



Child support to rise with income

In a legal decision that could affect hundreds of thousands of families across the country, the Supreme Court of Canada said Monday parents who receive raises at work but do not give more in child support may later be walloped with retroactive charges.

BY THE CALGARY HERALD AUGUST 1, 2006

In a legal decision that could affect hundreds of thousands of families across the country, the Supreme Court of Canada said Monday parents who receive raises at work but do not give more in child support may later be walloped with retroactive charges.

The long-awaited decision, which focused on four Alberta families, will hit Calgary father Daryl Ross Henry with a retroactive child support bill of \$108,000, to be paid to his former wife Celeste Rosanne Henry and their two daughters by 2010.

"Parents have an obligation to support their children in a way that is commensurate with their income," the unanimous high court ruling stated.

"This is a debt. This isn't a lottery," said Daniel Colborne, lawyer for Celeste Rosanne Henry. "When you shortchange child support, you shortchange kids."

While paying parents — mostly men — will now face greater responsibility for disclosing changes in their incomes, the complex ruling leaves courts ample room to determine whether there should be retroactive payments at all.

Judges will have to look at factors such as the circumstances of the children, the hardship the retroactive payments will cause and whether the parent making the support payments has a "reasonable excuse" for not paying more when getting a raise.

While the ruling suggests retroactive payments will become much more common, lawyers say the decision is far from clear. "It doesn't provide us with the definitive answers that some may have been looking for," said Sandra Hildebrand, who heads the family section of the Canadian Bar Association in southern Alberta.

But, Hildebrand said, "family law lawyers will be advising their clients that they should be addressing this issue if there is an increase in income." If they don't, "it could come back to haunt them."

Lawyers across Canada will be busy dealing with a backlog of cases that had been put on hold while the legal community awaited this ruling, and it's possible a rush of new cases may come forward.

In its ruling, the Supreme Court struck down the Alberta Court of Appeal's decision to award retroactive payments to two of the four Alberta families, saying the cases did not involve "blameworthy conduct" on the part of the paying father. It ruled on one case that assessing almost \$16,000 in retroactive payments was too much of a burden for a man earning \$23,000 a year.

But the Supreme Court held up the two other retroactive payment orders from the Alberta court.

The first was the Henry case. When the Henrys divorced in 1991, Daryl Ross Henry was earning \$73,500. But a few years later, his salary had soared to above \$180,000 and peaked in 2001 at \$235,000.

At the same time, Henry's ex-wife struggled to provide the children with basic necessities on the \$700-\$1,200 he paid her monthly, significantly below federal guidelines.

The ruling said Henry used intimidation tactics with his former spouse, blamed her for her financial problems and insinuated he was short on cash – successfully convincing her to pay for a bus ticket for one of the children to travel from her home near Edmonton to Calgary for a visit.

"There should be no dispute that the father in the present appeal acted in a blameworthy manner," the ruling said.

The court also decided in favour of retroactive payments in the case of Kenneth Hiemstra, whose former wife "paid a disproportionate share of the burden for supporting the children."

Deidre Smith, the Toronto-based lawyer for all of the four Alberta men, said her clients objected to retroactive payments going as far back as they did – in Henry's case to 1997, the year federal guidelines were established.

Smith said the current system is "too cumbersome" to work as quickly as the Supreme Court ruling dictates, as it often takes months to change an order for child support payments.

"We're going to have to come up with a more streamlined process."

The ruling mandates that court-ordered retroactive payments will stem back to the date when the paying parent is first met with a request for more money. But if the paying parent hides money or is otherwise "blameworthy," retroactive payments may stretch back to the time of the pay increase.

Gus Sleiman, president of the Calgary-based Men's Educational Support Association, a men's advocacy group, said he was disappointed the courts did not address the issue of what happens if court-ordered support payments are not reduced when a man's income drops.

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Divorced dads face bigger support bills

Calgary father told higher salary means larger payment

Calgary Herald, Suzanne Wilton, with files from Crislin Schnitzl, for CanWest News Service, Tuesday, February 08, 2005

A Calgary man has been ordered to pay more than \$100,000 in back child support in what's being described as a landmark court ruling that could affect fathers across Canada.

The case potentially opens the door to a flood of claims by custodial parents — usually moms — seeking retroactive payments, say family lawyers.

"This is big-time law," said Calgary lawyer Lonny Balbi, past chairman of the Canadian Bar Association's National Family Law Section. "It could be a huge numbers issue."

A judgment handed down by the Alberta Court of Appeal last month upheld a lower court's ruling that Daryl Ross Henry should pay retroactive support for his two daughters.

The court ruled that Henry should have increased his payments as his income dramatically rose in the years after his divorce from Celeste Rosanne Henry. He earned \$183,906 in 1995 and \$231,900 in 2002.

In 1991, the year after the couple split, the father was paying \$700 per month despite earning \$6,125 per month, or \$73,500 a year.

In 1997, federal rules took effect tying the amount of child support directly to income. And though Henry had voluntarily increased his monthly support to \$1,186 by 2002, he was still paying less than half of what his obligation would have been according to the formula set out by Ottawa.

"If you make more money — significantly more — then there is a duty to contribute," said the mother's lawyer, Daniel Colborne, who rejects the so-called "floodgate" argument.

"If you make more money you should share with the kids -- or don't have them. It's about responsibility."

The case was one of four in Alberta to reach the same conclusion in January.

Three of the judgments were handed down on the same day. The decisions could be used to argue similar cases in other provinces unless there is a definitive ruling on the issue from the Supreme Court of Canada.

Balbi argues the rulings run contrary to national child support guidelines set out by the federal government in 1997, which he said allow for retroactive payments — but only back to the date when the child support recipient goes to court seeking a review.

In the Henry case, the courts ruled the ex-wife was entitled to back child support to 1997, when the national guidelines took effect, even though she didn't formally request her ex-husband to disclose his income, or take legal action to increase payments until much later.

According to the court ruling, the mother was struggling to provide the basic necessities for her children on an annual income of \$38,400.

She claimed when she asked for additional financial help over the years, her ex-husband refused and threatened to fight her in court and seek custody of the girls.

In 1992, the mother's phone was cut off when she couldn't pay the bill. When she sought assistance to pay for treatment for a bedwetting problem with one of the children, he refused.

The father — who did help pay for braces and offered some other financial assistance — argued in court that to pay more than \$100,000 in back child support would be a hardship, as he's now remarried with twin boys.

The court, however, rejected that argument.

"This is a lot of money," said Court of Queen's Bench Justice Patricia Rowbotham, "approximately half of Mr. Henry's income. And he has a new family to support.

"On the other hand, Ms. Henry already endured the hardship of maintaining a home and providing for (the children)," she said.

Baldi said the ruling means the onus is now on the payee, usually the father, to cough up extra cash every time his income goes up.

"What happens, as his income goes up, he has to voluntarily pay more. Now, he has to monitor his income situation and just pay it.

"The problem is what happens if his income goes down? Does he start paying less?

"It's very bizarre."

Danny Guspie, executive director of the Toronto-based Fathers Resources International, criticized the judgment, saying it's another strike against dads.

"It doesn't get to the heart of the matter, which is why did he avoid (paying more)?" said Guspie.

"He avoided because he perceived an inherent unfairness in the guidelines.

"I guess she won the lottery."



Spousal support ruling sets precedent for self-sufficiency

EDMONTON - A Red Deer woman who earns \$16 an hour is calling a recent Alberta Court of Appeal decision unfair after it ruled that her ex-husband will not have to continue paying spousal support despite averaging a yearly salary of more than \$130,000.

BY THE EDMONTON JOURNAL JULY 16, 2008

EDMONTON - A Red Deer woman who earns \$16 an hour is calling a recent Alberta Court of Appeal decision unfair after it ruled that her ex-husband will not have to continue paying spousal support despite averaging a yearly salary of more than \$130,000.

Jean and Ken Shields, both 45, separated 10 years ago. They entered into a contract dividing their property and she received a lump-sum payment of spousal support.

A judge ordered him to pay spousal support indefinitely but the Court of Appeal has now limited those payments to eight years from the date the marriage broke down.

"I went and entered the workforce immediately to support my kids," said Jean Shields, who was a department store clerk before she was married.

"But after 15 years of being a homemaker, experience doesn't qualify a person for a particularly high-paying job."

She works at a meat-processing plant. He owns an oilfield company.

Lawyer Kevin Hannah, who represented Jean Shields, said because the appeal court is binding on all lower courts in the province, it sets a precedent for other cases.

"It's sending a message to Albertans that if you're in a medium-term marriage, if your kids are grown and gone, and if you've been receiving spousal support for a good number of years, that support should end," Hannah said.

Hannah said capping spousal support in this case at eight years doesn't account for the sacrifices Shields made when the couple decided she would stay at home to take care of their two children, now in their early 20s.

"When you give up your 20s and part of your 30s, you're giving up the opportunity to advance your career," Hannah said.

"You're not going to make up for lost ground, you're going to be behind where you were."

Research indicates that "women face significant financial loss, post-separation," said Zara Suleman, a director of family law with the Vancouver-based women's legal rights group, West Coast LEAF.

"The man's capacity to earn more money increases. His ability to network, gain status, and financial security -- that's contingent on the woman's implicit sacrifice on the home front where you don't pay into a pension, don't get benefits and your status decreases."

But Ken Shields' lawyer, Daniel Colborne, argued that in some cases, ongoing spousal support payments aren't warranted.

"Permanent indefinite support is not necessarily a given after a marriage breaks down, particularly if someone is young, healthy and just wants a rubber stamp on indefinite support," Colborne said.

"What this case does is give appropriate weight and consideration to the principal that a spouse after a marriage breakdown has a duty basic within a reasonable amount of time to become self-sufficient," Colborne said.

He said spousal support is "a very polarizing topic."

"In this case, I had some people telling me they think it's not enough and I've also heard people say after eight years of separation, that it's too much."

Although Shields could appeal the decision to the Supreme Court, she isn't sure it's worth it.

On top of her regular expenses like rent at \$975 a month, the case has been financially tiring, she said.

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Alberta court limits duration of spousal support

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A Red Deer woman says women across the country should take note of a recent ruling from the Alberta Court of Appeal that sets limits on how long an ex-husband has to pay spousal support.

Jean Shields, 45, stayed at home to raise her two daughters during her 15-year marriage. After her divorce, a judge ordered her ex-husband, Ken Shields, to pay her \$1,000 a month in ongoing spousal support retroactive to September 2001.

Jean Shields was a retail clerk before she got married, and now works full-time in a meat-packing plant earning \$16 an hour. Her former spouse runs an oilfield company and earns about \$132,000 a year.

'You better be able to stay at home and then when it doesn't work out, you better get out there, and even though you managed to miss 10 years of being in a workforce.'

—Jean Shields

This June, Ken Shields successfully appealed the spousal support order, arguing that Jean was adequately compensated through equal division of property and a lump sum of \$17,700, to which they both agreed.

The appeal court justices limited the original order of indefinite payments to eight years, beginning from the day the marriage broke down.

They said the "chambers judge erred ... in ordering spousal support of indefinite duration when a reasonable limitation on the duration of the spousal support was warranted."

The appeal court pointed out that the mother was only 34 years old at the time of the separation, and that eight years of spousal support is a "realistic time frame for the mother to be compensated for the economic disadvantage she sustained and to allow her to re-enter the job market in order to earn income leading toward financial self-sufficiency."

Ruling discourages homemakers, says lawyer

Jean Shields says the ruling isn't fair, and believes it sends the message that the work stay-at-home mothers do has little value.

"Just tells us females that you can do it all," she told CBC News on Monday. "You better be able to stay at home and then when it doesn't work out, you better get out there, and even though you managed to miss 10 years of being in a workforce."

Shields says she didn't have time to focus on a career while raising two kids.

Kevin Hannah, her lawyer, said the decision, which instructs lower courts in Alberta, is a setback for homemakers.

"If I read this decision of the Court of Appeal, I would be very reluctant to put myself in the position of being primarily responsible for the home and kids," he said.

But lawyer Dan Colborne, who represented Ken Shields, said the ruling doesn't say homemakers are not entitled to support, but it does state that those payments will not go on forever.

"Look, we're not going to simply rubber-stamp spousal support indefinitely, particularly if you're of good health [and] you're fairly young," he said of the decision.

Jean Shields said she wants to appeal to the Supreme Court of Canada, but she doesn't have enough money to fund the application.

