

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: Armoyan v. Armoyan, 2015 NSSC 241

Date: 2015-08-27

Docket: *Halifax* No. 1201-065036; 73536

Registry: Halifax

Between:

Vrege Sami Armoyan

Petitioner

v.

Lisa Armoyan

Respondent

Revised Decision: The text of the original decision has been corrected according to the attached erratum dated September 15, 2015.

Judge: The Honourable Justice Theresa M. Forgeron

Heard: May 8 and June 4, 2015, in Halifax, Nova Scotia

Written Release: August 27, 2015

Counsel: Vrege Armoyan, self-represented Petitioner, and not present

Harold Niman, Leigh Davis and Amber Penney for the Respondent, Lisa Armoyan

George MacDonald, Q.C. and Michael Blades for the non-parties:
Geovex Investments Limited, APL Properties Limited, Armco Capital Inc., Clarke Inc., Geosam Investments Limited, George Armoyan, Scotia Learning Centres Incorporated, Southwest Properties Limited, and 1181830 Alberta Limited

Jocelyn Campbell, Q.C. for the non-party, Deloitte Touche LLP

Sheree Conlon for the non-party, Stewart McKelvey

Geoffrey Saunders for the non-party, Merrick Holm

By the Court:

Introduction

[1] This motion involves the clash between disclosure and privacy principles. Lisa Armoyan is seeking disclosure from several non-parties, who are forcibly resisting her efforts. The non-parties object to the production of virtually all disclosure requests. This decision will determine the extent of the non-parties' obligation to produce documentation in the litigation involving Lisa Armoyan and her former husband, Vrege Armoyan.

Issues

[2] The following issues will be determined in this decision:

- What is the impact of Rule 59.27? (paras 13 to 20)
- Can non-parties challenge relevance? (paras 21 to 28)
- What consideration can be given to the statement of property of Vrege Armoyan? (paras 29 to 33)
- What is the applicable test for non-party disclosure? (paras 34 to 44)
- Are assets, which were sold post-separation, relevant to the **MPA** proceeding? (paras 45 to 56)
- Should the motions be dismissed for abuse of process? (paras 57 - 62)
- What disclosure orders should be granted?

Geovex Investments Limited (paras 65 to 75)

APL Properties Limited (paras 76 to 83)

Armco Capital Inc. (paras 84 to 90)

Clarke Inc. (paras 91 to 94)

Geosam Investments Limited and George Armoyan (paras 95 to 102)

Southwest Properties Limited (paras 103 to 107)

Scotia Learning Centres Incorporated (paras 108 to 113)

1181830 Alberta Limited (paras 114 to 117)

Deloitte Touche (paras 118 to 126)

Stewart McKelvey (paras 127 to 130)

Wickwire Holm (paras 131 to 141)

Background

[3] Vrege and Lisa Armoyan are engaged in acrimonious litigation involving the division of property following their separation and divorce pursuant to the provisions of the **Matrimonial Property Act**, R.S., c 275. In the course of that proceeding, Vrege Armoyan filed a statement of property, with two supporting volumes of documents.

[4] Lisa Armoyan filed a motion to obtain further disclosure from Verge Armoyan. The motion was resolved by consent on February 27, 2015. The consent order, dated March 3, 2015, required Verge Armoyan to “forthwith request, obtain, and produce all disclosure requested” in the three schedules attached to the consent order. The consent order, however, did not prove instrumental in having the requested documents produced.

[5] On March 16, 2015, Lisa Armoyan therefore filed numerous motions for disclosure from various non-parties. The motions were scheduled for March 26, 2015. Some of the non-parties consented to disclose at this hearing. On the other hand, a number of the non-parties objected to the disclosure requests; contested hearings dates were to be arranged.

[6] The court convened a conference call on April 24, 2015 to resolve scheduling difficulties which had arisen. May 8 was the only date available for most counsel in the month of May. Counsel for Anahid Armoyan was the one lawyer unavailable on May 8; an alternate hearing date was scheduled for that motion. All other motions would be heard on May 8.

[7] Although the hearing began on May 8, it did not conclude until June 4, 2015. The hearing involved Lisa Armoyan and twelve non-parties. Vrege Armoyan did not participate because he had abandoned the proceeding a few days earlier. The non-party disclosure motions revolve around a number of corporate entities, professional firms, and Vrege Armoyan’s brother, George Armoyan.

[8] Disclosure motions against the non-parties arose because of perceived disclosure deficiencies in Vrege Armoyan’s statement of property. In his statement of property, Vrege Armoyan stated that he held an ownership interest in APL

Properties Limited, 1181830 Alberta Limited, and a 50% ownership interest in Geovex Investments Limited and related entities. Controlled and wholly owned nonconsolidated subsidiaries of Geovex included Armco Capital Inc., Geosam Investments Limited and Scotia Learning Centers Incorporated. Kimberly-Lloyd Developments Limited was amalgamated with Armco Capital Inc. The non-party disclosure motions focused primarily on these corporations, and George Armoyan personally and as a director of Geosam.

[9] The other corporate non-parties that were called upon to produce were Clarke Inc. and Southwest Properties Limited, companies which Lisa Armoyan said held relevant information.

[10] Lisa Armoyan sought disclosure from the accounting firm of Deloitte Touche LLP, who had been engaged by Vrege Armoyan and some of the corporate entities. Lisa Armoyan also sought disclosure from two law firms, Stewart McKelvey and Wickwire Holm, because each represented some of the corporate non-parties and Vrege Armoyan.

[11] Many exhibits were entered during the hearing. Amber Penney was cross-examined. The parties relied on the evidence presented, in conjunction with their oral and written submissions.

[12] During closing submissions, counsel for the corporate non-parties and George Armoyan, questioned the court's impartiality. The tactical nature of the allegation is problematic given its timing, and in view of the fact that no formal recusal motion was filed, nor was an oral motion made. Courts have discouraged this approach: **Rothesay Residents Assn. Inc. v. Rothesay Heritage Preservation & Review Board**, 2006 NBCA 61, para 28; **Hilltop Group Ltd. V. Katana**, [2001] OJ No.4175, para 24; and **R. v. Curragh Inc.**, [1997] S.C.J. No. 33, para 11.

Analysis

[13] **What is the impact of Rule 59.27?**

Position of the Parties

[14] Lisa Armoyan relies on Rules 59.27 and 14.12 to support the disclosure requests outlined in the various motions.

[15] The corporate non-parties and George Armoian suggest that the test which applies to non-party disclosure in family proceedings is as set out in Rule 59.27. They state that Lisa Armoian should not be permitted to circumvent that test by concurrently relying on Rule 14.12.

[16] Deloitte Touche states that Rule 59.27 is not applicable. Stewart McKelvey and Wickwire Holm took no position on the issue.

Decision

[17] Rule 59.27 has no application to the motion before the court. Rule 59.27 distinguishes between a “court officer” and the “court”: Rule 59.27 sets out the authority of a court officer to order disclosure from a non-party. The Rule does not refer to the court’s authority to do so as noted in the definition section of Rule 59.01. “Court officer” is defined in Rule 59.01 as follows:

“court officer” means a court official at an office of the Supreme Court (Family Division) who performs duties and provides services on behalf of the court such as reviewing statements and documents submitted for filing, conducting conciliation, directing and ordering disclosure, arranging and scheduling for parties to appear before a judge, and determining interim child support in some circumstances;

[18] A “judge” is defined in 59.01 as follows:

“judge” means a judge of the Supreme Court (Family Division) and any other judge of the Supreme Court determining or hearing a proceeding brought in the Supreme Court (Family Division);

[19] Further, s 7 of the **Court Officials Act**, R.S.N.S. 1989, c 373 also notes the distinction between a court officer and the court. Section 7 provides as follows:

“every court administrator, officer, or employee appointed pursuant to this *Act* is an officer of the court in respect of which that person serves and that person shall obey the orders of the court and of a judge of the court.”

[20] Rule 59.27 does not apply. The court’s jurisdiction to order non-party disclosure falls under the umbrella of Rule 14.12, not Rule 59.27. This finding is in keeping with Rule 59.28(5) which states as follows:

(5) A judge may order a person to file any statement, disclose information, or produce documents the judge sees fit, and this power does not diminish a power of a judge under Part 5 – Disclosure and Discovery.

[21] **Can non-parties challenge relevance?**

Position of the Parties

[22] Lisa Armoyan states that non-parties have no right to attack relevance; non-parties are restricted to arguing privilege and confidentiality. Challenges to relevance can only be advanced by parties.

[23] In contrast, the non-parties state that they are entitled to question relevancy given that they are being asked to disclose documents which they own or control. Procedural fairness demands full participation.

Law

[24] This question has not been directly addressed in Nova Scotia, from a Rules or case law perspective.

[25] The Rules do not specifically include or exclude non-parties from challenging relevancy. Rule 14.12(1) distinguishes between a “party” and a “person”, thus indicating that a non-party may be required to provide a relevant document to a party. A motion to compel production must be made on notice, unless the court permits the motion to proceed *ex parte*: Rule 14.12(5). Rule 22.11(6) states that Rules applicable to a party on a motion “must, as nearly as possible, be applied to a non-party ... who is sought to be bound by an order, as if the non-party were a party.” It is difficult to infer from such wording, a restriction on the ability of a non-party to challenge relevancy.

[26] Case law is also somewhat obscure on the issue. In **Brown v. Capital District Health Authority**, 2006 NSSC 348, Warner, J. ordered disclosure of relevant portions of a discipline file from the College of Nurses, which was not a party. The College opposed disclosure on several grounds, including relevance. Warner, J. ordered disclosure of the relevant parts of the College file, pursuant to the provisions of the 1972 *Civil Procedure Rules*. Although Warner, J.’s reasoning rested on general principles of relevance, there appears to have been no suggestion that the College did not have the authority to challenge relevancy under the old

Rules. The ultimate issue of whether a non-party had the right to question relevance appears not to have been raised.

[27] In contrast, in **Rogers v. Wallascheck**, [2001] O.J. No. 4064, Quinn, J. dismissed a motion for the production and inspection of documents by non-parties because of a lack of service on the non-party. At para 19, Quinn, J. held that the fact that a non-party must be served with a motion made it clear that the court was obligated to consider the interests of the non-party. Despite the court's refusal to grant the relief, the court did, nonetheless, address several of the issues on the motion, including a finding that the documents were relevant for production purposes, but declined to rule on privilege or statutory confidentiality issues without first hearing from the non-party, as noted at paras 24 and 34. The assumption to be drawn is that the non-party did not have the right to challenge relevance, as opposed to privilege or confidentiality.

Decision

[28] I am not prepared to exclude the issue of relevance from the non-party production motions. Although relevance is traditionally advanced by parties, where non-parties are requested to produce private documents, it appears procedurally appropriate that they be entitled to present as strong a case as they can muster in opposition to the motion, including the ability to challenge relevance. Had it been otherwise intended, then such a restriction should have been inserted in the Rules. I am not willing to infer such a restriction.

[29] **What consideration can be given to the statement of property of Vrege Armoyan?**

Position of the Parties

[30] Lisa Armoyan referenced Vrege Armoyan's statement of property to frame the issue of relevance.

[31] The non-parties sought to restrict the court's ability to do so. The non-parties state that the court can only consider the statement of property to the extent that it supports the statements that are contained in the affidavits of Amber Penney, and for no other purpose.

Law

[32] The issue surrounding this dispute was highlighted in **Petrelli v. Lindell Beach Holiday Resort Ltd.**, 2011 BCCA 367, which decision was approved by the Nova Scotia Court of Appeal in **National Bank Financial Ltd. v. Barthe Estate**, 2015 NSCA 47, at paras 140 and 141. In **Petrelli**, Groberman, J.A., made the following relevant statements:

- Documents which are part of the court record are admissible without formal proof: paras 33 and 34.
- Documents which are part of the court record do not have to be appended to affidavits, or tendered in the manner that most documentary evidence is presented: para 37.
- Documents which are part of the court record and which are being relied upon should be marked as an exhibit: para 43.
- Documents which are part of the court record can be reviewed, with notice to the parties: paras 38, 39, and 42, which paragraphs state as follows:

38 I have no doubt that the parties could have asked the chambers judge to look at the pleadings in the *Bahry* action without attaching those pleadings to affidavits, and without proving them in accordance with s. 26 of the *Evidence Act*. Further, in keeping with cases such as *Lewis and Hunt*, it seems to me that the judge, with notice to the parties, was entitled to examine the pleadings in *Bahry* even without them having invited him to do so.

39 In short, I agree with the appellant that the pleadings in *Bahry*, being records of the court, did not have to be proven in order for the judge to consider them. The issue on this appeal, however, is not whether the pleadings had to be proven, but rather whether they can be relied on as evidence without them having been before the chambers judge. In my view, the case law does not support the idea that pleadings are subject to "judicial notice" in this broader sense.

...

42 I agree with the position taken by Robertson J.A. A judge may be entitled to consult court records that are not directly before him or her and may be entitled to use them as evidence to decide a case. He or she should not normally do so, however, without advising the parties

of his or her intentions and without giving them an opportunity to address the issue. In this way, the documents, even without formal proof, can properly be said to have become part of the evidence in the case.

Decision

[33] The court found that Vrege Armoyan's statement of property, inclusive of the two volumes of supporting documents, can be referenced in their entirety, and without restrictions, for the purpose of framing the relevance discussion, and for the following reasons:

- The process described in **Petrelli**, supra, was followed in this motion. Vrege Armoyan's statement of property, already part of the court record, was entered as an exhibit during the first appearance on May 8, 2015.
- During the May 8 appearance, this court stated that Vrege Armoyan's statement of property would be referenced for the purpose of determining relevance in the non-party disclosure motions. Because the non-parties had only received a copy of the statement of property on May 8, an adjournment was granted to allow the non-parties an opportunity to review the statement of property. The motion resumed on June 4, 2015. The non-parties had ample time to review and respond to the statement of property.
- It would be an unproductive and fruitless task to engage in a discussion of relevance without Vrege Armoyan's statement of property. Lisa Armoyan seeks disclosure because of perceived deficiencies in Vrege Armoyan's statement of property information. The issue of non-party disclosure arises in this context. The court can scarcely resolve that issue, without referencing the foundation documents from which the disclosure issues arose.
- The court's task of reaching a "just, speedy, and inexpensive determination"¹ of this proceeding would be compromised if the

¹ Rule 1.01

court was not permitted to reference the statement of property. The court's truth finding mission would be undermined because relevance would not be based on the most basic document required to determine that very issue. Further, the litigation, including that involving the non-parties, would become protracted, if the non-party disclosure motions were dismissed for reasons unrelated to merit. In such a case, Lisa Armoyan could refile, with the appropriate supporting information, so that the motions could be determined on their merits. Such an outcome should be avoided, where possible.

- Vrege Armoyan should not benefit from his failure to participate in a proceeding which he initiated. Had Vrege Armoyan not abandoned the MPA proceeding, he would have been present to give evidence and to answer questions regarding his property statement and property holdings. Vrege Armoyan's failure to participate should not result in a loss of relevant disclosure.

[34] **What is the applicable test for non-party disclosure?**

[35] Rule 14.12 describes a judge's discretionary authority to compel production of a relevant document or electronic information. Rules 14.12 (1) and (2) state as follows:

14.12 (1) A judge may order a person to deliver a copy of a relevant document or relevant electronic information to a party or at the trial or hearing of a proceeding.

(2) A judge may order a person to produce the original of a relevant document, or provide access to an original source of relevant electronic information, to a party or at the trial or hearing.

[36] Relevant and relevancy are defined in Rule 14.01, which provides as follows:

(1) In this Part, "relevant" and "relevancy" have the same meaning as at the trial of an action or on the hearing of an application and, for greater clarity, both of the following apply on a determination of relevancy under this Part:

(a) a judge who determines the relevancy of a document, electronic information, or other thing sought to be disclosed or produced must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the document, electronic information, or other thing relevant or irrelevant;

(b) a judge who determines the relevancy of information called for by a question asked in accordance with this Part 5 must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the information relevant or irrelevant.

(2) A determination of relevancy or irrelevancy under this Part is not binding at the trial of an action, or on the hearing of an application.

[37] In **R v. Grant**, 2015 SCC 9, the Supreme Court of Canada held that “[e]vidence is logically relevant where it has any tendency to prove or disprove a fact in issue”: para 18. In *The Law of Evidence in Canada*², the authors note in part, that “[a] fact will be relevant not only where it relates directly to the fact in issue, but also where it proves or renders probable the past, present or future existence (or non-existence) of any fact in issue”: para §2.45

[38] In **Laushway v. Messervey**, 2014 NSCA 7, Saunders, J.A. reviewed the test applicable to Rule 14.12, and confirmed the following points:

- “Trial relevance” replaced the old “semblance of relevancy” test when the new Rules came into effect, as noted in **Brown v. Cape Breton (Regional Municipality)**, 2011 NSCA 32; and **Saturley v. CIBC World Markets Inc.**, 2011 NSSC 4: para 47.
- The court should apply a more liberal view of relevance at the disclosure stage than at trial, subject to confidentiality, privilege, production costs, timing and probative value: para 49, quoting Wood, J.

² Sidney N. Lederman, Alan W. Bryant & Michelle K. Fuerst, *The Law of Evidence in Canada*, 4th ed (Markham, Ont.: LexisNexis, 2014).

- It is “better to err on the side of requiring disclosure of material that, with the benefit of hindsight, is determined to be irrelevant, rather than refusing disclosure of material that subsequently appears to have been relevant. In the latter situation, there is a risk that the fairness of the trial could be adversely affected”: para 49, quoting Wood, J.
- It is axiomatic that relevance must be connected or linked between people, events or things, as relevance is not determined in a “pristine, sealed vacuum”: para 61.
- Once a finding of relevance is made, the burden then shifts to the non-moving party to attempt to rebut the presumption and thereby defeat the motion for production pursuant to Rule 14.08: para 66.

[39] In addition, Saunders, J.A. provided a non-static, non-exhaustive list to supplement the guidance already provided in the **Rules**, and to assist trial judges in the exercise of their discretion pursuant to Rule 14.12. Paragraph 86 provides, in part, as follows:

1. Connection: What is the nature of the claim and how do the issues and circumstances relate to the information sought to be produced?
2. Proximity: How close is the connection between the sought-after information, and the matters that are in dispute? Demonstrating that there is a close connection would weigh in favour of its compelled disclosure; whereas a distant connection would weigh against its forced production;
3. Discoverability: What are the prospects that the sought-after information will be discoverable in the ordered search? A reasonable prospect or chance that it can be discovered will weigh in favour of its compelled disclosure.
4. Reliability: What are the prospects that if the sought-after information is discovered, the data will be reliable (for example, has not been adulterated by other unidentified non-party users)?
5. Proportionality: Will the anticipated time and expense required to discover the sought-after information be reasonable having regard to the importance of the sought-after information to the issues in dispute?
6. Alternative Measures: Are there other, less intrusive means available to the applicant, to obtain the sought-after information?

7. Privacy: What safeguards have been put in place to ensure that the legitimate privacy interests of anyone affected by the sought-after order will be protected?
8. Balancing: What is the result when one weighs the privacy interests of the individual; the public interest in the search for truth; fairness to the litigants who have engaged the court's process; and the court's responsibility to ensure effective management of time and resources?
9. Objectivity: Will the proposed analysis of the information be conducted by an independent and duly qualified third party expert?
10. Limits: What terms and conditions ought to be contained in the production order to achieve the object of the **Rules** which is to ensure the just, speedy and inexpensive determination of every proceeding?

[40] In **Laushway v. Messervey**, *supra*, the court was not addressing a non-party disclosure request. Whether additional considerations apply to non-parties is answered to some extent by Rule 22.11(6) which states as follows:

(6) Rules applicable to a party on a motion, including Rules about an *ex parte* motion, must, as nearly as possible, be applied to a non-party who moves for an order or who is sought to be bound by an order, as if the non-party were a party.

[41] Two additional factors, to those expressed in **Laushway v. Messervey**, *supra*, are also applicable to non-party production considerations, as follows:

- Non-parties who have an interest in the subject matter of the litigation, and whose interests are allied with a party opposing production, should be more susceptible to a production order than a true "stranger" to the litigation: **Ontario (Attorney General) v. Ballard Estate**, [1995] O.J. No. 3136 (C.A.), para 15.
- Non-party production should be used as a last resort.³

[42] At this juncture, it is also important to underscore the significance of full disclosure in the family law context. In **Leskun v. Leskun**, 2006 SCC 25, the Supreme Court of Canada approved the comments of Fraser, J. who held that

³ Stevenson and Cote: *Civil Procedure Encyclopedia*, vol 2 (Edmonton: Juriliber, 2003), pg 27-74.

“[n]on-disclosure of assets is the cancer of matrimonial property litigation” at para 34, wherein Binnie, J. states as follows:

34 In all of these circumstances, the appellant has a poor platform from which to launch an attack against the trial judge's conclusion regarding his assets and liabilities. As Fraser J. commented in **Cunha v. Cunha** (1994), 99 B.C.L.R. (2d) 93 (B.C. S.C.), at para. 9:

Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlement which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done.

[43] In **Armoyan v. Armoyan**, 2013 NSCA 99, Fichaud, J.A. held that the court is “a warden” in family law proceedings to ensure cost efficient disclosure which is essential to the court’s fact finding at para 281, which states as follows:

281 At the hearing in this Court, Mr. Armoyan's counsel submitted that Nova Scotia would be the more convenient forum for various reasons, including that Mr. Armoyan's information was located in Nova Scotia, making the information more amenable to discovery. It was heartening to hear that comment on Mr. Armoyan's behalf, given the Florida Courts' difficulties with the extraction of his financial disclosure. I reiterate, as guidance for the upcoming disclosure, this Court's comments in **Foster-Jacques v. Jacques**, 2012 NSCA 83 (N.S. C.A.):

[93] Rules 59.19 to 59.27 advertently engage the court in the mandatory pre-trial acquisition of evidence. The court is enlisted as a warden to ensure that, in family proceedings, obtaining the information which is essential to the court's fact finding is not a costly battleground, lever of procrastination or "game of hide and seek": **O'Brien v. O'Brien**, 2007 NBCA 22, para 15; **Chernyakhovsky v. Chernyakhovsky**, [2005] O.J. No. 944 (S.C.), para 6. The parties' court filings under Rule 59 are vital to the workings of the court's administration of justice for the divorcing litigants.

[44] The balance of privacy interests against the importance of disclosure of relevant information involves a proportional, contextual analysis, rooted in the law and the evidence.

[45] **Are assets, which were sold post-separation, relevant to the MPA proceeding?**

Position of the Non-Parties

[46] The corporate non-parties and George Armoyan assert that assets which Vrege Armoyan owned at separation, but sold post-separation, are no longer relevant to the **MPA** litigation because they can no longer be divided. For example, Geovex Investments Limited states, in part, at paras 22, 36 and 38 of its brief⁴, as follows:

However, clearly assets which the Petitioner used to own are not relevant, as they cannot today be divided between the Petitioner and Respondent (unless the Moving Party has challenged and seeks to reverse transactions relating to such previously held assets). ...

...

The Penney Affidavit dated April 28, 2015 serves only to state that the Petitioner, prior to October 2010, owned shares in Geovex Investments Limited which he sold at that time for \$20,000,000.00 (see para.8).

There is no evidence whatsoever that the Petitioner's current assets relate to this Non-Party in any way.

...

The Petitioner, however, has no current interest in Geovex. All of these requests are clearly aimed at valuing of [*sic*] the Petitioner's previous shareholding in Geovex and challenging the 2010 shotgun transaction. ...

These requests are irrelevant to the Petitioner's current property and assets, and are an abuse of process

⁴ Correspondence brief of George MacDonald, Q.C. for Geovex Investments Limited dated May 4, 2015

[47] The other corporate non-parties made similar submissions in respect of other shares which Vrege Armoyan redeemed post-separation, or in respect of subsidiaries of Geovex Investments Limited.

[48] Deloitte Touche, Wickwire Holm and Stewart McKelvey adopted the position of the corporate non-parties and George Armoyan.

Position of Lisa Armoyan

[49] Lisa Armoyan disagrees with the proposition. She also argues that she has the right to challenge all values provided by Vrege Armoyan in his statement of property in respect of shares which he owned in Geovex Investments Limited, APL Properties Limited, and 1181830 Alberta Limited and which he redeemed post-separation.

Decision

[50] I reject the submission that documents and electronic information cease to be relevant because Vrege Armoyan redeemed his shares in Geovex Investments Limited, APL Properties Limited, and 1181830 Alberta Limited post-separation. The non-parties provided no statutory or case authorities to support the unpersuasive submission that assets accumulated before or during the marriage and sold post-separation are no longer relevant.

[51] The **MPA** is remedial legislation. It is subject to liberal interpretation principles: **Clarke v. Clarke**, [1990] 2 SCR 795 para 24. A contextual, schematic and purposive analysis of the **MPA** confirms that the value of all assets which existed at separation is relevant to a division of property under the **Act**.⁵ Section 4(1) of the **Act** states that matrimonial assets include all real and personal property acquired by spouses before or during the marriage, unless the party claiming otherwise, proves that the assets fall within an enumerated exception: **Reardon v. Smith**, 1999 NSCA 147, para 33. Notably, none of the listed exemptions include property owned at separation, that is subsequently sold, transferred or otherwise disposed of post-separation.

⁵ I have no motion evidence to suggest that the framework of the **MPA** does not apply.

[52] Further, s 12 of the **MPA** lists the four events which trigger the **Act's** application, which triggering events include the filing for divorce or a permanent separation of the spouses. Section 13 of the **MPA** allows for an unequal division of assets for a number of reasons, including the unreasonable impoverishment of matrimonial assets. These provisions confirm that property which exists at separation is relevant for division purposes, and that assets which are dissipated must be considered.

[53] In addition, the **Act's** purpose, as set out in its preamble, affirms the need to strengthen the role of family; to recognize the joint, albeit often different, contributions of each spouse; to provide for mutual familial obligations, including the responsibility for children; and to provide for an orderly and equitable settlement of the spouses' affairs at the end of their relationship. These purposes cannot be achieved if the non-parties' premise is adopted.

[54] A contextual, schematic and purposive analysis of the **MPA** results in a rejection of the non-parties' position. I find that all property which existed at separation is relevant in this **MPA** proceeding, despite the fact that Vrege Armoyan divested himself of some of that property post-separation.

[55] The Nova Scotia Court of Appeal has additionally held that the appropriate valuation date for division purposes is based on what is fair and just. Valuation dates have been variously held to be at the time of trial; the commencement of the proceedings, but subject to variation according to the evidence; or based on the nature of the asset: **Reardon v. Smith**, supra at para 37.

[56] Lisa Armoyan is permitted to challenge the value of the assets stated by Vrege Armoyan in his statement of property. Vrege Armoyan valued his shares in Geovex Investments Limited at \$22 - \$24 million in 2009 and \$20 million, net of taxes, in 2010; and his shares in APL Properties Limited/1181830 Alberta Limited at \$2 million in 2009 and 2010. Vrege Armoyan acknowledged redeeming his shares in these companies in 2010. Vrege Armoyan adopted the redemption sale figures for valuation purposes. No independent valuation report was produced, despite Vrege Armoyan's obligation to provide credible evidence as to value: **Homsi v. Zaya**, 2009 ONCA 322, para 38. Lisa Armoyan has a right to challenge the values which Vrege Armoyan ascribed to his shares in the various corporations, even if he disposed of his shares post-separation. To decide otherwise, could lead to results not in keeping with a liberal and purposive interpretation of the **MPA**.

[57] **Should the motions be dismissed for abuse of process?**

Position of the Non-Parties

[58] The corporate non-parties and George Armoyan seek to have the motions dismissed for abuse of process. They suggest that the disclosure motions amount to an abuse of process pursuant to Rule 88. For example, Geovex Investments Limited argued as follows in its brief at paras 25 and 30⁶: ...,

As will be seen in these submissions, a great majority of the Moving Party's document requests are made for the ultimate purpose of assessing the Petitioner's past shareholding in Geovex Investments Limited, which past interest was sold pursuant to a shotgun transaction in 2010. The Non-Party submits that any such requests are irrelevant and amount to an abuse of process because that very issue has been pleaded by the Moving Party in a separate Supreme Court (Trial Division) [*sic*] proceeding against Geovex Investments Limited which separate proceeding is currently subject to a stay of proceedings.

...

In this case, the Moving Party chose, on November 21, 2012, to commence a fraudulent conveyance action in the Nova Scotia Supreme Court (Trial Division) [*sic*] specifically seeking a reversal of the shotgun transaction on the basis that it constituted a fraudulent conveyance. It is that separate litigation, and not this divorce proceeding, wherein the value of the Petitioner's supposed shareholding in Geovex Investments Limited must be assessed and the shotgun transaction itself considered. That separate litigation is currently stayed in its entirety pursuant to CPR 45.04(1) due to the Moving Party's failure, for more than one year, to post security for costs as ordered by The Honourable Justice Michael J. Wood. The Moving Party is abusing This Honourable Court's process by side-stepping that stay and seeking to advance her fraudulent conveyance claim in a completely separate forum in which those issues are irrelevant. These abusive requests will be highlighted below and should be dismissed entirely.

[59] The other corporate non-parties and George Armoyan asserted similar arguments in the various correspondence motions which were filed on their behalf.

⁶ Correspondence brief of George MacDonald Q.C. for Geovex Investments Limited dated May 4, 2015.

[60] Deloitte Touche, Stewart McKelvey and Wickwire Holm adopted the position of the corporate non-parties.

Position of Lisa Armoyan

[61] Lisa Armoyan rejects the submission that her requests for disclosure amount to abuse of process. She contends that she is the victim and that Vrege Armoyan's conduct is an abuse of process. Lisa Armoyan notes that the disclosure motions were made in good faith, are relevant, and relate to the issues that are before the court in the **MPA** litigation.

Decision

[62] Lisa Armoyan's disclosure motions are not dismissed because of abuse of process for the following reasons:

- Procedurally, no such motion was formally placed before this court, as is required by Rule 23.
- Substantively, there is no evidence to support such a finding in any event. The facts required to grant such a rare and extraordinary remedy are simply not present: **National Bank Financial Ltd. v. Barthe Estate**, supra. The evidence does not suggest that Lisa Armoyan's disclosure motions have compromised the trial's fairness, the integrity of the court's adjudicative functions, or the administration of justice. Public confidence in the legal process has not diminished because Lisa Armoyan filed non-party disclosure motions.
- Lisa Armoyan did not initiate the **MPA** proceeding; she is responding to a proceeding commenced by Vrege Armoyan. Lisa Armoyan is the respondent; Vrege Armoyan is the Petitioner. As such, Lisa Armoyan has the right to obtain information which is relevant to the valuation of the assets which accumulated before or during the marriage.
- A document that is relevant in a **MPA** proceeding, may indeed also be relevant in another proceeding. The request for disclosure in such circumstances is not an abuse of process.

[63] What disclosure orders should issue?

[64] The motions involving each of the non-parties will be analyzed separately based on the law and the evidence provided in the exhibits.

Geovex Investments Limited (Geovex)

Position of Lisa Armoyan

[65] Geovex is a corporation that has a number of wholly owned or controlled subsidiaries. Vrege Armoyan said he held a 50% ownership interest in Geovex and related entities, which he said he sold in 2010 because of a shotgun buy or sell agreement. Lisa Armoyan is asking Geovex to produce information relating to its financial statements; share structure; net asset valuations; books of account; communications with Vrege Armoyan; portfolio particulars; the shotgun transaction; and the 2009 personal tax return of Vrege Armoyan. The specific requests are listed as follows:

1. The fiscal years ending January 31, 2008 and January 31, 2009:
 - a) Consolidated Financial Statement of Geovex
If above is not available then:
 - b) Unconsolidated Financial Statement of Geovex
 - c) The audited or unaudited financial statement for each of its:
 - i. Wholly owned non-consolidated subsidiaries
 - ii. Investments in companies subject to significant influence
 - iii. Investments in controlled non-consolidated subsidiaries

9. (a) All payment documents evidencing the repayment of the below noted amounts to Sami Armoyan and Anahid Armoyan.

'Note 8' to the unconsolidated financial statements of Geovex reports the amounts "Due to Related Parties" as of the following dates:

Related Party	October 31, 2009	January 31, 2010
Sami Armoyan	\$7,996,593	Nil
Anahid Armoyan	\$1,551,231	Nil

- (b) Documentation of the accounting entry including date, authorization and reason that caused the below noted obligation to be recorded in the accounting records of Geovex;
- (c) The supporting documents for the accounting entry; and
- (d) The source of funds to Vrege Armoyan to make the repayment.

The Petitioner's Statement of Property reports payments made by him to Geovex between November 24 and December 3, 2009 for \$2,185,000. The October 31, 2009 unaudited financial statements of Geovex in Note 7 reports that Vrege Armoyan owes Geovex \$2,185,000.

(e) All documentation in regard to the authorization and issuance of a Class of Shares identified as 'B' and as 'Preferred'.

As at January 31, 2010, the only issued share capital in Geovex is in the form of common shares. Schedule 6 of the 4402600 Canada Inc. tax return for the fiscal year ended January 31, 2011 lists the "Disposition of Capital Property" that include shares. For Geovex it reports the sale of a Class of Shares identified as "B" with an adjusted cost base of \$28,441 and the sale of a Class of Shares identified as "Preferred" with an adjusted cost base of \$1.00.

(f) The 'Shotgun Buy-Sell' agreement regarding shares of Geovex in place as at January 31, 2006 and for each fiscal year end thereafter to January 31, 2010.

(g) The 'Shotgun Buy-Sell Notice regarding shares of Geovex referred to in the letter dated September 24, 2010 from Natalie Woodbury at Wickwire Holm to Jim Cruickshank at Stewart McKelvey.

(h) The 'original shareholders' agreement' referred to in the letter dated September 24, 2010 from Natalie Woodbury at Wickwire Holm to Jim Cruickshank at Stewart McKelvey.

(i) The final and signed 'formal document' that arose from the statement 'first draft of the formal document with closing to take place no later than October 25, 2010' in the letter dated October 8, 2010 from Jim Cruickshank at Stewart McKelvey to Natalie Woodbury at Wickwire Holm.

(j) All documents and communications with Vrege Armoyan from February 1, 2007 through to October 31, 2010.

(k) The Books of Account including the General Ledger, Receipts and Disbursement ledgers/journals from February 1, 2007 through to January 31, 2010.

(l) Any valuation of the net asset value of the company between February 1, 2007 and January 31, 2010.

19. Vrege Armoyan 2009 Personal Tax Return

a) All documentation to support the claimed total net loss of \$8,284,053 in the Vrege Armoyan personal tax return for the year 2009.

- b) All documentation to identify the incorporation or registration of Mr. Armoyan's self-employment business claimed on his tax return.

Part 5 of Vrege Armoyan 2009 personal tax return reports:

	Amount
"Losses on account of income – USD Securities	1,922,696
Losses on account of income – CDN Securities	3,009,082
Losses on account of income – CDN Short Sales	599,669
Foreign exchange gain on acct of income	(139,733)
Deemed Disposition on Loan – Designated per 50 (1)	<u>2,892,339</u>
Total Net Loss	<u>8,284,053</u>

- c) The date that Vrege Armoyan decided to become self-employed in the 2009 taxation year given that two installments were paid for him during 2009, totaling \$50,000 as per the 2009 tax return:
August 26, 2009 - Felisa emails Vrege to say I assume that I will be covering these installments (quarterly tax installments of Sami and Anahid) from Geovex and that Geovex will be paying the September 15 installments on behalf of the children. Are you going to make the \$25,000 installment payment as well, is Geovex going to cover it?
- d) All documentation to support the following interest earned amounts reported on Vrege Armoyan's personal tax returns for the following years:

	\$ Amount
2010	29,931
2011	138,460
2012	106,800
2013	2,349

- e) All documentation to support the information reported in the 'Foreign Income Verification Statement' on Vrege Armoyan's personal tax returns for the years 2010, 2011, 2012 and 2013.
- f) All documentation in regard to investments made by Vrege Armoyan in either Syria or Lebanon from September 1, 2010 to current date.
- g) Vrege Armoyan's tax return that reports the receipt of the following dividend in the amount of \$2,000,000:
In the September 28, 2010 agreement of purchase and sale for the sale of both 1181830 Alberta Ltd and APL Properties Ltd 1181830 by Vrege Armoyan to George Armoyan, 1181830 Alberta Ltd issued a promissory note to pay Vrege Armoyan \$2,000,000 after December 31, 2010 without interest. Vrege Armoyan affidavit dated February 2014 states that the \$2,000,000 dividend was paid.

27. Receipt of Funds from Loan Repayment:

(a) The monthly bank statement that shows the name of the account, account number and the deposit of the loan repayment of \$879,531 by Geovex to Vrege Armoyan as stated on page 17 of the Vrege Armoyan affidavit dated February 2014

1(a)(i) All documentation in regard to the authorization and issuance of a Class of Shares identified as 'B' and as 'Preferred' that occurred after January 31, 2010.

(ii) All documentation in regard to the 'Shotgun Buy-Sell Notice' and the 'Offer to Purchase or Sell' between the vendor 4402600 Canada Inc. and the purchaser Geosime Capital Inc. including how the sale price was determined that occurred in October and November 2010.

(iii) The 'Shotgun Buy-Sell' agreement regarding shares of Geovex in place as at January 31, 2006 and for each fiscal year end thereafter to January 31, 2010.

(iv) Documentation of the accounting entry including date, authorization and reason that caused the below noted obligation to be recorded in the accounting records of Geovex and the supporting documents for the accounting entry.

Pages 25-27 of the February 2014 Affidavit of Vrege Armoyan reports payments made by him to Geovex between November 24 and December 3, 2009 for \$2,185,000. The October 31, 2009 unaudited financial statements of Geovex in Note 7 reports that Vrege Armoyan owes Geovex \$2,185,000.

(v) Any valuation of the net asset value of the company between February 1, 2008 and January 31, 2010.

2(j) The monthly 'Portfolio Statement' for Geovex for the time period from January 1, 2008 to November 30, 2010 for the following accounts:

111FIR-E	Margin Account
111FIR-F	Margin Account (US \$)

[66] Lisa Armoyan also seeks any additional documents requested in the consent order which Geovex has in its control or possession.

[67] Lisa Armoyan states that the requested disclosure is relevant for several reasons, including the following:

- Disclosure is necessary to obtain an accurate picture of the finances and assets of Vrege Armoyan so that Lisa Armoyan can advance her position in the MPA litigation.

- The valuation of the assets held by Vrege Armoyan is an integral part of the **MPA** litigation and to proceed without valuations would be unfair and prejudicial to Lisa Armoyan's position at trial.
- As noted in his statement of property, Vrege Armoyan held 50% of the shares in Geovex until they were redeemed in 2010. Vrege Armoyan placed a value of between \$22 and \$24 million for his shares in 2009 and \$20 million, net of taxes, in 2010.
- Lisa Armoyan wishes to challenge the values which Vrege Armoyan ascribed to his Geovex shares in 2009 and 2010.
- The requests detailed in paras 1(a), (b) and (c) are relevant because the financial statements of Geovex report the book value of the net assets of the company. These values assist in the determination of the fair market value of Vrege Armoyan's interest in Geovex at the time of separation and at the time the shotgun clause was exercised in 2010.
- The financial statements for 2007 and 2008 are necessary to establish a base line or comparable net asset value of the company prior to separation.
- Disclosure requested in para 9(a), which is related to Note 8 of the unconsolidated financial statements, is relevant because Note 8 records significant amounts, in excess of \$9.5 million, due to related third parties, which impact on the valuation of the Geovex shares. Such a lump sum repayment appears out of the normal course of business for Geovex which had carried these liabilities since at least 2006. The reason for this event is relevant to an assessment of the propriety of other events whereby Vrege Armoyan disposed of assets after separation.
- Disclosure, related to paras 9(b), (c) and (d) and 1(a) (iv) of schedule B, is relevant. In his statement of property, Vrege Armoyan reports payments made by him to Geovex between November 24 and December 3, 2009 of \$2,185,000. The October 2009 unaudited financial statement of Geovex, Note 7, reports that Vrege Armoyan owes Geovex \$2,185,000. Documentation relating to this entry is relevant to the valuation of the shares and the assets held by Vrege Armoyan at separation.

- The request found in para 9(e) relates to documentation respecting share capital. This request is relevant because disclosure will lead to a better understanding of the Geovex corporate holdings. Documentation to support this request is found in Schedule 6 of the 2011 tax return of 4402600 which is located in the statement of property supporting documents filed by Vrege Armoyan and entered as an exhibit in this motion.
- The requests made in para 9 (f) to (k) are relevant because the shotgun buy or sell agreement was triggered in 2010. It is relevant to the issue of valuation, as would all such agreements in place from 2006 to 2010, for comparative purposes. It is also relevant to an assessment of the allegedly arms-length transaction by which Vrege Armoyan sold all of his interest in the company.
- The request stated in para 9(j), relating to documents and communication between Geovex and Vrege Armoyan between February 1, 2007 and October 31, 2010, is relevant to an assessment of the reason why a shareholder agreement was drawn up contemporaneously with a marital agreement. These documents are also relevant to an assessment of Vrege Armoyan's role in the sale of Geovex, together with an assessment of the legitimacy of the offer to purchase or sell that was executed as a result of the shotgun clause.
- The requests found in paras 9 (k) and (l) are relevant because they relate to the financial affairs and valuation of Geovex. These documents are relevant not only to establish a fair market valuation, but also to establish what information was available to Vrege Armoyan regarding the value of the company. Further, Lisa Armoyan, states that it is important to establish a base line valuation before marital difficulties arose in order to assess the impact of any intervening events.
- The requests regarding the 2009 personal tax return of Vrege Armoyan are relevant to determine the self-employment claims he put forth. His tax return claims an \$8 million loss under the self-employment category. The requests are relevant to understand why Vrege Armoyan's employment ceased either with Armco Capital Inc. or Kimberly-Lloyd Development and when the new self-employment relationship began. Paras 19(d), (e) and (f) request documentation relating to interest earned

and reported by Vrege Armoyan in his personal tax returns, documentation supporting the information reported by him in the foreign income verification statement, as well as documentation regarding his investments in Syria and Lebanon. This documentation is relevant to the amount of funds on deposit at the Byblos Bank and to the veracity of claims that Vrege Armoyan transferred funds to an investment in Syria where the funds were ultimately lost. The interest earned in the foreign accounts appears inconsistent with representations made in his statement of property and other documents. Documents relied upon by professionals who assisted in preparing his tax return would assist in a further understanding and appreciation of the return. Paragraph 19(g) requests documents relating to the payment of \$2 million to Vrege Armoyan for the sale of APL and 1181830 Alberta Ltd. Although the front of the cheques were provided, the endorsement side of the \$2 million cheque was not. This endorsement is relevant to the question of whether the funds were in fact wired to the Byblos Bank and invested as claimed.

- Para 27 (a) is relevant because in his statement of property, Vrege Armoyan indicates receipt of \$879,531 from Geovex. The statement of property does not account for the current whereabouts of the funds. The funds are also relevant to the issue of ability to pay court ordered amounts.
- The requests, relating to a class of shares and the shotgun buy-sell notice and agreement, outlined in paras 1(a)(i) to (iii) of schedule B are relevant because of events which occurred between January 2010 and November 2010 including the circumstances surrounding the exercise of the shotgun clause, the negotiations that followed, and the ultimate sale of Vrege Armoyan's interest in Geovex. Such information is necessary to determine the fair valuation of Vrege Armoyan's interest in Geovex and whether the sale was designed to evade financial obligations.
- Valuation documents, as requested in para 1(v) of schedule B, are relevant to establish a base line value and to understand the impact of the corporate reorganization that occurred in late 2007.
- The portfolio statements as requested in para 2(j) of schedule B are relevant as they would provide statements of valuation of some of

Geovex's investments, which in turn will assist with the fair market valuation of Geovex.

Position of Geovex Investments Limited

[68] Geovex disputes the disclosure motion for many reasons, including the following:

- A more narrow and cautious approach must be adopted because the motion concerns a non-party.
- Documents that are subject to privilege cannot be subject to a production order: Rule 14.05
- Assets which Vrege Armoyan used to own are not relevant. Property or assets which Vrege Armoyan never owned are also irrelevant.
- The consent order is not determinative. Geovex had no opportunity to respond to evidence filed within an earlier motion. An order negotiated by the parties cannot be binding on a non-party.
- Lisa Armoyan did not prove the basic relevance of the requested documentation.
- The requests are numerous and excessively broad. Lisa Armoyan is engaging in a costly, fishing expedition.
- The Penney affidavits contain no evidence regarding Geovex or Vrege Armoyan's connection to Geovex. The Penney affidavits serve only to state that Vrege Armoyan, prior to October, 2010, owned shares in Geovex which he sold. Requests seeking documents relating to the shotgun transaction are not relevant because Vrege Armoyan ceased to have any interest in Geovex in 2010.
- There is no evidence that Vrege Armoyan's current assets relate to Geovex in any way.
- There is no evidence indicating that payments were made by Geovex to third parties, or if they did, that the payments concerned Vrege Armoyan in any way.

- There is no evidence to suggest that Geovex has information connected to Vrege Armoyan's personal tax returns and documents relating to his personal investments and self-employment.
- There is no evidence to show a transaction involving a loan repayment by Geovex to Vrege Armoyan.
- There is no evidence that monthly portfolios statements for Geovex investments exist and further, any value attributed to them would be reflected in the Geovex financial statements, thus making the request unnecessarily burdensome and duplicative.

Decision

[69] Lisa Armoyan has proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. Geovex must therefore sort⁷ and deliver to Lisa Armoyan, a copy of the listed documents and electronic information⁸, or exactly copy⁹, with the exception of documentation which is subject to privilege¹⁰. Geovex must provide Lisa Armoyan with a listing of any documentation which Geovex asserts is subject to privilege. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by Geovex:

1. The fiscal years ending January 31, 2008 and January 31, 2009:
 - a) Consolidated Financial Statement of Geovex

If above is not available then:

- b) Unconsolidated Financial Statement of Geovex
- c) The audited or unaudited financial statement for each of its:
 - i. Wholly owned non-consolidated subsidiaries
 - ii. Investments in companies subject to significant influence
 - iii. Investments in controlled non-consolidated subsidiaries

⁷ Rule 14.02

⁸ Rule 14.02

⁹ Rule 14.02

¹⁰ Rule 14.05

9.a) All payment documents evidencing the repayment of the below noted amounts to Sami Armoyan and Anahid Armoyan.

'Note 8' to the unconsolidated financial statements of Geovex reports the amounts "Due to Related Parties" as of the following dates:

Related Party	October 31, 2009	January 31, 2010
Sami Armoyan	\$7,996,593	Nil
Anahid Armoyan	\$1,551,231	Nil

b) Documentation of the accounting entry including date, authorization and reason that caused the below noted obligation to be recorded in the accounting records of Geovex;

c) The supporting documents for the accounting entry; and

d) The source of funds to Vrege Armoyan to make the repayment.

The petitioner's statement of property affidavit reports payments made by him to Geovex between November 24 and December 3, 2009 for \$2,185,000. The October 31, 2009 unaudited financial statements of Geovex in Note 7 reports that Vrege Armoyan owes Geovex \$2,185,000.

e) All documentation in regard to the authorization and issuance of a Class of Shares identified as 'B' and as 'Preferred'.

As at January 31, 2010, the only issued share capital in Geovex is in the form of common shares. Schedule 6 of the 4402600 Canada Inc. tax return for the fiscal year ended January 31, 2011 lists the "Disposition of Capital Property" that include shares. For Geovex it reports the sale of a Class of Shares identified as "B" with an adjusted cost base of \$28,441 and the sale of a Class of Shares identified as "Preferred" with an adjusted cost base of \$1.00.

f) The 'Shotgun Buy-Sell' agreement regarding shares of Geovex in place as at January 31, 2006 and for each fiscal year end thereafter to January 31, 2010.

i) The final and signed 'formal document' that arose from the statement 'first draft of the formal document with closing to take place no later than October 25, 2010' in the letter dated October 8, 2010 from Jim Cruickshank at Stewart McKelvey to Natalie Woodbury at Wickwire Holm.

j) All documents and communications with Vrege Armoyan from April 1, 2009 through to October 31, 2010.

k) The Books of Account including the General Ledger, Receipts and Disbursement ledgers/journals from April 1, 2009 through to January 31, 2010.

1) Valuations of the net asset value of the company between February 1, 2007 and January 31, 2010.

27. Receipt of Funds from Loan Repayment:

(a) The monthly bank statement that shows the name of the account, account number and the deposit of the loan repayment of \$879,531 by Geovex to Vrege Armoyan as stated on page 17 of the Vrege Armoyan statement of property affidavit dated February 2014.

1(a)(ii) All documentation in regard to the 'Shotgun Buy-Sell Notice' and the 'Offer to Purchase or Sell' between the vendor 4402600 Canada Inc. and the purchaser Geosime Capital Inc. including how the sale price was determined that occurred in October and November 2010.

[70] I make this disclosure order for the following reasons, placing myself in the position of the trial judge:

- I reject the submission that documents and electronic information cease to be relevant because Vrege Armoyan sold his interest in Geovex post-separation.
- In his statement of property, Vrege Armoyan states that he held shares that provided him with a 50% ownership of Geovex and related entities. He valued this interest between \$22 and \$24 million as of October 31, 2009; and at \$20 million, net of taxes, when he redeemed his shares in October 2010. Lisa Armoyan disputes the values assigned by Vrege Armoyan. She is entitled to obtain evidence to either confirm Vrege Armoyan's values or to provide other valuations.
- The 2008 and 2009 financial statements requested in paras 1(a), or (b) and (c) are relevant as they will assist in establishing the fair market value of the shares held by Vrege Armoyan. The 2008 financial statements are relevant to establish a base line or comparable net asset value for the shares prior to separation and at the time they were redeemed.
- Disclosure surrounding Note 8 of the 2009 non-consolidated financial statement, as sought in para 9(a), is relevant because Note 8 indicates that in excess of \$9.5 million was due to related third parties, Sami and Anahid Armoyan. This substantial sum impacts on the valuation of the 2009 Geovex shares. There is evidence to support this determination as

- the 2009 unaudited non-consolidated financial statement of Geovex is found in Vrege Armoyan's statement of property supporting documents.
- The disclosure, requested in paras 9(b), (c) and (d) and 1(a) (iv) of schedule B, related to Vrege Armoyan's payments of \$2,185,000 to Geovex between November 24 and December 3, 2009, is relevant as it affects the value of the assets owned by Vrege Armoyan at separation and also reflects on the valuation of his shares in Geovex. There is evidence to support this relevancy determination, both in Vrege Armoyan's statement of property and in the October 2009 unaudited financial statement of Geovex, Note 7 which is found in the statement of property supporting documents.
 - The request, found in para 9(e) and 1(a) (i) of schedule B, is relevant because it relates to the authorization and issuance of a class of shares identified as "B" and as "Preferred." Clarification as to the share structure is necessary and relevant to valuation and to an understanding of the corporate structure. The evidence to support this relevancy determination is found in the schedule 6 of the 2011 tax return of 4402600 which is located in the statement of property supporting documents.
 - The requests, made in paras 9(f) and (i) and 1(a) (iii) of schedule B, are relevant because the shotgun buy sell agreement was triggered in 2010. It is relevant to the issue of valuation, as would all such agreements in place between 2006 and 2010, for comparative purposes. It is also relevant to an assessment of the arms-length nature of the transaction by which Vrege Armoyan sold his interest in Geovex.
 - The requests contained in paras 9(j) and (k) are relevant, but not for the period requested. The motion contains no evidence that serious marital problems developed in 2007. I accept that the parties separated in October 2009¹¹, and that Lisa Armoyan claims that Vrege Armoyan's sale of his Geovex shares was fraudulent. Given this evidence, communication and journal entries are relevant beginning from approximately six months prior to separation, but not from 2007. This

¹¹ This is the first valuation date provided by Vrege Armoyan in his statement of property, and the month that the divorce documents were filed, according to Lisa Armoyan's statement of claim which was produced in the Blades affidavit.

documentation is relevant to the assessment of the financial affairs, and ultimately the valuation, of Geovex, a company in which Vrege Armoyan held a 50% controlling interest.

- The requests contained in paras 9(l) and 1(a) (iv) of schedule B are relevant. Valuations of the net assets of Geovex between February 1, 2007 and January 31, 2010 are relevant because they relate to the issue of valuation, as well as establishing a baseline from which the later sale of the Geovex shares occurred.
- The request stated in para 27(a) is relevant because in his statement of property, Vrege Armoyan indicates receipt of \$879,531 from Geovex. The statement of property does not appear to account for the current whereabouts of this money.
- The financial information is closely connected to the **MPA** claim and to the issues which this court must ultimately decide. Connection and proximity factors weigh strongly in favour of disclosure.
- The financial information should be readily discoverable from Geovex. Geovex did not suggest that it did not possess the documents.
- There is no motion evidence to suggest that the time and expense associated with the cost of production would be unreasonable, especially in light of the significance of the documents to Lisa Armoyan's **MPA** claim.
- There are no less intrusive measures available to acquire the information. Vrege Armoyan abandoned the **MPA** proceeding. Geovex is the logical source of the information.
- The production order is restricted in time to the period during which Vrege Armoyan held a 50% ownership interest in Geovex. Disclosure has not been ordered for the period after Vrege Armoyan divested himself of his interest.
- The implied undertaking rule is applicable to the disclosure. No other privacy protections were suggested by Geovex.

[71] The requests stated in paras 9(g) and (h) are not ordered because a relevancy analysis cannot be conducted as the court could not locate the September 24 letter in the evidence.

[72] The requests regarding the 2009 personal tax return of Vrege Armoyan are dismissed because there is no evidence that Geovex was ever involved in the preparation of the personal income tax returns of Vrege Armoyan.

[73] The portfolio statements requested in para 2(j) of schedule B are not ordered because the court was unable to conduct a relevancy analysis in the absence of an evidentiary foundation. The court was unable to locate any evidence of the margin accounts in the evidence.

[74] The court did not order the production of any additional documents requested in the consent order which Geovex may have in its control or possession as such a request is too broad and there is no evidence to suggest that Geovex has other documents within its control or possession.

[75] The balancing factors weigh strongly in favour of production. The probative value of the documents is significant. Geovex's privacy concerns do not trump the pursuit of truth and fairness. Production is relevant to the issues which this court must determine in the **MPA** litigation. In order to do so, the court must have the necessary facts. Geovex is not being punished because it is required to produce relevant documents for the **MPA** litigation.

APL Properties Limited ("APL")

Position of Lisa Armoyan

[76] In his statement of property, Vrege Armoyan indicates and values an ownership interest in APL. In light of this evidence, Lisa Armoyan seeks the following disclosure from APL:

7. Six month interims and the fiscal years ending July 31, 2008, 2009 and 2010:

a) Consolidated Financial Statement of APL

If above is not available then:

b) Unconsolidated Financial Statement of APL; and

c) The audited or unaudited financial statement for each of its:

i. Wholly owned non-consolidated subsidiaries

ii. Investments in companies subject to significant influence

iii. Investments in controlled non-consolidated subsidiaries

14.a) All documentation for both 1181830 Alberta Limited and APL that resulted in the below referenced asset freeze change in share structure:

Brian Rendell, Director of Taxation at Kimberly Lloyd Developments issued an email to Vrege Armoyan and referred to APL as having a 1,000 special preferred shares “freeze shares” and 1181830 Alberta Ltd as having 1,000 Class B special shares “value freeze shares”. Further the APL Properties Limited financial statements dated as at July 31, 2007 refer to an ‘estate freeze’ in ‘Note 8’ to the financial statements: “This was done to facilitate an estate freeze which took place later on August 18, 2005.”

(b)All documentation to show how the price was determined for the sale of the above two companies to George Armoyan.

1.(g) (i) All documentation for the asset freeze change in share structure dated on or about August 18, 2005.

(ii)All documentation regarding the sale by Vrege Armoyan of his interest in the two companies to the purchaser George Armoyan including how the sale price was determined in September 2010.

[77] Lisa Armoyan also seeks any additional documents requested in the consent order which APL has in its control or possession from sections not listed above.

[78] Lisa Armoyan states that the requested financial disclosure is relevant for the advancement of her **MPA** claim, for a number of reasons, including the following:

- The valuation of the assets held by Vrege Armoyan is an integral part of the **MPA** litigation and to proceed without valuations would be unfair and prejudicial to Lisa Armoyan’s position at trial.
- According to his Statement of Property, Vrege Armoyan owned 100% of the common stock in APL, while his father owned preferred stock.
- Financial statements of APL, together with financial statements for its wholly owned non-consolidated subsidiaries, investments in companies subject to significant influence, and investments in controlled non-consolidated subsidiaries are relevant because they report the book value of the net assets of the company, and thus become the basis to determine the fair market valuation of Vrege Armoyan’s direct and indirect

shareholder interests and the corporate holdings of the company at the time of separation and at the time the shotgun clause was exercised.

- Documentation referencing the asset freeze change in share structure must be fully detailed in order to value the corporate holding.
- Documentation to show how the price was determined for the sale of APL to George Armoyan is relevant to the value of the assets at separation and whether Vrege Armoyan disposed of assets to make himself appear impecunious, when that is not the case.

Position of APL

[79] APL resists production, for a number of reasons, including the following:

- APL cannot be ordered to produce documentation which is subject to privilege: Rule 14.05.
- Assets which Vrege Armoyan used to own are not relevant. Property or assets which Vrege Armoyan never owned are irrelevant. The requests are not related in any way to the property and assets currently held by Vrege Armoyan.
- The affidavits of Amber Penney contain no evidence about APL or Vrege Armoyan's connection to it. Vrege Armoyan sold his interest in APL in 2010; he does not currently have an interest in APL.
- Evidence was not led to establish an asset freeze change in share structure, nor a sale of APL to George Armoyan, nor why such would be relevant in any event.
- The requests are unnecessarily broad and duplicative.
- APL, who is a non-party, cannot be punished for the litigation conduct of Vrege Armoyan.
- The consent order reached between the parties, cannot be binding on APL, a non-party who had no opportunity to respond to the earlier motion.

Decision

[80] Lisa Armoyan has proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. APL must therefore sort¹² and deliver to Lisa Armoyan, a copy of the listed documents and electronic information¹³, or exactly copy¹⁴, with the exception of documentation which is subject to privilege¹⁵. APL must provide Lisa Armoyan with a listing of any documentation which APL asserts is subject to privilege. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by APL:

7. Six month interims and the fiscal years ending July 31, 2008, 2009 and 2010:

a) Consolidated Financial Statement of APL

If above is not available then:

b) Unconsolidated Financial Statement of APL; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

1(g)(ii) All documentation regarding the sale by Vrege Armoyan of his interest in APL to the purchaser George Armoyan including how the sale price was determined in September 2010.

[81] I make this disclosure order for the following reasons, placing myself in the position of the trial judge:

- APL is listed in Vrege Armoyan's statement of property. Vrege Armoyan states that he does not have the financial statements for APL. He valued his interest in APL and 1181830 Alberta Limited, on October 31, 2009, at \$2 million. No valuation report was produced in support of his statement.

¹² Rule 14.02

¹³ Rule 14.02

¹⁴ Rule 14.02

¹⁵ Rule 14.05

- Vrege Armoyan states that he sold his interest in APL and 1181830 Alberta Limited on September 28, 2010 for \$2 million. No valuation in support of his statement was produced.
- In his property statement supporting documents, Vrege Armoyan produced an agreement of purchase and sale which shows that Vrege Armoyan's shares in APL were sold to George Armoyan.
- Lisa Armoyan has a right to challenge the values which Vrege Armoyan ascribed to APL. In order to do so, she must have access to the financial information requested. The financial information is closely connected to the **MPA** claim and to the issues which this court must ultimately decide. Connection and proximity factors weigh strongly in favour of disclosure.
- Documentation regarding the sale by Vrege Armoyan of his interest in APL to the purchaser George Armoyan is relevant to assist with the valuation of APL for the time periods indicated in the statement of property.
- The financial information ordered is basic in nature and should be readily discoverable from APL.
- There is no motion evidence to suggest that the time and expense associated with the production of the information would be unreasonable, especially in light of the significance of the information to Lisa Armoyan's **MPA** claim. The documents and electronic information hold significant probative value.
- There are no less intrusive measures available to acquire the information. Vrege Armoyan did not disclose the financial information; he said that he did not possess the financial statements. Vrege Armoyan abandoned the **MPA** proceeding. APL is the logical source of the information.
- The implied undertaking rule applies to non-party disclosure. APL suggested no other privacy protections.
- Documents and electronic information are relevant even though Vrege Armoyan sold his interest in APL post-separation.

- The documentation sought is restricted in time – at or near the date of separation, and at or near the date Vrege Armoyan redeemed his shares in APL.
- The balancing factors weigh in favor of production. Although the court appreciates APL’s privacy concerns, such do not trump the public’s interest in the search for truth, nor to fairness.
- Production is required to ensure that the court has the necessary facts from which to value Vrege Armoyan’s interest in APL. APL is not being punished because it is required to produce relevant documents for the **MPA** litigation.

[82] This court did not order the production of documentation related to an asset freeze change in share structure because the court was unable to locate documentation in the evidence to support the request, nor that marital problems had developed at the time. A relevancy analysis was therefore impossible to undertake.

[83] In addition, this court did not order the production of any additional documents requested in the consent order which APL may have in its control or possession from other parts of schedule A, B or C, as such a request is too broad and there is no evidence to suggest that APL has other documents in its control or possession.

Armco Capital Inc. (Armco)

Position of Lisa Armoyan

[84] Armco is a wholly owned subsidiary of Geovex, a company in which Vrege Armoyan held a 50% ownership interest at separation. Kimberly-Lloyd Developments Limited was amalgamated with Armco. Lisa Armoyan therefore seeks production of the following information from Armco:

2. Kimberly-Lloyd Developments Limited

The fiscal year ending in the calendar year 2007 and if applicable the stub year ended December 31, 2007:

- a) Consolidated Financial Statement of Kimberly-Lloyd Developments Ltd

If above is not available then:

- b) Unconsolidated Financial Statement of Kimberly-Lloyd Developments Ltd; and
- c) The audited or unaudited financial statement for each of its:
 - iv. Wholly owned non-consolidated subsidiaries
 - v. Investments in companies subject to significant influence
 - vi. Investments in controlled non-consolidated subsidiaries

11. a) All documents and communications relating to Vrege Armoyan from February 1, 2007 through to January 31, 2008.

b) Any valuation of the net asset value of the company between February 1, 2007 and January 31, 2008.

3. Armco Capital Inc.

The six month interims and fiscal years ending in the calendar years 2008, 2009 and 2010:

a) Consolidated Financial Statement of Armco Capital Inc.

If above is not available then:

- b) Unconsolidated Financial Statement of Armco Capital Inc.; and
- c) The audited or unaudited financial statement for each of its:
 - i. Wholly owned non-consolidated subsidiaries
 - ii. Investments in companies subject to significant influence
 - iii. Investments in controlled non-consolidated subsidiaries

13. a) All documents and communications relating to Vrege Armoyan from February 1, 2008 through to January 31, 2010.

b) The Books of Account including the General Ledger, Receipts and Disbursement ledgers/journals from February 1, 2008 through to January 31, 2010.

c) Any valuation of the net asset value of the company between February 1, 2007 and January 31, 2010.

1f(i) Armco Capital Inc./Kimberly-Lloyd Developments Ltd/Scotia Learning Centres Ltd.

All documentation including the relevant financial statements related to the amalgamation of Kimberly-Lloyd Developments Ltd, Scotia Learning Centres Ltd., Anahid Investments Ltd and 3099477 Nova Scotia Ltd into Armco Capital Inc. effective January 1, 2008.

16. The Place at Channelside, Tampa

a)The incorporation documents and the names of the shareholders, officers and directors for Channelside Place LLC and Channelside Management LLC from inception to January 31, 2010.

b)The signed agreement of purchase and sale for the acquisition of the 243-unit condominium.

October 2008 - Tampa Bay Business Journal by Michael Hinman
Jim Spatz, CEO of Southwest Properties in Halifax, joined forces with Armco Capital Corp. to buy the 243-unit condominium complex in Tampa's Channel District for \$21.9 million in a bankruptcy auction last week.

17.Downtown Dadeland, Miami

a)The incorporation documents and the names of the shareholders, officers and directors for Dadeland Investors LLC from inception to January 31, 2010.

b)The signed agreement of purchase and sale for the acquisition of the 158 condominiums.

c)The documentation to identify how much of either the reported \$17.9 million or the actual amount was contributed by Armco Capital Inc. and how Armco Capital Inc. generated the source of these funds to pay for the cash purchase.

November 16, 2009 - Goldman Sachs Sells Miami Condos for \$113,000 Each

Goldman Sachs Group Inc. sold 158 condominiums in a foreclosed project outside Miami to a partnership of Armco Capital Inc. and Southwest Properties Ltd. who paid \$17.9 million in cash for the apartments in Downtown Dadeland.

[85] Lisa Armoyan relies upon the following in support of her disclosure motion:

- Each of Armco and Kimberly-Lloyd Developments Inc. (Kimberly-Lloyd) was a wholly-owned subsidiary of Geovex during the parties' marriage. Armco assumed the assets of Kimberly-Lloyd after a corporate restructuring in 2007. Vrege Armoyan was 50% shareholder of Geovex until he sold his shares to his sister-in-law in October 2010.
- The requests for financial statements are relevant because they report the book value of the net assets of the companies and become the basis for determining the fair market value of Vrege Armoyan's direct and indirect

shareholder interests and the corporate holdings at the time of separation and at the time the shotgun clause was exercised.

- The requests for all documents and communication between Vrege Armoyan and Kimberly-Lloyd and Vrege Armoyan and Armco, for the stated periods, are relevant to show why the Geovex Shareholder Agreement was drawn up contemporaneously with the parties' marriage contract, and will also shed light on the value of the corporate assets. Such communication will prove or disprove Vrege Armoyan's narrative about the disposition of the assets and what he knew about the value of Geovex.
- Documents relating to the value of the net assets of the companies are relevant to not only show what the companies were worth at the time of separation, but also to shed light on the legitimacy of the offer to purchase which was executed as a result of the shotgun clause.
- Documents relating to The Place at Channelside, Tampa and Downtown Dadeland, Miami are relevant because the properties appear to have been purchased indirectly by Armco prior to October 2010 based on media report. The documents requested seek confirmation of information contained in a media report and is required to permit a fair market valuation of Armco's share of these assets.
- Documentation regarding the amalgamation of Kimberley-Lloyd is required to assist with an understanding of the corporate structure and valuation of Vrege Armoyan's interest. The amalgamation documents are also relevant to understand the impact of amalgamation and whether the amalgamation was a strategy to liquidate upon separation.
- Valuations of the net asset value of the various subsidiaries of Geovex are relevant to the determination of the fair market value of wealth accumulated during the marriage, as well as to whether the exercise of the shotgun clause resulted from a plan or scheme to liquidate the petitioner's assets to make him appear insolvent in the jurisdiction. The 2007 valuation documents would establish a baseline value for the period prior to separation and to understand the impact of the corporate reorganization in 2007.

Position of Armco

[86] Armco resists all disclosure requests for many reasons, which include the following:

- Lisa Armoyan failed to prove basic relevance in that the documentation is not relevant to proving Vrege Armoyan's current finances, property or assets.
- Assets which Vrege Armoyan used to own are not relevant, as they cannot today be divided between the parties.
- The requests are excessively broad and intrusive.
- The requests are a groundless fishing expedition.
- Armco, a non-party, can only respond based on the evidence presented on the motion. The affidavits of Amber Penney contain no evidence linking Armco to Vrege Armoyan.
- Some statements in the Penney affidavit are in error based on public information available from the Nova Scotia Registry of Joint Stocks.
- The media reports are not admissible, nor are the other hearsay statements contained in the Penney affidavits.
- There is no evidence that Vrege Armoyan held any interest in Kimberly-Lloyd or any such other entities/investments. Any value attributable to them would be reflected in the Geovex financial statements, making the requests unnecessarily duplicative and burdensome. Vrege Armoyan has no current interest in Geovex.
- It is inappropriate to order the production of incorporation documents and land purchase transactions from American companies who are not part of this motion.

Decision

[87] Lisa Armoyan has proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. Armco must therefore sort¹⁶ and deliver to Lisa Armoyan, a copy of the listed documents and electronic information¹⁷, or exactly copy¹⁸, with the exception of documentation which is subject to privilege¹⁹. Armco must provide Lisa Armoyan with a listing of any documentation which Armco asserts is subject to privilege. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by Armco:

2. Kimberly-Lloyd Developments Limited

The fiscal year ending in the calendar year 2007 and if applicable the stub year ended December 31, 2007:

a) Consolidated Financial Statement of Kimberly-Lloyd Developments Ltd

If above is not available then:

b) Unconsolidated Financial Statement of Kimberly-Lloyd Developments Ltd; and

c) The audited or unaudited financial statement for each of its:

i. Wholly owned non-consolidated subsidiaries

ii. Investments in companies subject to significant influence

iii. Investments in controlled non-consolidated subsidiaries

11.b) All valuations of the net asset value of the company between February 1, 2007 and January 31, 2008.

3. Armco Capital Inc.

The six month interims and fiscal years ending in the calendar years 2008, 2009 and 2010:

a) Consolidated Financial Statement of Armco Capital Inc.

If above is not available then:

a) Unconsolidated Financial Statement of Armco Capital Inc.; and

b) The audited or unaudited financial statement for each of its:

¹⁶ Rule 14.02

¹⁷ Rule 14.02

¹⁸ Rule 14.02

¹⁹ Rule 14.05

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

13. a)All documents and communications relating to Vrege Armoyan from April 1, 2009 through to January 31, 2010.

b)The books of account including the general ledger, receipts and disbursement ledgers/journals from April 1, 2009 through to January 31, 2010.

c)All valuations of the net asset value of Armco between February 1, 2007 and January 31, 2010.

1.f)Armco Capital Inc./Kimberly-Lloyd Developments Ltd.

All documentation, including the relevant financial statements, related to the amalgamation of Kimberly-Lloyd Developments Ltd into Armco Capital Inc. effective January 1, 2008.

[88] I make this disclosure order for the following reasons, placing myself in the position of the trial judge:

- Vrege Armoyan stated that he held a 50% ownership interest in Geovex and related entities, until he redeemed his shares in October 2010, as confirmed in his statement of property. The statement of property supporting documents confirm that Armco was a wholly-owned subsidiary of Geovex. Armco acquired the assets of Kimberly-Lloyd after a corporate restructuring as confirmed in the Blades' affidavit.
- The requested financial statements are relevant because they report the book value of the net assets of the companies and assist in the determination of the fair market value of Vrege Armoyan's direct and indirect shareholder interests and the corporate holdings at the time of separation, and at the time that Vrege Armoyan redeemed his shares in Geovex.
- I reject the submission that documents and electronic information cease to be relevant because Vrege Armoyan sold his interest in Geovex post-separation.

- Documents relating to the value of the net assets of Kimberly-Lloyd and Armco are relevant to prove what Armco and Geovex were worth at the time of separation, and their value when Vrege Armoyan redeemed his shares. 2007 and 2008 valuation documents will assist with the establishment of a baseline value for the period prior to separation.
- Information relating to communication and books of account are relevant, but not for the period requested. There is no motion evidence that serious marital problems developed by 2007. The evidence establishes that the parties separated in October 2009 and that Lisa Armoyan claims that Vrege Armoyan's sale of his interest in Geovex was fraudulent. In light of this evidence, communication and books of account are relevant beginning from approximately six months prior to separation. This documentation is relevant to the assessment of the financial affairs, and ultimately the valuation of Geovex.
- Documentation regarding the amalgamation of Kimberley-Lloyd is relevant to assist with an understanding of the corporate structure, the impact of amalgamation, and the valuation of Vrege Armoyan's interests.
- The disclosure is probative as it is closely connected to the **MPA** claim and to the issues which this court must ultimately decide. Connection and proximity factors weigh strongly in favour of disclosure.
- The financial information ordered is basic in nature and should be readily discoverable from Armco.
- There is no motion evidence to suggest that production costs would be unreasonable, especially in light of the significance of the information to Lisa Armoyan's **MPA** claim.
- There are no less intrusive measures available to acquire the documents. Vrege Armoyan did not disclose the financial information; he abandoned the **MPA** proceeding. Armco is the logical source of the information.
- The implied undertaking rule applies to non-party disclosure. Armco suggested no other privacy protections.
- The documentation ordered is restricted in time to those periods when Vrege Armoyan held an ownership interest in Geovex.

- The balancing factors weigh in favor of production. Production is required to ensure that the court has the necessary facts from which to value Geovex. Armco is not being punished because it is required to produce relevant documents in the **MPA** litigation.

[89] In contrast, this court did not order the production of the other requested information for the following reasons:

- The court was unable to locate a copy of the Geovex shareholder agreement in the evidence. In submissions, this document was connected to the issue of the legitimacy of the offer to purchase which was executed as a result of the shotgun clause. A relevancy assessment was not possible where an evidentiary foundation was lacking.
- The media report is hearsay. I therefore have no evidence from which to conduct a relevancy review on the issue of the American companies and the land transactions.

[90] Further, a request for Armco to produce any additional documents set out in the schedules appended to the consent order is too broad, where there is no evidence to suggest that Armco has the documents.

Clarke Inc.

Position of Lisa Armoyan

[91] Lisa Armoyan seeks the following disclosure from Clarke Inc.

8.a A list of the Officers and Directors of Clarke Shipping Inc. from November 25, 2004 to January 10, 2010

Any additional documents requested in the consent order which Clarke Inc. has in its control or possession.

[92] Lisa Armoyan states this documentation is relevant because Clarke Inc. was 100% shareholder of Clarke Shipping Inc. Vrege Armoyan, through Geovex and in his own name, owned a substantial interest in Clarke Inc. Vrege Armoyan was President of Clarke Shipping Inc. for at least some of this period. The leadership of Clarke Shipping Inc. is relevant to determining Vrege Armoyan's role in, and

control of, financial transactions and decisions during the time that the parties were married and after the parties separated.

Position of Clarke Inc.

[93] Clarke Inc. objects to production for reasons similar to those put forth by Geovex, APL and Armco, and because Clarke Shipping Inc. was not served with the motion.

Decision

[94] This court will not grant the disclosure requested for the following reasons:

- Clarke Shipping Inc. was not served with the motion.
- There is no evidentiary foundation to conduct a relevancy analysis.

George Armoyan, personally and as, Director, Geosam Investments Limited (Geosam)

Position of Lisa Armoyan

[95] Geosam was a controlled non-consolidated subsidiary of Geovex, a company in which Vrege Armoyan held a 50% ownership interest at the time of separation. Lisa Armoyan therefore seeks the following disclosure from Geosam and George Armoyan:

4. Six month interims and fiscal years ending in the calendar years 2007, 2008, 2009 and 2010:

a) Consolidated Financial Statement of Geosam

If above is not available then:

b) Unconsolidated Financial Statement of Geosam; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

10.a) All documents and communications relating to Vrege Armoyan from February 1, 2007 through to January 31, 2010.

b)The Books of Account including the General Ledger, Receipts and Disbursement ledgers/journals from February 1, 2007 through to January 31, 2010.

c)Any valuation of the net asset value of the company between February 1, 2007 and January 31, 2010.

14.(b)All documentation to show how the price was determined for the sale of 1181830 Alberta Limited and APL Properties Limited to George Armoyan.

18.a)Rothstein Settlement Agreement: Provide the payment documentation to show the source of the funds for the payment of \$550,000. On March 11, 2013, George Armoyan on behalf of Vrege Armoyan and the corporate defendants signed the Rothstein Settlement Agreement that called for payment of \$550,000.

1.e)Any valuation of the net asset value of the company between February 1, 2008 and January 31, 2010.

[96] Lisa Armoyan also seeks disclosure of any other information listed in the consent order which Geosam or George Armoyan have in their control or possession.

[97] Lisa Armoyan states that the requested disclosure is relevant for a number of reasons, including the following:

- The valuation of Vrege Armoyan's assets is an integral part of the **MPA** litigation. To proceed without valuations would be unfair and prejudicial to Lisa Armoyan's position at trial. The financial statements and other documents requested of Geosam and George Armoyan are required so that Lisa Armoyan may conduct valuations.
- Vrege Armoyan owned 50% of Geovex until he sold his shares to his sister-in-law in October 2010. Geosam is a subsidiary of Geovex.
- The corporate financial statements are relevant because they report the book value of the net assets of the companies and become the basis for determining the fair market value of Vrege Armoyan's direct and indirect shareholder interest in the corporate holdings at the time of separation and at the time the shotgun clause was exercised.

- The corporate financial statements for 2007 and 2008 are relevant to establish a baseline or comparable net asset value prior to the time of separation.
- The request for all documents and communication between Vrege Armoyan and Geosam are relevant to show why the Geovex Shareholder Agreement was drawn up contemporaneously with the parties' marriage contract and to determine Vrege Armoyan's role in Geosam and his knowledge of the value of the assets in Geosam. This in turn will shed light on the legitimacy of the offer to purchase or sell that was executed as a result of a shotgun clause.
- Documents related to the financial affairs of Geosam are relevant to establish a fair valuation of Geosam and to establish what Vrege Armoyan knew of the value.
- Documents relating to the value of the net assets of the companies are relevant to not only show what the companies were worth at the time of separation, but also to shed light on Vrege Armoyan's knowledge of the value of the assets of Geosam. Such valuations are relevant to the determination of the fair market value of wealth accumulated during the marriage.
- Documentation respecting the Rothstein settlement agreement is relevant to "the issue of whether the Petitioner truly exited" Geovex, APL and 1181830 Alberta Limited, "as he claims."²⁰ It appears that George Armoyan paid a liability of Vrege Armoyan, despite the allegation that Vrege Armoyan had sold his corporate interests. In his statement of property, Vrege Armoyan states that he held an ownership interest in APL and 1181830 Alberta Limited.

Position of Geosam and George Armoyan

[98] Geosam and George Armoyan object to the production of the requested documentation for numerous reasons, including the following:

²⁰ Correspondence brief of Harold Niman dated April 28, 2015.

- Documents which are subject to privilege cannot be ordered produced.
- Assets which Vrege Armoyan used to own are not relevant because these assets are not today available for division. Assets never owned are also not relevant. Vrege Armoyan never had an interest in Geosam and no longer has an interest in Geovex.
- The requests are irrelevant to Vrege Armoyan's current property and assets.
- The requests are excessively intrusive, and seek to cast a broad net over all of Geosam's confidential records.
- The affidavits of Amber Penney contain no evidence regarding Geosam or George Armoyan or Vrege Armoyan's connection to them.
- There is no evidence to show that George Armoyan paid the Rothstein settlement payment.
- The consent order is not determinative of this disclosure motion because neither Geosam, nor George Armoyan, participated in the prior hearing which lead to the issuance of the consent order.

Decision Re: Geosam

[99] Lisa Armoyan has proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. Geosam must therefore sort²¹ and deliver to Lisa Armoyan, a copy of the listed documents and electronic information²², or exactly copy²³, with the exception of documentation which is subject to privilege²⁴. Geosam must provide Lisa Armoyan with a listing of any documentation which Geosam asserts is subject to privilege. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by Geosam:

²¹ Rule 14.02

²² Rule 14.02

²³ Rule 14.02

²⁴ Rule 14.05

4. Six month interims and fiscal years ending in the calendar years 2007, 2008, 2009 and 2010:

a) Consolidated Financial Statement of Geosam

If above is not available then:

b) Unconsolidated Financial Statement of Geosam; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

10.a) All documents and communications relating to Vrege Armoyan from April 1, 2009 through to January 31, 2010.

b) The books of account including the general ledger, receipts and disbursement ledgers/journals from April 1, 2009 through to January 31, 2010.

10.c) All valuations of the net asset value of the company between February 1, 2007 and January 31, 2010.

Decision Re: George Armoyan

[100] Lisa Armoyan has further proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. George Armoyan must therefore sort²⁵ and deliver to Lisa Armoyan, a copy of the listed documents and electronic information²⁶, or exactly copy²⁷, with the exception of documentation which is subject to privilege²⁸. George Armoyan must provide Lisa Armoyan with a listing of any documentation which George Armoyan asserts is subject to privilege. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by George Armoyan:

²⁵ Rule 14.02

²⁶ Rule 14.02

²⁷ Rule 14.02

²⁸ Rule 14.05

14(b)All documentation to show how the price was determined for the sale of 1181830 Alberta Limited and APL Properties Limited to George Armoyan.

18.a)Rothstein Settlement Agreement: Provide the payment documentation to show the source of the funds for the payment of \$550,000. On March 11, 2013, George Armoyan on behalf of Vrege Armoyan and the corporate defendants signed the Rothstein Settlement Agreement that called for payment of \$550,000.

Reasons

[101] I make these disclosure orders for the following reasons, placing myself in the position of the trial judge:

- In his statement of property, Vrege Armoyan indicated that he held a 50% ownership interest in Geovex and related entities, at separation and that his shares were redeemed in October 2010. The statement of property supporting documents show that Geosam was a controlled non-consolidated subsidiary of Geovex.
- Financial statements of Geosam and its subsidiaries are relevant because they will help determine the fair market value of Geovex at the time of separation, and at the time Vrege Armoyan redeemed his shares.
- Documents relating to the value of the net assets of Geosam are relevant to assist in the valuation of Geovex at the time of separation, and in October 2010.
- 2007 and 2008 valuations are relevant to the establishment of a baseline and a comparable for the period prior to separation.
- The requests for communication and books of account are relevant, but not for the period requested. There is no motion evidence that the parties experienced serious marital problems by 2007. The motion evidence confirms that the parties separated in October 2009, and that Lisa Armoyan claims that Vrege Armoyan's sale of his interest in Geovex was fraudulent. In this context, communication and books of account are relevant from approximately six months prior to separation as such will assist with the assessment of the financial affairs, and ultimately the valuation, of Geovex.

- An agreement of purchase and sale among George Armoyan, Vrege Armoyan, 1181830 Alberta Ltd. and APL is found in the statement of property supporting documents. Vrege Armoyan said that his interest in APL and 1181830 Alberta Limited was valued at \$2 million, both at separation and in October 2010. Disclosure showing how the purchase price was determined is therefore relevant to the valuation issue.
- Documentation respecting the Rothstein settlement agreement is found in the statement of property supporting documents. In the settlement agreement, dated 3/11/13, George Armoyan represented that he had “full authority to execute this Agreement and bind all Defendants hereto.”²⁹ The disclosure ordered will provide clarification of the payment and obligation that was outlined in the statement of property of Vrege Armoyan.
- The requested disclosure is relevant and probative to the valuation of Vrege Armoyan’s direct and indirect corporate shareholding interests. Lisa Armoyan has the right to challenge the values placed on Geovex, APL and 1181830 Alberta Ltd. by Vrege Armoyan. Connection and proximity weigh strongly in favour of disclosure.
- The financial information ordered is basic in nature and should be readily discoverable from Geosam and George Armoyan.
- There is no motion evidence to suggest that production costs would be unreasonable, especially in light of the significance of the information to Lisa Armoyan’s **MPA** claim.
- There are no less intrusive measures available to acquire the documents. Vrege Armoyan did not disclose the financial information; he abandoned the **MPA** proceeding. Geosam and George Armoyan are the logical sources of the information.
- The implied undertaking rule applies to non-party disclosure.

²⁹ Settlement Agreement between The Chapter 11 Trustee and VRPL 1, LLC, 1181830 Alberta Ltd, JCVV Investments, LLC and Vrege Armoyan, exhibit 41, pg.229.

- The documentation ordered is restricted in time to those periods when Vrege Armoyan held an ownership interest in Geovex, APL and 1181830 Alberta Limited, and when the Rothstein settlement was entered.
- The balancing factors weigh in favor of production. Production is required to ensure that the court has the necessary facts from which to value Geovex, APL and 1181830 Alberta Limited. Geosam and George Armoyan are not being punished because they are required to produce relevant documents in the **MPA** litigation.

[102] A request to produce additional documents set out in the schedules appended to the consent order is too broad, and thus was refused.

Southwest Properties Limited (Southwest)

[103] Lisa Armoyan seeks the following disclosure from Southwest:

16. The Place at Channelside, Tampa

a) Provide the incorporation documents and the names of the shareholders, officers and directors for Channelside Place LLC and Channelside Management LLC from inception to January 31, 2010.

b) Provide the signed agreement of purchase and sale for the acquisition of the 243-unit condominium.

October 2008 - Tampa Bay Business Journal by Michael Hinman
Jim Spatz, CEO of **Southwest Properties** in Halifax, joined forces with Armco Capital Corp. to buy the 243-unit condominium complex in Tampa's Channel District for \$21.9 million in a bankruptcy auction last week.

17. Downtown Dadeland, Miami

a) Provide the incorporation documents and the names of the shareholders, officers and directors for Dadeland Investors LLC from inception to January 31, 2010.

b) Provide the signed agreement of purchase and sale for the acquisition of the 158 condominiums.

c) Provide the documentation to identify how much of either the reported \$17.9 million or the actual amount was contributed by Armco Capital Inc. and how Armco Capital Inc. generated the source of these funds to pay for the cash purchase.

November 16, 2009 - Goldman Sachs Sells Miami Condos for \$113,000 Each Goldman Sachs Group Inc. sold 158 condominiums in a foreclosed project outside Miami to a partnership of Armco Capital Inc. and Southwest Properties Ltd. who paid \$17.9 million in cash for the apartments in Downtown Dadeland.

[104] Lisa Armoyan states that this disclosure is relevant because it will provide an accurate picture of Vrege Armoyan's finances and assets and enable her to advance her position in the litigation. Lisa Armoyan relies upon media reports because there is no other available source.

Position of Southwest

[105] Southwest resists the disclosure requests for a number of reasons, including the following:

- The request is not relevant because Vrege Armoyan does not have a current interest in Southwest.
- The requested information concerns companies that have not been served with the motion.
- There is no admissible evidence supporting the suggestion that Armco and Southwest joined forces. Media reports are hearsay statements.
- The requests are not relevant to a valuation of the assets owned by Vrege Armoyan at present.

Decision

[106] The disclosure requests are refused because there is no evidentiary base upon which a relevancy analysis can be conducted. The media report is hearsay and inadmissible.

[107] A request for Southwest to produce any additional documents set out in the schedules appended to the consent order is too broad a request to grant.

Scotia Learning Centres (Scotia Learning)

[108] Scotia Learning is a wholly owned non-consolidated subsidiary of Geovex. Vrege Armoyan stated that he owned a 50% interest in Geovex at the time of

separation. Lisa Armoyan therefore seeks the following disclosure from Scotia Learning:

5. Provide the six month interims and fiscal years ending in the calendar years 2007, 2008, 2009 and 2010:

a) Consolidated Financial Statement of

If above is not available then:

b) Unconsolidated Financial Statement of Scotia Learning.; and

c) The audited or unaudited financial statement for each of its:

i. Wholly owned non-consolidated subsidiaries

ii. Investments in companies subject to significant influence

iii. Investments in controlled non-consolidated subsidiaries

12.a) Provide all documents and communications relating to Vrege Armoyan from February 1, 2008 through to January 31, 2010.

b) Provide any valuation of the net asset value of the company between February 1, 2008 and January 31, 2010.

All other documentation that it has in its control or possession from any and all paragraphs of the Consent Order which are not specifically listed above.

[109] Lisa Armoyan states that the disclosure requests are relevant for the following reasons:

- The valuation of Vrege Armoyan's assets and business interests is an integral part of resolving the outstanding matrimonial property issues. To proceed to a trial without the necessary valuations would be unfair and prejudicial to Lisa Armoyan.
- The financial statements are relevant as they report the book value of the net assets of the companies and therefore become the basis to determine the fair market valuation of Vrege Armoyan's direct and indirect shareholder interest in the corporate holdings of the assets accumulated during the marriage.
- The financial statements for 2007 and 2008 are necessary to establish a baseline or comparable net asset value prior to separation.
- Documents and communications between Scotia Learning and Vrege Armoyan from February 1, 2008 until January 31, 2010 are relevant to

the reason why the Geovex shareholder agreement was drawn up contemporaneously with the marriage contract. Further, these communications are relevant to an assessment of Vrege Armoyan's role in each company and his knowledge regarding the value of each of their assets, which knowledge will shed light on the legitimacy of the offer to purchase or sell that was executed as a result of the shotgun clause.

- Any valuation of the net asset value of the company between February 1, 2008 and January 31, 2010 will assist in establishing the fair market value of Scotia Learning and Geovex.
- The net asset value of Geovex and its various subsidiaries is relevant to the determination of the fair market value of wealth accumulated during the marriage, as well as to the legitimacy of the shotgun clause.

Position of Scotia Learning

[110] Scotia Learning refuses to provide the requested disclosure for a number of reasons, including the following:

- Documents which are subject to privilege are exempt from production.
- Assets which Vrege Armoyan used to own are not relevant because these assets are not today available for division. Assets never owned are also not relevant. Vrege Armoyan never had an interest in Scotia Learning and no longer has an interest in Geovex.
- The requests are irrelevant to Vrege Armoyan's current property and assets.
- The requests are excessively broad and intrusive, and seek to cast a broad net over all of Scotia Learning's confidential records.
- The Penney affidavits contain no evidence regarding Scotia Learning or Vrege Armoyan's connection to them. Further, certain statements made in the Penney affidavits are incorrect. Scotia Learning did not amalgamate with Armco. With no evidence of an actual amalgamation between Scotia Learning and Armco, all requests are without basis.

- The consent order is not determinative of this disclosure motion because Scotia Learning did not participate in the prior hearing which produced the consent order.

Decision

[111] Lisa Armoyan has proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. Scotia Learning must therefore sort³⁰ and deliver to Lisa Armoyan, a copy of the listed documents and electronic information³¹, or exactly copy³², with the exception of documentation which is subject to privilege³³. Scotia Learning must provide Lisa Armoyan with a listing of any documentation which Scotia Learning asserts is subject to privilege. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by Scotia Learning:

5. The six month interims and fiscal years ending in the calendar years 2007, 2008, 2009 and 2010:

a) Consolidated Financial Statement of

If above is not available then:

b) Unconsolidated Financial Statement of Scotia Learning.; and

c) The audited or unaudited financial statement for each of its:

- Wholly owned non-consolidated subsidiaries
- Investments in companies subject to significant influence
- Investments in controlled non-consolidated subsidiaries

12. All documents and communications relating to Vrege Armoyan from April 1, 2009 through to January 31, 2010.

b) All valuations of the net asset value of the company between February 1, 2008 and January 31, 2010.

[112] Lisa Armoyan has proven that the above disclosure is relevant for the following reasons:

³⁰ Rule 14.02

³¹ Rule 14.02

³² Rule 14.02

³³ Rule 14.05

- In his statement of property, Vrege Armoyan indicated that he held a 50% ownership interest in Geovex and related entities, and that his shares were redeemed in October 2010. The statement of property supporting documents show that Scotia Learning was a wholly owned non-consolidated subsidiary of Geovex.
- Financial statements are relevant because they will help determine the fair market value of Geovex at the time of separation, and at the time Vrege Armoyan redeemed his shares.
- Documents relating to the value of the net assets of Scotia Learning are relevant to assist in the valuation of Geovex at the time of separation, and in October 2010.
- 2007 and 2008 valuations are relevant to the establishment of a baseline and a comparable for the period prior to separation.
- Communication and books of account are relevant, but not for the period requested. There is no motion evidence that the parties experienced serious marital problems by 2007. The motion evidence confirms that the parties separated in October 2009, and that Lisa Armoyan claims that Vrege Armoyan's sale of his interest in Geovex was fraudulent. In this context, communication and books of account are relevant from approximately six months prior to separation, as such will assist with the assessment of the financial affairs, and ultimately the valuation, of Geovex.
- The disclosure is relevant to the valuation of Vrege Armoyan's direct and indirect corporate shareholding interests. The disclosure is thus probative. Lisa Armoyan has the right to challenge the values placed on Geovex by Vrege Armoyan. Connection and proximity factors weigh strongly in favor of disclosure.
- The financial information ordered is basic in nature and should be readily discoverable from Scotia Learning.
- There is no motion evidence to suggest that the cost of production would be unreasonable, especially in light of the significance of the information to Lisa Armoyan's **MPA** claim.

- There are no less intrusive measures available to acquire the documents. Vrege Armoyan did not disclose the financial information; he abandoned the **MPA** proceeding. Scotia Learning is the logical source of the information.
- The implied undertaking rule applies to non-party disclosure. No other privacy suggestions were advanced.
- The documentation ordered is restricted in time to those periods when Vrege Armoyan held an ownership interest in Geovex.
- Production is required to ensure that the court has the necessary facts from which to value Geovex. Scotia Learning is not being punished because it is required to produce relevant documents in the **MPA** litigation.

[113] A request to produce additional documents set out in the schedules appended to the consent order is too broad, and is thus refused.

1181830 Alberta Limited (1181830 Alberta)

[114] In his statement of property, Vrege Armoyan states that he has an ownership interest in 1181830 Alberta. Lisa Armoyan therefore seeks the following disclosure from 1181830 Alberta:

6. Six month interims and the fiscal years ending July 31, 2008 and 2009:

a) Consolidated Financial Statement of 1181830 Alberta

If above is not available then:

b) Unconsolidated Financial Statement of 1181830 Alberta; and

c) The audited or unaudited financial statement for each of its:

- Wholly owned non-consolidated subsidiaries
- Investments in companies subject to significant influence
- Investments in controlled non-consolidated subsidiaries

14a) All documentation for both 1181830 Alberta and APL that resulted in the below referenced asset freeze change in share structure. Brian Rendell, Director of Taxation at Kimberly Lloyd issued an email to Vrege Armoyan and referred to APL as having 1,000 special preferred shares “freeze shares” and 1181830 Alberta as having 1,000 Class B special shares “value freeze shares”. Further the APL financial statements dated as at July 31, 2007 refer to an ‘estate freeze’

in 'Note 8' to the financial statements: "This was done to facilitate an estate freeze which took place later on August 18, 2005."

b) All documentation to show how the price was determined for the sale of the above two companies to George Armoyan.

15. 1181830 Alberta Limited

a) All payment and supporting documentation for each amount advanced to the above entities that total \$18,488,895.

1181830 Alberta Limited financial statements as at July 31, 2010 in Note 4 entitled "Related Party Transactions" report as at July 31, 2009 that no funds had been advanced to the following entities listed below but by July 31, 2010 a total of \$18,488,895 had been advanced.

	July 31, 2010	July 31, 2009
APL Properties Ltd.	14,023,144	nil
Geosam Capital Inc.	2,400,000	nil
Geosime Capital Inc.	2,065,751	nil

1.g.i) All documentation for the asset freeze change in share structure dated on or about August 18, 2005.

1.g.ii) All documentation regarding the sale by Vrege Armoyan of his interest in the two companies to the purchaser George Armoyan including how the sale price was determined in September 2010.

2.k) The monthly 'Portfolio Statement' for 1181830 Alberta Limited for the time period from January 1, 2008 to November 30, 2010 for the following account:

111FST-F Margin Account (US \$)

[115] Lisa Armoyan states that the documents are relevant because they will assist with the valuation of a company which Vrege Armoyan owned at the time of separation. Lisa Armoyan has a right to contest the value of \$2 million which Vrege Armoyan ascribed to this company in conjunction with APL.

Position of 1181830 Alberta

[116] 1181830 Alberta contests the production motion for many reasons, including the fact that the company was dissolved by certificate dated February 28, 2013.

Decision

[117] I am unable to order 1181830 Alberta to disclose any information because the company ceased to exist on February 28, 2013. Section 211(6) of the **Business Corporations Act**, R.S.A. 2000 cB-9 states “[t]he corporation ceases to exist on the date shown in the Certificate of Dissolution.”

Deloitte Touche LLP (Deloitte)

[118] Deloitte provided accounting services to Vrege Armoyan and some of the corporate non-parties. Lisa Armoyan therefore seeks the following disclosure from Deloitte:

1. Geovex Investment Limited

Provide the fiscal years ending January 31, 2008 and January 31, 2009:

a) Consolidated Financial Statement of Geovex Investment Limited

If above is not available then:

b) Unconsolidated Financial Statement of Geovex Investment Limited

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

2. Kimberly-Lloyd Developments Limited

Provide the fiscal year ending in the calendar year 2007 and if applicable the stub year ended December 31, 2007:

a) Consolidated Financial Statement of Kimberly-Lloyd Developments Ltd

If above is not available then:

b) Unconsolidated Financial Statement of Kimberly-Lloyd Developments Ltd; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

3. Armco Capital Inc.

Provide the six month interims and fiscal years ending in the calendar years 2008, 2009 and 2010:

a) Consolidated Financial Statement of Armco Capital Inc.

If above is not available then:

b) Unconsolidated Financial Statement of Armco Capital Inc.; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

4. Geosam Investments Limited

Provide the six month interims and fiscal years ending in the calendar years 2007, 2008, 2009 and 2010:

a) Consolidated Financial Statement of Geosam Investments Limited

If above is not available then:

b) Unconsolidated Financial Statement of Geosam Investments Limited; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

5. Scotia Learning Centres Inc.

Provide the six month interims and fiscal years ending in the calendar years 2007, 2008, 2009 and 2010:

a) Consolidated Financial Statement of Scotia Learning Centres Inc.

If above is not available then:

b) Unconsolidated Financial Statement of Scotia Learning Centres Inc.; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

6.1181830 Alberta Limited

Provide the six month interims and the fiscal years ending July 31, 2008 and 2009:

a) Consolidated Financial Statement of 1181830 Alberta Limited

If above is not available then:

b) Unconsolidated Financial Statement of 1181830 Alberta Limited; and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries

- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

7.APL Properties Limited

Provide the six month interims and the fiscal years ending July 31, 2008, 2009 and 2010:

a) Consolidated Financial Statement of APL Properties Limited

If above is not available then:

- b) Unconsolidated Financial Statement of APL Properties Limited; and
- c) The audited or unaudited financial statement for each of its:
 - i. Wholly owned non-consolidated subsidiaries
 - ii. Investments in companies subject to significant influence
 - iii. Investments in controlled non-consolidated subsidiaries.

19. Vrege Armoyan 2009 Personal Tax Return

a) Provide all documentation to support the claimed total net loss of \$8,284,053 in the Vrege Armoyan personal tax return for the year 2009.

b) Provide all documentation to identify the incorporation or registration of Mr. Armoyan's self-employment business claimed on his tax return.

Part 5 of Vrege Armoyan 2009 personal tax return reports:

Amount

'Losses on account of income – USD Securities	1,922,696
Losses on account of income – CDN Securities	3,009,082
Losses on account of income – CDN Short Sales	599,669
Foreign exchange gain on acct of income	(139,733)
Deemed Disposition on Loan – Designated per 50 (1)	<u>2,892,339</u>
Total Net Loss	<u>8,284,053</u>

c) Provide the date that Vrege Armoyan decided to become self employed in the 2009 taxation year given that two installments were paid for him during 2009, totaling \$50,000 as per the 2009 tax return: August 26, 2009 - Felisa emails Vrege to say I assume that I will be covering these installments (quarterly tax installments of Sami and Anahid) from Geovex and that Geovex will be paying the September 15 installments on behalf of the children. Are you going to make the \$25,000 installment payment as well, is Geovex going to cover it?

d) Provide all documentation to support the following interest earned amounts reported on Vrege Armoyan's personal tax returns for the following years:

	\$ Amount
2010	29,931
2011	138,460
2012	106,800
2013	2,349

e) Provide all documentation to support the information reported in the 'Foreign Income Verification Statement' on Vrege Armoyan's personal tax returns for the years 2010, 2011, 2012 and 2013.

f) Provide all documentation in regard to investments made by Vrege Armoyan in either Syria or Lebanon from September 1, 2010 to current date.

g) Provide Vrege Armoyan's tax return that reports the receipt of the following dividend in the amount of \$2,000,000:

In the September 28, 2010 agreement of purchase and sale for the sale of both 1181830 Alberta Ltd and APL Properties Ltd 1181830 by Vrege Armoyan to George Armoyan, 1181830 Alberta Ltd issued a promissory note to pay Vrege Armoyan \$2,000,000 after December 31, 2010 without interest. Vrege Armoyan affidavit dated February 2014 states that the \$2,000,000 dividend was paid.

1. Produce the complete Deloitte & Touche LLP, Stewart McKelvey, and Wickwire Holm files as they relates to the entities and transactions referred to in our disclosure request dated January 23, 2015, including but not limited to all instruction letters, draft reports and notes, working papers, and all electronic and written communications with Vrege Armoyan or anyone on his behalf, and the following:

a) **Geovex Investments Limited**

i. Provide all documentation in regard to the authorization and issuance of a Class of Shares identified as 'B' and as 'Preferred' that occurred after January 31, 2010.

ii. Provide all documentation in regard to the 'Shotgun Buy-Sell Notice' and the 'Offer to Purchase or Sell' between the vendor 4402600 Canada Inc. and the purchaser Geosime Capital Inc. including how the sale price was determined that occurred in October and November 2010.

iii. Provide the 'Shotgun Buy-Sell' agreement regarding shares of Geovex Investments Limited in place as at January 31, 2006 and for each fiscal year end thereafter to January 31, 2010.

iv. Provide documentation of the accounting entry including date, authorization and reason that caused the below noted obligation to be recorded in the accounting records of Geovex Investments Limited and the supporting documents for the accounting entry.

Pages 25-27 of the February 2014 Affidavit of Vrege Armoyan reports payments made by him to Geovex Investments Limited between November 24 and December 3, 2009 for \$2,185,000.

The October 31, 2009 unaudited financial statements of Geovex Investments Limited in Note 7 reports that Vrege Armoyan owes Geovex Investments Limited \$2,185,000.

v. Provide any valuation of the net asset value of the company between February 1, 2008 and January 31, 2010.

b) Kimberly-Lloyd Developments Ltd

iv. Provide any valuation of the net asset value of the company between February 1, 2007 and January 31, 2008.

c) Armco Capital Inc.

i. Provide any valuation of the net asset value of the company between February 1, 2007 and January 31, 2010.

d) Scotia Learning Centres Inc.

i. Provide any valuation of the net asset value of the company between February 1, 2008 and January 31, 2010.

e) Geosam Investments Ltd

i. Provide any valuation of the net asset value of the company between February 1, 2008 and January 31, 2010.

f) Armco Capital Inc./Kimberly-Lloyd Developments Ltd/Scotia Learning Centres Ltd.

i. Provide all documentation including the relevant financial statements related to the amalgamation of Kimberly-Lloyd Developments Ltd, Scotia Learning Centres Ltd., Anahid Investments Ltd and 3099477 Nova Scotia Ltd into Armco Capital Inc. effective January 1, 2008.

g) 1181830 Alberta Limited and APL Properties Limited

i. Provide all documentation for the asset freeze change in share structure dated on or about August 18, 2005.

- ii. Provide all documentation regarding the sale by Vrege Armoyan of his interest in the two companies to the purchaser George Armoyan including how the sale price was determined in September 2010.

[119] Lisa Armoyan states that the disclosure requests are relevant for the following reasons:

- Information in the statement of property supporting documents shows that Deloitte provided accounting services for Geovex and some related companies, including the preparation of financial statements; and that Deloitte also prepared the 2009 personal income tax return of Vrege Armoyan.
- The valuation of Vrege Armoyan's assets and business interests is an integral part of MPA litigation. To proceed to trial without the necessary valuation of the parties' property would be unfair and prejudicial to Lisa Armoyan.
- Financial statements of the various companies that were owned, directly and indirectly, in whole or in part, by Vrege Armoyan during his marriage to Lisa Armoyan are necessary to complete a valuation of the property. The financial statements report the book value of the net assets of each company and therefore become the basis to determine the fair market value of Vrege Armoyan's direct and indirect shareholder interest in the corporate holdings at separation, in October 2009, and when Vrege Armoyan redeemed his shares in 2010. The financial statements for 2007 and 2008 are necessary to establish a baseline or comparable net asset value prior to the time of separation.
- Vrege Armoyan's 2009 income tax return was prepared by Deloitte. Lisa Armoyan has requests arising from the return. Paragraphs 19(a), (b) and (c) are relevant to the self-employment status of Vrege Armoyan, and to the net loss that he claimed exceeded \$8 million. The requests set out in paras 19(d), (e) and (f) are relevant because they relate to interest earned and reported, information reported in the foreign income verification statement, as well as documentation regarding investments in Syria and Lebanon. This documentation is relevant to the amount of funds on deposit in foreign jurisdictions. Paragraph 19(g) requests documents relating to the payment of \$2 million to Vrege Armoyan for the sale of APL and 1181830 Alberta Ltd. Although the front of the cheque was provided, the endorsement side of the \$2 million cheque was

not. This endorsement is relevant to the question of whether the funds were in fact wired to the Byblos Bank and invested as claimed.

- Paragraphs 1(a) (i)-(iv) request documentation involving Vrege Armoyan's alleged sale of his interest in Geovex to his sister-in-law, Hripsime Armoyan. This alleged sale is relevant to the calculation of the net worth of Vrege Armoyan and his alleged inability to make court-ordered payments. The events between January 2010 and November 2010, including the circumstances surrounding the exercise of the shotgun clause are relevant to the determination of the net worth of Geovex. Vrege Armoyan stated, in his statement of property, that his shareholding interest amounted to a 50% ownership in the company.
- Paragraphs 1(a) (v), (b), (c), (d) and (e) are relevant to the valuation of the net asset value of Geovex and its various subsidiaries. This information is relevant to the determination of the fair market value of the wealth accumulated during the marriage; and whether the exercise of the shotgun clause was designed as a means for Vrege Armoyan to evade his court ordered financial obligations.
- Paragraph 1(f) is relevant because it relates to an amalgamation that occurred in late 2007 when serious problems first arose in the marriage. Therefore the reason for, and the impact of, the amalgamation is relevant.
- Paragraph 1(g) relates to the ownership and sale of APL and 1181830 Alberta. Vrege Armoyan redeemed his shares when they were transferred to his brother, George Armoyan. The value which Vrege Armoyan placed on his shares is contested by Lisa Armoyan.
- All of the requests, other than the requests surrounding the 2009 personal income tax return, are relevant to the valuation of the corporate assets, and to an understanding of what was known at the time the financial statements were prepared, and what Vrege Armoyan knew at the time of the shotgun clause was exercised.

Position of Deloitte

[120] Deloitte states that it is prepared to disclose source documents it received from Vrege Armoyan, as well as final deliverables it provided to Vrege Armoyan, in the course of their client-accountant relationship, provided it is given a clear list of items to search for, and provided it is indemnified for the cost of providing such disclosure.

[121] For the balance, however, Deloitte opposes production for a number of reasons, including the following:

- Deloitte owes a duty of confidentiality in respect of information exchanged with its current and former clients which can only be waived through client consent or court order. Although Vrege Armoyan may have waived confidentiality, no such waiver was supplied by the corporate entities.
- Lisa Armoyan must first seek disclosure from the corporate entities, before requesting Deloitte to produce.
- Deloitte is a complete outsider to the litigation; it has no stake or interest in this proceeding. Such a factor weighs against burdening Deloitte with a disclosure order.
- Lisa Armoyan's requests are akin to a fishing expedition and any benefit that could be realized by allowing her to proceed is grossly outweighed by the cost and inconvenience that would inure to Deloitte.
- Deloitte's working papers are the private property of Deloitte. Ordering their disclosure would effectively destroy Deloitte's privacy and proprietary rights in them. Working papers are, absent the consent of an accountant, for the accountant's eyes only and not producible.
- Lisa Armoyan has not offered a shred of evidence to establish that any of the requested documents actually exist and that they are actually in Deloitte's possession.
- Lisa Armoyan has not established that the benefit of providing the requested documents equals or outweighs the harm done to Deloitte by prying into its confidential papers.
- The requests are broad ranging. Lisa Armoyan expects Deloitte to sift through its records to search for 23 pages of disclosure items and provide complete copies of its files for eight of its clients. A cost benefit analysis does not support such an expansive request.

Decision

[122] Lisa Armoyan has proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. Deloitte must therefore sort³⁴ and deliver to Lisa Armoyan, a copy of the listed documents and electronic information³⁵, or exactly copy³⁶, with the exception of its working papers or work product³⁷. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by Deloitte:

6.1181830 Alberta Limited

The six month interims and the fiscal years ending July 31, 2008 and 2009:

a) Consolidated Financial Statement of 1181830 Alberta Limited

If above is not available then:

b) Unconsolidated Financial Statement of 1181830 Alberta Limited;
and

c) The audited or unaudited financial statement for each of its:

- i. Wholly owned non-consolidated subsidiaries
- ii. Investments in companies subject to significant influence
- iii. Investments in controlled non-consolidated subsidiaries

19. Vrege Armoyan 2009 Personal Tax Return

a) All documentation to support the claimed total net loss of \$8,284,053 in the Vrege Armoyan personal tax return for the year 2009.

b) All documentation to identify the incorporation or registration of Vrege Armoyan's self-employment business claimed on his tax return.

Part 5 of Vrege Armoyan 2009 personal tax return reports:

Amount

Losses on account of income – USD Securities	1,922,696
Losses on account of income – CDN Securities	3,009,082
Losses on account of income – CDN Short Sales	599,669
Foreign exchange gain on acct of income	(139,733)

³⁴ Rule 14.02

³⁵ Rule 14.02

³⁶ Rule 14.02

³⁷ **FCMI Financial Corp. v. Curtis International Ltd**, [2003] O.J.No.4713 (Ont.S.C.J.) at para 16; **Tersigni v. Circosta**, [1997] O.J.No.1860 (Ont.S.C.J.) at para 6.

Deemed Disposition on Loan –	
Designated per 50 (1)	<u>2,892,339</u>
Total Net Loss	<u>8,284,053</u>

c)The date that Vrege Armoyan became self-employed in the 2009 taxation year given that two installments were paid for him during 2009, totaling \$50,000 as per the 2009 tax return:

August 26, 2009 - Felisa emails Vrege to say I assume that I will be covering these installments (quarterly tax installments of Sami and Anahid) from Geovex and that Geovex will be paying the September 15 installments on behalf of the children. Are you going to make the \$25,000 installment payment as well, is Geovex going to cover it?

d)Provide all documentation to support the following interest earned amounts reported on Vrege Armoyan's personal tax returns for the following years:

\$	Amount
2010	29,931
2011	138,460
2012	106,800
2013	2,349

e) Provide all documentation to support the information reported in the 'Foreign Income Verification Statement' on Vrege Armoyan's personal tax returns for the years 2010, 2011, 2012 and 2013.

g)Provide Vrege Armoyan's tax return that reports the receipt of the following dividend in the amount of \$2,000,000:

In the September 28, 2010 agreement of purchase and sale for the sale of both 1181830 Alberta Ltd and APL Properties Ltd 1181830 by Vrege Armoyan to George Armoyan, 1181830 Alberta Ltd issued a promissory note to pay Vrege Armoyan \$2,000,000 after December 31, 2010 without interest. Vrege Armoyan affidavit dated February 2014 states that the \$2,000,000 dividend was paid.

[123] I make this disclosure order for the following reasons, placing myself in the position of the trial judge:

- A letter from Deloitte dated August 20, 2010, found in the statement of property supporting documents, confirms that Deloitte audited the balance sheet of 1181830 Alberta Ltd. as of July 31, 2010. I infer that

Deloitte would have, on a balance of probabilities, the financial statements and particulars for 1181830 Alberta Ltd. At no time did Vrege Armoyan suggest otherwise.

- There are no less intrusive measures available to acquire the information about 1181830 Alberta Ltd. There is no other available source from which this information can be obtained. The company is dissolved; Vrege Armoyan is no longer participating in the proceeding and his whereabouts are unknown.
- The requested information related to 1181830 Alberta Ltd. is relevant to the **MPA** litigation. In his statement of property, Vrege Armoyan valued his interest in 1181830 Alberta Limited and APL at \$2 million as of October 2009 and September 2010. The financial statements are relevant to the establishment of a valuation of Vrege Armoyan's interest in 1181830 Alberta Ltd. The financial statements for 2007 and 2008 will establish a baseline or comparable net asset value prior to separation.
- The financial statements are basic, foundational documents which should be readily discoverable. The court infers that the production order will produce reliable data. Discoverability and reliability factors favour production.
- Lisa Armoyan has a right to challenge the values which Vrege Armoyan ascribed to 1181830 Alberta Ltd. In order to do so, she must have access to the financial information ordered.
- The evidence confirms that Deloitte prepared the 2009 personal income tax return of Vrege Armoyan. The court infers that Deloitte will have the information that was used to prepare the return. The requested information is relevant to the income and property held in the name of Vrege Armoyan and it is thus probative to the **MPA** litigation. Deloitte is the only source currently accessible who would have the 2009 income tax information given that Vrege Armoyan's whereabouts are unknown.
- The 2009 income tax particulars will also clarify issues surrounding the property of Vrege Armoyan.
- The financial information is thus closely connected to the **MPA** claim and to the issues which this court must ultimately decide. Probative value, and connection and proximity factors weigh strongly in favour of disclosure.

- Balancing and proportionality also weigh in favour of production. Deloitte's privacy concerns cannot trump the public's interest in the search for the truth, nor in fairness to the trial process. Deloitte will be compensated for its time and expense, as will be detailed below, and in any event, the sought after information is critical to determining the issues which this court must ultimately decide.
- The information produced will be subject to the implied undertaking rule.
- Production is required to ensure that the court has the necessary facts from which to value the various corporate holdings and other property interests held in Vrege Armoyan's name at separation. Deloitte is not being punished because it is required to produce relevant information and documentations for the **MPA** litigation.

[124] Deloitte has not been ordered to produce the balance of the requested disclosure for the following reasons:

- Many of the other requests, which have been found to be relevant, have been ordered to be produced directly from the corporate entities and George Armoyan. Duplicate disclosure is costly and unnecessary.
- Some of the disclosure requests have been previously dismissed because of a lack of an evidentiary foundation from which to conduct a relevancy analysis. These rulings continue to be applicable to the Deloitte disclosure motion.
- Paragraph 19(f) is not likely discoverable from Deloitte. The documentation that is likely discoverable from Deloitte in respect of foreign income and investment will be captured by paras 19(d) and (e).

[125] Deloitte sought payment for its services and provided evidence outlining its anticipated cost of production. The court's disclosure order, however, is significantly reduced from that which was originally requested and from which Deloitte based its cost assessment. Deloitte must therefore provide the parties with a revised cost assessment.

[126] Vrege Armoyan is responsible for Deloitte's cost of production because the disclosure involves his statement of property and income tax return. It is unlikely, however, that Vrege Armoyan will co-operate at this stage. Therefore, in the event Vrege Armoyan does not provide Deloitte, in advance, with the funds to pay the

production costs, then Lisa Armoyan must do so in his stead. In such a case, Lisa Armoyan is granted a cost order for the exact amount that she pays Deloitte for the disclosure.

Stewart McKelvey

Position of Lisa Armoyan

[127] Stewart McKelvey provided legal services for some of the corporate non-parties. Lisa Armoyan therefore seeks disclosure from Stewart McKelvey regarding Geovex, Kimberly Lloyd, Armco, Scotia Learning, Geosam, 1181830 Alberta Limited, APL and Vrege Armoyan as set out in para 9 of schedule A and para 1 of schedule B of the consent order. Lisa Armoyan states that the documentation requested should be produced for a number of reasons, including the following:

- The value of the property which Vrege Armoyan held directly and indirectly in a number of corporate entities is relevant to valuation issues. To proceed without the necessary valuations would be unfair and prejudicial to Lisa Armoyan.
- Documentation respecting each of the corporate entities and George Armoyan is relevant for the reasons previously outlined when each motion was separately analysed.
- James Cruickshank, of Stewart McKelvey, represented Geosime Inc. and Hripsime Armoyan in the shotgun transaction. The circumstances surrounding the sale are relevant to whether \$20 million is a fair valuation of Vrege Armoyan's interest in Geovex, and whether the exercise of the shotgun clause was a strategy to allow Vrege Armoyan to evade his financial obligations to Lisa Armoyan and the parties' children.

Position of Stewart McKelvey

[128] Stewart McKelvey objects to the disclosure motion for a number of reasons including the following:

- Relevance has not been established by Lisa Armoyan.
- Some of the documents sought are protected by solicitor-client privilege.

- Documents contained in Stewart McKelvey's files of clients or former clients are not the property of Stewart McKelvey. They are the property of its clients or former clients. Stewart McKelvey has not been informed that its clients or former clients consent to the relief sought.
- The Code of Professional Conduct instructs solicitors to hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship.
- Vrege Armoyan does not have the authority to speak on behalf of any of the corporate entities or George Armoyan; he is not in a position to waive solicitor-client privilege on their behalf.
- Some of the documents sought are lawyer work product and the property of Stewart McKelvey.
- There is no evidence that the documents sought cannot be obtained directly from the corporate entities or Vrege Armoyan.
- The relief sought is far reaching and can only be produced at considerable expense and effort by Stewart McKelvey.
- Stewart McKelvey has repeatedly outlined its objections, both generally and specifically, to the disclosure requests that were made.
- Stewart McKelvey's files related to the shotgun negotiations and transaction were previously transferred, in their entirety, to George MacDonald Q.C. for the purpose of his representation of the defendants in a fraudulent conveyance proceeding. All files related to the breakdown of Vrege Armoyan's marriage with Lisa Armoyan were transferred to Gordon Kelly when he assumed carriage of the file.

Decision

[129] The court denies the motion of Lisa Armoyan. A proportional assessment does not weigh in favour of production for the following reasons:

- Stewart McKelvey's files relating to the shotgun negotiations and transaction, and the marriage contract are no longer in the possession of Stewart McKelvey.

- The production of relevant information has been ordered directly against the corporate entities, George Armoyan and Deloitte. Duplicate production orders are unnecessary and inefficient.
- The cost of production, from a time and monetary perspective, would likely be significant given the unchallenged affidavit evidence of Stewart McKelvey.
- It is likely that portions of the files would be protected by solicitor-client privilege and lawyer work product. Solicitor-client privilege is a fundamental tenant of the administration of justice: **National Bank Financial Ltd. v. Potter**, 2005 NSSC 113 at paras 61 – 62.
- Granting such an order would not accomplish the just, speedy, and inexpensive determination of the **MPA** proceeding.

[130] The motion is dismissed.

Wickwire Holm

Position of Lisa Armoyan

[131] Lisa Armoyan seeks disclosure from Wickwire Holm in respect of Geovex, Kimberly Lloyd, Armco, Scotia Learning, Geosam, 1181830 Alberta Limited, and APL as set out in para 1 of schedule B of the consent order. Lisa Armoyan also seeks information contained in para 6 of schedule C which provides as follows:

6. Geovex records around exercise of the shotgun clause, records of valuation of shares transferred, any records of any advances to Vrege Armoyan, any available business valuations.(3rd party)

[132] In addition, Lisa Armoyan asks that Wickwire Holm produce any additional documents requested in the consent order which Wickwire Holm has in its control or possession.

[133] Lisa Armoyan states that the requested information is relevant for the reasons previously reviewed in this decision. She further states that the consent order serves as a waiver of solicitor-client privilege.

Position of Wickwire Holm

[134] Wickwire Holm is not prepared to release any files relating to the corporate non-parties for the same reasons advanced by Stewart McKelvey.

[135] Wickwire Holm states that it was prepared to release Vrege Armoyan's file, dealing with the matters set out in the consent order, to Gordon Kelly of Blois Nickerson & Bryson, who was representing Vrege Armoyan in the **MPA** proceeding. The file was made ready to transfer. The file, however, was not retrieved. Blois Nickerson & Bryson is no longer representing Vrege Armoyan. Vrege Armoyan is currently self-represented. In such circumstances, Wickwire Holm is not prepared to release Vrege Armoyan's file to Lisa Armoyan because of solicitor-client privilege.

Decision

[136] Lisa Armoyan has proven that the Wickwire Holm file involving Vrege Armoyan is relevant from the vantage and perspective of a trial judge. Wickwire Holm represented Vrege Armoyan in the shotgun negotiations and sale transaction involving Geovex. In this context, Wickwire Holm must therefore deliver to Lisa Armoyan, a copy of the documents and electronic information³⁸, or exactly copy³⁹, the file with the exception of lawyer work product. All disclosure is subject to the implied undertaking rule. This ruling is made for the following reasons:

- The evidence proves that Wickwire Holm represented Vrege Armoyan in the transaction concerning the sale of Vrege Armoyan's interest in Geovex. Lisa Armoyan claims that the sale was fraudulent.
- Lisa Armoyan disputes that \$20 million, net of taxes, represents the fair market value of Vrege Armoyan's interest in Geovex.
- Wickwire Holm has already prepared its file for transfer, thus significantly reducing the cost of production.
- There is no other source available from which production can be ordered. Vrege Armoyan is no longer participating in the proceeding and his whereabouts are unknown. Vrege Armoyan is also self-represented.

³⁸ Rule 14.02

³⁹ Rule 14.02

- Lisa Armoyan has proven that Vrege Armoyan’s Wickwire Holm file is closely connected to the **MPA** claim and to the issues which this court must ultimately decide. Probative value, and connection and proximity factors weigh strongly in favour of disclosure. Wickwire Holm’s file will be reliable.
- Privacy concerns cannot trump the public’s interest in the search for the truth nor in fairness to the trial process.
- The information produced will be subject to the implied undertaking rule.
- Production is required to ensure that the court has the necessary facts from which to value the various corporate holdings.

[137] The court did not make production subject to Rule 14.05(1) because the court finds that Vrege Armoyan waived solicitor-client privilege by virtue of the consent order dated March 3, 2015.

[138] Waiver of solicitor-client privilege will be established where the holder of the privilege “(i) knows of the existence of the privilege and (ii) demonstrates a clear intention to forgo the privilege...”⁴⁰ Wright J summarized the principles of implied waiver in **Nova Scotia (Attorney General) v. Royal & Sun Alliance Insurance Co of Canada**, 189 NSR (2d) 290, at paras 27 and 28 as follows:

[27] ...[W]hen it comes to solicitor-client privilege, in order for waiver to be implied the court must be satisfied that the client’s conduct demonstrates an intention to waive privilege. I refer to the following passage from the well-known text on *Solicitor-Client Privilege In Canadian Law* (Butterworths, 1993) by the authors Manes and Silver at page 191:

1.03 Generally, waiver can be implied where the court finds that an objective consideration of the client’s conduct demonstrates an intention to waive privilege. Fairness is the touchstone of such an inquiry.

⁴⁰ **Hartford Accident & Indemnity Co v Maritime Life Assurance Co** [1996] NSJ No 572 (SC) at paras 20-21, affirmed at 161 NSR (2d) 78 (CA); **Nova Scotia v Murtha**, 2009 NSSC 342, at para 30.

One of the best expressions on implied waiver of solicitor-client privilege is that of McLachlin, J. (as she then was) in *S & K Processors* (1983) where she said:

Waiver of privilege is ordinarily established where it is shown that the possessor of the privilege (1) knows of the existence of the privilege, and (2) voluntarily evinces an intention to waive that privilege. However, waiver may also occur in the absence of an intention to waive, where fairness and consistency so require. Thus waiver of privilege as to part of a communication, will be held to be waiver as to the entire communication. Similarly, where a litigant relies on legal advice as an element of his claim or defence, the privilege which would otherwise attach to that advice is lost: *Hunter v. Rogers*, 1981 CanLII 710 (BC SC), [1982] 2 W.W.R. 189, 34 B.C.L.R. 206 (S.C.).

[28] This passage was recently cited with approval by the Nova Scotia Court of Appeal in *Mitsui & Co. (Point Aconi) Ltd. v. Jones Power Co. Ltd. et al.* (2000) NSCA 96.

[139] Vrege Armoyan was represented by skilled counsel at the time the consent order was reached. The consent order states, in part, that “Vrege Armoyan, shall forthwith request, obtain, and produce all disclosure requested” in schedules A, B and C attached to the order. Paragraph 1 of schedule B is an expansive obligation and states in part as follows:

Produce the complete Deloitte & Touche LLP, Stewart McKelvey, and Wickwire Holm files as they relates to the entities and transactions referred to in our disclosure request dated January 23, 2015, including but not limited to all instruction letters, draft reports and notes, working papers, and all electronic and written communications with Vrege Armoyan or anyone on his behalf, and the following: ...

[140] An agreement to produce a law firm’s complete file, in the manner written, evinces an intention to waive privilege. Had Vrege Armoyan objected, he could have participated in the hearing, produced an affidavit outlining the evidence to support his submission, and be subject to cross-examination.

[141] The balance of the disclosure requests are not granted for the following reasons:

- The production of relevant information has been ordered directly against the corporate entities, George Armoyan and Deloitte. Duplicate production orders are unnecessary and inefficient.
- The cost of production would likely be significant and portions of the files would be protected by solicitor-client privilege or lawyer work product.
- Granting such an order would not accomplish the just, speedy and inexpensive determination of the **MPA** proceeding.

Conclusion

[142] The following rulings were made in this decision, after considering the law, the evidence and the submissions of counsel:

- The court's jurisdiction to order non-party disclosure falls under the umbrella of Rule 14.12, and not Rule 59.27, and as noted in Rule 59.28(5).
- Non-parties are permitted to challenge relevance in the course of the Rule 14.12 analysis.
- Vrege Armoyan's statement of property, with the supporting volumes of documents, are properly referenced in framing the relevancy analysis.
- Assets which existed at separation, and which were accumulated before or during the marriage, are relevant to the **MPA** litigation, despite the fact that Vrege Armoyan sold his interest in some of the assets post-separation.
- Lisa Armoyan proved that the documents and electronic information which have been ordered to be produced by Geovex, APL, Armco, Geosam, George Armoyan, Scotia Learning, Deloitte and Wickwire Holm are relevant. She further established that the benefit of production, given the probative value of the disclosure, outweighs any harm or inconvenience to the privacy interests of the non-parties in the circumstances of this case, based on a proportional and contextual analysis. Vrege Armoyan waived solicitor-client privilege as it related to his file in the possession of Wickwire Holm.

- Lisa Armoyan was not successful in her motion for disclosure against Clarke Inc. because the disclosure request affected Clarke Shipping Inc.; Clarke Shipping Inc. was not served with the motion.
- Lisa Armoyan was not successful in her motion for disclosure against Southwest because there was no evidentiary base upon which a relevancy analysis could be conducted. The media report was hearsay and inadmissible.
- Lisa Armoyan was not successful in her motion for disclosure against 1181830 Alberta Limited because the company no longer exists by virtue of the Certificate of Dissolution.
- Lisa Armoyan was not successful in her motion for disclosure against Stewart McKelvey because Stewart McKelvey's files surrounding the marriage contract and the shotgun negotiations were transferred from the firm some time ago; other non-parties were ordered to produce the documentation requested from Stewart McKelvey; and a cost benefit analysis did not support a production order, given that portions of the file would be protected by solicitor-client privilege and lawyer work product.

[143] Counsel for Lisa Armoyan is to prepare the production orders and reserve the court's jurisdiction on costs. The production orders should be prepared without the use of schedules. If costs cannot be resolved by consent, Lisa Armoyan and the non-parties must file submissions by September 30, 2015.

Forgeron, J.

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: Armoyan v. Armoyan, 2015 NSSC 241

Date: 2015-08-27

Docket: *Halifax* No. 1201-065036; 73536

Registry: Halifax

Between:

Vrege Sami Armoyan

Petitioner

v.

Lisa Armoyan

Respondent

Judge: The Honourable Justice Theresa M. Forgeron

Heard: May 8 and June 4, 2015, in Halifax, Nova Scotia

Written Release: August 27, 2015

Erratum Date: September 15, 2015

Counsel: Vrege Armoyan, self-represented Petitioner, and not present
Harold Niman, Leigh Davis and Amber Penney for the Respondent, Lisa Armoyan
George MacDonald, Q.C. and Michael Blades for the non-parties:
Geovex Investments Limited, APL Properties Limited, Armco Capital Inc., Clarke Inc., Geosam Investments Limited, George Armoyan, Scotia Learning Centres Incorporated, Southwest Properties Limited, and 1181830 Alberta Limited
Jocelyn Campbell, Q.C. for the non-party, Deloitte Touche LLP
Sheree Conlon for the non-party, Stewart McKelvey
Geoffrey Saunders for the non-party, Merrick Holm

Erratum: Footnote 2 as found in para 37 is changed as follows:
Sidney N. Lederman, Alan W. Bryant & Michelle K. Fuerst, *The Law of Evidence in Canada*, 4th ed (Markham , Ont.: LexisNexis, 2014).