

Date: 20011116
Docket: SFHD 006980
1201-50722

IN THE SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

[Cite as: Robski v. Robski, 2001NSSF29]

BETWEEN:

BARRY JOSEPH ROBSKI

APPLICANT

- and -

CATHERINE RUTH ROBSKI

RESPONDENT

D E C I S I O N

HEARD: Before the Honourable Justice Suzanne M. Hood at Halifax,
Nova Scotia on September 6, 2001

DECISION: November 16, 2001

COUNSEL: **Susanne Litke** for the applicant
Kent Clarke for the respondent

Hood, J.:

[1] Barry Robski's employment was terminated on January 22, 1999. He received a severance package. Later that year, he started a new business and incurred a business loss resulting from training expenses and other startup costs. He seeks to retroactively reduce his child support payments and to pay less than a *pro rata* share of special expenses.

FACTS

[2] Barry and Catherine Robski were married July 12, 1986, separated on January 21, 1996 and were divorced on May 25, 1998. They have three sons: Ryan - born [...], 1988 who is now thirteen; Adam - born [...], 1990 who is now eleven; and Drew - born [...], 1996 who is now six.

[3] Barry Robski seeks a variation of child support and s. 7 expenses retroactive to 1998.

[4] The parties made a number of agreements at a pre-trial conference held with Justice Campbell on August 13, 2001. These are incorporated in a pre-trial conference memorandum. These agreements will be referred to hereinafter.

[5] The parties agree that there has been a change in circumstances arising from Mr. Robski's employment having been terminated on January 22, 1999.

ISSUES

[6] The issues are:

- 1) Barry Robski's 1999 income;
- 2) Catherine Robski's 2000 and 2001 income;

- 3) Section 7 expenses:
 - a) the reasonableness of child care expenses
 - b) the sharing of child care and orthodontic expenses
- 4) Arrears, if any;
- 5) Costs.

Barry Robski's 1999 Income

[7] Barry Robski's 1999 income is in dispute because of losses deducted from his employment income arising from his business. Barry Robski received a severance package totalling \$85,713.01 upon termination of his employment. Attached as a schedule to his 1999 income tax return (Exhibit 2) is a breakdown of the severance package. From the severance package, income tax of \$31,577.93 was deducted.

[8] Line 150 of Barry Robski's 1999 Tax Return shows total income of \$53,628.96. That figure was arrived at after deducting \$32,084.05 in business losses.

Tax Refund 2000

[9] In 2000, because of the business losses, Barry Robski received a refund of 1999 income tax paid in the amount of \$16,063.63. However, at the pre-trial conference with Campbell, J., it was agreed that that sum would be included in Barry Robski's 2000 income. Accordingly, I conclude that amount is to be deducted from his 1999 income or it would be double counted. His 1999 income is therefore reduced by \$16,063.63.

Income from Profit Sharing

[10] Barry Robski cashed stock options totalling \$4,484.14. He testified that profit sharing income, although earned in a particular year, vests at a rate of 20% per year. In other words, it takes five years for profit sharing amounts to fully vest.

[11] In the division of matrimonial assets at the time of the divorce, the profit sharing amounts earned to that date were dealt with as matrimonial assets.

[12] Both parties agree that some portion of the \$4,484.14 should not be included as income for Barry Robski in 1999. Mr. Robski submits that 100% of it should be deducted from his income for that year; whereas Catherine Robski says only 80% should be deducted.

[13] I am satisfied that some portion of the \$4,484.14 was earned post-divorce. The divorce judgment dealt with the profit sharing plan as of 1997. The

termination of Barry Robski's employment was in January 1999. In the absence of any specific evidence about the profit-sharing amount earned in 1998, 20% of which would have vested in that year, I conclude that 20% of \$4,484.14 is post-divorce profit sharing. Only that amount should be included in Barry Robski's 1999 income. Accordingly, I deduct 80% of \$4,484.14 or the sum of \$3,587.31 from Barry Robski's 1999 income.

Business Expenses

[14] This is the area of greatest dispute between the parties, although both agree that some of the business expenses should not be deducted from Barry Robski's 1999 income.

[15] In *Snow v. Wilcox* (1999), N.S.C.A. 163, Flinn, J.A. said at para. 22:

22. In the case of a self-employed businessman, like the respondent, there is very good reason why the Court must look beyond the bare tax return to determine the self-employed businessman's income for the purposes of the **Guidelines**. The net business income, for income tax purposes, of a self employed businessman, is not necessarily a true reflection of his income, for the purpose of determining his ability to pay child support. The tax department may permit the self-employed businessman to make certain deductions from the gross income of the business in the calculation of his net business income for income tax purposes. However, in the determination of the income of that same self employed businessman, for the purpose of assessing his ability to pay child support, those same deductions may not be reasonable.

He continued at para. 26:

... The businessman must demonstrate, among other things, that the deductions which were made from the gross income of the business, in the calculation of his net business income, should, reasonably, be taken into account in the determination of his income for the purpose of calculating his obligation to pay child support.

[16] The *Child Support Guidelines* provide in s. 17 (2):

Non-recurring losses

17. (2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

[17] Section 19 of the *Child Support Guidelines* provides:

Imputing Income

19. (1) The Court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include:

[...]

(g) the spouse unreasonably deducts expenses from income.

Reasonableness of expenses

19. (2) For the purpose of paragraph (1)(g), the reasonableness of any expense deduction is not solely governed by whether the deduction is permitted under the **Income Tax Act**.

[18] In two decisions of the Saskatchewan Court of Queen's Bench, Archambault, J. dealt with business losses. In *Ewart v. Miller* (1997), 34 R.F.L. (4th) 408 (Sask. Q.B.) he said at p. 409:

The respondent argued that his losses for his horse boarding operation and motor-home rental businesses should be applied in reduction of his income. Again, while these losses may legitimately be deducted from his other income for income tax purposes, they ought not be applied to reduce his income for maintenance purposes. Furthermore, these losses result from investment expenditures, largely of cattle in nature, for the purposes of earning future income and ought not operate to the present detriment of his children.

[19] In *McKay v. McKay* (1977), 35 R.F.L. (4th) 69 (Sask.Q.B.), Archambault, J. said at p. 70:

... As this was a one shot loss and even though it may be a legitimate deduction for income tax purposes, it ought not reduce Vincent's income for guideline purposes to the detriment of his children.

Training/Travel Expense

[20] The largest business expenses claimed are training and travel expenses set out on lines 6440 and 6450 of the schedule attached to Exhibit 3, the revised financial statement of Barry Robski. These expenses are \$22,700.50 for training and \$6,000.49 for travel totalling \$28,700.99.

[21] Barry Robski's position is that almost all of these expenses should be an allowable deduction from his 1999 income for calculating child support. Catherine Robski's position is that little or none should be allowed.

[22] These expenses are a one time, non-recurring expense. They total approximately 70% of the total business expenses of \$38,000.00 shown as the business expenses on Exhibit 1, the report of Boyd Hunter of Hunter Belgrave, Chartered Accountants.

[23] That report states that, although a revised form T 2124 statement has been prepared, it does not affect the net income shown but better allocates the expenses. On line 9368 the total business expenses are shown to be \$38,046.05. Mr. Hunter shows the travel and training expenses to be \$5,019.00 and \$22,701.00 respectively for a total of \$27,720.00. The difference between this total and that shown on the schedule to Exhibit 3 appears to be item 6453 on Exhibit 3, the food amount of \$981.29, which is not included in the expert report, Exhibit 1.

[24] In Exhibit 3, Barry Robski shows the expenses he proposes to deduct for purposes of child support in 1999, totalling \$26,810.88.

[25] The wording of the *Child Support Guidelines* and the decisions referred to above lead me to the conclusion that these expenses should not be treated as deductions for purposes of determining income for child support purposes all in one year. They are a non-recurring loss similar to those in *McKay v. McKay, supra* and *Ewart v. Miller, supra*. They are a one shot loss. They are also similar to the capital investment expenditures made in *Ewart v. Miller* "for the purpose of earning

future income". For this reason, I conclude that the entire amount of travel and training expenses should be deducted from business expenses to arrive at Barry Robski's 1999 income for child support purposes. I accept the figures of Boyd Hunter as being more reliable than those of Barry Robski. I therefore deduct the sum of \$27,720.00 from the allowable business losses.

Other Business Expenses

[26] The parties agree that there is some benefit to Barry Robski from certain other business expenses. In my view, these include car expenses, cell phone expenses, donations and entertainment.

[27] In 1999 Barry Robski and his partner, Christine Taylor, had two vehicles. Barry Robski therefore submits that there was a smaller percentage of personal use of the company vehicle in 1999 than in 2000. This seems reasonable to me and I accept that to be the case. Using Exhibit 3 and the attachment to it, I conclude that the other business deductions should be reduced by a total of \$1,866.85. These are the amounts under the headings of gas and oil, license, maintenance, donations, entertainment, insurance, telephone and vehicle lease.

Franchise Fee

[28] Catherine Robski says that the franchise fee has been deducted in total from Barry Robski's 1999 income as a business expense in that year. However, Exhibits 1 and 2 show a capital cost allowance of \$243.58. The breakdown of the capital cost allowance is the same in both exhibits and shows that only \$144.00 of the franchise fee was deducted as a business expense in 1999. Since \$3,442.00 was not in fact deducted in 1999 but only \$144.00, I make no adjustment for the franchise fee.

Inventory Setup

[29] In Exhibit 2, Barry Robski's 1999 income tax return, the amount of \$4,668.00 appears as the closing inventory and the same amount as cost of goods sold. On the attachments to Exhibit 1, the chartered accountant's report, the statement of business activities shows \$8,841.00 in purchases during the year, a closing inventory of \$4,668.00 and \$4,173.00 as the cost of goods sold.

[30] On the schedules to Exhibit 2, Barry Robski uses a figure of \$3,355.20 as inventory setup costs and proposes that entire amount be deducted from his income for determining child support.

[31] The business began in August 1999 and the inventory was purchased at around that time. In my view, it would have been short sighted for Barry Roski to have purchased only enough inventory for four months. According to his accountant's report, he actually purchased \$8,841.00 in inventory and used almost half of it in those four months. In my view, the purchase of inventory was not excessive. If the same rate of usage occurred in 2000, it would be reasonable to conclude that that inventory would be used up in the first four to five months of 2000. I therefore make no adjustment for the inventory setup costs of \$3,355.20 in 1999.

Calculation of 1999 Income

Severance Package		\$ 85,731.01
Deduct: Income tax deduction refunded in 2000 and included in 2000 income		16,063.63
Deduct: Profit-sharing income of \$4,484.14 Less 20% attributable to 1998 (post-divorce)		<u>3,587.31</u>
Income before deducting business losses:		66,062.07
Deduct: Business loss:	32,084.05	
Add back expenses not allowable for calculation of income for determining child support:		
Travel, training	27,720.00	
Personal benefit from business expenses	1,866.65	
Franchise fee	—	
Inventory set-up	—	
Allowable business loss	2,497.20	
Business loss for child support purposes		<u>- 2,497.20</u>
1999 Income for Child support purposes		<u>63,564.87</u>

Income of Catherine Robski

[32] Based upon Exhibit 9, I conclude that Catherine Robski's 1999 income was \$59,743.00. According to the pre-trial conference memorandum, Catherine Robski's 2000 income was agreed upon in the amount of \$54,794.00.

[33] Barry Robski says that an amount should be added to Catherine Robski's income to reflect the contributions made by Wawanesa Insurance to match Catherine Robski's RRSP contributions. He says that, in the absence of specific evidence about this amount, I should impute as income to her 1/3 of her annual RRSP contributions.

[34] In my view, this is a perquisite of Catherine Robski's employment. It is, however, not a taxable benefit and, therefore, is not treated as part of her income. Furthermore, it is not a term of her employment because it is not a benefit received from her employer but from a company with whom her employer does business. Accordingly, it is a gratuitous payment and can be withdrawn at any time. I therefore conclude that it should not be included in Catherine Robski's income. I conclude that her income for the year 2001 is \$55,009.59 as shown on Exhibit 14.

Section 7 Expenses

Orthodontist Expenses

[35] It does not appear that Barry Robski says that the amount of the orthodontic expense is unreasonable. His position is that his *pro rata* share of that expense should be reduced because of his income. I will deal with this hereinafter.

[36] The total orthodontic expense is \$4,150.00; \$300.00 was paid as a deposit, \$200.00 as a records fee; and \$300.00 as a consultation fee. The payments after the \$300.00 deposit was made are \$190.00 per month for 18 months. The first payment was made in December 2000.

[37] However, regardless of one's means, orthodontic treatment is necessary for Ryan and the cost is reasonable. Barry Robski is, therefore, to share *pro rata* in the orthodontic expense in the full amount of \$190.00 per month.

Child Care Expense

[38] Barry Robski does not disagree with sharing the 1999 child care expense. During 1999 the youngest child, Drew, was not in school. With respect to the child care expenses beginning in 2000, he says two things:

- 1) They should have decreased in September, 2000 when Drew started school; and
- 2) He should not have to share the *pro rata* cost beginning in January, 2000 because of his income.

[39] Catherine Robski pays \$150.00 per week, non-deductible, 52 weeks per year. This is set out in Exhibit 10. The monthly cost is agreed to be \$650.00.

[40] With respect to his first point, Barry Robski says that child care costs should have decreased when the youngest child started school. He says the caregiver works fewer hours and some of the hours she works are for the personal benefit of Catherine Robski.

[41] Catherine Robski's position, however, is set out at p. 19 of her post-trial submissions:

... Mrs. Robski is the sole custodial parent for three children. Her employment requires her to commute between Halifax and Sackville and the level of responsibility of her job requires that she be present whenever possible with the possibility of extended hours. The child care of three children is extremely demanding on one parent. Mrs. Robski depends on the consistency associated with her childcare provider to bring stability to the children.

[42] I agree that good child care arrangements are important to Catherine Robski and stability in those arrangements is important for the Robski children. However, I also agree that there is some element of personal benefit to Catherine Robski in having Linda Brown in her home all day, every day now that all three children are in school. On cross-examination, Catherine Robski admitted that Linda Brown will do such things as: occasionally fold and put laundry away if there is a load in the dryer when Catherine Robski leaves in the morning and supervise the children's chores like vacuuming and walking the dog. She also agreed that Ms. Brown gives

the children their supper one night per week but said it is a meal she has left in the fridge for them. I do not accept that this is the extent of her household activities.

[43] I therefore conclude that some credit must be given for this assistance with household activities as part of the \$650.00 per month which Catherine Robski pays.

After September 2000 until April 2001, I conclude that the personal benefit to Catherine Robski from this assistance was \$50.00 per month. For now, while Drew is still very young and two of the three children come home for lunch daily, it is reasonable that the caregiver be on standby for the additional hours for which Catherine Robski has her available and for which she pays her. Of course, that standby time may change as the children grow older and either have afternoon activities after school or do not come home for lunch, or both.

[44] I therefore conclude that \$600.00 per month is the portion of the \$650.00 per month attributable to actual child care for the period September 2000 to April 2001.

[45] However, beginning in the spring of 2001, Catherine Robski's work hours changed. She is now able to leave the house at the same time as the children and does not need to have the caregiver arrive at 7:30 in the morning to look after the children in her absence. However, she continues to have her arrive at 7:30 a.m.. In my view, that additional time the caregiver spends every day in the Catherine Robski household is in the nature of assistance to Catherine Robski, not as caregiver to the children. I therefore conclude that this additional time every day results in a benefit to Catherine Robski of an additional \$100.00 per month not attributable to child care costs. I conclude that, beginning April 1, 2001, the actual child care costs are \$500.00 per month. The balance of the expense paid by Catherine Robski is for assistance to her and not for child care.

Sharing of Section 7 Expenses

[46] Barry Robski's second point also relates to the orthodontic expense. He says he should not have to pay a *pro rata* share of the orthodontic and child care costs beginning in 2000 because of his low income.

[47] Section 7 (1) of the *Child Support Guidelines* provides as follows with respect to special or extraordinary expenses:

Special or extraordinary expenses

7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover the following expenses, or any portion of those expenses, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense, having regard to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
 - (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually per illness or event, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

Sharing of expense

- (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

[48] In determining whether an order should be made to cover these expenses, I am to consider the necessity of the expense in relation to the child's best interests. Child care while Catherine Robski works is, of course, essential. It is in the best interests of Ryan to have orthodontic work done.

[49] I am also to consider the reasonableness of the expense in relation to the means of the spouses and those of the child. In this case, I am to consider the means of Catherine Robski and Barry Robski since the children have no independent means. I conclude that to consider the family spending pattern prior to separation is not appropriate since Barry Robski's means have, through no fault on his part, changed considerably since the date of separation. He was earning more than \$65,000.00 while the couple lived together and for three years thereafter.

However, as noted above, in January 1999 his position was terminated and he now earns less than half of his previous income.

[50] Although, as I have said above, it is essential that the children have child care, Catherine Robski's means enable her to have a level of child care which is, in my view, beyond the means of Barry Robski under the circumstances. I therefore conclude that he should not have to share in the total child care expense but only the amount which is reasonable considering his means and the means of Catherine Robski.

[51] For the first eight months of 2000, Drew was not in school. I therefore attributed \$650.00 per month to actual child care. However, based upon his means, I conclude that Barry Robski should share *pro rata* in only \$500.00 of that expense. That is the amount which is reasonable in light of his means and the means of Catherine Robski. Their respective incomes in 2000 were \$30,112.00 and \$54,794.00.

[52] For the months of September through December, 2000, I concluded that the child care portion of the \$650.00 payment was \$600.00. Based upon their respective means, I conclude that the reasonable child care expense in which Barry Robski should share is \$450.00 per month.

[53] That child care situation continued until April 1, 2001. However, Barry Robski's income for 2001 decreased to \$26,706.00 and Catherine Robski's increased slightly to \$55,009.59. Accordingly, I conclude that the reasonable amount of child care costs in which Barry Robski should share is \$425.00 per month.

[54] I concluded that, as of April 1, 2001, the child care portion of the amount paid to Linda Brown was \$500.00 per month. Again, considering the means of Barry Robski and Catherine Robski, I conclude that \$350.00 per month is the reasonable expense in which Barry Robski should share.

[55] At the pre-trial conference before Campbell, J., it was agreed that the after tax child care costs in 1998 in the amount of \$6,863.00 were to be prorated according to the incomes of Catherine Robski and Barry Robski. It was agreed

that these incomes were \$60,373.00 for Catherine Robski and \$71,585.00 for Barry Robski.

[56] It was agreed that the after tax daycare cost for 1999 was \$6,863.00 and would be shared on the basis of the prorated incomes of Catherine Robski and Barry Robski. I have calculated above Barry Robski's 1999 income.

Calculation of Child Support and Sharing of Section 7 Expenses

[57] Exhibit 7 is a list of the monthly payments made to Catherine Robski by Barry Robski for 1998, 1999, 2000 and 2001, inclusive of August 1. Attached to it is the record of payments from the Nova Scotia Maintenance Enforcement Program.

There appears to be no dispute with respect to the monthly payments schedule contained on p. 1 of Exhibit 7. I therefore use it for the basis of determining what, if any, arrears are owed.

[58] In the corollary relief judgment, Catherine Robski was given title to the matrimonial home but was to execute and deliver a mortgage to Barry Robski for his equity in the property in the amount of \$39,672.17 with an interest rate of five percent per annum or \$165.30 per month. The corollary relief judgment provided that Barry Robski was to receive a credit for the amount of the interest each month while the mortgage remains outstanding. It continues to be outstanding.

1998

[59] It was agreed at the pre-trial conference that the parties' incomes were: \$60,373.00 for Catherine Robski and \$71,585.00 for Barry Robski and that the net amount of day care costs was \$6,863.00 to be prorated according to those incomes. The child support payable by Barry Robski on an income of \$71,585.00 for three children is \$1,216.00 per month less the credit for the mortgage interest in the amount of \$165.30 per month for a net child support payment of \$1,050.70. That totals \$12,608.40 for the year. Barry Robski's share of the child care expenses of \$6,863.00 is 54.2%, totalling \$3,719.75 for the year. The two figures total \$16,328.15. According to Exhibit 7, Barry Robski paid \$15,370.00 in 1998 resulting in arrears of \$958.15.

1999

[60] I have calculated Barry Robski's 1999 income to be \$63,564.87 based upon which child support in the amount of \$1,103.00 per month is payable for three children. From that is to be deducted mortgage interest in the amount of \$165.30, resulting in a net child support payment of \$937.70 per month or \$11,252.40 for the year. I have concluded that Catherine Robski's income in 1999 was \$59,743.96. Barry Robski's percentage of the total income is 51.6%. The agreed upon child care expense for 1999 is \$6,863.00, of which Barry Robski's share is \$3,541.31. The child support and child care expenses payable by Barry Robski for 1999 total \$14,793.71. According to Exhibit 7, he in fact paid \$15,231.48, resulting in an over-payment of \$437.77.

2000

[61] It is agreed that Barry Robski's income for 2000 was \$30,112.00. That results in a child support payment of \$577.00 per month for three children from which is to be deducted the mortgage interest of \$165.30 per month. The net is \$411.70 per month or \$4,940.40 per year. Catherine Robski's income for 2000 is agreed to be \$54,794.00 and Barry Robski's percentage of the total income is 35.5%. I have concluded that, for the first eight months of 2000, Barry Robski should pay that percentage of \$500.00 per month for reasonable child care expenses. That totals \$1,420.00. For the last four months of 2000, I have concluded that the reasonable child care expense in which Barry Robski should share is \$450.00 per month. At 35.5% , his share is \$639.00. In addition, Ryan's orthodontic expense commenced on a monthly basis in December of 2000 in the amount of \$190.00. Barry Robski's share (35.5%) is \$67.45. In addition, Catherine Robski paid \$550.00 in other orthodontic expenses in 2000. Barry Robski's 35.5% share of those expenses is \$195.25. The total Barry Robski should have paid in 2000 is the total of those five amounts, which is \$7,261.70. According to Exhibit 7, he paid \$6,169.29, resulting in arrears of \$1,092.41.

2001 (first eight months)

[62] Barry Robski's income is agreed to be \$26,706.00 for 2001. That results in a child support payment for three children of \$515.00 per month less \$165.30 mortgage interest which equals \$349.70. For eight months of 2001, the child support payable is \$2,797.60.

[63] I have concluded that Catherine Robski's income for 2001 is \$55,009.59; Barry Robski's share of their total incomes is 33.7%. Applying that percentage to the reasonable child care expense of \$425.00 per month for the period January to March inclusive in 2001 results in his *pro rata* share of the reasonable child care expense totalling \$429.68 for the three months. Applying that same percentage to the reasonable child care costs of \$350.00 per month for the period from April 1 to August 1, inclusive, results in a *pro rata* share totalling \$589.75.

[64] In addition, Barry Robski is to pay the same percentage of the orthodontic expense of \$190.00 per month for eight months which totals \$497.04. During the

first eight months of 2001, Barry Robski was therefore to have paid \$4,314.07. According to Exhibit 7, he paid \$2,797.75, resulting in arrears of \$1,516.32.

[65] Arrears arose in 1998, 2000 and 2001 totalling \$3,566.88 from which is to be deducted the over-payment of \$437.77 in 1999, resulting in net arrears of \$3,129.11.

[66] Catherine Robski has requested that these arrears be paid by a corresponding reduction in Mr. Robski's equity in the matrimonial home which is secured by a mortgage. If Barry Robski is unable to pay these arrears within 60 days, I agree that this is a reasonable approach. I leave it to the parties to calculate the reduction in the mortgage principal owed by Catherine Robski and the resulting decrease in interest on that mortgage to be credited against Barry Robski's child support payments, if that is done.

DISCLOSURE OF INCOME TAX RETURNS

[67] Catherine Robski requests that Barry Robski be required to disclose his income tax return by May 15 in each taxation year with any notices of assessment or re-assessment being disclosed within ten days of receipt. She also asks that Barry Robski be required to disclose by May 15 each year his profit and loss statement together with a transaction detail by account statement.

[68] I agree that this information is necessary for Catherine Robski to determine Barry Robski's income for child support purposes. Therefore, Barry Robski is to provide to Catherine Robski a copy of his filed income tax return by May 15 each year. As well, he is to provide a statement of profit and loss and a transaction detail by account in a form similar to that attached to Exhibit 6 by May 15 each year. He is also to provide to Catherine Robski, within ten days of receipt, any notice of assessment or reassessment.

[69] Effective September 1, 2001, Barry Robski is to pay child support in the amount of \$515.00 per month based upon an income for 2001 of \$26,706.00. To be deducted from that amount is the mortgage interest which may be recalculated if the arrears owing are deducted from the mortgage balance owing. In addition he is, effective September 1, 2001, to pay 32.7% of the \$300.00 per month reasonable child care expense which totals \$98.10. The orthodontic expense will continue for

a further nine months after September 1, 2001. Barry Robski is to pay 32.7% of the monthly amount owing which is \$62.13 per month. All payments are to be made through the Maintenance Enforcement Program.

COSTS

[70] Since there has been mixed success, I order no costs of the proceeding.

Hood, J.