

FAMILY RESOLUTION SERVICE  
CHILD SUPPORT SERVICE  
Presentation to the MBA Family Law Section

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DISCLAIMER: INFORMATION VALID AS OF THE DATE OF PRESENTATION. FORTHCOMING DIVORCE ACT AMENDMENTS, AND POSSIBLE AMENDMENTS TO THE CHILD SUPPORT SERVICE ACT AND CHILD SUPPORT SERVICE REGULATION WILL NO DOUBT CHANGE CERTAIN ASPECTS OF THE CHILD SUPPORT SERVICE.

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## FAMILY RESOLUTION SERVICE

In June 2020, a new single-window Family Resolution Service (FRS) launched to consolidate and expand voluntary out of court services:

- [Family Law Manitoba](#), a new bilingual online hub delivers simplified and comprehensive family law information, tools and supports.
- Get Guidance, a single email and telephone line for family law information and provincial services with screening of all clients for intimate partner violence.
- Early Resolution Supports delivered by Family Guide specialists in intimate partner violence and safety planning, mediation, family law and court processes.
- **Expanded child support and maintenance enforcement.**
- Specialized supports for parents navigating agreements and court orders during COVID-19.

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## BILL 9 – THE FAMILY LAW MODERNIZATION ACT

Bill 9 - The Family Law Modernization Act was introduced on March 9, 2019. The Act addresses current challenges by:

- a) Amending The Arbitration Act to facilitate private arbitration as a means to resolve family law disputes (came into force on July 1, 2019).
- b) Enhancing the authority and discretion of the Maintenance Enforcement Program to prevent the need for court applications in a wide variety of circumstances (came into force July 1, 2019).
- c) **Establishing the Child Support Calculation Service to facilitate initial child support and recalculation decisions outside of court (came into force July 1, 2020).**
- d) Establishing an administrative family dispute resolution service pilot to make facilitated resolution and adjudication mandatory for all eligible common law families.

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## GET GUIDANCE & EARLY RESOLUTION SUPPORTS

An experienced family law guide can now be accessed by email at [GetGuidance@gov.mb.ca](mailto:GetGuidance@gov.mb.ca) or by calling: 204-945-2313 (Winnipeg) or 1-844-808-2313 (toll-free).

The guide can assist in identifying an individual's family law issue(s) and direct them to specialist guides for mediation, domestic violence, child support, enforcement of support and the court process.

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## CHILD SUPPORT SERVICE

The Child Support Service (CSS) is the successor to The Child Support Recalculation Service (CSRS) that operated from July 1, 2005 until June 30, 2020. The CSRS recalculated the table amount of child support and section 7(1) special or extraordinary expenses in child support orders pursuant to recalculation authorizations orders granted by the court.

A total of 13,007 Recalculated Child Support Orders were issued by the CSS during the 15 years the CSRS was in operation.

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## WHERE IS CHILD SUPPORT FOUND ON THE WEBSITE?

Family Law Manitoba has a section devoted to child support that provides information on the Child Support Guidelines and the forms to apply to the CSS for administrative calculation or recalculation.

- Child support can be accessed through the tab 'Money' at:  
<https://www.manitoba.ca/familylaw/money/child-support.html>.
- The application section that provides the CSS forms to apply is:  
<https://www.manitoba.ca/familylaw/money/child-support-applications.html>.

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## NEW FEATURES OF THE CHILD SUPPORT SERVICE

The new Child Support Service has expanded authority in these areas:

- Administrative calculation of child support on application (initial child support order) for table amount and special or extraordinary expenses.
- Recalculation of child support may be made on application without a fee made directly to the CSS.
- SDO may cease to recalculate (step down) child support for adult child (section 5(5) of the Act).
- Limited retroactivity under section 17 automatic recalculations.

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## NEW FEATURES OF THE CHILD SUPPORT SERVICE

- New section 7(1) special or extraordinary not previously ordered by the court may be sought during the recalculation process for orders made under *The Family Maintenance Act* in certain circumstances.
- Early recalculation of child support outside of the normal timelines on application based on significant change in the incomes or the financial circumstances of the parents.
- Authorization to recalculate child support agreements, shared parenting support orders under the net difference formula and to deem child support based on the Manitoba minimum hourly wage.

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## ADMINISTRATIVE CALCULATION OF CHILD SUPPORT

The Child Support Service through a Support Determination Officer (SDO) may now make an initial child support calculation decision for a table amount of child support and section 7(1) special or extraordinary expenses.

Parent applies by completing CSS Form A and related mandatory forms B and/or C to request the table amount of child support. Additional forms are required to request special or extraordinary expenses. There is no fee to apply.

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## APPLICATION FOR CALCULATION

The basic requirements for the administrative calculation process in section 3(2) of the Act are:

- The parents of the child must live separate and apart and the child's living arrangement must have been agreed to by the parents, whether by consent or acquiescence.
- No order or family arbitration award can have been made providing for the support of the child.
- No child support agreement that is eligible for recalculation is in effect
- Any other eligibility requirement specified by the regulations.

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## WHERE DO THE PARENTS RESIDE?

The ordinary place of residence of the parents is relevant to eligibility for the CSS for both calculation and recalculation of child support.

The general rule is that if the Manitoba Tables under the Child Support Guidelines would apply to the payor, the CSS should, in most cases, be able to calculate or to recalculate child support, subject to the many prohibitions, restrictions and limitations set in the Act and Regulation. The recipient could reside in another Canadian jurisdiction.

However, for the recalculation of a child support order grounded under the *Divorce Act*, both parents must ordinarily reside in Manitoba.

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## APPLICATION FOR CALCULATION

- SDO reviews the application to determine if there is a prohibition against making an initial calculation of child support, the eligibility criteria have been met and the Applicant has provided all the requested information and documentation (section 5 of the Regulation).
- The SDO must issue a Notice of Calculation if the requirements of section 5 are met.
- The Notice must be personally served on the other parent (payor) with proof of service provided within 14 days of the date of service.

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## SERVICE OF THE NOTICE OF CALCULATION

- Service is the responsibility of the applicant.
- The SDO may direct the manner of service should personal service not be appropriate, be impossible or impractical, or where there is a more efficient or expeditious method of serving the notice of calculation including the use of substitutional service (section 8 Regulation).
- The deadline to provide financial information once personally served or deemed to be served is 21 days.

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## INCOME DETERMINATION CALCULATION PROCESS

### Income Determination (Section 10 Regulation)

- SDO receives financial information from the payor and applies the computation of income mandated under the Child Support Guidelines Regulation with any Schedule III adjustments.
- Should financial information not be provided by the payor or is incomplete, the SDO may look at income earned by the payor in prior years, the previous employment and work history of the payor or the education of the payor and make an income determination.

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## INCOME DETERMINATION CALCULATION PROCESS

- If an employer is known, a request for information is typically served on the employer to obtain payroll information, if available.
- If the CSS is unable to obtain any information, the income of the payor is determined to be the annual amount (currently \$24,752.00) earned by working 40 hours per week for 52 weeks earning the hourly minimum wage in Manitoba. This will result in a table amount of \$164.00 per month for one child.

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## CHILD SUPPORT CALCULATION DECISION

Before issuing a child support calculation decision, the SDO must review the prohibitions, restrictions and limitations set out in sections 11 - 13 of the Regulation, that include:

- No child support calculation decision may be made where SDO is satisfied that payor has a reasonable claim under section 10 of the Child Support Guidelines Regulation for undue hardship.
- The income of either parent includes income from a corporation of which the parent is director, officer, or majority shareholder, or from a partnership.

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## CHILD SUPPORT CALCULATION DECISION

- SDO must not calculate special or extraordinary expenses under clause 7(1)(d), (e), or (f) of the child support guidelines unless both the payor and recipient have agreed on the nature and amount of these expenses.
- None of the discretionary provisions of clause 3(2)(b), 4(b) and considerations of 9(b) or (c) for shared parenting under the child support regulations may be applied.
- The first payment may be made retroactive to the date on which the application for calculation was made but no earlier.

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## ADULT CHILD ELIGIBILITY

Both the Child Support Service and the Maintenance Enforcement Program may conduct eligibility reviews for adult children. The CSS may cease to recalculate (terminate) child support for an adult child under section 5(5) of *The Child Support Service Act* if any of the following occur:

- a) if the Designated Officer of MEP notifies CSS that after an eligibility review by MEP enforcement has ceased for one or more children;
- b) if the recipient consents in writing and the consent is given voluntarily;
- c) If the CSS is not satisfied that an adult child is eligible for recalculation.

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## CONTENT AND SERVICE OF DECISION

- The child support decision must contain prescribed content (section 14(1) and follow the standard clauses (version 6.0) in QB Rule 70.31 with any necessary changes. It must be registered in the court (section 3(7) Act).
- The CSS must provide a copy the child support calculation decision to the payor, recipient, and to the designated officer of the Maintenance Enforcement Program.

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## OBJECTION TO CHILD SUPPORT CALCULATION DECISION

A payor or recipient who does not agree with the decision may apply to the court for:

- a) a child support order under *The Family Maintenance Act*;
- b) a child support order under the *Divorce Act (Canada)* if applicable; or
- c) an order to set aside the decision of the CSS.

The filing of the application to object does not suspend the child support calculation decision of the CSS unless the court orders otherwise.

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## RECALCULATION OF CHILD SUPPORT

The recalculation of child support has been expanded so the CSS may now recalculate (section 5(1) Act):

- a child support order.
- a child support calculation decision made by the CSS.
- a child support agreement that contains a provision requiring or permitting child support to be recalculated by the CSS.
- a family arbitration award under *The Arbitration Act* that includes child support.

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## TYPES OF RECALCULATION PROCESSES

(1) Automatic recalculation of child support under section 17 of the Regulation:

- Where there is already a recalculation authorization order in effect prior to the coming into force of the CSS Regulation;
- The CSS has made a child support calculation decision or child support has previously been recalculated by the CSS; or
- After the Regulation came into effect by completing QB Form W (Recalculation and Enforcement information form) and filing it along with draft child support order pronounced by the court when submitted for signing.

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## RECALCULATION APPLICATION PROCESS

(2) By applying under section 19 of the Regulation for recalculation by completing and filing the application Form M located at:

<https://www.manitoba.ca/familylaw/money/child-support-applications.html>

(3) By applying under section 22(1) of the Regulation for early recalculation by completing and filing the application Form L located at:

[https://www.manitoba.ca/familylaw/documents/forml\\_application\\_early\\_ealculation.pdf](https://www.manitoba.ca/familylaw/documents/forml_application_early_ealculation.pdf).

The applicant must already be enrolled on the CSS to apply for early recalculation.

There is no fee to apply for recalculation under sections 19 or 22(1).

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## TIMING OF RECALCULATION

Timing of recalculations (section 21 of the Regulation):

- One year after the initial child support decision was made;
- Then every two years after the first recalculation occurred;
- Special rule applies where an application for recalculation is made more than one year after the initial child support calculation decision was made (the date of the application applies to the timing of recalculations).

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## REQUEST NO RECALCULATION

No recalculation of child support (Opt Out Request)

- Payor and recipient may notify the CSS that they do not wish child support to be specified for a specified period. This opt out of the recalculation process may be overridden by an order assignee that has an interest in child support.
- SDO must be satisfied that the decision of the payor and recipient is freely and voluntarily given.

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## NOTICES TO PARENTS

Notices to parents are required for the a recalculation process. There are two basic types notices.

Type 1- Notice of Upcoming Recalculation of Child Support (section 25(1) Regulation) sent to both parents 40 days before the process begins

- Provides general information about the forthcoming process, provides information about the recalculation of existing or new requests for special or extraordinary expenses, gives information about the no recalculation option, and gives a deadline (30 days after issued) for a parent to provide the request for any special or extraordinary expenses.

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## NOTICES TO PARENTS

Type 2- Request for Information (section 26(1) Regulation) is sent on the scheduled recalculation start date.

- Provides information as to whether any special or extraordinary expenses have been requested, including a description and amount being sought, the particular financial information that is required including the financial statement that is to be completed, the consequences of non-compliance and the deadline to provide the requested financial information.

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## INCOME DETERMINATION

Should financial information be provided by one or both of the parents, the SDO must recalculate child support on the basis of the updated income and in accordance with The Child Support Service Act and the Child Support Guidelines Regulation (section 5(3) Act).

The SDO is always mindful of section 2(3) of the Child Support Guidelines Regulation as to the use of the current income approach, where possible in income determination.

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## DEEMING INCOME

The SDO may deem updated income to have been received from a parent should financial information not be provided and the information not be available from any other source.

Formula to be applied is set out in s.28(1) and (2) of the Regulation:

- The greater of the annual amount of minimum wage, or the sum of income of the payor or recipient used to determine the current amount of child support; and
- The amount equal to the product obtained by multiplying the current income by the applicable percentage 10% - 30% based on the length of time elapsed since parent's income was last determined.

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## RETROACTIVITY

Retroactivity set out in sections 30(5) – 30(7) of the Regulation.

General Rule – SDO may recalculate amount of child support payable on a retroactive basis to a date that is no earlier than:

- a) the date of the initial child support decision, in the case of the initial recalculation of child support;
- b) the date of the last recalculation of child support.

But does not apply for section 19 applications for recalculation or child support order made under the *Divorce Act*.

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## RETROACTIVITY EXCEPTIONS

SDO must not recalculate child support for any period:

- Before an application for recalculation (s.19) was made;
- Which was the subject of a request for no recalculation (s.24);
- If recalculation is made on the basis of deemed income; or
- Child support made under the Divorce Act (Canada).

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## CONSEQUENCES OF NON-COMPLIANCE

What happens if both parents don't cooperate?

- SDO may decline to recalculate where both parents do not respond to the Request for Information (shared parenting or special or extraordinary expenses) (section 27(1) Regulation).
- Where the payor or recipient fails to notify the CSS that they seek a special or extraordinary expense (recalculation or seek initial calculation), the service may decline to recalculate or make an initial calculation of the amounts (section 25(3) Regulation).

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## SPECIAL DIVORCE ACT RULES

Divorce Act (Special rules in sections 34-37 Regulation)

- An interim order must not be recalculated;
- No recalculation if one parent does not reside in Manitoba;
- Court imputed income to a parent other than under section 18(1)(b) or (c) of the Child Support Guidelines;
- Child support payable was determined under section 5 or 9 of the Child Support Guidelines.

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## SPECIAL RULES S.7(1) EXPENSES

Special rules for special or extraordinary expenses (section 30 Regulation):

- SDO may recalculate special or extraordinary expenses sought by a parent that have not previously been determined;
- SDO must not make an initial calculation of a special or extraordinary expense in clauses 7(1)(d), (e) or (f) of the guidelines unless both parents have agreed to the nature and amount of the expenses;
- If a parent seeks special or extraordinary expenses but fails to provide financial information as to the current amount, those expenses are deemed to be zero.

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## EARLY RECALCULATION

### Early Recalculation of child support (section 22(1) Regulation)

- Early recalculation is not an expedited recalculation process. It is the regular process but it starts at a different time than prescribed by section 21, and is subject to the same prohibitions, restrictions and limitations as the regular recalculation process.
- Application under section 22(1) of the Regulation by completing CSS Form L at located at <https://www.manitoba.ca/familylaw/> and submitting it to the CSS. The direct link to the form is:

[https://www.manitoba.ca/familylaw/documents/forml\\_application\\_early\\_ealculation.pdf](https://www.manitoba.ca/familylaw/documents/forml_application_early_ealculation.pdf)

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## BASIC RULES EARLY RECALCULATION

Basic Rules for Early Recalculations are:

- The application must not be made earlier than six months after:
  - a) the initial child support decision was made; or
  - b) the last recalculation of child support.
- The applicant must provide sufficient information to demonstrate that there has been a significant change in the income or the circumstances of the payor or the recipient that warrants early recalculation of child support.

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## CHILD SUPPORT RECALCULATION DECISION

Contents of decision:

- Set out in section 31 of the Regulation in standard clause form.

Notification (mail vs electronic):

- Decision may be sent out to parents by either regular mail or electronically if authorized by parent.

Right to object to the child support recalculation decision:

- May apply for an order under *The Family Maintenance Act* to vary, suspend, or terminate the child support order.

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# GOT QUESTIONS?

Questions about *The Child Support Service Act* and *Child Support Service Regulation* can be made to:

Family Resolution Service  
Child Support Service (CSS) Unit  
2<sup>nd</sup> Floor - 379 Broadway, Winnipeg, Manitoba R3C 0T9  
T- 204-945-2293 or 1-800-282-8069 toll free in Manitoba  
Fax - 204-948-2423, Email: [csrs@gov.mb.ca](mailto:csrs@gov.mb.ca)

Michael J. Williams - Director of Child Support Service

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