Resolution Services

Alberta Government

General Information Booklet

CHILD SUPPORT

Revised, June, 2023

General Information
Child Support

CONTENTS

Resolution Services and Court Staff cannot give you legal advice, or predict the outcome of your case.
This booklet provides general information only. You should speak to a lawyer for legal advice about your own situation

These instructions have been prepared for you by Resolution Services. Contact us at:

Calgary
7th floor, Calgary Courts Centre
601 - 5 Street SW
Phone 403-297-6981

Edmonton
8th floor, Brownlee Building
10365 – 97 Street
Phone 780-415-0404

Grande Prairie
Main Floor, Court House
10260 - 99 St.
Phone: 780-833-4234

Lethbridge
1st Floor, Court House
320 - 4 St. S
Lethbridge AB T1J 1Z8
Phone: 403-388-3102

Red Deer
Main Floor, Court House
4909 - 48 Ave
Phone: 403-340-7181

Medicine Hat
Court House
460 First Street SE
Medicine Hat, AB T1A 0A8
Phone 403-529-8716

Outside these centres, call the Resolution Services Contact Centre at 1-855-738-4747

Introduction

If your application deals with child support or arrears, you should read this booklet before starting to fill out your court forms.

This booklet will give you general information about the law relating to child support, and the principles applied by the court when deciding child support matters. This information is general in nature, and is not intended to be an in-depth discussion of all legal issues relating to child support.

We recommend that you speak to a lawyer to find out how the law would be applied to your situation.

If you need further information, please contact Resolution Services. They can answer questions you have about:

- the Federal Child Support Guidelines, the Alberta Child Support Guidelines and how to calculate child support;
- steps for getting or changing a child support order or opposing these applications; and
- general information and court procedures for other family law matters.

In this booklet, any information about the Guidelines applies both to the Federal Child Support Guidelines and the Alberta Child Support Guidelines, unless otherwise stated.

Objectives of the Guidelines

The objectives of the Guidelines are:

- to establish a fair standard of support for children that makes sure they continue to benefit from the financial means of both parents after separation;
- to reduce conflict and tension between parents by making the calculation of child support orders more objective;
- to improve the efficiency of the legal process by giving courts and parents guidance in determining the amount of child support and encouraging settlement; and
- to make sure that parents and children are treated consistently in similar circumstances.

The Guidelines tell parents that they must give each other their financial information when that information is necessary to determine the amount of child support.

Under the Guidelines, income information is necessary in three instances:

- When a parent is paying child support, that parent's income must be provided. In a split or shared parenting arrangement, the income of both parents must be provided.
- The income of both parents must be provided where special expenses are being claimed.
- The income of both parents must be provided if either is claiming undue hardship.

Tip:

Even if the Guidelines do not require the income information of the parent who will be receiving child support, the judge may still require it.

When do you have to give Income Information to the Other Parent?

Provide Income Information When a Court Application is Filed

The Guidelines set out exactly what information a person must provide to the court and to the other parent when applying for, or responding to, a child support application. The Guidelines also set out what action a person can take if the other parent fails to disclose necessary income information.

Provide Income Information on Request - Once a Year

Parents must provide each other with financial information on a yearly basis if the request is made in writing. Once a request is made, the parent living in Canada has 30 days to provide the information requested.

You can ask the other parent for income information by filing and serving a "Notice to Disclose" in the Court of King's Bench or a "Request for Financial Information" in Provincial Court.

The judge may impute (set or assign) income to a parent, or award costs against a parent who has not provided income information.

Provide Income Information if your Court Order Directs You

It is not unusual for a child support order to set out exactly what income information must be shared with the other parent, and when it is to be provided. Usually, this is by June 30th of each year.

If your court order tells you to provide income information by a certain date, you must do so, or risk having your income imputed, or being ordered to pay costs.

If the court order does not list all of the income information set out in the Guidelines, you can also do a written request once a year for the extra information.

Provide Income Information if there is an Undue Hardship Claim

In an undue hardship claim, the judge must compare the standards of living of each household. To do that, the judge will need to know how many people are living in each household and the total household income. If there are new spouses or other adults living in the household, the judge will want to know how much these people earn as well.

The incomes of other persons in the household are not used to determine what the "table" amount of child support is but only to determine if this is the appropriate case to either "cut a break" on the amount of child support or to "top up" the amount of child support that would otherwise be awarded.

What if you need the information of a member of the other household and that information is not provided? As that person is not a party to the action, they would not be ordered to disclose this information. In this case, you may wish to ask the judge to impute (set or assign) income to that person. This will give you the necessary figures to complete a standards of living calculation.

The Basic Child Support Calculation

The payor is the parent who is required to pay child support for the children in the other parent's care. The recipient is the parent who will receive child support.

Under the Guidelines there are tables for each province and territory that are used to calculate the base or "table" amount of child support that the payor is required to pay, based on the following:

- the province or territory where the payor lives (or, if the payor resides outside of Canada, the province or territory where the recipient lives);
- the number of children in the recipient's custody or care that the payor is obligated to support; and
- the guideline income of the payor.

The basic amounts of support in the Guideline tables are based on the payor's gross annual income. The table amounts already take into account the usual deductions from income, such as taxes, and the usual costs of access to the children.

These table amounts have been determined after looking at what parents in different income brackets generally spend on their children. The support amounts are intended to cover not only the direct costs for the children, but also the indirect costs, such as housing and transportation. Paying child support takes priority over paying any other expenses.

There may be special expenses that are shared between the parents and added to the table amount of support.

The basic method for calculating child support is to add the table amount plus the payor's share of any special or add-on expenses. This basic method would be used for a sole parenting situation and is to be used unless the Guidelines allow a different method.

Guideline Income

What is your Guideline Income?

The payor's guideline income must be calculated in order to use the tables. The recipient's guideline income must also be calculated if there are special expenses being claimed, if the parents have a split parenting or shared parenting arrangement, or if one of the parents is claiming undue hardship.

There are several methods the judge can use to calculate guideline income - keeping in mind that the judge is always trying to use the most current information. The judge wants to determine how much money is really available for support

As a starting point, guideline income might be calculated using the sources of income that make up the total income on the last filed Income Tax Return.

For a simple employment situation, the starting point would be line 150 of the Income Tax Return. This is the gross income a parent has earned from employment and other sources before taxes and deductions. When calculating guideline income, the only usual deductions from this gross income are union or professional dues from line 212 of the Income Tax Return.

Sometimes using what a parent made in the previous year is not a good way of determining what income to use to calculate child support. They could have changed jobs, lost a job, or know that they will not be earning the same amount as reported on their last Income Tax Return. Here it might be better to estimate what the parent will be earning in the current year based on letters of employment or actual pay stubs, for example.

In some cases, the judge may wish to take an average of the parent's income over the last three years when calculating guideline income.

The judge can also impute (set or assign) income to a parent. For example, the judge might impute income if a parent is unemployed or is underemployed and the judge feels they have the ability to earn more income. Based on the evidence given to the court about the ability of the parent to earn income, the judge can impute a guideline income and the parent must pay support according to this imputed income.

The table amounts are based on taxable income. If the parent is not paying taxes, the judge might impute some income or "gross up" the income so it is comparable to a person's income who does pay taxes. This could be the case for a parent receiving payments from the Workers' Compensation Board, Social Assistance, some disability pensions, or because the parent has special tax status as a Native Canadian.

If a parent receives social assistance, the guideline income is just the amount that is paid for them alone, and not the amount of assistance that may be paid for children or other people in the household.

The Universal Child Care Benefit

Until June of 2016, parents received the Universal Child Care Benefit (UCCB) and had to include that amount as income on their tax return. When parents separated, the parent who claimed the child for tax purposes received the benefit.

The Universal Child Care Benefit is not always included in guideline income. You do include this amount in your income:

- when you are calculating how much each parent should pay for special expenses; and
- there is a special expense for the child for whom the Universal Child Care Benefit is paid.

The Canada Child Benefit, GST rebate, Carbon Tax Rebate and other Non-Taxable government payments

The Guideline says that guideline income is “determined using the sources of income set out under the heading ‘Total Income’ in the T1 General form issued by the Canada Revenue Agency…” In other words, it is the income that you must report on your tax return.

Many government payments are not taxable. Since you do not have to report these payments on your tax return, unless the court orders otherwise, they are not included in guideline income.

Self-employment income

If a parent is receiving money from sources other than employment income, determining how much money is available for child support can be more complicated. This is the case with many self-employment, farming and corporate income situations.

In these situations, you should get a legal opinion and/or an accountant's opinion. The Resolution Services staff will not be able to help you go through financial statements in order to decide what the person's guideline income might be.

To set income when a parent is self-employed, the judge starts by looking at taxable income, which is gross business income less allowable business deductions, and is found at line 150 of the Income Tax Return. While the business deductions may be reasonable for tax purposes, they may not be reasonable for determining child support payments. It may be necessary to question each of the deductions.

The judge will want to know if these expenses were necessary to earn business income. Certainly materials needed to operate the business are legitimate deductions. For example, if your company is in the business of selling apples, the cost of purchasing the apples would be reasonable. On the other hand, the judge may want to know whether personal expenses are being written off, if transportation and meal allowances are reasonable or if travel is necessary.

Tip:

If you are self-employed, it will be up to you to explain the business expenses to the court – to show that they are reasonable, and there is no personal benefit. Or, if there is a personal benefit, you will need to explain what part is personal and what part is business.

If you have an accountant or other person doing your books and taxes, sit down with them and study your financial information, so that you can properly explain your income and expenses.

If the business is paying a salary or wage to a relative or close friend of the business owner ("non arms-length"), the judge will want to know if the amount paid is reasonable in relation to the duties that person performs for the business.

If the parent is a shareholder, director, or officer in a corporation, the judge will want to see evidence of their personal income tax returns as well as the corporate income tax returns and financial statements. The judge may want to know if there are other shareholders, how much all the shareholders are paid each year and what the retained earnings are in the company. As with self-employed income, the judge may question the reasonableness of the expenses claimed by the corporation.

In both self-employed and corporate income situations, the judge can look beyond the personal income tax return to determine how much money is actually available to support the children.

Tip:

If you are asking the Resolution Services staff to calculate child support, you should to provide proof of what both the payor and the recipient earn. This financial information should at least include:

- copies of your tax returns and notices of assessment and reassessment for each of the three most recent taxation years from Canada Customs and Revenue Agency;
- copies of the three most recent pay stubs showing gross pay for the year to date, or other proof of current income;
- copies of statements from employment insurance, social assistance, a pension, workers compensation, disability insurance or any other source of income showing the total income from that source for the current year; and
- any other information you have to support the calculation of the guideline income of both yourself and the other parent.

If both the payor and the recipient provide each other with financial disclosure, they may be able to agree on what their guideline incomes are. If the other parent will not provide the necessary income information or if parents cannot agree on what method to use to calculate guideline income, you may ask a judge to decide for you.

What is a Special Expense?

As set out above, there are tables which will tell you the starting point for child support based on the payor's income, the number of children that he or she must support, and the province or territory where the payor lives.

There are some expenses, often called “special”, “add-on” or “section 7” expenses, which are not included in the table amount and which may be paid on top of the table amount. Either parent may have special expenses. The amount of child support to be paid is the table amount plus a share of the special expenses.

These expenses are generally shared between the parents proportionately to their income. For instance, if both parents make the same amount of money, the cost of the special expense is split evenly between the parents.

Your lawyer or the Resolution Services staff can help you calculate what share each parent will have to pay. It is possible for the parties to agree or the judge to order that the special expenses be shared between the parties in a way that is not proportionate to income.

If you and the other parent cannot agree on what should be included as a special expense and/or how those expenses should be shared between you, you can ask a judge to decide. If you are asking the judge to decide what the special expenses are in your case, the judge will look at several factors, including:

- Is the expense necessary and in the child’s best interest?
- Is the expense reasonable?
- Can the parents afford this expense?
- Did the family have these types of expenses before they separated?

The wording of section 7 is open to interpretation and the judges have a fair amount of discretion as to whether or not to add on an expense.

Some expenses, such as child care, medical and dental premiums or health related expenses are usually considered to be reasonable and necessary. However, expenses either for primary or secondary school and for extracurricular activities must also be “extraordinary” before

they will be considered special expenses. To decide if an expense is extraordinary, the judge will apply two tests:

- The first test looks at whether the person who pays the expense can afford it, given their income and the amount of the child support (if any) that they receive. If it will be difficult to afford the expense, then the expense may be extraordinary.
- If the first test is not met, then the judge would go to the second test. This test looks at factors such as whether or not the child has a special need or talent, the number of programs the child is in and the overall cost of the programs.

After looking at these factors, the judge may decide the expense is extraordinary.

Some expenses, such as daycare, medical expenses and post-secondary tuition expenses are tax deductible to the parent with custody. That parent may also be eligible for subsidies, and medical or dental expenses may be partially covered by an insurance plan. In these cases, it is the net cost of the expense, after tax deductions and subsidies, that is considered the special expense.

Tip:

If you have medical or dental insurance that covers the child, and you then have a medical or dental expense, it is the amount that is not covered by the insurance that is the special expense. For example, if the dental expense is $200 and insurance covers $150, then the remaining $50 is shared proportionately between you. Your share is NOT covered by the insurance payment.

The cost of the medical / dental insurance would be a separate special expense.

Split and/or Shared Parenting

Your type of parenting arrangement may affect how child support is calculated under the Guidelines.

Children Living Primarily with One Parent

Your Order or agreement may say that one parent has sole custody or that the parents have joint custody, but one parent has primary care. Or, you may have a Parenting Order or agreement that divides up the time with the children so that they spend the bulk of their time with one parent.

Unless the paying parent has the child for more than 40% of the time, over the course of the year, the amount of support is determined by the basic child support calculation.

Split Parenting

Split parenting or split custody is where one or more children live with each parent. An example of split parenting would be if there are two children and one child lives with the mother and the other child lives with the father.

In split parenting, you must first find out what each parent would pay the other parent for the number of children in the other's care using the basic method described above. The difference between these amounts, or the "set-off" amount, is what the parent who is required to pay the higher amount would have to pay the other parent.

Shared Parenting

Shared parenting or shared custody is where each parent has care of the child for at least 40% of the time over the course of the year.

“Shared parenting” should not be confused with the term "joint custody" which may refer to different parenting arrangements. You should speak to a lawyer to determine what type of arrangement you have.

When deciding the child support when there is shared parenting, each shared child is counted as a child in each parent’s household. You would first find out what each parent would pay the other parent for the number of children in the other’s care, including the shared

children. The difference between these amounts, or the set-off amount, is the starting point for child support. The parent who is required to pay the higher amount would pay the other parent the set-off amount.

However, you are not bound by the set-off amount when there is shared custody. You and the other parent may agree on the set-off amount, or on another amount that you feel is appropriate in your case. If you cannot agree on whether you have shared parenting and/or the amount of child support, you can ask a judge to decide.

If the judge decides there is shared parenting, the judge can either award the set-off amount, or some other amount, while considering these factors:

- the amounts set out in the tables for each of the parents;
- any increased costs of the shared parenting arrangements; and
- the conditions, means, needs and other circumstances of each parent and any of the children for whom support is sought.

You may have a case where you have both split and shared parenting. Again, the starting point would be to calculate the set-off amount, counting the shared children as children in each household. You and the other parent may agree on the amount to be paid for child support. If you do not agree, you may ask a judge to decide. The judge could decide to award this set-off amount or some other amount.

When Does Child Support End?

The Federal Child Support Guidelines apply to children as defined by the *Divorce Act*. *The Divorce Act* defines a "child of the marriage" as a child of the parents who is:

- under the age of majority and who has not withdrawn from their charge, or
- a person at or over the age of majority 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.

The age of majority in Alberta is 18. If the child lives outside Alberta, you must use the age of majority for the province where the child is living.

If the support is **not** being paid under the *Divorce Act*, different rules apply for when the support should end. Information with respect to support payable under the Alberta *Family Law Act* is included later in this booklet.

Depending on the circumstances, a child at or over age 18 may or may not be eligible for child support. You should speak to a lawyer if you are uncertain. If you and the other parent cannot agree, you can ask a judge to decide.

How Much Child Support is to be Paid for an Adult Child?

The child support for an adult child may be decided by applying the Guidelines as if the child were under the age of 18; that is, by performing the basic calculation, table amount plus any special expenses, for the total number of children, including the adult child.

You and the other parent may agree to set child support at this amount under the Guidelines. Or, you may agree to use the basic calculation for the children under 18, but a different amount for the child over 18 to reflect their needs.

If you and the other parent cannot agree on the amount of child support, you can ask a judge to decide. The judge may either award the amount under the Guidelines, or, the judge may set a different amount based on:

- the condition, income, needs and other circumstances of the child; and
- the financial ability of each parent to contribute to the support of the child.

Undue Hardship

There are times when either the payor or the recipient can ask the judge to adjust the amount of child support.

The payor may say to the judge: “I know that this is the amount that I must pay under the Guidelines, but I can't pay this amount because my financial circumstances have caused me undue hardship.”

Or the recipient may say to the judge: “I know that this is the amount that the Guidelines say I should receive for the support of my children, but this is not enough and I need more than this to support my children because I am suffering an undue hardship.”

One of the objectives of the Guidelines is to make sure that child support awards are consistent throughout the country. However, there may be cases where the Guidelines do not provide the fairest way of calculating child support. The undue hardship section of the Guidelines allows the judge to award an amount either above or below the usual Guideline amount.

Step 1
To claim undue hardship, the recipient or the payor must first prove to the judge that they or their children are suffering an undue hardship. Some cases where the judge might find undue hardship are:

- A person has children in several households that they are required to support. If the person paid the full Guideline amount for all of the children, they would not have enough money left over to live on.
- One parent took on the responsibility of a debt incurred while they were together, which is making it difficult to pay child support.
- A parent lives a long way away from the children and must, in addition to the usual access costs, pay the cost of transporting the children to and from access visits. If the parent pays the full guideline amount, that parent would not be able to afford to pay the travel costs for the access visits.

There are other examples of undue hardship set out in the Child Support Guidelines. The judge is not limited to using just these examples of undue hardship. The examples set out in the Guidelines all seem to have a common thread however - that because of some

special circumstance, there isn't enough money, either in the payor's household or the recipient's household, to meet the needs of their children.

In simple terms the person is asking the judge to be "cut a break" on the Guideline amount of support or to "top up" the Guideline amount of support because they are suffering an undue hardship.

Step 2

While the judge may agree that there are special circumstances that have caused undue hardship, the amount of the child support will not be adjusted unless you can also prove that the standard of living in your household is lower than the standard of living in the other household. This is the second step in the undue hardship claim: a comparison of the standards of living in each household.

The Guidelines provide a complicated mathematical formula for determining and comparing household standards of living. In very simple terms, the test will look at all the income available in your household and the number of people living off that income as compared to a similar family existing at the poverty line, called a low income measures amount.

This mathematical comparison will result in a number, usually between 1 and 3. The same test is then applied to the other household, and the result will again be a number. The numbers themselves have no special meaning, however, the household with the lower number has the lower standard of living.

The test takes into account the special circumstances that have caused the hardship, and the cost of those special circumstances. For example, if you are claiming undue hardship because you are paying support for another child, the amount of that support is subtracted from your income.

Your lawyer, or the Resolution Services staff, can help you with the standards of living test.

The judge does not have to use the standards of living test that is set out in the Guidelines. Since that test looks only at income, it may not be the best measure of standards of living in all cases. However, even if you want the judge to compare standards of living another way, you

must still provide the judge with the Standards of Living calculation.

If the judge accepts that you are suffering from undue hardship, and that you have the lower household standard of living, then the door is open for the judge to consider either "cutting a break" on the child support or "topping up" the child support. In either case the judge will set the support amount at what it decides is appropriate in the circumstances.

Tip:

If you want to claim undue hardship, it is done as part of the child support application, or the application to change child support. It doesn't matter if you are the one applying to the court or the one responding to an application.

Think about what evidence the judge will need to see to prove your undue hardship claim. That evidence must be included in your Affidavit or Statement. Some examples:

- If you are supporting another child, a copy of that child support order;
- If you are claiming high access costs or debts, proof of the amounts you have been paying;
- Your budget, to show your that your expenses are not being met;
- The number of people in your household; their ages and proof of their incomes;
- If you are living with children who are not your own, information on the amount of support being paid by their parent.

The Alberta Child Support Guidelines

What are the Alberta Child Support Guidelines?

The Federal Child Support Guidelines (The "Federal Guidelines") are part of the *Divorce Act* and do not apply to unmarried parents or third parties in need of child support. But, if you were not married, or if you are married, but have not yet filed for divorce, your child support will be set using the Alberta Child Support Guidelines, which are part of the *Family Law Act* (The "Alberta Guidelines").

The Alberta Guidelines are almost the same as the Federal Guidelines in that they set out tables for setting the base amounts of child support that are to be paid. The amounts depend on the payor's (the parent that does not have the children in their primary care) gross annual income and the number of children in the household. The tables in the Alberta Guidelines are exactly the same as the Alberta tables used under the Federal Guidelines.

Like the Federal Guidelines, the Alberta Guidelines also set out rules about what and how special or add-on expenses are to be shared between the parents. These are to be shared between the parents in proportion to their incomes.

Why do we have Alberta Guidelines?

The Federal Child Support guidelines do not help those that are not making use of the *Divorce Act*. It is desirable to make sure that all children, regardless of the circumstances of the parents, are treated the same for child support purposes. So, the Alberta Guidelines were created as part of the *Family Law Act* to be used in all cases where the *Divorce Act* does not apply.

The Alberta Guidelines will apply automatically to all applications made under this act by the following people:

- the child;
- a parent or guardian of the child;
- a person who has the care and control of the child; or
- any other person with leave of the court where the judge considers the application would be in the best interests of the child.

How are the Alberta Child Support Guidelines Different from the Federal Child Support Guidelines?

Although the basic rules are still the same, the Alberta Guidelines are different from the Federal Guidelines in some important ways. There are 4 significant changes in the Alberta Guidelines:

Definition of "Child"

In the Federal Guidelines, the rule is that child support is payable for so long as the child is under the age of majority or over the age of majority if that child is unable to withdraw from their parents' charge because of illness, disability or other cause. "Other cause" has generally come to mean that child support is payable up until a child has finished their first post-secondary degree or diploma.

The Alberta Guidelines are different in that they set out a limit for how long child support can last. The Alberta Guidelines say that child support can continue for a child between the ages of 18 and 22 if that child is a full-time student.

"Full time" means the number of courses that the school the child is attending considers to be full time.

Child support under the Alberta Guidelines ends completely once the child turns 22.

Persons "In the Place of a Parent"

Under the Federal Guidelines, the judge can decide that a spouse, who is not a parent, has in fact stood in the place of parent and can order that person to pay child support. How and when a spouse becomes a person standing "in place of a parent" (sometimes called "*in loco parentis*") has been very difficult to pin down. It has mostly been up to the individual judges hearing the case to decide whether someone has stood *in loco parentis* or not.

In the Alberta Guidelines, however, there are clear rules about when a person stands in the place of a parent and must pay child support. The Alberta Guidelines refer to the *Family Law Act* which defines a person standing in the place of a parent as a person who:

- is or was the spouse of the mother or father of the child or who is or was in a relationship of interdependence of some permanence

with the mother or father of the child; and

- has demonstrated a settled intention to treat the child as the person's own child.

The *Family Law Act* then goes on to explain what factors should be taken into consideration to see if the person has treated that person as their own child. These factors are:

- the child's age;
- the duration of the child's relationship with the person including
    - the child's perception of the person as a parental figure;
    - the extent to which the person is involved in the child's care, discipline, education and recreational activities, and
    - any continuing contact or attempts at contact between the person and the child if the person is living separate and apart from the child's father or mother;
- whether the person has considered
    - applying for guardianship of the child;
    - adopting the child; or
    - changing the child's surname to that person's surname;
- whether the person has provided direct or indirect financial support for the child;
- the nature of the child's relationship with any other parent of the child; and
- any other factor that the judge considers relevant.

This results in more certainty in deciding when a step-parent has stood in the place of a parent and become responsible to help support that child. It is very likely that a parent's new partner who has lived with the child for several years, helped support the child and the family, and whom the child refers to as "mom" or "dad" will be deemed to be standing in the place of a parent, and required to pay child support.

Who can Apply

Under the Federal Guidelines, only "parents" are allowed to ask the court to require the other parent to pay support With the Alberta Guidelines, anyone who has a child in their care and can apply for child support and can also apply for contribution to special expenses.

Special Expenses

Another change from the Federal Guidelines is that the special expenses can be estimated. In other words, it may be enough for the party applying to simply know that child care will be "around $300 per month".

What is the Bottom Line?

The bottom line is that the Alberta Guidelines are available to every Albertan who is making an application for child support under the *Family Law Act*. The Alberta Guidelines are mandatory. The general rules and tables for calculating child support remain the same as the Federal Guidelines, but there are 4 important differences to be aware of. These can be summarized as follows:

- child support will continue for a child over the age of 18 who is still in full-time attendance at a post-secondary institutions, but will only be payable until the age of 22;
- a step-parent who has treated a step-child as their own may be responsible for paying child support;
- anyone who has the child in their care can apply for child support;
- special expenses can be estimated.

However, it is important to remember that if your child support application is under the *Divorce Act*, the Federal Guidelines apply.

Principles Applied by the Court to All Applications

There are three basic principles that apply to all child support applications. These principles apply whether the amount of child support is being set for the first time or whether an application is being made to change that amount or to cancel or reduce arrears.

Joint legal obligation

Both parents have a legal obligation to support their children. This is such an important obligation that a divorce cannot be granted until parents make satisfactory arrangements for the care of their children.

The person paying the support has no right to control how those funds are spent. The judge will assume that the parent with the child has the best interests of the child in mind when making budgeting decisions. Because the standard of living of both the child and the parent the child lives with will affect the child's welfare, the parent with the child may receive some benefit from child support payments. This is especially true when the parent paying support has a high income.

A child has a right to support

Even though child support is generally paid to the parent, it is the child that has the right to child support. This right has been confirmed by the Guidelines. This means that a parent who cares for the child cannot bargain away child support, or accept an amount which is unreasonably low.

The ability to pay

The amount of child support is based on ability to pay. That means that a person who is only able to earn a low income will pay a low amount of support, but a person who is able to earn a high income will pay a high amount of support.

If someone who has an obligation to pay support is not working, or is not working full time, and a judge finds that they are doing so because they do not want to pay child support, the judge can impute income to them – that is, they can set the person's income based upon what they are capable of earning, and base the child support on the imputed income, rather than the actual income.

Principles Applied when the Court is Asked to Change Child Support

Change in circumstances

There is one basic principle that applies to applications to change existing child support orders. Before a judge can change the amount of an existing child support payment, there must be a significant and long-lasting change in the circumstances of one or both parents. This must be a change that has occurred after the original child support order was made.

Some changes that might be considered include:

- a change in income;
- a change in the amounts paid for special expenses;
- a change in where the child resides; or
- the fact that the Guidelines tables have changed since the child support order was made.

Retroactive Orders

Sometimes, your circumstances or the other parent's circumstances changed a long time ago, and you are only now going to court to ask for the change in child support. Can you ask the judge to back date the order, in other words to make a retroactive order?

In some cases, you can. The judge will look at various factors in deciding whether or not to make a retroactive order. These include:

- the reason for the delay in making your application (why you didn't make the application at the time the circumstances changed);
- the conduct of the other parent;
- the past and present circumstances of the child, including the child's needs at the time the circumstances changed; and
- whether the retroactive award might cause hardship to either of you.

If the judge decides that a retroactive award should be made, the general rule is that it should be retroactive to the date of "effective

notice" – that is, the date that you let the other parent know that you wanted to change the amount.

However, the retroactive date should not be more than three years in the past unless the other parent engaged in blameworthy conduct (for example, if a paying parent hid the fact that they have received a large increase in salary).

Principles Applied when the Court is Asked to Reduce or Cancel Arrears

There are two basic principles that apply to cancelling or reducing child support arrears.

Change in financial circumstances

Before a judge can cancel or reduce the amount of arrears owed by the paying parent, there must be a significant and long lasting change in the parent's financial situation.

The courts are generally reluctant to reduce or to cancel arrears. Arrears will not be reduced or cancelled unless significant unfairness would result.

Postponing payment or paying over time

Just because the arrears are not cancelled does not mean that they have to be paid right away. The judge may postpone payment for a reasonable period of time or make an order setting out the amount, per month, that is to be paid on the arrears.

The judge will consider all the facts of a case, including the present financial situation of the person paying child support. This would only be done when there has been a complete financial disclosure from the person asking to postpone payment or to pay over time.

Common Arguments for Reducing or Canceling Arrears

There are often specific arguments that are made to the courts when a parent applies to cancel or reduce arrears. Here are the legal rules that apply to those arguments:

"I cannot afford to pay now."

Not being able to pay now is not a legal reason to cancel or reduce arrears. Arrears will only be cancelled if you are unable to pay now and will be unable to pay in the future. However, the judge may consider a repayment plan.

"I could not pay when I was supposed to because my financial circumstances changed."

It is sometimes possible to have arrears reduced for this reason. However, it is not good enough just to say that you could not pay because you earned less than at the time the support amount was ordered. Arrears will only be cancelled or reduced if you give the judge detailed and full financial disclosure that proves that:

- there was a significant and long lasting change in income;
- the change was not made by choice;
- every effort was made to earn money (or more money) during the time in question, and those efforts were not successful; and
- there is a good reason why you did not apply to the court to reduce the support at that time.

"I could not pay when I was supposed to because I had new obligations."

This raises questions of priority. Which obligations come first? It is often argued that the person required to pay has a second family. The law is clear that responsibility for a second family cannot relieve the parent of the responsibility to support the first family.

However, the judge will not allow children of a second family to suffer more than the children of the first family. The judge may allow a reduction based on an argument of "undue hardship."

To make this argument, you must provide full financial disclosure both for yourself and for your new parent or partner. The judge will then

decide whether the new obligations should take priority over the child support obligations for the first family.

The other parent delayed in taking steps to enforce payment of arrears."

The fact that the parent with parenting allowed the arrears to build up without taking steps to enforce payment is not an argument for cancelling or reducing arrears. There are two reasons for this:

- First, a child cannot give up the right to child support, nor can a parent who is caring for the children give up that right on behalf of a child.
- Second, very often all of the resources of the parent with the children -- financial, physical and emotional -- are used up in caring for the child. That parent is not in a position to take action for the payment of arrears.

However, a judge may consider delay as a factor if you can show that you have been prejudiced by the delay -- in other words that there are some special circumstances that make it unfair to enforce payment of the arrears now.

"The other parent will get a windfall."

This is sometimes called the rule against hoarding. The law is now clear that it does not apply to paying child support arrears. This is because the rule against hoarding rewards the person who disobeys the Court Order to pay. It assures the paying parent that if he or she can avoid making payments long enough, a judge will reduce or cancel those payments. This is contrary to public policy.

The rule also does not apply because the courts feel that the obligation to pay arrears of child support should be enforced in fairness to the parent who is caring for the children. After all, the parent with the children has had to bear the bulk of the child rearing expenses without adequate assistance from the other parent.

"The children have not suffered because others provided assistance."

This argument suggests that no harm has really been done. This has also been rejected by the courts. Arguing that the judge should reduce or eliminate arrears of child support because someone else has provided this financial support, does not recognize the financial

obligation of the person who was ordered to pay child support. An Order in these circumstances would ignore the fact that both parents have an obligation to support their children.

"My child does not need the money now."

This is like the last argument. It also has been rejected. Even if the child is being adequately supported now, or is an adult, the judge recognizes that the child or the parent who cared for the child has had a lower standard of living than they should have because the child support has not been paid. In this case it may be appropriate to compensate either the child, or the parent who cared for the child.

"The other parent agreed that I did not have to pay."

This argument is usually rejected by the judge as well. Even if such an agreement exists, it is seldom enforced because the parent who cares for the children does not have the right to make such an agreement. Child support is the right of the child, not the parent.

However, if there are special circumstances in which a verbal agreement was made (for example, if one or more of the children lived with you for a period of time) then the judge may consider reducing arrears.

"The other parent prevented me from having access (parenting time) with the child."

The courts have decided that lack of access or parenting time will not be considered when determining whether arrears of child support should be reduced. The court can assist you to enforce the right to time with a child in other ways.

"I spent a lot of money on my children, even though I was not paying all that was required by the Court Order."

This generally does not provide a legal excuse for not paying child support and does not provide a reason for reducing or cancelling arrears. Child support is required for many reasons and it is up to the parent who is entitled to receive it to decide how it should be spent in the best interests of the children.

However, there may be special circumstances in which an agreement was made between the parents where the paying parent would pay certain expenses instead of child support, which may be considered by the judge. In this case, the paying parent would have to provide proof of the expenses actually paid on behalf of the children and proof of the existence of the agreement.

"I did not have legal advice when the Order was made or during the time when the payments were not made."

The fact that a person did not have legal advice when the Order was made, or during the time when the arrears added up, is not a reason to reduce or cancel arrears.

“I did not have enough money to pay the support when it became due, I do not have enough money to pay the arrears now, and it is unlikely that I will be able to pay the arrears in the future.”

If your financial circumstances have changed for the worse since your support order was made, if these changes were not by choice, and if you will not ever be able to pay off the arrears, then the judge may be willing to reduce or cancel the arrears.

Providing Evidence for Court

When you apply for, or to change, a child support order or to reduce or cancel arrears, it is necessary to provide full and detailed financial disclosure to the court, under oath (usually in the form of an affidavit).

The requirement that the information be under oath is an important one. A decision to make or to change a court order can only be made on accurate and complete information. This evidence must be sworn or affirmed to be true. If there is no such sworn evidence, it is as if the judge has no evidence on which to base the child support order.

Evidence cannot be “hearsay” - that is, you cannot say in an affidavit things that you did not see or hear personally. If someone else told you an important fact, you must have that person provide an affidavit with that fact.

Willfully providing false information under oath, whether in an affidavit or in a court proceeding, is a crime under the Criminal Code. You could be sentenced to a maximum of fourteen years in prison.

It is important to spend the time to make sure you have provided all of the evidence the judge will need. You will not get a second chance to provide evidence to the court. If all of your evidence is not provided at the time of your application, the judge can either make a decision based upon the evidence that is provided, or can order you to provide the information and to pay costs as a penalty.

The Actual Guidelines

In this booklet, we have explained the guidelines in general terms. For more specific information, the actual guidelines can be found as follows:

The Federal Child Support Guidelines (http://laws-lois.justice.gc.ca/eng/regulations/SOR-97-175/index.html)

The Alberta Child Support Guidelines (http://www.qp.alberta.ca/574.cfm?page=2005_147.cfm&leg_type=Regs&isbncln=9780779741656&display=html)

The Child Support Tables (http://www.justice.gc.ca/eng/fl-df/child-enfant/ft-tf.html)

Canada Revenue Agency (http://www.cra-arc.gc.ca/menu-eng.html) For information on taxes, child tax benefit and GST