

Publisher's Note

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MacDonald & Weiler

Law and Practice Under the Family Law Act of Ontario

This is the definitive guide to both the substantive law and practice under Ontario's *Family Law Act*. Far more than just a collection of case summaries, this service offers detailed analysis of both statute and case law alike and tackles the difficult problems head-on.

This release features updates to the caselaw and commentary to Chapter 6 (Child Support) in the Cohabitation Section of the book.

Highlights

- **Support Order on Consent Is Reasonable or Not Less Than the Guidelines Amount (s. 33(14) of the *Family Law Act*)** — Where a consent order purports to bargain away a child's right to support and therefore does not provide for child support in accordance with the *Child Support Guidelines*, the order will be set aside and education expenses retroactively ordered. The parties' consent order purported to terminate support for the 14-year-old child. The mother now sought retroactive support. The court stated that under s. 33(11) of the FLA, child support orders should be made in accordance with the Child Support Guidelines except where a consent order determines

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otherwise (FLA s. 33(14)) and reasonable arrangements for child support have been made (FLA s. 33(15)). Here, the order did not comply with FLA objectives and the court found that it should be set aside. No child support was ordered, but the father was ordered to retroactively pay \$25,000 towards the child's postsecondary expenses. *Doull v. Tsim*, 2017 ONCJ 684, 2017 CarswellOnt 16026 (Ont.C.J.).

- **Lump Sum Not Granted** — Where there is a trust fund for the children's support, the Court of Appeal will not deem it necessary to order a lump sum award, but instead will order that the payor pay arrears and annual payments from the fund. The parties were married for eight years and separated in 2002. The father previously earned over \$300,000 a year, but claimed to be ill and began living in a long-term care facility in 2011. In 2012 a motion judge imputed income of \$80,000 to the father and ordered him to pay lump sum child support after considering his history of failing to pay support, the fact that he had been living on capital rather than income, and that he was a habitual liar. The judge ordered the father to pay support out of proceeds from the sale of the matrimonial home that would be held in trust. The father appealed. The Court of Appeal set aside the lump sum award and ordered the father pay both the accumulated arrears of child support plus interest and the annual child support payments from the \$200,000 trust fund instead. *Fraser v. Fraser*, 2013 ONCA 715, 2013 CarswellOnt 15821 (Ont. C.A.).