



# 3 Resolving Financial Issues

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## Types of Agreements and Orders

A Written Agreement drawn up by Family Justice Counsellors may only address issues regarding the children, so you may want to formalize the financial agreement between you and the other parent through one of the following options:

### 1. An Informal Agreement

If there are no safety issues, and you and your children's other parent can talk openly and agree on support matters, you can develop an informal agreement. It's a good idea to write down what the two of you agree to, in case there are problems later.

### 2. Written Agreement

A written agreement is an agreement, in writing, between you and your children's other parent that says what both of you have agreed to. A written agreement is often called a "separation agreement" if it is drawn up by lawyers and includes a property settlement.

A written agreement can include your decisions about how the children are to be supported financially, whether one parent is going to contribute to the financial support of the other, and how you are going to divide the things you own, your assets, and your debts.

You and your children's other parent can draft a written agreement with or without the help of a lawyer or mediator, either using your own wording or with the help of self-help packages such as the one available from Self Counsel Press titled "Separation Agreement."

You and the other parent can put whatever you want in an agreement. For example, you can say which school your children should attend or where your children may register for soccer. In writing up a written agreement, you may refer to the *Child Support Guidelines* to see what is fair and what is in the best interests of the children (for child support), or the *Spousal Support Advisory Guidelines* (for spousal support) but there is no requirement to follow these guidelines and you are free to make an agreement in any amount.

You should know, however, that if you apply for a divorce you are required to attach a copy of your written agreement to the paperwork. Unless the support amounts comply with the Guidelines a judge will reject your application for divorce.

Make sure you and the other parent sign the agreement. It's also a good idea to get legal advice before you sign an agreement, to make sure that you have protected your rights. (You and the other parent should each see separate lawyers.)

Some or all parts of your written agreement may be legally enforceable. There is no requirement to file a written agreement in court, but if you want to apply to make changes to an agreement, it must first be filed with the court.

### **3. Consent Order**

A Consent Order is like a written agreement but a judge reviews it, either in person or as a desk order, and then signs it. Like a Written Agreement, parents must agree to the terms of a Consent Order before presenting it to a judge.

Because a judge must review a Consent Order, the child support amount in a Consent Order cannot be below the amount applicable under the *Child Support Guidelines*.

Parents often use a Consent Order when they agree to change or cancel an existing Court Order or a Consent Order, since a Written Agreement cannot replace or change an order made in court. A Consent Order is always filed in court, and is legally enforceable.

### **4. Court Order**

When parents cannot agree on the amount of support, either parent may apply to the court to ask that a judge make an order or ask that a judge change a previous agreement or order.

The judge *must* follow the *Child Support Guidelines*, where relevant, in setting the amount of child support. The judge has the flexibility to vary the child support to take into account such things as hardship, custodial arrangements, and/or arrears.

The judge *may* apply the Spousal Support Advisory Guidelines, where relevant, in looking at the range of spousal support.

A Court Order is legally enforceable. A Court Order may only be varied by another Order, not by an Agreement.

An order made in the Provincial Court of British Columbia can be changed or cancelled by a subsequent order made in Provincial Court or an order made in Supreme Court. An order made in the Supreme Court of British Columbia can only be changed or cancelled in the Supreme Court of British Columbia.