



Section 7 Expenses: Extraordinary is in the Eye of the Judge

By Ken Nathens*

The *Child Support Guidelines* (“CSG”) have been in existence since 1997. There are four stated objectives for the CSG that are set out in Section 1 of the CSG: These are:

- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

Notwithstanding its objectives and the length of time in existence, there is still uncertainty regarding the interpretation and application of certain provisions of the CSG.

Section 7 of the CSG provides for the payment of “special or extraordinary expenses”. These are child related expenses that a payor may be required to contribute to over and above the table amount of child support. Section 7 provides a list of 6 possible special or extraordinary expenses. Some, such as child care expenses incurred by a working parent or post secondary education expenses, will almost always be considered by a court to be special and extraordinary and therefore justify additional child support payments.

Other child related expenses set out in the list may not result in additional child support payments and are far more discretionary. Section 7(f) of the CSG provides that a payor may be expected to contribute to “extraordinary expenses for extracurricular activities.” There is still uncertainty as to what constitutes an “extraordinary expenses for an extracurricular activity” and when a judge may order that additional child support be paid pursuant to this provision.

A child who partakes in a sport or activity at a high level, such as representative hockey, competitive gymnastics, or horse jumping, will usually qualify for additional support to assist with the payment of the activity. Competition at a high level is generally considered by the courts to be extraordinary, as the activity is usually expensive, beyond the ability of the support recipient to pay on his or her own, and requires that a child possess talent that is beyond the ordinary.

Not all children have the talent to participate in sports or activities at a high level. Many children play house league hockey, take non-competitive dance or gymnastics, try out beginner karate, endure weekly piano lessons, or take weekly seasonal swim lessons. Whether the parent in receipt of child support is entitled to additional child support pursuant to section 7(f) of the CSG for these “ordinary” activities depends on a number of factors that are discretionary in nature and are applied differently by different judges. Some factors that a judge may consider when determining whether ordinary activities are extraordinary for the purposes of Section 7(f) of the CSG include the following:

1. How much is the table amount of support being paid? The more the income of the recipient parent, and/or the more the table amount of child support being paid, the less likely a judge will consider children’s normal activities to be extraordinary as the cost of the activity may be covered by the recipient parent without the requirement of additional financial assistance.
2. How many activities are being claimed? Whereas the court may order additional support for one activity for a child, two or three activities claimed for the same child may be looked at as asking for too much.
3. Were the activities now being claimed for enjoyed by the children prior to separation? If the family has a pattern of the children participating in activities prior to separation, more likely a judge will order the continuation of the activity post separation, and classify the activity as being “extraordinary”.
4. Do the children have special needs? An ordinary sporting activity may be considered extraordinary for a child who is overweight or suffers from depression.
5. Will the child excel in the activity in the future? A child who shows particular talent and ability in house league or regular dance class such that he or she may be in a representative league or competition the following year may be entitled to additional financial support for the activity, whereas a child with less potential may not be.

It is difficult for lawyers or litigants to predict when ordinary children’s activities may be considered “extraordinary” pursuant to section 7 (f) of the CSG. Outcomes differ from court to court, and even from judge to judge in the same court. In this respect, section 7(f) of the CSG has failed in its objective to promote objectivity and consistency regarding the payment of additional child support for extracurricular activities. It will be of interest to see whether the interpretation and application of section 7(f) of the CSG by the courts becomes more consistent and predictable in the future.

** Ken Nathens is a partner with the law firm of Nathens, Siegel in Toronto, Ontario. He is a certified specialist in family law.*