

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Caza v. Caza, 2009 NSSC 225

**Date:** 20090721

**Docket:** 1201-53891  
(SFHD-00238)

**Registry:** Halifax

**Between:**

Paul Caza

Applicant

v.

Marilyn Caza

Respondent

**Judge:** The Honourable Associate Chief Justice Robert F. Ferguson

**Heard:** June 8 & 22, 2009, in Halifax, Nova Scotia

**Written Decision:** July 21, 2009

**Counsel:** Paul Caza, self-represented  
Marilyn Caza, self-represented

**By the Court:**

[1] Paul and Marilyn Caza are the parents of Sebastien, born November 4, 1986, and Dominic, born October 31, 1989. The couple separated, the children remained with Ms. Caza and Mr. Caza has been providing child support since the separation.

[2] Mr. Caza has made application to lessen his child support obligation, both retroactively and on an ongoing basis.

**BACKGROUND**

**July 12, 2000**

[3] An Interim Consent Order was issued requiring Mr. Caza to provide child support of \$801.00 per month beginning July 1, 2000, and spousal support of \$800.00 per month beginning January 1, 2000.

**January 15, 2002**

[4] A Separation Agreement noting Mr. Caza's annual income as \$61,350.00 and Ms. Caza's as \$48,672.00. Child support of \$820.00 per month beginning January 1, 2002, was ordered. The spousal support obligation ended as of January 1, 2002.

**June 28, 2002**

[5] A Corollary Relief Judgment was issued adopting Mr. Caza's child support obligations as previously noted in the Separation Agreement.

**October 8, 2002**

[6] A Maintenance Enforcement Program Record of Payments for the period beginning June 28, 2002, up to and including October 22, 2008. This record indicates the following:

- that the arrears owing as of June 27, 2002, were \$4.00;

- that, from that date until July of 2007, Mr. Caza complied with his child support obligation;
- that, beginning in July of 2007, he began to pay \$512.00 a month – \$308.00 a month less than required by the existing order;
- that he continued to pay this amount until July of 2008 when he further reduced his payment to \$493.00 a month – \$327.00 a month less than required by the existing order.

### **February 20, 2009**

[7] Conciliation Record. There were two conciliation meetings – December of 2008 and February of 2009. Both parties were self-represented. An agreement was reached that child support for Dominic would end as of July 1, 2008; further, that the child support for Sebastien would continue at the rate of \$493.00 a month up to and including the payment of April 1, 2009. It was acknowledged by both parties that, by this agreement, Mr. Caza's stated arrears which, according to the Maintenance Enforcement Program, were approximately \$5,000.00 would be reduced to \$3,696.00.

[8] As to the remaining arrears, paragraph 6 of the Conciliation Report states: "It is Mr. Caza's position that these arrears should be rescinded on the basis that he overpaid child maintenance from January, 2006 to July, 2007." Ms. Caza did not agree.

### **May 1, 2008**

[9] Amended Consent Variation Order. This Order follows the conciliation agreement. The relevant portions are:

1. The terms of the Corollary Relief Judgment dated June 28, 2002 are continued except where changed by this Order, in which case this order prevails.

### **Child Support**

2. Dominic Russell Caza, born October 31, 1989, be and is hereby declared no longer to be a “child of the marriage” as defined by the *Divorce Act* effective July 1, 2008. All child support payments payable by Paul Caza to Marilyn Caza for child support for Dominic shall cease effective July 1, 2008.
3. Should Dominic become enrolled in a post-secondary educational program, the issue of child support shall be re-addressed by the parties;
4. Paul Caza shall pay child maintenance to Marilyn Caza for the support of Sebastien pursuant to the federal *Child Support Guidelines* and in accordance with the Nova Scotia table, the amount of \$493.00 per month, commencing July 1, 2008, and continuing on the first day of each and every month thereafter to and including April 1, 2009, at which point child support for Sebastien shall cease.

**Arrears**

5. The issue of outstanding arrears of maintenance shall be addressed in a separate Order.

**SUBMISSIONS**

[10] Mr. Caza acknowledges reducing his payments as indicated in the Maintenance Enforcement Record of Payments. He submits that, during the relevant periods, his income had lessened and his adjusted payments were in accordance with his then income and his obligations pursuant to the Federal Child Support Guidelines table. Ms. Caza submits Mr. Caza had no authority to unilaterally reduce his court-ordered child support payments and, in any event, based his reduction on an improper assumption as to his annual income.

**EVIDENCE**

[11] Mr. Caza provided a number of affidavits and testified in support of his application. Mr. Caza’s employment ceased in the latter part of 2005. In 2006 and continuing to date he has become self-employed. As a result of the change in his

financial circumstances, he sought legal advice. His pre-trial brief filed on May 28, 2009, describes his reaction to his change of circumstances:

This matter is brought before the courts because I have refused to pay the amount owed as reported by the Maintenance Enforcement Program.

I am asking that the amount owed be “forgiven” for the lack of a better term. Please note that attempts were made to come to some agreement with the respondent and the amount of \$1,000.00 was also offered, as suggested by our Conciliator/Court Officer . . . This amount was rejected.

My ignorance of the system has probably caused this situation but it is hoped the following explains that the steps taken to change the child support payments for the 2 years were made in good faith and that the amount paid would have been the proper amounts had I gone through the proper channels.

2006

Solicitor . . . drew up a consent variation order (attachment 1) showing my income for the year 2006. I had been downsized in December 05 and my salary had decreased. My income for 06 was 34,612.46 (attachment 2), and the child support would have been reduced to \$512.00 instead of \$820.00. The respondent refused to sign the order and in ignorance, I sent a series of cheques to the MEP for the year like I normally did.

2007

Solicitor . . . drew up a consent variation order (attachment 3) showing my income for the year 2007 (attachment 4). It had increased to \$56,627.09 but the child support decreased to \$493.00 since one child had left to go work in Alberta and would not go back to school (Amended Consent Variation Order Attachment 5). The respondent refused to sign ... Again, I sent another series of cheques...

Several months later the MEP contacted me....

[12] Ms. Caza, as acknowledged by Mr. Caza, did not sign the submitted consent orders prepared at Mr. Caza’s request.

[13] Mr. Caza’s T1 General Income Tax and Benefit Return for the year 2006 discloses the following: line 129 (RRSP income) – \$17,777.77; line 130 (eligible retiring allowance for roll-over) – \$24,073.08; line 135 (net business income) –

\$34,612.46; line 150 (total income) – \$76,663.31. The hearing concluded on June 9, 2009. On June 15, 2009, the court received correspondence from legal counsel acting on behalf of Mr. Caza. The letter which was copied to Ms. Caza reported that Mr. Caza’s accountant had mistakenly applied his wife’s T4 RRSP income in the amount of \$17,777.77 to Mr. Caza. The court reconvened on June 22, 2009. Counsel for Mr. Caza provided a letter from Mr. Caza’s accountant indicating the previously mentioned mistake. The mistake resulted in an over estimation of Mr. Caza’s income and that a T1 adjustment for Mr. Caza’s 2006 tax return was being prepared for the CR Agency.

[14] Ms. Caza was disturbed that this information was not available to the court at the time of the hearing. She, however, left it to the court to consider if this recent information should be considered by the court. This information is relevant and did not come to Mr. Caza’s attention until after the hearing had concluded. I will consider this recent information. In doing so, I withdraw line 129 in the amount of \$17,777.77 from Mr. Caza’s income calculations. With this adjustment he would have a line 150 (total income) of \$58,888.54.

[15] Mr. Caza’s T1 General Income Tax and Benefit Return for the year 2007 discloses the following: line 135 (business income) - \$56,627.09; line 150 (total income) – \$56,627.09.

## **RELEVANT LEGISLATION**

[16] The *Divorce Act* states:

Child support order

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

...

Guidelines apply

15.1 (3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.

...

Factors for child support order

17.1(1) (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

...

Court may take agreement, etc., into account

17.1 (6.2) Notwithstanding subsection (6.1), in making a variation order in respect of a child support order, a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied

(a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and

(b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

[17] The *Federal Child Support Guidelines* state:

Presumptive rule

3.(1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and

b) the amount, if any, determined under section 7.

...

#### Circumstances for variation

14. For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

1. in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
2. in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support; and
3. in the case of an order made before May 1, 1997, the coming into force of section 15.1 of the Act, enacted by section 2 of chapter 1 of the Statutes of Canada, (1997).

...

#### Determination of annual income

15.(1) Subject to subsection (2), a spouse's annual income is determined by the court in accordance with sections 16 to 20.

...

#### Calculation of annual income

16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General



form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

## DECISION

[18] In July of 2007, and again in July of 2008, Mr. Caza unilaterally reduced his court-ordered child support. He based this action on his belief his income had decreased on both occasions and that, for a portion of that time period, one of his children was not entitled to continued support. However, by the current consent order, Mr. Caza acknowledges that both of his children were entitled to support up to July of 2008. Accordingly, Mr. Caza's ability to retroactively seek relief from his requirement to pay child support in the amount of \$820.00 a month prior to July of 2008 is related to the income attributable to him for the purposes of providing child support.

[19] Mr. Caza reduced his payments in July of 2007 based on the assumption that his income for determination of child support was his previous year's net business income of \$34,612.00. As noted previously, even allowing the deletion of the \$17,777.77 his line 150 or total income for that year would be \$59,351.00.

[20] As for 2007, Mr. Caza's total income and net business income was the same – \$56,627.00.

[21] Mr. Caza was in error when he concluded his obligation to provide child support was determined entirely by his net business income.

[22] The *Federal Child Support Guidelines*, in paragraphs 15 through 20, speaks to the determination of income for child support purposes. There are numerous factors for consideration. However, it is clear that, to the extent income tax information is to be considered, it is the amount indicated as total income and not that indicated as business income that is most relevant.

[23] Mr. Caza's income for the years 2006 and 2007 was marginally less than the \$61,350.00 attributed to him as the basis for his requirement to pay \$820.00 a month. However, this decrease in income did not provide Mr. Caza with the opportunity to unilaterally reduce his child support payments on two occasions,

especially when it was based on an incorrect assumption as to the determination of his annual income and the eligibility of one of his children to continue receiving support.

[24] It is apparent from information supplied by Mr. Caza that, since he undertook to pay \$820.00 a month in January of 2002, his income had increased, if marginally, up to the time he became self-employed. Mr. Caza was required, by virtue of a provision in the Corollary Relief Judgment, to provide yearly Ms. Caza with his Income Tax Returns and Notices of Assessment. Mr. Caza failed to meet this requirement.

[25] The majority in *S.(D.B.) v. G.(S.R.) et. al.* 2006 Carswell Alta 976 (SCC), confirmed that the decision to grant a retroactive award is discretionary.

[26] Mr. Caza was required to pay child support for two children in the amount of \$820.00 a month based on an income of \$61,350.00. He seeks a retroactive variation of this obligation lessening the obligation beyond what he acquired by the Amended Consent Variation Order of May 1, 2008.

[27] I have concluded Mr. Caza's income for 2006 was \$59,351.00 and for 2007 was \$56,627.00. Applying the applicable tables, his obligation for the first four months of 2006 would have been in the vicinity of \$790.00 per month and for the rest of the year \$835.00 per month. For the year 2007 up to July 1<sup>st</sup> his obligation would have been approximately \$805.00 per month.

[28] The strict application of the applicable *Guideline* table amount during the relevant period would provide marginal, if any, relief from his court-ordered payment.

[29] Ms. Caza, based on Mr. Caza's incorrect calculations and unilateral lessening of his child support obligation, has gone without appropriate child support for a considerable period of time. The application of the application *Guidelines* as requested by Mr. Caza would, in this instance, in my view, be inequitable. I decline to lessen his obligations as requested in his application.

[30] The parties acknowledge that the current order, with its retroactivity, would lessen Mr. Caza's arrears as calculated by the Maintenance Enforcement Program.

It would appear, given the court order, that Mr. Caza's ongoing obligation to provide child support has ceased.

[31] Mr. Caza remains responsible for the arrears owing and calculated after the reduction created by the current order. I assume the Maintenance Enforcement Program will confer directly with Mr. Caza as to the manner in which he will be required to pay these arrears.

J.