

SOME QUESTIONS AND ANSWERS ABOUT CHILD SUPPORT

In Canada, while a child is growing up, both parents have a responsibility to help pay for the needs of their child. If parents decide to end their relationship, they will have to make a plan for raising their child, such as where the child will live, and how the child will be taken care of.

When parents are not living together, then the parent who looks after the child most of the time has a legal right to get money from the other parent, to help pay for the child's needs. This money is called "Child Support".

All parents living with their children in Canada have the right to apply to the Courts for child support. If you came to Canada with your spouse or partner, or to join that person here, you may be worried about whether you will be allowed to stay in Canada if the two of you stop living together. And you may wonder about how that could affect your child. If you are concerned about your immigration status, it is important to talk to an immigration lawyer.

Here is a sample situation to think about:

Sari and her partner stopped living together a year ago. Their 3-year old child lives with Sari. She has a job, and is working hard to make a new home for them. Her partner is not giving her any money since they separated. He said, if their child is going to live with her, then she would have to pay for all of the child's needs. She is having a hard time paying for all of their expenses, and she wants to know if she would be able to get some money from the child's father to help.

QUESTION 1: I want to find out more about getting money for my child from the other parent. What is that money called?

ANSWER 1: A payment of money from one parent to the other parent, to help pay for the things that their child needs while the child is growing up is called "Child Support". The money might help pay for food, clothing, a place to live, school supplies and toys, and may also help pay for special classes, activities, or daycare.

Q2: How often can I get this money?

A2: Child support is usually paid every month until the child grows up. This is usually until the child turns 18 years old, or while the child is a full-time student getting a college or university degree. If the child is disabled and needs financial support, the payments may continue for longer.

Q3: When can I get child support?

A3: When parents stop living together, they have to decide where the child will live, and who will look after and raise the child. The child might spend some time with each parent. But if one parent begins to look after the child most of the time, that parent usually has the legal right to get child support payments from the other parent.

Q4: Which parent will get child support?

A4: If your child lives with you most of the time, the child's other parent will probably have to pay you child support. The law says that if the child lives with you 60% of the time or more, that is most of the time.

Q5: I have heard of child custody. Is that the same thing as child support?

A5: No, child custody and child support are different.

A parent who has custody of a child has the legal right to make the important decisions in the child's life, such as which school the child will attend, whether the child will have religious instruction, and if the child is sick, whether the child will take medicine or have an operation.

One parent may have custody, or both parents may share custody of the child.

No matter who has custody, if one parent ends up looking after that child for most of the time, that parent usually has the right to get child support. This is because the parent who spends more time raising the child is spending more money for the child's care.

The important thing is who the child lives with most of the time.

That is the parent who has the legal right to get child support payments from the other parent.

Q6: Do I have to be divorced to be able to get child support?

A6: No. You do not have to be divorced to have the right to get child support. If you have separated and you are not living with the child's other parent, that is when you will decide where the

child will live, and how each parent will be involved in the child's life. The money arrangements to make sure the child is cared for happen at the same time. The parents can agree, or they can go to Court for an order about these arrangements, whether or not they get a legal divorce.

Q7: What if I was never married to my child's other parent? Can I still get child support?

A7: Yes. A child has the right to get financial support from both parents, and it does not matter if the parents are married or ever got married. Both parents have to help pay for a child who is growing up. This is true even if the parents never lived together, and even if a parent never spends any time with the child.

Q8: How can I get child support?

A8: You and the other parent can agree on your own about who will pay child support, and how much the payments will be. There are government Guidelines about what is a reasonable amount. The Guidelines take into account the earnings of the parent who is paying child support, and how many children that person has to support.

It is a good idea to write down your agreement. Before you sign the agreement, it is important to talk to your own family law lawyer, to make sure the agreement is good for you.

Q9: What if I think the other parent will yell at me or bully me?

A9: If you think the other parent will bully you, or if there has been abuse in your relationship, it is a good idea to talk to a family law lawyer about child support or any agreement at the end of your relationship. Even if you think your agreement is reasonable, it is a good idea to show it to a lawyer, to make sure it is fair to you.

If you and the other parent cannot talk fairly and agree on child support payments, you can go to Family Court, and the Court will make an order about who gets child support, and what amount. If you are also getting divorced, you can ask the Court to make a child support order at the same time.

Q10: If we agree on our own about child support and we don't go to Court, will our agreement be legal?

A10: If you write out your own agreement about child support, and you want it to be legal, then both parents should sign the

agreement, put the date, and have someone else sign to say that they watched or “witnessed” the two parents sign the agreement. Then you or your lawyer can take the agreement to Family Court so that it becomes an Order from the Court. That way, you can legally force the other parent to follow the agreement.

Q11: How much money will my monthly child support payment be?

A11: The amount of your child support payments will depend on different factors. The other parent’s annual income is important. So is the number of children that the person has to support. There are also different amounts suggested for each province and territory, because the cost of living varies in different parts of the country.

The Courts will usually order that child support payments will be the basic amount in the Guidelines for where you live. But there are some other factors that can affect the amount of child support that a Court can order.

Some factors that can affect the amount of child support are:

- If both parents spend almost an equal amount of time raising their child, then the amount of child support may be reduced.

- If there are several children, and each parent has one or more of the children most of the time, this may affect the amount of child support.
- If there are special expenses for a child's education or health, this may increase the amount of child support, but both parents may have to share some of this special expense.
- If the parent paying child support has a very high income, child support payments may go up.

For example, think back to (woman #2)'s situation. She is the one who is looking after her child most of the time. She will probably get the Guideline amount. The cost of daycare might increase that amount, but she and the child's father may have to share that cost. If the father has a very high income, the amount of child support might go up.

When there are many factors to consider, it is a good idea to talk to a lawyer about what the law says a fair child support payment would be.

Q12: What if I think I should get more child support?

A12: If you think you should get more money for child support, you and the other parent might agree. It is important to write down any agreement about child support payments. Both parents should sign it, and have another person witness it, which means

they sign to say they saw each of you sign. It is a good idea for you or your lawyer to file the agreement with the Family Court, so that you can legally force the other parent to follow the agreement.

If your partner will not agree to change your child support payments, or you made an agreement with your partner about child support and you don't think it is fair, a family law lawyer can give you advice about your legal options.

If you already have a Court Order for child support, you may be able to ask the Court to change or "vary" the Order. The Court will only change an Order for child support if there has been a significant change in your situation.

Q13: What kind of "significant change" could affect child support payments?

A13: These are some common examples of significant changes that could increase your child support payments:

1. If you are looking after the child most of the time, and the paying parent has started to make a lot more money, the Court may increase your child support payments.
2. If you are looking after the child most of the time, and child's special needs start to cost more, such as medical expenses, or

special education, then the paying parent may have to pay more to help with these increased costs.

3. If the amounts in the government Guidelines go up, you can apply to the Court to get the increase. If the Guideline amounts increase, your payments will not go up automatically. It is a good idea to check with a family law lawyer every few years, to find out if the child support Guidelines have changed.

There may be significant changes for the paying parent that could decrease the amount of child support you get. For example:

1. If the paying parent loses their job, or their income drops, they can apply to pay less child support.
2. If the other parent starts looking after the child for more of the time, that could affect child support.
3. If the paying parent has started to support more children, they could ask to pay you less child support. The Court will compare all of the income in the household of both parents. If either parent has a new partner, this may affect the amount of child support.

Q14: What if the other parent says they don't have enough money to pay child support?

A14: The law says that the parent who has to pay child support has to give full information about their finances to the other parent, and the Court.

In some cases, if the paying parent has very limited income to live on, they may not have to pay child support.

If you don't think the other parent is telling the Court everything about the money they have, or is not working full-time when they could be, it is important to tell your lawyer, or the Court.

The Court can look at the way they are living, and make an estimate about their finances. The Court can also look at how much money the person used to earn, and whether there are jobs they could be doing. The Court can use this information to make an order for child support.

Q15: What if the other parent refuses to pay child support?

A15: If you do not have an agreement or Court Order for child support, then going to Family Court is how you can get an Order for the other parent to pay child support.

If you already have a Court Order for child support, it will be on file with the Ontario Family Responsibility Office (FRO). The FRO is a

government office that collects the child support payments from the parent who has to pay, and sends it to the other parent.

If the paying parent refuses to pay, then the Family Responsibility Office can do many things, including taking money directly from the paying parent's salary at work, or a bank account. The FRO can also take money from government payments that would go to the paying parent, such as a pension, tax refund, or employment insurance benefits. The FRO can also take away a Driver's License or Passport, until the parent starts making child support payments again.

Q16: If I don't get my child support payments from the other parent, can I stop them child from seeing our child?

A16: No. If the other parent has the legal right to see the child, because you share custody of the child, or because the other parent has the right to visit the child (which is called "access"), the law says that the parent must be able to see the child. You cannot stop this because you are not receiving child support payments. You can only stop the child from visiting the other parent if you are afraid for the child's safety. If you do this, it is important to talk to a lawyer right away.

CONCLUSION

it is always a good idea to talk to a family lawyer if you want to leave your partner, or if the relationship with your child's other parent has ended. You should ask about child support and what your rights and options are.

You should also know that there is a greater risk of violence when an intimate relationship is ending. If you are in immediate danger, you can call the police at 911.

You can find more information on the Family Law Education for Women (FLEW) website, and you can contact the South Asian Legal Clinic of Ontario (SALCO) for more support.

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