

VEDANG VALUATIONS

Litigation Support For Personal Injury And Family Law

Family Law - De Pinto Cabral v. Cabral, 2021 ONSC 3091 (CanLII) – A Brief Analysis

A recent judgment by the Ontario Superior court in a family law trial highlights the importance of providing sufficient evidentiary support for payments (either as salary or dividends) made to non-arm's length parties. While these payments can be deemed valid for tax purposes, unless they are for actual work performed and relevant to the business on hand they can be added back to the payer's income for support purposes.

Based on the review of De Pinto Cabral v. Cabral, 2021 ONSC 3091 (CanLII), the case facts were that the respondent had his income imputed at \$270,000 in June, 2018. Before the separation, the respondent provided IT software sales and services through his corporation, of which he was a 51% shareholder and the balance 49% were owned by his son. His son provided consulting, testing, and administrative services to this business. The applicant wife (before the separation) received salary (as income splitting) and the son received dividends respectively from the respondent's corporation. However, the expert report which imputed the respondent's income added back all these non-arm's length payments made to family members, in order to compute income for support purposes. The spousal support was calculated using the imputed income of \$270,000.

However, less than one year later in March, 2019, the respondent reorganized his corporate affairs. He ceased to operate his original corporation and stopped earning income from it. Thereafter, the respondent incorporated another company of which he was a 50% shareholder and the balance 50% were owned by his then girlfriend (who subsequently became his wife). Along with this change in ownership structure, the corporation now purportedly earned income from two streams of income – IT financial services (through services provided by the respondent) and direct marketing services for skin care products (through services provided by the girlfriend). The new corporation paid salaries to both the respondent's son (with his first wife and who was a shareholder of his original corporation) and current wife totalling \$47,400 in 2020.

However, the expert who imputed the respondent's income for 2020 was not informed that the 50% shareholder and respondent's girlfriend was now his spouse. Partly as a result of these changes, the valuation expert imputed the respondent's income in 2020 to \$144,121. This amount also included 50% of the respondent's share of the corporate income of \$4,967, with the same amount attributable to his current wife (she being the balance 50% shareholder). With this reduction in his annual income being a material change in his circumstances, the respondent requested for a reduction in spousal support.

The judge upon reviewing all the evidence found that there was no independent verification that the salaries paid by the new corporation to the respondent's spouse and son represented compensation for actual services performed by them. Further, there was no evidence provided to determine what portion of revenues of the corporation were attributable to the marketing services for skin care products. According to the judge, *'In my view, the information provided by the respondent on this motion is insufficient to meet his onus under s. 18(2) of the CSG to establish that the salaries and dividends paid to family members "were reasonable in the circumstances" .*

Therefore, the judge added back the salary paid to the family members (\$47,400) and 50% share of the wife's portion of the corporate income (\$4,967), for a total of \$51,367 to the respondent's imputed income of \$144,121, for a total of \$195,488. The judge now computed the spousal support on this reduced amount, which though was lower than what the respondent was paying earlier, was certainly not what he expected to pay when he brought the motion. As such, the lesson that can then be learnt from the review of this case is that even though changes made to the corporate structure to split revenues and payments made to non-arm's length parties can be valid for taxation purposes, they did not pass the test for family law purposes.