

***AUTOMATED FAMILY
COURT ORDER***

Available
STANDARD CLAUSES
For Recalculation Orders

VERSION 4

May 2012

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NOTE TO USERS

USE OF BRACKETS

PRESENT USE

The present use of all brackets demands that the user fill in the areas with the relevant information.

[]	Square Brackets	Indicates a choice to be made from information in Registry: Examples: - [specify Party Name] - [Judge]
[...]	Square Brackets with ellipsis (not in use at this time)	Indicates a choice to be made numerous times from information in Registry: Example of future use: - [specify Child Name/Birthdate...] in the case of more than one child.
()	Round Brackets	Indicates a choice to be made from a list: Examples: - (is/are) - (his/her) - (sworn/affirmed) - (by teleconference;/by video;/blank) - "blank" confirms you don't need the option(s) It can also indicate a choice to use the singular or plural of a word: Examples: - Lawyer(s) - number(s) - paragraph(s)

{ }	Curved Brackets	<p>Indicates a free form text where a person can supply additional information not found in Registry or file:</p> <p>Examples:</p> <ul style="list-style-type: none"> - {specify conditions} - {specify assets} - {insert full legal description} <p>It can also indicate an area of the clause which may be ignored entirely if not appropriate to the case:</p> <p>Examples:</p> <ul style="list-style-type: none"> - {(and/blank) {name of school} where {specify Child(ren)'s Name(s)/Birthdate(s)} (is/are) in attendance} - {subject to the following conditions: specify}
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AUTOMATED FAMILY COURT ORDER

STANDARD CLAUSES

A. PREAMBLE

DATE AND PLACE OF HEARING

AA-1¹ This matter having proceeded at [specify Queen's Bench Court Complex and address in full including postal code] (at the request of /blank) {specify at whose request and/or hearing date(s)};

REQUEST TO VARY (OR PROVISIONALLY VARY)

AC-3 Subsection (39.1(5) of *The Family Maintenance Act*/25.1(4) of the *Divorce Act*) applies to this request for variation and gives a party who does not agree with the amount of support as recalculated the right to apply to vary, rescind or suspend child support within 30 days of both parties being notified of the recalculation;

AC-4 On [Date], [specify Support Determination Officer], Support Determination Officer, pronounced a Recalculated Child Support Order recalculating child support payments in the {specify name of Order} pronounced [Date] by {specify Judge} {²as subsequently recalculated by

¹ Definition of "matter" - Any judicial matter or proceeding entered on the records of a court, and to be proved by the production of such record, such as trials, motions, applications, affidavit divorces, pre-trials, teleconferences, case conferences, support enforcement hearings, etc.

² Use the words "as subsequently recalculated by ..." in Clause AC-4 when the original child support amount has been recalculated previously and that/those recalculation(s) has/have taken effect.

the Recalculated Child Support Order pronounced [Date] by [specify Support Determination Officer], Support Determination Officer, and by the ... continue as required};

AC-5³ This matter being a request for variation of the {specify name of Order} pronounced [Date] by {specify Judge} (which has been subsequently varied by the/blank) {{specify name of Order} pronounced [Date] by {specify Judge} and by the ... continue as required} which has been recalculated as to child support by the Recalculated Child Support Order pronounced [Date] by [specify Support Determination Officer];

³ If a party is seeking to vary a child support order within 30 days of being notified of a Recalculated Child Support Order and the original child support order was previously recalculated (and that/those recalculated child support amount(s) came into effect), then Clause AC-5 should be used and followed by Clauses AC-3 and AC-4.

REQUEST FOR CONFIRMATION OF A *DIVORCE ACT* PROVISIONAL VARIATION ORDER

ATTENDANCES

- AE-1 In the presence of: {insert the appropriate AE-1 sub-clause(s)}
- AE-1.1 - [specify Party Name], acting on (his/her) own behalf;
- AE-1.2 - [specify Party Name] (by teleconference/by video/blank);
- AE-1.3 - {Specify Lawyer}, (by teleconference,/by video,/blank) counsel for [specify Party Name];
- AE-1.4 - {Specify name}, (by teleconference,/by video,/blank) representative for {specify name or agency};
- AE-1.5 - {Specify Lawyer} (by teleconference/by video/blank) for {specify name or agency};
- AE-1.6 - Crown Counsel on behalf of the Designated Officer of the Maintenance Enforcement Program;
- AE-1.7 - Crown Counsel, Manitoba Justice(, by teleconference/, by video/blank)(, on behalf of/blank) {if appropriate, specify name or agency};
- AE-1.8 - Support Determination Officer of the Child Support Recalculation Service;
- AE-1.9 - {Specify others if necessary - example: interpreter by name and

language, by teleconference or by video if applicable, and for whom if necessary};

AE-2 [Specify Party Name] not appearing although served {specify details if needed};

AE-3 [Specify Party Name] not appearing although represented by counsel;

AE-4 No one appearing for [specify Party Name];

DEFAULT NOTED

DOCUMENTS/EVIDENCE

AG-1 The following (documents/evidence/documents and evidence) (having been filed/being relied on) in support of this application: {insert the appropriate AG-1 sub-clause(s)}

AG-1.1 - the Affidavit of Service on [specify Party Name];

AG-1.2 - the Affidavit of Service on {specify Name};

AG-1.3 - the Affidavit of [specify Party Name], (sworn/affirmed) [Date];

AG-1.4 - the Affidavit of {specify Name}, (sworn/affirmed) [Date];

AG-1.5 - the Transcript of the Cross-Examination of [specify Party Name] conducted on [Date];

AG-1.6 - the (Transcript of the/blank) Verbatim Recording of the oath and

evidence given by [specify Party Name] on [Date] in support of (his/her) application for a Protection Order;

AG-1.7 - the (Transcript of the/blank) Verbatim Recording of the oath and evidence given by {specify name} on [Date] in support of application by [specify Party Name] for a Protection Order;

AG-1.8 - the {specify type of Order} pronounced [Date] by {specify judge's name or court} of the {specify reciprocating court or jurisdiction};

AG-1.9 - the (support/support variation) application of [specify Party Name];

AG-1.10 - the Recalculated Child Support Order and Report pronounced [Date] by [specify Support Determination Officer];

AG-1.11 - Certificate of Marriage;

AG-1.12 - Certificate of Birth of {specify Child(ren)'s Name(s)/Birthdate(s)};

AG-1.13 - Central Registry of Divorce Proceedings Clearance Certificate;

AG-1.14 - {specify other document(s)};

AG-2 Upon considering the (evidence presented and submissions made/blank) {if different than the previous words, specify as required - examples: pleadings, material filed, evidence presented, submissions made, Respondent's motion for an adjournment, etc.} in this matter;

B. HEADINGS - NAME OF THE STATUTE

BA-1⁴ THIS COURT (ORDERS/DETERMINES/DECLARES) pursuant to the *Divorce Act* (Canada) that:

BA-2⁵ THIS COURT (ORDERS/DETERMINES/DECLARES) pursuant to *The Family Maintenance Act* that:

BA-4 THIS COURT (ORDERS/DETERMINES/DECLARES) pursuant to *The Court of Queen's Bench Act* and Rules that:

⁴ SUPPORT PAYMENTS (EVEN IN VARIATION) MUST BE REFLECTED UNDER THE APPROPRIATE ACT AS SET OUT IN THE COMMENCEMENT DOCUMENT.

⁵ SUPPORT PAYMENTS (EVEN IN VARIATION) MUST BE REFLECTED UNDER THE APPROPRIATE ACT AS SET OUT IN THE COMMENCEMENT DOCUMENT.

C. PROCEDURAL

DISMISSAL

CM-4 The Notice of Motion to Vary seeking to (vary/rescind/suspend) the {specify name of Order} pronounced [Date] by {specify Judge} {⁶as subsequently recalculated by the Recalculated Child Support Order pronounced [Date] by [specify Support Determination Officer], Support Determination Officer, and by the ... continue as required} is dismissed;

CM-5⁷ The Notice of Motion to Vary seeking to (vary/rescind/suspend) child support in the {specify name of Order} pronounced [Date] by {specify Judge} is dismissed as the amount of child support as recalculated in the Recalculated Child Support Order pronounced [Date] by [specify Support Determination Officer], Support Determination Officer, is appropriate, the Recalculated Child Support Order is confirmed and the recalculated child support amount commences {specify commencement date contained in the Recalculated Child Support Order};

⁶ Use the words “as subsequently recalculated by ...” in Clause CM-4 where a previous Recalculated Child Support Order has taken effect and a subsequent request for variation is dismissed. (i.e. Sub-rule 70.31(10.2) applies)

⁷ Use where the Notice of Motion to Vary was brought within 30 days of notification of a Recalculated Child Support Order because a party did not agree with the recalculated amount of support.

H. REQUEST FOR RECALCULATION ORDER

MANDATORY RECALCULATION PROVISIONS

HA-1 The table amount of child support in the {specify name of Order} pronounced [Date] by {specify Judge} be recalculated by the Support Determination Officer of the Child Support Recalculation Service;

HA-2 The special or extraordinary expense payable for {specify Child(ren)'s Name(s)/Birthdate(s)} for the s. 7(1) {specify category} expense in the {specify name of Order} pronounced [Date] by {specify Judge} be recalculated by the Support Determination Officer of the Child Support Recalculation Service based on the amount of the expense in proportion to the respective incomes of the parties that are above the threshold income of the parties where child support is payable in the Manitoba Table of the Child Support Guidelines;

HA-3 The table amount of child support in this Order be recalculated by the Support Determination Officer of the Child Support Recalculation Service;

HA-4 The special or extraordinary expense payable for {specify Child(ren)'s Name(s)/Birthdate(s)} for the s. 7(1) {specify category} expense in this Order be recalculated by the Support Determination Officer of the Child Support Recalculation Service based on the amount of the expense in proportion to the respective incomes of the parties that are above the

threshold income of the parties where child support is payable in the Manitoba Table of the Child Support Guidelines;

HA-5⁸ The Support Determination Officer shall recalculate child support annually starting (immediately⁹/on) {specify date¹⁰ if appropriate}. Subsequent recalculations shall commence on the same day and month every year thereafter;

HA-6¹¹ The Support Determination Officer shall recalculate child support starting (immediately/on {(specify date if appropriate¹²and known / the first anniversary of the date the child support order was pronounced¹³)). Subsequent recalculations shall commence on the same day and month every two years thereafter;

HA-7 [Specify Party Name] and [specify Party Name] shall notify the Child Support Recalculation Service in writing at 201-373 Broadway, Winnipeg, Manitoba, R3C 4S4, or by facsimile transmission to (204) 948-2423, as to any change in his or her mailing address, e-mail address, telephone or facsimile number within 30 days of the date of

⁸ Clause HA-5 may only be used for orders pronounced prior to March 1, 2011

⁹ It is anticipated that where a recalculation authorization order is sought for a pre-existing child support order, the Court will generally order recalculation to commence immediately.

¹⁰ It is anticipated that where a recalculation authorization order is sought together with a child support order, the Court will generally order that the first recalculation commence on a specified date eight months later (bearing in mind the recalculation process will generally take three to four months to complete).

¹¹ Clause HA-6 to be used for orders pronounced on or after March 1, 2011

¹² Where a recalculation order is sought together with a child support order, the first recalculation must be one year after the date of the child support order. Where a recalculation order is sought for a pre-existing child support order, the court may order recalculation to occur immediately.

change;

HA-8 [Specify Party Name] and [specify Party Name] shall provide to the Support Determination Officer any financial disclosure requested by the Officer pursuant to s. 20 and clause 24.8(1)(b) of the *Child Support Guidelines Regulation*, in the manner required by the Officer;

HA-9¹⁴ - If [Specify Party Name] or [Specify Party Name] fails to comply with the Support Determination Officer's request for financial disclosure of updated income information, the Support Determination Officer shall, for the purposes of recalculation, deem disclosure of updated income information in accordance with subsections 24.8(1.1) and (1.2) of the *Child Support Guidelines Regulation* and recalculate the order using the deemed income amount;

HA-10¹⁵ - If [Specify Party Name] or [Specify Party Name] fails to comply with the Support Determination Officer's request for financial disclosure of the current amount of any special or extraordinary expenses, the Support Determination Officer shall, for the purposes of recalculation, deem the expense to be zero in accordance with subsection 24.8 (1.3) of the *Child Support Guidelines Regulation* and recalculate the order using the deemed expense amount;

¹³ Use this wording if the date of pronouncement of the child support order is unknown, such as when a consent order is submitted to the Court for signing.

¹⁴ Clause HA-9 must be included when a recalculation order respecting *Divorce Act* child support is made on or after March 1, 2011.

¹⁵ Clause HA-10 must be included when a recalculation order respecting *Divorce Act* special and/or extraordinary expenses is made on or after March 1, 2011.

DISCRETIONARY RECALCULATION PROVISIONS

HB-1 [Specify Party Name] and [specify Party Name] shall each complete and sign a release authorizing the Support Determination Officer to obtain:
{insert the appropriate HB-1 sub-clause(s)}

HB-1.1 - his or her address and other contact information from the Designated Officer of the Maintenance Enforcement Program;

HB-1.2 - copies of his or her income tax documents from the Canada Revenue Agency referred to in s. 20(1) and 20(2) of the *Child Support Guidelines Regulation*;

HB-1.3 - copies of his or her income or financial information from his or her employer or from a third party;

N. SUPPORT

CHILD SUPPORT GUIDELINES

INCOME

- NB-1 The current annual income of [specify Party Name] is determined by the Court to be {specify \$ amount};
- NB-2 The annual income of [specify Party Name] based on the most recently filed income tax return for the year {specify year} is determined by the Court to be {specify \$ amount};
- NB-3 The annual income of [specify Party Name] is determined by the Court to be {specify \$ amount} based on the pattern of annual income for the last three consecutive years ending with the year {specify year} and on the average annual income for the three year period;
- NB-4 The current annual income of [specify Party Name] is agreed by [specify Party Name] and [specify Party Name] to be {specify \$ amount} without determination by the Court;
- NB-5¹⁶ The current annual income of [specify Party Name] is imputed by the Court pursuant to clause {specify clause} of (s. 18(1) of the *Child*

Support Guidelines Regulation/s. 19(1) of the Federal Child Support Guidelines) to be {specify \$ amount};

NB-6 The current annual income of [specify Party Name] is imputed by the Court pursuant to (s. 18(1)(c) of the *Child Support Guidelines Regulation/s. 19(1)(c) of the Federal Child Support Guidelines*) to be {specify \$ amount} taking into account the actual annual income of [specify Party Name] of {specify income amount in foreign currency} converted to Canadian currency, and the foreign effective rate of income tax is significantly lower than that in (Manitoba¹⁷/Canada¹⁸);

NB-7 The current annual income of [specify Party Name] is determined by the Court pursuant to (s. 19(2) of the *Child Support Guidelines Regulation/s. 20(2) of the Federal Child Support Guidelines*) to be {specify \$ amount} taking into account the actual annual income of [specify Party Name] of {specify income amount in foreign currency} converted to Canadian currency, and the foreign effective rate of income tax is significantly higher than that in Manitoba;

¹⁶ Use Clause NB-7 if a party's income is being imputed pursuant to clause 18(1)(c) of the *Manitoba Child Support Guidelines Regulation* or clause 19(1)(c) of the *Federal Child Support Guidelines*.

¹⁷ Refer to Manitoba if the payor's income is being imputed pursuant to s. 18(1)(c) of the *Manitoba Child Support Guidelines Regulation*.

¹⁸ Refer to Canada if the payor's income is being imputed pursuant to s. 19(1)(c) of the *Federal Child Support Guidelines*.

T. EFFECTIVENESS OF RELIEF OR ORDER

EFFECTIVENESS OF RELIEF OR ORDER¹⁹

TA-3²⁰ The Recalculated Child Support Order pronounced [Date] by [specify Support Determination Officer], Support Determination Officer, recalculating child support in the {specify name of Order} pronounced [Date] by {specify Judge} {²¹as subsequently recalculated by the Recalculated Child Support Order pronounced [Date] by [specify Support Determination Officer], Support Determination Officer, and by the ... continue as required} is (suspended until further order of the Court/of no force and effect/rescinded effective) {specify a date when applicable};

¹⁹ Use the QF clauses if the relief sought is in reference to suspension of maintenance enforcement.

²⁰ This clause can be used where the Court considers a notice of motion to vary a child support order brought within 30 days of parties being notified of a Recalculated Child Support Order.

²¹ Use the words "... as subsequently recalculated by ..." in Clause TA-3 where the original child support amount has been recalculated previously and that/those recalculation(s) has/have taken effect.

VARYING AN ORDER

TH-2²² Paragraph(s) {specify number(s)} of the {specify name of Order} pronounced [Date] by {specify Judge} as subsequently recalculated by the Recalculated Child Support Order pronounced [Date] by [specify Support Determination Officer], Support Determination Officer, {and by the Recalculated Child Support Order ... continue as required}, which read(s) as follows:

{repeat/list each old paragraph number and wording exactly}

be (deleted;/deleted and replaced with:) {if required, insert a separate TH-2.1 sub-clause for each replacement clause}

TH-2.1 {Specify the wording for each replacement clause separately};

TH-4²³ The child support recalculation interval and commencement date(s) in the {specify name of Order²⁴} pronounced [Date] by [specify Judge] shall continue until further order of the Court;

²² Use Clause TH-2 where a previous Recalculated Child Support Order has taken effect and a subsequent request for variation is granted. (i.e. Sub-rule 70.31(10.2) applies)

²³ As of March 1, 2011, the child support recalculation interval and commencement date are prescribed by regulation (M.R. 15/2011). Orders varied on or after March 1, 2011 should specify the prescribed interval and commencement date.

²⁴ The Order referred to would be the Order that authorized recalculation of child support.

TH-5²⁵ Child support recalculation paragraphs(s) {specify number(s)} of the {specify name of Order²⁶} pronounced [Date] by [specify Judge], which read(s) as follows:

{repeat/list each old child support recalculation paragraph number and wording exactly}

be deleted and replaced with: {insert a separate TH-5.1 sub-clause for each replacement clause separately}

TH-5.1 {Using Clause HA-5 wording for child support recalculation provisions pronounced before March 1, 2011 or Clause HA-6 wording for child support recalculation provisions pronounced on or after March 1, 2011, specify each replacement child support recalculation clause separately};

²⁵ Use Clause TH-5 when the Court is varying the child support recalculation interval/commencement date. When a child support order that includes or is subject to a recalculation order is varied, the specified recalculation interval/commencement date should be revisited and adjusted accordingly.

²⁶ The Order referred to would be the Order that authorized recalculation of child support.

V. SERVICE

SERVICE OF A RECALCULATION ORDER

VH-1²⁷ [Specify Party Name] shall serve a copy of this Order and a blank Child Support Recalculation Service Registration Form on [specify Party Name] by regular letter mail addressed to {specify name} at {specify address};

VH-2²⁸ [Specify Party Name] shall file proof of service on {specify name(s)} with the Court and shall provide a copy of this Order and proof of service to the Child Support Recalculation Service without delay;

W. SIGNATURE CLAUSES FOR HARDCOPY DOCUMENTS²⁹

DATE AND SIGNATURE

WA-1 DATED .

(Judge/Master/Deputy Registrar)

²⁷ Use only if the order authorizing recalculation of a child support order is not sought by both parents jointly or both parents have not completed the Registration Form.

²⁸ Use only if the order authorizing recalculation of a child support order is not sought by both parents jointly or both parents were not present in court when the order was granted.

²⁹ The signature clauses in this Section are used for hardcopy documents only (with or without use of the Automated Family Court Order Builder). Electronic Draft Orders cannot be accepted with signature clauses attached.

X. LAWYERS OF RECORD OR COUNSEL

LAWYERS OF RECORD

XA-1 Lawyer of Record for [specify Party Name] is:

Name: {specify}

Firm Name: {specify}

Address: {specify}

Phone Number: {specify}

Fax Number: {specify}

E-Mail Address: {specify}

Firm File Number: {specify}