Law Society of Ontario | Barreau de l'Ontario

TAB 6

The Six-Minute Family Law Lawyer 2019

Motions for Interim Disbursements – A Primer

Jennifer Valliere
Stanchieri Family Law Professional Corporation

December 2, 2019

The Six-Minute Family Law Lawyer

Motions for Interim Disbursements - A Primer

Jennifer L. Valliere
Stanchieri Family Law Professional Corporation
December 2, 2019

Introduction

In line with the *Family Law Rules,* costs incurred at each step in a proceeding (i.e. a conference or motion) should be decided at the conclusion of each appearance or otherwise reserved to a later date. At the conclusion of the trial, the court will typically consider the entirety of the costs of the proceeding not otherwise decided after such fees have already been incurred/spent. At the same time, the upfront costs required to fund the ***future*** steps to be taken in a case can be unaffordable for many parties who find themselves embroiled in litigation. This may be particularly true for one spouse in a dispute where they earn significantly less (or do not work outside of the home) and/or if they have significantly less resources/capital than the other spouse. Although parties should make all reasonable efforts to settle a matter, problems can arise where a party believes that they are left with no choice but to accept a "bad" deal because they simply cannot afford to continue with the litigation. To address this concern, the *Family Law Rules* provide the court with the discretion to consider the future costs to carry on with a case, one tool to address this being an order for interim disbursements. This paper is a primer on the regulatory and statutory authority for a motion for interim disbursements, as well as the ways that courts have dealt with such requests. It is important for family law counsel to consider and advise a client of the options available for such a motion, which may arise at any time in the proceeding.

Many of the court decisions that attract these orders tend to share characteristics of a large disparity between the parties' resources, incomes, and/or assets. To treat cases "fairly", in line with the 'primary objective' set out in the *Family Law Rules*, courts have tended to utilize an order for interim disbursements to level the playing field between the parties.

When bringing a motion for interim disbursements, it is essential that adequate evidence is put before the court in the supporting Affidavit(s). The moving party will need to establish the need for interim disbursements, appropriate evidence from third parties (i.e. lawyer's draft bill of costs, letter containing estimated from proposed expert, NFP statement supporting the anticipated equalization

payment, etcetera) and evidence of the responding party's corresponding ability to pay the amount requested. Reference can be made to corporate financial statements, and the parties' sworn 13.1 Financial Statements together with any other relevant disclosure received or obtained in order to corroborate the moving party's position of impecuniosity and/or to challenge the responding party's credibility (if, for example, the position is taken that they do not have adequate means/resources). The court's focus will be on whether the amount requested is *necessary* in order for a spouse to explore potential settlement options and/or to move forward with the litigation for a final determination of the outstanding claims.

Regulatory and Statutory Authority

Subrule 24(18) (formerly subrule 24(12)[1]) of the *Family Law Rules* is the regulatory authority in family law proceedings which provides the court with the *discretion* to order interim disbursements. Subrule 24(18) provides as follows:

> ***PAYMENT OF EXPENSES***
>
> *R. 24 (18) The court may make an order that a party pay an amount of money to another party to cover part or all of the expenses of carrying on the case, including a lawyer's fees.*[2]

Subrule 24(18) must be applied in order to further the "primary objective" found at subrule 2(2) and 2(3) of the *Rules*:

> **PRIMARY OBJECTIVE**
>
> *2 (2) The primary objective of these rules is to enable the court to deal with cases justly.*[3]
>
> **DEALING WITH CASES JUSTLY**
>
> *2 (3) Dealing with a case justly includes,*
>
> *(a) ensuring that the procedure is fair to all parties;*

[1] **Practice Note:** Prior to 2018 amendments of the Family Law Rules, subrule 24(18) known and referred to as subrule 24(12).
[2] *Family Law Rules*, O. Reg. 418/18, s. 1.
[3] *Ibid, R. 2(2)*

(b) saving expense and time;

(c) dealing with the case in ways that are appropriate to its importance and complexity; and

(d) giving appropriate court resources to the case while taking account of the need to give resources to other cases.[4]

The court also derives its statutory authority to order costs/disbursements pursuant to the *Courts of Justice Act,* which states:

s. 11(2) The Superior Court of Justice has all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario.[5]

s. 131(1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.[6]

For cases involving *support claims*, it is important to note that s. 34(1) of the *Family Law Act* permits the Court to make an interim or final Order which could include an order for a lump sum payment. This provision can be also relied upon as a mechanism to request funds to continue with the case. The relevant sections are included below:

Powers of court

s. 34 *(1) In an application under section 33, the court may make an interim or final order,*

[…]

(b) requiring that a lump sum be paid or held in trust;

[…]

(e) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the dependant's benefit;

[…]

[4] *Ibid, R. 2(3)*
[5] *Courts of Justice Act, RSO 1990, c C.43, s. 11(2)*
[6] *Ibid, s. 131(1)*

The Civil Test for Interim Disbursements – 3RD Branch of the Test Does NOT Apply in Family Law

In the SCC decision of *British Columbia (Minister of Forests) v. Okanagan Indian Band*[7], the court outlined the 3-part civil test for interim disbursements, as follows:

1. The party seeking the order must be **impecunious** to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case;
2. The claimant must establish a ***prima facie* case** of sufficient merit to warrant pursuit; and
3. There must be **special circumstances** sufficient to satisfy the court that the case is within the **narrow class of cases** where this **extraordinary** exercise of its powers is appropriate.

In light of the regulatory authority found in Rule 24 and Rule 2 of the *Family Law Rules*, Courts have distinguished the test on motions for interim disbursements in family law proceedings, holding that the "exceptional cases" requirement (the third branch of the *Okanagan* test) is *not required* in family law disputes.[8] I infer that this leniency or lowering of the threshold is in contemplation of the high volume of cases involving a significant disparity in financial means/wealth as between the parties.

Factors to Consider on a Motion for Interim Disbursements

One leading family law case in Ontario on interim disbursements is *Stuart v. Stuart*[9]. Justice Rogers combs through a significant number of cases and confirms the following general principles for the court to consider when faced with a motion for interim disbursements[10]:

1. It is a **discretionary test** - having regard to the objective of fairness and the permissive nature of subrule 24(18)[11];
2. **Impecuniosity/Inability to pursue legal rights –** The moving party must demonstrate that, absent an Order for interim disbursements, they cannot present or analyse settlement offers

[7] [2003] 3 SCR 371, 2003 S.C.C. 71 (CanLII) ["*Okanagan*"].
[8] For example, see *Stuart v. Stuart,* [2001] O.J. No. 5172, 2001 CarswellOnt 4586, [2001] O.T.C. 965, 110 A.C.W.S. (3d) 1063, 24 R.F.L. (5th) 188 ["Stuart"].
[9] *Ibid*.
[10] *Ibid*. at para 8.
[11] *Stuart,* referring to *Airst v. Airst,* [1995] O.J. No. 3005 (Ont. Gen. Div.) [*Airst]*; *Hill v. Hill [1988] O.J. No. 3035,* 1988 CanLII 4710 (ON SC), 63 O.R. (2d) [*Hill*], and *Lossing v. Dmuchowski,* [2000] O.J. No. 837 (Ont. S.C.J.) [*Lossing].*

or pursue their entitlements[12]. In other words, they must establish that, without such an order, they would be deprived of the opportunity to proceed with the case.[13];

3. The moving party will need to demonstrate that the claimed expense/amount is **necessary**[14];
4. The moving party must show that the claim being advanced is **meritorious**[15] - the standard applied is a prima facie case of sufficient merit to warrant pursuit[16]
5. **Levelling the playing field**[17] **-** the moving party must show that an Order is necessary to address a "significant imbalance" in resources between the parties[18];
6. Monies might be **advanced against an equalization payment**[19].

Impecuniosity Versus Ability to Pay

The presumption in law is that parties are to pay their own litigation expenses until a trial. The moving party is required to show more than simply an inability to pay in order to reverse this presumption[20]. Rather, they must demonstrate that, **without the order for disbursements, they will be unable to pursue their entitlements**.[21] When exploring the responding party's means to pay for such cost/expense, the court may consider whether the moving party is expected to have assets available from the sale of property.[22] The court may also consider the moving party's substantial equity available in the matrimonial home as a basis for dismissing the motion.[23]

The evidentiary burden falls on the moving party to establish **hardship** insofar as that they are incapable of funding the fees and disbursements themselves.[24] The moving party will need to show that they are "without resources" to meet their costs.[25] The court can consider prior Orders for interim disbursements and if/how much support is/has been paid.[26] Receipt of substantial support, which may or

[12] *Hill* and *Airst, supra* note 11.
[13] *British Columbia (Minister of Forests) v. Okanagan Indian Band [2003] 3 SCR 371, 2003 SCC 71* at para 35 *["Okanagan"].*
[14] *Lossing, supra* note 11.
[15] *Lynch v. Lynch* (1999), 1 R.F.L. (5th) 309 (Ont. S.C.J.), 1999 CarswellOnt 4373 *["Lynch"]* and *Randle v. Randle*, [1999] 3 R.F.L. (5th) 139 (Alta. Q.B.), 1999 ABQB 954 (CanLII) ["*Randle*"].
[16] *Supra* note 13.
[17] *Randle, supra* note 15 at para 15.
[18] *Ludmer v. Ludmer* [2012] O.J. No. 3681, 25 R.F.L. (7th) 397, *2012 ONSC 4478,* 2012 CarswellOnt 9702 *["Ludmer"].*
[19] *Zagdanski v. Zagdanski,* 2001 CanLII 27981 (ON SC), 2001 CarswellOnt 2517 (Ont. S.C.J.) ["Zagdanski"].
[20] *O'Brien v. O'Brien*, [2006] O.J. No. 149, 2006 CanLII 11921 at para 80 *["O'Brien"],* citing *Waxman* v. Waxman, [2003] O.J. No. 73 (ON CA) at paras 18 and 22 ["*Waxman*"].
[21] *O'Brien, supra* note 20 at para 82.
[22] *Nolan v. Nolan* 2017 ONSC 4465 (Ont. S.C.J.).
[23] *Atkin v. Atkin*, 1993 CarswellOnt 1579, [1993] O.J. No. 1809 (Ont. Gen. Div.).
[24] *Laamanen v. Laamanen*, 2005 CanLII 50808, [2005] O.J. No. 5823 (S.C.J.) at para 6 ["Laamanen"]; *Stuart, supra* note 8 at para 8 citing *Organ v. Barnett* (1992), 11 O.R. (3d) 210 (Ont. Gen. Div.).
[25] *Herman v. Rathbone*, 1997 CarswellOnt 2501, 103 O.A.C. 321 (Ont. Div. Ct.), at 322 O.A.C.
[26] *Syed v. Syed* 2017 ONSC 2588 (Ont. S.C.J.).

may not include a component for anticipated legal expenses, may militate against an Order for interim disbursements[27].

In addition to demonstrating an inability to pay, the moving party also has the burden of establishing the **responding party's corresponding ability to pay** the amount sought.[28] Even where the moving party has shown that they have no ability to fund the litigation further, the court has declined to make such an award where the responding party does not have adequate means.[29]

When reviewing this factor, the court may consider not only a party's income, but also their assets. In one recent case, the Court found that the requirement for the husband to utilize his capital to satisfy the Order was appropriate, particularly where one spouse had routinely done so during the marriage to support their lifestyle.[30]

Evidence in the form of Financial Statements is important at this stage, particularly when considering claimed expenses/budgets as well as any changes in either party's net worth between the date of separation and at present. For this reason, and in line with the requirements of the *Family Law Rules*, ensuring that 13.1 Financial Statements are routinely updated is crucial to ensure that the Court has an accurate and up-to-date picture of the parties' resources at the hearing of the motion. An outdated sworn financial statement may mean the difference between victory or loss on a motion for interim disbursements.

Necessity of Expenses

The moving party must establish that the interim disbursements sought are, based on the circumstances of the case, **necessary and reasonable**[31]. The court will consider whether the expense is necessary for the party to fairly continue with the litigation and reasonable when considering the resources of the parties.[32] A request for interim disbursements must be **specific, not excessive, and reasonable considering the issues involved**."[33] The court will consider the principles of **proportionality**

[27] *Hill, supra* note 11.
[28] *Ludmer, supra* note 18 at paras 51 and 52.
[29] *Ibid*. at para 52.
[30] *Rea v. Rea, [2016]* 75 R.F.L. (7th) 105, 2016 ONSC 382, 2016 CarswellOnt 509 (Ont. S.C.J.) ["Rea"].
[31] *Stuart, supra* note 8 at para 11.
[32] *J.M.R. v. M.A.R.* [2008] O.J. No. 2716 (S.C.J.) [*"J.M.R."]*.
[33] *O'Brien, supra* note 20 at Para 81 citing *Waxman* at para 25 and *Rosenberg v. Rosenberg [2003] O.J. No. 2193*, 39 R.F.L. (5th) 403 (Ont. S.C.J.) ["Rosenberg"] at para 18.

between the issues at stake (for example, the projected equalization award) and the cost/disbursement to be incurred to determine same.[34] A detailed estimate or breakdown of anticipated/incurred costs is most helpful in supporting a case for interim disbursements. A reporting letter from a tax/investment advisor or trustee stipulating regulatory barriers, notional tax and disposition costs may also be persuasive in arguing that access to capital is limited or disposition is ill-advised.

Meritorious Claim

The moving party is required to establish that the claims advanced are meritorious on a **balance of probabilities** at the time of the request on motion.[35]

Levelling the Playing Field

Orders for Interim Costs and Disbursements in family law cases should be made where it is necessary to "level the playing field"[36]. Accordingly, the moving party bears the onus of establishing a "significant imbalance" in resources between the parties.[37] When evaluating this criteria, the court may consider contributions by a new partner to the moving party's expenses/budget.[38] Spousal support paid by the responding party is also a relevant consideration.[39] Interim disbursements are not awarded to 'see what sticks' or to promote vexatious or meritless claims; the viability of claims should be well-supported when bringing such a motion.

The order should not, however, provide a "licence to litigate".[40]

Advance against Equalization Payment

If the Court is contemplating relief in the form of an advance against the anticipated equalization payment (which has yet to be determined), to deal with the case justly, it is necessary to consider the ability of the moving party to repay any amounts ordered if the quantum of the disbursements ultimately exceeds the amount ordered at trial.[41] For this reason, the anticipated size of

[34] *Ludmer, supra* note 18 at para 21.
[35] *Stuart, supra* note 8 at para 8 citing *Lynch, supra* note 15 and *Randle, supra* note 15.
[36] *Stuart, supra* note 8 at para 9.
[37] *Ludmer, supra* note 18 at para 56.
[38] *Harbarets v. Kisil*, [2014] O.J. No. 4239, 2014 ONSC 4772 (CanLII), 2014 CarswellOnt 12434.
[39] *Ibid*.
[40] *Stuart, supra* note 8 at para 10.
[41] *Rosenberg, supra* note 33 at paras 17 and 18.

the potential equalization payment is a relevant consideration at the motion.[42] If equalization of net family properties has been claimed by either party, a net family property statement should be included as an exhibit in your motion materials, at least in draft format, but best completed and signed by your client.

In *Zagdanski*[43], Justice Lane provided the factors/test for an Order of an advance on equalization, which can be summarized as follows:

1. demonstrating little/no realistic chance that the amount of the advance will exceed ultimate equalization amount;

2. considerable degree of certainty about the right to, and minimum amount of, an equalization payment;

3. need, not necessarily in the sense of poverty, but a reasonable requirement for funds in advance of the final resolution of the equalization issue, including funds to enable the continued prosecution or defence of the action;

4. other circumstances such that fairness requires some relief for the applicant; frequently, but not necessarily, there will have been delay in the action, deliberate or otherwise, prejudicing the applicant by, for example, running up the cost. [44]

As an aside, leave to appeal was granted in *Zagdanski* based on the responding party's position that the court did not have the statutory authority to order an advance on equalization, but the parties settled so the appeal was never heard. Other courts have followed the approach taken is *Zagdanski* which has not been otherwise "tested" on appeal.

The following is a summary of some cases where an advance on equalization was ordered when interim disbursements were sought:

Case	**Notes**
Laamanen v. Laamanen[45] (Wife sought interim	Court ordered partial advance on equalization to

[42] *O'Brien, supra* note 20 at Para 83 citing Rosenberg at para 13.
[43] Zagdanski*, supra* note 19 at para 39.
[44] *Ibid*.
[45] *Laamanen, supra* note 24.

disbursements for retaining an expert and for her anticipated fees for trial)	wife to pay for expert and legal fees, rendering an order for interim disbursements unnecessary.
Zagdanski v. Zagdanski[46]	Court ordered a $700,000 advance on equalization and therefore did not consider the "in the alternative" claim for interim disbursements
Pawluk v. Pawluk[47] (husband produced a certified valuation report but wife wanted to retain own expert to double check/verify the conclusion by the husband's expert)	Husband conceded wife was owed an equalization payment. The court held that interim disbursements was inappropriate, but ordered a $2,000 advance on equalization.
Ravida v. Ravida[48]	Court ordered that the husband provide an advance to the wife, credited against the wife's equalization entitlement.

It should be noted that an advance against the final settlement or determination of the matter may also be requested in a case where monetary relief other than an equalization payment is sought (e.g. sale of home, unjust enrichment claim, etcetera).

Disbursements for Experts

The failure of the responding party to provide complete disclosure has been relied upon by the Court in determining the need for evidence from an expert.[49] However, the production of an expert report by the responding party does not immunize them against an order for interim disbursements. For example, where the responding party has provided a certified business valuation and/or income analysis from a Chartered Business Valuator, several courts have nevertheless taken the position that it would be reasonable for the moving party to retain their own expert, at least on a limited/partial basis, to test/verify the information.[50] This falls in line with recent judicial criticism of experts who are seemingly retained as a 'hired gun', rather than assisting the trier of fact.[51] Although the use of jointly retained expert should help address this concern, there is also caselaw to support the position that the moving party is not required to accept the responding party's offer to share in the costs of a joint valuator, but could elect to retain an expert of her own.[52] It may be helpful for the proposed Certified Business Valuator to specify in the estimate letter to be relied upon by the moving party at the motion: 1) the

[46] *Zagdanski, supra* note 19.
[47] *Pawluk v. Pawluk* (1990), 25 R.F.L. (3d) 41 (Ont. Dist. Ct.) ["*Pawluk*"].
[48] [1990] O.J. No. 1162, 1990 CanLII 6841 (ON SC), 74 O.R. (2d) 101, 27 R.F.L. (3d) 106 (Ont. U.F.C.), 1990 CarswellOnt 261 ["*Ravida*"].
[49] *Biddle v. Biddle*, 2004 CanLII 52809 (ON SC)
[50] *Pawluk, supra* note 47.
[51] *Plese v. Herjavec* 2018 ONSC 7749.
[52] *Alexander v. Alexander*, 1988 CarswellOnt 268, 65 O.R. (2d) 214, 15 R.F.L. (3d) 316 (Ont. H.C.) at 319 [R.F.L.].

scope of the anticipated retainer, 2) the anticipated cost of available/helpful services in the circumstances; 3) the human resources available to perform the work along with the hourly rates of the professionals; 4) the estimated time required to complete the work; 5) the steps proposed/type(s) of report deemed reasonable in the circumstances (e.g. critique/opinion report to only refute specific conclusions drawn or method/assumptions versus full-blown certified business valuation) with corresponding estimated cost to give the judge flexibility in determining an appropriate amount of interim disbursements that will move the matter forward without endorsing unnecessary work/valuation steps on the part of the proposed valuator. A preliminary opinion report may save on time and money and allow for "hot-tubbing" of certified business valuators retained by the parties following the production of the report, pending a return motion.

It is important to ensure that sufficient evidence is before the court, and that **preliminary due diligence** has been taken, to demonstrate **what the expert might hope to achieve** as a result of their engagement (rather than mere speculation).[53] The court will often consider the parties' financial disclosure obligations and the disclosure provided (i.e. business valuation, income analysis, etc.). From here, the court will determine whether the evidence available at the motion establishes that input from the proposed expert will assist the court/parties in settlement and/or trial.[54] In some cases, the court has held that the disclosure provided is adequate, and further investigation into same is not necessary at that time.[55] In other cases, courts have found that it is appropriate for the moving party to retain their own expert to provide a preliminary opinion and/or critique report.

Courts have been critical of the moving party where the proposed expert provides only a letter outlining the type of expert report(s) to be completed and an estimate of fees.[56] Recent caselaw has made it clear that further particulars are required in terms of a breakdown of the time expected for the engagement, why it requires the time, who will be performing the work and why.[57] In one prior Ontario decision, the Court noted that when an estimate of fees of at least $75,000 is requested, detailed information must be provided to establish merit.[58] Absent same, the court may not be in a position to evaluate whether the amount claimed at the motion is reasonable and necessary. A breakdown of the

[53] *J.M.R., supra* note 32 at para 50.
[54] *J.M.R. , supra* note 32 at para 40
[55] See, for example, *O'Brien* at para 75-76 where the court determined that an estimate of the value of the business being provided (rather than an opinion) was sufficient evidence of the value of this asset.
[56] *Ludmer, supra* note 18 at para 57 and 58.
[57] *Ibid.*
[58] *Rosenberg, supra* note 33.

estimate of fees is also important for the court to consider whether, at the stage of the motion, a less expensive option is available. For instance, the court may determine that the costs of a preliminary investigation/opinion by the expert is first required before exploring the option of a forensic accounting or valuation report. In other cases, the evidence provided at the motion includes a preliminary investigation by the expert and the expert's commentary on why a more extensive review and analysis is now required. In addition to considering a less expensive option, the court may also award costs up to a particular stage in the litigation (i.e. up a settlement conference), after which time the issue may be re-evaluated.[59]

Although the court was deciding the issue of costs following a trial, it is interesting to note that in one case, it was held that the cost for the valuation of an asset owned by one spouse should be shared by both spouses except in unusual circumstances (given that parties are required to equalize the value of their assets).[60] A party who owns the asset is typically required to bear the cost of the valuation/expert, though some courts have found that, following a trial, the expert's costs should be incorporated into the net family property statement as a debt, akin to disposition costs.[61]

The Court has also considered the ability of the responding party to claim additional costs at trial if they were successful in establishing that the expense actually incurred by the moving party, following the order granted at the motion, proved to be unnecessary.[62]

The lack of trust between the parties and an imbalance in knowledge of the finances of the other spouse has been identified in support of the proposition that an independent expert is required to allow for more productive settlement discussions.[63] This is particularly so where the moving party is expected to receive an equalization payment but does not have the funds to pay for the disbursements without an advance.[64]

[59] *Turk v. Turk,* [2016] O.J. No. 3439, 2016 ONSC 4210, 79 R.F.L. (7th) 50 ["Turk"].
[60] *MacKinnon v. MacKinnon* [2004] O.J. No. 2297, 7 R.F.L. (6th) 121 (Ont. S.C.J.) at para 9.
[61] *Dearing v. Dearing*, 37 R.F.L. (3d) 102, 1991 CarswellOnt 345 (Ont. Gen. Div.).
[62] *Posner v. Posner,* 2000 CarswellOnt 108, [2000] O.J. No. 109 (Ont. S.C.J.).
[63] *Ravida, supra* note 48.
[64] *Ibid*.

Disbursements For Legal Fees

When requesting an Order for interim disbursements to fund a parties' legal fees, it is important to provide evidence of the anticipated future legal fees. A statement of legal fees and disbursements incurred thus far as well as an estimate of the fees and disbursements to be incurred in the future (and details of the steps to bring litigation to trial, for example) has been held to be adequate evidence in support of a motion for interim disbursements.[65] A breakdown of the fee estimate is necessary for the Court to scrutinize the reasonableness and necessity of the costs to be incurred.

Types of Orders That Can Be Made

There are several options available to the court when faced with a motion for interim disbursements. As a few examples, the court may order the following:

1. That the responding spouse provide an **interest-bearing loan** to the moving party;
2. That the responding spouse provide an **advance on the anticipated equalization payment** owed;
3. A **release of funds held in trust** from the sale of property;
4. That the responding party can **encumber/mortgage property** to satisfy the obligation to pay interim disbursements;

Given the examples and options available to the court, it is prudent to seek in the alternative relief, where appropriate, which may include a request for an interim release of funds held in trust and/or an advance on an anticipated equalization payment.

Res Judicata

The dismissal of a motion for interim disbursements does not necessarily mean that a party will never be entitled to such relief. Courts have frequently dismissed such motions on the basis of the failure to provide adequate information to the court, sometimes being made without prejudice to the party's right to bring a future motion based on a better evidentiary record. Lawyers should be cautious, however, in ensuring that a motion is not being brought on essentially the same evidence and/or failing

[65] *Romanelli v. Romanelli* [2017] W.D.F.L. 1902, 2017 ONSC 1312, 2017 CarswellOnt 2724 (Ont. S.C.J.).

to address concerns that were previously flagged (for instance, that the moving party has adequate resources, including support, to pay for the amount sought).

Children Can Seek Interim Disbursements

Although the majority of caselaw in family law deal with interim disbursements being sought by a spouse in the litigation, the Family Law Rules permit any "party" to seek such an order. Justice Perkins in *Lynch v. Lynch*[66] granted the son's request for interim child support and interim disbursements from his father.

Creative Options to Structure an Order for Interim Disbursements

The following is a summary of a few of the various ways to implement an Order on a motion for interim Disbursements:

1. An order to provide interest-bearing loan of $15 000.00 to claimant to meet her need for an expert valuator and for legal representation[67];
2. Increasing interim spousal support payments to include estimate for the payment of legal fees so that the amount can be tax deductible, in lieu of an order for interim disbursements[68];
3. Using s. 34(1) of the *Family Law Act* to permit an order for lump sum support award that could enable a party to retain a lawyer. For example, awarding the Applicant-son interim child support of $1,000/month and $1,000 in additional support for 6 months, with the latter amount being for interim costs and disbursements.[69]
4. An Order permitting a spouse to encumber the matrimonial home in order to satisfy an interim equalization advance[70]

[66] *Lynch, supra* note 18.
[67] Stuart*, supra* note 8 and *Rosenberg, supra* note 33.
[68] *Ridgeway-Firman v. Firman*, [1999] O.J. No. 1477, 1999 CarswellOnt 1201 (Ont. Gen. Div.).
[69] *Lynch, supra* note 18 at para 35.
[70] Kleinman v. Kleinman, 1998 CarswellOnt 2605, 38 O.R. (3d) 740, 37 R.F.L. (4th) 1 (Ont. Gen. Div.).

Notable Cases Involving Large Orders of Interim Disbursements:

CASE	AMOUNT AWARDED
Rea v. Rea[71]	$250,000 (credited to any monies found owing by him, and without prejudice to wife to bring a further motion for interim disbursements at a later date)
Lakhoo v. Lakhoo[72]	$400,000
Bagheri-Sadr v. Yaghoub-Azari[73]	$125,000
L. (J.K.) v. S. (N.C.)[74]	$115,361
Hughes v. Hughes[75]	$500,000
Levina v. Levine[76]	$100,000
Long v. Long[77]	$200,000
Belittchenko v. Belittchenko[78]	$217,616

[71] *Rea, supra* note 30.
[72] 62 R.F.L. (7th) 24 (Alta. Q.B.).
[73] 2011 CarswellOnt 780 (Ont. S.C.J.).
[74] [2009] 64 R.F.L. (6th) 32 (Ont. S.C.J.), [2009] O.J. No. 804.
[75] [2009] 68 R.F.L. (6th) 129 (Alta. Q.B.).
[76] [2014] O.J. No. 2238, 2014 CarswellOnt 6104 (Ont. Div. Ct.).
[77] 2016 ONSC 1454)(Ont. S.C.J.).
[78] 2007 CanLII 20673 (ON SC), [2006] O.J. No. 5493.