

Administrative Recalculation of Child Maintenance Program Update Fact Sheet for Legal Professionals

The Nova Scotia Department of Justice is expanding the Administrative Recalculation of Child Maintenance Program. This Program permits the automatic recalculation of the table amount of child support where a court order or registered agreement so authorizes.

Prior to November 1, 2014, the Recalculation Program operated only within the Supreme Court (Family Division) for orders made under the *Maintenance and Custody Act* exclusively. The new Regulations allow the Program to operate throughout Nova Scotia for child support orders made under both the *Maintenance and Custody Act* and the *Divorce Act*. The new Regulations took effect on November 1, 2014 and were made pursuant to section 55 of the *Maintenance and Custody Act*: <http://www.novascotia.ca/just/regulations/rxam-z.htm#maintcust>.

The improvements to this program are part of the work the department and its justice partners are doing to improve access to justice. The Access to Justice Co-ordinating Committee, led by Justice Minister Lena Metlege Diab and Chief Justice Michael MacDonald, is finding ways to make Nova Scotia's family, civil and criminal court systems more efficient and effective, less costly and easier to navigate.

Authorization and Enrolment

Either party may apply for an order to authorize recalculation at the outset of proceedings or as part of a variation of an existing child support order. The parties do not need to consent to authorization provisions and a Judge can authorize recalculation on his or her own accord, without the request of either party. The authorization may be contained in a stand-alone order, or included in a more detailed written agreement or order, including a corollary relief order, as long as the document has been issued by the court. Standard authorization clauses have been developed for use to ensure compliance with the Regulations, and can be found at <http://www.nsfamilylaw.ca/www.nsfamilylaw.ca/admin-recalc-info-lawyers>.

An order that purports to authorize recalculation, under the 2010 Administrative Recalculation Regulations may be enrolled in the expanded Program provided the order is filed within 5 years of issuance and meets the enrollment requirements in both sets of Regulations.

Situations not covered by the Program

Not all child support situations are eligible for recalculation under the Program. These include situations of retroactive support, support arrears, changes in circumstances (other than a change in income level based on the previous taxation year's annual income), relief other than table child support, and where there is evidence of income other than that defined by the Regulations.

Conditions Precedent for Authorizing Enrolment:

The regulations provide that a court must not make a recalculation authorization order where:

- Either payor or recipient does not ordinarily reside in Nova Scotia at the time when the recalculation authorization order or recalculated order is issued
- Child maintenance order is set out in an interim order
- A shared custody order exists for a child to whom the maintenance order applies
- The payor's annual income is over \$150,000 and child support payable is not based on a table amount
- The child maintenance amount takes undue hardship into account

- The payor received income from self-employment as a partner in a partnership, as a person in control of a corporation or as a recipient of dividend income
- The payor stands in place of a parent and the child support payable is not a table amount
- The payor's annual income was determined based on a pattern of income
- The amount of child maintenance ordered was not determined under the *Child Maintenance/Support Guidelines*

The Regulations also set out circumstances where a clerk must not recalculate an order, for example when:

- The order authorizing the recalculation has been varied, rescinded, suspended or substituted
- The payor's income has not changed
- The authorization was made in circumstances noted in the above paragraph that preclude authorization
- The payor's circumstances have changed to include circumstances that would not have allowed a judge to issue the authorization order
- The recalculation authorization order was made under the new regulations, but does not comply with those regulations
- The authorization order was made under the former regulations and does not comply with either the former or the current regulations
- The eldest child subject to the child support order reaches the age of majority

The recalculation clerk will review orders to determine whether they meet the enrolment or recalculation criteria and will advise parties, courts and the Maintenance Enforcement Program of these decisions. The last recalculated order issued will continue to be enforceable until it is varied, but no new recalculated order may be prepared or issued.

Determining Annual Income

Annual income will be calculated in accordance with s. 16 of the *Child Maintenance or Child Support Guidelines*. Payors will be required by court order to file financial information as defined by the Regulations and will be reminded of this requirement prior to the deadline. "Financial Information" includes the personal income tax return and notice of assessment/reassessment for the previous taxation year and, if circumstances require, may include other document(s) acceptable to the clerk that set out the payor's annual income from all sources.

If insufficient or no financial information is filed, the clerk may deem income to the payor in an amount 10% higher than the amount set out in the most recent order for the purposes of recalculation.

Conditions of Recalculated Orders

The recalculation clerk will use the Nova Scotia Table to determine the amount of child support payable. The payor becomes liable to pay under the recalculated order 31 days after the parties are notified of the order. Notification is deemed to have occurred 5 days from the date the recalculated order was sent to the parties. The method of calculation, annual income determination, and review date must be stipulated in the recalculated order. A standard form of recalculated order can be found at <http://www.nsfamilylaw.ca/www.nsfamilylaw.ca/admin-recalc-info-lawyers>.

Variations and Objections Permitted

Either party may object to a recalculated order by making an application to vary, rescind or suspend the recalculated order no later than 30 days after the date the parties are deemed to have received it. The parties are required to notify the recalculation clerk in writing if they file any such application. Provided the objection is filed within the 31 day period, the recalculated order is suspended pending the determination of the objection or until the application is withdrawn. The next most recent order for child support remains in effect during this

time. If the objection is withdrawn or dismissed, the recalculated order is effective from the date it was first issued.

The Recalculation Program does not preclude either party from making an application to a court to vary a child support order, recalculation authorization order or recalculated order in response to a change in circumstances that happens outside the annual review process. The most recent of the recalculated order or other order dealing with child support remains in effect until the matter is determined, unless a judge authorizes a stay on application of a party or otherwise.

For more information, please visit nsfamilylaw.ca or contact the Administrative Recalculation Program at:
Administrative Recalculation of Child Maintenance Program

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Revised September 24, 2015