



FAMILY LAW PRACTICE TIPS

ISSUE No. 17

**Topic: Establishment or Variation of Child Support, *Retroactively*
(How to present your Case)**

Opinion by: Justice Doug Campbell

Date: May 25, 2015

This memorandum was prepared by Justice Doug Campbell in reply to the request of ACJ O'Neil as outlined in his Notice to the Bar dated November 6, 2014. It represents Justice Campbell's personal viewpoint and may or may not require some adjustment to conform to the preferences or practices of individual Judges. That will be left up to the Judge and the lawyer, if any, involved. Readers who make use of the within material do so therefore at their own discretion and subject to their own judgment.

Formulation:

1) Claims to retroactively establish or vary child support frequently involve a number of "Moving Targets" that are not easy to describe or understand when presented in a running narrative. These include changes in:

- a) the number of dependent children;
- b) the residence of the children as between the parents or otherwise,
- c) the incomes of one or both parents;
- d) the attainment of the age of majority of a child;
- e) the student status of a child as between public school and University; and
- f) other events that affect the quantification of child support.

2) The Parents and the Court will be greatly assisted when these moving targets are depicted in a "Chart" such as the ones described below.

Discussion:

In my opinion, presentation of claims to establish or vary child support *retroactively* should be accompanied by a "Chart" which shows the various moving targets referred to above. Any other approach creates frustration and confusion for the Presiding Judge

given that the two parents will usually bring competing and chronologically different versions of the facts.

The issue arises usually in one of 3 contexts:

- 1) when the recipient spouse seeks to increase child support to account for changes in circumstances that occurred in the past, such as an increase in the Payor's income;
- 2) when the payor spouse seeks to decrease child support to account for changes in circumstance that occurred in the past, such as a loss of his/her employment or a belief that a child of the marriage has become independent. This often arises in the context that there is a collection event initiated by the fact of "arrears" that exist on the records of the Maintenance Enforcement Program;
- 3) where the original application for Child Support faced delay between the date of separation and the court date and the circumstances of the past suggests and underpayment or overpayment.

In all 3 circumstances, the allegations can best be presented in a chart of the type mentioned below. (*The Chart below depicts allegations, not Court-authorized Policy.*)

The Chart must show each of the changes in circumstances along with the arithmetic by which each phase of those moving targets results in the allegation of a retroactive re-assessment of the support obligation. **The claim must have an explanation that is mathematically evident in the Chart.**

The Chart below is built on an Excel spreadsheet to take advantage of the automation that it provides. However, the Chart is capable of being used without that automation if the user is uncomfortable with Spreadsheet technology

[CLICK HERE](#) to access the Charts.

(In my opinion, no one should bring a retroactive claim to Court without a Chart that complies with these remarks.)

Please refer to the "Sheet" numbers at the bottom of the Spreadsheet:

Sheet 1 is an example of a simple use of the Chart;

Sheet 2 is an example of a complex use of the same Chart;

Sheet 3 is the Chart in Blank "Template" form;

[Note: When set off applies, use the section from the Bottom Right Corner on page 2 and insert calculated amount in the "Table Amount Due" column on page 1].