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Corporate income may be used to determine support obligations

Bryce Dillon, Family Law Lawyer

In Canada, it is trite law that a corporation is a legal person separate from its shareholders, directors, and officers. However, family courts can “pierce the corporate veil” to determine the amount of income available to a spouse for child and spousal support. More specifically, if a spouse is a controlling shareholder of a corporation, a judge may look at the corporation’s pre-tax income to calculate how much support should be paid.

In normal circumstances, support obligations are calculated using the amount at “line 150” of each spouse’s personal income tax return—that is, their gross income before taxes and deductions. However, courts have the power to depart from line 150 if that would not be the fairest determination of a spouse’s income for support purposes.ⁱ

There are several alternate approaches or adjustments in determining income, such as considering patterns or fluctuations in a spouse’s line 150 income over the past three years, or adding all or part of a corporation’s pre-tax income for the most recent taxation year.ⁱⁱ For this purpose, pre-tax income includes all amounts paid by the corporation as salaries, wages, fees, or other payments and benefits to someone not at “arm’s length” (e.g. the controlling shareholder’s family members).ⁱⁱⁱ

A controlling shareholder may have a number of reasons for not distributing corporate earnings to him or herself through a dividend, salary, or a bonus. For example, keeping earnings within a corporation or paying a reasonable salary to a family member may be effective as a tax planning strategy.

However, in family law cases, courts are concerned with the unfairness that would result if a spouse artificially manipulates his or her income through a corporate structure for the purpose of avoiding support obligations.^{iv} Therefore, if there is some basis for attributing corporate income to a spouse, he or she has the legal onus of providing a legitimate business reason for not withdrawing earnings from the corporation.^v

Some examples of legitimate business reasons include: the need to acquire or replace inventory, debt financing needs, accounts receivable carried for a significant period of time, cyclical peaks or valleys in cash flow, allowances for bad debts, allowances for anticipated business losses or extraordinary expenditures, and capital acquisitions.^{vi}

A court may consider several other factors, such as the historical pattern for earnings being retained in the corporation, the industry environment, the potential for growth or contraction, the degree of control the spouse exercises over the corporation, and whether salaries or other benefits are consistent with industry standards.^{vii}

In *Mason v. Mason*, the Ontario Court of Appeal recently confirmed that judges are not restricted to looking at corporate earnings for only the most recent taxation year.^{viii} Rather, a judge may look at the corporate earnings for the *last three years*, having



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regard to any fluctuations or patterns of income.^x In that case, the husband's corporation suffered a loss in the most recent year. However, this was exceptional, and the business was likely to rebound. As a result, the Court averaged his personal income and part of the corporate income over the last three years, and found that his total annual income for support purposes was just under \$215,000.^x

Whether or not corporate earnings can be added into a spouse's income for support purposes is highly contextual. There is no general "rule of thumb". The Family Law Group at Perley-Robertson, Hill & McDougall LLP/s.r.l. can assist individuals navigate their rights and obligations with respect to child and spousal support.

Bryce Dillon is a family law lawyer in the firm's Litigation Law Group. He can be reached at 613.566.2852 or bdillon@perlaw.ca.

ⁱ *Federal Child Support Guidelines*, SOR /97-175, s. 18; *Spousal Support Advisory Guidelines* (Toronto: Carol Rogerson and Rollie Thompson, 2008), p. 46, s. 6.1.

ⁱⁱ *Federal Child Support Guidelines*, ss. 17, 18.

ⁱⁱⁱ *Federal Child Support Guidelines*, ss. 18(2).

^{iv} *Thompson v. Thompson*, 2013 ONSC 5500 ["*Thompson*"] at para 88.

^v *Thomson*, *ibid* at para 91.

^{vi} *Thomson*, *ibid* at para 92.

^{vii} *Thomson*, *ibid*.

^{viii} *Mason v. Mason*, 2016 ONCA 725 ["*Mason*"].

^{ix} *Mason*, *ibid* at paras 151, 160.

^x *Mason*, *ibid* at paras 170-186.