

A Miscellany of Recent, Frequently Cited Appellate Child Support Decisions

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I. INTRODUCTION

The Federal Child Support Guidelines¹ are now almost twenty years old, having come into force on 1 May 1997 as a regulation to the *Divorce Act*.² The Guidelines emerged from work begun by the Federal-Provincial-Territorial Family Law Committee in 1990 in response to widespread dissatisfaction with the determination and tax treatment of child support, and were implemented by government with the intention of helping parents, lawyers and judges set “fair and consistent” amounts of child support.³ Over the years that followed, the Guidelines were adapted and adopted by most provinces and territories⁴ for the purposes of their local domestic relations legislation, and a relatively consistent body of case law developed interpreting the new regulation and addressing tricky issues like the amount of support payable for children over the age of majority, when the payor’s annual income is in excess of \$150,000 and when parents have shared custody of their children.

Although the Guidelines’ goal of improving the predictability of child support awards has generally been realized,⁵ the change from a needs-and-means analysis to analyses based on annual income has merely shifted the focus of argument from budgets to earnings and earning capacity.

Unfortunately, many counsel practicing family law prior to the introduction of the Guidelines are of the view that child support is litigated more frequently now than before, as a result of this change in focus and the new emphasis on income. Nonetheless, the Guidelines have proven to work well for the majority of payors with relatively commonplace employment and child care arrangements; in general, it is only those with irregular or self-employment income, those with equal or near-equal parenting time and those improperly seeking to minimize their support obligations who find themselves mired in arguments about income.

In this paper I will digest ten of the most frequently cited decisions on child support rendered by Canada’s courts of appeal in the last three years. These decisions address the aspects of the

¹ Federal Child Support Guidelines, SOR/97-175

² *Divorce Act*, RSC 1985, c. 3 (2nd Supp.)

³ Child Support Team, “Child Support Initiative Research Framework: Discussion Paper” (Ottawa ON: Department of Justice, 1998) at p. 2

⁴ Manitoba, New Brunswick and Quebec have each developed their own guidelines that apply when both parents reside in the province. The Child Support Guidelines regulations of Manitoba (Man Reg 58/98) and New Brunswick (NB Reg 98-27) bear a close resemblance to the federal Guidelines; Quebec’s Regulation Respecting the Determination of Child Support Payments (CQLR, c. C-25, r. 6) does not.

⁵ Canadian Research Institute for Law and the Family, *Phase 2 of the Survey of Child Support Awards: Final Report* (Ottawa, ON: Department of Justice, 2005)

Guidelines most prone to litigation, including: ss. 18 and 19 on the imputation of income, s. 3 on adult children, s. 7 on special expenses and s. 17 on the averaging of income. In reviewing the digests below, readers should bear in mind the rigorous standard for appellate reviews of support orders set out in *Hickey v Hickey*:⁶

“[10] When family law legislation gives judges the power to decide on support obligations based on certain objectives, values, factors, and criteria, determining whether support will be awarded or varied, and if so, the amount of the order, involves the exercise of considerable discretion by trial judges. ... Because of its fact-based and discretionary nature, trial judges must be given considerable deference by appellate courts when such decisions are reviewed.

“[11] Our Court has often emphasized the rule that appeal courts should not overturn support orders unless the reasons disclose an error in principle, a significant misapprehension of the evidence, or unless the award is clearly wrong. ...”

II. CASE DIGEST

A. *Calver v Calver*

2014 ABCA 63⁷

Retroactive Support and Special Expenses for Adult Child: DA ss. 2, 15.1

Imputing Income: CSG s. 19

Facts:

Separation 2003. Interim consent order in 2004 giving children’s primary residence to recipient, requiring child support of \$500 per month for parties’ three children and requiring payor to provide annual notices of assessment. Divorce 2006, final order continuing disclosure obligation. Payor’s income increasing steadily following final order.

In 2013, payor living in Kamloops and working in Fort McMurray, receiving annual travel and living allowance from employer ranging between \$36,000 and \$48,000.⁸ Payor applying to vary 2004 order as one child reaching age of majority and not attending school and payor having acquired primary residence of another of the children. Recipient crossapplying for increase in child support and payment of special expenses retroactive to 2006. Chambers judge imputing \$18,000 of allowance to payor in absence of evidence of payor’s actual expenses in working in Fort McMurray,

⁶ *Hickey v Hickey*, [1999] 2 SCR 518, recently confirmed in *D.B.S. v S.R.G.*, 2006 SCC 37.

⁷ Available at <http://canlii.ca/t/g332x>. Cited 8 times as of 12 February 2016, according to CanLII.

⁸ Amounts rounded to nearest \$500 here and throughout.