



Imputing Income to Payor Parents

By Jodi Wyman

Child support is based on the payor's income. Usually this is easy to determine. The Courts use a payor's last income tax return or recent pay cheque stubs to determine an accurate figure.

Sometimes however Judges have to be more creative. Sometimes the court can decide to add or impute income to what the payor is earning on paper.

The Child Support Guidelines set out some specific times when income can be imputed to the person paying child support.

Probably the most common time is when the payor is found to be "intentionally under-employed" or unemployed. Parents of minor children owe an obligation to them to work to the best of their ability. A non-custodial parent cannot simply decide not to work and therefore not pay support. They would be deemed to have at least income equivalent to minimum wage. Just holding any job will not be sufficient. A doctor would not be able to find work as a convenience store

clerk at minimum wage without good reason. They would most likely still have to pay support at a doctor's level of income.

The under-employment has to be intentional. There are cases where due to stress or physical or mental health reasons the payor has reduced their hours of work or changed careers all together. Lay-offs, caring for a child or disabled person, retiring or changes in the job market may all be acceptable excuses for a reduction in income.

Likely the second most common time this section of the Guidelines is used is when the payor has not provided financial disclosure to the court as required by law. Refusing to produce tax returns or pay stubs will not prevent a child support order. The Judge has the ability to make a best guess as to a likely income, often based on past work history, and set child support.

One other time income can be imputed is when the payor is exempt from paying provincial

and/or federal taxes, such as if they earn income on a reserve.

Other countries have lower tax rates than Canada. A payor who earns income in another country may have extra money attributed to them as a result.

Self-employed parents can fall into some of the categories of this section as well. If the payor has diverted income to another place, such as their corporation, or if they have taken unreasonable deductions from their revenue, extra income can be added by the court. It is interesting to note that just because the Canada Customs and Revenue Agency approves a deduction does not necessarily mean the family court will consider it reasonable.

One other interesting example is when the parent's property is "not reasonably utilized" to earn income. This could be poorly invested money, or a farmer not bothering to plant a crop and leaving the equipment to gather dust.

The list of times the court can impute income is not exhaustive. If the circumstances seem right, the court can add income at any time. Judges take their obligation to set child support very seriously. This section of the Guidelines allows them to adjust a payor's income if appropriate and to order child support accordingly.