

## **Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP**

### **Answers to pressing questions on Family Law.**

#### **Don't let him slip through the payment net.**

**Question:** I was wondering if you could help me. My fiancé and I live in B.C. and we are going to be getting married in Nova Scotia. Is our marriage license valid in another province other than the one we live in now?

**Answer:** Yes. But in the winter it is much colder in Nova Scotia and it snows more in Halifax than it does in Victoria. Nonetheless, I understand that the people are friendly.

**Question:** My husband moved to the U.S. to remarry, leaving me with custody of our two children. Ever since, he has paid me child support based on his U.S. gross income to Canadian gross income and use that amount to calculate support payments on the Canadian Child Support Guidelines chart? My children and I have remained residents of Ontario. Also, is any of the unpaid support payment due retroactively?

**Answer:** Yes, he has been underpaying because he must pay based on gross income, not his net income retroactive to the day he started underpaying, converted to Canadian currency. Moreover, since U.S. tax rates, the Child Support Guidelines demand that his U.S. income be “grossed-up” or recalculated to reflect the difference between the two tax rates so that he will be paying the same in child support as if he lived in Ontario. You need to see a family law lawyer and accountant to calculate the amount of the gross-up in his income. To enforce the amount not paid have the Ontario Director of the Family Responsibility Office (free of charge) enforce your agreement or court order in the state where he resides. They can suspend his driver's license or even incarcerate him. If your deal is only in the form of a written agreement you will first have to file it with your local Ontario Court of Justice under a prescribed court form and fill out a statement of arrears from the FRO director. Make sure you indicate that you want his U.S. income “grossed-up” to account for the difference in tax rates.

**Question:** I will be cashing \$100,000 RRSP's to split with my separated wife but will pay \$30,000 in withholding tax. Any help here?

**Answer:** Yes. You both sign a separation agreement and a special form to transfer the RRSP to her tax-free in a “spousal rollover.”

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