

## PART A

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# Child Support Orders in Manitoba

## What is a Child Support Order?

Child support is money paid by one parent to the other when the parents do not live together. It is paid to help with the support of the child or children living with the other parent.

When parents do not live together, and a parent applies to Court for child support, the Court can order or require that one parent make child support payments to the other parent. This kind of Court Order is a Child Support Order.

In Manitoba, there are two laws that allow the Court to make a Child Support Order. These laws are:

1. *The Divorce Act*
2. *The Family Maintenance Act*

If you are or were married to the other parent, your Child Support Order can be made under either of these laws. If you were never married to the other parent, the Child Support Order can only be made under *The Family Maintenance Act*.

Both *The Divorce Act* and *The Family Maintenance Act* have *Child Support Guidelines* to help parents and the Courts decide how much child support should be paid.

## What are *Child Support Guidelines*?

Child Support Guidelines are rules that the Court must follow in deciding how much child support to order. The *Child Support Guidelines* include *Tables* that are used to figure out a child support amount. The child support amount is based on:

- the income of the parent paying support
- the province where the paying parent lives
- the number of children for whom child support is paid

In some cases, the child support amount also includes an extra amount for some kinds of special expenses that children may have. Only the parent who receives child support can ask for an extra amount for special expenses.

## When do the *Child Support Guidelines* apply?

Since May 1, 1997, the *Child Support Guidelines* apply to all Child Support Orders under the *Divorce Act*. Starting June 1, 1998, the *Child Support Guidelines* apply to all Child Support Orders under *The Family Maintenance Act*.

## What if my Child Support Order was made before the *Child Support Guidelines*?

The *Child Support Guidelines* can also apply to Child Support Orders made before these dates. If you want the *Child Support Guidelines* to apply to your Child Support Order that was made:

- under the *Divorce Act* before May 1, 1997
- under *The Family Maintenance Act* before June 1, 1998

you must apply to the Court to change, or vary the Child Support Order.

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Before May 1, 1997, child support paid under a Child Support Order was tax-deductible to the paying parent, and had to be included in the income of the parent receiving the support. If you only want to change how the child support amount is treated for tax reasons, without changing the child support amount, both parents may file a document with Canada Customs and Revenue Agency (CCRA). To do this, both parents must complete and sign **CCRA Form T1157, Election for Child Support Payments**, and file this document with CCRA. For more information, call 1-800-959-8281 or visit the CCRA web site at: [http:// www.ccr-aadrc.gc.ca](http://www.ccr-aadrc.gc.ca)

### For what reasons can I apply to vary a Child Support Order?

Varying a Court Order means changing the Court Order. You can only apply to the Court to vary your Child Support Order for two reasons:

1. Your Child Support Order was made before the *Child Support Guidelines* came into effect.
2. Your Child Support Order was made under the *Child Support Guidelines* and there has been a change in circumstances since the time that Order was made, so that a different child support amount would now result.

There are many kinds of changes in circumstances. Some examples of a change in circumstances are:

- increase in the income of the parent paying support

- decrease in the income of the parent paying support
- change in the number of children supported
- change to a child's special expenses
- change to the timesharing arrangements, or primary care of child

You can only apply to the Court to vary your Child Support Order if one of these reasons applies to you.

### How do I know if there's been a change in circumstances?

If you receive child support, you can ask for financial information from the other parent once each year. You need this information to decide if you should apply to Court to vary your Child Support Order.

If you pay child support, you may be asked to give financial information to the other parent.

If you pay child support and want to vary the Child Support Order, you can ask the other parent for financial information only if:

- the Child Support Order includes an amount for **special expenses**
- you are claiming *undue hardship*
- there is *split custody* or *shared custody* of the child
- a child for whom support is paid is 18 years of age or older
- your income is more than \$150,000 per year

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*Special expenses* or extraordinary expenses are certain kinds of extra costs for a child that fit into the following categories:

1. child care expenses
2. health-related expenses above any insurance coverage
3. extraordinary expenses for primary or secondary school or other educational programs that the child needs
4. post-secondary education programs
5. extraordinary expenses for extracurricular activities

The parent who receives child support can ask the other parent to contribute to these kind of special expenses. If parents can't agree, they can ask the court to make an Order to pay special expenses, plus the table amount of child support. When a parent asks for special expenses, both parents have to provide financial information.

*Undue hardship* means that the court has decided that it would cause undue hardship (extra difficulty) to require the paying parent to pay the table amount plus special expenses. The hardship can be for either the paying parent or the receiving parent. When a parent says that there would be undue hardship, financial information is needed for each member of each household.

*Split custody* means that each parent has custody or primary care of one or more of their children together. In this situation, both parents have to provide financial information.

*Shared custody* means that each parent has custody or primary care of a child at least 40% of the time each year. In this situation, both parents have to provide financial information.

## What kind of information can I ask for?

Parents can ask for the following financial information:

- sworn financial statement in Form 70D of the *Court of Queen's Bench Rules*
- copy of every personal income tax return filed by the other parent for each of the three most recent tax years
- copy of every notice of assessment or reassessment issued to the other parent by Canada Customs and Revenue Agency for each of the three most recent tax years
- if the other parent is an employee**, his/her most recent statement of earnings showing the total earnings paid in the year to date, including overtime, or a letter from the parent's employer setting out that information including the parent's rate of annual salary or pay
- if the other parent is self-employed**, the financial statements of the parent's business or professional practice, other than a partnership, and a statement showing a breakdown of all salaries, wages, management fees or other payments and benefits paid to people or businesses that the other parent is somehow related to, for each of the three most recent tax years
- if the other parent is a partner in a partnership**, confirmation of that parent's income and draw from, and capital invested in the partnership, for each of the three most recent tax years
- if the other parent controls a corporation**, the financial statements of the corporation and its subsidiaries, and a statement showing a breakdown of all salaries, wages, management fees or other payments and benefits paid to people or businesses that the other parent is somehow related to, for each of the three most recent tax years
- if the other parent receives benefits from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source**, the most recent statement of income that shows the total amount received from that source in the year or a letter from the provider of the benefits setting out that information
- if the other parent is a beneficiary under a trust**, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements
- if the current Child Support Order includes an Order for special expenses**, any current information, in writing, about these special expenses
- if the current Child Support Order was made by the Court based on a finding of undue hardship**, any current information, in writing, about the circumstances relied on by the Court in finding an undue hardship

If you already have given this information to the other parent, or have already received this information from the other parent, it does not have to be provided again, unless there is a Court Order.

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If you have already received the information you need from the other parent, skip ahead to **Part B**.

## How do I ask for the financial information?

The *Child Support Guidelines* say that you must ask for financial information in writing. You can send or deliver a letter to the other parent. Keep a copy of the letter for your own records. If you think you need proof that you sent the letter, use registered or certified mail to send it.

Ask for the financial information that you need to figure out the child support amount using the *Child Support Guidelines*. Use the checklist on Page 11 as a guide. The letter may be from you personally or from someone asking on your behalf such as a lawyer.

## How long do I wait for an answer?

The *Child Support Guidelines* say the other parent must get you the financial information requested in writing in:

- 30 days after the request is received, if the other parent lives in Canada
- 60 days after the request is received, if the other parent lives outside Canada

The *Child Support Guidelines* say you can assume that your written request is received 10 days after it is sent. It is important to keep a record of the date that you send the request.

If you do not get the financial information from the other parent, you can apply for a Court Order to get the information. **Part B** gives you information on how to do this.

## What do I do with the financial information?

The financial documents you get from the other parent should provide you with the information you need to calculate the annual income of the other parent.

To calculate the appropriate child support amount, you need to know:

1. the annual income of the paying parent according to the *Child Support Guidelines*
2. the number of children for whom support is paid
3. the province or territory where the paying parent lives

Using the *Child Support Guidelines* and the information you have received from the other parent, you can calculate how much child support you should pay or receive.

If the paying parent lives in Canada, but does not live in Manitoba, use the *Child Support Guidelines* Table for the province or territory where the paying parent is living. Call toll-free to 1-888-373-2222 for a copy of the appropriate table to be sent to you.

When you have calculated the child support amount based on the *Child Support Guidelines*, talk to the other parent about changing the child support to this amount. **Part B** gives you information about how to apply to Court to change a Child Support Order.

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**Don't talk to the other parent if there are protection or prevention Orders or any other Court Orders that prevent you from speaking to the other parent. If there has been violence between you and the other parent in the past, think carefully about whether you will be safe if you talk to the other parent about changing the Child Support Order, and whether it may be better to have a lawyer to whom the other parent may speak to if that is necessary.**

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## What if the change in circumstances happened a year ago?

The law lets you apply to change a Child Support Order any time there is a change in circumstances. A judge can make a change to your Child Support Order on a retroactive basis. However in some cases, a judge may only be prepared to make changes to Child Support Orders that date back to the day that you filed the documents in court to ask for that change. This means that you need to apply to court as soon as possible after a change happens so that the Child Support Order can be changed as soon as possible.

## What if the other parent lives outside Manitoba?

If the other parent lives outside Manitoba, you can use the Court processes described in **Part B** to apply to change your Child Support Order if that parent agrees to use the Manitoba Court. If you start with the Court processes in **Part B** and the other parent doesn't agree to use the Manitoba Court, there are other special processes that you can use to apply to change your Child Support Order. These processes are described in the *Divorce Act* and *The Inter-jurisdictional Support Orders Act*.

These special processes allow you to start the Court application in Manitoba without letting the other parent know about the process. Then, in most cases, a Court located where the other parent lives decides your application, taking into account the evidence you have submitted, which will be sent from Manitoba and the evidence submitted by the other parent when they were notified of the court hearing in their province. For more information about these processes, contact the Manitoba Justice Family Law Branch or web site at [www.gov.mb.ca/justice/family/iso\\_forms.html](http://www.gov.mb.ca/justice/family/iso_forms.html)

## What if I owe money for child support payments?

If you have fallen behind in making child support payments, the amount you owe is called *arrears*.

If you are paying child support through the Maintenance Enforcement Program, there are a number of ways the program can try to collect the child support arrears. You can try to work out a payment plan with the maintenance enforcement officer or through the Maintenance Enforcement Court.

**It is important to know that the maintenance enforcement officer or the Maintenance Enforcement Court can't change the amount of child support or reduce or forgive the arrears.**

If you want to change a child support amount, you must apply to the Court that made the Child Support Order. If you want to ask for arrears of child support to be reduced or forgiven, you must apply to the Court that made the Child Support Order. At the same time, you can ask the Court to *suspend*, or put on hold the Maintenance Enforcement action until the Court hears and decides your application to vary the Child Support Order and forgive the arrears. If you don't ask for suspension of the Maintenance Enforcement process, enforcement of the Child Support Order will continue during the variation process.

## Where can I get more information about child support?

For more information about the *Child Support Guidelines*, contact:

- Federal Department of Justice
  - Web site: <http://canada.justice.gc.ca>
  - Telephone: For general information on child support or to receive copies of publications, call: National Capital Region: (613) 946-2222  
Canada: 1-888-373-2222

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- Law Phone-In and Lawyer Referral Service
  - Telephone: In Winnipeg: (204) 943-2305
  - In Manitoba: 1-800-262-8800
  - E-mail: [info@communitylegal.mb.ca](mailto:info@communitylegal.mb.ca)
- Manitoba Justice
  - Family Law Branch web site:  
[www.gov.mb.ca/justice/family/familyindex.html](http://www.gov.mb.ca/justice/family/familyindex.html)
  - Telephone: In Winnipeg: (204) 945-0268
  - Toll-free: 1-800-282-8069 (Ext. 0268)
- Manitoba Statutory Publications
  - Web site:  
[www.gov.mb.ca/chc/statpub/free/index.html](http://www.gov.mb.ca/chc/statpub/free/index.html)
  - Telephone: In Winnipeg: (204) 945-3101
  - Toll-free: 1-800-321-1203
- Community Legal Education Association
  - Web site: [www.acjnet.org/white/clea](http://www.acjnet.org/white/clea)
  - Telephone: (204) 943-2382
- For more information about the Maintenance Enforcement Program:
  - Web site:  
[www.gov.mb.ca/justice/family/familyindex.html](http://www.gov.mb.ca/justice/family/familyindex.html)
  - Telephone: In Winnipeg: (204) 945-7133
  - Toll-free: 1-800-282-8069
- Manitoba Courts
  - Web site: [www.manitobacourts.mb.ca](http://www.manitobacourts.mb.ca)
- Manitoba Laws
  - Web site: [www.gov.mb.ca/laws](http://www.gov.mb.ca/laws)

**Part D** includes a list of more resources to help you.