

# **Underused, Misunderstood and Misused (Child Support Provisions)**

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*Child Support*

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## UNDERUSED, MISUNDERSTOOD AND MISUSED (CHILD SUPPORT PROVISIONS)

### Introduction

Despite the frequency in which we, as family law lawyers, use and apply the *Federal Child Support Guidelines*, SOR/97-175, (the “*Guidelines*”) there are a variety of underused, misunderstood and misused provisions in the *Guidelines* themselves, and in the *Divorce Act*, R.S.C. 1985, c. 3 (2<sup>nd</sup> Supp.) (the “*Divorce Act*”), and Alberta’s *Family Law Act*, S.A., 2003, c. F-4.5 (the “*Family Law Act*”). This paper will address the following:

1. Employment Expenses –Schedule III
2. Rental Income
3. Employer Pension Contributions
4. International Payors – Section 19(1)(c) and 20
5. RRSP Withdrawals and Section 17(1)
6. Contracting Out of the Guidelines
  - a. Section 15.1 (5) *Divorce Act*
  - b. Section 51 of the *Family Law Act*
7. Life Insurance and Section 15.1 (4) of the *Divorce Act*
8. Pre-Natal Expenses - *Family Law Act* Section 66(5)

### **1. Employment Expenses - Schedule III**

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The starting point for determining income for child support purposes is laid out at Section 16 of the *Guidelines* which points us to total income as set out in a payor’s tax return, subject to the other income-determining sections of *Guidelines*, being sections 17 – 20, and Schedule III. Section 16 provides:

- s. 16 Calculation of annual income** – Subject to sections 17 to 20, a spouse’s annual income is determined using the sources of income set out under the heading “Total income” in the T1 General form issued by the Canada Revenue Agency **and is adjusted in accordance with**

**Schedule III.** [Emphasis added]

Section 1 of Schedule III, dealing with employment expenses, is an oft-overlooked section of the *Guidelines*, despite the fact that there are 14 potential categories and ways to seek a reduction to a payor's income for the purpose of child support:

1. Where the spouse is an employee, the spouse's applicable employment expenses described in the following provisions of the Income Tax Act are deducted:

- (a) [Repealed] SOR/2000-337, s. 8 (1);
- (b) paragraph 8(1)(d) concerning **expenses of teacher's exchange fund contribution**;
- (c) paragraph 8(1)(e) concerning expenses of **railway employees**;
- (d) paragraph 8(1)(f) concerning **sales expenses**;
- (e) paragraph 8(1)(g) concerning **transport employee's expenses**;
- (f) paragraph 8(1)(h) concerning **travel expenses**;
- (f.1) paragraph 8(1)(h.1) concerning **motor vehicle travel expenses**;
- (g) paragraph 8(1)(i) concerning **dues and other expenses of performing duties**;
- (h) paragraph 8(1)(j) concerning **motor vehicle and aircraft costs**;
- (i) paragraph 8(1)(l.1) concerning **Canada Pension Plan contributions and Employment Insurance Act premiums paid in respect of another employee who acts as an assistant or substitute for the spouse**;
- (j) paragraph 8(1)(n) concerning **salary reimbursement**;
- (k) paragraph 8(1)(o) concerning **forfeited amounts**;
- (l) paragraph 8(1)(p) concerning **musical instrument costs**; and
- (m) paragraph 8(1)(q) concerning artists' employment expenses.

[Emphasis added]

The corresponding sections of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), to each of the above