's income tax returns, which were adjusted by Mr. DeBresser to take into account his opinion concerning Mr. Purcaru's actual expenditures and his unreported cash income.

[26] In the absence of disclosure from Mr. Purcaru regarding his income in 2008 and 2009, Mr. DeBresser attributed income to him of $626,000 for 2008 and $350,000 for 2009, which were figures provided to him by Ms. Purcaru's counsel.

[27] Mr. DeBresser acknowledged that he had no information upon which to estimate Mr. Purcaru's current income for the purpose of calculating ongoing child support.

However, he also testified that counsel's estimate of $350,000 accorded with the $325,000 that Mr. Purcaru lent his brother.[1]

[28] In explaining his retrospective spousal support calculations, Mr. DeBresser used Ms. Purcaru's income from her tax returns. He concluded that her income was $96,351 in 2003; $75,155 in 2004; $147,254 in 2005; $189,912 in 2006; $101,500 in 2007, and $130,000 in 2008. He estimated her 2009 income at $130,000.

[29] Mr. DeBresser pointed out that, in light of the parties' relative incomes in 2004 and 2006, no spousal support was due for those years. Based on the parties' incomes in the remaining years, and using the 2009 estimated income of $350,000 for Mr. Purcaru and $130,000 for Ms. Purcaru, and applying the calculations provided by Ms. Purcaru's counsel, Mr. DeBresser arrived at a lump sum figure of $227,256 for retrospective spousal support. Ms. Purcaru did not pursue a claim for prospective spousal support.

[30] In explaining his disposition, the trial judge stated that he awarded Ms. Purcaru the amounts requested "based on the evidence of Mr. DeBresser and the [respondent's] testimony". He stated that he was satisfied theirs was the "best evidence possible in the circumstances." The trial judge accepted, in arriving at his opinion, that Mr. DeBresser was required to make judgment calls and assumptions, which the trial judge characterized as "conservative", regarding Mr. Purcaru's worth.

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[1] This aspect of the trial evidence highlights the potential for injustice when trial participation is disallowed and why such a result should be exceptional. Mr. Purcaru's evidence on the motion to admit fresh evidence indicated the $325,000 payment was funded from the line of credit, not his income. This evidence was not available at the trial proper. Nonetheless, there was ample evidence that the $350,000 estimate of his income was conservative.

[31] In the result, the trial judge ordered Mr. Purcaru to pay Ms. Purcaru $7,534 in monthly child support, inclusive of section 7 expenses; $165,840 as an equalization payment; $140,000 for his share of the tax obligation; $518,481 in arrears of child support, including section 7 expenses and prejudgment interest; $240,506 in retrospective spousal support, also inclusive of prejudgment interest; and costs.

III. ISSUES

[32] In oral argument, Mr. Purcaru pursued the following grounds of appeal alleging that the trial judge erred on the motion:

- in striking Mr. Purcaru's pleadings and precluding him from participating at trial; and
- in failing to grant Mr. Purcaru an adjournment of the motion.

[33] He also argued that the trial disposition was in error:

- in awarding Ms. Purcaru $140,000 for the tax liability;
- in awarding Ms. Purcaru an equalization payment of $165,840;
- in failing to consider the proper components and the requisite proof of section 7 expenses; and
- in failing to consider Ms. Purcaru's entitlement to spousal support.

IV. ANALYSIS

1. The striking of Mr. Purcaru's pleadings

[34] Mr. Purcaru's counsel on appeal does not argue that Mr. Purcaru did not deplete his assets. Indeed, counsel properly concedes that Mr. Purcaru was in breach of the non-depletion and restraining orders made by the Superior Court. He also wisely concedes that the breaches were both egregious and caused serious prejudice by compromising Mr. Purcaru's ability to meet his obligations to Ms. Purcaru and their children.

[35] However, Mr. Purcaru challenges the disposition of the motion for three reasons. First, he argues that his proposed fresh evidence demonstrates that he was unaware at the time of trial that his medical condition was a relevant consideration to bring to the attention of the trial judge. Second, he explains his egregious misconduct on the basis of his mental condition. Finally, he argues that the trial judge should have fashioned a remedy for his breaches that fell short of striking his pleadings and precluding his participation in the trial.

(a) The fresh evidence

[36] The first and second grounds of appeal rely on the proposed fresh evidence comprised of affidavits and psychiatric reports from Mr. Purcaru's treating psychiatrist, Dr. Canella, and an experienced forensic psychiatrist, Dr. Julian Gojer. The psychiatric opinions attempt to attribute Mr. Purcaru's breaches, and his alleged failure to raise his mental condition at trial, to his depression and the diagnosis of a brain lesion.

[37] We permitted Mr. Purcaru to argue the appeal on the basis of the fresh evidence, subject to our subsequent determination about its admissibility. After considering the fresh evidence, I am of the view that it is inadmissible, primarily because it is unreliable and its admission would not affect the result.

[38] The test for the admissibility of fresh evidence is set out in *R v. Palmer*, [1980] 1 S.C.R. 759 at 775:

> - The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial ...;
> - The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
> - The evidence must be credible in the sense that it is reasonably capable of belief; and
> - It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[39] Mr. Purcaru argues that the medical evidence could not have been adduced at trial even with due diligence because he was too ill to appreciate its importance. I do not accept this argument. Both Mr. Purcaru and the trial judge were alive to the issue of Mr. Purcaru's psychiatric problems and their effect because those problems were raised in the course of argument of the motion.

[40] Mr. Purcaru made several references to his depression. He testified at trial that he continued to be "out of this world" for the balance of 2008. However, he also testified that, after Czutrin J. granted him an adjournment in October 2008 to cope with his

medical condition, he was able to focus on his case and prepare for trial. He stated that by January 2009, he "felt better".

[41] In any event, the argument that his depression caused his breaches would not have succeeded for several reasons.

[42] First, the allegation that Mr. Purcaru's judgment was negatively affected by his 2008 depression and lesion diagnosis is belied by the fact that, in that same timeframe, Mr. Purcaru attended full-time at the University of Toronto and achieved a MBA. This substantial accomplishment for a person whose thinking and judgment were allegedly severely compromised would be an important fact for an expert to consider when providing an opinion about the individual's mental capacity. However, although Dr. Gojer specifically addresses Mr. Purcaru's alleged loss of clients and inability to function from April 2008 to May 2009, he makes no reference to Mr. Purcaru obtaining a MBA in that same period. It may be that Mr. Purcaru did not inform Dr. Gojer of this accomplishment. Without consideration of this information, and a more complete appreciation of Mr. Purcaru's conduct throughout the entirety of the proceedings, the psychiatric opinion regarding the cause of Mr. Purcaru's admitted breaches is not reliable.

[43] Second, Mr. Purcaru's history of misconduct, albeit including his disclosure obligations, significantly predated his June 2008 attempted suicide. For example, as I discussed earlier, his 2005 and 2006 financial statements deliberately and repeatedly

concealed his purchases of the Gloucester Street properties.[2] This suggests that his lack of "judgment" significantly predated his depression.

[44] Third, Mr. Purcaru breached the court orders in April or May 2008 when he applied for the $500,000 line of credit. This was at least a month before he testified that he began to suffer from depression.

[45] Fourth, Mr. Purcaru defaulted on his obligations even after he was medicated with anti-depressants and had accepted that the lesion in his brain did not require surgery. Even assuming that Mr. Purcaru somehow could attribute his September 2008 misconduct to his mental condition, he would have great difficulty advancing the same explanation for his depletion of his RRSPs given the admitted improvement in his mental health by January 2009.

[46] Accordingly, I would dismiss the motion to introduce fresh evidence.

(b) The remedy imposed

[47] I wholly accept Mr. Purcaru's argument that pleadings should only be struck and trial participation denied in exceptional circumstances and where no other remedy would suffice.

[48] This is particularly so in a family law case where the resulting judgment may provide for continuing obligations that can only be varied on proof of a change in

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[2] According to an October 2005 property search, Mr. Purcaru bought a house at 37 Gloucester Street in August 2005. A further property search in December 2006, disclosed that Mr. Purcaru had also bought an interest in a cooperative on Gloucester Street in September 2005. A final property search in April 2008, revealed that Mr. Purcaru had bought an interest in yet another cooperative unit on Gloucester Street in January 2008.

circumstances. A change in circumstances may be difficult to establish if the initial judgment is based on incorrect assumptions, thus perpetuating injustice. Similarly, special care must be taken in family law cases where the interests of children are at issue. The consequences of striking pleadings or limiting trial evidence when custody or access is at issue was discussed in *King v. Mongrain* (2009), 66 R.F.L. (6th) 267 (Ont. C.A.), where Gillese J.A. observed at p. 273 that pleadings should not be struck if such a remedy leaves the court with insufficient information to determine custody. See also *Haunert-Faga v. Faga* (2005), 203 O.A.C. 388 (C.A.).

[49] The adversarial system, through cross-examination and argument, functions to safeguard against injustice. For this reason, the adversarial structure of a proceeding should be maintained whenever possible. Accordingly, the objective of a sanction ought not to be the elimination of the adversary, but rather one that will persuade the adversary to comply with the orders of the court. As this court said at p. 23 of *Marcoccia v. Marcoccia* (2009), 60 R.F.L. (6th) 1 (Ont. C.A.), the remedy of striking pleadings is "a serious one and should only be used in unusual cases". The court also explained at p. 4 that the remedy imposed should not go "beyond that which is necessary to express the court's disapproval of the conduct in issue." This is because denying a party the right to participate at trial may lead to factual errors giving rise to an injustice, which will erode confidence in the justice system.

[50] Nonetheless, the decision to strike pleadings and to determine the parameters of trial participation is a discretionary one that is entitled to deference on appeal when

exercised on proper principles. The exercise of discretion will be upheld where the motion or trial judge fashions a remedy that is appropriate for the conduct at issue. In *Sleiman v. Sleiman* (2002), 28 R.F.L. (5th) 447 at p. 448, a case involving a refusal to provide financial disclosure, this court upheld the motion judge's determination that the appellant had demonstrated a "blatant disregard for the process and the orders of the court" as well as her decision precluding the appellant from contesting his wife's financial claims. In *Vacca v. Banks* (2005), 6 C.P.C. (6th) 22 the plaintiff had repeatedly failed to comply with orders related to discovery and the progress of litigation. Ferrier J. for the Divisional Court, observed at p. 27 that the master's remedy of the dismissal of the action may be an appropriate sanction to recognize the court's "responsibility for the effective administration of justice".

[51] In this case, the trial judge was alert to the proper principles. He repeatedly and emphatically expressed the concept that trials should ideally proceed with the participation of the parties. He was cognizant of and balanced the competing interests.

[52] This is not a case where the trial judge struck Mr. Purcaru's pleadings and financial statements summarily, or without giving him an opportunity to correct or explain his conduct. The trial judge appropriately called for and heard oral evidence, both from Mr. Purcaru's chartered accountant and from Mr. Purcaru, who acknowledged the very transactions that amounted to breaches of the orders at issue.

[53] It is apparent that the trial judge did not accept Mr. Purcaru's proffered explanation that his assets had actually appreciated in value - an explanation not pursued on appeal - or that he believed he was acting within the confines of the orders. He also did not accept that Mr. Purcaru would or could remedy his breaches. Indeed, there were plenty of reasons not to accept Mr. Purcaru's evidence on its face, including his attempts to rationalize his significant disbursements to his brother and his former girlfriend.

[54] In addition, Mr. Purcaru's credibility was brought into question by a review of his earlier sworn financial statements, which demonstrate a pattern of deception. He also altered a medical report that he had annexed to his affidavit on an interlocutory motion earlier in the proceeding. The motion judge, Herman J., specifically concluded that Mr. Purcaru had "crossed out" the words "identical to" in the medical report and replaced them with "different from", apparently in an effort to make the report sound as though there were conflicting medical opinions about the seriousness of his lesion.

[55] In light of Mr. Purcaru's conduct, the trial judge considered whether his participation would assist with arriving at the necessary factual findings. He decided it would not. He did so primarily because Mr. Purcaru continued to display an unwillingness to comply with orders of the court that were essential to ensure trial fairness, including his continued failure to comply with his disclosure obligations.

[56] The trial judge required Ms. Purcaru's counsel to deliver a draft proposed judgment so that Mr. Purcaru would see and appreciate the details and significance of the

relief sought by Ms. Purcaru. Even after he was presented with the proposed judgment, Mr. Purcaru remained intransigent. The most that he was prepared to do was "to make those disclosure in the trial."[3]

[57] While Mr. Purcaru suggested to the trial judge that costs would be an adequate remedy to address his misconduct, his depletion of assets suggested that any costs order could be ineffective.

[58] In any event, if Mr. Purcaru had been allowed to participate fully in the trial without completing his disclosure, counsel for Ms. Purcaru would have unfairly been denied the opportunity to prepare to meet his evidence about his financial situation. The trial judge could have considered the alternative of allowing Mr. Purcaru to continue to participate, but drawing an adverse inference with regard to his assets and liabilities. However, such a sanction would have been inadequate in light of the trial judge's specific conclusion that Mr. Purcaru would prolong the trial with irrelevant issues without providing the disclosure necessary to arrive at a fair determination of his relevant worth and income.

[59] The trial judge did not explicitly consider providing Mr. Purcaru with other lesser forms of trial participation that may have assisted the court with its fact-finding role. For example, the trial judge did not specifically address permitting Mr. Purcaru to cross-examine his wife or her expert to test the value of her assets and liabilities. Nor did he

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[3] In his July 2009 affidavit on the stay motion in this court, Mr. Purcaru claimed that he was then "prepared to sell my house and one of my apartments and pay the monies into court in an attempt to partially purge my contempt." Unfortunately, Mr. Purcaru did not make that suggestion at the time of the motion.

address whether Mr. Purcaru could present argument at the conclusion of the evidence. It would have been helpful if the trial judge had specifically discussed these alternatives because a litigant denied the right to call evidence may still potentially contribute to a trial. That contribution could be made through partial or full cross-examination of one or more witnesses, or by making oral submissions on the evidence and the law. However, a review of the record in this case demonstrates several reasons why the trial judge decided against allowing Mr. Purcaru the opportunity to cross-examine or present oral argument.

[60] First, Mr. Purcaru explained to the court that his trial participation was important, but only in relation to the quantification of his own income, assets and liabilities. He did not ask for any form of participation regarding other issues.

[61] Second, Mr. Purcaru did not define any particular concerns about the income, assets and liabilities of Ms. Purcaru that would have supported a request to cross-examine her or her expert.

[62] Third, Mr. Purcaru's demonstrated deception and unfocused approach would likely have prolonged the trial without advancing its truth-seeking purpose.

[63] Finally, it would have been unfair to allow Mr. Purcaru to present argument on matters such as entitlement to spousal support when he had failed to put forward his own position.

[64] In any event, apart from his position on appeal that Ms. Purcaru did not call sufficient evidence at trial to support her claims regarding the tax liability or receipts for

childcare, Mr. Purcaru does not present evidence to conclude that Ms. Purcaru obtained a windfall as a result of the lack of cross-examination or argument.

[65] Accordingly, in my view, the trial judge properly exercised his discretion to decide that Mr. Purcaru's participation at trial in any respect would not have been helpful or productive. In light of Mr. Purcaru's significant level of sophistication, manipulation and prevarication, this was one of those exceptional cases where the trial judge was entitled to conclude that the sanction imposed did not exceed what was necessary. The trial judge's disposition is entitled to deference.

2. Refusal of an adjournment

[66] Mr. Purcaru also argues that the trial judge erred in failing to grant him an adjournment to obtain counsel for the motion to strike. The trial judge gave Mr. Purcaru the opportunity to speak to counsel after counsel for Ms. Purcaru had informed the court that he intended to bring an application to strike Mr. Purcaru's pleadings. After the recess, rather than requesting an adjournment to retain counsel for the motion, Mr. Purcaru specifically said he was prepared to represent himself on both the motion and at trial. He requested an adjournment to retain counsel only for the purposes of the contempt motion. That request was granted. I would not give effect to this ground of appeal.

3. The challenges to the merits

[67] I turn to Mr. Purcaru's grounds of appeal challenging the substantive relief awarded by the trial judge.

[68] First, Mr. Purcaru challenges the award to compensate Ms. Purcaru for the $140,000 tax liability attributable to Mr. Purcaru. However, in the absence of any evidence to the contrary, the trial judge was entitled to accept Ms. Purcaru's evidence about this claim. I see no error in the trial judge's award, which I observe implicitly requires Ms. Purcaru to pay that amount on Mr. Purcaru's behalf or on behalf of the corporation. There is no fresh evidence that justifies a conclusion that the award resulted in a windfall to Ms. Purcaru.

[69] Second, Mr. Purcaru cannot succeed in his challenge to the equalization award. There was no persuasive evidence that Ms. Purcaru misrepresented her income, assets or liabilities. In the absence of disclosure by Mr. Purcaru, the trial judge was entitled to accept Mr. DeBresser's assumptions about Mr. Purcaru's date of separation assets. It was within Mr. DeBresser's expertise to value those assets by working backward to query the sources of the monies Mr. Purcaru used to buy the Gloucester Street properties and to send money to Romania. In addition, the record discloses that the trial judge properly credited Mr. Purcaru for his $50,000 prepayment towards the equalization award.

[70] Third, I see no error in the trial judge's award of section 7 expenses for the children. Mr. Purcaru's primary argument on this issue is that Ms. Purcaru did not

provide paper receipts for the childcare expenses. However, counsel at the hearing were unable to explain exactly what evidence was before the trial judge from the court file. Moreover, Mr. DeBresser testified that he was satisfied about these expenses. In addition, it was evident that Ms. Purcaru incurred significant childcare expenses while she was working outside the home. In her application, the contents of which she adopted at trial, Ms. Purcaru stated that costs for the children "before and after school ... total $2,700 a month." In the absence of any evidence to the contrary, the trial judge was entitled to accept Ms. Purcaru's evidence on this issue.

[71] Fourth, Mr. Purcaru challenges the spousal support award on the basis that Ms. Purcaru failed to establish entitlement to support, which is an essential pre-condition to a support award. Unfortunately, trial counsel for Ms. Purcaru did not specifically address the factors and objectives for spousal support set out in section 15.2 of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), nor did he question Ms. Purcaru orally about any economic advantages or disadvantages that arose from her marriage or its breakdown or the financial consequences arising from her care of the children of the marriage or about any other relevant circumstances that would entitle her to support.

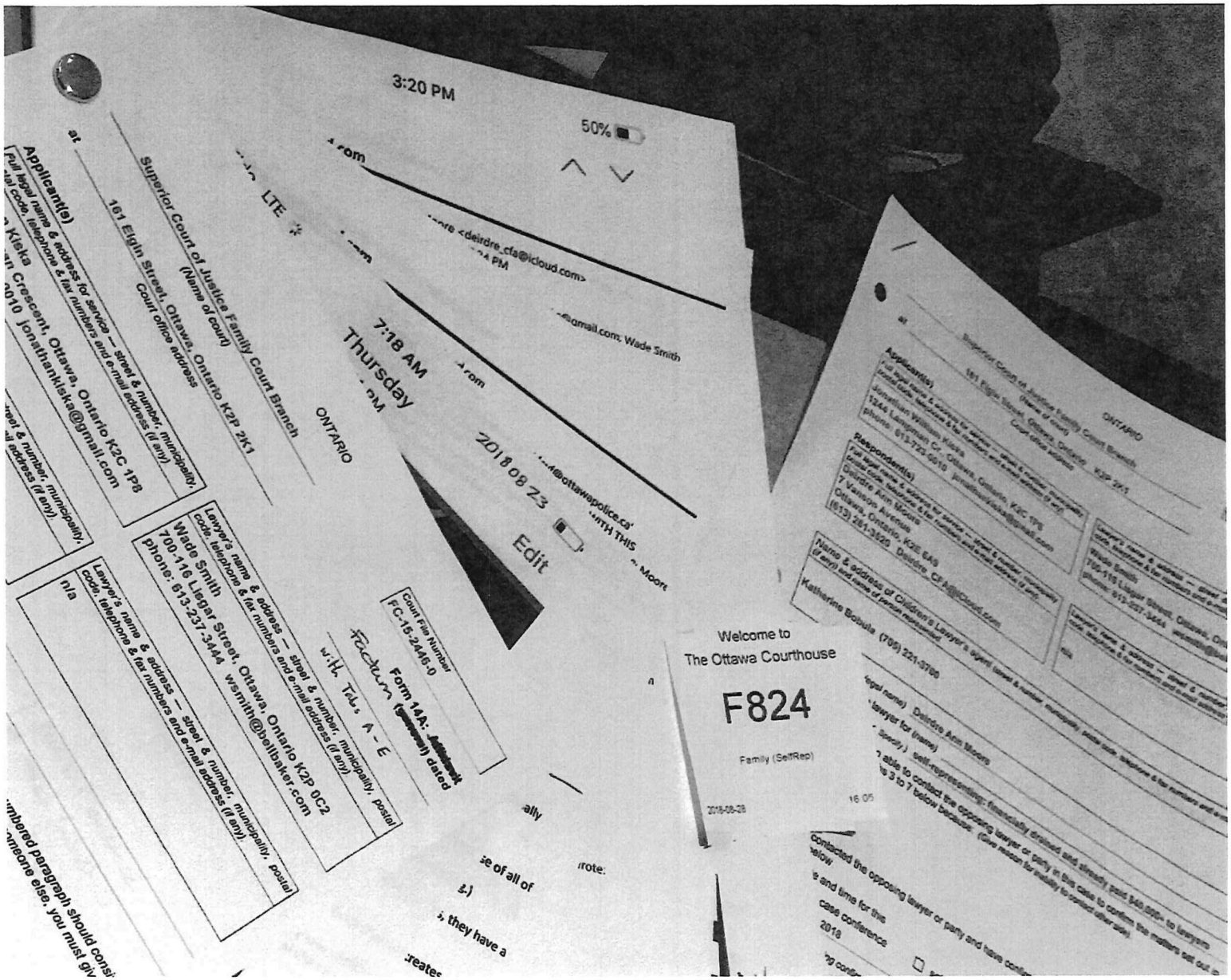
[72] However, the bulk of the evidence regarding entitlement was contained in Ms. Purcaru's application, financial statement and affidavits that she specifically relied upon and adopted as true at trial. In her affidavits, Ms. Purcaru explained that she was the primary parent who was responsible for the children's care, including that of the daughter who had medical challenges at birth. As well, Ms. Purcaru explained that her ability to

V. RESULT

[76] In the result, I would dismiss the appeal with costs to Ms. Purcaru fixed in the amount of $12,500, inclusive of disbursements and GST.

RELEASED: Feb 3, 2010
"JL"

"S.E. Lang J.A."
"I agree John Laskin J.A."
"I agree Robert P. Armstrong J.A."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FC-15-2446-0
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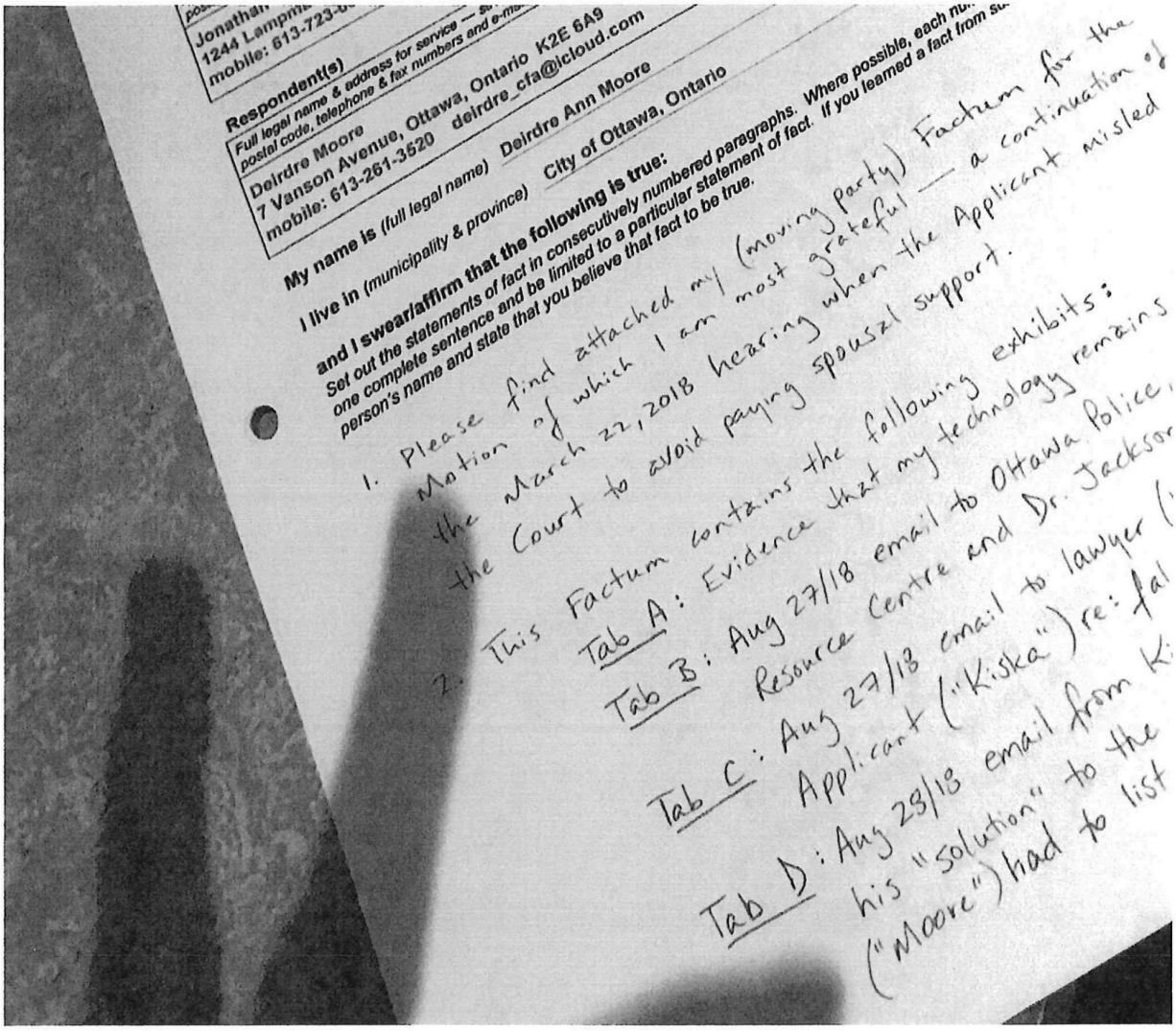
Name & address of Children's Lawyer (if any) and name of person represented
Contacted the opposing lawyer or party and have
case conference
2018


Respondent(s)
Full legal name & address for service — postal code, telephone & fax numbers and e-mail
Deirdre Moore
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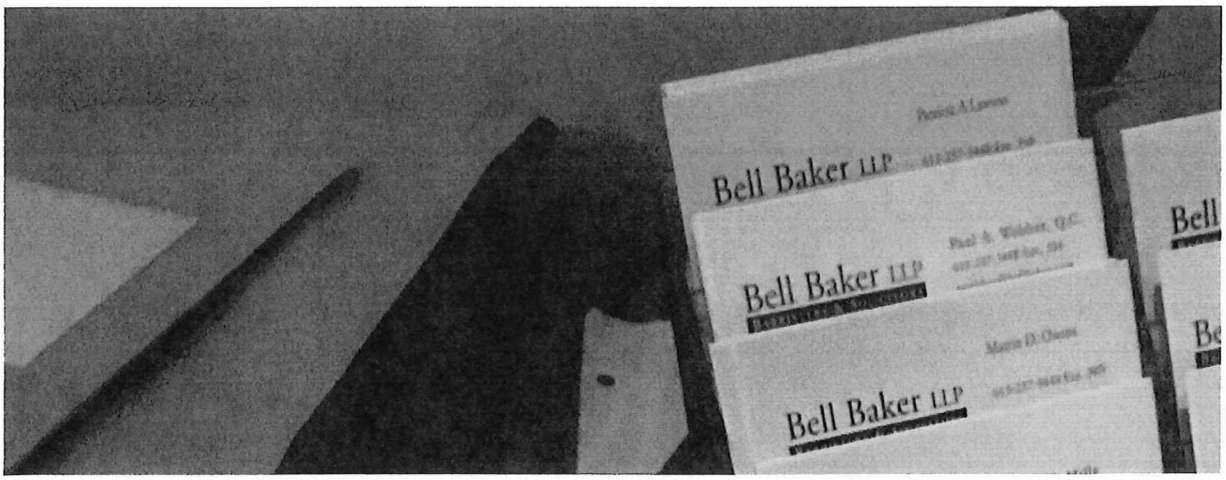
mobile: 613-261-3520 deirdre_cfa@icloud.com
My name is (full legal name) Deirdre Ann Moore
I live in (municipality & province) City of Ottawa, Ontario
and I swear/affirm that the following is true:
Set out the statements of fact in consecutively numbered paragraphs. Where possible, each number should be one complete sentence and be limited to a particular statement of fact. If you learned a fact from someone, name the person's name and state that you believe that fact to be true.
1. Please find attached my (moving party) Factum for the Motion of which I am most grateful — a continuation of the March 22, 2018 hearing when the Applicant misled the Court to avoid paying spousal support.
2. This Factum contains the following exhibits:
Tab A: Evidence that my technology remains
Tab B: Aug 27/18 email to Ottawa Police, Resource Centre and Dr. Jackson
Tab C: Aug 27/18 email to lawyer ("Kiska") re: fal Applicant
Tab D: Aug 28/18 email from Ki his "solution" to the ("Moore") had to list


Bell Baker LLP
Bell Baker LLP
Bell Baker LLP

From: Deirdre Moore deirdre_cfa@icloud.com
Subject: Today's service of a Factum
Date: Aug 28, 2018 at 5:11:47 PM
To: wsmith@bellbaker.com
Cc: JW Kiska jonathankiska@gmail.com

Mr. Smith,

You are now in receipt of an Affidavit, Factum and 14C for next week's Motion. They are not perfect, but under the circumstances

You should be aware that, as per below, your client is attempting to suggest that his finding of more ways to avoid spousal suppor under two years. Accepting an RRSP transfer when he should be paying spousal support??? Risk a real estate market correction w

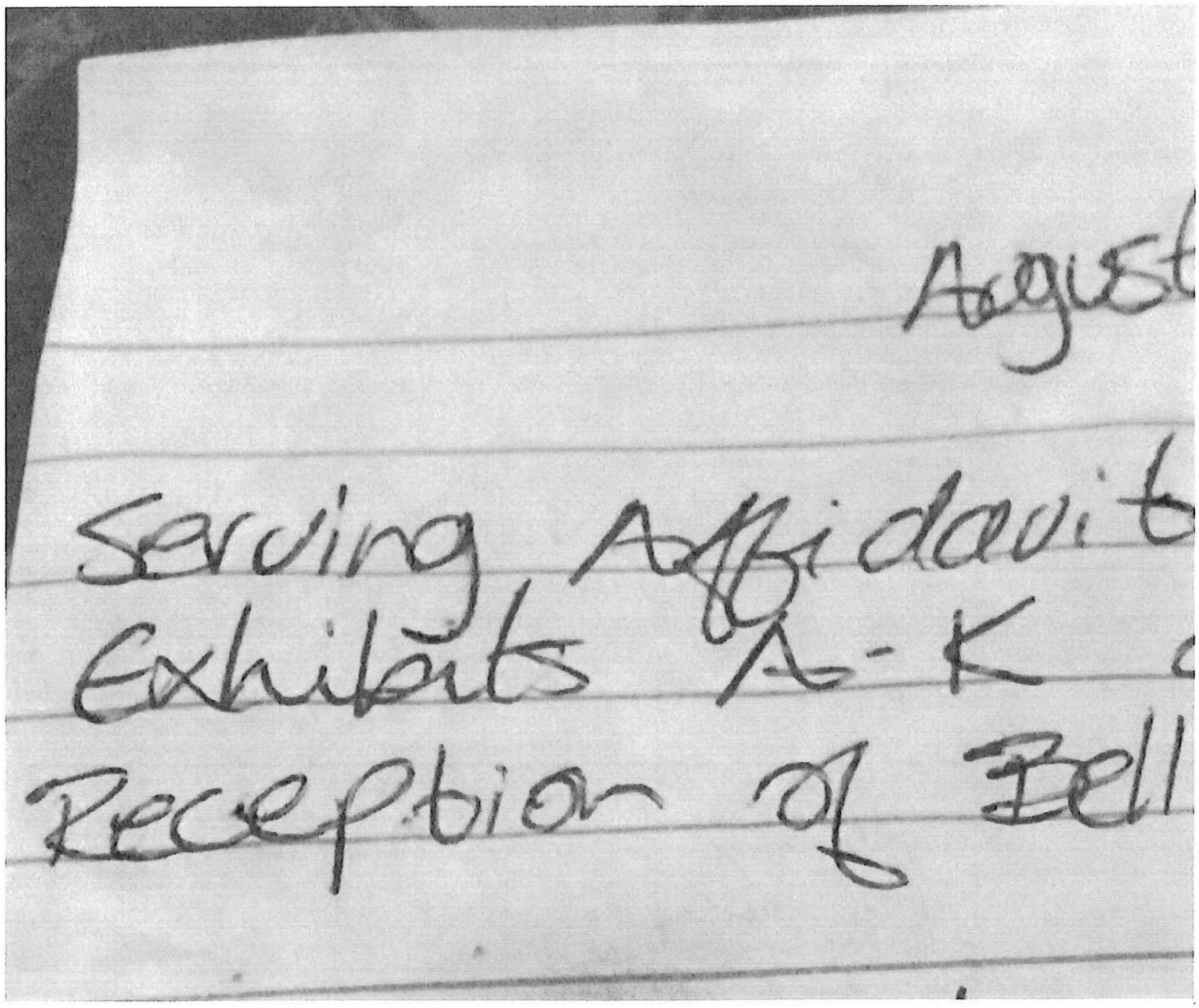
Kiska continues to find new ways for me to document his abuse.

Also, as you are now aware, I do have evidence of tech hacking ... the attached screenshot is simply the most recent and handy.
↳ shown in the Factum

Regardless, you have received a lot of information in person, and by fax and although you don't seem to have any trouble sending responding to questions regarding the well-being of Sean and Cate.

Clearly, Kiska also has no trouble reaching me when he wants to.

The both of you are ignoring OCL recommendations and knowingly attempting to make my life as difficult as possible.



Aff 2

re: rushed Factum