

## **Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP**

### **Answers to pressing questions on Family Law.**

#### **Still likely stuck with payments**

**Question:** I signed a separation agreement for child support in 1998. It said I had to pay \$600 monthly for child support. My income has gone up since then. There's nothing in the agreement that says I have to show her any proof of my income changes each year. Now my ex-wife says that I owe her in arrears an increase under the Child Support Guideline tables. I'm willing to pay more starting now but I don't have \$53,000 for the time she never asked about until now. It just isn't there. Who's right?

**Answer:** If you lived in Alberta, she would definitely be right. In Ontario, she's still probably right even though our own Court of Appeal in one recent decision (Walsh) ruled that pending trial, you wouldn't have to pay the increase because there was nothing in your agreement that obligated you to disclose your income from year to year. At trial, you would still likely be stuck with retroactive payments. However, for many payers Walsh was a "lifesaver" because trials in family law are expensive and don't happen as often anymore. They settle or die well before trial. Some Ontario courts have ruled that it would be unfair to burden a payer with a retroactive increase in a large lump sum if the mother waited for several years or even for a period of time prior to commencing her court action before asking a judge to "pounce" on the payer with a large retroactive sum. (One judge ordered less retroactively because the mother's letter requesting exposure may not have reached the payer and she never "followed up" until starting her lawsuit. However, if the agreement does contain a clause that obligates the payer to disclose tax returns and other evidence of income from year to year then the retroactive payments would be ordered, even before trial. Most importantly, legal scholars and senior family law lawyers today agree that recent Alberta Court of Appeal decision recently released is so thoroughly decided and persuasive that it will likely be adopted by our own courts in Ontario, even though the decision does not technically bind them. The decision is revolutionary. It sweeps aside all technical objections. If your income increased, then you should have contacted your ex and started paying that much more under Child Support Guideline tables, even if the original separation agreement is silent on the issue of timely disclosure. So, payer start paying or you will pay interest. And recipients start calculating what you are owed.

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