



THE NEWFOUNDLAND AND LABRADOR GAZETTE

EXTRAORDINARY

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**NEWFOUNDLAND AND LABRADOR
REGULATION**

NLR 16/18



NEWFOUNDLAND AND LABRADOR REGULATION 16/18

*Administrative Recalculation of Child Support Regulations
under the
Family Law Act
(O.C. 2018-037)*

(Filed March 1, 2018)

Under the authority of section 85 of the *Family Law Act*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, March 1, 2018.

Ann Marie Hann
Clerk of the Executive Council

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Short title **1.** These regulations may be cited as the *Administrative Recalculation of Child Support Regulations*.

Definitions

2. In these regulations

- (a) "Act" means the *Family Law Act*;
- (b) "age of majority" means
 - (i) in the case of the Act, 19 years of age; and
 - (ii) in the case of *Divorce Act* (Canada), the age of majority as defined in the *Divorce Act* (Canada);
- (c) "agreement" means an agreement as defined in section 61 of the Act, that has been filed with the court in accordance with subsection 65(5) of the Act and that requires
 - (i) the payment of child support, and
 - (ii) the annual recalculation of the child support payable under the agreement in accordance with these regulations;
- (d) "child support order" means an order for the support of a child made by a court;
- (e) "court" means the Supreme Court and the Provincial Court;
- (f) "department" means the department presided over by the minister responsible for the *Income and Employment Support Act*;
- (g) "Federal Child Support Guidelines" means the *Federal Child Support Guidelines* established by regulation under section 26.1 of the *Divorce Act* (Canada);

(h) "former regulations" means the *Child Support Service Regulations*, Newfoundland and Labrador Regulation 31/07;

(i) "income information" means

(i) a copy of

(A) the personal income tax return filed by a party for the most recent taxation year, and

(B) the notice of assessment and any reassessments issued to the party for the most recent taxation year, or

(ii) where the annual recalculation takes place before a party has filed his or her income tax return for the most recent taxation year, another document acceptable to the recalculation officer setting out the party's total income from all sources for that year;

(j) "party" means

(i) a payor, or

(ii) a person who is entitled to receive child support under a child support order or an agreement;

(k) "payor" means the party who is obligated to pay child support under a child support order or an agreement;

(l) "recalculation office" means the office designated under subsection 3(1);

(m) "recalculation notice" means a notice issued under section 5, 6 or 7;

(n) "recalculation officer" means a person appointed under subsection 4(1);

(o) "review date" means the date in each year which is the anniversary of the commencement of the most recent child support obligation under a child support order, an agreement or a recalculation notice;

(p) "special or extraordinary expense" means an expense referred to in section 7 of the *Federal Child Support Guidelines* and section 7 of the *Child Support Guidelines Regulations*; and

(q) "table" means

(i) the child support table set out in Schedule I of the *Federal Child Support Guidelines* for the province in which the payor resides, or

(ii) where the payor resides outside Canada or the residence of the payor is not known at the time of recalculation, the table set out in Schedule I of the *Federal Child Support Guidelines* for the province where the person entitled to receive child support resides.

Recalculation office

3. (1) The recalculation office is designated as a child support service for the purpose of section 25.1 of the *Divorce Act* (Canada) and paragraph 85(b) of the Act.

(2) The duties of the recalculation office include

(a) assisting the court in the determination and administration of child support orders;

(b) monitoring compliance with child support orders or agreements requiring the periodic filing of income information;

(c) reviewing and recalculating the amount of a child support order or an agreement as set out in the applicable table in accordance with section 5; and

(d) acting on behalf of a party for the purpose set out in section 26 of the *Federal Child Support Guidelines* and section 24 of the *Child Support Guidelines Regulations*.

Recalculation officer

4. (1) The minister shall appoint one or more recalculation officers.

(2) A recalculation officer may, in the exercise and performance of his or her powers and duties under these regulations

- (a) use computer programs or other technical aids; and
- (b) engage the services of or seek assistance from accountants or other experts as the recalculation officer considers appropriate.

Recalculation

5. (1) A payor shall provide his or her income information to the recalculation office no later than 45 days before the review date.

(2) Notwithstanding subsection (1), where a child support order or an agreement was made before the coming into force of these regulations, a payor shall provide his or her income information to the recalculation office no later than

- (a) the date in a year on which income information was required to be provided under the child support order or the agreement; or
- (b) where a child support order or agreement did not specify a date on which income information was to be provided, the date in a year determined by the recalculation office.

(3) Where a payor provides the recalculation office with income information in compliance with subsection (1) or (2), a recalculation officer shall review and recalculate the amount of child support as set out in the applicable table using the income information provided.

(4) Where a payor does not provide the recalculation office with income information in compliance with subsection (1) or (2) or where income information is not available and the child support order or the agreement allows for recalculation, the income of the payor shall be considered to be the sum of

- (a) the income amount on which the most recent child support order, agreement or recalculation notice was based; and
- (b) 20 percent of the payor's income as determined under paragraph (a).

(5) Notwithstanding subsection (4), where a child support order, an agreement or a recalculation notice was issued under the former regulations and a payor does not provide the recalculation office with income information in compliance with this section or where income

information is not available and the child support order or the agreement allows for recalculation, the payor's income shall be considered to be the sum of

(a) the income amount on which the most recent child support order, agreement or recalculation notice was based; and

(b) 10 percent of the payor's income as determined under paragraph (a).

(6) Where, as a result of the recalculation, the amount of child support would increase or decrease by less than \$5 a month, the recalculation officer shall not recalculate the amount of child support for that year, and shall notify the parties that there will be no change in the child support amount for that year.

(7) Where, as a result of the recalculation, the amount of child support would increase or decrease by \$5 or more a month, the recalculation officer shall provide each party with a recalculation notice stating that the recalculated amount of child support shall come into effect on the date specified in the recalculation notice unless within 30 days after the date the recalculation notice was considered to be received a party objects to the recalculation by filing a notice of objection with

(a) the court

(i) that made the child support order, or

(ii) where the agreement was filed; and

(b) the recalculation office.

(8) Where a notice of objection under subsection (7) is not filed, the recalculation officer shall file a copy of the recalculation notice with

(a) the court

(i) that made the child support order, or

(ii) where the agreement is filed; and

(b) the Director of Support Enforcement.

Notice of objection

6. (1) Where a notice of objection under subsection 5(7) is filed objecting to the recalculation, the amount of child support shall not change as a result of the recalculation and the amount of child support in the most recent child support order, agreement or recalculation notice remains in effect pending the hearing of the objection.

(2) Where a notice of objection under subsection 5(7) is filed,

(a) the court shall notify the parties to the child support order or the agreement and the recalculation office of the date set for the hearing of the objection; and

(b) on the conclusion of the hearing of the objection the court shall issue a child support order for the recalculated amount or another amount.

(3) Where a notice of objection is withdrawn before the hearing of the objection, the recalculated amount of child support is considered to have come into effect on the date specified in the recalculation notice.

Recalculation -
children over the
age of majority or
death of a child

7. (1) Where a child to whom a child support order or agreement applies has attained the age of majority, the recalculation officer may recalculate the amount of child support where the person who is entitled to receive child support under a child support order or an agreement provides written confirmation in the form required by the recalculation office, that the child meets the requirements of paragraph 37(7)(a) of the Act or continues to be a child of the marriage as defined by the *Divorce Act*.

(2) Notwithstanding subparagraph 15(1)(a)(x), where a child support order or an agreement applies to 2 or more children and a child dies or attains the age of majority and is no longer entitled to child support, the recalculation office may recalculate the amount of child support of the other children to whom the child support order applies where

(a) the child support order or the agreement was made in accordance with the table; and

(b) the child support order or the agreement states

- (i) the number of children, and
- (ii) the total amount of child support determined in accordance with the table.

Effect of
recalculation notice

8. After a recalculation notice has been made by the recalculation office in respect of a child support order or an agreement, the payor under the child support order or the agreement is liable to pay the recalculated amount of child support set out in the recalculation notice commencing on the date specified in the recalculation notice.

Notice of change

9. A party shall notify the recalculation office in writing of a change to any of the following contact information no later than 10 days after the date of the change:

- (a) mailing address;
- (b) email address;
- (c) telephone number; and
- (d) fax number.

Notification by
recalculation office

10. (1) Notice to a party required to be given by the recalculation office under these regulations may be

- (a) personally served on the party;
- (b) sent by ordinary mail to the last known address of the party shown in the records of the recalculation office;
- (c) sent by fax to the fax number provided by the party; or
- (d) sent by electronic mail, text or other electronic means to the electronic mail address, cellular telephone number or other electronic address provided by the party.

(2) Notice sent under paragraphs (1)(b), (c) and (d) is considered to have been received 7 days from the date on which it is sent.

(3) Where notice is sent to the party's last known address or the electronic mail address or fax number provided by the party but is

returned as undeliverable, the party is considered to have received the notice in accordance with subsection (2).

Application in
respect of defective
service

11. Where a party is considered to have received a recalculation notice and the party satisfies the court that he or she was not aware of the recalculation notice or that the recalculation notice came to his or her attention only at some time later than when it was considered to have been received, the court may make the order that it considers appropriate and fair in the circumstances.

Rounding to nearest
dollar

12. When recalculating child support under these regulations, the recalculation officer shall round the amount payable to the nearest dollar.

Foreign currency
conversion

13. Where a payor provides the recalculation office with income information that is reported in a currency other than Canadian dollars, the recalculation office shall convert the income information to Canadian dollars, applying the foreign currency exchange rate as set by the Bank of Canada on the date the recalculation is made.

No recalculation of
special expenses

14. Where a child support order or an agreement provides for an amount to cover special or extraordinary expenses, the recalculation office shall not recalculate that amount.

Refusal to
recalculate

15. (1) The recalculation office shall not recalculate the amount of child support payable

(a) under a child support order or an agreement where

(i) the parties have a shared custody arrangement within the meaning of the *Federal Child Support Guidelines* or the *Child Support Guidelines Regulations*,

(ii) the annual income of the payor has been determined in another manner than by using the sources of income set out under the heading "Total Income" in the T-1 General form issued by the Canada Revenue Agency and adjusted in accordance with Schedule III to the *Federal Child Support Guidelines* or Schedule B of the *Child Support Guidelines Regulations*,

(iii) neither party resides in the province,

- (iv) the recalculation office is aware that a date has been set for the court to hear an application respecting the amount of child support specified in the child support order or the agreement,
- (v) recalculation may be impracticable or too complex for the recalculation office to perform,
- (vi) the child support order or the agreement was received by the recalculation office less than 4 months before the review date of the child support order or the agreement,
- (vii) the child support order or the agreement is not in compliance with the requirements of the *Rules of the Supreme Court, 1986* or the *Provincial Court Family Rules, 2007*,
- (viii) the child support order or the agreement is not in compliance with the requirements of the *Federal Child Support Guidelines* or the *Child Support Guidelines Regulations*,
- (ix) the child support order or the agreement indicates that for one or more of the following reasons the amount of child support has been determined in a manner other than by applying the applicable table amount under the *Federal Child Support Guidelines* or the *Child Support Guidelines Regulations* as if the child were under the age of majority:
 - (A) the child to whom the child support order or the agreement applies has attained the age of majority,
 - (B) a payor stands in the place of a parent,
 - (C) there has been a determination of undue hardship, and
 - (D) the income of the payor is greater than \$150,000 a year, or

(x) the child to whom the child support order or the agreement applies has attained the age of majority and either

(A) the court has not ordered that the child support continue after the age of majority, or

(B) the parents have not agreed that child support continue after the age of majority; or

(b) under a child support order where

(i) the child support order was made on an interim or without prejudice basis and does not provide for the recalculation of the child support order by the recalculation office, or

(ii) the amount of child support in the child support order is \$0.

(2) Where the recalculation office refuses to recalculate the amount of child support payable under a child support order or an agreement, the recalculation office shall

(a) return

(i) the child support order to the parties and to the court that made the child support order, or

(ii) the agreement to the parties and to the court where the agreement was filed; and

(b) indicate why recalculation was refused.

Application for
retroactive child
support

16. The existence of a child support order or an agreement providing for the recalculation of child support shall not preclude a person who is entitled to receive child support under a child support order or an agreement from making an application to court for retroactive child support.

Correction

17. (1) Where, after the recalculation office has recalculated a child support amount, the recalculation office discovers a mistake in the

recalculation notice, including a clerical error, the recalculation office may

(a) correct the mistake and issue an amended recalculation notice; or

(b) where the recalculation notice should not have been issued, issue a notice that the recalculation notice has been revoked.

(2) A recalculation notice that has been corrected under this section takes effect on the day the recalculation notice would have taken effect if there had been no mistake.

(3) An amended recalculation notice or a notice of revocation referred to in subsection (1) shall be sent to the parties and the Director of Support Enforcement and filed with the court.

(4) Where the amended recalculation notice changes the amount of child support payable under a child support order or an agreement, the parties have the right to object to the amended recalculation notice in accordance with subsection 5(7).

Request by department

18. Where the department requests, the recalculation office shall provide a designated employee of the department with a copy of a recalculation notice.

No liability

19. A recalculation officer or a person acting on behalf of a recalculation officer is not liable for a loss or damage suffered by a person because of anything done or omitted to be done in good faith with respect to the recalculation of a child support order or an agreement.

Recalculation does not affect other portions of child support order

20. A recalculation of the table amount of a child support order or agreement under these regulations in accordance with a recalculation notice does not affect the validity of any other portion of the original child support order or the original agreement.

Conflict

21. Where there is a conflict between the recalculation of child support in an agreement and these regulations, these regulations prevail.

Transitional

22. (1) A child support order issued or an agreement filed before the coming into force of these regulations shall be enforced or otherwise dealt with under these regulations.

(2) Where a recalculation of the amount of child support in a child support order or an agreement was started but not concluded before the coming into force of these regulations, subsections 5(2) and (5) apply.

NLR 31/07 Rep.

23. The *Child Support Service Regulations*, Newfoundland and Labrador Regulation 31/07, are repealed.

Commencement

24. These regulations come into force on March 1, 2018.

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