



Income Setting with Child Support

By Jodi Wyman

Most people are aware that when parents separate, there is an obligation on the non-custodial parent to pay child support.

Many parents already know that child support is based on government-drafted tables, called Child Support Guidelines.

Something less clear to many parents however is on what basis the child support is set. How is their income calculated? What income is included?

The law gives Judges the option of using many different methods of determining a payor's income, with a goal of trying to choose the most reasonable and current number.

The most common way an income figure is chosen is by using the total income figure in the most recent income tax return. If a payor's income fluctuates from year to year however, the courts can use an average of the last three income tax returns. If the payor's income has changed since the last tax year, for example if he

or she has changed jobs, then the Judge can look at three recent pay cheque stubs to determine income. The Judge is trying to estimate the annual income of the payor for the next year.

It is normally the parent's employment income that is used to set child support. The Child Support Guidelines require that the employment wage before deductions be used, as the tables take into account the usual payroll deductions. If a parent receives their income tax-free, such as with Workers Compensation Benefits or if they earn the income on a First Nations Reserve, the earnings should be grossed up to take that fact into account.

Overtime and bonuses can be included in income as well if they are predictable and reliable. Employee benefits such as use of a vehicle or a housing allowance can be included in or added to income as well.

Generally speaking, if any type of money received by the payor

is recurring and the evidence shows a pattern, it should be included in income for child support purposes.

In setting child support, it is only the parent's income that is used. If the parent lives with a new spouse or common-law partner, that person's income is not relevant. The only time a new partner's financial situation is relevant is if the payor is claiming they cannot pay the child support amount because of "undue hardship". In those cases, which are rare, the court has to examine both households financial picture.

The law does allow the Judge to look at other types of income, besides just employment income. This is where child support cases can get very complicated.

For self-employed individuals, Judges can add back in some deductions taken for income tax purposes. Just because you can deduct a particular expense under the Income Tax Act, does not necessarily mean the

expense is deductible for child support purposes.

Because the Child Support Guidelines are based on what the non-custodial parent can afford to pay, the need for support is not relevant. The parent with custody's income is usually not relevant to the setting of child support. Except in some situations such as when the parents have shared custody, the custodial parent could have lots of their own money, or none at all. The support would be the same. The age of the child is not relevant either, although it may cost far more to look after a fifteen year old than a two year old.

The benefit to the Child Support Guidelines is that there is some certainty and therefore less need to fight out cases in court, but they can lead to some inequities in some cases.