THE VALUATION LAW REVIEW

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Family Law Decisions

The Valuation Law Review is a joint publication of The Canadian Institute of Chartered Business Valuators and Harrison Pensa LLP and this issue summarizes family law decisions of interest to business valuators.

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Di Matteo v. Del Medico

July 29, 2005, Harvison Young J. (Ont. S.C.J.)

Husband's lifestyle dramatically exceeded his reported income. Income imputed under *Child Support Guidelines*.

Husband had previously agreed to $1,200 monthly child support payment. Court refused to reduce amount as husband's extravagant lifestyle was inconsistent with his reported income.

The parties entered into an interim settlement which required the husband to pay child support as follows:

a) for 2000, $800 monthly;
b) for 2001, $1,000 monthly;
c) for a period in 2003, $1,200 monthly.

The order also provided that the husband had to disclose, for 2002, his personal tax returns and the financial statements for DMI Inc. and any other related companies. The order specifically provided that it was without prejudice to the wife's right to claim attribution of corporate income to the husband pursuant to s. 18 of the *Child Support Guidelines*.

DMI Inc.'s business was that of an importer. It imported frozen pizzas from Italy which were shipped directly from Italy to a grocery store chain in New York. There were between 4 and 6 shipments annually. On that basis, the court noted that little business activity would take place in Ontario, other than administration. Despite this, the company claimed significant expenses for meals in Toronto, motor vehicle expenses, travel across Canada, the U.S.A., and Europe, and miscellaneous expenses including tickets to entertainment events, photography, and clothing (some of which were claimed personally by the husband).

The husband's tax returns showed he reported an income of $24,000 for 2000, $6,000 for 2001, $12,000 for 2002, and $24,000 for 2003. During that time he had taken the children on vacation to Banff to ski, to Florida for a cruise, and a Christmas trip to Disney World. He bought the children several gifts including laptop computers. His Form 13 Financial Statement indicated that his rent expense was $2,000 monthly.

The approach of the experts varied significantly. The wife's expert concluded that the husband had a cash flow of $84,000 in 2002 and $134,000 in 2003 based on his expenses set out in his Form 13 Financial Statement and on the attribution of corporate expenses, grossed up, to him.

The husband's expert conceded that his income was approximately $31,000 for 2003, $15,000 for 2002, and $9,500 for 2001. His approach was to start with the reported income on the tax return and add back certain expenses of DMI Inc. that were considered to be personal in nature. He was critical of the wife's expert's attribution of income as she failed to consider other sources of cash flow available to the husband. To this, the wife's expert replied that she was not provided with sufficient disclosure to adequately ascertain such other cash flow sources.

Not surprisingly, the court concluded that the husband's income exceeded $96,000 annually – the amount that would warrant a payment of child support of $1,200 monthly.

Stone v. Stone
(2005), 63 W.C.B.J. (2d) 583 (Ont. S.C.J.)

Consent order requiring husband to "fully co-operate" with wife's valuators. Husband found in contempt for failure to co-operate.

Failure, by husband, to provide documents and information in advance of meeting with wife's valuator, constituted a failure to "fully co-operate" as required by prior consent order.

The wife brought a contempt motion against her husband alleging numerous violations of court orders relating to non-dissipation of assets, restraining him from terminating her employment status and benefits as an employee of their corporation and failure to co-operate with the wife's valuators.

The consent order relating to the valuators provided as follows:

> The Respondent will fully co-operate with [the wife's valuators] in their effort to value the Respondent's business interests. The Respondent will permit the Applicant entry to the business premises for up to 2 days in accompaniment with a representative of [the wife's valuators] to have access to all records. The Respondent will have, at his discretion, members of his staff present during this attendance who will assist in retrieving any records requested.

Several weeks before the appointed 2 day attendance, the wife's valuator prepared a list of documents that he would require so the work could be accomplished within the time allotted. The husband, in the court's opinion, failed to make "any attempt prior to the attendance of the valuator to retrieve the requested information and documents and prepare it in an orderly fashion with reference to the list provided to [him]." When the wife attended at the business premises on a third day to photocopy documents, she was denied entry.

The court concluded that the husband's failure to prepare and organize the documents prior to the 2 day attendance was a breach of the order to "fully co-

operate". The fact that the documents were made available during the 2 day attendance did not excuse the contempt as the task of the wife's valuator, to adhere to the limited time period, was frustrated by the husband's inaction.

The court struck out the time limit and ordered the husband to produce, at the company's expense the documents that the wife's valuator required. The court also ordered that the wife and her valuator could enter the corporate premises to complete their investigation.

Starr v. Starr
(2004), 131 A.C.W.S.J. (3d) 695 (Ont. S.C.J.)

Husband alleged that corporate profits were needed in the business. Failure to demonstrate actual deployment of profits resulted in court attributing some profits to him under *Child Support Guidelines.*

The parties were divorced in April, 2002. At that time, they entered into a child support agreement calling for annual income disclosure in accordance with the *Child Support Guidelines*. It appeared to be common ground that in 2002, the husband's companies – a manufacturing company and a realty holding company, were undergoing financial strains.

As required, the husband produced his 2003 income tax return and the financial statements for both corporations along with information concerning amounts paid by the companies to his second wife.

The wife's expert analyzed the information disclosed and concluded that the husband's income was $750,000 composed of his base salary, bonuses to himself and his second wife, non-taxable dividends, personal expenses paid by the companies and withdrawals from his shareholder's accounts.

The husband and his expert asserted that the husband's income was $68,000, being the base salary. He stated that the corporate profits, amounting to $283,000 were required by the companies to maintain the physical plant and upgrade and acquire machinery. He said his bonuses and dividends were mere "paper transactions" as the money was left or turned back to the companies. He said that he could not personally keep the bonuses and dividends due to covenants that the company had with its bankers.

The hearing of the motion was in June of 2004 [Ed note: evidence on motions is by way of affidavits filed. Witnesses are not called and there is no examination or cross-examination as would be the case at trial]. The court noted that much of the

financial evidence was, by that time, stale and outdated. Noting that the husband failed to update how the company deployed its profits and cash re-invested in the balance of 2003 and 2004 to the acquisition of machinery and other capital improvements, the court added the husband's bonuses to his base salary and attributed income of $185,000 to him.

Biddle v. Biddle
(2005), 13 R.F.L. (6th) 63 (Ont. S.C.J.)

The court will be slow to attribute corporate profits to a parent under the *Child Support Guidelines* on an interim motion.

Having previously agreed to pay temporary or interim child support based on an income of $280,000, the husband sought a reduction. He alleged that his company was losing money and he had suffered a pay cut. The wife alleged his income was much higher and that he should access the retained earnings in the company.

The court noted that the proceedings were still at the motions stage. The parties had filed affidavits but there had been no viva voce evidence and no examinations or cross-examinations. Thus, it was not in a position to determine whether the retained earnings were required to maintain the financial integrity of the company or whether they were available for child support.

The court found the husband's income to be $322,000, being the $280,000 he had admitted to plus $42,000 salary that had previously been paid to his wife.

Kimla v. Golds
(2005), 13 R.F.L. (6th) 214 (Ont. S.C.J.)

Court attributed projected corporate profits to the father under the *Child Support Guidelines* notwithstanding father's argument that profits were needed to pay down business debt.

The husband had received a severance package from his employer which called for a salary continuance. As the continuance neared its expiry, he set up a new business selling his services. At the time of the motion, he was only in the third month of operations. The business had yet to show a profit and the husband had drawn nothing from the business.

He had prepared a business plan which projected that in the first year of operations he would draw a salary of $48,000 and would be entitled to share in the projected corporate profits, his share being half the projection of $128,000. He noted that the company had taken out a 5-year $250,000 term plan loan that

required a principal reduction of $50,000 annually. This would, he argued, reduce the "profits" of the corporation as the balance of the profits would be required to ensure the viability of the business over the long run.

The court disagreed. The court concluded that the business, being a service business, did not need to expend or reserve funds for capital assets. There was no evidence that there would be substantial receivables. Thus, the court concluded that the company profits should be attributed to the husband.

Schamber v. Schamber
(2004) 133 A.C.W.S.J. (3d) 1023 (Man. Q.B.)

Court preferred evidence of husband's valuator as his evidence was obtained first hand.

Estimated value of business for estate freeze purposes, is not entirely irrelevant in family law proceedings.

Sale of business after separation disregarded as "hindsight evidence"

Unique structure of family business did not warrant any reduction of family members' salaries to "normalize" salaries.

The parties married in April, 1994 and separated in August, 1998. Manitoba's *Marital Property Act* requires the court to add to each spouse's inventory of assets the appreciation in the value of assets brought into the marriage from the date of marriage to the date that cohabitation ceases. The Manitoba statute dictates the method of valuation, namely, the traditional "fair market value" approach of willing vendors and purchasers in an open market.

Prior to the marriage, the husband established the business known as Contec. Contec's business was a rural and sewer contractor that provided construction, renovation, and other services to sewer lift stations, treatment plants, and water and sewage pipelines and pumps.

At the date of marriage, he owned 65% of the common shares. Three of his children, who worked in the business, owned the remaining 35%. In 1997, the business was re-organized as part of an estate freeze. There was no formal valuation prepared, the business being family-run. The public accountant who handled the company's accounting estimated its value at $670,000 consisting of retained earnings of $550,000, estimated retained income for the year of $20,000 and estimated goodwill of $100,000. In fact, Contec was audited by CCRA in 1998 and 1999. The valuation was not challenged and no adjustments were made.

Approximately two months after the parties separated, the husband and his sons agreed to sell the business to a third party for $1,050,000 (but the actual sale price was $710,000 net). The sale fell through, litigation ensued, and the action was settled by way of the purchasers returning the shares but receiving damages and costs of $70,000.

The valuators agreed that the value of the business was approximately $410,000 at marriage. They substantially disagreed on its separation date *en bloc* value. Both applied multiple of earnings approaches, apparently. The wife's valuator opined that its *en bloc* value at separation was $1,050,000 while the husband's valuator concluded that its value was $700 - $750 thousand at the freeze and $750 - $800 thousand at separation.

The Master, who heard evidence, and who would report his findings to the court for confirmation or adjustment concluded that the business value on separation was $750,000. In coming to his determination, the Master observed that:

a) The wife's valuator's information, in the first instance, was gleaned from the husband's valuator's report, certain public information from the provincial government, from information obtained from the wife (who, the Master found, knew little about the business), and information from the wife's son who had been a minor employee in the business. By contrast, the husband's valuator, had interviewed all of the shareholders individually, interviewed the accountant who did the estate freeze, and attended at the job site to personally experience the work of the business,

b) The estate freeze was not an irrelevant consideration. The wife's valuator pointed out that the shareholders were not at arm's length, the asset-based approach was inappropriate, there was no formal valuation, and the subsequent sale established it was undervalued. The husband's valuator pointed out that formal valuations in such cases were rare, their absence could be dealt with by a "price adjustment" clause and Bulletin IT 169 required the shareholders and their accountant "to arrive at a value for the purposes of the agreement by a fair and reasonable method".

c) The circumstances of the separation did not warrant discounting the "estate freeze". The wife's valuator suggested that the estate freeze was a "sham" intended to deprive the wife in further sharing of the growth in value of the company. In this respect, the Master noted that the husband was 58, he wished to retire, and the sons were now the primary drivers of the business. Moreover, the wife left the husband, 8 months after the "freeze", she'd been aware of the re-organization, and the husband was oblivious to the strains in the marriage at the time of the freeze.

d) The post-separation sale was disregarded by the Master as it was entirely hindsight evidence. The wife's valuator, in cross-examination, admitted that the "net" value of the sale was $710,000.

e) The Management Salaries: The last thread in the wife's valuator's opinion was that the parties all drew excessive management salaries. If they were "normalized", the profits would be much higher, leading to a significant increase in value due to the multiplier effect. The Master disagreed, noting that the family team worked 60-70 hours weekly, were on call 24-7, and engaged in "incredibly unpleasant, difficult and hazardous …work". This would impact on the company's ability to hire staff. In so doing, the Master accepted the husband's valuator's opinion that "…the ability of the business to produce significant profits is directly tied to the commitment of family members".

Rosenau v. Rosenau
(2004), 132 A.C.W.S.J. (3d) 80 (Sask. Q.B.)

Husband's income fluctuated. Court declined to average annual salary over 3 years, but assessed income based on most recent year.

Court applied a "multiple of earnings" approach to value the husband's interest in a company notwithstanding that its liquidation value would be greater.

Value prescribed by unanimous shareholder's agreement in a family-held company irrelevant to valuation in family law proceedings.

The husband was employed by R. Ltd. That company was wholly owned by MST Ltd., a privately owned holding company founded by his father and currently owned equally, for all intents and purposes, by 6 siblings. R. Ltd. was a trucking company. There was a unanimous shareholders' agreement that had been entered into by all of the siblings, prior to the marriage. The parties married in September, 1994 and separated in August, 2000. By agreement, they used calendar year-end 1994 and 2000 as the appropriate valuation dates.

The court had to determine the husband's income for the purposes of the *Child Support Guidelines* and the value of his shareholdings on the date of marriage and the date of separation.

The company comptroller for R. Ltd. was called as a witness. She testified that her duties included preparation of the financial strategies for the company, dealings with the company's banker, and ensuring compliance with the company's banking covenants. She testified how, in the 1990's, R. Ltd. embarked on an overly aggressive expansion plan in which the company acquired substantial assets but also substantial debt. Its bankers became alarmed and questioned the company's financial viability – particularly its ability to serve its ongoing operations and debt repayment. As a result, the company was obliged to enter into stringent covenants

which imposed, amongst other things, a "cap" on the amount shareholders could remove from the corporation.

The total "cap" was $457,000. Internally, the shareholders agreed to a $4,000 monthly draw with each shareholder limited to $60,000 annually. A shareholder could draw more than $60,000 only if another shareholder agreed to take less in that year. This had been done in a prior year when the husband drew more to pay his substantial legal and accounting fees.

The husband's most recent tax return disclosed a line 150 income of $319,000. However, evidence was lead that his actual draw was $68,000, the balance being a bonus that was re-invested in the business and funds to cover income tax. The husband's expert testified that over a 6 year period, the husband's actual draws ranged from a low of $38,000 to a high of $79,000, the average of such drawings being $59,000. This equated, the expert said, to an average gross salary of $88,000.

The court rejected the expert's 6 year average, noting that s. 16 of the Guidelines limits the inquiry to 3 years. Moreover, the Court noted that the lowest and the highest amount of compensation occurred within that 3 year period. Therefore, applying s. 2(3) of the Guidelines, the Court looked to the most recent income information - found in his most recent tax return. The Court determined that this compensation was the $68,000 draw, which "grossed up" for tax of $32,000, yielded an annual income of $100,000.

The experts called by the husband and wife employed different methodologies, but agreed that the fair market value of the shares of the husband at marriage was approximately $450,000. They differed significantly on the appropriate methodology to arrive at the separation date value of the shares and the impact of the unanimous shareholder's agreement. In its simplest terms, the agreement provided that any disposition would occur at 50% of fair market value, unless the shareholder died, became disabled or retired after age 55.

The husband's expert employed a capitalization of earnings approach. He reviewed the historical before tax earnings of the corporation for 6 years. He made adjustments to eliminate unusual or non-recurring events (certain start-up costs as the company expanded and sales or losses on the disposition of capital assets). He "normalized" the shareholder compensation. Finally, he applied the date of separation tax rates to arrive at the after tax earnings of the company, which he estimated to be $750,000 to $780,000. He applied capitalization rates of 15% and

17% to the upper end of the maintainable earnings. He noted that these were lower than normal capitalization rates for the industry but found comfort in them because of the company's significant tangible asset base. Its assets reduced the risk of using a low rate. In so doing, he valued the company at $4.6 to $5 million.

The wife's expert appeared to value the company at $7.8 million. The wife's expert determined that the fair market value of the capital assets exceeded their book value by $3.3 million (based on an appraisal of the capital assets – trucks, trailers…etc. performed by the different appraiser who was not called to testify). He deducted from the revised capital value the foregone tax shield. It was his position that where the adjusted net asset value exceeds the value of the capitalized earnings, the former value should be the final value as it is the highest.

The husband's expert disagreed. First, he pointed out that the company was, in fact, a "going concern". Thus, an investor would look primarily to the earnings. This would certainly be the case where the assets - trucks and trailers – are depreciable. Second, the husband's expert noted that it was unlikely that an investor would pay $7.8 million to achieve a return of $750,000 to $780,000 considering the risk. Third, the husband's valuator testified that a net asset value approach is rarely a primary methodology in valuing a "going concern". Rather, it is only used to assess risk in the choice of multiple.

The husband's expert also questioned the "appraisal" of the assets. The appraiser was not called. The husband's appraiser pointed out that over the 6 years, company revenues had risen from $5 million to $25 million but profits languished, indicating that the company was underperforming, given its asset base. Finally, he noted that the company depreciated its trailers at a more conservative rate of 12.5% while the c.c.a. rate was up to 40%. Thus, he questioned whether the addition to book value was appropriate.

The court agreed with the husband's valuator, summarizing its reasons as follows:

a) the company is under performing and is not profitable when viewed in the context of its net tangible asset base;
b) the assets are depreciable;
c) there would be no anticipated capital appreciation;
d) the company would not be liquidated; and

e) a prudent purchaser or investor would be most interested in the corporate earnings.

The wife's valuator disregarded the unanimous shareholder's agreement entirely. It was his position that he was to determine a notional value as no sale or disposition was contemplated. In cross-examination he conceded the limited market for a one-sixth interest in the company, that there'd be a substantial minority discount in a market sale and that full value could only be obtained on a sale to a family member or on a sale *en bloc*.

On cross-examination, the husband's expert conceded that in the absence of the shareholder's agreement, the minority discount would be much less than 50% - possibly 20% to 30%.

The court disregarded the shareholder's agreement but discounted the value of the shares by 20%, without providing reasons for so doing.

Thompson v. Thompson
(2004), 130 A.C.W.S. (3d) 138 (Sask. Q.B.)

The parties married in 1973 and separated in 1998. About 3 months after the separation, the wife started her application under Saskatchewan's *Family Property Act*. The statute directs the court to distribute the family property, or its value, equally subject to certain exceptions, exemptions and equitable considerations. *Prima facie*, "value" is fair market value unless it cannot be determined. In such case, the court must determine a value that is "reasonable". The court has an option to value assets at either the date of application or adjudication.

The husband owned a 50% interest, with his brother in a farming corporation known as T-Four. In 2002, while the action was pending, the husband entered into a shotgun buy-sell agreement with his brother offering to sell his shares for $900,000. The husband fully expected that his brother would not exercise his sale option and, therefore, he anticipated that he would be the ultimate inquisitor. To his surprise, the brother bought him out.

Both parties called business valuators to express an opinion of value at the date of application and the approximate date of the sale. The land was appraised by a real estate appraiser "K", while the equipment was appraised by "L". Both

Where a business valuator relies on other expert opinions in preparing an opinion of value (as, for example, real estate or auctioneers' opinions as to value of real estate or machinery), those other expert opinions must be proven in evidence.

A shotgun buy-sell agreement, negotiated under adversarial conditions may be relevant to establishing value in family law proceedings.

Withdrawals from spouse's shareholder account instead of draw of salary was not "dissipation" under Saskatchewan's Family Property Act.

appraisals were criticized in a critique prepared by "G", on behalf of the husband. Using "rounded off" midpoint numbers, the wife's valuator testified that the date of application value of the husband's shares was $1.1 million while the approximate date of the sale value was $1.7 million. The husband's valuator testified that the values were $581,000 and $892,000.

The court noted, firstly, that where an expert relies on the opinion of others (as in this case where the valuators had to rely on the real estate appraiser's and equipment appraiser's opinion of value) the other opinions must be established. If not established, the valuator's opinion may be subject to failure.

The wife's valuator initially employed a capitalization of income approach believing that the real estate appraiser, K, had identified significant redundant assets. When K failed to identify any redundant assets in his testimony, the wife's valuator conceded that an asset-based approach would be more appropriate.

Thereafter, the issue became the value of the underlying assets and a battle between the appraisers. The first contentious area was the use of a "market multiplier" – the amount by which the municipal assessment should be "grossed up" to reflect market value. Noting the careful research done by K and that G was limited to critiquing K's research, the court accepted K's opinion as to the market multiplier.

K then testified that the "market multiplied value" should be further increased by an "assembly premium" to reflect the magnitude of the operations – some 56 quarter sections owned and another 7 leased. K could only find one comparable upon which to base his opinion. G pointed out that the lands were not contiguous and the lands were as much as 40 miles apart. It would take 2 days to transfer the livestock from one end of the operation to the other. Finally, G denied that the concept of an assembly premium existed at all as the larger and more expensive the operation, the more difficult it would be to find a buyer. The court refused to add an assembly premium to the market multiplied value.

The appraisers disagreed with improvements to the land – noting some houses on the quarter-sections and the value of feedlot improvements, namely, a feed mill; which the court resolved on a factual basis.

Finally, the real estate appraisers did not refer to a potential value for certain oil and gas leases. The wife's valuator attempted to point out that the income steam produced by the leases could be a component of value. The court declined to attribute any value to the surface leases as all parties concerned conceded that the value of the leases would depend on the remaining life of the wells. There was no evidence touching upon that issue.

The wife's valuator, in his final analysis, attempted to value the operations on a "going concern" asset-based approach, under which the income tax consequences are largely ignored. The husband's valuator rejected the "going concern" approach noting that the return on assets was inadequate. Thus, he employed a "liquidation" asset-based approach and testified to the income tax consequences of an immediate sale.

The court concluded that it could not determine "fair market" value as both valuators had premised their valuations on erroneous assumptions as to the value of the underlying assets. The court stated that it could not redo the calculations due to the various tax consequences. Thus, the court concluded that it had to follow the dictates of the statute and determine a value that was "reasonable".

As a consequence, the court looked to the price in the buy-sell agreement. The court conceded that it represented a reasonable value as it was negotiated under adversarial conditions. It reflected a sale of 50% of the shares of T-4 whereas the valuators had valued the corporation en bloc and disagreed over a minority discount.

The parties, in 1995, bought two insurance agencies and incorporated a company "Cathedral", to operate them. The wife took 51% of the shares and a third person named Martin took 49%. As neither party had any experience in the insurance industry, Martin was brought in to manage the business.

The valuators were not called upon to value the business. As a result, the husband, the wife and another broker all testified as to various rules of thumb used to value insurance businesses. In arriving at its value, the court adopted a midpoint rule of thumb, applying a formula of 1 times auto insurance commissions and 1.6 times general commissions.

In the year leading up to the separation, the wife altered the method by which she drew compensation from Cathedral. Formerly, she paid herself a salary. However, in the year prior to separation she withdrew funds, on a regular basis, from her shareholder's account in an amount that totalled $30,000. The husband argued that she artificially reduced the value of her assets and that the $30,000 should be "added back".

The court disagreed. Such an "add back" could only occur if the husband could successfully argue that the wife "dissipated" her assets. The *Family Property Act* defines the word "dissipate" as meaning "…to jeopardize the financial security of a household by squandering of property". Noting that drawing down one's shareholder's account was a legitimate means by which a shareholder can draw money out of a company, the court held that the stringent test established by the statute had not been met.

Hamilton v. Hamilton

(2004), 135 A.C.W.S.J. (3d) 1096 (Ont. S.C.J.)

If a transaction is structured as a purchase and sale, it cannot be classified as a "gift" under Ontario's *Family Law Act*, even if the sale is at less than fair market value.

The distribution of profits between partners is not determinative of their capital holdings in the partnership.

The method by which an equalization payment will likely be paid will drive the tax discount to be applied in the valuation process.

During the marriage the husband became a partner, with his father, in the father's dairy farm. The assets consisted of the matrimonial home, 200 acres of farmland, buildings on the property, the cattle and milk quota. Not included in the partnership assets was a further 350 acres on which a free stall barn stood. This was retained by the father.

The consideration for the husband's purchase was a cash payment of approximately $100,000 and the assumption of $100,000 in debt. The evidence indicated that the value of the assets acquired by the husband exceeded $320,000. He argued, consequently, that the percentage difference between purchase price and market value at the time was a "gift", and therefore excluded from his net family property under s. 4(2) 1 of Ontario's *Family Law Act*.

The court rejected his argument. There was no definition of "gift" in the statute. At common law, a "gift" is "a voluntary transfer of property without consideration". The transaction and transfer was a purchase.

The documents evidencing the transfer and the testimony of the husband, his father and the professionals that created the partnership was that it was 60/40 in favour of the husband's father. The partnership agreement was silent as to the parties' capital, but provided that profits and losses, including capital losses would be born equally. It was silent as to capital gains. The wife's valuator opined that the sharing of income and losses on a 50/50 basis indicated a 50/50 partnership in the assets. His conclusion was rejected by the court in light of the clear evidence that the assets were owned by the partnership on a 60/40 basis.

The court then had to deal with the value of the 350 acres and barn still owned by the father. The wife's real estate appraiser apparently ignored the fact that the barn sat on the father's land and ascribed a value to it of $421,000. The husband's appraiser opined that it had a value between nil and $200,000 as it enhanced the value of the partnership assets and would likely be part of any sale. The court added $200,000 to the *en bloc* value of the partnership assets.

The court fixed the value of the husband's interest in the partnership at $725,000. The issue became the proper tax discount or underlying tax liability associated with the pre-tax value. The wife's valuator testified that the overall average tax rate on a liquidation would be 16% (presumably because a large component would be exempt or subject to lower capital gains rates). He expressed the view that the magnitude of the obligation required liquidation. The husband's valuator testified that liquidation would be unnecessary. The quota could be sold, the assets could be mortgaged or by a combination thereof, the husband could meet his obligation. In such a case, the tax cost would be 31%, being the cost to extract the money from their corporation.

The court used a tax discount of 30%, and provided 3 years to pay.