

Child Support

Who has a legal duty to financially support the children of a relationship?

Both parents have a legal duty to financial support their children, even after they separate.

If you are a stepparent, you too may be ordered to pay child support even if the children are not your biological children. A stepparent is a person who is or was married to one of the children's parent or lived together in a marriage-like relationship with the children's parent for a period of at least two years. To be required to pay child support under *the Family Relations Act*, a stepparent must have contributed to the support and maintenance of the children for at least one year and the children's parent must have applied for support within one year after the date the stepparent last contributed to the support of the children. Under the *Divorce Act*, the stepparent must have been married to the children's parent and stood in place of a parent to the children."

If you are applying for child support from a non-biological parent you must file your application within one year of the date of that person's last contribution to the support of the children.

What is child support and why is it paid?

Child support is money paid by one parent to the other to help distribute the expenses associated with the children being in that parent's primary care. The parent who has primary care is also expected to contribute towards the children's living expenses, based on their gross income. The parent with primary care of the children usually pays more than their "share" of child support as they absorb all the expenses that aren't covered by the other parent. With both parents contributing to the children's expenses, the children's living conditions will be better than if only one parent provided support.

When parents have split custody (the custody of two or more siblings is divided between their parents) or shared custody (the children spend at least 40% of their time with each parent), these expenses are presumed to be shared more equally. As a result, the *Child Support Guidelines* allow for special provisions for parents with these kinds of parenting arrangements.

Can I waive child support?

Child support is the right of the children, not the parent who has custody of a children. If you are the primary caregiver for your children you cannot agree to "give up" child support in order to have no further contact with the other parent.

The children live with their other parent, and he/she has moved in with another person. Do I still have to pay child support?

Child support continues even if the parent who has primary care of the children enters into a new relationship. The obligation to pay child support would be transferred to the new spouse only if the new step-parent adopted the children.

What if the other parent never sees the children?

The obligation to pay child support continues even if a parent never sees the children and has no role in the children's lives.

Can I stop paying child support if my access is cancelled or interfered with?

No. Child support is not a fee paid in exchange for time with the children. The children's living conditions should not be affected by conflict between you and the other parent.

Do I have to pay child support when the children spend time with me?

Yes. Child support is averaged over the year. The parent who has primary care of the children must maintain the children's living environment even when the children are spending time with the other parent or with extended family or friends, or when the children are away from home at camp or on a vacation.

What expenses does child support cover?

The base amount of child support a parent pays is presumed to cover a very wide scope of common day-to-day expenses associated with raising children: the children's share of the rent, utilities and groceries; clothing; school expenses; and activities. In some circumstances the basic amount can be increased to include other expenses so long as they qualify as "special and/or extraordinary expenses" under the Child Support Guidelines. Examples include daycare, tutoring, and a portion of medical and dental expenses.

Can I ask the parent to whom I pay child support to provide receipts to show me how he/she spends the money?

No. By definition a person who receives child support is free to spend the money at their discretion. If you deduct money from the child support you normally pay to cover the cost of something you bought for your children, or to pay an activity fee for your children, you will still owe money as child support unless the other parent agrees to the lower payment.

Special expenses are treated differently. If your agreement or order includes special expenses you may ask to see receipts to show that the expenses have been paid.

Is child support affected by an order for spousal support?

If there isn't enough money to pay both child support and spousal support a child support order will take precedence over a spousal support order.

How long does child support continue?

In British Columbia child support continues until each child is 19 years of age.

A child 19 years of age or older may be eligible for support if he/she is unable to withdraw from the care of his or her parents. The two main reasons why a child might not be able to "withdraw" are: the pursuit of a post-secondary education; or, a serious chronic illness that prevents the child from becoming self-supporting. In general the courts will allow an adult child to benefit from child support for one program of post-secondary study so long as the child is enrolled full-time.

Special and/or Extraordinary Expenses

In addition to basic child support a paying parent may also be required to cover a portion of other kinds of expenses so long as they qualify as "special and/or extraordinary expenses" under the *Child Support Guidelines*.

What are "special and/or extraordinary expenses"?

"Special and/or extraordinary expenses" are defined under section 7 of the *Child Support Guidelines* as follows:

- Child care expenses, as long as those expenses are the result of the custodial parent's employment, illness, disability or education or training for employment;
- The children's portion of the medical and dental insurance premiums;
- 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;
- Extraordinary expenses for primary or secondary school education or for any other educational programs that meet the children's particular needs. Tutoring costs falls under this category where the tutoring is necessary for the children's academic performance. So, too, can special costs related to particular courses, including workbooks, instruments, equipment or materials, field trips.
- Expenses for post-secondary education; and
- Extraordinary expenses for extracurricular activities.

How are special and/or extraordinary expenses shared between the parents?

In the absence of another arrangement between the parents, expenses are shared by the parents in proportion to their income, after deducting any contribution to those costs made by the children or the government (through things like grants or tax deductions).

The idea is to look at the total pot of money available to the children and to figure how much each parent's share of that pot is, and pay the expense according to that share.

What is being shared is the *net* cost of an expense — in other words, the amount actually being paid. The net cost of daycare, for example, is the cost of daycare less any daycare subsidy the provider is receiving and less any tax credits that arise from claiming the expense.

Changes to the *Child Support Guidelines* that were introduced on May 1, 2006 clarify when these special and/or extraordinary expenses should be paid.

First, expenses are extraordinary if they exceed what the requesting spouse can reasonably cover, in light of his or her income. In deciding what a parent can reasonably cover, the court takes into consideration the income of the requesting parent as well as any child support received.

Second, just because an expense occurs doesn't mean it will automatically be shared. The courts consider the:

- Amount of the expense in relation to the receiving parent's income (including the child support amount);
- Nature and number of the educational programs and extracurricular activities;
- Special needs and talents of the child or children;
- Overall costs of the programs and activities; and
- Factor that the court considers relevant.

The courts also consider the necessity of the expense in relation to the children's best interests and the "reasonableness of the expense." This includes considering the family's means (how much money they have) and their spending pattern before the separation.

Can we make our own agreement about how special and/or extraordinary expenses will be shared between us?

You can agree to the expenses you will share and how you will share them.

You can agree to share expenses which do not necessarily qualify as "special and/or extraordinary expenses" under the *Child Support Guidelines*, e.g. the

registration fee for an activity, birthday parties, fees related to social outings, and extraordinary purchases such as a computer.

You can also agree on how you will share expenses – 50/50 vs. in proportion to your incomes.

And you can include details of the payment of such expenses in your agreement, e.g. taking turns to pay for program registration fees, a lump sum payment either annually or seasonally, or paying within 30 days of production of a receipt for the expense.

The Elements of a Child Support Order

A standard Child Support Order must include the following elements:

- The names of the payor (person paying support) and recipient (person receiving support)
- The Guideline income of the payor
- The names and birthdates of each child covered in the agreement
- The amount of support
- The effective start date for support payments
- The frequency of payments
- The date of the month the payment is due
- The duration of the agreement

In order to be enforceable an agreement for special expenses must *also* include:

- The name of the child the expense applies to
- The nature of the expense
- The payor's share of the net expense, preferably in dollars and cents

You can negotiate important details of the child support payment, such as the date(s) when payment is to be made. Sometimes orders aren't paid just because the order is for the 1st of the month, at a time when all other payments are expected to be made from a limited pay. A monthly payment of \$600 could be paid in equal installments of \$300 on the 1st and 15th of the month. You can also choose to include details on the form of payment — whether by cheque, money order, or direct deposit.

Legal Fees

Your legal fees are tax deductible if you paid them:

- to establish a Child Support Order
- to enforce a Child Support Order or Agreement

Changes to the *Child Support Guidelines* came into force on May 1st, 2006

These changes updated the Child Support Tables for all provinces and territories and reflect changes to tax rates.

For more information about child support and the *Child Support Guidelines* please contact your local Family Justice Centre or:

Department of Justice Canada 1-888-373-2222

<http://canada.justice.gc.ca/en/ps/sup/index.html>

You can use the Child Support Online Lookup below to figure out basic child support amounts.

<http://canada.justice.gc.ca/en/ps/sup/lookup/index.asp>