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# Financial Support After Breakup: What Women Should Know about Spousal and Child Support

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# METRAC

## METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

[www.metrac.org](http://www.metrac.org)

## METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

## FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



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# Topics to be Covered

1. Spousal Support
  - Who can get it
  - Purposes of spousal support
  - What determines the amount
  - For how long
  - Making changes
2. Child Support
  - For which children
  - Legal requirements to pay
  - General guideline amounts
  - Special or extraordinary payments
  - Ensuring a fair amount
3. Starting the Process
4. Ensuring Payment of Support
5. Additional Resources

*Accurate as of the date of this webinar presentation: July 5, 2012*



# Spousal Support

# Spousal Support

- regular money payment
- usually monthly
- to help pay living expenses
- from the partner with higher income to the partner with lower income
- after separation or divorce

## **The law in Ontario requires:**

*Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.*

-Ontario *Family Law Act*, s. 30

# Who Can Get It?

- either partner
- married – now separated or divorced
- common law
  - no children, after 3 years cohabiting
  - with a child together, after a relationship of “some permanence” of any length
- it is not automatic in every relationship following breakup



# Example Scenario 1

- Shequita and Ernesto lived together for three and a half years. She quit college and started working when he moved in with her, so they would have more money to go out. She wanted to have a baby, and they started fighting about it. He slapped her once.
- She decided she'd had enough. For three years, she helped support him, his work, and his lifestyle. They broke up, and now she wants to go back to finish her college degree.



# Purposes of Spousal Support

- **Compensatory**

- recognize a partner's contributions to the relationship

- respond to economic advantages to a partner from marriage or breakup

- respond to economic disadvantages to a partner from marriage or breakup

# Purposes of Spousal Support

- Needs Based
  - help a partner to become self-supporting
  - relieve the financial hardship arising from the breakdown of the relationship
  - share financial consequences arising from the care of children

# What Determines the Amount?

- partners may agree to an amount themselves
- court may order an amount and must consider:
  - length of relationship
  - each partner's financial situation
    - now
    - in future
- ability for lower income partner to support self
- ability of higher income partner to pay
- age and health of each partner
- current needs and living standard during relationship

# What Determines the Amount?

- role of each partner during the relationship
- effect on earning capacity as a result of that role
- other legal obligations to provide support
- arrangements for any child of the relationship
- unconscionable conduct

## **Another consideration:**

- Spousal Support Advisory Guidelines
  - non-mandatory government guidelines
  - usual starting point for the court

# Social Assistance

- must try for spousal support to get social assistance
- family support worker can help get a support agreement or court order
  - **exceptions:**
    - violence against partner or child
    - payor partner cannot be found
    - payor partner is unemployed and can't pay
- support payments are deducted from social assistance amount
  - **unless:**
    - payor often misses payments
    - payor can send payment directly to government, and full social assistance paid to partner

# For How Long?

- partners can agree to any terms
- the court order may be indefinite, or set an end date
- support does not automatically end if either partner begins a new relationship



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# Making Changes

- to private agreement, if both partners agree
  - date
  - sign
  - witness
- must apply to court to change its order
  - partners can agree
  - or significant change in circumstances, such as:
    - one partner's income has changed
    - if partner getting support should be self-supporting
    - child arrangements have changed

## Example Scenario 2

- Mala and Sam are immigrants. They met in Canada and were married for 12 years and had two kids together. Mala was working the counter at a dry cleaners when they met, and left her job to be a stay-at-home mother and homemaker, while Sam made a good living.
- He wants to get a divorce now, and start living with someone new. Mala and Sam are fighting over custody of their 9 and 6 year old children.



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# Child Support

# Legal Requirements to Pay

- *Every parent has an obligation to provide support for his or her unmarried child who is a minor or is enrolled in a full time program of education, to the extent that the parent is capable of doing so.*
  - Ontario *Family Law Act*, s. 31(1)



# For Which Children?

- **Parents have legal duty to support:**
  - biological child
  - adopted child
  - step-child
  - if acting in place of parent
- **Applies to parents:**
  - married
  - common law
  - separated
  - divorced
  - no permanent relationship



# For Which Children?

- **Up to 18 years old:**
  - unmarried
  - has not withdrawn from parental control
- **Over 18 years old:**
  - unable to support self
  - attending school full-time
  - has illness or disability



# Federal Child Support Guidelines

- under federal *Divorce Act*
- based on:
  - gross income of paying parent
  - average amount of income spent to raise a child
  - number of children supported
  - adjustments for each province/territory
- provide a guide to minimum child support payment

# Ontario Child Support Guidelines

- under Ontario *Family Law Act*
- mostly mirror the Federal Guidelines
- apply in cases that don't involve divorce
- provide a guide to minimum child support payment

# General Guideline Amounts

- determine:
  - which parent pays
  - which provincial table applies
  - how many children will receive support
  - what the payor's annual gross income is (based on three most recent income tax returns)
  - table amount for income up to \$150,000
  - appropriate amount for remaining income above \$150,000
    - based on conditions and needs of child



# Child Support Tables

## Ontario:

### Federal Child Support Amounts: Simplified Tables

### Montants fédéraux de pensions alimentaires pour enfants: Tables simplifiées

Income/ Revenu (\$)	Monthly Award/ Paiement mensuel (\$)				Income/ Revenu (\$)	Monthly Award/ Paiement mensuel (\$)				Income/ Revenu (\$)	Monthly Award/ Paiement mensuel (\$)			
	No. of Children/ N <sup>bre</sup> d'enfants					No. of Children/ N <sup>bre</sup> d'enfants					No. of Children/ N <sup>bre</sup> d'enfants			
	1	2	3	4		1	2	3	4		1	2	3	4
<b>32400</b>	274	473	637	774	<b>37800</b>	334	544	731	885	<b>43200</b>	390	633	821	988
<b>32500</b>	275	474	639	776	<b>37900</b>	335	545	732	887	<b>43300</b>	391	635	823	990
<b>32600</b>	276	475	641	778	<b>38000</b>	336	546	734	889	<b>43400</b>	392	637	825	992
<b>32700</b>	277	477	643	780	<b>38100</b>	337	548	736	891	<b>43500</b>	393	638	827	993
<b>32800</b>	278	478	645	782	<b>38200</b>	338	549	737	893	<b>43600</b>	394	640	829	995
<b>32900</b>	280	480	647	784	<b>38300</b>	339	551	739	895	<b>43700</b>	395	642	831	997
<b>33000</b>	281	481	649	786	<b>38400</b>	341	553	740	896	<b>43800</b>	395	643	833	999
<b>33100</b>	282	482	651	788	<b>38500</b>	342	554	742	898	<b>43900</b>	396	645	835	1001
<b>33200</b>	283	484	653	790	<b>38600</b>	343	556	743	900	<b>44000</b>	397	647	837	1003
<b>33300</b>	284	485	654	793	<b>38700</b>	344	558	745	902	<b>44100</b>	398	649	839	1005
<b>33400</b>	285	487	656	795	<b>38800</b>	345	559	746	904	<b>44200</b>	399	650	841	1007
<b>33500</b>	287	488	658	797	<b>38900</b>	346	561	748	906	<b>44300</b>	400	652	843	1009
<b>33600</b>	288	489	660	799	<b>39000</b>	348	563	749	907	<b>44400</b>	401	654	845	1011
<b>33700</b>	289	491	662	801	<b>39100</b>	349	565	751	909	<b>44500</b>	402	656	847	1012
<b>33800</b>	290	492	663	803	<b>39200</b>	350	566	752	911	<b>44600</b>	403	657	849	1014

# Other Factors

- **Other factors:**
  - does another parent (biological, step-parent) have a duty to pay support
  - parents share time raising child (40/60% or 50/50%)
  - each parent has responsibility for one of several children
  - undue hardship

# Example Scenario 3

- Lina and Derek lived together for ten years. They had a daughter who is 6 now. Lina had a son from a previous relationship, and Lina and Derek both raised him while they were all living together. Her son is 16 now.
- Derek was out of work for awhile, started to drink and became abusive. Lina decided to leave with the kids. Derek has moved to Manitoba for work, and they have agreed that the kids will live with her in Toronto, and visit him on holidays.

# Special or Extraordinary Factors

- also called s.7 expenses
- court may order extra payment for:
  - necessary childcare
  - a portion of medical/dental premiums for the children
  - uninsured health-related expenses
  - extracurricular activities
  - special education needs
  - college or university
- expenses shared, taking both parents' income into account

# Ensuring a Fair Amount

- **The court requires:**
  - payor parent's financial statements to determine proper table amount
  - receiving parent's financial statements if asking for s. 7 expenses, or support higher than table amount
- **Financial Statements include:**
  - income tax returns
  - notices of assessment/reassessment
  - statement of earnings from employer
  - business owner financial statements

[http://www.attorneygeneral.jus.gov.on.ca/english/family/child\\_support\\_checklist.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/child_support_checklist.asp)

# Ensuring a Fair Amount

- The court will not accept the payor's reported income:
  - if financial information is incomplete
  - if payor unemployed or underemployed on purpose
  - if some of payor's income not reported
    - self-employed
    - paid "under the table"
- The court may "**impute**" income to the payor to determine amount of support



# Ensuring a Fair Amount

- **Change in circumstances**
  - receiving parent entitled to financial updates from payor once/year
  - automatic under provincial law
  - must make written request, under federal law
- **To change support order:**
  - if parents agree
    - file new private agreement with court
    - ask court to change the order
  - if contested, court will consider:
    - has payor parent's income changed
    - has child withdrawn from parental control
    - has child moved homes



# Starting the Process



# Starting the Process

- **Online basic information**

- [Ontario Ministry of the Attorney General](#)
- [Family Law Information Program \(FLIP\)](#)
- [Family Law Education for Women \(FLEW\)](#)
- [Community Legal Education Ontario \(CLEO\)](#)
- [Ontario Women's Justice Network \(OWJN\)](#)

- **Spousal Support**

<http://www.justice.gc.ca/eng/pi/fcy-fea/spo-epo/index.html>

- **Child Support**

<http://www.justice.gc.ca/eng/pi/fcy-fea/sup-pen/index.html>

# Starting the Process

- Helpful to talk to a lawyer
  - ask for initial free consultation
  - discuss cost of fees and disbursements
- JusticeNet
  - not for profit service
  - reduced legal fees

<http://www.justicenet.ca/professions>

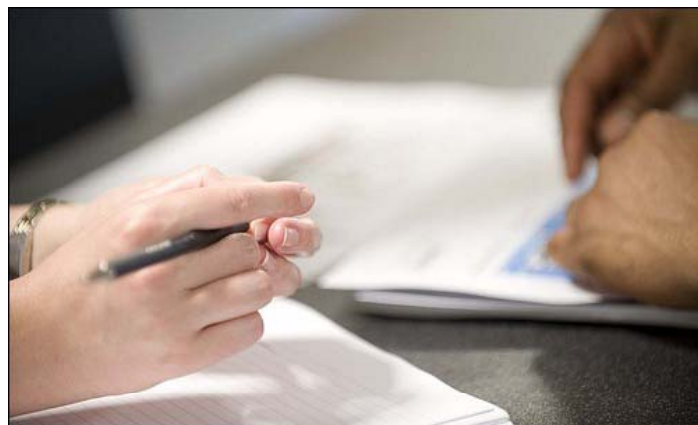
- Law Society of Upper Canada Referral Service

<http://www.lsuc.on.ca/with.aspx?id=697>

# Starting the Process

- **Legal Aid Ontario**
  - for low income people
  - 20 minutes Summary Legal Advice
  - Family Court advice lawyers
    - at Family Law Information Centres (FLICs)
  - Family Law Service Centres
    - help with documents
    - help to get lawyers
  - **If your partner is violent or abusive**
    - Family Violence Authorization Program
    - free 2-hour meeting with lawyer
    - special family law services when abuse involved

# Starting the Process



## **Community Legal Clinics**

- can refer to services; may do some family law

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

## **Online forms**

<http://www.ontariocourtforms.on.ca/english/family/>

**See FLEW Webinar: Where to Look for a Family Law Lawyer**

<http://www.onefamilylaw.ca/en/webinar/>



# Ensuring Payment of Support

# Ensuring Payment of Support

- **Ontario Family Responsibility Office (FRO)**
  - ensures payment of spousal and child support
  - must be by court order
  - court orders automatically filed with FRO
  - payor sends money to FRO
  - FRO pays the receiving person



# Ensuring Payment of Support

- **If payments are missed**
  - receiving person provides payor's current information:
    - Name
    - Address
    - Social Insurance Number
    - Place of work
    - Income
    - Owned property
- **FRO can get money from:**
  - deducting money from payor's wages, employment insurance, income tax refund, pension
  - putting a lien on property
  - taking money from a bank account

# Ensuring Payment of Support

- **FRO can:**
  - suspend driver's license
  - affect credit rating for loans
  - cancel passport
- **FRO can help:**
  - across Canada
  - in Unites States
  - other countries with agreements with Ontario
- **Contact FRO:**
  - 24-Hour Automated Information Line  
Tel: 416-326-1818  
Toll-free: 1-800-267-7263

[http://www.mcsc.gov.on.ca/en/mcsc/programs/familyResponsibility/Contact/payor\\_recipient.aspx](http://www.mcsc.gov.on.ca/en/mcsc/programs/familyResponsibility/Contact/payor_recipient.aspx)



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# Additional Resources

# Resources (Family)

## **Assaulted Women's Helpline**

[www.awhl.org](http://www.awhl.org)

- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- Toronto: 416-863-0511

## **Legal Aid Ontario**

<http://www.legalaid.on.ca/en/getting/default.asp>

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

## **Family Law Information Program (FLIP)**

<http://www.legalaid.on.ca/en/getting/flip.asp>

## **Family Law Information Centres (FLICs)**

[http://www.legalaid.on.ca/en/getting/type\\_family.asp](http://www.legalaid.on.ca/en/getting/type_family.asp)

## **Family Law Services Centres (FLSCs)**

<http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>

## **Family Law Education for Women (FLEW)**

<http://www.onefamilylaw.ca/en/resources/>

## **Ontario Women's Justice Network (OWJN)**

[www.owjn.org](http://www.owjn.org)

# Resources (General)

## **Law Society of Upper Canada Lawyer Referral Service**

<http://www.lsuc.on.ca/with.aspx?id=697>

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

## **Toolkit for a good Client-Lawyer Relationship**

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

## **Ministry of the Attorney General**

<http://www.attorneygeneral.jus.gov.on.ca/english/>

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

## **Find a community legal clinic near you**

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

## **211 Canada.ca**

<http://211canada.ca/>

# Resources (General)

## Online forms

<http://www.ontariocourtforms.on.ca/english/family/>

## Ontario Court Forms Assistant

<https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>

- Get help online to complete family court forms

## Ontario Courts

<http://www.ontariocourts.on.ca/>

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
  - Superior Court of Justice <http://www.ontariocourts.ca/scj/en/famct/>
  - Ontario Court of Justice <http://www.ontariocourts.ca/ocj/family-court/overview/>

## Ontario Court Locations

[http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court\\_Addresses/](http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/)

- Find court addresses across Ontario