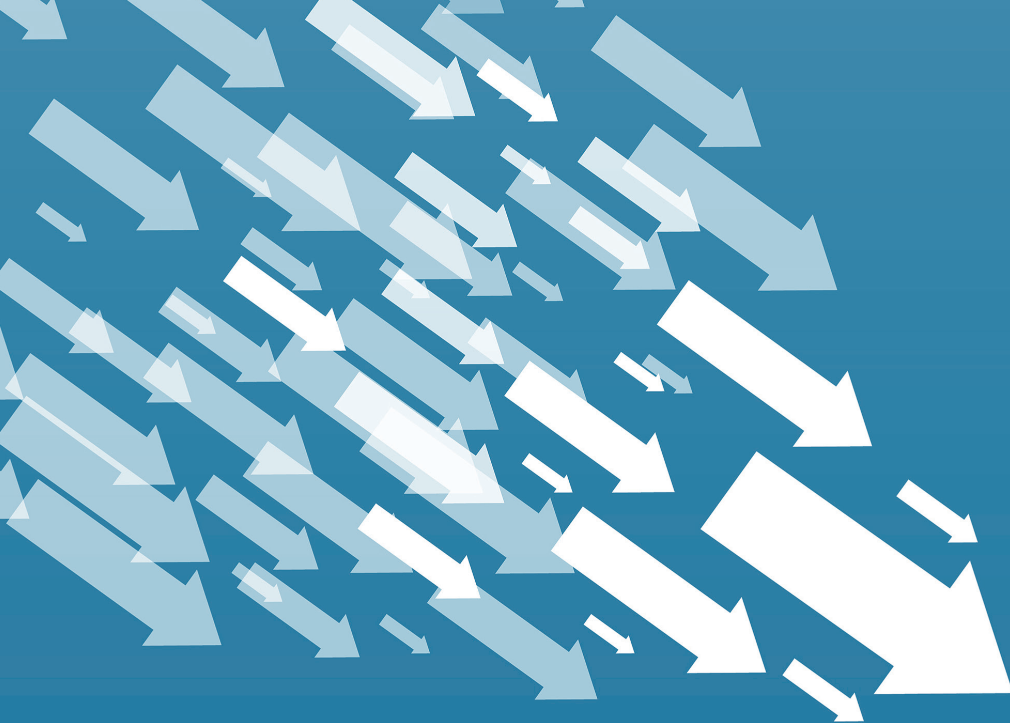

COMMON MISTAKES TO AVOID

When Preparing Financial Statements

By Carolyn J. Chambers, B.Comm, LL.L, LL.B., LL.M., CDFA®

Most family law cases involve at least one financial issue that needs to be resolved. This requires that both parties prepare a Financial Statement and produce financial disclosure. Often, this is the first time that a client will take a hard look at his or her finances and gather all of the relevant information about their financial situation in one place. For many, this is an overwhelming endeavor. In an effort to simplify the process, clients will try to cut corners wherever possible, and inadvertently leave out important information.

WHAT IS A FINANCIAL STATEMENT?

The Financial Statement is a sworn document, much like an affidavit. Each party is supposed to be able to rely on the other's sworn Financial Statement to be a true, complete and accurate reflection of that party's financial situation in order to make decisions with respect to support and property settlements.

> Failure to properly complete the Financial Statement could result in inequitable, incorrect and unfair settlements, loss of credibility, and (if the parties are in Court) possible costs and other sanctions.

This is the client's opportunity to get their financial house in order, put their best case forward, and move forward with the next stage in their life.

To help your clients through this process, it's helpful to do a "dry run" through the Financial Statement to alert them to the things they should consider when they prepare their first draft. Carefully demonstrate to them how to complete the Financial Statement—including pointing out assets and debts that are often omitted—and provide a list of documents that they will need to gather. Below is a list of common mistakes to avoid when preparing a Financial Statement:

1 OVERLOOKING IMPORTANT PAY STUB DEDUCTIONS

Most (if not all) of the information on a client's pay stub should correspond to a section of the Financial Statement. In addition, the pay stub can reveal a wealth of information, including: whether there are any taxable benefits; whether the client is enrolled in any medical, dental, extended health care and/or life insurance plans; whether there are any additional savings accounts or retirement vehicles (such as RRSPs, DPSPs, pensions, or other employee savings plans); if charitable donations are being made; if union dues are being paid; and more.

Another common mistake is to overstate the CPP and EI deductions. Once the client has reached a certain level of income for the year, the CPP and EI deductions are maxed out and the contributions will no longer be automatically deducted for the remainder of the year. Because of this, it is important to be aware of the income level and maximum deductions for CPP and EI for the year. (The CPP and EI maximums for the current and previous years can be found at www.canada.ca.)

While it is possible to overpay CPP and EI—for example, where a client has two jobs and both employers are deducting the maximum amounts—in most cases the overpayment will be refunded when they file their income tax returns. The Financial Statement should reflect the actual amount of CPP and EI being paid.

2 OVERSTATING OR UNDERSTATING EXPENSES

Many questions will be raised if a client has significantly more expenses than income and it is unclear how these expenses are being paid for, without corresponding debts to substantiate the extra spending. Similarly, eyebrows may be raised if a client has significantly more income than expenses without clear indication of where the unused funds are going, or without significant savings to account for the excess.

In the former situation, is the client receiving cash income that is not being reported? In the latter, is the client hiding excess income in unreported accounts?

When recording expenses, it is important that the client accurately records both the expense and the portion of the expense that they are covering with their income. For example, if a spouse does not earn an income, it is unlikely that they are covering 100% of the mortgage, property taxes, insurance, and children's expenses; be sure to indicate who pays for what.

3 FORGETTING TO DISCLOSE THE "LITTLE THINGS"

When asked about a client's assets and liabilities, the big-ticket items always come to mind: family home, RRSPs, pensions, mortgages, and lines of credit. However, more often than not, they overlook the less common or "forgotten" assets and liabilities, such as: credit card and loyalty reward points, timeshares, banked vacation and sick days, and retail credit card balances. While seemingly insignificant, the values add up—and quickly! I had a client whose spouse failed to disclose hundreds of thousands of credit card and other loyalty rewards points, which, when valued, were worth thousands of dollars. In another case, my client nearly forgot to include a debt on a retail credit card that had been used to pay for materials and appliances for renovations towards the family home, which ultimately increased its value. Luckily, this was caught in time.

**The lesson?
Take the time to jog your client's memory regarding all aspects of their financial situation to help avoid future disputes about undivided assets or liabilities.**

Dig deep—obtaining Income Tax Returns as far back as the date of marriage could reveal RRSP contributions that could result in a significant date of marriage deduction.

4 IMPROPER TREATMENT OF EXCLUDED ASSETS

Often, a client will inform you of a gift or inheritance received during the marriage that is to be excluded. It is important for you to always ask where the funds were deposited or how they were used. A client needs to be able to clearly demonstrate that the funds were kept separate, and can only exclude the amount that was still in existence on the date of separation (or the date of trial, depending on the province or territory in which you practice).

It is not uncommon for clients to provide account statements confirming the original amount of the gift or inheritance received, only to discover that throughout the years they had withdrawn and deposited from the account to the point where one could no longer ascertain what amount, if any, was left over from the original funds. A client should only exclude those amounts (or other excluded items) if they are able to reasonably show the source of the funds or trace the assets back to the original gift or inheritance.

Financial Statements are the first step towards a resolution of financial issues, and require careful consideration to ensure that the statement is an accurate reflection of a party's financial situation. The accuracy of a Financial Statement not only ensures a fair and equitable settlement, but reduces conflict and saves your client money. It helps that you, the financial professional, work closely with the client and their lawyer to ensure that the assets and liabilities are accounted for, all required documents are disclosed, and that no stone is left unturned.

CAROLYN J. CHAMBERS
B.Comm, LL.L, LL.B., LL.M., CDFA®

Carolyn is a family law lawyer and CDFA® professional at the firm Gelman and Associates in Toronto, ON. She helps clients to reach financial settlements that consider the short- and long-term financial impact. She is also involved in the community as the current Vice President of Programs with the North American Association of Asian Professionals (Toronto Chapter), as a past member of the Board of Directors of the Family Lawyers Association, and as a current member, and past member of the Board of Directors of the Federation of Asian Canadian Lawyers.