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Understanding Notional Disposition Costs

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1. — What are Notional Disposition Costs?

(a) — General Principles

Net family property is defined under Section 4(1) of the *Family Law Act* [1] as follows:

> "net family property" means the value of all the property, except property described in subsection (2), that a spouse owns on the valuation date, after deducting,
>
> > a) the spouse's debts and other liabilities, and
> >
> > b) the value of property, other than a matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse's debts and other liabilities, other than debts or liabilities related directly to the acquisition or significant improvement of a matrimonial home, calculated as of the date of the marriage;

Section 4(1.1) of the *Family Law Act* provides that liabilities include contingent tax liabilities: [2]

> (1.1) Net family property, liabilities — The liabilities referred to in clauses (a) and (b) of the definition of "net family property" in subsection (1) include any applicable contingent tax liabilities in respect of the property.

In *Berta v. Berta*, the Ontario Court of Appeal confirmed that section 4(1.1) of the *Family Law Act* stipulates that the specified liabilities to be deducted from a spouse's net family property include "any applicable contingent tax liabilities in respect of the property." [3] Notional or contingent disposition costs are potential liabilities that may arise when an asset is sold or otherwise disposed of. These costs are "notional" or "contingent" because they have not yet been incurred. They are payable if and when the asset is sold or otherwise disposed of.

For example, if someone is planning to sell a piece of property, there may be costs such as realtor fees, legal fees, and taxes associated with the sale. These costs are considered "contingent" because they depend on the future sale or transfer of the asset. Challenges arise in determining how to value these costs before they are incurred. This leads to the question: how are potential liabilities estimated when they are not guaranteed to happen and are contingent on future events?

In *Sengmueller v. Sengmueller*, the leading case on the issue of contingent disposition costs in family law cases, the Ontario Court of Appeal established the following principles regarding notional disposition costs:

> • The costs of disposition, as well as the benefits, should be shared equally between parties;
>
> • A deduction of notional disposition costs is not restricted to cases where a party must dispose of an asset that will attract a liability to satisfy an equalization payment;
>
> • It is appropriate to deduct notional disposition costs as long as there is clear evidence that they will be incurred at a particular time in the future;

• **Do not include the cost:** If costs of disposition are "so speculative" that the costs can safely be ignored based on the evidence provided, they should not be included;

• **Include the full cost:** It may be appropriate to deduct the full amount of costs for assets with an imminent disposition; and

• **Include the cost at a discount:** A deduction of a discounted amount of disposition costs is appropriate in circumstances where the disposition costs may be delayed. [4]

The Court in *Sengmueller* adopted three rules to apply in all cases where disposition costs are at issue:

(1) Apply the overriding principle of fairness, i.e., that costs of disposition as well as benefits should be shared equally;

(2) Deal with each case on its own facts, considering the nature of the assets involved, evidence as to the probable timing of their disposition, and the probable tax and other costs of disposition at that time, discounted as of valuation day; and

(3) Deduct disposition costs before arriving at the equalization payment, except in the situation where "it is not clear when, if ever" there will be a realization of the property. [5]

However, the Court in *Sengmueller v. Sengmueller* did not address considerations such as the appropriate tax rate to be applied, what discount rate should be applied, and whether tax planning should be considered, including capital gains exemptions, capital losses or other tax minimization options.

In *Hawkins v. Huige*, [6] the Court held that in determining notional costs, the following must be considered:

1. Whether the asset will be disposed of at once or in portions over time;

2. The likelihood of changes in income tax legislation impacting the estimate of income tax;

3. The expectation of changes in future income tax rates;

4. The expectation of change in disposition costs, for example, commission rates;

5. The expectation of change in the spouse's future income tax position;

6. The expectation of change in interest and inflation rates;

7. The circumstances under which the asset may be sold prior to the anticipated date of this division;

8. The age and health of the spouse and his or her financial plans.

In *Bortnikov v. Rakitova*, [7] the Ontario Court of Appeal summarized the principles of applying notional disposition costs:

> As a general rule, in determining whether disposition costs should be deducted from an asset's value, the analysis should take into account evidence of the probable timing of the asset's disposition. It is appropriate to deduct disposition costs from net family property "if there is satisfactory evidence of a likely disposition date and if it is clear that such costs will be inevitable when the owner disposes of the assets or is deemed to have disposed of them": *Sengmueller v. Sengmueller* (1994), 1994 CanLII 8711 (ON CA); 17 O.R. (3d) 208 (C.A.), at pp. 216-17. An allowance for disposition costs from net family property should not be made in the case "where it is not clear when, if ever, a sale or transfer of property will be made": *McPherson v. McPherson* (1988), 1988 CanLII 4732 (ON CA); 63 O.R. (2d) 641 (C.A.), at p. 647. **However, it is not necessary for the court to determine whether the disposition of the assets is inevitable; rather, the court should determine on the basis of the evidence whether it is more likely than not that the assets would be sold, at which point disposition costs would inevitably be incurred:** *Buttar v. Buttar*, 2013 ONCA 517, at para. 20.

Therefore, a specific date for the sale of an asset is not required. Instead, there must be evidence that the asset will *likely* be sold. [8]

It will be appropriate to discount the rate of the notional disposition costs when there is no firm plan to dissipate the asset following separation. [9] The question then arises: what is the appropriate discount rate?

The value of a notional disposition cost can materially impact the calculation of a spouse's net family property at the date of marriage and the date of separation which will impact the resulting equalization payment. For illustrative purposes, assume at the date of separation a spouse has the following assets with associated disposition costs:

Asset	**Fair Market Value of the Asset**	**Tax Associated with the Asset's Value**	**Discounted (rounded)**	**No tax**
Stocks	$5,000,000	$1,745,422	$1,396,338	Nil
Cottage	$1,000,000	$331,382	$265,106	Nil
Matrimonial Home	$700,000	Nil	Nil	Nil
	$6,700,000	$2,076,804	$1,661,444	Nil
Equalization Payment (rounded)		$2,311,598	$2,519,278	$3,350,000
Difference			**$207,680** difference from the low-end to the mid-range	**$1,038,402** difference from the low end to the high end of the range **$830,722** difference from mid-range to the high end of the range

Notes: * Taxable capital gain per inclusion rate change scheduled to take effect January 1, 2026 (50% inclusion on the first $250,000 and 67.7% inclusion on the excess of $250,000) multiplied by income tax rate 53%). Assume that the stocks and cottage have a nominal ACB.** Discounted at 1.5% per annum over 15 years (to reflect that taxes will not be incurred until sometime in the future).*** Assume the other spouse has net assets of Nil.

By discounting the above disposition costs, the equalization payment would be increased by $207,680. If disposition costs were not considered, the equalization payment would increase by $1,038,402 (the difference from the low end to the high end of the range).

(i) — Examples of Assets that Attract Notional Disposition Costs

The following are examples of assets that attract notional disposition costs: [10]

- Real Property;
- Business Interests;
- Investments;
- Registered Accounts (such as RRSPs, RIFs, LIRAs);
- Pensions; and
- Cash Surrender Value of Permanent Life Insurance Policies.

(ii) — Examples of Notional Disposition Costs

- Real estate commission plus HST;
- Legal fees and disbursements plus HST;
- Capital gains tax; and
- Income tax.

2. — Capital Gains Tax as a Notional Disposition Cost

(a) — General Principles

Capital gains are the profits earned from selling capital property that has appreciated in value since it was originally purchased. For example, if someone bought a property for $500,000 and later sold it for $800,000, the $300,000 profit is known as a capital gain. A capital gains tax liability will be considered a notional disposition cost and a deduction permitted where it is more likely than not that assets would be sold, at which point disposition costs would inevitably be incurred. [11]

(i) — Proposed Legislative Changes in Canada — Capital Gains Inclusion Rate

In 2024, the Canadian federal government announced changes to the taxation of capital gains, which were set to take effect on June 25, 2024. These changes included an increase in the inclusion rate of capital gains from 50% to 66.7%. Before June 25, 2024, 50% of a capital gain would be included in an individual's taxable income and taxed at the individual's marginal tax rate. [12]

The changes that were scheduled to take effect as of June 25, 2024 included:

- For individual capital gains above $250,000, 66.7% would be included in taxable income.
- For individual capital gains of $250,000 or less, the inclusion rate would remain at 50%.
- The new 66.7% inclusion rate was to apply to all capital gains realized within corporations and most types of trusts, regardless of the amount.

In light of these proposed changes, calculating the notional disposition costs associated with capital gains over $250,000 would require the utilization of two different inclusion rates. Specifically, for properties owned by individuals, such as cottages or rental properties, disposition cost calculations above $250,000 would be required to account for the 50% inclusion rate for capital gains up to $250,000, and the 66.7% inclusion rate for capital gains exceeding $250,000.

On January 31, 2025, Canada's Department of Finance announced that they would be deferring the date on which the capital gains inclusion rate would increase from 50% to 66.7% from June 25, 2024, to January 1, 2026. Accordingly, the capital gains inclusion rate of 50% remains in effect today. [13] Recently, on March 9, 2025, newly elected Prime Minister of Canada, Mark Carney, declared in his victory speech that his government would "stop the hike in the capital gains tax," pointing to the possibility that the deferred inclusion rate increase may be scrapped altogether. [14]

(b) — What Capital Gains Inclusion Rate Applies When Valuing an Asset?

While it is uncertain whether the proposed increase to the capital gains inclusion rate will occur in 2026, the government has historically implemented periodic changes to the capital gains inclusion rate. When calculating notional disposition costs in the context of a spouse's net family property, it is important to assess what inclusion rate should apply to capital gains. This determination is particularly significant given that the inclusion rate may differ at the date of marriage compared to the date of separation.

The recent decision of *Lang-Newlands v. Newlands* addressed the appropriate capital gains inclusion rate to apply to an asset held by a spouse on the date of marriage. The parties were married on August 21, 1987, and separated on July 31, 2019. [15] At the trial, one key issue in determining equalization was the valuation of the Applicant's interest in a Trust as of the date of marriage. The parties' experts disagreed on the valuation, partly due to differing opinions on which capital gains inclusion rate should be applied. [16]

The Applicant's expert utilized a 50% capital gains inclusion rate because this was the rate applicable on the date of marriage. [17] On the other hand, the Respondent's expert used a 75% capital gains inclusion rate. [18] The Respondent's expert did not dispute that a 50% capital gains inclusion rate was in place on the date of marriage. However, he explained that two months before the parties married, the Department of Finance released its *Tax Reform White Paper*, which announced that the capital gains inclusion rate would increase from 50% to 66 2/3% in 1988 and 1989, and then to 75% in 1990. Further, the Respondent's expert testified that from his experience, "taxpayers generally act on assumptions that rates would increase." [19]

The Applicant's expert acknowledged that the announcement was made by the Department of Finance, but pointed out that it was not made into law until the federal budget was passed in 1988. The Applicant's expert asserted that on the date of marriage, the inclusion rate was 50% and that "it is only with hindsight that we know it changed to 66.33% for 1988 and 75% for 1990." [20]

Justice Sharma agreed with the Applicant's expert in finding that the proper capital gains inclusion rate to apply to the Applicant's interest in the Trust at the date of marriage was 50%. In his reasoning, Justice Sharma clarified that applying a future capital gains inclusion rate that had not yet been legislated when valuing an asset would not be in line with the intent and express language of the *Family Law Act*:

> [147] I find that the proper capital gains inclusion rate to apply when calculating Barb's interest in the BJL Trust is 50%. I make this finding because the policy intent underlying the FLA and the express language in s. 4(1) of the *FLA* contemplates a "snapshot" valuation to be undertaken of a spouse's assets "on the date of marriage" and "date of separation": see, *DeFaveri v. Toronto Dominion Bank*, 1999 CanLII 4162 (ON CA); 45 R.F.L. (4th) 141, at para. 4; *Numair v. Numair*, 2022 ONSC 3449, at para. 103. To apply a future capital gains inclusion rate not yet legislated when valuing an asset on the date of marriage, would be inconsistent with the language and scheme of the *FLA* . . .
>
> [149] Finally, while a tax advisor may give advice to taxpayers based on announcements of anticipated tax hikes, to interweave these and other contingencies into the "snapshot" equalization analysis required under s. 4 of the *FLA* would lead to uncertainty and impracticalities in our family justice system. [21]

Accordingly, the *Lang-Newlands v. Newlands* decision clarifies that until a capital gains inclusion rate has been legislated, it should not be applied when valuing an asset.

(i) — Deductions Against Capital Gains

When calculating a capital gain, an owner can deduct any outlays and expenses that were incurred to sell the property from the proceeds of disposition. These types of expenses include repairs, renovations and upgrades, commissions, legal fees, and transfer taxes. Detailed records and receipts of such expenses should be kept for purposes of justifying these adjustments to the adjusted cost base ("ACB") of the property. Such deductions will reduce the capital gain tax that is payable for equalization purposes.

(ii) — Capital Gains Tax on Real Property

A. — Principal Residence Exemption and the Matrimonial Home

Section 40(2)(b) of the *Income Tax Act* provides that where a matrimonial home is the parties' principal residence, capital gains are not payable on the sale due to the principal residence exemption. [22] Courts often allow parties to deduct notional costs of disposition related to the sale of a matrimonial home including real estate commission and legal fees. For example, in the recent decision of *Daciuk v. Daciuk*, the Court deducted 5% notional disposition costs from the value attributed to a matrimonial home representing real estate commission, and $1,000 as notional costs of legal fees for the sale. The Court held that it was likely that the matrimonial home would have to be sold to pay the equalization payment and support awards granted to the applicant. [23]

B. — Cottages and Other Real Property

When a party seeks to deduct notional disposition costs, such as capital gains tax, related to the sale of real property, Courts have required evidence of a party's intention to sell the property, or evidence suggesting that a potential sale will be made. Evidence of a party's past attempts to sell the property in question, or evidence concerning plans for the disposition of the property may support a party's claim that disposition costs should be deducted.

Unless a party is eligible to claim a cottage or another property as their principal residence, capital gains will be triggered when the cottage is sold for a price beyond its ACB. In *Abela v. Gibbens*, the Court found that it was reasonable to deduct capital gains from the husband's cottage property as a notional disposition cost when there was no likelihood that the property could later be disposed of as his principal residence. As the husband had a separate principal residence, the disposition of the cottage property would result in the husband incurring capital gains taxes. [24]

In *Kirvan v. Kirvan*, the Court did not allow for $3,000 in disposition costs for capital gains on a wife's cottage property due to a lack of evidence. The wife did not provide sufficient proof, including any intention to sell the property, which led the Court to deny the claim for potential capital gains costs. The Court emphasized the necessity of evidence regarding the potential sale to justify such costs. [25]

In *Zheng v. Xu*, the Court allowed a wife to deduct notional disposition costs of real estate commission, deed tax, and capital gains tax from her net family property in relation to the anticipated sale of her condominium in China. [26] This decision was based on reasonable evidence that the wife intended to sell the property within the next five years. She had previously attempted to sell the condominium during the marriage which further supported her intention to dispose of the property. [27]

In *Katz v. Katz*, the parties chose to remove a property from their net family property calculation and divide the proceeds of the sale between them. The husband argued that his net family property should include the liability of the capital gains attributable to him as a result of the investment and that it was only fair that the wife should share in the obligations as well as the profits. As there had not been an agreement between the parties, the Court included the capital gains obligation as a liability of the husband. [28]

In *Nersisian v. Hyde*, the Court held that it was appropriate for a husband to deduct capital gains and real estate commissions as disposition costs related to the future sale of a condominium. [29] The condominium was located in Florida and was held by a Limited Liability Corporation ("LLC"). The husband held 34% of the shares, and his two children each held 33% of the shares of the LLC. [30] The husband's evidence as to the likely disposition date of the condominium was that he may wish to buy a property in a different area because of rising water levels. The husband also stated that his children may wish to sell their interest in the condominium and purchase their own properties. [31] The Court held that it was appropriate to deduct disposition costs for the husband's share of the condominium from his net family property as it was likely that the property would be sold at some point in the future at which time disposition costs would be incurred. [32]

C. — Farm Property

A portion of a farm property may include a principal residence. As such, there must be a reasonable allocation of the portion of the land that is attributable to the primary residence and the farmland. As of January 1, 2026, the capital gains exemption of qualified farming and fishing property is scheduled to increase from $1 million to $1.25 million, which will result in a reduction in the amount of tax payable. It is important to receive expert advice on whether the farm property is "qualified family property" under the *Income Tax Act* and whether a party will be able to utilize the lifetime exemption and calculate the capital gains tax associated with the sale of the farm property that excludes the principal residence.

(iii) — Capital Gains Tax on Other Property

A. — Investments

In *C.Z. v. J.Y.*, the Court allowed a husband to deduct disposition costs at a discounted rate with respect to unrealized capital gains on his investments at the date of separation. The wife submitted that notional disposition costs should not be attributed on account of the husband's contingent tax liability since he was not paying them. The Court stated that unlike the wife's major asset of value (the matrimonial home), the husband's major asset of value (his investments) had a contingent tax liability that should be included in the equalization of net family property. [33]

The Court found that the rate of notional disposition costs of the husband's investments must be discounted because it was unclear to what extent he planned to dispose of some or all of them on the date of separation. [34] The husband sought a finding that 46% was the correct rate of notional disposition costs for his investments and relied on hindsight evidence. Most of the capital gains realized on his investments were between 2013 to 2014. Between 2011 to 2014, his marginal tax rate was 46%. He calculated the tax liability as the amount of $46,732.14 (on taxable gains of $101,239.47). [35]

Relying on *Knight v. Knight*, the Court explained that hindsight evidence should not be relied upon to determine the value of an asset, but rather, the value of an asset should be calculated based on information that existed at the time of separation. The Court explained, referencing the Ontario Court of Appeal's decision in *Zavarella v. Zavarella*, 2013 ONCA 720, that the only permissible use of hindsight evidence it to confirm assumptions that are made on the valuation date. [36] As the husband chose not to produce expert evidence of the issue, the Court concluded that a notional disposition cost rate of 25% was reasonable. [37]

In *Delongte v. Delongte*, the Court did not accept a husband's claim for disposition costs associated with a capital gain of approximately $142,000 on his investments. The husband sustained great losses of approximately $1.5 million in 2021 resulting from his day trading. He then refiled his income tax return for the three previous years and would be entitled to apply his losses for up to 20 years into the future. The Court noted that the husband also admitted that he had already claimed his gains and losses in the appropriate tax year and received sizeable taxable refunds. Accordingly, the Court held that the husband failed to prove that he would have to pay the disposition costs associated with his capital gain. [38]

B. — Shares

In *Noble v. Curveira*, the Court refused to apply the 20% estimated notional costs for disposition for the husband's shared held at RBC. The husband's line 150 income for the prior two years ($7,325 and $11,315, respectively) was seen as modest by the Court, and the likely outcome of taxation of capital gains on the shares would require evidence. The Court refused to accept an arbitrary amount of disposition costs that were not agreed upon by the wife without any evidence or justification submitted by the husband. [39]

3. — Other Notional Disposition Costs

(a) — Pensions and RRSPs

Courts have been inconsistent in determining notional disposition costs for pensions and RRSPs.

The Court of Appeal in *Sengmueller* stated that RRSPs are "taxable in full, regardless of the time of realization, whether they are cashed in total, or taken by way of annuity." [40]

In *Ramezani v. Najafi*, the Court determined that a rate of 26.5%, representing the mid-point between each party's proposed income tax rate, was a reasonable deduction to apply to the parties' RRSPs and the wife's pension at the date of separation. This rate represented the midpoint between each party's proposed income tax rates. This decision was made due to the absence of evidence produced by either party to determine the present value of the future tax obligation. Based on the wife's age of 43, and the husband's age of 57, the Court found that it was both reasonable and probable that the husband would not be required to begin reducing his RRSPs until the end of the year he turned 71, unless he were to become unemployed before then. The Court added that even if the husband did become unemployed, it was reasonable and probable to conclude that each party's RRSPs would not be disposed of as a one-time event. [41]

The Court applied a 21.1% notional discount factor to both parties' RRSPs in the recent case of *Crombie v. Crombie*. [42] This decision was influenced by the actuarial report provided by the wife, who was 59 years old at the time of separation. The report estimated her average tax rate at 21.1% based on her projected retirement income from various sources. The husband, also 59 years old at the time of separation, proposed a 35% discount rate for his RRSP but failed to provide justification or supporting evidence for this figure. Accordingly, the Court decided to adopt the wife's estimated rate for both parties due to an absence of better evidence.

In *Alexander v. Gensberger*, the wife sought notional disposition costs for her RRSPs and investment accounts at a rate of 21%, while the husband did not apply any disposition costs to his RRSPs or investment accounts. The Court applied the three rules discussed in *Sengmueller* that should be considered when disposition costs are at issue. The Court reiterated the approach taken by Justice Jarvis in *Virc v. Blair*:

> To determine the appropriate notional RRSP tax rates — where the parties disagree — the court's analysis must rely on evidence supporting the expected time of disposition; *Virc v. Blair*, 2016 ONSC 49. If the evidence is lacking, the court may consider both agreed upon rates for other assets as well as hindsight evidence of post-separation text rates and actual disposition costs incurred upon sale of RRSPs: *Ibid* at para. 198.

Neither party provided evidence for the correct tax rates, but the Court accepted the wife's 21% tax rate for the present value of the future tax rate at the valuation date for her RRSPs and investments, and applied the same rate to the husband's savings. [43]

In *Kruschenske v. Kruschenske*, the issue was whether the notional tax liability for the respondent's RRSP and pension should be deducted at 19% as she claimed, or at 17.3% as suggested by the applicant. The respondent produced an expert report that outlined her average tax rates upon retirement: 17.3% at age 57, 19% at age 61, and 20.5% at age 65. The respondent's pension would be higher if she delayed her retirement to age 61 or 65. The Court determined that the respondent had incentives to continue working beyond the age of 57 to financially support her children. Accordingly, the Court concluded that a tax liability rate of 19% was appropriate. [44]

(i) — Calculation of Post-Retirement Tax Rate

The tax calculation is typically performed by projecting a party's total income after retirement, the total income tax on the income, and the resulting projected post-retirement average tax rate. In projecting a party's total income after retirement, pension income, CPP and OAS benefits are typically included.

Below is a Table prepared by Timothy Martin of Verity Valuation Group using the 2024 Ontario and federal tax rates for various income levels, for a taxpayer after age 65 entitled to the old age tax credit and pension income tax credit (assuming pension income is received) for 2024.

Projected income	**Income at 2024 Rates**	**Average tax rate**
35,000	2,325	6.6%
40,000	3,477	8.7%
45,000	4,495	10.0%
50,000	5,797	11.6%
55,000	7,096	12.9%
60,000	8,681	14.5%
65,000	10,314	15.9%

70,000	11,947	17.1%
75,000	13,730	18.3%
80,000	15,363	19.2%
85,000	16,996	20.0%
90,000	18,594	20.7%
95,000	20,252	21.3%
100,000	21,939	21.9%
105,000	23,629	22.5%
110,000	25,424	23.1%

(ii) — Cash Surrender Value of a Life Insurance Policy

The accumulation of funds (or savings) element of a whole or permanent life insurance policy serves to form a "cash surrender value" of the policy. The cash surrender value of the policy belongs to the insured, who can take the cash surrender value out of the policy as loans or by cashing out the policy while they are alive. [45] Generally, the cash value grows tax-free, but withdrawals and surrenders can have tax implications.

Therefore, there may be a disposition cost associated with receiving the cash surrender value of a permanent life insurance policy based on how much the investments have increased in value. Any amount that is received that exceeds the total premiums paid is considered a taxable gain. The taxable portion of the gain will be subject to the policyholder's marginal tax rate. The insurer may also charge a surrender fee which is a further disposition cost.

Evidence will be required concerning the ACB of the policy to calculate the amount that would be taxable upon surrender or withdrawal. Evidence will also be required on the likelihood of surrendering or withdrawing the cash surrender value. A discount to the disposition cost may be appropriate to reflect that a policyholder may not have any intention of losing their life insurance protection.

(iii) — Business Interests

The expert retained to value a party's business interests as at the date of marriage and/or date of separation will also calculate the associated disposition costs related to any sale of the business interests at the relevant dates.

The Court gave the following guidance in *Sengmueller*:

> In dealing with a business, one should fairly consider the nature of the business, the possible requirement that the business could only operate if the owner spouse continued to be involved, any shareholder agreement which required sale of his or her shareholding in specified circumstances, and a myriad other possible considerations in the individual case. [46]

When it was unlikely that a party would be able to sell a business in the 9 years following the valuation date, if ever, the Court found it appropriate to use *Sengmueller* principles to discount for the present value of notional disposition costs and accepted a 20.6% deduction based on expert reports. [47]

(b) — Practical Tips

In the recent case of *Carter v. Carter*, the Court emphasized the importance of presenting evidence when claiming notional disposition costs. The Court recognized that there may have been disposition costs associated with some of the husband's assets on the valuation date, but "he failed to provide disclosure, evidence or calculations of those disposition costs." [48] On his Net Family Property Statement, the husband placed "TBDs" for disposition costs for his non-registered investments. The Court was clear that it could not work with TBDs, and it was incumbent on him to provide evidence of the disposition costs well before trial. [49] This case echoes the same sentiment expressed by the Ontario Court of Appeal in *Alalouf v. Sumar*, namely that the Court will decline to recognize any contingent debts if there is no evidence and no entries in the Net Family Property Statement regarding the costs of disposition.

Therefore, notional disposition costs should be included in Financial Statements for all relevant dates, including the "date of marriage," the "date of separation", and the "today" column, and in Net Family Property Statements. Attaching Schedules to the Financial Statement is an effective way to detail the calculation of the notional disposition costs. When in doubt, experts should be hired to assist and prepare a notional disposition costs report, when necessary, which will set out the assumptions the expert made when calculating the effective tax rate, the disposition cost and any discount. Counsel must ensure that the expert's assumptions, such as the date and age of retirement, and the extent to which pension and/or registered retirement income will be withdrawn at once or in portions over time, are consistent with the facts and evidence in the case.

Issues surrounding the factual underpinnings for considering disposition costs, such as the parties' expectations and intentions surrounding the timing of disposition, retirement expectations, and the other criteria set out in *Hawkins v. Huige* above, ought to be canvassed during Questioning.

Footnotes

* Thomson Rogers LLP.

1 *Family Law Act*, RSO 1990, c F.3, Section 4(1).

2 *Family Law Act*, RSO 1990, c F.3, Section 4(1.1).

3 *Berta v. Berta*, 2015 ONCA 918 at para. 68.

4 (1994), 17 O.R. (3d) 208 (C.A.). [*Sengmueller*]; Andrew J. Freedman & Timothy Martin, Financial Principles of Family Law (Toronto: Thomson Reuters, 2024) at 35:1.

5 *Sengmueller v. Sengmueller*, 1994 CanLII 8711 (ON CA).

6 [2007] O.J. No. 4895 (Ont. S.C.J.) at para. 106.

7 *Bortnikov v. Rakitova*, 2016 ONCA 427 at para. 11.

8 *Knight v. Knight*, 2018 ONSC 3294 (Ont. S.C.J.).

9 *C.Z. v. J.Y.*, 2021 ONSC 256 (Ont. S.C.J.).

10 Wilton & Joseph (Eds.). (1993). Family Property Law and Practice in Canada [Online]. Thomson Reuters. Updated: October 2024. Retrieved on: November 8, 2024.

11 *Buttar v. Buttar*, 2013 ONCA 517 at para. 21.

12 Department of Finance Canada, "Government of Canada Delivering Tax Fairness for Every Generation" (10 June 2024), online: <https://www.canada.ca/en/department-finance/news/2024/06/government-of-canada-delivering-tax-fairness-for-every-generation.html>.

13 Department of Finance Canada, "Government of Canada Announces Deferral in Implementation of Change to Capital Gains Inclusion Rate" (31 January 2025), online: <https://www.canada.ca/en/department finance/news/2025/01/government-of-canada-announces-deferral-in-implementation-of-change-to-capital-gains-inclusion-rate.html>.

14 CBC News, "Carney addresses Canadians as new Liberal leader and PM-designate" (9 March 2025), online: <https://www.cbc.ca/player/play/video/9.6678260>.

15 *Lang-Newlands v. Newlands*, 2024 ONSC 6285 at para. 26.

16 *Lang-Newlands v. Newlands*, 2024 ONSC 6285 at para. 141.

17 *Lang-Newlands v. Newlands*, 2024 ONSC 6285 at para. 144.

18 *Lang-Newlands v. Newlands*, 2024 ONSC 6285 at paras. 142-143.

19 *Lang-Newlands v. Newlands*, 2024 ONSC 6285 at para. 145.

20 *Lang-Newlands v. Newlands*, 2024 ONSC 6285 at para. 146.

21 *Lang-Newlands v. Newlands*, 2024 ONSC 6285 at paras. 147-149.

22 *Income Tax Act*, RSC 1985, c. 1 (5 th Supp.), Section 40(2)(b).

23 *Daciuk v. Daciuk*, 2023 ONSC 70 at paras. 14 &16.

24 *Abela v. Gibbens*, 2011 ONSC 2994 at para. 43.

25 *Kirvan v. Kirvan*, 2016 ONSC 7712 at paras. 60-62.

26 *Zheng v. Xu*, 2019 ONSC 865 at para. 73.

27 *Zheng v. Xu*, 2019 ONSC 865 at para. 66.

28 *Katz v. Katz*, 1989 CarswellOnt 260 (Ont. U.F.C.) at p. 176.

29 *Nersisian v. Hyde*, 2021 ONSC 3428 at paras. 102 & 104.

30 *Nersisian v. Hyde*, 2021 ONSC 3428 at paras. 77-78.

31 *Nersisian v. Hyde*, 2021 ONSC 3428 at para. 103.

32 *Nersisian v. Hyde*, 2021 ONSC 3428 at para. 104.

33 *C.Z. v. J.Y.*, 2021 ONSC 256 at paras. 145-147.

34 *C.Z. v. J.Y.*, 2021 ONSC 256 at para. 153.

35 *C.Z. v. J.Y.*, 2021 ONSC 256 at para. 150.

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37 *C.Z. v. J.Y.*, 2021 ONSC 256 at para. 153.

38 *Delongte v. Delongte*, 2024 ONSC 3454 at paras. 79-81.

39 *Noble v. Curveira*, 2023 ONSC 1211 at paras. 90-91.

40 *Sengmueller v. Sengmueller* (1994), 17 O.R. (3d) 208 (C.A.) at p. 218.

41 *Ramezani v. Najafi*, 2021 ONSC 7638 at paras. 157-162.

42 *Crombie v. Crombie*, 2024 ONSC 2847 at paras. 44-46.

43 *Alexander v. Genseberger*, 2023 ONSC 904 at paras. 120-122.

44 *Kruschenske v. Kruschenske*, 2018 ONSC 4342 at paras. 55-62.

45 Andrew J. Freedman & Timothy Martin, Financial Principles of Family Law (Toronto: Thomson Reuters, 2024) at 31:5.

46 *Sengmueller v. Sengmueller* (1994), 17 O.R. (3d) 208 (C.A.) at p. 215.

47 *Plese v. Herjavec*, 2018 ONSC 7749 at paras. 237-238.

48 *Carter v. Carter*, 2024 ONSC 5414 at paras. 307 & 308.

49 *Carter v. Carter*, 2024 ONSC 5414 at para. 213.