
**Request for a Child Support Order,
Different than Child Support Guidelines Table Amount**

Use Form 7 if you are making a claim for a child support amount that is not in a child support guidelines table. It is important that you read the ISO Guide for Form 5, and fill out Form 5, before you start Form 7. Have you filled out Form 5? If no, please do it now. What you write in Form 5 will tell you whether you need this Guide and Form 7.

* * *

If you are the claimant, in Form 5 you checked off the box that said you were claiming a child support amount different than the one in the child support guidelines table. If you are the Respondent, in Form 16 you checked the box that said you do not agree with the application and are asking the court to instead order an amount different than the table amount.

With Form 7 you will tell the court the reasons why the order should be a different amount, and what it should be. Form 7 covers the five reasons the court uses to decide whether something other than the 'table amount' should be used. Not all of these reasons will apply to you. But more than one reason can apply, especially with more than one child.

Begin by checking off the box at the top left. This is your claim for a 'non-table amount'. You will attach documents to show why the amount should be different.

This ISO Guide will go through each of the five reasons. There will be more information on each of them, some examples, and the documents that the court might want to see. If you have questions about whether you should make a claim, or what you need to prove to the court, you may want to get legal advice.

1. Child over the age of majority

The child support guidelines apply until a child reaches the 'age of majority'. In New Brunswick, that's at age 19. If you have a child who is 19 or older and still counts on you for day-to-day support, you can ask the court for a support order. The court looks at whether the child still counts on the parents for support because of the child's "illness, disability,

or other cause". The "other cause" part includes 'reasonable education'.

Example:

Keeshia and Lavar have two children from their relationship. Sondra is 15 and Lavar Jr. (LJ) is 19. When they separated and Lavar left New Brunswick, he said he would pay for Sondra's support, but believed that LJ should support himself. LJ is at community college taking math and science courses to go on to engineering or computer science. He lives at home, and has a part time job on Saturdays.

Should Lavar continue to pay support for LJ? Keeshia thinks so. She will ask for child support for both children (using Form 5). For Sondra, she will ask for the child support guidelines 'table amount', and for LJ, she will fill out Form 7. On Form 7 she will deal with LJ only (because he's the only one over the age of majority). She will also fill out a Child Status and Financial Statement (Form 12) for LJ, and her own Financial Statement (Form 11). Keeshia will have to decide how much support to ask for. The two financial statements will help her see what support she needs for LJ.

A 'child over the age of majority' claim does involve a lot of work and forms. When the application gets to court there are, as always, no guarantees that the order will be what you asked for. Without the claim, a dependent 'over age' child will not receive support.

2. Split Custody

This can be called "split parenting responsibility", or "split custody". What it means is that one or more children live with each parent. When this happens, each parent has a duty to support the child(ren) the other parent has, based on the child support guidelines tables. The parent who pays *more*, (because of fewer children, or a higher income) pays the other parent the difference.

On your working copy of Form 7, you will start by checking the box beside #2. On the lines, describe your custody arrangements. The example may help:

Example:

When Peter and Brittany separated they decided that one child would live with each of them. Brittany is making a claim for support. She is the claimant; Peter is the respondent. Peter has moved to another province, and she thinks he makes about \$45,000 a year. Brittany makes \$31,000.

In the chart, Brittany will write down Peter's income, and will call 1-888-373-2222 to get the 'table amount' for Peter's income for the province he lives in and the number of children he has (one, in this example). She will do the same thing for herself. When she subtracts her amount from Peter's, she will get the claim amount. Brittany will write that amount on the blank \$_____ section right above the chart.

Note: You can get the child support guidelines tables by calling 1-888-373-2222. You need to say where both parents live, and the number of children each parent has. You can also check the Internet at <http://canada.justice.gc.ca>. If the respondent lives **outside** Canada, use the 'table amount' for New Brunswick.

If you and the respondent each have at least one child, split custody may apply to you. Other parts of Form 7 may also apply, so keep reading, and make notes of things you need to do in the Worksheet section at the end of this ISO Guide.

3. Shared Custody

"Shared custody" has a special, legal meaning in the child support guidelines. Before you decide whether it applies to you, it is important that you read this section.

For there to be "shared custody" the person paying support (the respondent) must **have the children in his/her care for at least 40 percent of the time over the year**. This isn't all that common when parents live in different 'reciprocating jurisdictions', but here's an example of one case.

Example:

Michelle and Robin have one child, Ethan. The parents live a few miles apart, but just across their provincial borders. Michelle has regular shift work and Robin has a small farm. The parents worked out a plan, which was good for Ethan, and for them. Ethan spends 6 weeks each summer at the

farm and 2.5 days each week with Robin while Michelle works. Their calculations looked like this:

52 weeks minus 6 weeks in the summer = 46 weeks.

6 weeks x 7 days = 42 days.

46 non-summer weeks x 2.5 days each = 115 days.

42 days + 115 days = 157 days with Robin.

157 days divided by 365 days in the year = 43 % with Robin.

Robin and Michelle have shared custody of Ethan. The parents have not been able to decide on an amount of support, so Michelle is asking the court to decide. For shared custody, the child support guidelines tables will not apply automatically. The court will look at:

- the table amount for each parent
- the increased costs of shared custody arrangements, and
- the finances and needs of the child, and of each parent.

As a claimant, you can ask for a support amount, and the court will decide whether it is reasonable, or if another amount is fair.

4. Undue Hardship Claim

Working through the forms and ISO Guides for your application, you've learned some things about the child support guidelines. You now know that the 'table amounts' are based on average amounts spent on raising a child, depending on the income of the parent who pays. For most Canadians, the 'table amounts' are what the courts use when deciding the amount of support.

In some families a claim is made for an amount outside the guidelines. That is the situation for an undue hardship claim, and for each of the other claims covered on Form 7.

What is "undue hardship"?

For a person who will receive the support (that's you) it means that the 'table amount', plus special expenses, would cause undue hardship to either you or the child(ren). It means that it would be difficult to support the child on that amount. That's the first step.

In the second step the court looks at the standards of living for the *households* of both parents. Before the court will change the 'table amount', the standard of

living of the respondent's household will have to be better than yours. "Household" includes the income of every person who lives with you, and with the respondent. For this kind of claim it's not just the income of the two parents.

Example:

When Tammy and Alex separated the two children stayed with Tammy, and Alex moved to another province. They split the debts from their failed business. Tammy married and had another child (now 6 months old), and her husband is off work on long term disability. Alex lives in a common-law relationship with a very successful businesswoman, Joan. Alex works part-time in Joan's family business, and is trying to get a career going as a photographer.

Tammy is now asking for child support, and says that the 'table amount' would cause an undue hardship. She says that the court should look at the household income that Alex and Joan have, because Joan is supporting them. Tammy will fill out the Financial Statement (Form 11) and show the income for her household.

As you can tell, a claim for undue hardship can be complex, and involves other people. To Tammy, Alex is making as little money as possible, so he can cover his own expenses but doesn't have to pay much support. But Tammy still has debts from making a living while they were together, costs to send the kids to see Alex, a baby at home to support, and a disabled husband who can't bring much to the household income.

This ISO Guide cannot give you legal advice on whether to make a claim for undue hardship, or for how much. If you want to make this claim, you may wish to talk to a family law lawyer. The federal Department of Justice also has a large booklet, the 'Workbook on Child Support' that can help you. You can get a copy by calling 1-888-373-2222. Be sure to tell them that you and the respondent do not live in the same province.

5. Respondent's income over \$150,000 a year

The child support guidelines tables go up to \$150,000 a year to calculate the amount a paying parent should pay. If the respondent's income is more than that, the court can order more than the 'table amount'.

Example:

*Carlton is an architect. In the last 5 years he and Elise were together he always made over \$150,000 (and she has copies of his tax assessment notices to show it). Elise and the 2 kids moved to New Brunswick, but Carlton still works at the same company. She believes he makes about \$175,000 a year now. Carlton thinks he should pay support at the \$150,000 level at the bottom of the table. Elise believes he should pay that amount, **plus** the \$25,000 difference between the \$150,000 and what he makes.*

Elise looks at the table and sees that support for 2 children at \$150,000 is \$1,717 a month. For the \$25,000 difference between 'table amount' and 'real' income, she multiplies the \$25,000 by 0.99%, and gets \$247.50. Elise adds the two numbers and gets \$1,964.50. That's the number she will write on the \$_____ line in this section. Elise will show her calculations in the blank space below the paragraph.

The child support guidelines tables have a little chart showing the percentage calculation for incomes over \$150,000, depending on the number of children. As always, you are asking the court to decide on the amount of support, and there are no guarantees. But there is a formula, and the court will look at it when deciding on an order.

* * *

The child support guidelines are about what's normal and average for the costs of raising children. For most Canadians they do very well. The five sections in Form 7 and this ISO Guide show you that a claim for an amount that is different than the guidelines covers other situations. Not all of them will apply to you. They certainly involve more work for you, the respondent, and the court. But if one or more of these claims is right for you and your family, this is the way to ask the court to look at the reasons your situation is different, and that the child support guidelines rules should not apply to you.

If you decide to make any of these claims, be sure to start with the Worksheet section on the next page. Write down any work you have to do, or documents you need to get. As you finish, check off the 'done' column, and keep the information with your 'good' copy of Form 7.

