

E. Imputing Incomes to the Payor

Hunt-Smolis-Hunt 2001 Carswell, Alta 1357 Alberta Court of Appeal

Section 19(1)(a) of the Child Support Guidelines permits a Court to impute an income to a spouse who is 'intentionally under-employed or unemployed.' Historically, this section has been used to allow a Court to deem a payor's income to be an amount which differs from his/her tax return if the spouse who can work is not working or working at less than full capacity. Whether a Court will apply this section depends significantly upon the specific facts of a case.

In **Hunt-Smolis**, a lower Court judge was asked to determine the income for a young lawyer who was struggling to build a practice. The lawyer had been employed earning \$55,000 and then left that position to try to build his own practice. He claimed to be earning less than \$55,000 on his own. The lower court 'imputed' an income of \$55,000 to the husband. On Appeal, the Court of Appeal overturned the decision, after finding that the husband was not 'intentionally' under-employed.

This decision has been viewed as having a result which is very specifically linked to the unique facts of the case. Our Courts maintain the ability to impute incomes to under-employed or unemployed payors where a judge finds it to be appropriate.