

How to Review Child Support

The Law permits child support to be reviewed anytime there is a ‘material change of circumstances’. As the definition of a material change of circumstances as any change in income of either parent, child support could be reviewed monthly. Most separation agreements, however, contemplate an annual review of child support, usually around the time that Income Tax Returns are filed with the Government and Notices of Assessment are received.

Reviewing child support can be a straightforward process, if you know what is expected and are willing to look up the numbers online. While you can hire a lawyer to conduct your review of child support, you can save a considerable amount on legal fees if you and your former spouse follow these steps:

1. **Check your separation agreement or court order.** This is always your first step. Your separation agreement or court order will likely address the review of child support. See when the review is to take place, what disclosure is to be provided, whether the review is retroactive or ongoing, and what steps you need to take in the event of a dispute.
2. **Exchange financial information with your former spouse.** This is mandatory – you cannot calculate child support without knowing both parents’ incomes. A comprehensive list of financial information to be exchange can be found in Section 21 of the Federal Child Support Guidelines. However, here is a list of standard documents exchanged when reviewing child support:
 - a. Last year’s T1 Income Tax Return with schedules (not just your T4 statement),
 - b. Any and all Notices of Assessment and Reassessment,
 - c. Three most recent paystubs,
 - d. A breakdown of your employment income, if you receive bonus income, stock options, or other forms of incentives that are not paid regularly. A letter from your Human Resources office may be the simplest way for this information to be summarized, and
 - e. If you are self-employed or operate a business through a privately held corporation, the most recent Financial Statements. Also provide a breakdown of any payments made to yourself (salary, management fees, shareholders loans) and any other individual who is not operating at arm’s length (family members, spouse, etc.).

Remember – the general rule for calculating income for child support is that all income is included. You can review my blog post on determining income for assistance with this issue.

3. **Determine your income for child support.** The law tells us to use our best guess at current income, or anticipated income for the upcoming year. Therefore, your income from last year is only helpful if it is similar to what you expect your income to be in the current year. You should not use your historical income if you have changed jobs, received a significant raise, or have other changes to your income that will cause it to be significantly greater than or less than your historical income.
4. **Calculate monthly child support.** If your children reside primarily with one parent, this is fairly straightforward. The monthly payment of child support is determined by the income of the parent who is not living with the children for the majority of the time. For example, if the children reside primarily with their mother, the income of the children's father is used to determine the monthly payment. You can use the online calculator provided by the Government of Canada, Department of Justice to determine the monthly payment; it is located here: <http://www.justice.gc.ca/eng/fl-df/child-enfant/look-rech.asp>.

If you are sharing the parenting of your children with your spouse, the process is a bit more complicated. You should consider contacting your lawyer for assistance with this situation. Here are the basic steps:

- a. Calculate the monthly payment for both parents,
 - b. Determine the net difference between the monthly payments to determine the base monthly payment from one parent to the other,
 - c. Determine if the net difference of the monthly payment should be adjusted due to the increased costs of having a shared parenting plan, and
 - d. Determine if the net difference of the monthly payment should be adjusted due to the conditions, means, needs and other circumstances of you, your former spouse, and / or the children.
5. **Calculate percentages for sharing Section 7 expenses (Special and Extraordinary Expenses).** This is straightforward; what percentage is your income of the total income of you and your former spouse. For example, if your income is \$80,000.00 and your former spouse's income is \$20,000.00, then your percentage is 80%:

$\$80,000.00 / \$100,000.00 = 0.80$, or 80%. Your former spouse's percentage is then 20%.

Remember that any spousal support that is being paid is generally considered as income for the recipient, not for the payor. This may adjust the percentages, sometimes significantly.

6. **Identify Section 7 expenses.** Some people will identify either specific activities that they will share, or set a budget for expenses for the year. This will ensure that certain expenses are sharable without the need of obtaining your former spouse's consent prior to spending on the activity. A full list of the Section 7 expenses is here:

- a. child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment,
- b. that portion of the medical and dental insurance premiums attributable to the child,
- c. health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses,
- d. extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- e. expenses for post-secondary education, subject to the terms of this Agreement; and
- f. extraordinary expenses for extracurricular activities.

7. **Retroactive child support.** Do you need to update child support from last year? Check your agreement or your court Order – it should tell you one way or another. If your agreement or Court Order is silent on this, the law presumes a retroactive review of child support. Calculating child support is fairly straightforward:

- a. Determine the amount of child support that should have been paid in the past year by finding the monthly child support payment and multiply by 12,
- b. Determine how much child support was actually paid during the year, and
- c. Find the difference.

If there was an underpayment of support, determine how the difference will be paid. If there was an overpayment, determine how the credit will be applied.

8. **Updating your Agreement or Order.** This is especially important if you have a Divorce Judgment or a Court Order setting out child support, as these documents are enforceable by the Maintenance Enforcement Program ("MEP"). The new child support terms you have determined above should be placed into a new Court Order, which will take priority over the old Order. If you do not do this, the old Court Order can be registered with MEP and enforced. This can cause one parent a significant hardship, as that parent who is on the wrong side of the old Order will need to go to Court to change the Order, stop the enforcement, and correct the amounts that were already taken by MEP.

A new Court Order is a fairly straightforward document to prepare and have granted, provided that you and your former spouse are in agreement with its terms. Talk to your lawyer about getting this done; he will want to know that you and your former spouse have agreed on the updating of child support, and will want to have a copy of the disclosure exchanged to come to that agreement.

I can help you with any and all of the above steps to update your child support. I also offer flat fees for updating your Court Order to reflect your new terms of child support. Please contact me to discuss how we can resolve this issue amicably and respectfully.

- Warren S. Jennings
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Warren is a family law lawyer who practices in Victoria, British Columbia, Calgary, Alberta, and points in between. Warren's approach to family law emphasizes effective and dignified problem solving, and empowering his clients to deal with their legal issues at separation. Read Warren's bio at <http://www.islandfamilylawyers.com/WarrenJennings.aspx>.

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