GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

UNUSUAL INCOME ISSUES: A JUMBLE OF ODDS AND ENDS

by: Cheryl Goldhart and Lorna M. Yates[1]

Introduction

Unusual income issues abound in the case law as it relates to the *Child Support Guidelines*.

We have taken a snapshot of some recent and not so recent cases as they relate to non-recurring income such as capital gains; severance payments; personal injury settlements; lottery winnings; income from trusts (really family trusts); and treatment of income earned outside of Canada (U.S. income). These may not be everyday issues in your practice, but the cases may for some good reading and definitely qualify as "unusual".

Summary

Legislation

Some excerpts from the *Guidelines*:

Calculation of annual income

16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Customs and Revenue Agency and is adjusted in accordance with Schedule III.

Pattern of income

17. (1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

---

[1] Goldhart & Associates.

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Non-recurring losses

(2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

...

Imputing income

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

(b) the spouse is exempt from paying federal or provincial income tax;

(c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

(d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

(e) the spouse's property is not reasonably utilized to generate income;

(f) the spouse has failed to provide income information when under a legal obligation to do so;

(g) the spouse unreasonably deducts expenses from income;

(h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and

(i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Reasonableness of expenses

(2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.

Case Review

How can we summarize the cases excerpted on Appendix "A" to this paper? Well, sometimes it is income, sometimes it is not income. If it is good for the child, it may be income. If it is too difficult to quantify, it will not be income. Like everything else in family law, the treatment of these income issues is very much fact specific.

Capital Gains

The leading case is still *Fung v. Lin* [2002] Q.L. No. 456 (Ont.Sup.Crt.). Mr. Justice Perkins found that the onus was on the payor to demonstrate why the "total income" line on an Income Tax Return is not appropriate. If the child may benefit, the fact that an item such as capital gains is non-recurring may not matter. Madam Justice MacKinnon uses the same reasoning in *Gibson v. Gibson* [2002] O.J. No. 1784 (Ont.Sup.Crt.). Her Honour uses the objectives of the Guidelines to justify including the gain, and finds that the onus is on the payor to show that the section 16 determination is not the "fairest determination" and that another amount is "fair and reasonable".

Severance Payments

The Alberta case of *MacDonald v. MacDonald* [1997] A.J. No. 1262 (Alta.C.A.) is still one of the most often cited with respect to the treatment of non-recurring items such as severance payments and capital gains. The Alberta Court of Appeal included the severance payment, bonus and options in the payor's income because it enhanced his ability to pay support. If the options or another quasi-income item

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

had already been equalized, the Court may show some interest in the "double-dipping" argument.

Mr. Justice Aitken in *Vitagliano v. Di Stavolo* [2001] O.J. No. 1138 (Ont.Sup.Crt.) also found that the payor's severance payment was income. The payment was pro-rated over a certain period post-termination in order to determine the payor's income.

Personal Injury Settlements

In Nova Scotia, if the *Guidelines* do not explicitly say it, the Court won't order it: "if personal injury awards are to be considered, in whole or in part, as income for *Guidelines* purposes, the legislation should say so. It does not" – *Tibbo v. Bush* [2000] N.S.J. No. 352 (N.S.F.C.).

In British Columbia they may treat a personal injury settlement as income for support purposes by imputing income to bring the payor up to his or her income level pre-accident: *Neufeld v. Neufeld* [2001] B.C.J. No. 1682 (B.S.S.C.). The Courts in Ontario do not seem too interested in this issue...

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Lottery Winnings

Courts will generally treat lottery winnings as a one-time windfall, and instead of imputing the entire winnings as income for support purposes, an appropriate rate of interest will be fixed on the winnings, which will then be imputed to the payor as income – see *Wilson v. Eronchi* [2000] N.W.T.J. No. 3 (N.W.T.S.C.) and *Kirk v. Sharpe* 2003CarswellMan 562 (Man. Q.B.).

Income From Trusts

The matter of "optics" cannot be overlooked when determining if a Court will treat family trusts as income or capital. The creepier the payor looks, the more likely the Court is going to find that the trust should be characterized as income.

Madam Justice Himel in *Orszak v. Orszak* [2000] O.J. No. 1606 (Ont.Sup.Crt.) found that the capital base of the payor, being his interest in a trust (which was really his company) must be considered part of his "means" in the consideration of income. Similarly, in *Baziuk v. Baziuk* [2001] O.J. No. 3060 (Ont.Sup.Crt.) the Court looked behind the "veil" of the family trusts and imputed income to the payor father for support purposes.

For an interesting read, look at *Paniccia v. Butcher* [2003] O.J. No. 1880 (Ont.Crt.Jus.), when Mr. Justice Dunn, sitting in Brampton, found that the payor's inheritance from a trust under a will of his later father was capital, and that is would be inappropriate to treat disbursements/draws from the capital as income because "regular withdrawals from capital were not income when they are withdrawals from one's own capital". We will leave you to think about that.

U.S. Income

We all know to gross-up a payor's income where it is earned in a jurisdiction where the taxes are lower than Ontario. Mr. Justice Zuker did not accept the payor's argument in *Balo v. Motlagh* [2004] O.J. No. 3611 (Ont.Crt.Jus.) that the

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

lower tax rate should be offset by the higher cost of living in Illinois. We think this argument does have merit though. There are jurisdictions which may have very low tax rates but where it costs $10.00 to buy a can of pop. The issue becomes, then, how do you treat places like Northern Ontario, where the cost of living is very high? Should payors get a break under section 10 (undue hardship)? See also *McLean v. Vassel* [2004] O.J. No. 3026 (Ont.Sup.Crt.), a decision of Madam Justice Wein where Her Honour declined to consider the "cost of living" argument.

Conclusion

As usual, if you can make the pitch that the child will benefit, a Court will be more sympathetic to unusual income issues that may be "one time only" or blurry in terms of income vs. capital.

CASE LAW REVIEW

1. Non Recurring Income – Capital Gains

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
Fung v. Lin	[2001]O.J. No. 456 (Ont.Sup.Crt.)	Perkins J.	s.17	Payor father sold his shares in his company for $1.82 million, of which about $1.25 million came in cash and the balance in shares of the purchaser. Payor father taxes on the basis that his share sale proceeds were capital gains. Payor has had very little employment/self-employment income since separation (around the time he sold his company). Payor father had taxable capital gains in three years preceding separation, the highest being the year of separation, when he sold his company. Most of his "income" was from capital gains in the year of separation and the year after (being over $1.5 million). Recipient mother submits that anything that forms part of "total income" for tax purposes is income for Guidelines purposes (subject to Schedule III of Guidelines) each year. Onus is on the payor father to justify a departure such as averaging or excluding as a "non-recurring amount". Why should the child not benefit? Payor father argues that pattern of income is fairest way of determining income. Best to

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION
2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5
T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
				calculate interest on the liquid capital and impute income to father (see also *Arnold v. Washburn* [2000]O.J. No. 3653 (Ont.Sup.Crt.). Perkins J. found that the spouse who is seeking an averaging or advancing a "non-recurring" argument has the burden of persuading the Court that "the determination of a spouse's annual income under section 16 would not be the fairest determination of that income". There is a presumption in favour of the *Guidelines* amount. No evidence that table amount is inappropriate: "if the father is using his capital to live on, why should his child not do so?" (at para. 22). Three year average used, which was really the two big years relating to the proceeds from the sale of the father's business.
Gibson v. Gibson	[2002]O.J. No. 1784 (Ont.Sup.Crt.)	J. MacKinnon J.	s.17	Recipient mother brought an application for contribution by the payor father for certain add-on expenses, and to vary the Table amount of support pursuant to a Consent Order entered into 2 years prior. Recipient mother argues that capital gains in her income in year of Consent Order were non-recurring and should not be included in her income for the purposes of determining her proportional share of the add-ons. Court found it was proper to include capital

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Appendix A
Case Law Summary
Six Minute Family Lawyer, 2004

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
				gains as income in 2000 (Nortel shares – taxable gain of $140,000.00) to recipient mother. Held that section 16 of the Guidelines means that there is a presumptive inclusion of a gain. Onus is on the person who seeks to have it excluded from the determination of income to show that the section 16 determination is not "the fairest determination" and that another amount is "fair and reasonable". The focus here is the determination of the fairest actual income for one particular year, as opposed to predicting an income for a future year. Therefore, the onus to be met to exclude a non-recurring amount of income actually received in that year from the calculation of that year's income is high. Court declines to exclude the gain for 2000, as doing so would not meet the "objectives of objectivity or consistency and would not fairly reflect the financial means of both parents."

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION
2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5
T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

2. Severance Payments

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
MacDonald v. MacDonald	[1997]A.J. No. 1262 (Alta.C.A.) Application for leave to appeal to S.C.C. dismissed with costs.	Hunt J.A.. Gallant J.A. and Rawlins J.J.	s. 19/17	Recipient mother argued bonus, exercise and disposition of stock options and severance package all received in one year should be treated as income. Payor father argued options, severance and bonus were "property", and in any event, used to pay down debt and increase the equity in his assets. On appeal, Alta.C.A. allows appeal and finds trial judge erred in accepting payor father's argument. Options, bonus and severance "enhanced the respondent's ability to pay child support, either as direct income, or... as property to which income should be attributed" (at para. 14). Payor father had historically received part of compensation from employment in the form of bonuses and stock options. Bonus, severance monies and taxable capital gains all items considered income on an income tax return. Caution re: double-dipping – "may" be exempt if already equalized.

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
Vitagliano v. Di Stavolo	[2001]O.J. No. 1138 (Ont.Sup.Crt.)	AitkenJ.	s. 19	Payor father entitled to severance pursuant to his employment contract. Payor father was working on valuation date and had not received any notice of termination. A year and ½ later, the payor received severance payment of $182,614.00. Recipient mother argued payor had what amounted to a contingent interest in the severance payment at date of separation for 4 months from the beginning of the year to April, when the parties separated. Court found no severance pay should be included in payor's property as at valuation date. On the issue of the inclusion of severance pay in payor's income, Court rejects payor's argument that severance was a property payment for past services. Payor argued that was not income because he had another job to go to right away and did not need to use it as income; he used it as capital (at para. 83). Held that purpose of severance pay was to provide payor father with income replacement that would cover his needs over the following year in case he was unable to fund employment elsewhere. Severance included as income for support purposes and pro-rated accordingly over 67 weeks following termination.

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION
2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5
T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

3. Personal Injury Settlements

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
Tibbo v. Bush	[2000]N.S.J. No. 352 (N.S.F.C.)	Dyer J.	s.19	Payor father received a net personal injury settlement of $66,775.50 in 2000. Payor father submits that court should fix a reasonable rate of return on the net-net settlement (i.e. net of mutual fund investments, repayment of loan from parents, purchase of a boat and motor), at a 10 per cent annual interest rate. Recipient mother argues that payor father's drawings from capital/settlement (i.e. to buy the boat) should be treated as income for Guidelines purposes, and the remaining funds from the settlement as the capital sum to which 10 per cent return rate can be applied. If payor father further draws against the balances, these draws should be treated as income. Court finds: "if personal injury awards are to be considered, in whole or in part, as income for Guidelines purposes, the legislation should say so. It does not." (at para. 23) Court applies a 10 per cent rate of return but only on net-net settlement funds, and does not add back "draws", i.e. purchase of a boat, and investment of settlement in mutual funds.
Neufeld v. Neufeld	[2001]B.C.J. No. 1682	Holmes J.	s. 19	Payor father sustained an accident post-

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
	(B.S.S.C.)			separation and moved to reduce his child support obligations. Personal injury claim settled three years later and payor received $390,000.00 (net of fees and expenses). Payor then had some employment income from other sources. Recipient mother argues that some of the funds are attributable to lost earning capacity. Payor father is earning less now in his new business than prior to the accident. Court accepts that income should be imputed to bring the payor's income up to what he would earn in his previous employment. Indirect attribution of income from settlement funds.

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778

info@goldhartlaw.com

4. Lottery Winnings

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
Wilson v. Eronchi	[2000]N.W.T.J. No. 3 (N.W.T.S.C.)	Schuler J.	s.19	Payor mother won $195,000.00 in a lottery in 1999. Recipient father suggests two ways of dealing with the winnings: (a) entire winnings should be grossed up for income tax purposes and be considered one year's income to payor mother; or (b) that winnings were capital, not income. Recipient father argued that the grossed up sum should be divided by an arbitrary number of years and resulting amount as the payor mother's annual income in each of these years. Payor mother argued lottery winnings were capital and not income, and therefore should be treated as an asset which can be used to generate income. Also argued that treating winnings as income would impair payor mother's ability to make long term use of the capital. Court found that winnings were a one-time windfall and not income earned by payor mother of her own efforts. Winnings characterized as capital or property. No connection with employment. Appropriate here impute an annual return, in this case 8 per cent.

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION
2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5
T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
Kirk v. Sharpe	2003 CarswellMan 562 (Man.Q.B.)	Mykle J.	19	Payor father won $2.5 million in lottery. Court varied the pre-Guidelines Order. Sources of income were pension income, employment income, and lottery winnings. For purposes of imputing income for lottery winnings, Court found that the payor father's evidence that he was only earning 3 per cent on his winnings was not reasonably utilizing property to generate income. Therefore appropriate level found to be 8 per cent interest, or $200,000.00 per year.

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778

info@goldhartlaw.com

5. Income from Trusts

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
Orszak v. Orszak	[2000]O.J. No. 1606 (Ont.Sup.Crt.)	Himel J.	s. 19	Payor father's company was held in trust for children. Recipient mother alleged payor was trying to avoid his support obligations. Madam Justice Himel imputed income to the payor father: "the capital base of a party may be considered part of his "means" in the consideration of income." (at para. 38) Burden of proof lies upon the payor. Where there is limited financial evidence, the court may draw an adverse inference and impute income in an amount it considers appropriate.
Baziuk v. Baziuk	[2001] O.J. No. 3060 (Ont.Sup.Crt.)	Platana J.	s. 19.1(i)	Payor father ran a family business with his mother, which included interests in family trusts (interesting, both Mr. Baziuk and Mr. Orszak were self-represented at trial...). Sole director of family business is payor father's mother. Payor's evidence is that he takes "as little salary as possible" because family wanted to build the company up. Payor makes a recommendation to his mother every year re: salary. The payor father is the controller of one of the family trusts and appoints the trustees. The payor's mother is the controller of the

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION
2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5
T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
				other trust and appoints the trustees. Court found that, despite the ownership by family trusts, payor father was the controlling and operating mind of the company and has full discretion in terms of establishing his own income. Income imputed to him (mostly pre-tax corporate income).
Paniccia v. Butcher	[2003]O.J. No. 1880 (Ont.Crt.Jus.)	Dunn J.	19	Payor father entitled to funds from a trust under a will of his late father (about $500,000.00). Prior to separation, the payor's father had helped to support the payor financially on a fairly regular basis. Payor had drawn funds from his trust account to complete repairs on home. Payor claimed he had no income. He also claimed he could not work (he had an extensive criminal record), but that he "kept himself busy" by cleaning his house every day, doing laundry and visiting friends. Payor father was withdrawing $1,000.00 per month from the trust account (capital), and was also receiving $400.00 per month from trust income. Payor father also withdrew from capital from time-to-time, as needed. Recipient mother argued entire amount of trust should be considered income (even though due in 2 capital distributions). The first "draw" was an estate gift and therefore

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Appendix A
Case Law Summary
Six Minute Family Lawyer, 2004

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
				should be grossed up for tax purposes. Payor father argued funds were capital. Also not necessarily accessible, because he had to request funds from the capital account and could be refused. Court found that the capital disbursements/draws should not be treated as income. Regular withdrawals from capital were not income when they were withdrawals from one's own capital (????).

6. Gross-Up for Income Earned outside of Canada

Note: We have not included the "usual suspects" such as *Sarafinchin v. Sarafinchin* [2000]O.J. No. 2855 (Ont.Sup.Crt.); *Moran v. Cook* [2000]O.J. No. 2583 (Ont.Supt. Crt.); *Orser v. Grant* [2000]O.J. No. 1429 (Ont.Sup.Crt.); or *Riel v. Holland* [2003]O.J. No. 3901 (Ont.C.A.) re: the availability of grossing up income. We have instead summarized two 2004 cases on this issue.

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
Balo v. Motlagh	[2004]O.J. No. 3611 (Ont.Crt.Jus.)	Zuker J.	19	Payor father living in Illinois, after relocating from Denmark. Danish Order for child support. Fresh application in Ontario Court of Justice for child support. Martin Pont calculated the payor father's income in U.S., less state taxes, and converted into equivalent CDN pre-tax dollars. Mr. Pont was acting for the recipient mother. Payor father's position was that lower Table amount should be used, and then adjusted even lower due to payor father's claim of undue hardship (access costs/support of new family). Payor father also had significant monthly health care costs in U.S. On the issue of payor's position that the lower tax rate he enjoys in U.S. is offset by the higher living expenses there, Mr. Justice Zuker found that there was no evidence of this, and, in any event, child support is fundamentally determined by the Guidelines rather than a detailed analysis of each

GOLDHART & ASSOCIATES
FAMILY LAW - MEDIATION - ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Appendix A
Case Law Summary
Six Minute Family Lawyer, 2004

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
				party's household expenses. The Court declined to impute income pursuant to section 19(1) of the Guidelines (no grossing up). However, payor father's equivalent CDN income was used to calculate his child support obligations.
McLean v. Vassel	[2004]O.J. No. 3026 (Ont.Sup.Crt.)	Wein J.	19	Parents living in Turks and Caicos prior to separation, practicing business corporate law. Recipient mother returned to Toronto with the children after separation. One of the children eventually returned to live with the father. As part of the divorce settlement, support fixed at $7,000.00 per month. Not Guideline amount, but appropriate in the circumstances (acc. to the Separation Agreement). Payor father applied to vary Separation Agreement, citing material change in circumstances re: his income (collapse of company, etc.). On the issue of a gross-up claim by recipient mother, payor father acknowledges that his income is tax free and in U.S. dollars, but that it should not be grossed up because the cost of living in the Turks and Caicos is extremely high. Madam Justice Wein declined to vary the child support and cited ample support for the

GOLDHART & ASSOCIATES
FAMILY LAW · MEDIATION · ARBITRATION

2 St. Clair Avenue West
Suite 900
Toronto, Ontario
M4V 1L5

T. (416) 967-6111
F. (416) 967-2778
info@goldhartlaw.com

Appendix A
Case Law Summary
Six Minute Family Lawyer, 2004

Name of Case	Cite	Judge	Guidelines Cite	Synopsis
				proposition that the benefits of lower tax rates in the U.S. were not necessarily offset by the higher cost of living.