

Child Support

Overview

Child support is the right of the child. All parents have an obligation to support their children. Each parent has an obligation to provide reasonably for the child's support, maintenance, and education, regardless of what the parenting arrangement looks like. Basic child support is for such needs as housing, clothing, and food. One parent pays child support to the other parent on a monthly, bi-weekly, or semi-monthly basis. Child support is not deductible on taxes.

Who Pays Support?

A parent pays child support for a child, but what does the word parent mean? A **parent** can be biological, adoptive, or a person declared to be the parent of a child. It does not matter whether parents of a child were ever married. If you are married or living in a common-law relationship with someone with a child, you have an obligation to provide reasonably for that child's support, maintenance and education. That obligation may continue even after you separate from your spouse or common-law partner if you are considered to stand *in loco parentis* – meaning in the place of a parent – to that child. However, that obligation is secondary to the child's biological parents, and only to the extent that those parents fail to provide reasonably for the child's support, maintenance or education. It is possible to have both a biological and *in loco parentis* parent paying for child support at the same time. A parent who has parenting time with the child less than 40% of the time is required to pay child support. A parent with 40% parenting time or more may also be required to pay support.

Who is a Child?

A **child** is someone under the age of 18 or who is the age of 18 or older but is unable to be self-sufficient because of illness, disability, or some other reason, such as going to school full-time. When a child is going to university, the duration and amount of child support depends on the circumstances. It will generally include at least the child's first degree or diploma. Other factors include the child's earnings, loans, and money paid directly to the child. The best interests of the child is the guiding

Lesson Plan Overview

Family law is an area of law that deals with family relationships, and the rights and responsibilities associated with the creation, transformation, or discontinuation of those relationships.

This lesson plan introduces students to the concept of child support in family law. The objectives of this lesson are to understand the purpose of child support and to recognize the different types of support considerations. Students should also be able to examine and analyze some of the main issues in child support matters, such as when support ends, and how support is decided for adult children, high income earners, and individuals who stand in the place of a parent.

Activities & Discussion

Questions:

- 1) Provide the students with handout #1: *Parsons v Watt*, 2008 MBQB 328 (CanLII). Review the discussion questions.
- 2) Provide the students with handout #2: *Child Support: Calculating Payments*. Using the Department of Justice Child Support Table Look-up students will

principle in the laws about children.

Child Support

The costs of raising a child are substantial. Some studies such as the one conducted by Moneysense.ca

<https://www.moneysense.ca/save/financial-planning/the-real-cost-of-raising-a-child/>

have estimated the cost of raising a child from birth to age 18 as \$253,946.97. The average yearly cost of raising a child is \$13,365.63. This number was reached by calculating the following averaged, yearly expenses associated with a child:

Food	\$1,799.94
Increased household costs	\$2,834.88
Child care costs	\$4,141.84
Clothing	\$874.44
Increased transportation costs	\$2,152.22
Health care	\$255.35
Personal care	\$260.56
Recreation/school supplies	\$1,046.40

What is the Basic Amount for Child Support?

Child support is calculated based on the paying parent's gross income and the number of children. The Child Support Guidelines are used to decide how much child support should be paid. Child support varies from province to province. To calculate a child support amount, you generally must use the child support table amount from the province where the paying parent lives. There are also slight differences between provincial and federal child support guidelines. The Manitoba Guidelines are used when both spouses live in Manitoba. When only one spouse lives in Manitoba and the application is under the Divorce Act (Canada), the Federal Child Support Guidelines are used. The amounts in the Federal and Manitoba child support tables are the same, however the Manitoba regulation has different rules for using the tables.

The Federal Department of Justice has an "online lookup" to decide how much child support a parent should pay according to the parent's income, where the parent lives, and how many children there are:

determine appropriate child support in different custody scenarios.

3) Provide the students with Handout #3: *Child Support Quiz*.

Glossary

Child – A person under the age of 18 or 18 years of age or older ~~over the age of 18~~, but unable to support him or herself because of illness, disability, or some other reason, such as going to school full-time.

In loco parentis – standing in the place of a parent to a child.

Parent – as far as having an obligation to pay child support, can be biological, adopted, or a person declared to be the parent of a child.

Section 7 expenses – special or extraordinary expenses that are extra and over and above the child support table amounts and include child care, extracurricular activities, health-related, and education fees.

Relevant Law:

Federal Legislation:

Divorce Act

Federal Child Support Guidelines Regulation

Provincial Legislation:

The Family Maintenance Act – sections

Child Support Guidelines Regulation – sections

Resources:

Which Parent Pays?

Both the *Divorce Act* and *The Family Maintenance Act* determine which parent pays child support by how much parenting time they exercise with their child. The general rule is that if one parent's parenting time is 60% or more of the total parenting time, the other parent must pay child support. If both parents have parenting time of 40% or more, a child support amount must be calculated for each using the appropriate table, and the larger amount will be offset by the smaller amount.

Here are a few examples of how child support would be calculated in various parenting arrangements:

1) Parent A and Parent B have two children. Parent A's parenting time makes up 70% of the total parenting time. Parent B's parenting time is the remaining 30%. Parent B will have to pay Parent A child support in the amount found on the tables.

2) Parent C and Parent D have two children. They each have 50% parenting time. The tables must be used to find an amount for each parent based on their individual incomes. If Parent C has the larger amount, they will subtract Parent D's amount and pay only the difference. If both parents have the same income, neither will have to pay child support to the other, as the amounts will cancel each other out.

3) Parent X and Parent Y have two children. Each parent lives with one of the children, and has parenting time of 35% with the other child. As in the above example, the tables must be used to calculate a child support amount for each parent, and the amounts will be offset. The difference between this example and the previous one is that in this case the child support amount will be for only one child instead of two. This is because each parent will not need to pay child support for the child living with them, as their parenting time for that child is over 40%.

What are Section 7 Expenses?

Section 7 expenses are the expenses listed in section 7 of the *Child Support Guidelines*. These are special or extraordinary expenses that are extra, over and above the table amounts. These expenses may include:

- child care expenses, (if the parent works, is ill, disabled, or going to

school or for training),

- expenses for necessary and reasonable extracurricular activities such as sports, dance or music lessons in certain circumstances,
- health-related expenses, or any portion of health-related expenses not covered by insurance, that are more than \$100 per year. This includes expenses like prescriptions, dental expenses, glasses, hearing aids, or counseling;
- extraordinary expenses for primary or secondary school education fees or any other educational programs that meet the child's particular needs, and
- expenses for post-secondary school education fees.

Contributions to these expenses are based on both parents' income. Each parent pays a percentage of the expense. For example, if one parent earns 40% as much as the other parent, they would be responsible for 40% of the expense and the other parent would contribute 60%.

When is Child Support an amount other than the Table Amount?

There are a number of situations where the court has discretion to order child support in an amount that is different from the table amount.

Income Over \$150,000

Where the income of the paying parent is over \$150,000, the amount of a Child Support Order is the table amount plus the percentage listed in the child support tables for the amount of income over \$150,000. If the Court considers that amount to be inappropriate, for the first \$150,000 of the parent's income, child support would be the amount set out in the table, plus an amount that the Court considers appropriate. The Court would look at the condition, means, needs and other circumstances of the children. The Court would also look at the financial ability of each parent to pay support and special and extraordinary expenses.

Undue Hardship

A Court may order an amount of child support that is different from the table amount, if the Court finds that the parent making the request, or a child involved, would otherwise suffer undue hardship. This happens in extremely rare circumstances, for example where there are unusually high access costs, responsibility for an unusually high level of debt incurred to support the family before separation, or a legal duty to

support another person. The requesting parent must also have a lower standard of living than the household of the other parent.

Adult Children

If a child is found to still need support once they have reached the age of 18, the court may order the amount of child support set out in the guidelines. If the court considers that amount to be inappropriate, the court may order a different amount considering the condition, means, needs and other circumstances of the child and the financial ability of each parent to pay child support.

In Loco Parentis

There is also flexibility where the paying parent has been found to stand in loco parentis (in the place of a parent). In these cases, the court must also consider the biological parent's involvement and responsibility for child support.

Changing a Child Support Order

If the circumstances of the parents or children have changed, the court order may also need to be changed. Also, most court orders do not say when child support will end. Therefore, in most cases it is necessary to apply to court to vary or end a child support order. The parents may also agree to stop support payments and to opt out of any enforcement programs such as the Maintenance Enforcement Program.

To vary a child support order, the court must be satisfied that a change in circumstances as provided for in the guidelines has occurred. Such circumstances may include a change in parenting arrangement or when a paying parent has lost employment or is now suffering from a disability that prevents that parent from working.

Financial Disclosure

It is important for parties who have an obligation to pay child support to provide updated financial disclosure every year to the other parent. This ensures that the other parent has an accurate idea of their income for child support purposes. It also helps the parent decide if they should apply to court to vary a child support order.

Maintenance Enforcement Program

As of July 1, 2019, parents can apply to the Maintenance Enforcement Program (MEP) to change the enforcement of child support payments.

Parents would complete and submit an Agreement to Change Maintenance obligations form. Both parents must sign the form.

Either parent can end the Agreement to Change Maintenance Obligations, by completing and submitting a form called a Termination of Agreement to Change Maintenance Obligations. MEP would then resume enforcing the child support payments.

The Maintenance Enforcement Program can also stop enforcing support for an adult child, unless the child is still dependent because of illness, disability or other reason, such as going to school, university or college. The parent paying support would have to submit a Child Support Enforcement Eligibility Review Request form.

Manitoba Child Support Service

Manitoba Justice offers a Child Support Service for parents who want their child support order recalculated based on updated financial information. This program saves the parents the expense of having to hire a lawyer periodically to vary a child support order. To be eligible, both parents must live in Manitoba and one of the parents must get a court order authorizing the Service to recalculate child support at regular intervals. The Service cannot deal with Orders for child support under a shared custody arrangement or where a party stands *in loco parentis*.

This is a free service but parties must pay any court filing fees and document service fees. Recalculation occurs one year after the order was initially made and then every two years after that. If a parent refuses to provide their updated financial information as requested then the Recalculation Service can use a deemed income amount which will assume certain automatic income increases such as 10%, if it has been less than 2 years since disclosure. If it has been more than 10 years since disclosure, then the service can assume a 30% increase in income.

As of July 1, 2020, The Manitoba Child Support Service can make an initial child support calculation decision. This is done outside of court. You would provide the Child Support Service with information on the parents, children, incomes, and custody arrangements. It can take between 45-90 days to receive a decision from the Service once you have applied. When you receive a child support calculation decision, it can also be registered with the Maintenance Enforcement Program so that they can enforce payments.

Child Support Service

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