

# Child Support Recalculation Program

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## **CHILD SUPPORT RECALCULATION PROGRAM**

### **WHAT IS THE CHILD SUPPORT RECALCULATION PROGRAM?**

The Child Support Recalculation Program is an administrative service planned by Alberta Justice that will annually recalculate child support orders (and some agreements) based on changes in the parties' incomes. The Recalculation Program (RP) is expected to open in December 2009.

Certain details about program operation have not yet been finalized. Regulations have not yet been promulgated and it is possible that program features described below may still be refined or changed. Readers are strongly encouraged to check RP's website at [www.recalculation.gov.ab.ca](http://www.recalculation.gov.ab.ca) in the fall 2009 for more up to date information and a link to the planned regulations.

### **WHAT ARE THE GOALS OF RP?**

RP is intended to increase access to justice for parents with child support orders or agreements. RP will respond to increases or decreases in the parent's income and will aim to:

- offer an easy and inexpensive way for parents to fulfill their legal obligations. The Supreme Court of Canada, in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra*, 2006 SCC 37, ruled that both parties to child support orders are responsible for ensuring their children get the appropriate amount of support.
- ensure accessibility no matter where a client lives in Alberta.
- not require either party to go to court or to a government office.
- provide certainty, predictability and transparency in the method of recalculation.
- save court time.

It is understood, however, that the more complex files will still be handled by the court. RP cannot exercise discretion like a court and can only use limited income information in making its decisions.

The creation of an administrative program to recalculate child support responds to demands from clients<sup>1</sup>, the Bar and Bench. Of particular note is Resolution 08-03-M passed by the Canadian Bar Association in 2008:

“BE IT RESOLVED THAT the Canadian Bar Association urge the federal, provincial and territorial governments to implement permanent child support recalculation services in all jurisdictions, and to continue their efforts to make financial disclosure and support recalculation and collection more accessible, understandable and certain for all separated or divorced families.”

## WHERE DOES RP GET ITS AUTHORITY FROM?

The three key sources of RP’s legal authority to recalculate child support orders are:

1. **Family Law Act:** Part 3, Division 1.1 establishes RP and authorizes it to recalculate table amounts of child support and proportionate shares of special or extraordinary expenses.<sup>2</sup> Division 1.1 (see attachment 1), when proclaimed in force, will:
  - a. create a right of a recipient or a payor to a child support order to register with RP (s. 55.2(1)).
  - b. establish obligations of the parties to a child support order, once the order has been registered with RP. The obligations are to provide RP with contact information (s. 55.5) and to provide income information if the party’s income is relevant to recalculation (s. 55.41(1)).
  - c. allow RP to complete recalculation even if income disclosure has not been made (s. 55.51).
 

Note – this section may be amended by Bill 29 as noted in footnote 2.
  - d. make RP’s decisions effective on the 31<sup>st</sup> day after they are received (s. 55.31).
  - e. give parties a right to object to RP’s decisions by, within 30 days of receiving the decision, commencing an application to vary, terminate or suspend their original child support order (s. 55.4).
  - f. authorize RP to charge a service fee (s. 55.71).
  - g. facilitate RP recalculating child support agreements, as well as orders (s. 55.8(f)).

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<sup>1</sup> In the 2006 Client Survey conducted by the Maintenance Enforcement Program (MEP), 74% of recipients and 65% of payors agreed it would be good if MEP annually reviewed their support orders, while only 7% of recipients and 16% of payors disagreed.

<sup>2</sup> The **Family Law Amendment Act 2008 (Bill 15)** was passed in the fall 2008 but has not yet been proclaimed in force. Additionally, Bill 29 (see attachment 2) received first reading in the Legislature on March 16, 2009. This Bill, if passed, will amend Section 55.51 that deals with recalculation where a party fails to provide required income disclosure.

2. **Family Law Regulation:** Regulations will govern program operations and reflect the results of consultation done in 2008 with the Bar, Bench and public. The key questions posed by the consultation dealt with the method of recalculation to be used, whether RP could assist self-employed parties, how parties could withdraw their court order from RP and whether child support agreements should be eligible for recalculation.
  
3. **Divorce Act, s. 25.1:** This section (see attachment 3) enables the federal government to enter into an agreement allowing a province to establish an administrative service to recalculate child support orders in accordance with updated income information and the **Child Support Guidelines**. Subsection 25.1(4) grants the parties a right to object to the recalculation and establishes procedure for the objection. Note that this subsection was the basis for the **Family Law Act's** s.55.4; Alberta was constrained by the objection procedure already established in s. 25.1.

It is anticipated Alberta will have a s. 25.1 agreement with the federal government and will be able to recalculate **Divorce Act** orders. As of April 2009, negotiations are ongoing to establish the agreement. Challenges include determining if RP can recalculate interim **Divorce Act** orders and how s. 55.51 of the **Family Law Act** can be applied to enable recalculation if a party to a **Divorce Act** order fails to provide income disclosure.

## HOW WILL CLIENTS BE ABLE TO REGISTER WITH RP?

RP will be an “opt in” program. Either the recipient or the payor under a child support order can choose to register. There is no cost for registration. Once one party chooses to register, both parties have obligations to RP under the **Family Law Act** to keep their contact information up to date and to provide income information, if their income is relevant to child support.<sup>3</sup>

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<sup>3</sup> Both the registration and withdrawal procedures are similar to those of the Maintenance Enforcement Program (MEP). Registration with MEP can be done by either party and the non-registering party does not have a right to close the file.