



Child Support for Incomes over \$150,000

By Scott Abel

With the creation of the Child Support Guidelines in 1997, the discretion of the Courts to impose an amount for child support was to be removed. The Guidelines create a system whereby once the income of the payor has been determined, the amount of child support is established by the Guidelines.

Practice since that time has demonstrated that there is still much discretion with the Courts to establish an amount of child support. One such area where the Court still has such a discretion is for payor's with incomes over \$150,000.

The discretion of the Court in such a case is not absolute. The Court must order the payor to pay at least the amount of child support that corresponds with an income of \$150,000. Subject to this limitation, the Court can increase or decrease the presumptive amount of support where the amount is inappropriate.

When the court is considering what is inappropriate, the issue is whether the amount of child

support is unsuitable. The issue ultimately becomes is whether the amount generated by the Guidelines is so in excess of the children's reasonable needs that it no longer qualifies as child support.

By permitting the Court to consider what is reasonable, the Court still has some discretion to determine and set an amount of child support.

The Courts generally have been disinclined to reduce the amount of support for incomes over \$150,000. The Courts are still generally using the Guideline amounts for incomes over \$150,000, thereby continuing and ensuring the consistency and certainty that the Guidelines were to meant to create.

When the Courts have reduced the amount of support is to avoid a transfer of wealth from one parent to another, rather than a payment of child support. However at such high income levels, it is difficult to differentiate between support and a transfer of wealth.

It is sometimes difficult to determine what a "reasonable" amount of support is to be paid under the Guidelines for such high incomes. Child support can often be in the tens of thousands of dollars.

On the one hand, it is hard to justify why a child needs \$10,000 or \$20,000 per month for their reasonable living expenses. This sum is clearly going to amount to the payor giving the custodial parent some of their wealth, which is not the goal of child support.

On the other hand, while no child requires that amount of support on a monthly basis, they are entitled to benefit in the lifestyle being enjoyed by the parents. If the child's parent is a millionaire, the child should benefit from the income being earned by that parent. This is how it would work if the family remained together. This principle is true regardless of the income being earned by the parent – it just becomes more difficult to comprehend at such high income levels.

What does this mean for the average family going through a separation? Probably very little, as perhaps only 2% of Canadians earn over \$150,000 per year. However, for those that do earn that much, it creates some further uncertainty in a system that was supposed to create certainty.