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Marmer Penner Inc. Newsletter

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Know Your Stones

An article in the December 2013 edition of *Money & Family Law* stuck in this author's head as it was read over the holidays. A chartered business valuator with some family law experience wrote an article about spouses who are business owners and included the following paragraph:

> "Spouses who are very wealthy normally have great financial advisors. If they don't want to share the income from investments, they can, and will, find ways to divert and hide their income-producing assets from their spouses."

This author agrees with the first statement that wealthy business persons can afford top quality financial advisors. The remainder of the paragraph is a generalization which, if followed, may lead to reckless spending looking for non-existent hidden assets. Many successful business people who are separating realize they have significant support obligations and do not jump for joy when informed of the amount. However, despite their unhappiness about having to "share income", stating that "they can, <u>and will</u> find ways to divert and hide their income-producing assets from their spouses" is no different than stating that all Canadian mayors are cracksmoking alcoholics just because we happen to have witnessed this once.

That type of attitude in matrimonial litigation will result in more non-titled spouses spending too much of their resources looking for hidden assets and unreported income when it may not exist. One of the roles of a chartered business valuator in matrimonial litigation is to advise clients when they are on a wild goose chase. Many times, we have been told that a spouse has unreported income or hidden assets but, after preliminary investigation, we see that the higher standard of living was funded by debt or the disposition of capital property. Of course, unreported income and hidden assets must be investigated, but with an eye to cost versus benefit. Such investigations are costly and should be entered into only when there is evidence of such and not just unfounded suspicion. Very often, we have heard ourselves telling clients not to pay us $50,000 to investigate a possible $20,000 issue. Matrimonial litigation is an emotional matter and the client needs the business valuator to provide unemotional, independent analysis, including where to spend the investigation dollars.

The December 2013 article gives an example of a spouse who borrowed $200,000 from a business in a year while he was also paid a $24,000 salary. Using the delay in banks clearing cheques, the business owner was able to mask that he borrowed the $200,000. We agree that unless a review of the general ledger or the bank statements is undertaken, a review of just the financial statements would not indicate this loan. The December 2014 article indicated that this loan would be uncovered "by demanding the transaction details of all transactions for all loans and advances accounts with shareholder, for the entire year." However, this may be moot as hiding this loan impacts the balance sheet but not the statement of income. We would suggest a different approach, which is to look at the aggregate earned by the business and by the shareholder as employment income from this business. If the business was not profitable, the fact that the shareholder borrowed money from it likely has no impact on his income because any amounts withdrawn from the corporation would be considered a reduction of capital. If the business was profitable however, then hiding the $200,000 loan would overstate the bank balance by the same $200,000 and likely indicate access to the pre-tax corporate income which would be included for *Guidelines* purposes. Once again, all of the income would be appropriately included and there would have been no "A-ha moment" related to uncovering the $200,000 temporary loan.

Do you want your litigation accountant to enter every case with a dose of healthy skepticism? Yes. But you also want your litigation accountant to understand that leaving no stone unturned is a very expensive approach and common sense and sound judgment in relation to cost versus benefit should be applied to identifying the relevant stones.