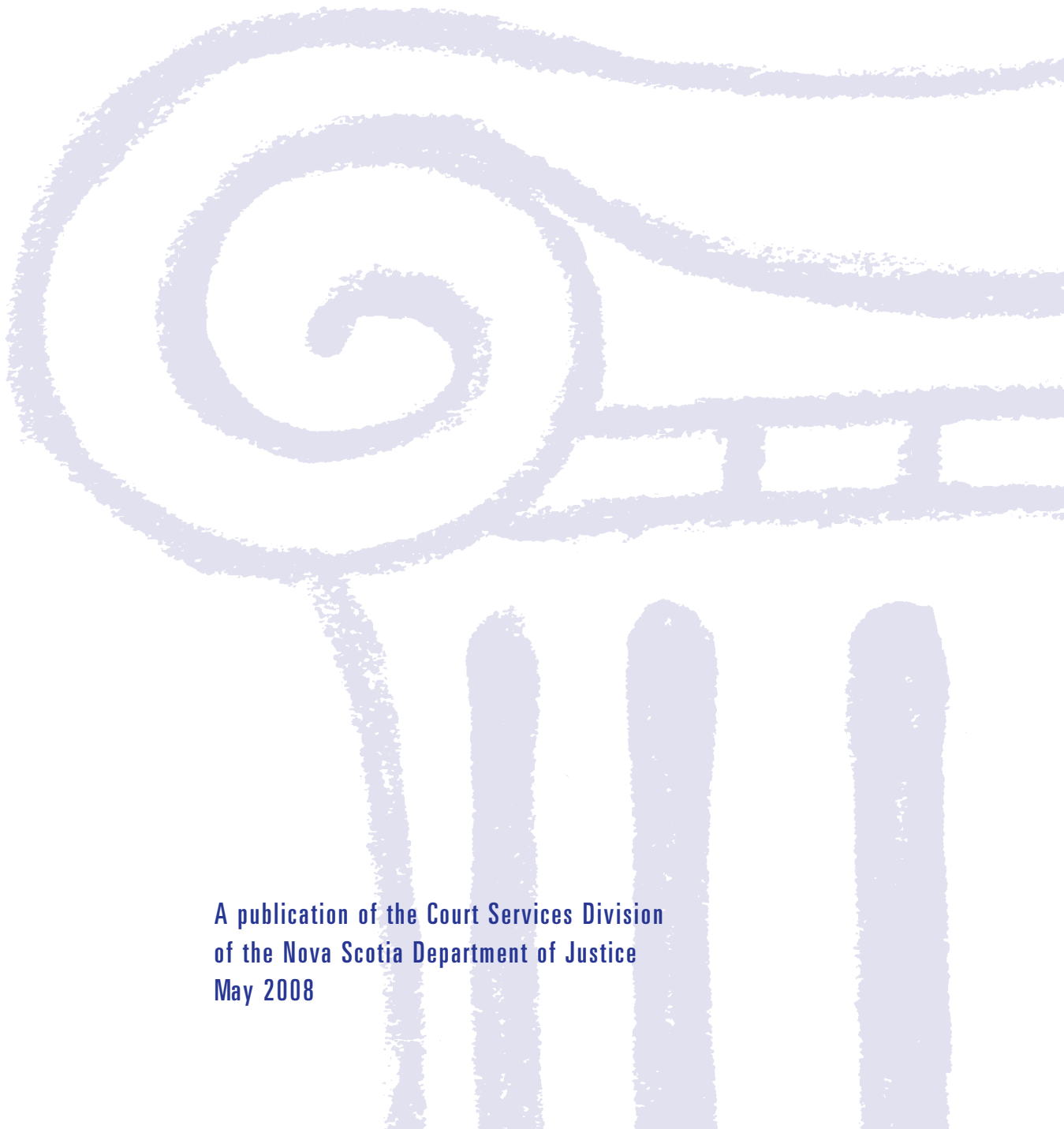


Applying for a Child Maintenance Consent Order in the Family Division of the Supreme Court

Guidelines table amount only



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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 Nova Scotia Supreme Court (Family Division) 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 was 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 which 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 can not 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 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 are in agreement 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 assist you in determining 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 6 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 10 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 can not give you legal advice. They can not 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:

- Application and Intake Form
- Court filing fee or waiver of fee application. For current fee information, contact court staff or visit the Courts of Nova Scotia website at www.courts.ns.ca/General/fees.htm
- Paying parent's sworn Statement of Guidelines Income Form with required attachments
- Consent order

Step 2:

Get and complete the Application and Intake Form (Form 70.05A)

You can get a copy of the Application and Intake Form from the court administration office. Addresses are listed at the back of this guide. If you cannot go to court in person, get a copy of the form online at www.courts.ns.ca/Rules/rule70.htm#family_forms or ask court staff to mail a copy to you.

Complete the form. Make sure you select the appropriate section under the Maintenance and Custody Act to indicate to the court whether you are married or unmarried parents.

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 financial information at any time before issuing your consent order.

Step 4:

Prepare and have sworn the paying parent's Statement of Guidelines Income Form [Form 70.09A]

The Statement of Guidelines Income Form is available from the court administration office. If you cannot go to the court to pick up a copy of the form, ask that it be mailed to you or get one online at www.courts.ns.ca/Rules/rule70.htm#family_forms.

Complete the Statement of Guidelines Income Form for the paying parent. Make sure you include: your full name, the other parent's full name, and all the paying parent's income information.

Have the paying parent "swear" the Statement of Guidelines Income Form. This means the paying parent must sign the form before a lawyer, notary public or commissioner for taking oaths and swear to the truth of its contents.

Step 5:

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 6:

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 or on-line. Website addresses are provided at the end of this guide.

Step 7:

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 8:

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 each of the Application and Intake Form, paying parent's Statement of Guidelines Income Form (with income information attached) and 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 9:

Bring all the completed paperwork and the filing fee to the court administration office

Bring or mail the following to the court administration office:

- the original and the copies of the completed Application and Intake Form
- the original and the copies of the paying parent's sworn Statement of Guidelines Income Form (with all the required income information attached)
- the filing court fee. Make your cheque payable to Family Court. For current fee information, contact court staff or visit the Courts of Nova Scotia website at www.courts.ns.ca/General/fees.htm
- the original and copies of the consent order signed by both parents (or their lawyers)
- any other documents requested by the court

In some circumstances you will have a meeting with court staff to discuss your documents. Court staff will tell you when a meeting is necessary.

Step 10:

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 details on 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

Locations of Supreme Court (Family Division):

Port Hawkesbury
15 Kennedy Street, Suite 201
Port Hawkesbury, NS B9A 2Y1
Phone: 625-4218
Fax: 625-4084

Sydney
136 Charlotte Street
Harbour Place
Sydney, NS B1P 1C3
Phone: 563-2200
Fax: 563-2224

Halifax
3380 Devonshire Avenue
PO Box 8988 Station A
Halifax, NS B3K 5M6
Phone: 424-3990
Fax: 424-0562

This is a draft form of order for use on the Supreme Court (Family Division) 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 70.26A

F. No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

Between:

A.B.

Applicant

- and -

C.B.

Respondent

**[Consent Order]
[Table Amount Only]**

BEFORE THE HONOURABLE JUSTICE _____

UPON reading the application and all other documents on file;

AND UPON IT APPEARING that the proper persons have received notice of the proceeding;

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;

[AND UPON C.B. acknowledging that he is the natural father [a possible father] of the child/ren, born]

NOW UPON MOTION:

THE FOLLOWING RELIEF UNDER THE MAINTENANCE AND CUSTODY ACT IS HEREBY ORDERED:

Paternity [must be included for unmarried parents of the children]

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

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, 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.

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 _____.

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, on _____, [date].

Court Officer

CONSENTED TO:

A.B., Applicant

C.B., Respondent