

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

Pursuing additional child support.

Question: Last year my ex and I agreed to terms of separation which included (nominal) child support arrangements and access. The agreement was handwritten by me and signed by both of us not witnessed. He agreed as well to pay half of the cost of a divorce. If I wouldn't go after additional support. The agreement was never filed with the courts and the application for divorce not yet filed either. Are these legally binding documents or can I pursue additional support?

Answer: You can definitely pursue additional support. A domestic contract, such as a separation agreement, cohabitation agreement, or marriage contract are only enforceable if they are made in writing, signed by both parties and witnessed. Even then, if the amount of child support you agreed upon did not follow the Child Support Guidelines then a court may not be obliged to enforce the agreement, unless good reason to do so. The Guidelines provide for basic monthly child support and special or "extraordinary" payments for extras based on your income as compared to your partner's. The basic "table" amount payable is determined by a chart found on the Internet or in booklets from the government. The basic "table: monthly payment is determined by (a) the gross pre-tax yearly income of the non-custodial parent and is usually found at line 150 of his tax return (b) the number of dependant children the parents have between them and (c) the province in which the paying spouse resides. For instance, if your Ontario husband earns \$50,000 gross in 2004 then for one child the grid for child support under the Guidelines shows that he should be paying \$429. If you have daycare/ nanny or other "extra" expenses of \$1,000 monthly and earn 25 per cent of your gross incomes (i.e. combined with your ex husband), then he would pay an additional \$750 monthly and you would pay the remaining \$250. the same formula applies to orthodontics, summer camp, post-secondary tuition, non-OHIP healthcare and some extra curricular activities, like hockey. But half the cost of an uncontested divorce is about \$750. It's nothing to worry about, especially if your signatures weren't witnessed. Also if you didn't have a Certificate of Independent Legal Advice form your own lawyer before you signed, along with full financial disclosure from your husband/partner, then the whole agreement is completely enforceable on those grounds alone.

John T. Syrtash, Associate
GARFIN ZEIDENBERG LLP
Yonge-Norton Centre
5255 Yonge Street, Suite 800
Toronto, Ontario, Canada M2N 6P4
Phone: (416) 512-8000 ext 410; Direct (416) 642-5410
Fax: (416) 512-9992
email: jsyrtash@gzlegal.com
