

Child Support – Legislation

The Family Maintenance Act

Definitions

1 In this Act,
"child" includes a child to whom a person stands in loco parentis;

Definition of "child"

35.1 For the purpose of this Part other than section 39, "child" means a child who, at the relevant time

- (a) is under the age of 18 years and has not withdrawn from the charge of his or her parents; or
- (b) is 18 years of age or over and under their charge but is unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life.

Child support order

[37\(1\)](#) A court may, on application by a parent, or by any person on behalf of a child or children, make an order requiring a parent, or any other person having an obligation to provide for the support of the child or children under subsection 36(2), (3) or (4), to pay for the support of any and all children of the parent.

Application to vary, rescind or suspend order

[37.2\(1\)](#) Where a court has made a child support order, that court, on application may make an order varying, rescinding or suspending, prospectively or retroactively, the child support order or any provision of the child support order.

Factors for child support order

[37.2\(3\)](#) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the child support guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Divorce Act

Definitions

2 (1) In this Act,
child of the marriage means a child of two spouses or former spouses who, at the material time,
(a) is under the age of majority and who has not withdrawn from their charge, or
(b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;

Child of the marriage

(2) For the purposes of the definition *child of the marriage* in subsection (1), a child of two spouses or former spouses includes

- (a)** any child for whom they both stand in the place of parents; and
- (b)** any child of whom one is the parent and for whom the other stands in the place of a parent.

Order for variation, rescission or suspension

17 (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

- (a)** a support order or any provision thereof on application by either or both former spouses; or
- (b)** a custody order or any provision thereof on application by either or both former spouses or by any other person.

Factors for child support order

- (4)** Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Child Support Guidelines Regulation

Presumptive Rule

- 3(1)** Unless otherwise provided under these guidelines, the amount of a child support order for children under the age of majority is
- (a)** the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the parent against whom the order is sought; and
 - (b)** the amount, if any, determined under section 7.

Special or extraordinary expenses

7(1) In a child support order, on the request of the parent who has or is granted sole custody or primary care and control of the child, or a person, other than a parent, who seeks a child support order on behalf of a child, the court may provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests, and the reasonableness of the expense in relation to the means of the parents and those of the child and, where the parents cohabited after the birth of the child, to the family's spending pattern prior to the separation:

- (a)** child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b)** health-related expenses, or any portion of health related expenses, not covered by insurance that exceed \$100 annually including orthodontic treatment, professional counselling provided by

a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and medications, hearing aids, glasses and contact lenses;

(c) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;

(d) expenses for post-secondary education; and

(e) extraordinary expenses for extracurricular activities.

Split custody

8 Where each parent has sole custody or primary care and control of one or more children, the amount of a child support order is the difference between the amount that each parent would otherwise pay if a child support order were sought against each of the parents.

Shared custody

9 Where each parent exercises a right of access to, or has physical custody or care and control of a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account

(a) the amounts set out in the applicable tables for each of the parents;

(b) the increased costs of shared custody arrangements; and

(c) the condition, means, needs and other circumstances of each parent and of any child for whom support is sought.

Federal Child Support Guidelines

Presumptive Rule

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

(a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and

(b) the amount, if any, determined under section 7.

Applicable table

(3) The applicable table is

(a) if the spouse against whom an order is sought resides in Canada,

(i) the table for the province in which that spouse ordinarily resides at the time the application for the child support order, or for a variation order in respect of a child support order, is made or the amount to be recalculated under section 25.1 of the Act,

(ii) where the court is satisfied that the province in which that spouse ordinarily resides has changed since the time described in subparagraph (i), the table for the province in which the spouse ordinarily resides at the time of determining the amount of support, or

(iii) where the court is satisfied that, in the near future after determination of the amount of support, that spouse will ordinarily reside in a given province other than the province in

which the spouse ordinarily resides at the time of that determination, the table for the given province; and

(b) if the spouse against whom an order is sought resides outside of Canada, or if the residence of that spouse is unknown, the table for the province where the other spouse ordinarily resides at the time the application for the child support order or for a variation order in respect of a child support order is made or the amount is to be recalculated under section 25.1 of the Act.

The Family Maintenance Act, Child Support Guidelines Regulation

Child the age of majority or over

3(2) Unless otherwise provided under these guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

- (a) the amount determined by applying these guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each parent to contribute to the support of the child.

Incomes over \$150,000

4 Where the income of the parent against whom a child support order is sought is over \$150,000, the amount of a child support order is

- (a) the amount determined under section 3; or
- (b) if the court considers that amount to be inappropriate,
 - (i) in respect of the first \$150,000 of the parent's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates,
 - (ii) in respect of the balance of the parent's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each parent to contribute to the support of the children, and
 - (iii) the amount, if any, determined under section 7.

Person in place of a parent

5 Where a person against whom a child support order is sought is not the child's parent but has been found by the court to have an obligation to pay for the support of the child either under the *Divorce Act* (Canada) as a person who stands in the place of a parent or under subsections 36(2), (3) or (4) of *The Family Maintenance Act*, the amount of a child support order is, in respect of that person, such amount as the court considers appropriate, having regard to these guidelines and the child's parents' legal duty to support the child.

Undue hardship

10(1) On the application of either parent or a person on behalf of a child, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the parent making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

Circumstances that may cause undue hardship

10(2) Circumstances that may cause a parent or child to suffer undue hardship include the following:

- (a) the parent has responsibility for an unusually high level of debts reasonably incurred to support the parents and their children prior to the separation or to earn a living;
- (b) the parent has unusually high expenses in relation to exercising access to a child;
- (c) the parent has a legal duty under a judgment, order or written separation agreement to support any person;
- (d) the parent has a legal duty to support a child, other than a child of the parents or a child of the other parent who is a party to the application, who is
 - (i) under the age of majority, or
 - (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessaries of life; and

- (e) the parent has a legal duty to support any person who is unable to obtain the necessaries of life due to an illness or disability.

Standards of living must be considered

10(3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the parent who claims undue hardship would, after determining the amount of child support under any of sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other parent.