

YOU AND THE LAW

ACT FAST TO CLAIM PAST CHILD SUPPORT

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If you have custody of your child or children, can you claim past child support from the other parent? How far back can your claim go, and how much money can be claimed?

These questions often trouble the courts. Factors to be weighed include hardship on the part of the payor to pay such back-reaching support, delay in making the claim, the child's needs, any increases in the payor's earnings, the child's right to share in such increase, and non-disclosure by the payor of earning increases in the past.

A case decided by the BC Court of Appeal sheds some light on the issues involved.

Ms. and Mr. H met when they were 16 and 18 years old, respectively. They moved in together after a year and married six years later in 1990. A month later, their child was born. They separated once in 1992 and again in 1996. During the second separation, Ms. H got a child support order of \$181 month, which Mr. H paid. They reconciled for a time, then separated for the last time in 2000. They got divorced in 2006.

In 2001, Ms. H demanded an updated financial disclosure statement from Mr. H. He gave this, but underestimated his income and omitted an asset (a half-interest in a house in Vernon). In 2002 and 2003, Ms. H again demanded an updated disclosure statement, which Mr. H didn't give. In 2005, Mr. H increased the monthly support payments. Finally in 2006, Ms. H claimed, among other things, "retroactive" or past child support, as her ex's income had shot up significantly over the previous years. She had a lawyer

at trial, but represented herself before the Court of Appeal (she was granted "indigent" or poor status).

The Court of Appeal upheld her claim for past child support for 2003, 2004 and 2005. Based on four previous Supreme Court of Canada decisions, the Court of Appeal noted that retroactive payments should normally only go back the three previous years, unless there is "blameworthy conduct" by the payor. The earliest starting date for retroactive support should be the date when notice of the claim was effectively given (in this case, 2001, when Ms. H first demanded an updated financial disclosure statement).

Here, Mr. H's conduct was blameworthy because he ignored his ex-wife's repeated demands for updated financial documents and didn't boost his support payments as his income went up. But the support he paid in 2001 and 2002 was about the same as what he should have paid. The court therefore only had to order past support for the three previous years of 2003

to 2005, when Mr. H should have paid monthly support of \$323, \$397 and \$507, respectively.

If a change in your ex's circumstances (like an increase in income) would allow a bump in child support, don't delay your claim for past child support. You're expected to be vigilant and prompt. The courts note that it's hard for the paying parent to pay a retroactive lump sum judgment. Also, you may not be able to claim retroactive child support once your child is an adult. Consult your family lawyer for specific advice.



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If you require assistance in dealing with any family or criminal defence matter, please contact Courtenay Simmons for information on how we can help you.

*Written by Janice and George Mucalov, LL.B.s with contribution by Davidson Pringle LLP. This column provides information only and must not be relied on for legal advice. Please contact Courtenay Simmons of Davidson Pringle LLP at 250-542-1177 for legal advice concerning your particular case. Lawyer Janice Mucalov is an award-winning legal writer.
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