



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

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

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this regulation, current to January 1, 2009. It is intended for information and reference purposes only.

This document is *not* the official version of these regulations. The regulations and the amendments printed in the *Royal Gazette* should be consulted on the Prince Edward Island Government web site to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the *Table of Regulations* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

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FAMILY LAW ACT
Chapter F-2.1

**ADMINISTRATIVE RECALCULATION OF CHILD SUPPORT
REGULATIONS**

Pursuant to subsection 61(5) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1, Council made the following regulations after consultation with the Chief Justice of Prince Edward Island and the Chief Justice of the Trial Division.

1. Definitions

(1) In these regulations

- (a) “**Act**” means the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1;
- (b) “**agreement**” means a separation or parental agreement entered into under the Act, before, on or after the date these regulations come into force, that requires
 - (i) the payment of child support, and
 - (ii) the annual review and recalculation, in accordance with the Child Support Guidelines, of the child support payable under the agreement;
- (c) “**anniversary date**” means, in respect of an agreement, a child support order, recalculation order, or a notice given under subsection 6(1), the date in a year on which
 - (i) the agreement or order was made, or
 - (ii) the notice was sent, in a prior year;
- (d) “**Child Support Guidelines**” means the Child Support Guidelines as defined in the Child Support Guidelines Regulations;
- (e) “**child support order**” means an order made by the court under the Act, before, on or after the date these regulations come into force, that requires
 - (i) the payment of child support, and
 - (ii) the annual review and recalculation, in accordance with the Child Support Guidelines, of the child support payable under the order;
- (f) “**deputy registrar**” means the deputy registrar of the Family Section of the Supreme Court appointed under section 29 of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1;
- (g) “**Director of Maintenance Enforcement**” means the Director of Maintenance Enforcement appointed under section 2 of the *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1;

- (h) “**Federal Guidelines**” means the Federal Child Support Guidelines established by regulation pursuant to section 26.1 of the *Divorce Act* (Canada);
- (i) “**party**” means, in respect of an agreement or a child support order, a person who is required to pay or is entitled to receive child support under the agreement or child support order;
- (j) “**payor**” means the party who is obliged to pay child support under an agreement or a child support order;
- (k) “**Recalculation Office**” means the Recalculation Office established as a child support service under subsection 2(1);
- (l) “**Recalculation Officer**” means the Recalculation Officer appointed under subsection 3(1);
- (m) “**recalculation order**” means an order issued under subsection 8(1) or 14(1);
- (n) “**special or extraordinary expense**” means an expense referred to in section 7 of the Federal Guidelines.

References to income information

- (2) For the purposes of these regulations, unless the context indicates otherwise, a reference to the income information of or for the payor, in respect of the review and recalculation in any year of the payor’s obligation to pay child support, is a reference to
 - (a) the income tax return that the payor filed with the Canada Customs and Revenue Agency for the immediately preceding year; and
 - (b) any notice of assessment or reassessment issued to the payor by the Canada Customs and Revenue Agency for the immediately preceding year.

Shared custody

- (3) For the purposes of these regulations, the parties under an agreement or a child support order shall be deemed to have shared custody of a child to whom an agreement or a child support order applies if each party has a right of access to or physical custody of the child for not less than 40 per cent of the time over the course of a year.

Applicable table

- (4) For the purposes of these regulations, a reference to the applicable table in respect of the recalculation of a payor’s obligation to pay child support under an agreement or order is,
 - (a) in the case where the payor ordinarily resides in Prince Edward Island at the time of the recalculation, a reference to the table set out in Schedule I of the Child Support Guidelines Regulations;
 - (b) in the case where the payor ordinarily resides in a place in Canada other than in Prince Edward Island at the time of the recalculation, a reference to the table in Schedule I of the Federal Guidelines for the province or territory in which the payor ordinarily resides;
 - (c) in the case where the payor ordinarily resides outside of Canada, or where the payor’s residence is not known, at the time of the recalculation, a reference to
 - (i) the table set out in Schedule I of the Child Support Guidelines Regulations, if the recipient of the child support under the agreement or order ordinarily resides in Prince Edward Island at the time of the recalculation, or
 - (ii) the table in Schedule I of the Federal Guidelines for the province or territory in which the recipient of the child support under the agreement or order ordinarily resides at the time of the recalculation, if the recipient does not ordinarily reside in Prince Edward Island. (EC465/03;732/08)



RECALCULATION OFFICE

2. Child support service

- (1) The Recalculation Office, a project of the Office of the Attorney General, is established as a child support service.

Duties

- (2) The duties of the Recalculation Office shall include the following:
 - (a) assisting the court in the administration of the child support provisions of agreements and child support orders;
 - (b) monitoring compliance with the child support provisions of agreements and child support orders that require the periodic filing of income information by the payor;
 - (c) reviewing and recalculating the amount of child support payable under an agreement or a child support order. *(EC465/03)*

3. Recalculation Officer

- (1) There shall be a Recalculation Officer who shall be an employee of the Office of the Attorney General.

Direction of the Recalculation Office

- (2) The Recalculation Officer shall exercise the general direction and supervision of the Recalculation Office.

Use of computer programs and experts

- (3) The Recalculation Officer may, in the exercise and performance of his or her powers and duties under these regulations,
 - (a) use such computer programs or other technical aids; and
 - (b) engage the services of or seek assistance from such accountants or other experts, as the Recalculation Officer considers appropriate. *(EC465/03)*

REVIEW AND RECALCULATION

4. Applications

- (1) Subject to these regulations, a party under an agreement or a child support order who wishes to have the Recalculation Officer review and recalculate the amount of child support payable under the agreement or child support order must make an application to the Recalculation Officer by filing with the Recalculation Office
 - (a) an application in a form approved by the Recalculation Officer;
 - (b) a copy of the agreement or child support order, as the case may be; and
 - (c) a copy of the income information for the payor under the agreement or child support order, if the agreement or order was made before September 6, 2003.

Recalculation Officer

- (2) Subject to subsection (3), on receipt of an application referred to in subsection (1), the Recalculation Officer shall review and recalculate, in accordance with section 5, the amount of child support payable under an agreement or a child support order.

Refusal of application

- (3) The Recalculation Officer shall, on receipt of an application referred to in subsection (1), refuse to review and recalculate the amount of child support payable under an agreement or a child support order if
- (a) the agreement or child support order indicates that the amount of child support payable under it has been determined
 - (i) by taking into consideration
 - (A) the prevention of the undue hardship of a party or a child, or
 - (B) the fact that the parties have shared custody of a child to whom the agreement or order applies, or
 - (ii) after first determining the payor's annual income pursuant to sections 17 or 19 of the Federal Guidelines, or
 - (iii) pursuant to the clauses 3(2)(b) or 4(b), or section 5, of the Federal Guidelines; or
 - (b) in the opinion of the Recalculation Officer, the application
 - (i) is made in respect of a matter for which an application should be made to the court under sections 33 or 37 of the Act, or
 - (ii) is not made in accordance with the requirements of subsection (1).

Requests respecting special or extraordinary expenses

- (4) For greater certainty, where an agreement or a child support order includes an amount of child support for a special or extraordinary expense, the Recalculation Officer shall refuse to review and recalculate that amount of child support payable under the agreement or child support order for the special or extraordinary expense.

Notice of refusal

- (5) Where, on receipt of an application, the Recalculation Officer refuses to review and recalculate the child support payable under the agreement or child support order, the Recalculation Officer shall send, by regular mail, to the parties under the agreement or child support order a written notice that advises the parties of the refusal and of the reasons for the refusal. (EC465/03)

5. Review and recalculation (with income information)

- (1) Where, at least 30 days before the anniversary date of an agreement or a child support order, the Recalculation Office has been provided with the income information of the payor
- (a) by the payor, if the agreement or child support order was made on or after September 6, 2003; or
 - (b) by the applicant, if the agreement or order was made before September 6, 2003,
- the Recalculation Officer shall, before the anniversary date of the agreement or child support order, review and recalculate the amount of child support payable under the agreement or child support order in accordance with the applicable table by matching on the table the number of children under the age of majority to whom the agreement or child support order relates with the income of the payor, using the income information provided.

Review and recalculation (without income information)

- (2) Where, in respect of an agreement or a child support order made on or after September 6, 2003, the payor has not, at least 30 days before the anniversary date of the agreement or child support order, provided the Recalculation Office with the income information required by the



agreement or child support order, the Recalculation Officer shall review and recalculate the amount of child support payable under the agreement or child support order in accordance with the applicable table by matching on the table the number of children under the age of majority to whom the agreement or child support order relates with the deemed income of the payor, as determined in accordance with subsection (3).

Deemed income of payor

- (3) For the purposes of subsection (2), the income of the payor is deemed to be the sum of
- (a) the payor's income for the most recent preceding year during which the Recalculation Office was provided, in or pursuant to the agreement or child support order, with income information for the payor; and
 - (b) 10 per cent of the payor's income referred to in clause (a).

Recalculation to be rounded to nearest dollar

- (4) When reviewing and recalculating under this section the amount of child support payable under an agreement or a child support order, the Recalculation Officer shall round the amount payable to the nearest dollar. (EC465/03)

6. No change in amount payable –notice

- (1) Where, after recalculating the amount of child support payable under an agreement or a child support order, the Recalculation Officer determines that the amount would increase or decrease by less than \$5 per month, the Recalculation Officer
- (a) shall not issue a recalculation order in respect of the application; and
 - (b) shall send a notice, by regular mail, to the parties to the agreement or child support order that advises that no change in the amount of child support is required.

Change in amount payable–notice of recalculation

- (2) Where, after recalculating the amount of child support payable under an agreement or a child support order the Recalculation Officer determines that the amount of child support would increase or decrease by \$5 or more per month, the Recalculation Officer shall send, by registered mail, a written notice to the parties to the agreement or child support order that advises them of
- (a) the recalculated amount;
 - (b) the payor's obligation under section 9 to pay the recalculated amount;
 - (c) the right of each party
 - (i) to make an application to the court under section 37 of the Act seeking a variation in the amount payable under the agreement or child support order; and
 - (ii) to file a notice of objection in Form 1 of the Schedule with the Recalculation Office to preclude, subject to subsection 8(1), the issuance of a recalculation order for that recalculated amount; and
 - (d) the payor's right, in accordance with subsection 7(3), to object to the recalculation on the basis that his or her income was less than the deemed income for the payor under subsection 5(3). (EC465/03)

7. Notice of objection pending application to court for variation

- (1) Where a party to an agreement or a child support order intends to make an application to the court under section 37 of the Act, the party may, within 30 days after receipt of a notice

referred to in subsection 6(2), file with the court and the Recalculation Office a notice of objection, completed on a copy of Form 1 of the Schedule, that indicates that the party will, within 60 days of filing the notice of objection with the court and the Recalculation Office,

- (a) make the application to the court under section 37 of the Act for a variation of the amount of child support payable under the agreement or child support order;
- (b) obtain a hearing date from the court for the application; and
- (c) serve a copy of the application and a notice of the hearing date on the other party and the Recalculation Officer.

Effect of notice of objection

- (2) Where a party, in accordance with subsection (1), files a notice of objection to a recalculation for the reason referred to in that subsection, the Recalculation Officer may not issue a recalculation order in respect of the matter until one of the circumstances described in section 8 occurs.

Objection to deemed income

- (3) Where the payor's actual income for the immediately preceding year is less than the deemed income used by the Recalculation Officer for the recalculation, the payor may, within 30 days after the receipt of the notice referred to in subsection 6(2), object to the recalculation by filing with the court and the Recalculation Office
 - (a) a notice of objection, completed on a copy of Form 1 of the Schedule, objecting to the recalculation on that basis; and
 - (b) a copy of the income information for the payor for the immediately preceding year.

Recalculation with new information

- (4) Where a payor, in accordance with subsection (3), files a notice of objection and the income information referred to in that subsection, the Recalculation Officer shall
 - (a) recalculate, in accordance with subsections 5(1) and (4), the amount of child support payable using the income information provided by the payor; and
 - (b) comply with the requirements of section 6. (EC465/03)

8. Recalculation order

- (1) After sending to the parties to an agreement or a child support order the recalculation notice required by subsection 6(2), the Recalculation Officer shall make a recalculation order in respect of the recalculation if
 - (a) no party has, within 30 days after receipt of the notice of recalculation, filed a notice of objection under subsection 7(1) with the court and the Recalculation Office; or
 - (b) where a party has, within 30 days after receipt of the notice of recalculation, filed a notice of objection under subsection 7(1) with the court and the Recalculation Office, the party has
 - (i) failed, within 60 days after filing the notice of objection with the court and the Recalculation Office, to do or obtain any of the things referred to in clauses 7(1)(a) to (c),
 - (ii) withdrawn the application referred to in clause 7(1)(a), or
 - (iii) failed, within 120 days after filing the notice of objection with the court and the Recalculation Office, to have a court hearing of the application referred to in clause 7(1)(a).



Form and content of order

- (2) A recalculation order made by the Recalculation Officer must be made in writing and indicate
- (a) the recalculated amount of child support;
 - (b) the date the payor is liable, pursuant to section 9, to pay the recalculated amount; and
 - (c) the relevant circumstances referred to in clause (1)(a) or (b) under which the recalculation order is issued.

Filing and delivery of order

- (3) The Recalculation Officer shall
- (a) file a copy of the recalculation order with the deputy registrar of the court;
 - (b) send, by regular mail, a copy the recalculation order to each of the parties; and
 - (c) provide a copy of the recalculation order to the Director of Maintenance Enforcement. *(EC465/03)*

9. Effect of recalculation order

After a recalculation order has been made by the Recalculation Officer in respect of an agreement or a child support order, the payor under the agreement or child support order is liable to pay the recalculated amount of child support set out in the recalculation order on the date each month provided for in the agreement or child support order, commencing the month immediately following the month during which the recalculation order is made. *(EC465/03)*

Annual Review and Recalculation

10. Annual review and recalculation

- (1) Subject to subsection (2), every year following the year in which a recalculation order is issued under subsection 8(1), or a notice is given under subsection 6(1), in respect of an agreement or a child support order, the Recalculation Officer shall, without application by a party, review and recalculate in accordance with section 11 the amount of child support payable under the agreement or child support order.

Termination of annual review and recalculation

- (2) The Recalculation Officer shall cease to review and recalculate, in accordance with subsection (1), the amount of child support payable under an agreement or a child support order following
- (a) the expiry of the payor's obligation under the agreement or child support order to pay the amount of child support; or
 - (b) the receipt by the Recalculation Office of
 - (i) a court order made under section 37 of the Act, or
 - (ii) a copy of an agreement made by the parties,

that precludes the recalculation, in accordance with these regulations, of child support payable. *(EC465/03)*

11. Review and recalculation (with income information)

- (1) Where the Recalculation Office has been provided with the income information of the payor under an agreement or a child support order at least 30 days before the anniversary date of the most recent

- (a) recalculation order, if any, that has been issued; or
- (b) notice, if any, that has been sent under subsection 6(1),

in respect of the agreement or child support order, the Recalculation Officer shall, before that anniversary date, review and recalculate the amount of child support payable under the agreement or child support order in accordance with the applicable table by matching on the table the number of children under the age of majority to whom the agreement or child support order relates with the income of the payor, using the income information provided.

Review and recalculation (without income information)

- (2) Where the Recalculation Office has not been provided with the income information of the payor under an agreement or a child support order at least 30 days before the anniversary date described in subsection (1), the Recalculation Officer shall, before that anniversary date, review and recalculate the amount of child support payable under the agreement or child support order in accordance with the applicable table by matching on the table the number of children under the age of majority to whom the agreement or child support order relates with the deemed income of the payor, as determined in accordance with subsection (3).

Deemed income of payor

- (3) For the purposes of subsection (2), the income of the payor is deemed to be the sum of
 - (a) the payor's income for the most recent preceding year during which
 - (i) the Recalculation Office was provided, in or pursuant to the agreement or child support order, with income information for the payor, or
 - (ii) a recalculation order was issued in respect of the agreement or child support order, as determined using that income information or the amount of the deemed income set out in that recalculation order, as the case may be; and
 - (b) 10 per cent of the payor's income referred to in clause (a).

Recalculation to be rounded to nearest dollar

- (4) When reviewing and recalculating under this section the amount of child support payable under an agreement or a child support order, the Recalculation Officer shall round the amount payable to the nearest dollar. *(EC465/03)*

12. No change in amount payable- notice

- (1) Where, after recalculating under section 11, the amount of child support payable under an agreement or a child support order, the Recalculation Officer determines that the amount would increase or decrease by less than \$5 per month, the Recalculation Officer
 - (a) shall not issue a recalculation order in respect of the recalculation; and
 - (b) shall send a notice, by regular mail, to the parties to the agreement or child support order that advises that no change in the amount of child support is required.

Change in amount payable- notice of recalculation

- (2) Where, after recalculating under section 11, the amount of child support payable under an agreement or a child support order the Recalculation Officer determines that the amount of child support would increase or decrease by \$5 or more per month, the Recalculation Officer shall send, by registered mail, a written notice to the parties to the agreement or child support order that advises them of
 - (a) the recalculated amount;
 - (b) the payor's obligation under section 15 to pay the recalculated amount;



- (c) the right of each party
 - (i) to make an application to the court under section 37 of the Act seeking a variation in the amount payable under the agreement or child support order; and
 - (ii) to file a notice of objection in Form 1 of the Schedule with the Recalculation Office to preclude, subject to subsection 14(1), the issuance of a recalculation order for that recalculated amount; and
- (d) the payor's right, in accordance with subsection 13(3), to object to the recalculation on the basis that his or her income was less than the deemed income for the payor under subsection 11(3). (EC465/03)

13. Notice of objection pending application to court for variation

- (1) Where a party to an agreement or a child support order intends to make an application to the court under section 37 of the Act for a variation of the amount of child support payable under the agreement or child support order, the party may, within 30 days after receipt of a notice referred to in subsection 12(2), file with the court and the Recalculation Office a notice of objection, completed on a copy of Form 1 of the Schedule, that indicates that the party will, within 60 days of filing the notice of objection with the court and the Recalculation Office,
 - (a) make the application to the court under section 37;
 - (b) obtain a hearing date from the court for the application; and
 - (c) serve a copy of the application and a notice of the hearing date on the other party and the Recalculation Officer.

Effect of notice of objection

- (2) Where a party, in accordance with subsection (1), files a notice of objection to a recalculation for the reason referred to in that subsection, the Recalculation Officer may not issue a recalculation order in respect of the matter until one of the circumstances described in section 14 occurs.

Objection to deemed income

- (3) Where the payor's actual income for the immediately preceding year is less than the deemed income used by the Recalculation Officer for the recalculation, the payor may, within 30 days after the receipt of the notice referred to in subsection 12(2), object to the recalculation by filing with the Recalculation Office
 - (a) a notice of objection, completed on a copy of Form 1 of the Schedule, objecting to the recalculation on that basis; and
 - (b) a copy of the income information for the payor for the immediately preceding year.

Recalculation with new information

- (4) Where a payor, in accordance with subsection (3), files a notice of objection and the income information referred to in that subsection, the Recalculation Officer shall
 - (a) recalculate, in accordance with subsections 11(1) and (4), the amount of child support payable using the income information provided by the payor; and
 - (b) comply with the requirements of section 12. (EC465/03)

14. Recalculation order

- (1) After sending to the parties to an agreement or a child support order the recalculation notice required by subsection 12(2), the Recalculation Officer shall make a recalculation order in respect of the recalculation if
- (a) no party has, within 30 days after receipt of the notice of recalculation, filed a notice of objection under subsection 13(1) with the court and the Recalculation Office; or
 - (b) where a party has, within 30 days after receipt of the notice of recalculation, filed a notice of objection under subsection 13(1) with the Recalculation Office, the party has
 - (i) failed, within 60 days after filing the notice of objection with the court and the Recalculation Office, to do or obtain any of the things referred to in clauses 13(1)(a) to (c),
 - (ii) withdrawn the application referred to in clause 13 (1)(a), or
 - (iii) failed, within 120 days after filing the notice of objection with the court and the Recalculation Office, to have a court hearing of the application referred to in clause 13(1)(a).

Form and content of order

- (2) A recalculation order made by the Recalculation Officer must be made in writing and indicate
- (a) the recalculated amount of child support;
 - (b) the date the payor is liable, pursuant to section 15, to pay the recalculated amount; and
 - (c) the relevant circumstances referred to in clause (1)(a) or (b) under which the recalculation order is issued.

Filing and delivery of order

- (3) The Recalculation Officer shall
- (a) file a copy of the recalculation order with the deputy registrar of the court;
 - (b) send, by regular mail, a copy the recalculation order to each of the parties; and
 - (c) provide a copy of the recalculation order to the Director of Maintenance Enforcement. *(EC465/03)*

15. Effect of recalculation order

After a recalculation order has been made by the Recalculation Officer under section 14 in respect of an agreement or a child support order, the payor under the agreement or child support order is liable to pay the recalculated amount of child support set out in the recalculation order on the date each month provided for in the agreement or child support order, commencing the month immediately following the month during which the recalculation order is made. *(EC465/03)*



SCHEDULE

FORM 1

Court File #

R.O. #

IN THE SUPREME COURT OF PRINCE EDWARD ISLAND
(FAMILY SECTION)

BETWEEN:

Applicant

- and -

Respondent

NOTICE OF OBJECTION

I,,
object to the recalculated amount of child support as determined by the
Recalculation Officer and set out in the Recalculation Notice dated
.....,,,
(month) (day) (year)

THE REASON for my objection is as follows (must
check one):

- Q 1. Although I did not file a copy of my Income Tax Return/Notice of Assessment/Reassessment within the prescribed time frame, my income is less than the amount deemed by the Recalculation Officer, as evidenced by my (year) Income Tax Return/Notice of Assessment/Reassessment attached.
- Q 2. Although the payor did not file a copy of his/her Income Tax Return/Notice of Assessment/Reassessment within the prescribed time frame, his/her income is more than the amount deemed by the Recalculation Officer, as evidenced by the payor's (year) Income Tax Return/Notice of Assessment attached.
- Q 3. There has been a material change in circumstances since the most recent Income Tax Return/Notice of Assessment/Reassessment filed with the Recalculation Office. I intend to file a variation application with the Supreme Court of Prince Edward Island within sixty (60) days of the date of this objection seeking a variation of the Q Court Order Q Separation Agreement dated

Dated at
 Prince Edward Island
 this..... day of, 200... ..
NAME
 Telephone:
 Address:

TO: Supreme Court of Prince Edward Island AND TO:
 Sir Louis Henry Davies Law Courts

42 Water Street
 Charlottetown, PE C1A 7N8
 (Name and address of other party)

TO: Recalculation Office
 Sir Louis Henry Davies Law Courts
 42 Water Street
 Charlottetown, PE C1A 7N8

For Office Use Only:

The Court hearing of this matter has been set for(date)
 commencing at (time) at the Supreme Court of Prince
 Edward Island (Family Section) at the Sir Louis Henry Davies Law
 Courts, 42 Water Street, Charlottetown, Prince Edward Island.

(EC465/03)

