



When to Increase Child Support by Jodi L. Wyman

The latest Supreme Court of Canada decision may make retroactive child support orders far more common.

The issue addressed by the Court was when support should increase. Generally, the non-custodial parent will have an obligation to pay child support based upon their income. But what happens when they get a raise at work, or a higher-paying job? Should they increase their child support right away? What if they decide not to and the matter goes to Court?

In Manitoba, the Courts most often order the new support amount from the date of the hearing, or back to the date the Court application was filed. This puts the burden on the parent with the children to hire a lawyer and file Court documents.

The Supreme Court pointed out however that the law does need to shift. Because support is now based on the parent's income, and not the child's needs, an increase in support should not have to wait for a hearing. The Court stated that if a parent does not increase his support when his income increases, he has not fulfilled his obligation to his

children. Therefore, the Courts do have the power to order retroactive increases in child support.

Although a Judge can order a retroactive increase, it is not clear when. Judges are supposed to look at the circumstances of each case, such as the excuse for not raising the support amount earlier, the conduct of the payor, the circumstances of the children, and any hardship a retroactive award could create for the payor.

Generally, the support increase should go back to when notice was given by the recipient parent to the payor that there should be an increase. If however the payor has been uncooperative, such as by refusing to provide financial information, the new support amount could go as far back as when the payor got the increase in pay. This could lead to a substantial amount of money owing if the raise was many years earlier.

The clear message from the decision is that parents paying child support owe their children an obligation to increase child support as their incomes increase. Payor parents should protect themselves from a retroactive support order by getting a copy

of the Child Support Guidelines (available on-line), and checking it against their income tax returns each year. Try to keep the support amount current. If they are faced with a request for financial information or a request for an update to the support amount, they should respond in a timely fashion.

Parents receiving child support should make sure they request in writing the other parent's tax return and recent pay stubs once each year. Then, if appropriate, they should request an increase in support in writing, and make sure they keep copies. This evidence could be used in Court later.

This decision does not however address decreases in a paying parent's income. If the non-custodial parent loses their job or becomes disabled, they still have to hire a lawyer and file Court documents to change their support order, at a time they can least afford to do so.