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CHILD SUPPORT

CHILD means a 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 school).

The best interest of the child is the guiding principle in laws about children. 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.

What does the word PARENT mean? A parent can be biological, adopted, or a person declared to be the parent of a child. It is irrelevant whether parents of a child were ever married. You can also be considered a parent to your partner's children, if you acted as a parent to the children. 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 if you separate from your spouse or common-law partner. 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.

A person who stands "**in loco parentis**" to a child - meaning in place of a parent - has an obligation to provide reasonably for that child's support, maintenance and education. Again, 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.

The Child Support Guidelines are used to decide how much child support should be paid. 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. To find the amount of child support, look up the number of children and the yearly income of the parent paying support. Tables, instructions about calculating income and a simplified look-up tool can be located online at <http://www.justice.gc.ca/eng/fl-df/child-enfant/ft-tf.html>.

Special or extraordinary expenses are extra, over and above the table amounts, and include:

- child care expenses, (if the parent works, is ill, disabled or going to school or for training),
- expenses for extracurricular activities like sports, dance or music lessons,
- health-related expenses, or any portion of health related expenses not covered by insurance, that are more than \$100 per year,
- extraordinary expenses for primary or secondary school education fees or any other educational programs that meet the child's particular needs,
- expenses for post-secondary school education fees,
- orthodontic treatment,
- professional counselling,
- physiotherapy,
- occupational therapy,
- speech therapy,
- medication,
- hearing aids, glasses or contact lenses.

If one parent has sole custody or has 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. The parent who has sole custody, or joint custody with primary care and control of the child, may apply to the court for "extraordinary" or special expenses. Special expenses are calculated proportionately, based on each parent's income.

When deciding whether to add special or extraordinary expenses, the Court will look at:

- how necessary the expense is as far as the child's best interest is concerned,
- how reasonable the expense is taking into account the means of the parents and the child, and,
- where the parents lived together after the child was born, the family's spending pattern before the separation.

Split Custody - Where each parent has sole custody or primary care and control of one or more children, the amount of the Child Support Order is the difference between the amounts that each parent would otherwise pay. For example, Tom has custody of one child and Sally has custody of one child. According to the Child Support Guidelines table, based on his income Tom should be paying Sally \$500. Based on her income, Sally should be paying Tom \$300, Sally will receive \$200 (the difference between what Tom should be paying and what she should be paying).

Shared Custody - 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 the Child Support Order 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.

Where the income of the paying parent is over \$150,000, the amount of a Child Support Order is the table amount plus special or extraordinary expenses, or if the Court considers that amount to be inappropriate, for the first \$150,000 of the parent's income, 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 pay special and extraordinary expenses.

A Court may order an amount of child support that is different from the amount under the Legislation, 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. Circumstances that may cause a parent or child to suffer under hardship include 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.

Child Support must be paid until the child reaches age 18, or past age 18, if the child is still dependent because of illness, disability, education at University or College, etc. The Court Order may say when child support payments end. If it does not, the paying parent must go to Court to vary or change the Order. Most Orders do not specify when child support will end, so applying for a Variation is necessary in most cases.

Manitoba Justice offers a Child Support Recalculation Service for parents who want their Child Support Order recalculated based on updated financial information. To be eligible, both parents must live in Manitoba and one of them must get a Court Order authorizing the service to recalculate child support at regular intervals.

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

You can go to Court to ask for a Variation Order to change the amount of child support paid or to end the payments but the Court must be satisfied that there has been a change of circumstances since the Child Support Order was made or since the last Variation. Manitoba Justice has a publication online and in print called **A Guide to Changing Child Support Orders**. It is available online at <http://www.gov.mb.ca/justice/family/law/guide/index.html>.

The following main Statutes and Regulations, as well as the common law (case law), govern child support in Manitoba:

The Family Maintenance Act <http://web2.gov.mb.ca/laws/statutes/ccsm/f020e.php>

Divorce Act <http://laws-lois.justice.gc.ca/eng/acts/d-3.4/>

Child Support Guidelines <http://justice.gc.ca/eng/fl-df/child-enfant/fcsg-lfpae/2011/index.html>