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Featured Cases:

McDonald v. Brookfield Asset Management Inc., 2016 ABCA 375

Areas of Law: Class Actions; Corporations; Oppression; Good Faith Doctrine

~A creditor is not to be regarded as a shareholder for the purpose of determining if two companies are affiliates prior to actual conversion of a debt instrument into shares~

BACKGROUND

CLICK HERE TO ACCESS THE JUDGMENT

The Appellant, Lanny McDonald, was a director and shareholder of Birch Mountain Resources Limited. Birch Mountain was a publicly traded company, and was thought to own a limestone quarry worth $1.6 billion. The company had trouble funding its operations. The Respondents, Brookfield Asset Management Inc., Brookfield Special Situation Partners Ltd., and Hammerstone Corporation, are part of a venture capital group that identify and invest in companies that are facing business challenges but otherwise show potential. The Respondents provide financial and operating advice, as well as capital, to assist such companies in becoming profitable. Between 2006 and 2008, over the course of several financial transactions and events involving the Respondents,

McDonald v. Brookfield Asset Management Inc., (cont.)

Birch Mountain became unable to meet its financial obligations and eventually lost the quarry in receivership proceedings. As a result of Birch Mountain's various defaults and the eventual judicial sale of the quarry to the Respondent Hammerstone, the shares of Birch Mountain lost all their value. The Appellant sought to bring a class action on behalf of Birch Mountain shareholders. The chambers judge summarily dismissed the action, concluding that the plaintiff class did not qualify as "complainants" for the purposes of the corporate oppression remedy. The statement of claim alleged that the Respondents were affiliates of Birch Mountain, because if certain debentures issued by Birch Mountain and held by the Respondents were converted to common shares, the Respondents would fall into the definition of "affiliate" in s. 2 of the *Business Corporations Act*. The Appellant argued in the alternative that the Respondents were affiliates because of certain provisions in the loan agreements between them and Birch Mountain. If the Respondents were affiliates, the Appellant alleged that they had conducted the business of Birch Mountain in a way that was oppressive or unfairly prejudicial to the proposed class. The chambers judge rejected this argument. She held that a creditor is not to be regarded as a shareholder for the purpose of determining if two companies are affiliates prior to actual conversion of a debt instrument into shares. The judge dismissed the

McDonald v. Brookfield Asset Management Inc., (cont.)

claim based on the "good faith doctrine", on the basis that the claim was a part of the law of contract, the proposed class did not have any contractual relationship with the Respondents, and there was no independent tort of bad faith. There was no evidence to support a claim of negligent misrepresentation, and in any case the special relationship needed to maintain such a claim did not exist between a creditor and a borrower.

McDonald v. Brookfield Asset Management Inc., (cont.)

APPELLATE DECISION

The appeal was dismissed. The Appellant sought to introduce fresh evidence on appeal, but the Court of Appeal did not allow it. The fresh evidence could have been adduced at trial by due diligence, and it could not be reasonably expected to have affected the result. The Appellant submitted that the chambers judge committed reviewable error in giving little weight to some of the Appellant's evidence as consisting "entirely of hearsay" and "non-expert interpretation of various documents." The Appellant argued that a respondent to a summary dismissal application can rely on hearsay. While this is correct, the chambers judge found that the evidence had no probative value for many reasons, not just the fact that it was hearsay. The judge did not err in attributing little or no evidentiary value to the affidavit. The Court of Appeal agreed with the chambers judge's conclusions on the question of negligent misrepresentation. With respect to oppressive conduct, many of the Appellant's complaints amounted to an impermissible collateral attack on the orders made in the receivership proceedings. Most of the oppression claim depended on the plaintiff class demonstrating that Birch Mountain and the Respondents were affiliates. The Court considered the *Business Corporations Act* and noted that when affiliation is said to arise as a result of "control" there is a two-part test: the controlling entity must hold 50% of the votes plus the ability to elect a majority of directors. Without "control"

McDonald v. Brookfield Asset Management Inc., (cont.)

as defined in the statute, there is no affiliation. The Court of Appeal agreed with the chambers judge that Birch Mountain and the Respondents were not affiliates under the *Act*, and the members of the proposed class did not qualify as complainants for the purposes of advancing an oppression claim. On the record, the various identified transactions were shown to be legitimate and did not amount to oppression. The chambers judge was also correct in concluding that there is no freestanding cause of action of "bad faith".

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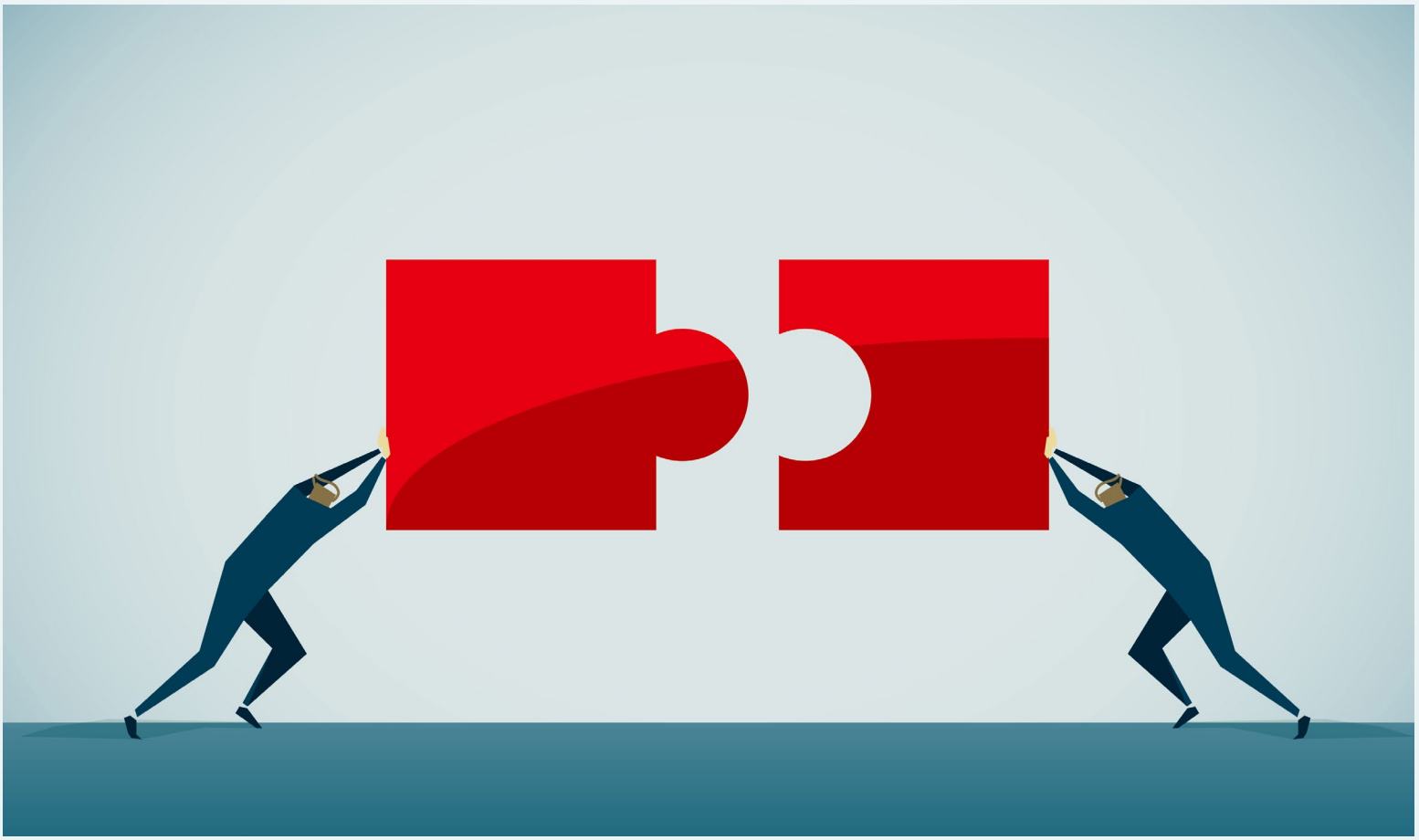

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Alberta (Attorney General) v. Malin, 2016 ABCA 396

Areas of Law: *Certiorari*; *Mandamus*; Standing; Want of Prosecution; Appeal by Judge

~A provincial court judge does not have private or public interest standing to appeal the decision of a superior court with respect to that judge's own ruling~

BACKGROUND

CLICK HERE TO ACCESS THE JUDGMENT

The Appellant, the Honourable Judge L. Malin, is a Provincial Court judge who refused to grant a production order requested during a police investigation, based on the Appellant's interpretation of s. 487.014 of the *Criminal Code*. The Respondent Attorney General of Alberta applied to the Court of Queen's Bench for orders of *certiorari* and *mandamus*. The Queen's Bench judge granted these orders, quashing the Appellant's ruling and requiring him to issue a production order. The Appellant sought to appeal. He was concerned about the *ex parte* nature of the proceedings that occurred before him, because on such an application there is no one to speak for the other side. This amounted to a challenge

Alberta (Attorney General) v. Malin, *(cont.)*

to the validity of this section of the *Criminal Code*. The Appellant also took the position that Rule 833 of the *Alberta Rules of Court* is *ultra vires* s. 482 of the *Criminal Code*, which concerns the powers of courts to make rules. Rule 833 states that notwithstanding Rules 826 to 831, the court on an *ex parte* application by the Crown may quash a conviction, order, warrant or inquisition. The Respondent applied to the Court of Appeal to dismiss the appeal for want of jurisdiction.

Alberta (Attorney General) v. Malin, (cont.)

APPELLATE DECISION

The application was allowed. The Court of Appeal noted that the Appellant had no private interest standing in the matter, which was a criminal proceeding with no personal implications for him. When a judge makes decisions as a member of the judiciary, he or she is acting in an institutional role rather than a personal one. Furthermore, while the *Criminal Code* does confer rights of appeal on third parties under some circumstances, those rights have been expressly granted to them because they have an identifiable interest of a real nature. The Appellant had no such interest in the proceeding. The Court did not accept the Appellant's argument that Rule 835 affords him a personal stake in the matter sufficient to qualify for private interest standing. Rule 835 provides

for automatic civil immunity for a Provincial Court judge who is made subject to a *mandamus* order, but it does not mention *certiorari*. This, the Appellant argued, implied that he could be personally liable civilly should his original order be overturned. The Court of Appeal disagreed, stating that s. 9.51 of the *Provincial Court Act* is a complete answer to concerns about potential personal liability. Under that section, no action may be brought against a judge for any act done or omitted to be done in the execution of the judge's duty. Additionally, judges are immune from suit and prosecution, to ensure judicial independence and impartiality. The appeal was not supported under any principles of administrative or common law. The three-step test for public interest standing is whether there is a serious justiciable issue raised, whether the party raising it has a real stake or a genuine interest in it, and whether in all the circumstances the proposed suit is a reasonable and effective way to bring the issue before the courts. The Appellant has no real stake or genuine interest in the case within the meaning of the law of standing, nor is an appeal by a judge a reasonable or effective way to bring disputes before the courts. The Court also noted that serious policy considerations weigh against any claimed appeal right by a judge. Were judges allowed to appeal decisions quashing their earlier judgments, this would permit them to expand on, defend or qualify their own reasons for decision. This is not acceptable. Appeal by judge also creates the reasonable apprehension of bias, because it gives rise to the impression that the judge has an interest in the proceeding. Finally, the Court of Appeal said, appeal by judge would undermine the rule of law.

Roth v. Economical Mutual Insurance Company, 2016 ABCA 399

Areas of Law: Insurance Law; Exclusions; Water Damage; Enforcement of a Municipal Bylaw

~Where an insurance policy covers increased costs resulting from the enforcement of a law or bylaw in repairing or rebuilding following loss from an insured peril, that coverage does not extend to bylaw infractions that are discovered because of the insured peril but are otherwise unconnected to it~

BACKGROUND

CLICK HERE TO ACCESS THE JUDGMENT

The Appellant, Economical Mutual Insurance Company, issued a commercial package insurance policy to the Respondent, Clarence Roth, operating as the Respondent Inter-City Collision Repairs Ltd. The policy excluded loss or damage arising in consequence of or contributed to by the enforcement of any bylaw or regulation that would make it impossible to repair or reinstate the property as it was immediately prior to the loss. However, Inter-City obtained a rider called an "Express On-Premises Extension Form", which extended coverage to include any increase to repair, replacement, construction or reconstruction costs that resulted from the enforcement of the minimum requirements of any bylaw, regulation, ordinance, or law which

Roth v. Economical Mutual Insurance Company, (cont.)

regulated zoning or the demolition, repair or construction of damaged buildings or structures. In July 2012, heavy rainfall caused a storm sewer to overflow, resulting in water damage to Inter-City's wood frame building. When an adjuster examined the damage, he discovered certain potential building code violations including problems with the interior slab foundation, the wiring, and the roof structure connecting the wood frame building to the steel frame main shop. He also discovered that the wood sill plates and wood framing at the base of the foundation had been exposed to moisture over an extended period of time, and were rotten. Ultimately, the building was determined to be structurally unsound. The City of Medicine Hat determined that the wood frame building had to be demolished or there would have to be a report from a structural engineer as to what steps were required to stabilize it. Before the storm sewer overflow, Inter-City had agreed to sell the property to

Roth v. Economical Mutual Insurance Company, (cont.)

the Respondent, Energy Plus Insulation Ltd. The sale went ahead at a reduced price. The Appellant took the position that the policy covered the cost of repairs to the water damaged portions of the wood frame building, but that no further claims were recoverable. The Respondents brought an action for the cost of replacing the building. The summary trial judge accepted that the building issues relating to the wood frame building were not caused by the storm sewer overflow, and would normally be excluded under the policy, but went on to find that the Extension Form provided coverage. The judge interpreted the phrase "as a result of a peril insured against" to mean that "as a result" referred not only to situations where the insured peril has led to bylaw infractions occurring, but also to situations where the insured peril has led simply to the discovery of a bylaw infraction. He also appeared to consider non-compliance with bylaws to be a separate insured peril.

APPELLATE DECISION

The appeal was allowed. Because interpreting the standard form insurance contract would have precedential value and there was no meaningful factual matrix specific to the particular parties to assist in the interpretation process, the interpretation was properly characterized as a question of law subject to review on a correctness standard. The Respondents argued that compliance with relevant bylaws is a separate or independent insured peril, which is discovered as a result of a first insured peril – in this case, the overflowing storm sewer. The Court of Appeal disagreed. If the policy were to be interpreted in this way, an insured could remove a portion of drywall in response to any peril insured against and, should the building be discovered to be in such a degraded state that it was no longer structurally sound, be entitled to a new code-compliant building to replace the old one. This interpretation is contrary to reasonable

Roth v. Economical Mutual Insurance Company, *(cont.)*

expectations. Neither the insured nor the insurer would have reasonably anticipated recovery for pre-existing deficiencies in a building where the peril insured against did not actually create the bylaw issue. Rather, the Extension Form provides coverage where damage has been caused by an insured peril and repairing that damage requires additional costs in order to meet the minimum requirements of the bylaw.

1177620 Alberta Ltd v. Axcess Mortgage Fund Ltd., 2016 ABCA 404

Areas of Law: Consolidating Actions; Mortgages; Foreclosures

~The court may consolidate actions that involve some of the same parties (even if some parties are different), arise from the same series of transactions, and have common questions of fact and law~

BACKGROUND

CLICK HERE TO ACCESS THE JUDGMENT

The Appellant, 1177620 Alberta Ltd., is a corporation owned by Russ McCurdy. The Appellant developed a multi-residential building on land at Redwater, Alberta. The Respondent, Axcess Mortgage Partners Ltd., is a mortgage administrator. It manages three mortgages on the lands, each one held by a different group of Respondent mortgagees ("Mortgagees"). The Respondent William Buterman is an employee of Axcess and acted as representative of the Mortgagees. The Appellant defaulted on its payments. Axcess and the Mortgagees brought three separate foreclosure actions. In the third of these actions, the Appellant filed a counterclaim. Mr. McCurdy also filed a separate action for breach of contract against Mr. Buterman and the Mortgagees, alleging that Mr. Buterman as agent for the Mortgagees entered into an agreement with Mr McCurdy. The alleged agreement contemplated Mr. McCurdy incorporating a company to purchase the lands and that company completing the condominium project and selling the condominium units. The separate action also alleged that the parties agreed that Mr. McCurdy would be paid for his services and that the Mortgagees would continue to advance funds until the project was complete and the units sold. The Appellant's statement of defence was substantially the same in each of the foreclosure actions, and the main defence relied on a limitation period. The Appellant brought an application under Rule 3.72 of the *Rules of Court* for an order consolidating the four actions. The Mortgagees brought a cross-application for an order severing the counterclaim to the third foreclosure action. The chambers judge dismissed the Appellant's application and severed the counterclaim. Both of these orders were appealed.

1177620 Alberta Ltd v. Axcess Mortgage Fund Ltd., (cont.)

APPELLATE DECISION

The appeal was allowed in part. The Court of Appeal considered the central issue common to all four actions to be whether there was an enforceable agreement between Mr. Buterman, as agent of the Mortgagees, and Mr. McCurdy as both agent of the Appellant and on his own behalf. The Court found that although they involved some different parties, the foreclosure actions all involved a common question of fact and law. All of the statements of claim alleged a forbearance agreement with the Appellant, and the three actions concerned the same series of events. They would also involve the same witnesses. If the three foreclosure actions were to proceed to trial separately, the trial courts might reach different conclusions about the agreement allegedly entered into between Mr. McCurdy and Mr. Buterman. For these reasons, the Court

1177620 Alberta Ltd v. Axcess Mortgage Fund Ltd., (cont.)

of Appeal allowed the appeal with respect to consolidating the three actions, including the counterclaim to the third foreclosure action. However, the breach of contract claim was not consolidated with the others. It involved a different party and a distinct issue, and consolidating it could unduly delay the resolution of the foreclosure claims.

Bohn v. Bohn, 2016 ABCA 406

Areas of Law: Family Law; Child Support; Retroactive Support; Guideline Income

~Agreeing to a child support recalculation under Alberta Justice's Child Support Recalculation Program does not estop a party from seeking to vary the calculation when new information about a payor's income comes to light~

BACKGROUND

CLICK HERE TO ACCESS THE JUDGMENT

The Appellant, Troy Bohn, and the Respondent, Trina Bohn, obtained a divorce judgment and corollary relief order in 2011. They have shared parenting of their only child since July 1, 2015. The Appellant's income is from his corporation, Troy's Trucking & Crane Ltd. He is the sole shareholder and director. Although he disclosed his personal income tax returns as directed to in the divorce judgment, he did not disclose financial information about his corporation. In 2014, the parties used the Child Support Recalculation Program offered by Alberta Justice to calculate their 2012 *Federal Child Support Guidelines* income and proportionate share of section 7 expenses based on the Line 150 income in their personal income tax returns. Again, the Appellant did not provide information from his corporation. In 2015, the Respondent received legal advice to the effect that that the Appellant's income for the purposes of the *Guidelines* might be higher than that reflected on his tax return. In October 2015, she asked for and received the Appellant's unaudited financial statements for the corporation for 2011 – 2015. She then obtained an expert report to determine the Appellant's income for the purposes of the *Guidelines*. In November 2015, the Respondent filed an application for retroactive child support to January 1, 2012. The expert report provided ranges for adjustments to the Appellant's income derived from personal benefits of some expenses deducted by the corporation: advertising and promotion expenses for meals, hotels, gifts and gift certificates, and amortization and fuel expenses of vehicles used for personal benefit. At the high end of the range 25% of the benefits were attributed as personal benefits. The expert report concluded that a portion of the salary the corporation paid to the Appellant's new wife was a non-arm's length expense. On February 10, 2016, the Appellant cross-applied for a recalculation of child support and for retroactive credit for overpayment of child support. He submitted an affidavit in

Bohn v. Bohn, *(cont.)*

which he deposed to information about the corporation's income and proposed his Line 150 income should be reduced for the relevant years. The Appellant also attempted to file a supplemental affidavit and a cross-application to examine the Respondent well after the filing deadline. The Respondent objected to the late filing and the judge received and read but declined to consider the late filed affidavit and cross-application. The Appellant did not file a formal application to admit the supplementary affidavit. The chambers judge found that the Appellant had failed to disclose financial information as required by the divorce judgment, and found that the provision of some information several years late did not satisfy the disclosure obligation. The Respondent's agreement to the Recalculation Program's recalculation in 2014 did not constitute waiver of her entitlement to receive this information. The Appellant's Line 150 income did not fairly reflect the funds available for child support. The judge concluded that the Respondent's expert report estimates were reasonable, and awarded retroactive child support for 2012 to 2014 in the total amount of $42,500. For 2015 he added one half of the salary paid to the Appellant's new wife to the Line 150 income.

APPELLATE DECISION

The appeal was dismissed. The Court of Appeal noted that child support decisions warrant considerable deference absent an error in principle, significant misapprehension of the evidence, or a clearly wrong award. The Appellant argued that the chambers judge erred in refusing to consider the supplementary affidavit, because in accordance with ss. 2(3) and 3 of the *Guidelines*, the court must use the "most current information". Extensions of time are well within the discretion of a chambers judge. Furthermore, in the Court of Appeal's view "current information" is likely intended to address current income. Much of the material in the supplementary affidavit

Bohn v. Bohn, *(cont.)*

was directed at previous years and was not necessarily the most current information. The Court noted that courts routinely add to Line 150 income the value of personal benefits the payor spouse derived from deductions from income for tax purposes, or expenses deducted from the income of a related corporation. The Court further noted that the corporate income and expenses calculations contained in the Appellant's supplemental affidavit were prepared by the Appellant himself and his lawyer instead of another expert accountant. The Court of Appeal found no error in the chambers judge's reliance on the Respondent's expert report. His use of the mid-range estimate of personal benefits as set out in the report was reasonable and entitled to deference. There is also nothing in the Regulation to suggest that a party is estopped from making an application to vary the Recalculation Program amount when new information about a payor's income comes to light.

COUNSEL COMMENTS

Bohn v. Bohn, 2016 ABCA 406

Counsel Comments provided by
Jerry Kiriak, Counsel for the Respondent

"A payor parent's obligation to provide full, frank and timely disclosure cannot be stressed enough in family law. Courts are given wide discretion and will draw an adverse inference when there is a lack of disclosure from the payor parent to the child's detriment.


Jerry D. Kiriak

In this case, the Divorce Judgment contained a disclosure clause which did not include a requirement to disclose corporate financial statements. The Appellant here elected not to provide his corporate financial documents until the request was made by the Respondent three and a half years after the Divorce Judgment was granted.

Where a payor's only source of income is from a corporation where he or she is the sole shareholder, as in this case, the payor parent would seem to be under a positive obligation to disclose any relevant and material financial information regarding the corporation to assist the recipient parent determine the payor's income for the purpose of child support.

Here, the Appellant claimed business expense deductions but failed to provide the supporting documentation in a timely manner. The Duty Judge, by an interim order, excluded the late filed materials from the Special Chambers adjudication. The Court of Appeal interestingly noted that, not withstanding the interim order, it was still open to the Appellant to make a formal application directly to the Chambers Judge to allow the late filed materials, which the Appellant did not do.
It is also interesting to note in this case that the Respondent's expert accountant report ("Report") for personal income tax years 2013 and 2015 added all of his corporate pre-tax income to the

COUNSEL COMMENTS

Bohn v. Bohn, (cont.)

Appellant's income as a starting point, before considering adding back some of the Appellant's personal expense deductions. The Chambers Judge did not to reduce the added corporate income, notwithstanding his having the discretion to do so, and also added some of the Appellant's assumed personal business deductions back to his income.

The Report, which was relied on by the Chambers Justice, was based entirely on the documents provided by the Appellant in response to the Notice to Disclose. The Court of Appeal here emphasized that where inadequate documentation is provided, an "adverse inference" may be found by the presiding judge. The Court of Appeal cited *Ricafort v Ricafort*, 2006 ONCJ 520 at paragraph 75, for the principle that even if the Canada Revenue Agency permits certain business expense deductions for the purpose of a parent's personal taxation, that "does [not] bind the Court" for the purposes of calculating Guideline income:

> [75] Revenue Canada requires retention of all records pertaining to employment expenses for six years from the end of the year when the tax return was filed. The acceptance of his claims by Revenue Canada on the face of his tax return is not licence to a court to do the same. Absent receipts, the lack of documentation to validate the expenses means that the person claiming the expense deductions is unable to substantiate them in the event of an audit or reassessment. Unsubstantiated expense claims are of no assistance to the court.

In the absence of adequate supporting documentation from the payor parent, the business deduction calculations by the Respondent's accountant were based on three scenarios with estimated ranges for adjustments for personal benefits. The Court of Appeal agreed with the Chambers Judge that the Report was reasonable in its calculations, and that the accountant "worked with what it had and applied its expertise", and that the payor parent had ample time to rebut the Report by another expert report.

This judgment sends a powerful message to payor parents who derive their income from corporations as the concept of the payor parent's blameworthy conduct underlies much of the rationale for the decision."

COUNSEL COMMENTS

Bohn v. Bohn, 2016 ABCA 406

Counsel Comments provided by
Ken Proudman, Counsel for the Appellant

Ken Proudman

"This decision contained a number of statements affecting family law practice.

Although a decision rendered by the Child Support Recalculation Program is filed with the Court, contains an appeal period, and is deemed a child support order under the legislation, here both Courts found that voluntary use of the Program had no bearing on arrears, because of "new information" (presumably the payor's corporate Financial Statements). Although unreported, it was the recipient who insisted on the Program, despite the payor requesting to discuss support. As is customary where corporations are involved, the Recalculation Decision also stated "[t]he payor reported self employment income or involvement in a… corporation. The [Program] obtained the recipient's consent to recalculate based on the payor's tax return information". In that regard, payors cannot rely on the Program alone to protect against arrears.

In most cases, there continues to be no clear legal requirement to exchange Financial Statements annually. In that sense it is interesting that if the payor had satisfied the Divorce Judgment by providing his Income Tax Returns and Notices of Assessment directly to the recipient rather than to the Recalculation Program, under the *Goulding v Keck* framework arrears would have been limited, even though no Financial Statements were provided.

Where files involve corporations, being the majority of my practice, practitioners now typically expressly state that the parties shall not use the Recalculation Program. However, there is still a

COUNSEL COMMENTS

Bohn v. Bohn, (cont.)

question of whether or not to require yearly disclosure of Financial Statements, because we can either:

1. Continue to draft annual disclosure clauses referring to only Income Tax Returns and Notices of Assessment, in which case there is a burden on the recipient to obtain additional disclosure;

2. Inscribe an express obligation to exchange corporate Financial Statements annually, which may confuse clients if the Divorce Judgment's disclosure clause does not also refer to Financial Statements, and may result in a dispute about the amount of profit to be imputed. Where the client fails to adhere to such obligation (as is often the case), arrears to the date of the agreement or order would also be virtually guaranteed using this language, due to *Goulding v Keck*; or

3. We can negotiate a default recalculation formula in advance, including the proportion of net income to be included, so that expectations are clear. However, there are a number of drafting issues which can trap practitioners who are unfamiliar with corporate guideline income issues, such as deducting dividend gross-up.

The Court's statement on the burden to prove the reasonability of expenses will also affect family law litigation practice. We had cited one Albertan Court of Appeal decision, two Alberta Court of Queen's Bench decisions, and eleven other decisions throughout Canada, including appellate decisions, which all stood for the proposition that a shareholding spouse is not required to establish the reasonableness of all expenses: the party seeking to impute income must first adduce some evidence to make out a *prima facie* case that the deducted amount is improper, after which point the burden then shifts to the payor. As the Respondent did not dispute this onus, it was surprising that the Court of Appeal, without elaboration, cited two decisions from

COUNSEL COMMENTS

Bohn v. Bohn, (cont.)

Ontario's lower courts rendered obsolete due to their Court of Appeal's subsequent decisions, a decision from the New Brunswick Court of Queen's Bench, and a Alberta Court of Queen's Bench decision which was reversed on appeal (*Roseberry*), to find that "[t]he parent claiming business expense deductions bears the onus of demonstrating they are reasonable". Despite conflicting appellate decisions, the result is that prudent practice may now require that shareholders provide documentation for and justify all expenses, which unfortunately surpasses the CRA's record-keeping requirements. Although not cited by the Court, the Honourable Madam Justice D.A. Yungwirth's suggested form of disclosure in *Sweezey v Sweezey*, 2016 ABQB 131 at para 48 may be useful.

The predominant issue on appeal was actually the relationship between significant corporate losses and arrears when those arrears are based primarily upon past profits, as losses typically imply reliance upon past profits. As appellate authority on the issue of losses is sparse, it's unfortunate that the Court declined to provide further jurisprudence, and instead rationalized that adding only part of the income of the payor's new spouse made up for no other adjustment for the loss, even though the Chambers Justice hadn't linked the two. The Court also upheld the decision to not consider the 2016 Financial Statements evidencing a $113,947 loss, which was only available shortly before Special Chambers."

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