



## Article

### Family Law

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# Judge appoints receiver to get to the bottom of husband's assets in divorce case

By Adam N. Black

Judicial intolerance for spouses who provide incomplete financial disclosure in divorce cases appears to be on the rise, amid an increasing backlog of cases that is putting significant demand on courts and judges throughout the country.

Financial disclosure is an essential tenet of family law: Without it, a separated spouse is unable to determine their entitlement to division of property, child support and spousal support, and court proceedings can be prolonged unnecessarily while those issues are sorted out.

That was what transpired in a recent case before Justice Leonard Ricchetti of Ontario's Superior Court of Justice, with the judge ultimately taking the "extraordinary" step of appointing a receiver to provide the disclosure related to the husband's assets and income.

In the case, a husband and wife separated at the ages of 77 and 72 respectively, following their 47-year marriage. The couple generated significant wealth through a land development business the husband started shortly after the couple married. According to the husband's net worth statement, which he prepared seven months prior to separation, he was worth approximately \$78 million. Despite the husband's own description of his wealth, following the parties' separation he alleged he had no net worth and was forced to live in his office because he could not afford to rent a home.

Unfortunately, the hallmark of the couple's separation has been the husband's steadfast refusal to provide the necessary and relevant financial disclosure to his ex-wife. The wife commenced court proceedings just five days after the parties separated in November 2019. Since that time, there have been approximately 15 court hearings, almost all of which focused on the husband's incomplete disclosure. Several orders were made compelling the husband to provide, for example, real estate appraisals, corporate information, documents related to money advanced to family members and information about a corporate reorganization.

The husband failed to comply with many of the court orders. In May 2022, the wife asked Justice Ricchetti to find the husband in contempt of six court orders. In the contempt hearing, the husband admitted his failure to comply and pointed his finger at others in defence of his breach. He stated he had “been unable to comply with Court Orders as a result of a lack of financial resources, lack of adequate internal workforce for the demanded financial disclosure and lack of control over third parties, who were requested to prepare reports.”

Justice Ricchetti rejected the husband’s suggestion that he was not to be blamed for the incomplete disclosure and noted the “difficulty with the outstanding disclosure is that it is all within the husband’s control – not as he suggests within the control of third parties.”

Against that backdrop, Justice Ricchetti considered whether the husband was in contempt. He began his analysis by stating the “case demonstrates the unfortunate waste of considerable judicial resources when parties *choose* NOT to comply with their fundamental obligation on separation – disclosure of complete, and accurate financial information and documentation. The game of ‘hide and seek’ of the party’s assets and income is to be discouraged in the strongest means possible.”

Over the course of a five-day hearing before the judge, the husband and wife provided evidence. The judge assessed the husband’s evidence and rejected it “in its entirety.” According to Justice Ricchetti, the husband’s evidence “constituted bald denials, veiled and clear attempts to blame both of his prior counsel” and “was inconsistent and contained unbelievable explanations.”

According to Justice Ricchetti, a finding of contempt should be made “sparingly and as a last resort” in only the “clearest of cases and with the greatest of caution.” For the judge, this was one of those cases. The judge found the husband to be in contempt of the disclosure orders since he “acted in a deliberate manner to not comply with the disclosure orders so as to avoid disclosing his personal and financial information.”

On Aug. 5, approximately three months later, a hearing to determine the penalty for contempt took place. At that hearing, Justice Ricchetti first considered if the husband had brought himself into compliance with the court orders. In other words, had the husband purged his contempt? Despite the opportunity to right the ship, the husband had not done so and, not surprisingly, he remained in contempt.

In designing the penalty, the judge had regard to the goals of a sentencing for contempt which are 1) deterrence to prevent further non-compliance through an awareness that “there are serious consequences for the deliberate and flagrant disobedience of court orders and for failing to make complete and accurate financial disclosure” and 2) denunciation which should help to “maintain confidence to parties in family law proceedings and the general public who use the justice system” by demonstrating that the “administration of justice is seriously undermined where parties can ignore statutory obligations or court orders.”

The judge ordered the husband to pay a financial penalty of \$50,000 to the wife. In doing so, Justice Ricchetti noted the amount was “unacceptably low” but that he was unable to order a higher amount since the wife requested only \$50,000.

In a relatively rare step, the contempt penalty also included the appointment of a receiver. A receiver is a neutral and independent third party tasked with controlling all or part of a person’s or business’ affairs. In this case, the receiver will be given all the powers and rights the husband had to “seek, request and obtain possession of all relevant financial documentation and information relating to the issues in this case.” Simply put, the husband’s refusal to provide disclosure is corrected by giving someone else the power to provide it.

Justice Ricchetti recognized the “appointment of a receiver is an extraordinary and intrusive remedy.” However, in the circumstances of this case, the result is both proportionate and fitting.

If the husband continues to frustrate the disclosure process and the work of the receiver, Justice Ricchetti’s decision leaves the door wide open to the appointment of a receiver who will take full possession of all of the husband’s property and business interests.

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