

Child Support

Overview

Child support is the right of the child. Therefore, all parents have an obligation to support their children., Parents must pay child support whether or not they have custody, and whether or not they visit their children. Each parent has an obligation to provide reasonably for the child's support, maintenance, and education. 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, adopted, 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. The parent who does not have custody of the child or the parent who has custody of the child less than 40% of the time is required to pay child support.

Who is a Child?

A child is someone under the age of 18 or who is over the age of 18 but is unable to support him or herself because of illness, disability, or some other reason, such as going to school full-time. When a child is going to university, how long a parent has to pay child support and how much depends on the circumstances. It will generally include at least the child's first degree or diploma. You also have to look at the child's earnings, loans, and money paid directly to the child. The best interests of the child

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: Case Study of 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 determine appropriate child support in different custody

is the guiding 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

(<http://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. You have to use the child support table amount from the province where the paying parent lives. There are also slight differences between provincial and federal guidelines. 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. Amounts in 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:

<http://www.justice.gc.ca/eng/fl-df/child-enfant/look-rech.asp>

scenarios.

3) Provide students with Handout #3: Family Law Mediation Simulation.

4) Provide the students with Handout #4: Quiz: Review of Child Support.

Glossary

Child– under the age of 18 or 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 a 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.

Split custody – each parent has at least one child in their custody or care for more than 60% of the time.

Relevant Law:

Federal Legislation:

Divorce Act - sections 2, 17(1)

Federal Child Support Guidelines Regulation – section 3(1)

Provincial Legislation:

The Family Maintenance Act – sections 2, 25.1, 37(1), 37.2(1), (3)

Child Support in Different Custody Arrangements

Sole Custody

If one parent has sole custody of a child or joint custody with care of the child for more than 60% of the time, child support is calculated based on the paying parent's income in The Child Support Guidelines table.

Split Custody

If the parents have split custody of children, this means that each parent has at least one child in their custody or care for more than 60% of the time. In split custody, the amount of child support is the difference between the amounts that each parent would otherwise pay according to their incomes. For example, John has custody of one child and Judy has custody of one child. According to the Child Support Guidelines table, based on his income, John should be paying Judy \$600. Based on her income, Judy should be paying John \$400. Judy will receive \$200 (the difference between what John should be paying and what she should be paying).

Shared Custody

In a shared custody situation, where each parent has access to, or has physical custody or care and control of a child for 40% or more of the time over the course of a year, the amount of child support must be decided by taking into account the amounts set out in the applicable tables for each of the parents, the increased costs of shared custody arrangements, and the condition, means, needs and other circumstances of each parent and of the child. The court considers the table amounts and an offset similar to a split custody situation. The court does not have to follow that amount. Child support may be more or less than the table amount. It is important to look at the financial circumstances and the increased costs in each household because of the shared custody arrangement.

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,

Child Support Guidelines Regulation – sections 3(1), 7, 8, 9

Resources:

Child Support Guidelines

Online Lookup

Child Support Recalculation Service Website

- 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 parent's income. Each parent pays a percentage of the expense. For example, if one parent earns 40% as much as the other parent, they would pay 40% of the expense and the other parent would pay 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.

ADULT CHILDREN

If a child is found to still be in need of 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 custody arrangement or when a paying parent has lost employment or is now suffering from a disability that prevents that parent from working.

Manitoba Justice has a publication online and in print called *A Guide to Changing Child Support Orders*. It is available online at:

<https://www.gov.mb.ca/justice/family/law/changembsupportorder.html>

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.

Child Support Recalculation Service

Manitoba Justice offers a Child Support Recalculation 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*.

The Child Support Recalculation Website is at:

<https://www.gov.mb.ca/justice/family/law/recalculation.html>

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.