

Applying for a Child Maintenance Consent Order in Family Court

Guidelines table amount only



A guide for the person proceeding without a lawyer

This guide will be helpful to parents who have reached an agreement about child maintenance and wish to make the agreement into a court order. Such orders are known as “consent orders.” The Family Court has the authority to make these orders under the Maintenance and Custody Act. A copy of the act is available online at www.gov.ns.ca/legislature/legc.

You may get a consent order without having to attend a court hearing if you agree about the amount of child maintenance and a judge accepts your agreement. A consent order has the same legal force as if it were made after a court hearing.

The Maintenance and Custody Act refers to the Child Maintenance Guidelines. These Guidelines help parents calculate the child maintenance one parent is required to pay the other parent to support a child or children.

Use this guide when the child is living primarily with one parent and there are no additional costs such as child care, health expenses, or extra educational expenses. If you and the other parent have agreed that child maintenance will be based solely on the guidelines table amount, then this guide will be helpful to you.

This guide does not apply to spousal maintenance.

Before entering into a court order, figure out which sections of the Child Maintenance Guidelines apply to your situation. The Guidelines are available online at www.gov.ns.ca/just/regulations/regs/fmcmg.htm.

Speak to a lawyer for legal advice about your situation and to review your consent order before you submit it to the court. You may need to seek legal advice about what financial information you need to provide, or the contents of your consent order, or implications of agreeing to the arrangements that are proposed in the consent order.

This guide gives general information only. It does not explain the law. Court staff can give general information about how the court works, and about court rules and procedures. Court staff cannot give legal advice.

For legal advice, contact a lawyer. Look in the yellow pages of the telephone book under “lawyers.” A lawyer referral service is available through the Legal Information Society of Nova Scotia (LISNS). Call 455-3135 in Metro or 1 800 665-9779 toll free in Nova Scotia or visit LISNS website at www.legalinfo.org. Legal information is available by calling LISNS dial-a-law line at 902 420-1888. This is not a toll free number.

Who can use this guide?

- Parents who are proceeding under the Nova Scotia Maintenance and Custody Act
- Parents who are married or unmarried
- Parents who agree that child maintenance will be based on the Guidelines table amount only

Who cannot use this guide?

- Parents who are proceeding under the Divorce Act
- Parents who are not in agreement about child maintenance
- Parents who are not in agreement about paternity. Paternity means being the child’s biological father
- Parents with split or shared parenting of the children as defined in sections 8 and 9 of the Child Maintenance Guidelines
- Parents who are asking the court for special or extraordinary (or add on) expenses of the children to be shared by the parents. These expenses are discussed in section 7 of the Child Maintenance Guidelines

- Parents asking the court to consider an undue hardship argument concerning child maintenance payments as discussed in section 10 of the Child Maintenance Guidelines
- Parents who already have a court order and want to change it. Check with court staff about information available to assist you in changing your current court order

Words to Know

Review the Maintenance and Custody Act and the Child Maintenance Guidelines for full explanations of the terms listed below.

Parent: A parent can include a biological or adoptive parent, and people who have been ordered by a court to pay maintenance for the child.

Child maintenance: Also known as child support, this is the amount being paid to the parent receiving the money on behalf of the child or children.

Child Maintenance Guidelines: These Guidelines set out rules regarding the payment of child maintenance, including a table (or chart) for the monthly amount payable.

Guidelines table amount: This amount is calculated based on the gross annual income of the person paying child maintenance (the paying parent) and the number of children for whom support is being paid. This amount does not include a contribution to additional expenses such as child care or health expenses. See section 7 of the Guidelines for a complete list of additional expenses for which the paying parent may have to contribute.

Gross annual income: This amount is the paying parent's total yearly income, before taxes. Review sections 15 through 20 of the Child Maintenance Guidelines to help you determine this amount.

Paying parent: This is the person who is paying child maintenance.

Recipient parent: This is the person receiving child maintenance on behalf of the child or children.

What is a consent order?

A consent order is a court order issued by a judge that states the terms of agreement reached between parents on the legal issues. In this situation, it is an agreement about the amount of child maintenance to be paid.

Why is the wording of my consent order so important?

The Child Maintenance Guidelines require that certain information be included in a child maintenance order. In addition, you may decide to enroll in the Maintenance Enforcement Program to have your consent order enforced by the program staff. It is important that your consent order has the information program staff will need to enforce the order. Make sure you include in your order the clauses listed in the sample order attached to this guide and the information listed in step 5 below.

More information about the Maintenance Enforcement Program is available at www.gov.ns.ca/just/maint.htm or by calling 424-0050 in Metro or 1 800 357-9248 toll free in Nova Scotia.

What steps do I take to apply for a consent order?

There are 9 steps in the process of applying for a consent order. It is important that you follow each one. If you do not, your application may be delayed or refused by the court.

You are responsible for making sure that all of your paperwork is in order. The court staff can assist you, but they cannot give you legal advice. They cannot fill in the forms for you.

Step 1: Review list of documents and fee to deliver to court

To get a court order you must first start a court application by delivering the proper documents and fee to the court. The documents and fee required to apply for a consent order based on the Guidelines table amount are :

- Intake Sheet
- Application and Summons Form
- Court filing fee or waiver of fee application. The current fee is \$35. Fees are subject to change without notice. Check with court staff to confirm the current fee
- Paying parent's income information
- Consent order

Step 2: Get and complete the Intake Sheet and the Application and Summons Form

You can get a copy of the Intake Sheet and Application and Summons Form from the court administration office. Addresses are listed at the back of this guide. If you cannot go to court in person, ask court staff to mail copies to you.

Complete the Intake Sheet and the Application and Summons Form.

Step 3: Get income information of the paying parent

The court requires income information of the parent who will be paying maintenance under the consent order before it will make an order.

The court will need all of the following:

- the last 3 years' income tax returns and notices of assessment and reassessment from CRA (Revenue Canada) or a copy of a CRA printout of the last 3 years' income tax returns
- the most recent statement of earnings indicating the total earnings paid in the year to date including overtime. If such a statement is not provided by the employer, get a letter from the employer setting out that information including the person's rate of annual salary or pay

- confirmation of all other income received during the last year. Review Sections 15 through 21 of the Child Maintenance Guidelines to ensure you have collected all required income information

The court may require additional income information at any time before issuing your consent order.

Step 4: Determine the Guidelines table amount

The Child Maintenance Guidelines refer to a table (or chart). You can get a copy of the table from the court administration office or online at www.canada.justice.gc.ca/en/ps/sup/grl/glp.html. The Province of Nova Scotia has incorporated the federal child support tables into the provincial Child Maintenance Guidelines.

Review the table based on the paying parent's gross annual income and the number of children involved. Determine the appropriate monthly amount of maintenance.

Note: If the paying parent does not live in Nova Scotia, a different table may apply.

Step 5: Prepare the consent order

There is a sample consent order at the back of this guide. This sample order complies with the Child Maintenance Guidelines.

Add or remove paragraphs, or change the wording of the sample order as necessary, to reflect the agreement that you have reached with the other parent. Make sure that your consent order includes all of the following:

- the full name and birth date of each child covered by the order
- the full names of the paying parent and the recipient parent
- the current mailing addresses for the paying parent and the recipient parent
- the gross annual income of the paying parent
- the guidelines table amount payable on a monthly basis

- the date when payments are to start and the day of the month that payments are to continue each month

You will have to re-type the sample order. You can also get copies of a sample order from the court administration office.

Step 6: Parents sign the consent order

Both of the parents must sign the consent order and print your names underneath your signatures. The signatures show that you both agree with all of the terms that are in the order.

The other parent's signature appears below the line "consented to:"—if that person is represented by a lawyer, the lawyer may sign the order for their client.

Step 7: Make copies of the documents to be filed with the court

Check with staff at the court administration office in your area to determine the number of copies you must file of the Intake Sheet, Application and Summons Form, paying parent's income information, and the consent order. Make the required number of photocopies to take to the court.

The court may also require you to deliver stamped envelopes for the consent order to be sent to you and the other parent after it has been issued by the court. Check with court staff.

Step 8: Bring all the completed paperwork and the filing fee of \$35 to the court administration office

Bring or mail all of the following to the court administration office:

- the original and the copies of the completed Intake Sheet
- the original and the copies of the Application and Summons Form
- the court filing fee. Make your cheque payable to Family Court
- a copy of the paying parent's income information. (Bring the originals if possible. They will be returned to you upon request.)

- the original and the copies of the consent order signed by both parents (or their lawyers)

- any other documents requested by the court

Court staff may need to meet with you to discuss your documents. Court staff will tell you when a meeting is necessary.

Step 9: Your documents are reviewed by a judge

Once court staff are satisfied that you have filed all the necessary information, they will present your file to a judge. The judge will review your information and decide whether to sign your consent order.

If the order is signed by a judge, copies will be sent to you and the other parent by the court. One copy will be kept in the court file and court staff will send a copy to the Maintenance Enforcement Program office.

If the order is not signed, court staff will contact you to make arrangements for getting further information to the judge. The judge may ask for more financial information or may have other questions. Court staff will do one of the following:

- ask you to prepare an affidavit along with your consent order. An affidavit is a written statement explaining why you agree with the court order. You must sign the affidavit under oath. This means your signature must be witnessed by a lawyer, notary public, or commissioner for taking oaths.
- or, the judge may ask for the parents to come to court to explain why the order should be made. Court staff will make arrangements for a court appearance and will send each parent a notice of the hearing date.

Do I have to pay the court fee?

That depends on your situation. You may be eligible for relief from some court fees, if your income falls within the criteria established in the Costs and Fees Act. Court staff can provide information about eligibility requirements and circumstances in which fees may be waived. A copy of the Costs and Fees Act is available online at <www.gov.ns.ca/legislature/legc>.

Website addresses to know:

NS Department of Justice - Representing Yourself
www.gov.ns.ca/just/repselfmain.htm

Nova Scotia Courts
www.courts.ns.ca

Nova Scotia Acts & Regulations
www.gov.ns.ca/legislature/legc/

Legal Information Society of Nova Scotia
www.legalinfo.org

List of Court Administration Offices (Justice Centres):

Amherst

Family Court
16 Church Street
Amherst, NS B4H 3A6
Phone: 667-2256
Fax: 667-1108

Antigonish

Family Court
11 James Street
Antigonish, NS B2G 1R6
Phone: 863-3676
Fax: 863-7479

Bridgewater

Family Court
599 King Street, Suite 201
Bridgewater, NS B4V 1B3

Phone: 543-4679

Fax: 543-0678

Digby/Annapolis

Family Court
117 Queen Street - P.O. Box 1089
Digby, N. S. B0V 1A0
Phone: 245-4567
Fax: 245-6722

Kentville

Family Court
136 Exhibition Street
Kentville, NS B4N 4E5
Phone: 679-6075
Fax: 679-6081

Pictou/New Glasgow

Family Court
69 Water Street
Pictou, NS B0K 1H0
Phone: 485-7025
Fax: 485-8934

Truro

Family Court
540 Prince Street
Truro, NS B2N 1G1
Phone: 893-5840
Fax: 893-6261

Yarmouth

Family Court
403 Main Street, Courthouse
Yarmouth, NS B5A 1G3
Phone: 742-0550
Fax: 742-0678

This is a draft form of order for use in the Family Court only. You must retype or reprint this order and add the specific information about your case. When you file your order with the court it will be reviewed for accuracy and appropriate wording. Ultimately it is the judge's decision about whether to grant your order. For help drafting your order contact a lawyer.

Shaded portions will be completed by court staff.

FORM 21.02B

F. No.

IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA

Between:

A.B.

Applicant

- and -

C.B.

Respondent

Consent Order [Table Amount Only]

BEFORE THE HONOURABLE JUDGE _____

UPON READING the Application and all other documents on file herein;

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Family Court Rules;

AND UPON IT APPEARING that C.B. has a gross annual income of \$_____ for the purpose of determining the table amount of child maintenance;

AND UPON the parties consenting hereto;

NOW UPON MOTION:

IT IS ORDERED THAT:

Paternity [must be used if unmarried parents of the child(ren)]

1. C.B. shall be and is hereby declared to be the biological father [a possible father] of the child(ren), _____, born, _____.

IT IS FURTHER ORDERED:

Child Maintenance

- 2. The following child(ren) is/are the subject of this order: _____
[insert each child’s full name and birth date].
- 3. C.B. shall pay child maintenance to A.B. pursuant to the provincial Child Maintenance Guidelines and in accordance with the Nova Scotia table, the amount of \$_____ per month, payable on the ____ day of each month [i.e., 1st, 15th, or 30th, etc.], and commencing _____ [insert date].
- 4. [Optional] C.B. shall continue [or acquire and continue] medical, dental and drug plan coverage for the child/ren available through his/her present or subsequent employer or otherwise [and shall reimburse A.B. for receipts provided by him/her for submission to the insurer without delay].
- 5. C.B. shall provide A.B. with a copy of his/her income tax return, completed and with all attachments, even if the return is not filed, along with all notices of assessment received from Revenue Canada, on an annual basis on or before June 1st.

IT IS FURTHER ORDERED:

Payment of Maintenance

- 6. All maintenance payments shall be made payable to A. B. Payments shall be forwarded to the Office of the Director of Maintenance Enforcement, P.O. Box 803, Halifax, Nova Scotia B3J 2V2, while the order is filed for enforcement with the Director. The current mailing address of A.B. is _____ and the current mailing address of C.B. is _____.

IT IS FURTHER ORDERED:

Enforcement

- 7. All sheriffs, deputy sheriffs, constables and peace officers shall do all such acts as may be necessary to enforce this order and for such purposes they, and each of them, are hereby given full power and authority to enter upon any lands and premises whatsoever to enforce the terms of this order.

DATED AT _____, the _____ day of _____, 20____.

ISSUED at _____, Nova Scotia, this _____ day of _____, 20____.

Family Court Officer

CONSENTED TO:

A.B., Applicant

C.B., Respondent