



SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
Rules of the Supreme Court, 1986

PRACTICE NOTE
P.N. No. 2018-01

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PREVIOUS PRACTICE
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The following Practice Note is published pursuant to Rule 4.04 of the *Rules of the Supreme Court, 1986*.

**ADMINISTRATIVE RECALCULATION OF CHILD SUPPORT REGULATIONS UNDER
THE FAMILY LAW ACT**

Background and Purpose

1. New regulations were recently approved entitled the *Administrative Recalculation of Child Support Regulations* under the *Family Law Act*. The new regulations will come into force on March 1, 2018 and will repeal the current *Child Support Service Regulations*. The new regulations will be published in the *Gazette* on or before March 1, 2018.
2. As a result of the regulations, the recalculation of child support orders will now be an administrative process instead of a judicial one. Child support amounts that are registered with the recalculation office will be recalculated annually by recalculation officers.
3. A summary of the key provisions of the *Administrative Recalculation of Child Support Regulations* is provided below:

(a) Section 2(o) states that a “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”. The “review date” is fundamental to the determination of the due date for payors’ income information to be provided to the recalculation office.

(b) Section 4 provides for the appointment of recalculation officers to administratively recalculate child support amounts.

(c) Section 5(1) specifies that payors must provide income information at least 45 days before the review date of their order, agreement, or most recent recalculation notice. “Income information” is defined in s. 2(i) as both personal income tax returns and notices of assessment (and any reassessments) or where such information is not available, such other documentation that is acceptable to the recalculation office.

(d) Section 5(4) states that where a payor does not provide income information to the recalculation office or where the information is not available, the income of the payor will be considered the payor’s most recent income amount plus 20% of the payor’s most recent income. Under the previous regulations, this additional amount was 10%.

(e) Section 5(7) provides that after the payors’ financial information has been assessed, the recalculation office shall issue a recalculation notice to the parties stating that the recalculated amount of child support shall come into effect on a certain date unless either party objects by filing a Notice of Objection. Section 6 provides for the procedure for the court hearing of the objection.

(f) Section 7(1) allows recalculation officers to recalculate child support if a child has reached the age of majority, but remains under the charge of his or her parent and/or continues to be a dependent child. The support recipient must provide written confirmation, in the form required by the recalculation office, that the child meets the requirements in s. 37(7)(a) of the *Family Law Act* or the definition of “child of the marriage” under the *Divorce Act*.

(g) Section 7(2) allows recalculation officers to recalculate child support for families with multiple children, where one or more of the children have either reached the age of majority (and is no longer entitled to support) or died, but support of the other children continues. In this situation, the recalculation office may recalculate child support for the remaining dependent children provided that the order/agreement was made according to the child support table, and states the number of children, and the corresponding table amount of support.

(h) Section 10 sets out how notice to parties must be given by the recalculation office. Under the previous regulations, notices were to be sent by registered mail only. The new regulations allow notice to be served by personal service, ordinary mail (at the last known address of the party shown in the recalculation office's records), fax, or electronic means (eg. email, cellphone, etc.).

(i) Sections 10(2) and (3) specify that a notice served by ordinary mail, fax, or electronically transmitted, is deemed to be received 7 days from the date it was sent (whether the document was actually received or returned as undeliverable). Under the previous regulations, the period of deemed service was 30 days from the date it was sent.

(j) Section 14 specifies that the recalculation office will not recalculate amounts for special or extraordinary expenses.

(k) Section 15 contains a number of grounds upon which the recalculation office will not recalculate the child support amount. Such circumstances are set out in section 15(1) , and include:

- (a)(i): where the parties have a shared custody arrangement;
- (a)(ii): where the payor's income was determined in a manner other than by the payor's CRA T1 General form;
- (a)(iii): where neither party resides in the province;
- (a)(iv): where the recalculation office is aware that a court date has been set to hear an application respecting the child support order or agreement;
- (a)(v): where recalculation would be impracticable or too complex;
- (a)(vi): where the recalculation office receives the support order or agreement less than 4 months before the review date;
- (a)(vii): where the support order or agreement does not comply with the applicable Court Rules;
- (a)(viii): where the child support order or agreement does not comply with the applicable *Child Support Guidelines*;
- (a)(ix): where the child support amount has not been determined in accordance with the child support tables for the following

reasons: (A) the child is over the age of majority, (B) a payor stands in the place of a parent, (C) there has been a determination of undue hardship, or (D) the payor's income is more than \$150,000;

- (b)(i): where an interim child support order does not provide for recalculation by the recalculation office; or
- (b)(ii): where the amount of the child support in the order is \$0.

(l) Sections 22(1), 22(2), 5(2), and 5(5) are the transitional provisions:

- Child support orders, agreements, and recalculated notices issued *after* March 1, 2018 will be subject to the new regulations.
- Child support orders or agreements issued *before* March 1, 2018 or recalculation orders that are "in progress" (ie. Notices of Recalculation issued *before* March 1, 2018, but have not yet been issued as orders), will be subject to the new regulations, with two exceptions:
 - The date on which a payor must provide income information will remain the date in a year provided by the order or agreement (or the date specified by the Recalculation Officer where there is no date provided). [For new support orders, agreements, and recalculated notices issued *after* March 1, 2018, the date will be 45 days before the review date.]
 - Where income information is not provided by the deadline (and the order or agreement provides for recalculation), child support will continue to be calculated based on the income from the most recent order, agreement, or recalculation notice, plus 10% of that income amount. [For new support orders, agreements, and recalculated notices issued *after* March 1, 2018, 20% of the payor's most recent income will be added].

Practice Note:

4. Where parties are required to include a recalculation clause in a draft order submitted to the Court pursuant to r. 34.03(1)(i) of the *Supreme Court Family Rules*, the following wording must be included:

Support Recalculation

The amount of child support shall be reviewed each year and, where necessary, will be recalculated by the Recalculation Office in accordance with the *Administrative Recalculation of Child Support Regulations*.

COMMENCEMENT DATE OF CHILD SUPPORT:

(a) The commencement date of child support pursuant to this order is the ____ day of (*month*) _____ of (*year*) _____.

REVIEW DATE:

(b) The child support amount will be reviewed one year after the date set out in clause (a) above. The next review date for the child support obligation is the ____ day of (*month*) _____ of (*year*) _____.

INCOME INFORMATION REQUIREMENTS AND DUE DATE:

(c) The person required to pay child support must provide the following income information to the Recalculation Office:

- i. Personal income tax return for the most recent taxation year; and
- ii. Notice of assessment and any reassessments for the most recent taxation year; or
- iii. other document(s) acceptable to the Recalculation Office.

(d) The income information must be provided to the Recalculation Office **not later than 45 days before the review date** at:

Recalculation Office
9th floor, Sir Richard Squires Building
P.O. Box 2006
Corner Brook, NL A2H 6J8
Tel: (709) 634-4172
Fax: (709) 634-4155
E-mail: recalculation@gov.nl.ca

RECALCULATION – WHERE INCOME INFORMATION IS PROVIDED

(e) If satisfactory income information is received by the Recalculation Office at least 45 days before the review date, the Recalculation Office will issue a Recalculation Notice setting out the proposed recalculated child support amount.

(f) If, as a result of the recalculation, the amount of child support would increase or decrease less than \$5.00 per month, the Recalculation Office will not recalculate the amount of child support. The Recalculation Office will notify the parties that there will be no change for that year.

RECALCULATION – WHERE INCOME INFORMATION IS NOT PROVIDED

(g) If satisfactory income information is not received by the Recalculation Office at least 45 days before the review date, the Recalculation Office will issue a Recalculation Notice setting out the proposed recalculated child support amount. This amount will be:

- i. the income amount on which the most recent child support order, agreement, or Recalculation Notice was based; plus
- ii. 20% of the payor's income as determined under (g)(i) above.

EFFECTIVE DATE OF RECALCULATED AMOUNT

(h) Unless a Notice of Objection is filed, the recalculated amount of child support stated in the Recalculation Notice will come into effect on the date set out in the Recalculation Notice. The Recalculation Office will file a copy of the Recalculation Notice with the court that made the child support order (or where the agreement is filed) and the Support Enforcement Agency.

(i) The recalculated amount of child support is payable to the Support Enforcement Agency:

Support Enforcement Division
2nd floor, Sir Richard Squires Building
P.O. Box 2006
Corner Brook, NL A2H 6J8
Tel: (709) 637-2608

OBJECTION TO RECALCULATION

(j) If a party objects to the change in child support amount in the Recalculation Notice, the party must file a Notice of Objection with the court that made the child support order, or where the agreement was filed. The party must also provide a copy of the Notice of Objection to the Recalculation Office.

(k) The Notice of Objection must be filed within 30 days after the Notice of Recalculation is deemed to be received.

(l) If a Notice of Objection is filed, no change shall be made to the amount of child support payable unless:

- i. a court order is made at the conclusion of the objection hearing; or
- ii. the Notice of Objection is withdrawn before the objection hearing, in which case the recalculated amount of child support is considered to have come into effect on the date set out in the Recalculation Notice.

CHANGE OF CONTACT INFORMATION

Parties must notify the Recalculation Office of any change to their mailing address, email address, telephone number, or fax number within 10 days of the change.

5. The required wording is included in the *Form F34.02A – Consent Order (Support)* template and the *Order (Support)* template, which are available on the court's website.

Authorized by:

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