

D. The law with respect to when and whether child support arrears may be reduced
Haisman v. Haisman 1994 CarswellAlta 179 Alberta Court of Appeal (leave to appeal to the Supreme Court of Canada dismissed [1995] S.C.C.A. No. 86 (S.C.C.))

Haisman is the leading Alberta Court of Appeal decision with respect to when arrears of child support should be reduced or varied. In this case, a lower court had rejected the payor of child supports application to reduce the amount of unpaid child support which he owed. The lower court found that the payor could pay child support and refused to lower the arrears owing. The Court of Appeal upheld the lower court decision, stating:

In the absence of special circumstances a variation order should be considered only where the former spouse has established on a balance of probabilities that he or she cannot pay and will not, in the future, be able to pay the arrears. As the father was at all times able to pay maintenance, any argument based on his inability to pay failed."

The second matter under appeal in **Haisman** related to an agreement the parties had entered into without counsel. Pursuant to this agreement, the payor's arrears had been reduced. The lower Court refused to follow the agreement, after finding that the wife had been abused by the husband and that the agreement did not provide adequate child support. The Court of Appeal upheld the decision, stating:

"An agreement between parties, particularly in relation to child support, does not bind the court. However, a judge should give effect to an agreement where it provides for an appropriate level of support."