

2015 ONSC 235
Ontario Superior Court of Justice

Philippe v. Bertrand

2015 CarswellOnt 255, 2015 ONSC 235, [2015] W.D.F.L. 856, [2015] W.D.F.L. 885, [2015] W.D.F.L. 921, 248
A.C.W.S. (3d) 652

**Stephane Joseph Edouard Philippe, Applicant and Carmen Marie Louise
Bertrand, Respondent**

Kane J.

Heard: September 29, 2014; September 30, 2014; October 1, 2014; October 2, 2014; October 3, 2014; October 6,
2014; October 7, 2014; October 8, 2014; October 9, 2014; October 10, 2014
Judgment: January 14, 2015
Docket: FC-12-2884

Counsel: Jack E. Pantalone, for Applicant
Carmen Marie Louise Bertrand, for herself

Subject: Family; Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Family law

IV Support

IV.1 Spousal support under Divorce Act and provincial statutes

IV.1.b Entitlement

IV.1.b.iii Means of spouses

Family law

IV Support

IV.3 Child support under federal and provincial guidelines

IV.3.b Determination of award amount

IV.3.b.i General principles

Headnote

Family law --- Support — Child support under federal and provincial guidelines — Determination of award amount —
General principles

Parties began living together in 1994, were married in 2002 and separated in 2012 — Parties had one child who suffered from ADHD and needed supervision — After parties' separated, child spent alternate weeks with each parent until October 2014, when she began to reside full-time with father — Father was long-term employee with Federal Government — Mother owned and operated daycare — Father had also worked as diving instructor but he no longer did so — Mother applied for child support — Application granted — For purpose of determining support, father's income was \$120,000 per year — For purpose of determining child support, mother's income was \$36,000 per year — Father was to pay child support of \$674 per month if child resided equally with each parent — There was no child support payable to father while child resided only with

him.

Family law --- Support — Spousal support under Divorce Act and provincial statutes — Entitlement — Means of spouses

Parties began living together in 1994, were married in 2002 and separated in 2012 — Parties had one child who suffered from ADHD and needed supervision — After parties' separated child spent alternate weeks with each parent until October 2014, when she began to reside full-time with husband — Husband was long-term employee with Federal Government — Wife owned and operated daycare — Husband had also worked as diving instructor but no longer did so — Wife applied for spousal support — Application granted — For purpose of determining support, husband's income was \$120,000 per year — For purpose of determining support, wife's income was \$40,340 per year — Circumstances including health issues of child during first few years and move at husband's request impaired wife's education and level of income since separation — Operation of daycare had not provided wife with financial security for single parent of one child 50 percent of time — Husband acknowledged that wife was entitled to spousal support — Under current circumstance of child residing solely with husband, spousal support should be \$1,300 per month — If parties resumed equal residential time of child then spousal support should be \$1,650 per month — Husband owed arrears of spousal support of \$16,310.

Family law --- Division of family property — Entitlement — General principles

Parties began living together in 1994, were married in 2002 and separated in 2012 — Parties had one child who suffered from ADHD and needed supervision — After separation, child spent alternate weeks with each parent until October 2014, when she began to reside full-time with husband — Husband was long-term employee with Federal Government — Wife owned and operated daycare — Husband had also worked as diving instructor but he no longer did so — Wife applied for division of family property — Application granted — Parties' assets were set out and valued — Husband owed wife equalization payment of \$98,404.29.

Table of Authorities

Cases considered by *Kane J.*:

MacDonald v. MacDonald (1997), 1997 CarswellOnt 3911, 33 R.F.L. (4th) 75, 109 O.A.C. 19 (Ont. C.A.) — considered

Moge v. Moge (1992), [1993] R.D.F. 168, [1993] 1 W.W.R. 481, 99 D.L.R. (4th) 456, [1992] 3 S.C.R. 813, 81 Man. R. (2d) 161, 30 W.A.C. 161, 43 R.F.L. (3d) 345, 145 N.R. 1, 1992 CarswellMan 143, 1992 CarswellMan 222 (S.C.C.) — referred to

Statutes considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

s. 15(7) — considered

s. 17(7) — considered

s. 17(7)(a) — considered

s. 17(7)(c) — considered

Family Law Act, R.S.O. 1990, c. F.3

Generally — referred to

s. 4(2) — referred to

s. 5(6)(h) — considered

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)
Generally — referred to

Regulations considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)
Federal Child Support Guidelines, SOR/97-175

Generally — referred to

s. 7 — considered

APPLICATION by wife for spousal support, child support and division of family assets.

Kane J.:

1 The following are relevant dates regarding the parties:

(a) Start Living Together:	June, 1994
(b) Child's DOB:	November 24, 2000
(c) Married:	October 11, 2002
(d) Separated:	July 1, 2012

2 The couple's 14 year old daughter has ADHD, is forgetful and needs supervision after school and on weekends. This child spent alternate weeks with each parent until the middle of October, 2014, when she began to reside full-time with her father.

3 The Respondent testified that she has been diagnosed with ADHD and receives counseling in relation thereto.

4 The parties currently are in their early forties.

5 At the start of trial the Respondent indicated she was:

- (a) Waiving her claim to arrears of spousal support,
- (b) Waiving her claim to arrears of s. 7 extraordinary expenses,
- (c) Claiming arrears of child support, and
- (d) Claiming child and periodic spousal support.

6 During the trial, the Respondent indicated she changed her position and was claiming arrears of spousal support but waiving any claim for arrears of child support as the Applicant was assuming all reasonable s. 7 expenses.

7 The orders sought on the financial issues by the parties at trial are set forth in exhibit A for the Applicant and exhibit D for the Respondent.

8 The Applicant agrees to pay *Guideline* support to December, 2013 based on his line 150 income of \$117,500 per annum. He submits that the setoff amount for child support is \$616/month based on the one week about schedule. To date he has been paying \$1,020/month child support plus 80% of s. 7 expenses. During trial he agreed to pay all reasonable s. 7 expenses.

9 The Applicant submits the Respondent is understating her actual income and overstating her expenses.

10 The Applicant submits that he is liable for spousal support in the amount of \$1,000 per month for a further period of 8.5 years. He acknowledges spousal support arrears for the period July, 2012 until September, 2014, at this level, totals \$6,411.

11 The Respondent requests the court to impute an annual income to the Applicant in the amount of \$140,000 in calculation of spousal and child support.

12 The Respondent claims child and spousal support. The Applicant acknowledges legal responsibility to pay the same, but disagrees as to the amount.

13 The parties dispute each other's past and present income levels which must therefore be determined.

14 As to equalization of net family property, the Applicant submits he is required to pay the Respondent \$93,600. The Respondent submits that she is entitled to an equalization payment of \$240,000.

Applicant's Income

15 The Applicant is a long-term employee with the Federal Government.

16 The Applicant was a diving instructor on Saturdays for 3-4 years. That activity earned him a few hundred dollars per year. He has stopped instructing. This amounts to little income. Termination as an instructor and the small amount involved results in this court's exclusion of this previous revenue source in determining the Applicant's current level of income for support purposes.

17 The Applicant's income tax returns disclose the following information:

<i>Collective Agreement</i>	<i>Employment Income</i>	<i>RRSP Income</i>	<i>Overtime</i>	<i>Dive/Other</i>	<i>Total/ Line 150</i>
—					
2011-\$105,978	\$115,060	\$12,500		\$600	\$128,160
2012-\$107,833	\$121,021	\$21,726		\$1,775	\$144,522
2013-\$109,451	\$132,242	Nil		\$100	\$132,342
2014-\$111,641	\$112,400	Nil		\$5,437	Nil

18 Given the above fluctuation, although limited in amount, this court concludes that the appropriate line 150 income level for the Applicant in determining support should be \$120,000 per annum. Historical overtime pay remains likely in the future.

19 There is no evidentiary basis to impute income of \$140,000 to the Applicant.

Respondent's Income

20 The calculation of the Respondent's income is very problematic. Her income is understated. Her expenses are overstated. She appears to have closed her business upon the conclusion of trial which may result in new proceedings.

21 Historically, the Respondent worked as a dental hygienist. This changed when she opened and began operating a daycare center from her home in 2010.

22 This couple lived in Gatineau, Québec until 2005 when they moved to Ottawa at the request of the Applicant. A similar request by the Applicant to move to Ottawa in 1998 was refused by the Respondent as her employment as a dental hygienist involved working in Buckingham, Maniwaki and Aylmer, Québec and a move to Ottawa would require to travel farther.

23 Upon moving to Ottawa in 2005, the Respondent set new goals. She obtained a certificate in teaching from the University of Ottawa at night/on the weekend and hoped to get full-time employment as a teacher. The amount of work as dental hygienist she was able to obtain was less than she had hoped for; was part time and involved evening and work on Saturday.

24 The Respondent in 2010 proposed opening a daycare so that she could be at home to look after her daughter after school; work during the day from Monday to Friday and avoid the night and weekend work and the driving to multiple locations in Quebec. The Applicant agreed. The daycare was opened midway through 2010.

25 The Applicant requests this court to impute annual income to Ms. Bertrand in the amount of \$44,000.

26 Based on her income tax returns and Notices of Assessment, the Respondent's income was:

<i>Year</i>	<i>Respondent's Employment Income</i>
2003	\$35,218
2004	\$36,534
2005	\$29,664
2006	\$39,643
2007	\$28,026
2008	\$32,451
2009	\$38,038
2010	\$10,588
2011	\$17,811
2012	\$6,983 (Notice of Assessment)
2013	\$10,585 (Notice of Assessment)

27 The chart below records gross and net income earned from the daycare and declared by the Respondent on her income tax returns for 2011 to 2013 and a projection for 2014.

2011		2012		2013		2014	
Gross Income Less		Gross Income Less		Gross Income Less		Gross Income Less	
Business and House		Business and House		Business and House		Business and House	
Expenses		Expenses		Expenses		Expenses	
Gross:	\$48,273	Gross:	\$46,530	Gross:	\$28,872	Gross to trial 12 months (projected)	
							\$45,454
Less:		Less:		Less:		Less:	
Bus. Exp.	- \$22,662	Bus. Exp.	-\$26,977	Bus. Exp.	-\$16,299	Bus. Exp.	- \$16,299
House Exp.	- \$7,799	House Exp.	-\$10,219	House Exp.	-\$9,077	House Exp.	- \$9,077
	\$30,461		\$37,196		\$25,376		\$25,376
Net Income	\$17,812	Net Income	\$9,334	Net Income	\$ 3,495	Net Income	\$20,078
		Notice of Assessment		Notice of Assessment		(Applicant's projection)	
		Total Rev.	\$16,805	Total Revenue			
		Net Revenue	\$6,983	(including spousal support of \$8,700) =			\$15,641
						(Respondent's projection)	
					\$10,795		
				Net Revenue	\$10,585		

28 Several things are to be noted to the above 2011 to 2014 figures.

(a) The daycare was open in the fall of 2010. Some daycare equipment expense would be incurred before 2011.

(b) The annual gross revenue is constant for 2011 and 2012 but dramatically decreases for an unexplained reason in 2013. The actual gross revenue for 9 months in 2014 of \$34,091, exceeds the annual gross income in 2013.

(c) Expenses claimed in 2011 to 2013 are 62.5%, 80.4% and 89.3% of annual gross revenue.

(d) Expenses claimed consist of

(i) Direct operating costs of the daycare, such as food and equipment, plus

(ii) Expenses claimed for the use of the Respondent's home where she and her daughter live.

(e) Use of home expenses includes mortgage interest, municipal taxes, heating, electricity, home insurance and maintenance of the property.

(f) The Respondent immediately following the trial moved from the matrimonial home and may have closed the daycare.

Ms. Parent and The Daycare

29 Based on the evidence, the court concludes that the income of the Respondent may not be determined without consideration of the income of Ms. Parent.

30 Ms. Parent performed work on two levels in relation to the Respondent. Initially, she was hired by Ms. Bertrand to do some painting in the parties' home. She was later hired or paid by Ms. Bertrand to perform certain functions around the home such as grass cutting.

31 More directly relevant is the role that Ms. Parent performed in relation to the daycare. Ms. Parent signed contracts with some of the parents whose children were cared for in the daycare. Ms. Parent declared income earned and expenses incurred at the daycare for tax purposes.

32 Ms. Bertrand prepared income tax returns which were signed and filed by Ms. Parent.

33 The income tax returns of Ms. Bertrand and her exhibit 39, tab 10, cross-referenced to tax information provided by Ms. Parent, indicate the following income and expenses of the daycare in 2010 and 2011:

Ms. Bertrand's Gross Revenue	General Expenses	House Expenses	Ms. Bertrand's Net Income	Ms. Parent's Gross Revenue
2010				
(from September to December, 2010)				
\$7,778	\$18,597	\$6,439 (34.6%)	(\$10,819)	Nil
2011				
(5 to 7 kids — Exhibit 38)				
\$48,273	\$22,662	\$7,799 (34.4%)	\$17,811	\$12,077

34 Ms. Parent did not start working at the daycare center until April 1, 2011.

35 Ms. Parent's tax returns show her as an educational aide at Ms. Bertrand's daycare and contracting for two children (Lewis and Benjamin).

36 Ms. Parent earned an additional \$8,015 working for Dr. MacSween. The majority of this was performed during weekdays.

2012

Ms. Bertrand's Gross Revenue	General Expenses	House Expenses	Ms. Bertrand's Net Income	Ms. Parent's Gross Revenue
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2012				
\$46,530	\$26,977	\$10,219 (52.3%)	\$9,333	\$31,283(4)

37 Ms. Parent's tax returns include her issuance of receipts to parents totalling \$31,279 for four children (Lewis, Benjamin, Joshua and Easton). She also declared an additional \$1,202 of painting revenue.

38 Ms. Parent in 2012 also earned \$2,990 working for Dr. MacSween. The majority of this, she stated in chief, was worked during weekdays. In cross-examination, she corrected this and stated that the majority of this was performed on Saturdays and nights.

2013

<i>Ms. Bertrand's Gross Revenue</i>	<i>General Expenses</i>	<i>House Expenses</i>	<i>Ms. Bertrand's Net Income</i>	<i>Ms. Parent's Gross Revenue</i>
2013				
\$28,872	\$16,299	\$9,077 (55.69%)	\$12,572	\$20,771(4)

39 In 2013, Ms. Parent earned \$4,596 working with Dr. MacSween.

40 Ms. Parent's income tax information records her receipt of payment from parents of four children (Benjamin, Joshua, Olivier and Maeva) totalling \$20,771, as well as revenue for painting totalling \$1,486 and \$937.

41 Ms. Parent's total 2013 gross income of \$27,793 almost equals the \$28,872 gross income declared that year by the Respondent. Ms. Parent's gross income of \$20,771, from the daycare, is to be compared to the gross income of \$28,872 declared by the Respondent from the same daycare.

2014

42 For 2014, the Respondent projects \$34,091 gross daycare revenue received to September 30, 2014 plus an additional anticipated \$5,890 to December 31, for a total annual gross of \$39,981. She estimates her 2014 net from that revenue will be \$15,641.

43 The Respondent calculates she has operated the daycare at a loss since 2010. (Exhibit 39 T-10).

44 Ms. Parent testified that:

- (a) She signed contracts with the parents to care for their children identified above.
- (b) The money paid by the parents in the contracts with Ms. Parent is paid to her by cheque which she deposits in her bank account. Ms. Parent testified that she does not give any of those payments to Ms. Bertrand.
- (c) Ms. Parent's tasks include helping to look after the children, working around the home, cutting grass, shopping for the daycare and for things needed by Ms. Bertrand and her daughter, going to pick up supplies and transporting Elizabeth to school on occasion.
- (d) According to the contracts signed by the parents, none of which were produced, Ms. Bertrand is the person primarily responsible for the children, while Ms. Parent is secondarily responsible.
- (e) The daycare parents know that Ms. Parent is to look after the children when Ms. Bertrand is not there and to assist when Ms. Bertrand is present.
- (f) Ms. Parent testified that she has two children to care for while Ms. Bertrand has three children to care for.
- (g) Ms. Bertrand does Ms. Parent's tax returns. Ms. Parent really does not understand the contents or line items in those returns.

45 Ms. Parent and Ms. Bertrand testified that they monthly alternate food preparation for the daycare children. During her month, Ms. Parent prepares food at her home for the children and brings it to the daycare. Both women testified Ms. Bertrand does the same the following month. The evidence was not clear who pays for the cost of the food prepared every second month by Ms. Parent.

46 None of the daycare contracts with parents were produced by Ms. Parent or Ms. Bertrand.

47 It was clear from their testimony that Ms. Bertrand is fully in charge of and makes the decisions regarding the daycare and prepares each of their income tax returns. Ms. Bertrand was very assertive and outspoken in her testimony and conduct of her case. Ms. Parent was exactly the opposite.

48 In cross-examining Ms. Parent, Ms. Bertrand alluded to sitting with Ms. Parent around the kitchen table during this trial on the evening of October 8, 2014, and preparing a draft of Ms. Parent's 2011, 2012 and 2013 tax returns which were then brought to court on October 9, 2014 and introduced as exhibit 49 (a), (b) and (c). Ms. Parent did not have access to her original copy of such returns as filed.

49 Ms. Parent testified she deducts expenses related to her painting, sewing and the daycare. One annual global expense total is listed in each draft recreation of Ms. Parent's tax returns prepared by Ms. Bertrand with Ms. Parent on the night of October 8, 2014.

50 The total annual expenses deducted in these three income tax returns for Ms. Parent are:

- (a) 2011 - \$4,778.74 (2 jobs),
- (b) 2012 - \$20,760.42 (2 jobs), and
- (c) 2013 - \$21,859.59 (2 jobs).

51 These specific expense totals do not come from memory. This detail was available on October 8, 2014 before Ms. Parent testified and is not contained in the CRA's notices of assessment. This information therefore was available despite Ms. Parent testifying that computer problems prevented her accessing her tax information and daycare expense deductions claimed for these three years of tax returns.

52 Ms. Parent's income tax materials, exhibit 46, indicate her daycare contracts for the children she cared for in 2011, 2012 and 2013. The second job referred therein to was either as a receptionist/dental hygienist assistant in a dentist office, where there should be little if any deductible employment related expenses.

53 The painting work by Ms. Parent would involve expenses, however the cost of paint is normally charged in addition to labour and may therefore be paid by the customer. The gross revenue recorded for painting work is small, consisting of \$789; \$1,377 and \$1,486 in 2011, 2012 and 2013 respectively. Painting expenses accordingly should not be high given these low revenue figures.

54 The specific expense totals were recorded and available on October 8, 2014. Despite the summons requiring Ms. Parent to produce these three years of tax returns, despite Ms. Bertrand and Ms. Parent jointly completing draft returns, exhibit 49, on October 8, 2014; the breakdown of such expenses have not been produced.

55 The large amount of job related expenses claimed by Ms. Parent must therefore relate largely to daycare expenses, about which she testified that every second month, she prepares and provides the food for a month for all children at the daycare.

56 Presuming that 50% in 2011 and 80% in 2012 and 2013 of the expenses claimed by Ms. Parent are daycare expenses, those combined with the daycare expenses claimed by Ms. Bertrand, are high, compared to their combined gross daycare revenue:

<i>Combined Gross Revenue of Ms. Bertrand and Ms. Parent</i>	<i>Combined Expenses Claimed of Ms. Bertrand and Ms. Parent</i>
(a) 2011 \$54.1K (\$48.3K + \$5.8K)	\$34.4K (\$30.4K + 4K) (63.6%)
(b) 2012 \$77.9K (\$46.6 + \$31.3K)	\$46.5K (\$37K + \$9.5K) (59.69%)
(c) 2013 \$50.6K (\$28.9 + \$21.7K)	\$33.2K (\$25.4K + \$7.8K) (65.6%)

57 These combined expense totals are surprising high as the alleged maximum number of children cared for at any time, according to Ms. Bertrand, did not exceed five.

58 Exhibit 38 is Ms. Bertrand's summary of the children cared for throughout 2011. For 2011, Ms. Bertrand lists the names of:

(a) Five children cared for at the beginning and spring period of the year, including the amount of revenue from each of these children.

(b) Seven children cared for during the period from late spring to December and the revenue for each child, except for three children who are identified as being by sub-contract. Two of those sub-contract children identified are Lewis and Benjamin, the children Ms. Parent testified she signed parental contracts for. There was no evidence of any sub-contractors other than Ms. Parent.

59 For the year 2012, Ms. Bertrand's calculations in exhibit 39-12, list the names of 18 children who spent varying amounts of time at the daycare. The list includes Easton, Joshua, Benjamin, Lewis and Maeva with little or no revenue attributed to them by Ms. Bertrand. Ms. Bertrand records gross annual revenue for the other children she cared for was \$46,530.

60 For the year 2013, Ms. Bertrand records in exhibit 39-11, the names of 13 children for varying periods at the daycare, including Benjamin, Joshua, Olivier and Maeva who Ms. Parent records contracting for, and for whom Ms. Bertrand records receiving none or very little revenue.

61 Ms. Bertrand in total, records gross annual revenue of \$28,872 in 2013. Ms. Bertrand testified that this litigation led to a decrease in her revenue in 2013 and 2014.

62 Exhibit 39-11 records 2014 revenues to October 30, 2014 total \$34,091, and the names of nine children.

63 If Ms. Bertrand's testimony is correct that, independent of the children Ms. Parent contracted for, she cared for a maximum of four children per year, the food cost of these four children appears to be very high.

64 Ms. Bertrand testified this food cost includes one meal per day for herself and Ms. Parent. Ms. Parent stated food costs do not include one meal per day for herself.

65 As to the children, Ms. Bertrand testified food costs are for one meal per day/child, plus snacks for the children.

66 Daycare according to Ms. Bertrand, consists of 245 days/year. That, times four children, results in 980 child food units/year. Ms. Bertrand claimed her gross food costs, and therefore the daily child food unit cost, were as follows:

<i>Year</i>	<i>Total Food Cost Declared</i>	<i>Daily Child Food Cost</i>
2011	\$10,360	\$10.57
2012	\$11,089	\$11.32
2013	\$13,362	\$13.90

67 It is unlikely that feeding a 3 or 7 year old child, one home cooked meal per day, plus a snack, averages a daily cost of \$14.00.

68 Ms. Parent testified she prepares and brings food for all the children one-half of the year, that she has fewer children than Ms. Bertrand and that she pays none of the revenue she receives for her children to Ms. Bertrand. If the above cost for the four children cared for by Ms. Bertrand in fact are food cost for only every second month, the above per child unit food costs doubles. That produces an inaccurate figure for daily food costs for a child.

69 The above annual food cost claimed by Ms. Bertrand appears to exceed the cost of food for the children only.

70 What is surprising is the evidence of these two caregivers that Ms. Parent pays nothing to Ms. Bertrand for the right to care for "her children" at this daycare. The gross annual revenue declared by Ms. Parent, comparatively; is substantial in 2012 and even more so in 2013. Other than attending as required by this litigation, Ms. Bertrand stated she is present in the daycare every day. Ms. Bertrand testified it is her home and she pays 100% of all of its operating costs and 50% of her home

use expenses. Despite that, Ms. Parent testifies she shares none of the parental revenue she receives with Ms. Bertrand.

71 Ms. Bertrand and Ms. Parent agree that the former is fully in charge of this daycare, the daycare facilities are exclusively in Ms. Bertrand's home. Ms. Bertrand does all the marketing to attract clients and apparently is the primary daycare provider for all of the children in the daycare.

72 Both ladies testified that Ms. Bertrand pays cash to Ms. Parent for any out-of-pocket expenses the latter incurs in relation to this daycare.

73 The above division of revenue and expenses creates doubt as to the amount of daycare revenue and expenses declared by Ms. Bertrand and suggests her actual gross and net annual income is higher than declared in her income tax returns.

74 It appears that Ms. Bertrand is dividing daycare revenue and expenses between herself and Ms. Parent in order to:

- (a) reduce her income tax, and
- (b) maximize her entitlement for child and spousal support.

Business USE of Home Expenses

75 The Respondent in her income tax returns includes a portion of her house expenses which reduce her gross income for tax purposes.

2010

Total House Area: 3,750	Work Space Area: 1,720	Business Portion: 45.9%
Total House Expenses: \$14,030	Amount Claimed: \$6,439	45.9%

2011

Total House Expenses: \$16,991	Amount Claimed: \$7,799	45.9%
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2012

Total House Expenses: \$19,538	Amount Claimed: \$10,219	52.3%
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2013

Total House Area: 2,550	Work Space Area: 1,275	Business Portion: 50%
Total House Expenses: \$18,154	Amount Claimed: \$9,077	50%

Daycare Food Costs

76 The Respondent's Income Tax Returns and Exhibits 14, 35 and 39 list:

2010	Food Costs: \$5,829	Claimed: Nil
2011	Food Costs: \$10,360 (5 children only)	Claimed: \$5,180 (50%)
2012	Food Costs: \$11,089 (partial)	Claimed: Unknown
2013	Food Costs: \$13,631	Claimed: \$6,815 (50%)

Daycare Income

245 DAYS/YEAR = 49 WEEKS (Respondent's tax returns)

2013 Expenses Claimed

77 The 2013 expenses claimed are:

- (a) Advertising \$787
- (b) Meals \$6,815 (50%)
- (c) Insurance \$194
- (d) Office expenses \$654
- (e) Supplies \$2,987
- (f) Maintenance and repairs \$686
- (g) Motor vehicle expenses \$2,308
- (h) Other \$1,445

Total expenses are \$15,876

78 The Respondent in addition, claimed \$9,077 deductions for expenses related to the use of her home from gross income. The total of these direct and home related expenses resulted in a 2013 net income of \$3,495.

79 The 2013 home related expenses include:

- (a) House insurance \$1,671
- (b) Heating \$1,364
- (c) Electricity \$2,320
- (d) Maintenance \$1,138
- (e) Mortgage interest \$4,067
- (f) Property taxes \$5,141
- (g) Telephone/cable/internet water and sewer \$ 2,449

80 The 2013 house related expenses total \$18,150 of which 50% is claimed against daycare revenue, namely \$9,075.

81 In comparison, the total 2011 expenses were \$34,047, versus \$48,247 income, resulting in a net income of \$14,173.

82 The total 2013 expenses of \$15,876, plus 50% of home business expenses of \$9,075, total \$24,951. This is to be compared to declared income of \$28,872 and results in a net revenue of \$3,921.

83 Clearly, the CRA's treatment of income and expenses to calculate line 150 net income is relevant and must be considered.

84 Valid expenses under the *Income Tax Act* to determine what portion of earned income is subject to taxation, is not necessarily equivalent to what a spouse's income is for determining their income level and need for spousal support.

85 A spouse working from home and entitled under the *Income Tax Act* to deduct, in this case 50% of the cost of things like mortgage interest, insurance, taxes, heating, electricity, telephone and cable; places that spouse at a material advantage to the other spouse who, like most Canadians, work in their employer's office and are unable to deduct such expenses from their revenue. This Applicant can claim none of such expenses from his income. This directly impacts spousal and child support entitlement and obligation.

86 The above distinction resulting from legislation aimed at calculating income tax liability must be considered and adjusted, where appropriate, to determine what comparable incomes should be considered in determination of capacity and liability for support under the Divorce or *Family Law Act*. To not do so in this case would be inequitable. Ms. Bertrand would not have the same "home use expenses" in 2013 if she worked as before in a dental office.

87 The Respondent is correct that some of these home expenses are higher because of the operation of the daycare. House insurance, house maintenance heating and electricity will be slightly higher by an estimated \$400, \$600, \$300 and \$500 respectively. The other expenses are the same despite the daycare.

88 On balance, I attribute this category of expenses in 2013 to be 20% higher because of the daycare operation. Using that factor, the Respondent's 2013 net income should increase by the remaining 90% of the \$9,077 income tax deduction, namely \$8,169, in the calculation of support. The Applicant's submission that all use of home expenses be added back is not correct.

89 Ms. Bertrand at the opening of trial and in argument conceded that her income for the issues of spousal and child support, should be \$30,000. She later submitted it should be \$20,000, notwithstanding the lower net income reported in her annual income tax returns for the years 2011 to 2013 and her exhibit 39, tab 10 calculations, all of which show net income below \$30,000 and \$20,000.

90 The court determines for the above reasons that there is some income splitting with Ms. Parent and adjustments are needed for home use expenses and daycare costs.

91 Imputing income of \$44,000 to the Respondent as submitted by the Applicant is not accurate.

92 Based on Ms. Parent's role as an assistant, the fact that she and the Respondent declare no sharing of income despite Ms. Parent's attendance to care for up to four children, this court, as to the issues between the parties, attributes a net income to Ms. Parent of \$17,000 from the daycare. This increases the Respondent's income of between \$4,000 to \$14,000, in the years 2012 and 2013.

93 This court imputes gross self-employment income from the daycare to the Respondent for 2014 at \$55,000 to calculate net income support. This is \$10,000 above the projected \$45,466 using the nine months actual of \$34,091.

94 Supplies of \$2,987 are reduced to \$2,000 given the allocation of children between the caregivers and Ms. Parent retaining all revenue paid to her.

95 A vehicle is required on occasion. The portion of that cost is reduced to \$1,000.

96 The sum of \$7/day per child for one meal, plus a snack, is very reasonable.

97 The court makes the following adjustments to the Respondent's income level in 2014 for support purposes:

<i>Respondent's 2014 Daycare Income and Expenses</i>		
Gross Income	\$55,000	
<i>Business Expenses</i>	<i>Respondent's Position</i>	<i>Court's Decision</i>
-Meals for 4 daycare children (\$7/day × 4 children/245 days)	\$6,815	\$6,860
-Advertising	\$787	\$787
-Insurance	\$194	\$194
-Office Expense	\$654	\$654
-Supplies	\$2,987	\$2,000
-Maintenance and Repair	\$686	\$686
-Motor Vehicle	\$2,308	\$1,000
-Capital Cost Allowance	\$379	\$164
-Other Expense	\$1,485	\$500

Sub Total	\$16,299	\$12,845
	50% of Use of Home Expense	
	\$9,077	(20%) \$1,815
Total	\$25,376	\$14,660
Self-Employed Net Income	•	\$40,340

Spousal Support

98 The Respondent seeks mid-point spousal support in the amount of \$2,041 per month for a minimum of 13 years and retroactive at that level to the date of separation, less amounts paid to date.

99 Circumstances, including health issues of the daughter during the first two or three years after birth and the move from Gatineau to Ottawa at the Applicant's request with resulting travel time required to continue working in Quebec, impaired the Respondent's education and her level of income since separation. Her operation of the daycare has not provided the Respondent with financial security for a single parent of one child fifty percent of the time.

100 The support objectives of the *Divorce Act*, 1985, are contained in ss. 15(7) and 17(7).

101 Where a former spouse suffers continuing economic disadvantages because of the marriage and its dissolution, while the other spouse reaps economic advantages, compensatory spousal support requires long-term support or an alternative settlement.

102 The judge's task under s. 17(7) of the *Divorce Act*, 1985, is to make an order providing compensation for marital contributions and sacrifices, allowing for financial consequences of looking after children of the marriage, relieving against need induced by the separation, and, to the extent it may be "practicable," promoting the economic self-sufficiency of each spouse.

103 The question under s. 17(7)(a) is whether the spouse was disadvantaged or gained advantages from the marriage, as a matter of fact and under s. 17(7)(c), whether the marriage breakdown in fact led to economic hardship for one of the spouses.

104 The starting point in determining whether economic hardship arises from marriage breakdown should be a comparison of the spouse's actual situation before and after the breakdown. Evidence of the spouse's respective contributions and gains from the marriage is necessary under s. 17(7)(c). See: *Moge v. Moge*, [1992] 3 S.C.R. 813 (S.C.C.).

105 *MacDonald v. MacDonald* (1997), 109 O.A.C. 19 (Ont. C.A.) considers the issue of unconscionable conduct which must be harsh and shocking to the conscience. In order to apply the provisions of s.5 (6)(h), the test of unconscionability must first be met.

106 The Applicant in the past was addicted to alcohol but nonetheless contributed significantly through his labour and employment income to improvements to the matrimonial home and the financial support of the family. The test of unconscionability was not established on the facts in this case.

107 Spousal support entitlement, as acknowledged by the Applicant, has been established.

108 The Applicant's proposal to pay a lump sum payment is not appropriate given the current financial state of the Respondent.

109 DIVORCEmate calculations, Schedule A attached hereto, indicate a low, high and medium spousal support of \$1,269, \$1,673 and \$2,090 with the child residing equally with each parent. With the child residing exclusively with this father, the mid-range spousal support is \$1,655, but that includes the Respondent paying child support to the father in the amount of \$363 per month.

110 The Respondent announced in a note on or about October 11, 2014, that she was vacating the family home, would not disclose where she was living and that the daughter was to reside with her father only until "next spring".

111 This announcement prompted an emergency motion and an interim order to amend the final order granted at the opening of trial by which the child is to reside equally with each parent and for arrangements to complete the sale procedure of the matrimonial home. A variation interim order was made granting interim custody to the father, suspending his payment

of child support and setting terms as to the sale of the matrimonial home.

112 The Respondent, although served, did not respond or attend this motion, apparently because she was “updating her CV”, this suggesting closure of the daycare.

113 The father did not seek an order of interim child support from the mother. That will be considered however in the spousal support ordered.

114 Spousal support payable shall be:

(a) \$1,650 per month ongoing and since July 1, 2012,

(b) Under the current circumstances of the child residing solely with her father, spousal support shall be \$1,300 per month, commencing October 1, 2014, as the Respondent is paying no offset child support to the father, and

(c) If the parties resume equal residential time with the child as provided in the final order granted at the commencement of trial, spousal support shall be \$1,650 monthly, to commence on the month following the child living equal time with each parent.

115 Spousal support shall be adjusted upon a material variation occurring. The parties shall provide one another by June 1 annually, with a copy of their full income tax return including enclosures and their most recent Notice of Assessment.

116 Spousal support has been paid since July, 2012. Spousal support continues for a further nine years, terminating September 30, 2023.

Spousal Support Arrears

117 Spousal support has been paid since separation at the rate of:

(a) \$500.00 per month from July 1, 2012, to September 30, 2013

(b) \$1,400 pursuant to an interim order commencing October 1, 2013, to January 30, 2015

118 The average of the Applicant’s line 150 income for 2012 to 2014 is \$121,600.

119 Using \$120,000 per annum income for the Applicant and \$40,340 for the Respondent, the arrears of spousal support, based on \$1,650/month for the period July 1, 2012 to September 30, 2014, and \$1,300 from October 1, 2014 to January 30, 2015, totals \$19,850 (\$49,750 less \$29,900 as per Schedule C.)

Child Support

120 For support purposes, the child resided:

(a) With the mother — July 1, 2012 until December 31, 2013;

(b) With the father — January 1, 2014 to February 28, 2014;

(c) Alternating one week with each parent — March 1, 2014 to September 30, 2014; and

(d) With the father — October 1, 2014 to January 31, 2015.

121 Child support payable for the period July 1, 2012 to January 31, 2015 is as follows:

(a) \$1,037 by the father when the child lived with the mother (18 months);

(b) \$363 by the mother when the child lived with the father (6 months);

(c) \$674 per month offset by the father, when the child resided equally with each parent (9 months);

(d) Given the present above offset to spousal support, no child support is payable to the Applicant while the child resides with the Applicant.

122 The Applicant paid the Respondent child support of \$1,020 per month from July 1, 2012 until October 31, 2014, totalling \$28,560.

123 The Respondent waived any claim for arrears of child support as the father agreed to pay all future reasonable s. 7 expenses. Accordingly, there will be no order for child support arrears.

124 The result as per Schedule C, is that the Applicant overpaid child support by \$5,902.

125 Offsetting the Applicant's liability for arrears of spousal support against his overpayment of child support, he owes a reduced spousal support of \$13,948 which will be paid from his share of the net sale proceeds of the matrimonial home.

Net Family Property and Equalization

126 The Applicant proposes a net equalization payment to the Respondent of \$8,681. He calculates the equalization payment to be approximately \$97,000. He adds to that, \$91,000 lump sum support and retroactive spousal support of \$2,200, for a total of \$190,475. He then deducts his one-half interest in the matrimonial home to be transferred to the Respondent, or \$181,800, for a net equalization payment of \$8,681.

127 Schedule B is the court's determination of the appropriate amounts for the calculation of the parties' net family property ("NFP") and the resulting equalization payable ("EP") by Mr. Philippe to Ms. Bertrand.

128 The parties disagreed in the calculation of the NFP and the resulting EP. They dispute the existence of and the value of certain assets on relevant dates. They dispute the existence of and the value of certain assets and debts on the relevant dates.

129 In her work sheets Ms. Bertrand claims an EP of \$241,909, plus \$130,000. In her written submissions, Ms. Bertrand claims an EP of \$240,000.

130 Mr. Philippe submits he owes an EP of \$93,654.

131 The entries by Ms. Bertrand in her NFP statements or worksheets, exhibits, 32 and 42, tab 50, contain errors such as:

(a) Duplication, such as adding \$130,000 to the contents of the Applicant's bank accounts to calculate the NFP and EP and then claiming that same addition of \$130,000 in addition to the EP payable by the Applicant, and

(b) Including her estimate of what she considers are necessary repairs to the matrimonial home which is to be sold with net proceeds to be divided.

132 The following are reasons for the court's determinations on disputed items. The numbers referred to correspond to those appearing on Schedule B.

Part 4(a) — Land

133 The parties used the same value of and division as to the matrimonial home.

Part 4(b) — Household Contents and Vehicle(s)

134 The Applicant's value for the list of his items from the home seems low and has been increased. The Respondent's estimate of value is inaccurate considering the quantity and list of purchase prices and dates thereof in exhibit 41, tab 41.

135 The Applicant's value of his car is a bit low given the average value of \$21, 862 and the Respondent's evidence as to "black book" value. His value of the Respondent's car at \$6,500 exceeds his "black book" evidence of \$6,200.

136 As to diving equipment, the evidence, including the lower value thereof assigned by the Respondent, supports this figure.

137 The Applicant's value for tools is low given the number of power tools and the quantity of tools overall which could expect to be popular items in a garage sale. The Respondent's estimate of market value for the snow blower and grass cutters is too low.

138 The parties agree the boat and motor was sold in August, 2012. The court accepts the proceeds thereof were divided equally.

139 The court adjusted electronics as a lot of these remained with the Respondent and her evidence as to value is unreasonably low.

Part 4(c) — Bank Accounts, Savings and Pensions

140 The Applicant's RRSP, account 2884895, has been attributed with an additional \$12,000.

141 The Applicant admits he was drinking excessively and using marihuana daily pre-separation and in 2011. He states he also went to a massage parlour 5-6 times. He admits he was withdrawing cash from his account regularly in 2011 which I total to be \$10,170. He admits he used up to 50% of that cash for marihuana, massage parlour and alcohol in 2011. 50% of the cash withdrawals in 2011 total \$5,085.

142 The Applicant admits he was, in 2011 in particular, suffering depression, went into treatment including AA and counselling. He stopped all drugs, alcohol and massage early in 2012 and has fully abstained since then.

143 The Applicant acknowledged \$4,600 per year for alcohol, drugs and massages, being \$9,600 for two years.

144 There were regular and frequent alcohol purchases recorded of \$665 in 2010 commencing in June of that year. In 2011, direct alcohol purchases total \$434. That, combined with 50% of admitted cash withdrawals being used for these three purposes in 2011, totals \$5,808. The Applicant admitted some of the restaurant expenditures were to consume alcohol.

145 There were RRSP withdrawals in 2011 which totalled \$13,600.

146 With treatment and counselling, the conduct identified ceased in mid-2012.

147 There should be the above \$12,000 adjustment as to the expenditures for these three categories.

148 The Respondent's request for a \$130,000 adjustment has no evidentiary foundation in excess of the above.

149 If the Applicant had not used money prior to or at the time of separation, to pay off car loan and credit card balances, he would have corresponding debts. The Respondent was not negatively impacted as to EP as a result of these debt payments.

150 The valuation of the Applicant's pension is established (exhibit 23, tab 10) by Mr. Martel as \$341,062 for family law purposes and \$260,912 as "Le montant a ajouter aux actifs ...en présumant un taux d'imposition de 23,5%". The Applicant includes the gross figure before tax. The Respondent inserts the Applicant's net after tax figure of \$260,912.

151 The Respondent adopts a different approach as to her Teachers Pension. Her Teachers Pension Plan, (exhibit 23, tab 17, pages 2 and 14) indicates a pre-tax amount of \$53,955 and that such gross amount "needs to be adjusted for tax prior to insertion in the net family calculation".

152 The Respondent reduces the gross of \$53,995 by the Applicant's marginal tax rate of 23.5 %, to justify an after tax credit to herself of \$41,275. That is not her marginal rate, which according to Mr. Martel's report, is 7.1% (exhibit 23, tab 24). In order to be consistent, the pre-tax of both amounts are contained in Schedule B.

153 As to the increased value during marriage of the Applicant's severance entitlement, the Respondent's figure of \$15,375 from exhibit 40, tab 26, p.3, being the after tax amount if the Applicant elected an immediate payment thereof at the time of separation, did not occur. Such election is not presently contemplated.

154 The statements from Industrielle Alliance, exhibit 23, tab 12, support this figure as of July 1, 2012 and not the \$9,690 figure used by the Respondent.

155 The Respondent (exhibit 32) incorrectly reduced (exhibit 23, tab 18) her July 1, 2012 TD Canada Trust RRSP (2886057) of \$8,740.98, by an amount in excess of 50%, to \$3,526.39. That is incorrect according to the evidence.

156 The Respondent incorrectly reduced her TD Canada Trust RRSP (P10867629-9) by the Applicant's marginal tax rate of 23.5%.

157 The Respondent in the months prior to separation, on four occasions between January 11 and April 22, 2012, withdrew a total of \$18,380. The court concludes that the Respondent withdrew some of this money in anticipation of the separation and in response to the Applicant's above conduct. It was not withdrawn exclusively for family and or daycare expenses as alleged. The daycare opened in 2010. It did not on the evidence, have extraordinary new expenses in 2012. Food costs for the daycare were only paid by the Respondent every second month.

158 Ms. Bertrand prides herself in being frugal. She testified that she purchased second hand clothing and second hand furniture to save money. \$7,000 is imputed to the Respondent's account 044465-CS as savings placed elsewhere and retained by her.

Part 4(d) — Life and Disability Insurance

159 The statement from Industrielle Alliance confirms the figure used by the Applicant and not the \$3,909 used by the Respondent. The parties agree as to the \$1,417 amount attributable to the Respondent.

160 There is no evidence of a cash surrender value for the group medical and dental insurance plan. The Respondent is incorrect in this regard.

Part 4(e) — Business Interests, 4(f) Money Owed to and 4(g) Other Property

161 The Respondent has presented no calculations for or evidence of these subjects and therefore agrees with the position of the Applicant in relation thereto.

Part 5 — Debts and Other Liabilities

162 The Respondent is incorrect in applying the Applicant's notional tax rate to her RRSP and pension. Mr. Martel's calculation of the Respondent's notional tax rate at 7.1% is not contradicted in evidence and is therefore accepted.

163 The alleged indebtedness to the Respondent's mother is not recorded by the Respondent in her financial statement dated January 2, 2013. The written notice "evidencing" this debt was not produced over 28 months until the start of this trial. The mother was not called as a witness. The Respondent's evidence on some points has not been accepted. This alleged debt is not supported by sufficient evidence and has not therefore been proven.

164 Expenses attributable to the future sale costs of the matrimonial home do not yet exist. They will be determined upon such sale and will be deducted prior to the division of the net proceeds of sale, will be shared equally and should not be included. These are not valid deductions by the Respondent.

Property, Debts and Other Liabilities on Date of Marriage

165 The Respondent presented no contrary evidence regarding the value of the real property in Gatineau.

166 The Respondent refers to exhibit 41, tab 35 in support of her value of household items owned on the date of marriage. That document and the 1 or 2 tabs before and after tab 35, do not support her value. The Applicant's value for these items is an estimate, but he does acknowledge the Respondent's value should exceed his.

167 The estimated value of the Bayliner boat has been divided equally. There are no records. He testified it was his and she testified she paid for half of it. As to finances, the parties had a "business like" relationship, with each frequently paying a share of the expenses. It seems unusual that this would not apply to this purchase. The Applicant in addition alleges the sale

proceeds of the subsequent boat were divided equally.

168 As to motor vehicles, the issue is not whether the Applicant ever or frequently used the Respondent's vehicle. The question is whether he owned one and the value thereof on the eve of marriage in 2002. The Applicant (exhibit 23, tab 35) lists a detailed history of car ownership including purchase, sale dates and amounts with documentary proof attached. The Respondent in her exhibit 32 on this issue, refers to her tab 38. Her exhibit 41, tab 38, and several tabs on either side of 38, have nothing to do with motor vehicles. On balance, the evidence of the Applicant is preferred.

169 As to jewelry, the Respondent includes a credit of \$1,000 for herself only for three wedding rings. These presumably are the rings they gave to one another on marriage. The Respondent notes them as 50/50. A corresponding and offset credit has been included.

170 As to the Respondent's bank account, the Applicant credits the Respondent with an amount in her account as of October 10, 2002. The Respondent did not produce a contrary bank account statement. The best evidence is the account record produced.

171 The Applicant generally had better historical, relevant records as to the assets and liabilities of the parties immediately prior to their marriage in this part 3 (a) and (b).

Value of Property Excluded S. 4(2) Family Law Act

172 Neither party included any items under this category.

Equalization Payable

173 The Applicant owes the Respondent an equalization payment on the amount of \$98,404.29 payable from his share of the net proceeds of sale from the matrimonial home.

Ancillary Orders

174 Judgment herein shall include the following ancillary provisions.

175 The parties have lived separate and apart for in excess of one year. A decree of divorce shall therefore issue upon filing the requisite documents.

176 Child support herein is calculated using imputed annual income of \$120,000 and \$40,340 respectively. Child support shall be adjusted retroactive to January 1, 2015 and every January 1 thereafter, having regard to the parties' actual income earned in 2015 and each year thereafter.

177 The Applicant shall maintain health, medical and dental coverage on behalf of the child, as offered through his employment.

178 Subject to insurability:

(a) The Applicant shall maintain life insurance in the amount of \$100,000 as security for child support in the event of his death, naming the Respondent as irrevocable beneficiary thereof, in trust for the child, as to child support. He shall provide proof to the Respondent of said policies within 30 days of the date of this order, and annually thereafter if requested by the Respondent.

(b) The Applicant shall maintain life insurance in the amount of \$100,000 as security for spousal support in the event of his death, naming the Respondent as irrevocable beneficiary thereof. He shall provide proof to the Respondent of said policies within 30 days of the date of this order, and annually thereafter if requested by the Respondent. The Applicant shall be entitled to reduce the amount of such policy by \$10,000 annually on October 1 of each year, commencing October 1, 2019.

(c) The Respondent shall maintain life insurance in the amount of \$40,000 as security for child support in the event of her death, naming the Applicant as irrevocable beneficiary thereof, in trust for the child. She shall provide proof to the

Applicant of said policy within 30 days of the date of this order, and annually thereafter if requested by the Applicant.

179 The Respondent's income is imputed to be \$40,340 annually for the purposes of child support unless varied by further court order.

180 The parties shall adjust child support annually, as of July 1st of each year commencing July 1, 2015, based on the parties' incomes for the previous calendar year.

181 Child support ends when:

(a) The child ceases to be a "child" as defined in the *Divorce Act*;

(b) The child no longer resides with one of the parents, ("resides" includes the child living away from home for school, summer employment or vacation);

(c) The child turns 18, unless he or she is unable to become self-supporting due to illness, disability, education or other cause;

(d) The child becomes self-supporting;

(e) The child obtains one post-secondary degree or diploma;

(f) The child turns 23 years of age;

(g) The child marries;

(h) The child dies; or

(i) A party dies.

182 Unless and until otherwise ordered, the Applicant shall pay all reasonable s.7 expenses of his daughter as determined by him, including without limitation, all of her medical, dental and school expenses.

183 Out-of-pocket expenses paid by the Applicant to prepare the matrimonial home for sale total \$1,764. The Respondent from her share of the net proceeds of sale shall pay the Applicant \$882.

184 This court by order dated January 15, 2015, prohibited distribution of the net proceeds of sale of the house of the parties. That prohibition is hereby cancelled. Net proceeds should now be paid to the parties in accordance to this decision subject to the holdbacks for cost, pursuant to interim decision dated October 17, 2014.

185 Custody and access were determined by final order dated September 29, 2014. Paragraphs 16 to 22 of the decision dated November 5, 2014 varied by suspension, the terms of the September 29, 2014 final order.

186 The November 5, 2014 suspension order shall survive the granting of a Decree of Divorce of the parties.

Costs

187 Any party claiming costs shall serve on the other party and forward concise written submissions to the court within 30 days from the date hereof. Any written reply thereto shall be served and filed within 21 days thereafter.

188 Service of these costs submissions shall be via email to the Applicant's counsel and on the Respondent at 123garderie@gmail.com

Application granted.

Appendix 1

February 4, 2015:

Paragraph [113]

The words "needs to" replaced with "will"

Paragraph [114]

The words “the appropriate amount of” replaced with “Spousal support payable” Added subparagraph (a)

Deleted the words “as that is the amount this court would have ordered but for the Respondent’s unilateral change mid-October, 2014” in subparagraph (c)

Paragraph [117]

(a) added the words to September 30, 2013

(b) deleted

(c) in original judgment becomes (b) and added words October 1, 2013 to January 30, 2015

Paragraph [119]

\$1,600 replaced with \$1,650

\$16,310 replaced with \$19,850

\$33,440 replaced with \$29,900

Deleted last sentence in para. [119] in original judgment

Paragraph [120]

Added new paragraph [120]

Paragraph [121]

Added new paragraph [121]

Paragraph [121] in original judgment become paragraph [123]

Paragraph [122]

Added new paragraph [122]

Paragraph [122] in original judgment becomes paragraph [125]

Added new paragraphs [124] and [125]

Paragraph [169] in original judgment becomes paragraph [173] as amended

Paragraph [172] in original judgment becomes paragraph [176] as amended

Paragraph [175] in original judgment becomes paragraph [179] as amended

Added new paragraphs [183]; [184]; [185]; and [186]

Paragraph [179] in original judgment becomes paragraph [187]

Paragraph [180] in original judgment becomes paragraph [188]

Amended Schedule C

Schedule A

Tabular or graphic material set at this point is not displayable.

Graphic P-1

Tabular or graphic material set at this point is not displayable.

Graphic P-2

Tabular or graphic material set at this point is not displayable.

Graphic P-3

Schedule B

<i>ONTARIO</i>	Court File Number
<i>Superior Court of Justice, Family Court</i>	<i>FC-12-2884</i>
<i>(Name of Court)</i>	
<i>at 161 Elgin St. Ottawa ON.</i>	<i>Form 13B: Net Family</i>
<i>(Court office address)</i>	<i>Property Statement</i>

Applicant(s)

<i>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i>	<i>Lawyer’s name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i>
<i>S. J. E. Philippe</i>	<i>J. Patalone</i>

Respondent(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).	Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).
C. Bertrand	

My name is (full legal name) _____

The valuation date for the following material is (date) July 1, 2012

The date of marriage is (date) October 11, 2002

(Complete the tables by filling in the columns for both parties, showing your assets, debts, etc. and those of your spouse)

Table 1: Value Of Assets Owned on Valuation Date (List in the order of the categories in the financial statement)

PART 4(a): LAND			
Nature & Type of Ownership (State percentage interest)	Address of Property	APPLICANT	RESPONDENT
Matrimonial Home	15 Barkwood, Ottawa	\$275,000.00	\$275,000.00
<i>15. Totals: Value of Land</i>		\$275,000.00	\$275,000.00

PART 4(b): GENERAL HOUSEHOLD ITEMS AND VEHICLES			
Item	Description	APPLICANT	RESPONDENT
Household goods & furniture		\$2,000.00	\$3,200.00
Applicant's and respondent's vehicles.		\$22,000.00	\$6,000.00
Diving equipment		\$4,736.00	
Tools including snow blower and grass cutting equipment		\$700.00	\$200.00
2008 Legend boat and motor		\$0.00	\$0.00
Electronics		\$900.00	\$600.00
Camping and sporting equipment		\$200.00	
<i>16. Totals: Value of General Household Items and Vehicles</i>		\$30,536.00	\$10,000.00

PART 4(c): BANK ACCOUNTS AND SAVINGS, SECURITIES AND PENSIONS				
Category (Savings, Checking, GIC, RRSP, Pensions, etc.)	Institution	Account Number	APPLICANT	RESPONDENT
Chequing	TD Canada Trust	4072 3125098	\$1,548.46	\$0.00
Investment Fund converted to TFSA	TD Canada Trust	2885182	\$0.00	\$0.00
TFSA	ING Direct	3401275088	\$32.00	\$0.00
RRSP	TD Canada Trust	2884895	\$12,000.00	\$0.00
RRSP	FTQ	P1086-3800-1	\$12,458.77	\$0.00
Employment Pension	Pre-tax value	1224025	\$341,062.00	\$0.00
Employment severance accumulated during the marriage (Date of separation less date of marriage value)			\$20,101.00	\$0.00
RESP			\$0.00	\$8,817.39
Chequing	Caisse Populaire	94475 -EOP	\$0.00	\$12,282.12
Savings	Caisse Populaire	094475-ESI	\$0.00	\$0.00
Chequing	Caisse Populaire	044465 EOP	\$0.00	\$8,000.00

Savings	Caisse Populaire	044465-CS	\$0.00	\$7,000.00
Investment	TD Mutual Funds	2886090	\$0.00	\$63.00
Pension	Teacher Pension Plan		\$0.00	\$53,955.09
RRSP	TD Canada Trust	2886057	\$0.00	\$8,740.98
RRSP	FTQ	P1086-7629-9	\$0.00	\$2,158.46
RRSP Spousal	TD Canada Trust	2886031	\$0.00	\$22,376.40
<i>17. Totals: Value of Accounts And Savings</i>			\$387,202.23	\$123,393.44

PART 4(d): LIFE AND DISABILITY INSURANCE					
<i>Company, Type & Policy No.</i>	<i>Owner</i>	<i>Beneficiary</i>	<i>Face Amount (\$)</i>	<i>APPLICANT</i>	<i>RESPONDENT</i>
Industrial Alliance	Applicant	Respondent	\$140,000.00	\$4,024.23	\$1,417.00
<i>18. Totals: Cash Surrender Value Of Insurance Policies</i>				\$0.00	\$1,417.00

PART 4(e): BUSINESS INTERESTS			
<i>Name of Firm or Company</i>	<i>Interests</i>	<i>APPLICANT</i>	<i>RESPONDENT</i>
—			
<i>19. Totals: Value Of Business Interests</i>		\$0.00	\$0.00

PART 4(f): MONEY OWED TO YOU			
<i>Details</i>	<i>APPLICANT</i>	<i>RESPONDENT</i>	
—			
<i>20. Totals: Money Owed To You</i>		\$0.00	\$0.00

PART 4(g): OTHER PROPERTY			
<i>Category</i>	<i>Details</i>	<i>APPLICANT</i>	<i>RESPONDENT</i>
—			
<i>21. Totals: Value Of Other Property</i>		\$0.00	\$0.00

<i>22. VALUE OF PROPERTY OWNED ON THE VALUATION DATE, (TOTAL 1) (Add: items [15] to [21])</i>	\$692,738.23	\$409,810.44
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Table 2: Value Of Debts and Liabilities on Valuation Date			
PART 5: DEBTS AND OTHER LIABILITIES			
<i>Category</i>	<i>Details</i>	<i>APPLICANT</i>	<i>RESPONDENT</i>
Mortgage on Matrimonial Home	Scotiabank (joint)	\$93,203.00	\$93,203.00
Applicant's RRSP	23.5% Notional Taxes	\$2,927.81	\$0.00
Applicant's Pension	23.5% Notional Taxes	\$80,149.57	\$0.00
Applicant's severance Entitlement	23.5%	\$4,723.74	\$0.00
Respondent's RRSP	7.1%	\$0.00	\$2,362.58
Respondent's Teachers Pension	7.1 %	\$0.00	\$3,830.81
Applicant's Master Card		\$134.25	\$0.00
Respondent's Master Card		\$0.00	\$742.25
<i>23. Totals: Debts And Other Liabilities, (TOTAL 2)</i>		\$181,138.37	\$100,138.64

Table 3: Net value on date of marriage of property (other than a matrimonial home) after deducting debts or other liabilities on date of marriage (other than those relating directly to the purchase or significant improvement of a matrimonial home)		
PART 6: PROPERTY, DEBTS AND OTHER LIABILITIES ON DATE OF MARRIAGE		
<i>Category and Details</i>	<i>APPLICANT</i>	<i>RESPONDENT</i>

Land (exclude matrimonial home owned on the date of marriage, unless sold before date of separation). 12 Marie Guyart Gatineau	\$71,820.00	\$71,820.00
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General household items	\$2,000.00	\$4,000.00
16 Ft. Bayliner	\$5,500.00	\$5,500.00
Vehicle of the parties	\$2,000.00	\$2,000.00
Jewelry	\$500.00	\$500.00
Chequing and Savings account of Respondent	\$0.00	\$2,332.00
Respondent's TD Canada Trust RRSP	\$0.00	\$14,036.94
Respondent's TD Canada Trust investment	\$0.00	\$313.15
Applicant's TD Canada Trust Chequing	\$3,049.93	\$0.00
Applicants TD Canada Trust RRSP	\$16,973.29	\$0.00
Applicant's Life & Disability Insurance	\$132.76	\$0.00
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3(a) TOTAL OF PROPERTY ITEMS	\$101,975.98	\$100,502.09
Debts and other liabilities (Specify)		
Mortgage 12 Marie Guyart Gatineau	\$34,235.50	\$34,235.50
Notional Taxes on Applicants RRSP and Investment @23.5%	\$3,981.03	\$40.00
Notional taxes on Respondent's RRSP and Investment @7.1%	\$0.00	\$1,018.88
Respondents admitted debt on date of marriage	\$0.00	\$6,567.75
3(b) TOTAL OF DEBTS ITEMS	\$38,216.53	\$41,862.13
24. NET VALUE OF PROPERTY OWNED ON DATE OF MARRIAGE, (NET TOTAL 3)	\$63,759.45	\$58,639.96

Table 4: PART 7: VALUE OF PROPERTY EXCLUDED UNDER SUBS. 4(2) OF "FAMILY LAW ACT"

<i>Item</i>	<i>APPLICANT</i>	<i>RESPONDENT</i>
Gift or inheritance from third person		
Income from property expressly excluded by donor/testator		
Damages and settlements for personal injuries, etc.		
Life insurance proceeds		
Traced property		
Excluded property by spousal agreement		
Other Excluded Property		
26. TOTALS: VALUE OF EXCLUDED PROPERTY, (TOTAL 4)	\$0.00	\$0.00
TOTAL 2: Debts and Other Liabilities (item 23)	\$181,138.37	\$100,138.64
TOTAL 3: Value of Property Owned on the Date of Marriage (item 24)	\$63,759.45	\$58,639.96
TOTAL 4: Value of Excluded Property (item 26)	\$0.00	\$0.00
TOTAL 5: (TOTAL 2 + TOTAL 3 + TOTAL 4)	\$244,897.82	\$158,778.60
	<i>APPLICANT</i>	<i>RESPONDENT</i>
TOTAL 1: Value of Property Owned on Valuation Date (item 22)	\$692,738.23	\$409,810.44
TOTAL 5: (from above)	\$244,897.82	\$158,778.60

<i>TOTAL 6: NET FAMILY PROPERTY (Subtract: TOTAL 1 minus TOTAL 5)</i>	<i>\$447,840.41</i>	<i>\$251,031.84</i>
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<i>EQUALIZATION PAYMENTS</i>	<i>Applicant Pays Respondent</i>	<i>Respondent Pays Applicant</i>
	<i>\$98,404.29</i>	<i>\$0.00</i>

_____	_____
<i>Signature</i>	<i>Date of signature</i>

Schedule C

Spousal Support Payable — Court Order

\$1,650/month	
July 1/12 to September 30/14	
27 months @ \$1,650 =	\$44,550
\$1,300/month	
October 1/14 to January 30/15	
4 months @ \$1,300 =	\$ 5,200
Total	\$49,750
<i>Payments Made</i>	
July 1/12 to September 30, 2013	
15 months @ \$500 =	\$ 7,500
October 1/13 to January 30/15	
16 months @ \$1,400 =	\$22,400
Total	\$29,900
	\$49,750 - \$29,900 = <i>ARREARS \$19,850</i>

Child Support

<i>Guideline Income Amounts</i>	
Applicant - \$120,000 =	\$1,037
Respondent - \$40,340 =	\$ 363
Offset =	\$ 674 payable by Applicant
<i>Guideline Owing by Father</i>	
July 1/12 to December 31/13	\$18,666
18 months @ \$1,037 =	
March 1/14 to September 30/14	\$ 4,718
7 months @ \$674 =	\$23,384
less	\$ 726
<i>Guideline Owing by Mother</i>	
January and February, 2014 =	
Total	\$22,658
<i>Child Support Payments Made</i>	
July 1/12 to October 30/14	
28 months @ \$1,020 =	\$28,560
Overpayment	\$ 5,902
<i>Conclusion</i>	
Underpayment — spousal =	\$19,850
Overpayment — child =	\$ 5,902
Applicant owes (combined) arrears	\$13,948

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