IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Ghosn v. Ghosn, 2006 NSSC 2

Date: 20060126
Docket: SFHD-004118 1201-54395
Registry: Halifax

Between:

Raphina Ghosn

Applicant

v.

Ronald Ghosn

Respondent

Judge:	The Honourable Justice Kevin Coady
Heard:	November 8 and 10, 2005, in Halifax, Nova Scotia
Written Decision:	January 26, 2006
Counsel:	Thomas J. Singleton, for the Applicant
	Michael I. King, Q.C., for the Respondent

Coady, J.:

Introduction/Background:

[1] Ron and Raphina Ghosn were divorced on December 21, 2000. Their Corollary Relief Judgment incorporated minutes of settlement that addressed, among other things, matters of child support. On June 2, 2004 Ms. Ghosn applied for a variation respecting child support. She requests the court impute income to Mr. Ghosn and she seeks a retroactive variation on the basis of inaccurate disclosure.

[2] The parties were married on November 7, 1980 and separated in March, 1997. There are two children of the marriage, Natalie who is 20 years old and Neil who is 13 years old. Natalie is a university student and Neil is a student at Armbrae Academy. Natalie is estranged from her father. Neil's relationship with his father is strained. The evidence on the file indicates that Ms. Ghosn has done little to encourage the children's relationship with their father.

[3] The Ghosns are independently affluent. They derive their wealth and income from the development and operation of large rental properties. Their

separation agreement effected an equal division of their matrimonial and business assets. Both retained a number of rental units which provide them with a post-divorce stream of income. Mr. Ghosn is also involved in other real estate developments.

[4] The following recital appears at page 1 of this couple's Corollary Relief Judgment:

> And upon it appearing that Petitioner/Applicant, Ronald Anthony Ghosn has an annual income of approximately $90,000.00 for the purpose of determining the table amount of child support and, for the purposes of making an order for payment of special or extraordinary expenses, the annual income of Ronald Anthony Ghosn is approximately $90,000.00 and the annual income of Raphina Ghosn is approximately $60,000.00;

[5] The provisions respecting child support were as follows:

> 3. Ronald Anthony Ghosn shall pay child support to Raphina Ghosn pursuant to the Federal Child Support Guidelines and in accordance with the Nova Scotia table, the amount of $1,133.00 per month, payable on the first day of each month thereafter, and commencing on the 1st day of December 2000.
>
> 4. In addition to the table amount set out above, on the first day of each month and commencing on December 1, 2000, Ronald Anthony Ghosn shall pay to Raphina Ghosn 50% of the costs of all of the children's schooling costs including, without limiting the generality of the foregoing, tuition, books, uniform fees, school supplies and tutoring costs.

5. The Petitioner/Applicant, Ronald Anthony Ghosn shall also pay for 50% of the children's medical and dental expenses until further Order of the Court. The Petitioner/Applicant, Ronald Anthony Ghosn shall also obtain a term life insurance policy in the face amount of $300,000.00 payable to the Respondent, Raphina Ghosn as beneficiary in trust for the children of the marriage for so long as the children remain children of the marriage within the meaning of the **Divorce Act**, 1985.

6. The Petitioner/Applicant, Ronald Anthony Ghosn and the Respondent, Raphina Ghosn shall provide each other with a copy of his or her income tax return, completed and with all attachments, even if the return is not filed, along with all notices of assessment received from Revenue Canada, on an annual basis on or before June 1st.

[6] The present nature of the parties businesses allow for various interpretations as to their true level of income. It is clear that they arrange their affairs to minimize their income tax exposure. I find that the parties self reporting of income varies with the purpose for which it is being provided. Consequently both parties income tax documents are not an accurate indication of their income for child support purposes.

[7] The parties have always enjoyed a very high standard of living. They reside in luxury homes and drive exotic automobiles. Their children have always attended private schools. They travel extensively. They both have extensive real estate holdings and investments. Mr. Ghosn has the ability to partner in multi

million dollar investments. It would be impossible to conclude that their self reported income, over the years, reflected their level of success.

[8] The significance of this conclusion relates primarily to Mr. Ghosn as the payor. Determining his income has been problematic throughout this application. In 2000 the parties acknowledged that their reported incomes did not represent their income for child support purposes. They negotiated figures of $90,000 for Mr. Ghosn and $60,000 for Ms. Ghosn.

[9] On November 8, 1999, Mr. Ghosn swore a financial statement indicating a total income of $6,401. His 1999 tax returns indicate an income of $11,117. He declared a 2000 income of $32,871; a 2001 income of $19,783; a 2002 income of $29,360 and a 2003 income of $24,620. On August 24, 2004, Mr. Ghosn filed a statement of financial information advising his income to be $60,704. Mr. Ghosn's 2004 T-1 General was prepared by a professional and declared a 2004 line 150 income of $174,523.

[10] It is not surprising that the Canada Customs and Revenue Agency decided to audit and re-assess Mr. Ghosn for the years 1999-2003. That audit set Mr. Ghosn's income as follows:

1999 - $121,588

2000 - $133,553

2001 - $83,090

2002 - $195,017

2003 - $137,961

[11] The natural conclusion is that Mr. Ghosn's credibility is questionable when it comes to reporting his financial information. This is supported by the extensive litigation required by Ms. Ghosn to obtain reliable information for this application. It is further supported by Mr. Ghosn's lack of truthfulness on discovery examination respecting his post divorce investments. It is also supported by his exaggeration/misleading on a recent mortgage application, a practice he described as "putting things in the best possible light". It is a fact that Mr. Ghosn applies this standard whenever he is required to make financial disclosure.

[12] Ms. Ghosn testified that she agreed to the $90,000 figure in 2000 because she was not privy to her husband's finances. She testified that she realized that Mr. Ghosn's income was understated only after operating her own rentals for two to three years. I do not accept her evidence that she was in the dark because of her spousal role and her limited education. I find Ms. Ghosn to be a savvy business person. I conclude that she acquiesced in Mr. Ghosn's financial decisions pre divorce and that this application reflects the present changed relationship between the parties.

[13] There are two aspects of this case that require preliminary comment.

[14] The first relates to the manner in which Ms. Ghosn's case was framed and agrued. She relied on Section 19 of the Federal Child Support Guidelines to impute income to Mr. Ghosn. While there is an element of imputing income, there is a more significant element of adjusting Mr. Ghosn's income pursuant to paragraphs 11 and 12 of Schedule III of the Guidelines.

[15] The second point relates to the lack of evidence respecting adjustments to Ms. Ghosn's income for Section 7 child support purposes. While Mr. Ghosn's

declared income attracted great scrutiny, the same was not the case for Ms. Ghosn's declared income. The evidence did not disclose whether Schedule III adjustments were appropriate, and if they were, the quantum of such adjustments. This is a concern given the equal division of business and matrimonial assets effected upon divorce.

Imputing/Adjusting Income Before July 1, 2004:

[16] Ms. Ghosn requests this Court to impute income to Mr. Ghosn from 2001 forward. Mr. Ghosn advances the position that income should be imputed to a maximum of $150,000 per annum but only for the period of July 1, 2004 forward. This date represents the first month after Ms. Ghosn filed this application to vary. He argues that Ms. Ghosn should be bound by her agreement until that time. Ms. Ghosn responds saying that her consent was based on misleading income reports by Mr. Ghosn and, therefore, should be varied to reflect his real income.

[17] I am not prepared to adjust Mr. Ghosn's declared income, or to impute income to him, for the period prior to the date of this application (June 4, 2004). I find as fact that both parties received what they bargained for in their 2000

negotiations. I further find that their agreement was based on a mutual knowledge of each others circumstances and not on fraud or misleading financial disclosure. I found both to be very astute business persons.

[18] The Corollary Relief Judgment indicates that the parties had experienced legal counsel when the agreement was negotiated. Paragraph 6 of their agreement stated:

> ...The parties hereby waive production of any further financial statements in respect of claims made in the within action and this provision is intended to constitute a waiver for the purposes of Civil Procedure Rule 57.13 (3)...

[19] Further at paragraph 14(f)(v):

> Both parties acknowledge that in the division of their business assets they have chosen not to hire separate corporate, or forensic accountants in order to review the books, corporate records and bank accounts of the business assets being retained by them individually.

[20] Paragraph 20 entitled “releases” states as follows:

> ...(b) Each of the parties hereto agrees that this Agreement and Minutes of Settlement may be pleaded by either party as an Estoppel in respect of any claim

or application whatsoever which may be made pursuant to the provisions of the **Matrimonial Property Act**, or any other similar legislation in Nova Scotia or any other jurisdiction by the other party, in respect of any matter dealt with by this Agreement is a full and final settlement between the parties and may be pleaded as a complete defence to any action brought by either party to assert a claim in respect of any matter dealt with by this Agreement, except where:

(I) this Agreement expressly provides for review or variation of a particular term or condition, or

(ii) where a party has failed to disclose a significant circumstance with respect to his or her financial or asset position which should have been raised during negotiation of this Agreement.

(iii) matter deals with support for or parenting of or access to a child, in which case the Agreement cannot be considered final and authority to vary the terms of this Agreement is retained by a court of competent jurisdiction;

[21] And further at paragraph 23 entitled acknowledgements:

The parties acknowledge that:

(a) This Agreement is not unconscionable or unduly harsh on one of the parties;

(b) Each party has had the benefit of independent legal advice or has had the opportunity to have sought independent legal advice;

(c) Each understands his or her respective rights and obligations under this Agreement;

(d) Each party is fully advised and informed of the estate and prospects of the other;

(e) Each party is entered into this Agreement based on a satisfactory disclosure of the income, assets and debts of the other party;

(f) The invalidity or unenforceability of any provisions in this Agreement will not affect the validity or enforceability of any other provision and any invalid provision will be severable;

(g) Each party is signing this Agreement voluntarily without undue influence or fraud or coercion or misrepresentation whatsoever and each has read the Agreement in its entirety and with full knowledge of the contents thereof and does hereafter affix their signature voluntarily.

(h) Except as herein otherwise provided, this Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

[22] This Court, on the evidence, is not prepared to interfere with the parties child support arrangements prior to the date of this application. In arriving at this conclusion I have considered paragraph 20 (b) (iii) of this couples Corollary Relief Judgment.

<u>Determination of Income:</u> (July 1, 2004 - December 31, 2005)

[23] The issue of depreciation on Mr. Ghosn's rental properties factor into this exercise. As a starting point, Ms. Ghosn takes the position that Mr. Ghosn's total income and depreciation should be income for child support purposes. Mr. Ghosn agrees but argues that capital payments should be deducted from his total income plus depreciation. The authorities clearly establish that for the purposes of the calculation of income for child support purposes, depreciation of rental properties should be added back into income. *Egan v. Egan*, [2002] B.C.J. No. 896 (BCCA). This is also dictated by Section 11, Schedule III of the Guidelines.

[24] Section 12, Schedule III requires a payor spouse who earns income through a partnership or sole proprietorship to "deduct any amount included in income that is properly required ... for purposes of capitalization." Capitalization refers to the cash needed to operate on a day to day basis. Mr. Ghosn's capitalization costs primarily reflect the mortgage payments on his rental properties. In these situations the court must be satisfied that such income is properly required for purposes of capitalization.

[25] This point was addressed in *Gossen v. Gossen*, [2003] 213 N.S.R. (2d) 217 (N.S.S.C.). Smith, J. stated at paragraph 98:

> Section II must be read in conjunction with Section 12 of Schedule III which indicates that where the spouse earns income through a partnership or sole proprietorship the court shall deduct from any amount included in income that which is properly required by the partnership or sole proprietorship for the purposes of capitalization.

[26] Mr. Ghosn's income for 2004 was $174,532.72. The depreciation on his rental properties was $138,988.26. Capital payments for 2004 amounted to $138,988.25. The source of the amounts flow from Mr. Ghosn's 2004 T-1 General Tax Return. This was the first return filed after the reassessment. It was the first return prepared by a professional not related to Mr. Ghosn.

[27] The law does not require that the full capital cost allowance or capital payments be considered in arriving at a payor's income for child support purposes. In *Wilson v. Wilson*, [1998] 8 W.W.R. 493 (Sask. Q.B.) the court quoted with approval the following statement from *Lesveque v. Lesvesque*, [1994] 4 R.F.L. (4th) 375 (Alta. C.A.):

> The calculation of gross income does not, of course, work as simply for the self-employed as for those who are employed for wages. They have business expenses that must be put against gross income. For them, the judge must do a calculation of what, as near as can be, would be gross income were the party employed for wages. While we cannot offer detailed assistance, we warn judges not necessarily to use the tests employed by the **Income Tax Act** for the calculation of expenses,

> some of these, as, for example, capital cost allowance, reflect tax policy not related to the issue before us.

[28] In *Grant v. Grant* (2001), 92 N.S.R. (2d) 302 (N.S.S.C.) Williams, J. spoke of Section 12, Schedule III of the Guidelines at para. 137:

> Section 12 of Schedule III provides that where a spouse earns income through a partnership or sole proprietorship the court must deduct any amount included in income that is properly required by the partnership for purposes of capitalization ... I conclude that some, and perhaps all of the principal payments should be deducted from his rental income.

[29] Williams, J. cited this quote from *deGoede v. deGoede* (1999), 5 B.C.T.C. 130 at p. 5.

[30] Justice Williams discussed the approach at paragraph 140:

> There are arguments and equities running both ways and an endless number of scenarios possible. In my view, there should be sufficient judicial discretion to determine an outcome that is fair and considers the particular circumstances before the court as opposed to a rigid rule.

[31] The Grant case essentially stands for the proposition that capital cost allowance for residential rental units should not automatically be included for child support purposes and principal mortgage payments not necessarily deducted.

[32] I have considered the evidence and reviewed the authorities herein cited. I conclude that this is a case where it is appropriate to return all depreciation to income for child support purposes. I also include that this is a case where it is appropriate to back out fifty per cent of the capital payments. I do this because the properties owned by Mr. Ghosn are substantial and are located in desirable rental areas. They are very durable assets that will increase in value over the years to come. Further, these properties were purchased pre-divorce and I conclude that the mortgages have been reduced since that time.

[33] This computation establishes Mr. Ghosn's rental based income, for child support purposes, to be $244,026. ($174,532.72 + $138,988.26 - $69,494.12). I will round off this income to $244,000.

Imputing Income - The Principles:

[34] Court's jurisdiction to impute income is found under Section 19 of the *Federal Child Support Guidelines:*

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

(b) the spouse is exempt from paying federal or provincial income tax;

(c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

(d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

(e) the spouse's property is not reasonably utilized to generate income;

(f) the spouse has failed to provide income information when under a legal obligation to do so;

(g) the spouse unreasonably deducts expenses from income;

(h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and

(I) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

[35] I have previously determined in *Faddoul v. Faddoul*, [2005] N.S.J. No. 128 that this is not an exhaustive menu. The words "include the following" dictate this conclusion. Ms. Ghosn relies on sub section (f) which addresses non disclosure by Mr. Ghosn.

[36] In *Snow v. Wilcox*, [1999] N.S.J. No. 453 (N.S.C.A.) Flinn, J.A. stated at paragraph 22:

> In the case of a self-employed businessman, like the respondent, there is very good reason why the Court must look beyond the bare tax return to determine the self-employed businessman's income for the purposes of the Guidelines. The net business income, for income tax purposes, of a self employed businessman, is not necessarily a true reflection of his income, for the purpose of determining his ability to pay child support. The tax department may permit the self employed businessman to make certain deductions from the gross income of the business in the calculation of his net business income for income tax purposes. However, in the determination of the income of that same self employed businessman, for the purpose of assessing his ability to pay child support, those same deductions may not be reasonable.

[37] In *Vermeulin v. Vermeulin*, [1999] N.S.J. No. 193 (N.S.C.A.) the Court stated at paragraph 29:

> In my opinion, the decision of Justice Hall to impute the sum of $30,000 as income is quite reasonable. It is one thing to deal with your income tax to provide

> the most favourable conclusion, but it is another matter if that affects the persons ability to make support payments.

[38] The introductory words of Section 19(1) of the Guidelines provide that the Court may impute such income as it considers appropriate in the circumstances. These words have been broadly determined. In the case of *Mascarenhas v. Mascarenhas*, [1999] O.J. No. 37 (Ont. Gen. Div.), the case advanced the principle that "the purpose behind Section 19 is apparently to attribute income to a spouse who, for whatever reason, be it purposeful or not, has not supplied the Court with a true indication of their income".

[39] In the case of *Maynard v. Maynard*, [1999] B.C.J. No. 325 (B.C.S.C.) Cowan, J. stated at paragraph 27:

> The power to impute income under Section 19 is also highly discretionary. The employment of the phrase "as it considers appropriate in the circumstances" indicates the extremely fact driven nature of the exercise of discretion under Section 19.

[40] *Kapogiannes v. Kapogiannes* (2000), 10 R.F.L. (5th) 63 (Ont. S.C.J.) advanced the principle that where a parent's income is difficult to ascertain for child support purposes because of a history of providing misleading and

contradictory information, it is appropriate to impute income at the high end of the range for that job.

[41] The evidence also discloses some information upon which income could be imputed under Section 19(g) of the Guidelines. I also conclude that Mr. Ghosn's lifestyle and standard of living is a factor upon which this Court can impute income. For example, he recently leased a very expensive Mercedes Benz automobile and was able to put $29,000 down. He owns an expensive home and is able to travel. He has the ability to be involved in some very substantial ongoing real estate investments. In *Harari v. Harari* (2001), 20 R.F.L. (5th) 59 (B.C.S.C.) the Court imputed income far in excess of that declared in tax returns. The Court found that the parents spending habits supported the conclusion that his income was significantly higher than that declared.

[42] I also conclude that Section 19(1)(g) which states "the spouse unreasonably deducts expenses from income" applies in this case. Mr. Ghosn's reassessment by the Canada Customs Revenue Agency confirms that this practice was attributed to Mr. Ghosn. This is further supported by the significant difference between the returns he filed initially and the reassessed total income set by the audit.

Imputing Income - Post July 1, 2004:

[43] I have found ample evidence that Mr. Ghosn has gone to great lengths to foil disclosure of his true income. I find that the purpose of these failures to be forthright was to frustrate Ms. Ghosn's application to vary. He delayed filing a Statement of Guidelines Income until just before discovery examination. The income stated was $60,740 for 2004. When he filed his 2004 T1 General, he declared a total income of $174,523. He refused to answer questions on discovery. He misled Ms. Ghosn when questioned on discovery regarding his 2004 "Bayne Street" investment and I find that he intentionally did so. When questioned in Court about the profit on this investment, he refused to be forthright. Mr. Ghosn has steadfastly attempted to mislead Ms. Ghosn and the Court. His explanations for these actions lacked credibility.

[44] On this application the record clearly establishes that Ms. Ghosn went to great lengths to flush out Mr. Ghosn's information. This required discovery of his business partners in order to elicit answers that Mr. Ghosn refused to provide. Applications were necessary to compel discovery and to force Mr. Ghosn to fulfill

undertakings given at discovery. Costs were awarded against Mr. Ghosn. While much information was obtained, the true state of Mr. Ghosn's income for future child support is anything but complete.

[45] The evidence suggests that Mr. Ghosn continues to invest in real estate outside of his holdings considered thus far in this decision. He has not been forthright in disclosing the terms of these investments, especially to Ms. Ghosn or her counsel.

[46] Mr. Ghosn invested in the "Bayne Street" property in 2004. He and nine partners each invested $400,000 to acquire the land. The property was expropriated by the municipality within a year of acquisition. Mr. Ghosn admitted to a generous return but would not be specific. I did not accept his evidence that the final figures were not within his knowledge. He made some comment about making "a couple of hundred thousand" on the deal but he provided no verification as to his portion of the sale price. The court noted Mr. Ghosn's vagueness and advised him that the court would do what was warranted on the available evidence.

[47] There was also an investment in a Bedford motel property. While Mr. Ghosn suggested that this venture was not particularly successful, he failed to provide any details.

[48] Mr. Ghosn refused to answer questions about these kinds of investments on discovery examination. The Court has real concerns that there may be additional income producing investments out there that are not known by either Ms. Ghosn or the Court.

[49] The Court is left in the position of having to work with less than complete information. The responsibility for that is entirely Mr. Ghosn's. This is a basis for imputing income in relation to these additional investments. I also find support for imputing in Section 19(g) of the Guidelines and the standard of living approach advanced in *Harari v. Harari supra*.

[50] I am imputing an additional $50,000 per annum to Mr. Ghosn for the investments I have reviewed. This brings Mr. Ghosn's income for child support purposes to $294,000 effective July 1, 2004.

Level of Basic Child Support:

[51] Section 4 of the Child Support Guidelines addresses incomes in excess of $150,000:

> 4. Where the income of the spouse against whom a child support order is sought is over $150,000, the amount of a child support order is
>
> (a) the amount determined under section 3; or
>
> (b) if the court considers that amount to be inappropriate,
>
> (i) in respect of the first $150,000 of the spouse's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates;
>
> (ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children; and
>
> (iii) the amount, if any, determined under section 7.

[52] Given the financial status of the parties, I cannot conclude that the table amount is inappropriate. The word "inappropriate" in Section 4(b) does not mean

inadequate, rather is means unsuitable. I refer to the case of *Francis v. Baker* (1999), 3 S.C.R. 250.

[53] In cases of incomes over $150,000 courts have a discretion to either increase or decrease the amount of child support set out in the Guidelines. There is a presumption in favour of the table amount. There can only be an increase or a decrease in the Guideline's figure if the payor rebuts the presumption that the table amount is appropriate.

[54] The decision in *Francis v. Baker* (*supra)* held that the discretion to reduce the quantum of support should be exercised only where the table amounts are so in excess of the children's reasonable needs so as to no longer be child support but instead be a wealth transfer to a parent or de facto spousal support. This case does not present facts that supports deviation from the table amount.

Retroactive Variation: (July 1, 2004 - December 31, 2005)

[55] The table amount of support for the first $150,000 of Mr. Ghosn's income is $1,794 per month. He is required to pay 1.12 % of his income over $150,000

which amounts to a further $1,612 per month for a total monthly figure of $3,406. This will be retroactive to July 1, 2004.

[56] There are presently two lines of authority respecting retroactive child support. I find that both support the ordering of retroactive child support in this case. In *L.S. v. E.P.*, [1999] B.C.J. No. 1451 Rowles, J.A. outlined various factors to be considered when attempting to ascertain whether retroactive child support is warranted. The following passage is found in the decision:

> A review of the case law reveals that there are a number of factors which have been regarded as significant in determining whether to order or not to order retroactive child maintenance. Factors militating in favour of ordering retroactive maintenance include: (1) the need on the part of the child and a corresponding ability to pay on the part of the non-custodial parent; (2) some blameworthy conduct on the part of the non-custodial parent such as incomplete or misleading financial disclosure at the time of the original order; (3) necessity on the part of the custodial parent to encroach on his or her capital or incur debt to meet child rearing expenses; (4) an excuse for a delay in bringing the application where the delay is significant; and (5) notice to the non-custodial parent of an intention to pursue maintenance followed by negotiations to that end.
>
> Factors which have militated against ordering retroactive maintenance include: (1) the order would cause an unreasonable or unfair burden to the non-custodial parent, especially to the extent that such a burden would interfere with ongoing support obligations; (2) the only purpose of the award would be to redistribute capital or award spousal support in the guise of child support; and (3) a significant, unexplained delay in bringing the application.

[57] Obviously I have found all five factors "militating in favour" to be fully or partially present in this case. Further, I conclude that this retroactive order would not be a burden on Mr. Ghosn. It is certainly not a distribution of capital and not spousal support in camouflage. There has been no significant unexplained delay in bringing forth this application.

[58] The second line of authorities involved a trilogy of cases from the Alberta Court of Appeal: *D.B.S. v. S.R.G.*, [2005] A.J. No. 2; *L.J.W. v. T.A.R.*, [2005] A.J. No. 3; *Henry v. Henry*, [2005] A.J. No. 4. These cases have been described as taking a child focussed approach. They find that retroactive child support should be seen as a presumption.

[59] There is effectively 18 months of retroactive adjustment to the existing $1,133 order for a total outstanding obligation to Ms. Ghosn in the amount of $40,914. This is payable forthwith.

Section 7 Expenses:

[60] Ms. Ghosn's income prior to July 1, 2004 is not relevant to this decision as I am not prepared to interfere with the parties 2000 agreement to equally share Section 7 expenses. The parties negotiated incomes of $90,000 and $60,000 for child support purposes. It would have been open to them to pro-rate these expenditures relative to their negotiated respective incomes. They chose not to do so. Both had counsel at the time who would have been well aware of the presumption in favour of pro-rating. Section 7(2) of the Guidelines provides:

> The guiding principle in determining the amount of an expense referred to in Subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes ...

[61] Notwithstanding, the parties agreed as follows:

> ...Ronald Anthony Ghosn shall pay to Raphina Ghosn 50% of the costs of all the children's schooling costs including, without limiting the generality of the foregoing, tuition, books, uniform fees, school supplies and tutoring costs.

[62] In addition, Mr. Ghosn was required to pay fifty per cent "of the children's medical and dental expenses until further order of the Court".

[63] This arrangement satisfies me that the parties in the year 2000 viewed their income and assets as relatively equal. The entirety of their agreement speaks to an equal division of their matrimonial and business assets. Prior to separation they derived their livelihood from their extensive investments. I find that was their expectation for the future. For the most part, that is what has occurred. Mr. Ghosn has been involved in some 2004 investments which may have disturbed the balance and that will be relevant to 2004 and future Section 7 child support obligations.

[64] I am not persuaded to interfere with the equal sharing agreement of Section 7 expenses prior to July 1, 2004. I do not accept Ms. Ghosn's position that Mr. Ghosn's 2000-2004 financial circumstances were unknown to her and that she "trusted" him to disclose accurately. I find as fact that the parties so agreed as a recognition of their individual financial circumstances. Additionally there were no surprises to Ms. Ghosn in terms of the expenditures. Most were in place, or at least anticipated, in 2000. Neil was in private school and Natalie's university education was on the horizon.

[65] I find that at the time of the agreement, the parties did not limit these obligations to the items set forth in Section 7(1) of the Guidelines. The language used was "all of the children's schooling costs..." On the basis of all the evidence, I conclude that this phrase must be given a liberal interpretation. On the other hand, it clearly does not include all expenditures made by Ms. Ghosn for the benefit of the children. The wealth of these parents is such that the children have never done without and the financial impact on both parents has been relatively minimal.

[66] Ms. Ghosn requests that the Court apply the imputed/determined income to Section 7 expenses retroactive to 2002. Specifically she seeks an order that I apply that level of income on a proportionate basis to all Section 7 expenditures incurred since that time. I have already decided not to disturb the 50/50 agreement prior to July 1, 2004. This conclusion in no way effects Mr. Ghosn's responsibility to pay fifty per cent of the pre July 1, 2004 expenditures envisaged in paragraph 4 of the Corollary Relief Judgment.

[67] Ms. Ghosn alleges that Mr. Ghosn has often not met his fifty per cent of these expenditures. In response, Mr. Ghosn testified that many of the accounts

submitted to him are either not covered by their agreement or are duplicates of accounts already paid. Mr. Ghosn went so far as to allege that Ms. Ghosn submitted fraudulent accounts.

[68] There is some common ground for the period January 1, 2002 to August, 2004. On October 4, 2004 Ms. Ghosn's counsel sought $14,909.02 in Section 7 arrears for that period of time. A detailed list was attached to the request. There is no dispute that on February 17, 2005 Mr. Ghosn paid $9,756.15 on account leaving a balance of $5,152.87. He also submitted a list indicating which items he rejected as not appropriate or verified.

[69] The following represents the items for which Mr. Ghosn declined contribution:

Natalie Ghosn	(to August 2004)	
Miscellaneous	school costs - Dalhousie University	
	school trip	$300.00
	miscellaneous	$ 37.57
	parking permit	$ 15.00

Natalie Ghosn	(2003)	
Miscellaneous	school costs - Armbrae Academy	
	school trip (balance)	$303.00
Dental Expenses		$191.00
Other Miscellaneous Expenses		
	Dance	$ 25.00
	Nova Skiing	$402.33
Natalie Ghosn	(2002)	
Miscellaneous	school costs - Armbrae Academy	
	school trip	$l,344.20
	miscellaneous	$ 225.27
Other Miscellaneous Expenses		
	Halifax Dance	$ 381.50
	school trip	$ 103.48
	Nova Skiing	$ 707.27

Total arrears for Natalie to August, 2004 amount to $2,194 ($4,388.19 ÷ 2)

Neil Ghosn (to August 2004)	
- Dental Expenses - mouth guard	$341.00

Neil Ghosn (2003)

- Books for Ambrae Academy	$39.99
- Uniform fees - Armbrae Academy	$290.50
- School Supplies - Armbrae Academy (tutoring)	$374.49
- Tutoring Costs - Armbrae Academy	$560.00
- Miscellaneous Costs for Armbrae Academy	$427.00
- Other Miscellaneous Costs - Armbrae Academy (Nova Skiing)	$114.94

Neil Ghosn (2002)

- Uniform Fees - Armbrae Academy	$573.71
- School Supplies - Armbrae Academy	$103.48
- Tutoring Costs for Armbrae Academy	$3,789.00
- Miscellaneous Schooling Costs - Armbrae Academy	$1,710.54
- Medical Expenses	
Breakthrough Psychologists	$713.00
Prescriptions	$32.60
- Other Miscellaneous Expenses (Nova Skiing)	$114.94

[70] Total arrears for Neil to August, 2004 amount to $4,592.60 (9185.19 ÷ 2).

[71] Section 7 arrears are set at $6,786.60 as of August 31, 2004 for both children. ($13,573.38 ÷ 2).

[72] I have reviewed the pre August, 2004 expenses with reference to paragraph 4 of the parties' Corollary Relief Judgment. I have concluded that any reasonable expenditure associated with schooling should have been equally shared by the parents. I am giving this clause a liberal interpretation. In this case both parents have ample capacity to contribute to their children's expenses within the framework of the Corollary Relief Judgment. They agreed to this arrangement with full knowledge of its implications.

[73] I do not find support for Mr. Ghosn's assertion that Ms. Ghosn submitted fraudulent expense claims. I find no evidence of double billing. Receipts are provided for most expenditures but not for all. I have reviewed all of the documentation to satisfy myself that submitted accounts were appropriate.

[74] The submission of Mr. Ghosn is that dance lessons and skiing costs are not covered by paragraph 4 of the Corollary Relief Judgment. I disagree and find that

they are part of the cost of schooling for such an affluent family. There is no question that these children should be exposed to many activities given their standard of living. Mr. Ghosn's practice of picking and choosing the activities he will financially support goes against the language and spirit of their 2000 agreement.

[75] Mr. Ghosn also takes issue with contributing to Neil's tutoring and therapy costs. I find these costs are covered by paragraphs 4 and 5 of the Corollary Relief Judgment. In light of this, and my previous conclusions, I approve all of the expenses submitted for this time period.

[76] These two obligations in the amount of $6,786.60 are payable forthwith subject to any adjustments for contributions made by Mr. Ghosn. The bottom line is that they be equally shared.

[77] I have already made findings in relation to determining and imputing income to Mr. Ghosn retroactive to July 1, 2004. In light of these findings, I am not prepared to displace the presumption in favour of proportional sharing of Section 7 expenses after that time. Proportionate sharing shall commence as of

August, 2004 instead of July, 2004 as that is the way in which the evidence was presented. The next time frame for analysis of outstanding expenses flowing from paragraph 4 of the Corollary Relief Judgment is August, 2004 until September, 2005.

[78] Ms. Ghosn stated the following at paragraph 10 of her supplementary affidavit sworn November 2, 2005.

> That since October 4, 2004 Mr. Ghosn has not paid the following Section 7 expenses:

Name of Child	Details of Each Expense	Amount Owing
Neil	books, supplies, etc. for Armbrae Academy	$565.12
Neil	Tutoring	$424.50
Natalie	Tuition for the University of Toronto 2004-2005	$7,359.39
Natalie	York University, summer of 2005	$972.30
Natalie	Dalhousie University, fall of 2005	$1,675.04

Natalie	School Supplies for each university	$738.21
Natalie	Rent for apartment in Toronto while attending York University	$2,959.25
Natalie	Medical expenses while at York University	$24.97
Total Amount Owing		$14,718.78

[79] The Court sought clarification of these figures. Counsel indicated that these figures represented fifty per cent of total expenditures made by Ms. Ghosn. There is also agreement that Mr. Ghosn paid $2,485.43 towards Natalie's 2004-2005 tuition at the University of Toronto.

[80] I have concluded that these figures represent all outstanding expenses to September, 2005. There are likely expenses incurred over the past 2 months but they had not been submitted at the time of this hearing.

[81] The focus in this hearing was regarding Mr. Ghosn's income for child support purposes. Little challenge was made to Ms. Ghosn's declarations as to income. She filed a statement of financial information on June 4, 2004 indicating a monthly "income from property rentals" of $11,561.83 which equates to an annual

income of $138,741.96 for child support purposes. Her 2004 tax documents declare an income of $103,000 on a gross rental income of $429,000. The court received no evidence as to depreciation or capitalization costs of Ms. Ghosn's assets and, therefore, cannot make any adjustments.

[82] Given the information available to the Court, I am setting Ms. Ghosn's income for child support purposes at $138,741.96 which I will round off to $139,000.

[83] Pro-rating expenses made pursuant to paragraphs 4 and 5 of the Corollary Relief Judgment on these incomes amounts to sixty-eight per cent for Mr. Ghosn and thirty-two per cent for Ms. Ghosn. Consequently Mr. Ghosn shall be responsible for sixty-eight per cent of the expenditures set forth in paragraph 78 herein ($10,008) and Ms. Ghosn shall be responsible for thirty-two per cent ($4,710). Mr. Ghosn will receive credit for payments already made.

[84] This sharing shall continue for all expenditures made pursuant to paragraphs 4 and 5 of the Corollary Relief Judgment after September, 2005.

Format For Future Section 7 Expenses:

[85] Ms. Ghosn complains to the Court that Mr. Ghosn delayed payment of his share of these expenses and that she must carry them for extended periods. The evidence disclosed that Mr. Ghosn carefully scrutinized each item. He rejected expenditures if he felt they fell outside of the Corollary Relief Judgment or are not supported by proper verification. Mr. Ghosn complains that he is not consulted on major expenditures. Also, he complains that the receipts are submitted annually in large numbers and that is the reason for any delay in payment. Both parties are in agreement that I put a process in place that will address these chronic problems.

[86] The following conditions shall apply to future expenditures pursuant to paragraph 4 and 5 of the Corollary Relief Judgment:

- All expenditures for which Ms. Ghosn seeks sharing shall be viewed consistently with this decision, i.e. a liberal application of the phrase “all the children’s schooling” found in paragraph 4 of the Corollary Relief Judgment.

- All expenditures submitted by Ms. Ghosn pursuant to paragraph 5 of the Corollary Relief Judgment shall be paid as long as the expenditures relates to the protection or improvement of the children's medical and dental health.

- In the event that Mr. Ghosn continues to pay for Neil's team sports, he shall be entitled to a thirty-two per cent reimbursement to a maximum of $1,000 per annum. Receipts will be required and submitted within 30 days of being incurred. Ms. Ghosn will pay her share within 14 days of receiving the receipts.

- Ms. Ghosn shall give Mr. Ghosn 14 days notice of any expenditures over $1,500 and for which she seeks equal sharing. This notice requirement does not include tuition for Natalie and Neil, but does include room and board.

- All receipts and payments shall be processed through the Maintenance Enforcement Program. In the event they will not fulfill this role, the parties will deal with each other on the terms set forth in this decision.

- All receipts for any expenditure in excess of $1,000 shall be provided within 14 days of incurring the expense. Mr. Ghosn shall have 14 days to either pay his share or to object to the expenditure.

- All other expenditures shall be provided when the cumulative balance reaches $1,000. Mr. Ghosn will have 14 days to pay his share or to object to the expenditure.

Conclusion:

[87] The following sets forth the main findings in this decision:

- Income for Mr. Ghosn, for child support purposes, as of July 1, 2004 is set at $294,000

- Income for Ms. Ghosn, for child support purposes, as of July 1, 2004 is set at $139,000

- Mr. Ghosn shall pay to Ms. Ghosn $40,914 as a retroactive adjustment of basic support for the period July 1, 2004 to December 31, 2005

- Mr. Ghosn shall pay to Ms. Ghosn $3,406 monthly in basic child support effective January 1, 2006

- Mr. Ghosn shall pay to Ms. Ghosn $6,786.60 in satisfaction of arrears of expenses caught by paragraphs 4 and 5 of the Corollary Relief Judgment to August 31, 2004

- Mr. Ghosn shall pay to Ms. Ghosn the sum of $10,008 for his share of Section 7 expenses for the period August, 2004 until September, 2005

- Mr. Ghosn shall pay sixty-eight per cent of all expenses caught by paragraphs 4 and 5 of the Corollary Relief Judgment and made after September, 2005. Ms. Ghosn will be responsible for thirty-two per cent of those expenditures.

[88] If a party seeks costs, I will hear submissions by way of written briefs.

J.