



The Importance of being Earnest by Scott D. Abel

In 1997, the Federal Government introduced the Child Support Guidelines. The purpose of the Guidelines was to simplify the calculation of child support, and to provide a consistency in the amount of child support that was being paid.

While disputes regard the amount of child support may have lessened, other areas of disputes have arisen, one being retroactive support.

As child support is calculated on the basis of the payor's income, if that income increases, so too should the amount of child support. But what happens if the recipient of child support does not know of the increase in income? Child support could be paid at an amount that is far below what the payor's current income would require.

If child support is being underpaid, the parent receiving child support is entitled to return the matter to court, and seek not only a change in the current amount of child support, but a further sum of money reflecting the amount of child support that ought to have been paid, but was not being paid. This sometimes results in several thousands of dollars in child support having to be paid,

despite the payor complying with the current child support order.

How then can either the payor or the recipient protect themselves, to ensure that child support is always being paid at the correct amount? The Guidelines provide for both the right to request, and an obligation to provide, annual financial disclosure. This is often required in a court order. Regardless of whether the obligation to disclose is ordered, a recipient of child support has the right, on an annual basis, to request updated financial information from the payor.

To protect the recipient, the recipient ought to make that request, and do so in writing. The recipient ought to keep a copy of the letter or email for themselves, to ensure they can prove when the request was made. If no disclosure is received in a timely manner, the recipient ought to seek further legal advice.

The payor, regardless of whether they were asked or ordered to provide financial disclosure, ought to consider voluntarily providing that disclosure, especially if there has been an increase in income. The payor is entitled to rely on

a court order setting out the amount of child support. However, if there is an increase in income, the child or children are entitled to benefit in that increase as well, through the increase in child support.

If the payor does not voluntarily disclose, or ignores a court order requiring disclosure, the payor could be responding in court, with a request for increased child support, and paying retroactive support.

In Manitoba, the Provincial Government has set up the Child Support Recalculation Service. This Service requires the parents on an annual basis to provide financial disclosure, and will set the correct amount of child support, without the need to return to court. There are certain requirements that need to be met in order to utilize this service, but it certainly is an effective and cost efficient manner in which to address the issue of ongoing child support.

As is true with most disputes, lack of communication is often the cause. Making a request for financial disclosure, or voluntarily providing the disclosure, may often avoid what can become a time consuming and costly legal dispute.