THE LAWYER'S DAILY

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Family

Trust, freedom and inadequate financial disclosure

By **David Frenkel**

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(August 15, 2018, 9:16 AM EDT) -- What do trust, freedom and boring financial documents have in common? Maybe nothing, but maybe everything. Let me explain.

Family law clients go through a lot. Their life is turned upside down, their family is in shambles and they're hearing all sorts of advice from their relatives, colleagues, doctors and now their family law lawyer.

What's that now? You want me to give you my monthly bank and credit card statements for the last three years so my crazy ex can get their hands on my personal information? You got to be kidding me. Why the hell for? Have I not gone through enough? I thought you were on my side!

I hear these types of questions regularly in my practice and so it may make sense to provide an overview of why we produce various financial disclosures and how it all relates to the bigger picture of a family law file.

To understand the nuances and the trees, one must see the forest. The forest represents the ultimate goal in a matrimonial proceeding — freedom. Freedom after breaking through to the other side with as minimal collateral damage as possible. The "other side" means re-establishing your life after having fairly settled the issues of custody, access, child support, spousal support and property division.

The "collateral damage" represents the cost while going through the process: financial and emotional. The sooner one gets to the other side, the better.

However, many times during matrimonial files, clients lose track of the ultimate goal and forget that a major impediment in reaching it is not producing adequate financial disclosure. Furthermore, the longer a person takes to produce the disclosure, the longer a matrimonial file typically drags on.

But why? Why do my bank statements matter so much? Why is it important to verify each and every value on my financial statement? Why I am spending so much money with my lawyer talking about it?

The answer boils down to one word: Trust.

A spousal relationship many times deteriorates because of a decrease in trust between the couple. Not surprisingly, when that same couple is trying to convey their financial worth for support and property division purposes, the trust factor creeps back in whether they like it or not. It is the underlying and unspoken factor.

Your spouse is not going to simply accept your word for it regarding your accounts and ownerships in business ventures. Your spouse is not simply going believe you just because you tell her that you earned a certain amount of income last year. She doesn't trust you and that is your reality. Instead, she will rely on a bank statement or a valuation report from a forensic accountant.

At least the boring accountant won't tell her some concocted story about being late due to a meeting when in fact he was screwing his assistant. At least the bank statement is clear and predictable rather than moody and prone to outbursts of anger. At least your income tax return won't start drinking again after promising that he "has it under control."

Emotions run high, resentment digs deep and words are no longer enough. Rather, boring financial statements are what will bring your ex-spouse excitement again.

And if you don't care what your ex-spouse thinks, then you may want to consider some recent court decisions on the repercussions of not providing a clear picture of your finances.

In *Roach v. Lashley* [2018] O.J, No. 88 the husband failed to produce financial disclosure in a timely manner. Justice John McDermot wrote as follows: "At best, the failure to disclose by Mr. Lashley was both an inconvenience and a distraction; at worst his failure to disclose was contemptuous of the court process, resulting in both delay and the failure of these parties to settle their issues, as most of the 2017 conferences concentrated on disclosure rather than settlement and the respondent's disclosure was not substantially complete until the trial scheduling conference."

In awarding the wife pre-judgement interest and costs against the husband, Justice McDermot noted the husband's conduct of failing to make timely disclosure which largely impeded the progress of the litigation and prevented settlement.

In *Cowan v. Cowan* [2018] O.J. No 2051 the wife was not satisfied with the husband's production of financial disclosure. She claimed that obtaining financial disclosure from the husband was exceedingly difficult and that he failed to produce reasonable disclosure to back up his position and claims.

Justice Deborah Swartz had this to say about the husband: "I find that Mr. Cowan has been less than forthright in his disclosure obligations. He has delayed in producing a financial statement … The difficulty with Mr. Cowan's position is that it is not backed up with convincing paperwork or documentation. The Court is left simply being asked by Mr. Cowan to believe him … I have no convincing basis on which to do so…"

The wife didn't believe the husband and neither did the court.

Therefore, family law clients can do themselves a favour and not lose track of the goal, which is in fact freedom. And although there is a cost to freedom, that cost should not entail unnecessary legal fees and preventable litigation stress. Rather, I suggest that the cost should be to disclose the necessary financial documents as soon as possible irrespective of how uneasy and uncomfortable it may be.

Trust has gotten you into this mess, so let's rebuild it by a known and predictable mechanism called adequate financial disclosure.

So boring, but so true.

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