

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

Are You on the Hook for Retroactive Child Support?

Question: Five years ago, when I separated from my wife I earned \$50,00 yearly. Over the past five years my income gradually increased each year. I now earn \$110,000 yearly. My ex-wife and I have two children and I have been paying child support under the Child Support Guidelines based on my former income without any increases. Our separation agreement did not impose any obligation on me to advise my wife of any of my income increases. She first advised me with a letter on June 1, 2005 of her request that I increase my child support and that I should disclose to her any increases in my income since we separated. I now have two new kids and any retroactive Order will affect their life style. How does the new Supreme Court of Canada decision in *DBS v. SRG* affect me? Are the headlines correct? Am I now on the hook retroactively for five years of increased child support in lump sum?

Answer: No. Almost all of the media reports have exaggerated the impact of the new Supreme Canada decision. You are likely limited to paying retroactive child support for up to a maximum of three years before the date of “effective notice.” Effective notice means the first time your ex broached the subject of an increase. In your case this was the date you received a letter from her being June 1, 2005, meaning support could start as early as June 1, 2003. For others, effective notice may have been a telephone call. Moreover, if you had attempted to intimidate her by threats or coercion or refusing to disclose your true income when asked then support could be pushed back further. If you had a legal obligation to provide this information, say as written down in a separation agreement or Court order, then the start date for retroactivity may well be pushed back to more than three years before the effective date of notice since the payer should have provided such data but failed to do so. For payers who fail to provide income info when they were legally obligated, or who lied about their income, or who threatened or intimidated the recipient, then it is not up to three years before the date of “effective notice” but up to three years before the date of “blameworthy conduct.” But the Court also said something helpful for payers. Your second family may prevent a Court from hitting you with the whole retroactive amount if ordering it affects the welfare of your new children.

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