

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

Courts look at ability to pay for activities.

Question: I live in Ontario. When I retire I will be earning \$42,000 per year. My ex-wife also has other children, and expenses such as private school, camp, psychologist. Do I have to pay for these in addition to the support indicated in the table? For example, if the total of these expenses is \$30,000 and she earns the same as me, do I have to pay an addition at \$15,000?

Answer: It depends on many factors. First, the expense must be found by the court to be “special or extraordinary.” If a court is to impose such payments, it will do so against both parents in proportion to their respective gross (not net, after-tax) incomes. So which expenses will the courts in Ontario truly consider “special and extraordinary” and under what circumstances? Under section seen of the Child Support Guidelines the court must “take into account the necessity of the expense in relation to the means of the spouses and those of the child and to the family’s spending pattern prior to the separation.” In addition, if the recipient spouse gets a tax break or other benefit for a day-care expense or obtains a subsidy that the other spouse will not benefit from when he pays his share, then the court must take that into account when calculating his contribution. Moreover, if someone is retiring, then even if his children were attending private schools at the time when he separated from his wife, it may be that it is no longer realistic to expect him to contribute to that luxury. That is especially true if making that payment would now eat into his ability to afford basics after paying the table amount such as paying for his own food, clothing and shelter on after-tax basins. The courts first look at the payer’s ability to pay. If it is there then the court will almost always find day care or nannies to be “special or extraordinary” if the custodial parent works, is currently looking for work or is going to school. Equally important are extended health-insurance premiums or specific non-OHIP health costs, especially dentists. And if there is enough money, which there may not be in your case, orthodontists are also likely to be important. Psychologists? Maybe not, if a child psychiatrist that OHIP covers can provide the same services. But with very long waiting lists, that may not be possible or correct health remedy. Overnight camp you can no longer afford (day camp, you might). But for higher income-earners, it’s usually ordered. The toughest questions: extra-curricular activities, like hockey or other sporting opportunities. Are they truly “special or extraordinary” activities? Wait for next Monday’s article.

John T. Syrtash, Associate
GARFIN ZEIDENBERG LLP
Yonge-Norton Centre
5255 Yonge Street, Suite 800
Toronto, Ontario, Canada M2N 6P4
Phone: (416) 512-8000 ext 410; Direct (416) 642-5410
Fax: (416) 512-9992
email: jsyrtash@gzlegal.com

John Syrtash is an associate and family law lawyer with the Toronto firm of *GARFIN ZEIDENBERG LLP*. Neither GARFIN ZEIDENBERG LLP nor John Syrtash is liable for any consequences arising from anyone’s reliance on this material, which is presented as general information and not as a legal opinion