FAMILY LAW SUMMIT 2026 - ADVANCED PROPERTY ISSUES IN FAMILY LAW PANEL OUTLINE

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CHARTERED BUSINESS VALUATORS (CBVs)

What is a CBV?

- A Chartered Business Valuator (CBV) is a financial professional who holds a CBV designation.
- They commonly provide business valuation evidence in family law matters.
- They are typically relied upon to:
    - value business interests
    - calculate income for spousal or child support purposes
    - trace assets to gifts or inheritances for exclusion claims

Expert Reports

- Reports containing a conclusion of value for a business interest are defined as a **Valuation Report** by the CBV Institute (also known as the Canadian Institute of Chartered Business Valuators, "CICBV").
- Reports containing conclusions of a financial nature, such as the calculation of a spouse's income or the extent to which assets may be traced to gifts and/or inheritances. are defined by the CICBV as an **Expert Report**.
- Reports containing only commentary concerning conclusions set out in a report prepared by another CBV are defined as a **Limited Critique Report** by the CICBV.
- In the preparation of such reports, a CBV must comply with the Practice Standards of the CICBV. Those Practice Standards set out the Standards and Recommendations applicable to the following in respect of each of a Valuation, Expert and Limited Critique Reports:
    - The Report itself;
    - The Scope of Work to be conducted; and
    - The File Documentation to be maintained

When is an Expert Report Required?

- An expert report is not mandatory in all family law matters but becomes necessary in complex financial situations.

Valuation Reports

- Each party has an obligation to provide evidence with respect to the value of their assets and liabilities, which includes business interests. If the value cannot be easily established or there is a dispute about the value, a valuation report will be required.
- ***Laurent v. Laurent*, 2019 ONSC 3535 at para. 17:**
    - [17] I accept the Ontario Assessment's Review Board's description of MPAC assessments. MPAC assessments are not reliable indicators of the fair market value of a particular property. In this case, the husband's real estate portfolio is significant. It is his obligation to provide credible evidence as to its value. Assets and debts and liabilities must be authentic and properly valued. The onus is on the party asserting a value for an asset under his control to provide credible evidence in support of it. If it cannot be readily ascertained, an independent valuation must

be obtained: *Conway v. Conway* (2005), 2005 CanLII 14136 (ON SC), 16 R.F.L. (6th) 23 (Ont. S.C.) at para. 13.

- ***Di Luca v. Di Luca*, 2004 CanLII 5044 at para. 10:**
  - [10] The Family Law Act contains provisions designed to ensure full and fair disclosure of assets and income so as to foster early settlement of all of the issues. Section 8 of the Act imposes an obligation on each party to deliver a sworn statement disclosing particulars of that party's property, debts and other liabilities. Each spouse has the burden of establishing the value of the property that she or he owned on the valuation date (see: Menage v. Hedges (1987) 1987 CanLII 5234 (ON SC), 8 R.F.L. (3d) 225). The obligation on the owner of an asset can extend so far as to require the owner to obtain an expert evaluation (see: Greenwood v. Greenwood (1988) 1988 CanLII 8684 (ON SC), 18 R.F.L. (3d) 273).

- ***Clement v. Clement*, 2012 ONSC 6980 at para. 9:**
  - [9] While I recognize that my Ruling may cause hardship to the Wife, the case law is clear that she has the onus of providing credible evidence in support of the value (or lack of value) that she asserts, and, having failed to do that, she must obtain an independent valuation, at her cost. *Di Luca v. Di Luca*, 2004 CanLII 5044 (ON SC), 2004 1 R.F.L. (6th) 162.

- ***Blaney v. Blaney*, 2012 ONSC 1777 at para. 5:**
  - [5] Particularly where a party is self employed, or is a shareholder of a company and works for that company they should know that, for support purposes, their Income Tax Returns may not be enough to establish income and that the value of their interests in a company will need to be established by the use of and need for experts in many instances. The obligation and onus to satisfy the court as to income and the value of assets and debts is on the person whose income or asset or debt is called into question. Here, the Respondent (husband) had that obligation. His obligation existed prior to any court orders, conferences or court attendances.

Court's Authority with Respect to Expert Reports

- The Court has the authority to order a party to retain and pay for their own expert business valuator, or can provide interim disbursements for the other party to obtain a report, where appropriate.

- ***Otis v. Otis*, FS-20-15388 (Endorsement of Justice Czutrin dated September 3, 2021):**

> **THE ISSUES ON THE MOTION**
>
> [33] For the purposes of this motion, I was asked to consider the following issues and provide my response:
>
> a. Whether to order Mr. Otis (the Respondent) to disclose the documents and information requested by Mr. Cohen in his updated Information Request. (**My ruling is yes**).
>
> b. Whether to order the Added Parties (i.e., the Respondent's siblings) to provide the disclosure requested by Mr. Cohen that is in their power, possession, and control. (**My ruling is yes**).
>
> c. Whether to order the Respondent to deliver a report from a qualified expert calculating his business and trust interests as at the date of marriage and separation. (**My ruling is yes**).
>
> d. In the alternative, whether to order the Respondent pay to the Applicant $150,000 in interim fees and disbursements to allow Mr. Cohen to prepare the said report. (**The issue is reserved depending on whether the Respondent will retain a duly qualified family law financial expert and it is to be addressed by the assigned case management judge. If the Respondent maintains his position that he will not retain such an expert, the case management judge is to set the timeline to pay the interim fees and disbursements and related timelines).**
>
> e. **The Respondent shall advise of his position within 30 days.**
>
> f. Whether, as requested by counsel for the Added Parties, to strike portions of the affidavit evidence of the Applicant and of Mr. Cohen. (**My ruling is no**).

- ***Uppal v. Singh*, 2022 ONSC 5758**:
  - One of the key issues was the value of the husband's jewelry business on the date of separation
  - The wife sought an order requiring the husband, at his own expenses, to produce an expert business valuation
  - The husband argued that valuing his business will be complicated and costly, and that an expert valuation is not necessary because the wife was a co-owner of the company, was involved in the sale of the business, and knows that the business was worth.
  - The court found that it was an appropriate case to require the husband to have an expert valuation. He was ordered to produce a report on the value of the business on the date of separation and the date of marriage, and to cover the cost of the report.
  - **The court explained that the husband had an obligation to provide credible evidence as to the value of his assets, including his business. If the value of an asset, such as the business, cannot be easily established or if there is a serious dispute about its value, an independent expert valuation will be required. The**

court has the authority to order a party to obtain an independent valuation of a disputed asset.

- The court explained that the husband had given inconsistent information about his ownership interest in the business, and that he could not take inconsistent positions on issues when it suits him.

Income Reports

- In situations where income can be determined by looking at a party's income tax return, no expert is required.
- An expert report will be required in circumstances where a party's income cannot be easily ascertained. This is often the case for individuals who are self-employed with complex income structures. In these cases, it becomes necessary to examine financial records and business records to determine income.
- The obligation to obtain an expert report typically arises in scenarios involving self-employment income, corporate income, and other complex financial scenarios.
- In these situations, standard disclosure can fail to provide a clear picture of a person's income for support purposes. Other components may also need to be considered, such as the attribution of corporate income under section 18 of the *Guidelines* when a party is a shareholder, director, or officer of a company.
- ***Tonogai v. Tonogai,* 2021 ONSC 2366 at para. 22:** "It is not disputed on this motion that in family court proceedings the owner of an asset bears the burden of establishing the applicable value of the asset, and the earner of an income bears the burden of establishing his or her level of income. In some cases, this obligation extends to the creation and production of formal written expert reports, including formal business valuations and income analysis reports: see for example *Michi v. Michi,* 2008 CanLII 728 (ONSC), *Meeser v. Meeser,* 2011 ONSC 6517 (CanLII), and *Casdie v. Caskie,* 2020 ONSC 7010 (CanLII) as referenced by the Applicant."
- ***D.B. v. I.B.,* 2023 ONSC 1053 at para. 65:** It will be the uncommon case that will not require some level of expert assistance to value income when dealing with the income of a self-employed party. A payor bears the evidentiary onus when proposing to deduct expenses from income for support determination purposes.
- ***Sundberg v. Sundberg*, 2023 ONSC 5518 at para. 4**: In this case, the applicant brought a motion for an order that a CBV be retrained to quantify the respondent's income for support purposes. The court found that the relief sought with respect to the joint retainer of a CBV to assess the respondent's income was appropriate to provide clarity regarding his income for support purposes, which is required for a fair and accurate determination of his support obligations. The respondent's income was comprised of employment income, income from rental of real estate holdings, and corporate income from a solely hold corporation. The determination of the rental income and corporate income requires an understanding of the expenses claimed by the respondent against those income sources, and which of those may have a personal component that should be added into income.

SHAREHOLDER LOANS

What is a Shareholder Loan?

- When a corporation lends money to a shareholder it creates a debit balance – **shareholder owes the company.**
- When the shareholder advances personal funds to the corporation (such as paying business expenses from a personal account) it creates a credit balance – **the company owes the shareholder.**

Treatment of a Shareholder Loan for Equalization Purposes

- When a CBV prepares a valuation report, they typically include a summary table that sets out the fair-market value of the company along with the notional disposition costs. The report also often provides a separate summary outlining the shareholder loans owed to the business and those owed by the business.
- If a party either owes a shareholder loan to the business or is owed a shareholder loan by the business, that amount is recorded as its own line item on that party's NFP statement.
- It is treated separately from the value of the business and the notional disposition costs associated with the business, which will also be reflected on the party's NFP statement.

Shareholder Loan payable TO the business owner

- Often reported under "Part 4(f): Money Owed to You" on a party's NFP statement.
- When a shareholder loan is payable **to** the business owner, it will be recorded as a liability for the business.
- As it is a liability, the valuation report will show that the shareholder loan reduces the overall value of the business.
- When you account for the shareholder loan on a party's NFP statement, you are reflecting that the business owner is personally entitled to receive those funds, so it becomes an asset to them.

Shareholder Loan payable FROM the business owner

- Reported under "Part 5: Debts and Other Liabilities" on a party's NFP statement.
- If the business owner owes money to the business, the shareholder loan is recorded as a receivable for the business, which is an asset and increases the value of the business.
- For the business owner personally, this amount is a liability, so it must be listed as a debt on their NFP.

General Information – Shareholder Loans

- If a business owner reports a shareholder loan on their NFP—whether it is owed to the corporation or owed by the corporation, the corporate financial records should show the corresponding entry. This confirms that the shareholder loan actually exists.
- There must be clear evidence of the shareholder loan in the corporation's books and records.

- Typically, the general ledger will show the relevant transactions. Additional supporting information can be requested, such as confirmation of the transaction history showing that the funds were actually transferred.

Recent Case Law – Shareholder Loans (Property Context)

- ***Mahtani v. Mistry*, 2019 ONSC 5260, aff'd 2024 ONCA 532:**
  - The husband was employed as the president of VAMS Canada (the "corporation") throughout the marriage.
  - He owned 50% of all outstanding and issued shares in the corporation, and his sister held the other 50% of those shares.
  - The court explained that the determination of a proper equalization payment the husband owed the wife turned on multiple issues, including the valuation of the corporation and the validity of the debts claimed by the husband on the date of marriage and on the date of separation.
  - Court found that the shareholder loans that the husband claimed he was owed by the corporation on the date of separation and the date of marriage had not been proven.
  - The husband was ordered to provide ledger accounts for the business, together with documents sufficient to corroborate the actual transfer of funds from each shareholder to the company, and vice-versa to show which were repaid, but this was never done.

DOUBLE-DIPPING

What is Double-Dipping?

- Double-dipping (or "double recovery") arises in family law when one spouse seeks support from an income source derived from an asset that was previously divided or equalized.
- As established in *Boston v Boston* (2001 SCC 43), it is generally unfair to allow a payee spouse to benefit from the same asset twice - once during equalization and again as a source of income for support.
- The general rule is that double-dipping should be avoided; however, exceptions exist.

Leading Case and General Principles: *Boston v. Boston*, 2001 SCC 43

- Leading Supreme Court of Canada case establishing the general rule against double-dipping, arising in the context of a pension.
- **Facts:**
  - Husband (former Director of Education, ~$115,476/year) retained his pension (valued at $333,329) upon separation; the pension was included in equalization calculations.
  - Wife received the mortgage-free matrimonial home and other assets to offset the pension value, resulting in near-equal division.
  - Husband agreed to pay $3,200/month in spousal support.

  - Upon retirement, husband received ~$8,000/month in pension income - $5,300 from the previously equalized portion and $2,300 from the post-separation portion.
  - Wife had no employment income but had prudently invested equalization assets (worth over $493,000 at judgment).
- **Holding:**
  - The SCC held that only the unequalized portion of the pension ($2,300/month) should be used to calculate spousal support obligations, to avoid double-dipping.
  - The court recalculated and reduced spousal support, also imputing income to the wife based on returns she could reasonably have generated from her investments.
- **General Rule:**
  - Courts should focus on the portion of the payor's income and assets not previously equalized. Double-dipping should be avoided where possible.
- **Exceptions to the General Rule:**
  - (1) The payor spouse has the ability to pay; or
  - (2) The payee spouse made reasonable efforts to generate income from equalized assets but, despite those efforts, economic hardship from the marriage or its breakdown persists.
  - (3) Double-dipping may be permitted where support is based on need rather than compensation.
- **Note on Pension vs. Business/Investment Income:**
  - The SCC observed (at para 57) that pension income differs from business or investment income: a pension is a liquidating asset (drawing income depletes its capital value), whereas a business or investment can produce income without being depleted and may continue to increase in value.
  - Whether an asset increases or decreases in value or is being liquidated post-separation is not instructive to determining whether double dipping has occurred. It may be a dactor consider as part of a consideration of all circumstances but it is not a determining factor as to whether double dipping has or has not occurred.
  - When considering double dipping – we should keep in mind that the FLA preamble calls for an "*equitable settlement of the affairs of the spouses*"

<u>Pensions</u>

- Double dipping is not limited to pensions; the applicability of the general rule has been addressed in a variety of different contexts.
- Courts have consistently applied the general rule in the pension context. Cases include:
  - ***Martins v. Martins*, 2023 ONSC 7533, aff'd 2024 ONCA 532:** Court declined to permit double-dipping despite the wife's medical inability to work, as the husband had already equalized his pension and had no other income source. Affirmed on appeal.
  - ***Lorimer v. Lorimer*, 2020 ONSC 1923:** Applicant sought to terminate his spousal support obligations on account of his retirement. Court found that there had been a material change in circumstances hat warranted a variation of the order to avoid double dipping. None of the *Boston* exceptions were present. The applicant's

income was too low such that support payments would result in hardship and the respondent had failed to use equalized pension assets in an income-producing manner and had not met her self-sufficiency obligation. The applicant in contrast was found to has kept his living expenses at a reasonable level and managing his capital assets to produce a basic level of income during retirement. The court concluded that double dipping would be inequitable due to the applicant's diminished income capacity and ability to pay.

- ***Zacher v. Zacher*, 2019 ONSC 1450:** Court held that it would be unfair and unjust to require the respondent to include his pension income in assessing his spousal support obligations as most of the pension was earned prior to the date of separation and equalized. The applicant (82 years old, $800,000 in capital) had an obligation to encroach on capital to support herself; respondent had dementia and significantly less capital. Applicant neither deserved nor needed a second dip.

- Examples in case law where general rule against double dipping was not applied:
  - ***Nithiaraj v. Sellapu*, 2024 ONSC:** Despite prior equalization, spousal support payment was based on entire pension income due to the needs/hardship exception.
  - ***Want v. Gauthier*, 2021 ONSC:** Double-dipping permitted - wife in dire need, poor health, limited income; husband had ability to pay from other substantial income.
  - ***NZN v. MRN*, 2024 ONSC:** Military pension case; double-dip permitted given the payee's ongoing dire need, economic hardship, mental health struggles, and active steps toward self-sufficiency.
  - ***Meiklejohn v. Meiklejohn*, 2001 ONCA:** General rule not applied; significant portion of pension was not equalized (undervalued at time of agreement and a portion was earned post-separation and the husband's employer later "sweetened" the pension). Disagreement between the parties as to the amount of pension that was equalized and the court concluded that it could not be more than 50%. Wife's support was need-based, and she could not generate income from assets tied up in home and RRSPs.
  - ***Ellis v. Ellis*, 2010 ONSC:** Respondent brought a motion to vary a final order, seeking to reduce spousal support. Court found the vast majority of the pension had accumulated post-separation and was not formerly equalized property. Accordingly, court disregarded the double-dipping factor.

- Double dipping found to be inapplicable:
  - ***Toth v. Toth*, 2015 ONSC 1174:** Court rejected argument that spousal support was not warranted due to the equalization of a pension, and the concept of double dipping, noting that the pension was for future retirement and thus not in pay. Court explained that double-dipping would only be relevant on a future motion to change upon retirement on a full pension. General rule is not applicable when argued prior to retirement as spousal support cannot be

determined on future income.

- ***Arthur v. Arthur, 2018 ONSC 6682:*** Double dipping found to be inapplicable to CPP credits. Court found that unlike a pension, CPP credits are not subject to equalization under the FLA with section 4(2)(7) stating that unadjusted pensionable earnings under the CPP are not included in a spouse's NFP.

RRSPs/Capital Gains

- General rule against double dipping in cases dealing with RRSP withdrawals in assessing income for support purposes, as well as previously equalized capital gains in assessing spousal support.
  - ***Rapoport v. Rapoport*, 2011 ONSC 4456:** Previously equalized RRSPs excluded from income for spousal support; same approach applied to equalized capital gains.
  - ***Qaraan v. Qaraan*, 2012 ONSC 6017, aff'd 2014 ONCA 401:** Adopted *Rapoport*; equalized RRSPs and capital gains excluded from spousal support income.
  - ***Kinsella v. Mills*, 2020 ONSC 4785:** Court noted the double-dipping concern when RRSPs form part of a property settlement and are later included as income for support.
- General rule against double dipping did not apply:
  - ***Bensky v. Bensky*, 2012 ONSC:** Court declined to exclude all capital gains earned by a husband on an interim motion for spousal support, leaving the issue to be determined at trial. Court held that the applicant was entitled to interim support, and noted that it did not appear appropriate to exclude all capital gains given the respondent's consistent earnings history, and that he had realized capital gains for the past 11 years.
  - ***Krane v. Krane*, 2010 ONSC:** Case discussed consideration of income or loss from rental properties for the purposes of determining child and spousal support. Court held that the general rule did not apply to rental property capital acquired by the payor spouse post-separation, as the original equalized capital represented only a small portion of the existing rental property capital.

RSUs, RSAs, PSUs, Stock Options, and Phantom Stock

- Discussion of double dipping becomes more complex when dealing with income producing assets as a result of them being able to be perceived as assets or income.
  - ***Brennan v. Lander*, 2020 ONSC 1696:** The court described the case law as to whether RSUs and related income producing assets should be treated as property or income as being unclear. This is relevant in discussions because RSUs can be seen as an asset for equalization purposes, and income for support purposes in the year they are realized. The court concluded that previously equalized RSU income excluded from spousal support income, but included in child support income.

- ***AE v. AE*, 2021 ONSC 8189:** Court drew distinction between unvested assets (treated as property, similar to pensions) and vested assets (included in income in the year of vesting). The Boston general rule applies to the equalized portion of RSAs; subject to the same discretionary exceptions. Court made a distinction between spousal support and child support.
- ***Haley v. Haley*, 2022 BCSC 1922:** RSUs included in income for both child and spousal support where they had not been previously divided as family property. The fact that the payor chose to retain rather than sell RSUs on vesting was not relevant.
- ***Patterson v. Patterson*, 2007 CanLII 26619:** Court elected to include income from bonuses, RSAs, and stock options for years child support was payable. For spousal support, court found that in consideration of the substantial child support, there was no reason to equalize the two incomes.
- ***Tomas v. De Batz De Trenquelleon*, 2024 BCSC 180:** PSUs treated as income (not assets) because they had been considered as income during negotiations and in determining lump-sum spousal support. Court concluded that the PSUs had been included in the separation agreement as part of the respondent's income.
- ***Emmerson v. Emmerson*, 2017 ONCA 917:** Court excluded respondent's transition allowance from his employer from income as it had already been accounted for in the valuation of the payor's book of business for equalization.
- ***Marinangeli v. Marinangeli*, 2003 ONCA CanLII 27673:** Double-dipping from phantom stock income permitted where significant profit arose post-separation, payor's income had increased, and payee demonstrated need and economic hardship.
- ***Boulanger v. Hebert-Boulanger*, 2017 ONSC 482:** Unvested stock options at date of separation treated as property according to the Family Law Act and removed from assessment of income for support purposes.

Business Interests

- Boston distinguished business/investment income from pension income: a business is not a liquidating asset.
- Drawing income from a business does not deplete its value - it can continue producing income and may increase in value.
- This distinction has driven courts to generally permit double-dipping in the business context, though recent cases have begun to shift this approach.

Case Law on Double-Dipping for Business Interests

- ***Halliwell v. Halliwell*, 2017 ONCA 349:** Leading case. Court of Appeal assessed whether trial judge erred by not applying the principle against double-dipping to the appellant's business income, in consideration of the EP derived from the business. Court of appeal affirmed trial judge's rejection of the Boston rule against double dipping in the context of business income due to the fact that the assets were not liquidating assets or special assets of the nature of a pension.

- ***Wilton v. Myhr,* 2019 ONSC 77:** Case involving music royalties. Rule against double dipping was found to have no application. Royalties from a catalogue of musical work were treated as both income and an asset. The catalogue was a business asset capable of producing ongoing royalty income; equalization did not affect the composer's ability to generate future royalties.
- ***Jourabchi v. Masbough*, 2024 BCSC 1813:** The Court applied a double-dipping adjustment for spousal support in the context of shares. After paying 50% of the Ashco share value to the payee on equalization, the payor's income for spousal support was reduced proportionally to reflect only the profit share attributable to the shares he effectively retained. No such adjustment applied for child support.
- ***Abitbol v. Abitbol*, 2020 ONSC 4619:** Court noted that an equalization payment based on business value could constitute a material change in circumstances warranting reconsideration of spousal support quantum, where support was agreed before equalization was determined.
- ***PS v. MR*, 2016 ONSC 5576:** Corporate income included but dividends excluded from income to avoid double-dipping.
- ***Sne v. Sne*, 2023 ONSC 566:** One-time dividend excluded from payor's income on interim motion due to risk it had already been captured in corporate valuation.
- ***Cook v. Cook*, 2011 ONSC 5920:** Retained earnings used in business valuation for equalization could not also be treated as income (via drawings) for spousal support – Court found that would be inherently unfair. Distinction noted for dividend income from corporations where income is not reflected in the payor's tax return.
- ***Gannon v. Gannon*, 2021 ONSC 7160:** Husband raised concern that the company's pre-tax corporate income should not be attributed to him for the purposes of support if the business valuation were to include retained earnings. The court left the issue to be determined at trial, and explained that the issue should be first put to the husband's valuator to assess.

<u>The Issue of Business Valuation – Income Analysis of Double-Dipping</u>

- The fact that a business is not liquidated when income is drawn from it does not mean double-dipping cannot occur.
- Whether the same income stream is counted both in the business valuation (for equalization) and in the payor's income (for support) must be examined.
- Clear and cogent evidence must be presented as to why there is a clear double dip.
- To determine if a double-dip exists, one has to consider:
  - (i) the valuation methodology applied when valuing the business interests
  - (ii) what the value for equalization purposes represents
  - (iii) what the income being considered for inclusion in a party's income for support purposes represents

Valuation Methodologies

- ***Asset-Based Approach:***
  - Assets and liabilities are restated to realizable values.

- Appropriate for businesses where assets are the prime determinant of value (e.g., investment holding companies, small owner-operated services firms with no transferrable goodwill).
- Double-dipping concerns arising here are consistent with those for personally-held assets (e.g., capital gains realized post-separation on equalized investments).

- ***Earnings/Cash Flow-Based Approach:***
  - Future expected earnings or cash flows are estimated and discounted to valuation date using a discount rate or capitalization multiple.
  - The value reflects the present value of future income the business is expected to generate - which is precisely the income that may also be captured in the payor's income for support purposes.
  - This is where double-dipping most clearly arises.

Double-Dipping in Child Support versus Spousal Support Contexts

- Courts have found that the general rule against double-dipping does not apply to child support.
- Equalization of property is a matter between spouses - it is not intended to benefit children, while they may indirectly benefit from such payment.
- Child support is the right of the child - parents must support their children according to need and ability to pay.
- Section 16 of the Federal *Child Support Guidelines* requires income to be determined using the T1 General Form total income, adjusted per Schedule III. There is no discretion to reduce income for child support to avoid double-dipping (absent an undue hardship claim under s.10).
- As a result, a support payor may have two different incomes for support purposes - one for child support and one for spousal support.

Case Law – Child Support and Spousal Support

- ***Boutin v. Boutin*, 2023 SKCA 41:** Court of Appeal clearly confirmed that Boston's double-dipping principle applies only to spousal support, not child support. Pension income must be included in income for child support per the mandatory *Guidelines.*
- ***Jourabchi v. Masbough*, 2024 BCSC 1813:** No adjustment for double-dipping applied to child support. Husband's full profit share income used for child support; adjusted proportion used for spousal support.
- ***McConkey v. McConkey*, 2022 ONSC 4600:** Court found that double-dipping concept does not apply to child support; double-dipping analysis for spousal support left for trial.

Recent Case Law on Double-Dipping

- ***Cornale-Picone v. Picone*, 2024 ONSC 6880**:
  - Respondent equalized family law value of pension in 2022
  - he retired 4 months later and started receiving pension income at that time
  - He testified that if he had known that the Applicant would then ask for spousal support from his pension income, he would not have agreed to settle equalization in that manner.
  - The vast proportion of the Respondent's net family property consisted of the value of his pension. He has few other resources at his disposal. These factors would have been relevant if the court had been asked to consider whether the Respondent's pension interests should be paid in lump sum fashion or divided at source:
  - The Court accepted the Respondent's evidence that he would not have consented to a cash payment had he believed that the Applicant would request double recovery in the form of spousal support on the pension interest already equalized.
  - The Court was satisfied that the Applicant had a need for spousal support, but that the Applicant's need could not be determined in a vacuum without reference to the Respondent's ability to pay.
  - The Court found that the Respondent was suffering greater financial hardship than the Applicant, and that he did not have the ability to pay support to the Applicant on the basis of his full pension. He will never be able to recover financially if his spousal support obligation were to be based on this already equalized source.
  - Accordingly, the court found that this was not an appropriate case in which double-recovery was warranted.

- ***Chemilnisky v. Chemilnisky, 2024 ABKB 750***
  - Court found that there was double-dipping as the respondent had not accounted for any of her share of the applicant's pension in calculating her income, noting that the issue of double-dipping is not avoided unless both parties utilize the portion of the pension they received in the calculation of their income.
  - Accordingly the court found it appropriate to impute 5k per year to her annual income.