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Le droit de la femme à savoir

Child Support: Dealing with a Difficult Ex-partner

February 28, 2014

Tamar Witelson, Legal Director, METRAC
Charley Levitan, Lawyer, Torkin Manes LLP, Toronto

www.onefamilylaw.ca

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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

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

Family Law Education for Women in Ontario -- **FLEW**

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

www.onefamilylaw.ca

www.undroitdefamille.ca

Presenters

Tamar Witelson

Legal Director, METRAC



Charley Levitan

Lawyer, Torkin Manes LLP, Toronto



Topics to be Covered

1. What is Child Support
2. Legal Requirement to Pay Child Support
3. When a Parent Must Pay Child Support
4. Which Parent Pays
5. Amount: General Guidelines
6. Special or Extraordinary Payments
7. Ensuring a Fair Amount
8. Enforcing Payment of Child Support
9. Additional Resources

Accurate as of the date of this webinar presentation: February 28, 2014



What is Child Support?

What is Child Support

Child Support is:

- money that is paid by a parent
- to the other parent who is looking after and caring for their child
- to help support or provide for the child
- money is for the child, and a **child's right**

Legal Requirement to Pay Child Support

- *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)





When a Parent Must Pay Child Support

When a Parent Must Pay

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
- in no permanent relationship



When a Parent Must Pay

- As soon as parents separate, for as long as one parent is caring for a dependent child
- Dependent Child:
 - **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 (in some cases)





Which Parent Pays?

Which Parent Pays Child Support

- by agreement or Court order
- based on amount of time with child
- usually, the parent who looks after the child for the least amount of time pays child support
- if child care time is close to evenly shared, payment amount may be less

Scenarios

1. Patrick and Gail have been married for 15 years. They have a daughter in high school and a son in university.

Patrick often gets jealous and threatens Gail, “If you ever dare cheat on me, you can take the kids and get out, and you won’t get a penny from me to look after any of you!”

Scenarios

2. Omar and Joelle have been living together for two years, both raising their 10-month old baby and Joelle's 13-year-old daughter. Joelle is worn down by Omar's drinking and bad temper and decides to move out. She wants the kids to live with her, and Omar agrees.

But Omar says, if you don't let me see my kids whenever I want, I will hold back my child support payments.

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Child Support Amount: General Guidelines

Amount: General Guidelines

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
- a guideline for minimum child support payment

www.justice.gc.ca/eng/fl-df/child-enfant/index.html

Amount: General Guidelines

Ontario Child Support Guidelines

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

www.attorneygeneral.jus.gov.on.ca/english/family/divorce/support/

Amount: General Guidelines

- **General Guideline Tables** show:
 - the table that applies to the province
 - how many children will receive support
 - the payor's annual gross income (based on three most recent income tax returns)
 - minimum monthly payment amount for incomes up to \$150,000/year
 - appropriate amount for remaining income above \$150,000/year

Child Support Table

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

Amount: Special or Extraordinary Payments

- **Special or Extraordinary Expenses** (also called s.7 expenses)
- Agreement or Court order may add 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, in proportion with each parent's income

Amount: General Guidelines

Other factors:

- does another parent (biological, step-parent) have a duty to pay support
- parents share time raising child (40/60% or 50/50%), may reduce amount
- each parent has responsibility for one of several children, may reduce amount
- undue hardship
 - If difficult to pay, or to care for the child, under the guidelines

Amount: General Guidelines

Other factors:

- undue hardship (continued)
 - the standard of living of both parents' household is compared
 - new partners and their income are considered
 - family income, debt, other children are considered

<http://canada.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/guide/step8-etap8.html>

Scenarios

3. Arlene and Sari have been partners for five years. Arlene gave birth to a baby boy two years ago, and Sari is his adoptive mom.

Sari loves the baby but says Arlene has changed. Sari has decided to move out. They are talking about Arlene raising the baby, and Sari will see him every other weekend.

But Sari says, “there’s no way I’m helping you support him, you’re getting to raise him. And besides, you make twice as much as I do!”

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Ensuring a Fair Amount of Child Support

Ensuring a Fair Amount

- **Child Support is based on (and the Court requires):**
 - paying parent's financial statements
 - receiving parent's financial statements if asking for s. 7 expenses, or support higher than guideline amount
- **financial statements include:**
 - income tax returns
 - Revenue Canada Notice of Assessment
 - statement of earnings from employer
 - business owner financial statements

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**" or assign income to the payor to determine amount of support



Scenarios

4. Rosemary left Julian and went to a women's shelter with her kids, after years of yelling and physical abuse. She is now seeking custody and child support.

She knows Julian makes a lot of money in business, but she thinks he makes lots of private deals and doesn't think he is honest on his income taxes.

She doesn't know how to get a fair amount of child support, based on his real earnings.



Enforcing Payment of Child Support

Enforcing Payment of Support

- **Ontario Family Responsibility Office (FRO)**
 - ensures payment of child and spousal support
 - must be in a Court order
 - Court orders automatically filed with FRO
 - private agreements must be filed with the Court (at any time)
 - paying parent sends money to FRO
 - FRO pays the receiving person



Enforcing 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 (a right to its value) on property
 - taking money from a bank account

Enforcing Payment of Support

- **FRO can:**

- get driver's license suspended
- affect credit rating for loans
- get passport cancelled

- **FRO can help:**

- across Canada
- in Unites States
- other countries with agreements with Ontario

- **Contact FRO:**

24-Hour Automated Information Line
416-326-1818 (Toronto)
1-800-267-7263 (toll free)

www.mcass.gov.on.ca/en/mcass/programs/familyResponsibility/Contact/payor_recipient.aspx

Scenarios

5. George and Rachel separated a year ago and they still fight every time they have contact. He makes everything as difficult as possible for her.

She is living on her own with their kids and he takes the kids out once in a while. She has been telling him for months that she needs money for the kids, and the law says that he has to pay. But he hasn't. She doesn't know what to do.

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Additional Resources

Starting the Process

Online Basic Information

Ministry of the Attorney General

www.attorneygeneral.jus.gov.on.ca/english/

- 1-800-518-7901 (toll free)
- 1-877-425-0575 (TTY)

Child Support

www.justice.gc.ca/eng/pi/fcy-fea/sup-pen/index.html

Family Law Information Program (FLIP)

www.legalaid.on.ca/en/getting/flip.asp

Family Law Information Centres (FLICs)

www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

www.legalaid.on.ca/en/contact/contact.asp?type=flsc

Family Law Education for Women (FLEW)

www.onefamilylaw.ca/en/resources/

Ontario Women's Justice Network (OWJN)

www.owjn.org

Starting the Process

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

www.justicenet.ca/professions
- Law Society of Upper Canada Lawyer Referral Service
 - www.lsuc.on.ca/with.aspx?id=697
 - 416-947-3330 (Toronto)
 - 1-800-268-8326 (toll free)
 - 416-644-4886 (TTY)

Starting the Process

Community Legal Clinics

- can refer to services; may do some family law
www.legalaid.on.ca/en/contact/contact.asp?type=cl

Toolkit for a good Client-Lawyer Relationship

schliferclinic.com/vars/legal/pblo/toolkit.htm

- Barbra Schlifer Commemorative Clinic

See FLEW Webinars:

- Where to Look for a Family Law Lawyer
- Your Day in Family Court: How to Prepare and What to Expect

www.onefamilylaw.ca/en/webinar/

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

Resources

Legal Aid Ontario

www.legalaid.on.ca/en/getting/default.asp

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

Assaulted Women's Helpline

www.awhl.org

- 416-863-0511 (Toronto)
- 1-866-863-0511 (toll free)
- 1-866-863-7868 (TTY)

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

Online guide to estimate child support amount

www.MySupportCalculator.ca

Resources (General)

Ontario Courts

www.ontariocourts.on.ca/

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

Ontario Court Locations

www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario