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Education for Women  
Women's Right to Know

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Le droit de savoir

# Child Support

*This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, it is recommended that you get legal advice as soon as possible to understand your options and to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem". You may find it helpful to view our webinars Looking for a Family Law Lawyer and about Child Support on our website at [www.onefamilylaw.ca](http://www.onefamilylaw.ca).*

A child has the right to financial support from both parents. If you and the other parent do not live together, you must share the costs of caring for your child.

Parents must financially support their child in most cases, even if:

- they do not live with the child;
- they do not see the child, except in rare cases where the child has rejected the parent for no good reason;
- they are not married to the other parent; or
- they never lived with the other parent.

If the child lives with you most of the time, this is called the child's **primary residence**, and you are entitled to **child support** from the other parent. You are the **recipient** and the other parent is called the **payor**. If the child lives most of the time with the other parent, then you have to pay child support for your child.

The payor can be a birth parent or an adoptive parent. A step-parent who has acted as a parent may also be required to pay child support.

## **How to get child support**

You and your child's other parent can make your own arrangements about child support. It is a good idea to put your agreement **in writing**, with the **date**. Each parent must sign it, each in front of a separate person called a **witness**. It is best if each parent gets a lawyer to look at the agreement, and then file it with the Court.

If you cannot agree about the amount, if your relationship with the other parent is or was abusive, if the agreement breaks down, or if the child lives with you for some of the time and you need child support, you can ask the Court to make an Order for child support. In all of these situations, it is a good idea to talk to a lawyer.

## **How long must a parent pay child support?**

Child support must be paid as long as the child is still a dependant. In most cases, this means at least until the child turns 18. The payor parent may have to keep paying child support after the child turns 18, if the child cannot support herself because she is sick, or has a disability, or is a full-time student. Children over 16 are no longer dependants if they get married or leave home.

The parent living with the child most of the time is entitled to receive child support, even if that parent remarries or starts to live with someone else.

## **How does the Court decide the amount of child support?**

The federal and provincial governments decide the basic amounts that payor parents should pay for child support. The amounts are based on the cost of living in each province. These amounts are calculated based on the **Child Support Guidelines** which say how much must be paid.

The **Child Support Table** in the Guidelines is used to determine the basic amount of support to be paid. There is a different Table for each province and territory. In most cases, the Court will use the amounts in the Child Support Table, for Court Orders dealing with child support.

The Table that applies is usually based on where the payor lives in Canada. For example, if both parents live in Ontario, the Ontario Table applies. If the payor lives in another province or territory, the Table for that province or territory applies. But if the payor lives outside of Canada, and the other parent who is caring for the child lives in Ontario, the Ontario Table applies.

The basic amount that a payor must pay is based on:

- the payor's **gross annual income**. This means how much income the payor had before he or she paid any taxes or made any deductions, and
- how many dependant children the payor is responsible for supporting.

If the payor is self-employed or has their own business, it might not be obvious how much the payor makes. The payor might subtract a lot of expenses from their income or not pay themselves a lot so that their income seems lower than it really is. If the payor is self-employed, you have a right to ask for more information about their income, including information about their business.

In many cases, the Court will order the payor to pay the basic amount from the Guidelines. However, in certain cases, the Court will order an amount that is different from the Guidelines, such as:

- when support payments are made for a child who is over 18;
- if a child spends almost the same amount of time with each parent;
- if there are multiple children of the relationship, and both parents have at least one child living with them, or;
- if the payor has a very high annual income.

In these cases, the Court will look at your family's situation. The amount of support may be based on the income of both parents and what the child needs.

You may also be able to get extra child support for **special or extraordinary expenses** such as fees for day care or child care, some extracurricular and educational expenses, or health care costs that are not covered by a private or government health insurance plan. What is and is not a special expense can vary depending on the parents' incomes and the

child's needs, so it is a good idea to talk to a lawyer about these additional expenses.

If your child has special expenses, you and the other parent must share the cost. The amount that each of you will pay depends on your income.

In rare cases, the Court may reduce the basic amount of support. The Court will only do this if the payor parent can prove that the Guideline amount would cause them **undue hardship**. This means that parent would not be able to pay for their own living expenses. For example, the Court could reduce the amount of support if the payor has a disability or has to pay support for other dependants.

Before a claim for undue hardship is accepted, the Court will look at the income of **every member** of both households to compare the standards of living in **each household**. This means that if you or the other parent has remarried or is living with a new partner, the Court will take that into account.

When filing income tax returns, the payor cannot claim the amount of child support as a tax deduction. You do not have to declare child support payments you receive as income.

### **Can a support agreement or Court Order be changed?**

If you and the other parent have an existing agreement and you both agree that the amount of child support should change, you can sign a new agreement. If you

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and the other parent cannot agree about changing the existing agreement, either of you can ask the Court to make an Order to change the child support.

If you have a Court Order already, you have to ask the Court to change the amount of child support or any other terms in the existing Order. This is called **varying the child support Order**.

The Court will only change the amount of support if the situation has changed a lot, for example, if the payor's income has increased or decreased, if the child's living arrangements have changed, or if there are new special expenses.

Another reason the Court might change the amount of support is if new Guidelines become law. Child support amounts in an existing Order or agreement based on the previous Guidelines do not change automatically when the law changes.

If the new Guidelines would change the amount of child support you receive, you will have to ask the Court to vary the child support Order. If you are receiving child support, it is a good idea to check every few years, to find out if there are new Child Support Guidelines. A family law lawyer can help you with this.

## **Your rights and responsibilities**

When you apply for child support, you have rights and responsibilities.

## **1. The right to information about the payor's finances**

If you apply for, or are receiving, child support, you have the right to know the truth about the payor's finances. This is called **financial disclosure**.

You need this information to make sure that the payor is paying the right amount of child support. The law says that the payor must give you information about their income every year if you ask for it.

Sometimes, the payor parent does not cooperate, and may:

- not give you the information you ask for; or,
- choose to be unemployed or work in a job that does not pay much money, to avoid having to pay child support.

If this happens, you will have to convince the Court that the payor could earn more but chooses not to. Then the Court can estimate what it thinks their income is or should be. This is called **imputing** an income to the payor parent. The Court can use the imputed income to decide how much child support you should get.

## **2. Parents on Social Assistance**

In 2017, the Ontario government introduced new rules about child support for parents who are on social assistance (Ontario Works (OW) or Ontario Disability Support Program (ODSP)).

If you are getting social assistance payments, you can keep both the money from OW or ODSP and your full child support payment. The government used to pay less social assistance if you were getting or could get child support. That is not the rule any more, but you still have to report that you are getting child support payments if you are also getting social assistance payments.

Payor parents on social assistance are still expected to pay some child support, as set out in the Guidelines. The payor may be expected to pay child support, even if their annual income seems very low.

The Ontario government sets a limit, and a parent who earns less than the limit does not have to pay child support. You can ask at a social assistance office or ask a lawyer how to find out if your partner is below the limit for paying child support.

### **How are support orders enforced?**

Orders for child support in Ontario are enforced by the **Family Responsibility Office (FRO)**. The FRO is a provincial government office. Every Court Order for child support is automatically filed with the FRO. The support **recipient** has to **consent** to stop the FRO from enforcing your support Order.

If you and your ex-partner have an agreement about child support and want the FRO to enforce it, you have to file the agreement with the Court first. Then you can contact the FRO to find out how to make sure they will enforce it.

## How does the FRO work?

When a support Order is filed with the FRO, the other parent must send all child support payments to the FRO. Once the FRO gets the money, it sends it to you.

The FRO has many files. Because the office is so busy, you may have to wait several months after you file the Order before you will start to receive child support money. If the FRO does not have information about the payor's income or other property, it could take longer for you to start receiving payments.

## What happens if the payor does not pay?

Sometimes, the payor is late or misses a payment. Here is what the FRO can do to collect the money:

- If the payor is working, the FRO can order the payor's employer to take money for support payments from their wages and send it to the FRO. This is called **garnishing wages**.
- If the payor is unemployed or self-employed, the FRO can try to take money from the payor's bank account. This is called **garnishing an account**. The FRO can also put a **lien** on personal property such as a car or home. If the payor tries to sell this property, the FRO will get the money the payor owes, to pay you.
- If the payor is always late or owes a lot of money in child support, the FRO can try to force payment by reporting the payor to the Credit

Bureau, suspending the payor's driver's license and passport, or even by putting them in jail.

- The FRO can take money that the government owes the payor, such as a tax refund or employment insurance benefits, to make child support payments.
- The FRO can report the payor to the Credit Bureau for not making support payments. If the payor has not made a child support payment in six months or more, and the FRO has not been able to find the payor, it can post personal information about the payor on a website about non-paying parents. The FRO will get consent from the recipient parent before doing this.

## **Special Rules for Indigenous Communities**

If the payor parent is a Status Indian under the federal *Indian Act*, in some situations the federal law limits how the FRO can enforce a Court Order for child support:

- If the recipient (child or partner) is a Status Indian but the payor is not a Status Indian, the FRO can still apply all of the rules to try to enforce a child support Order.
- If the payor is a Status Indian but the recipient (child or partner) is not a Status Indian, then the FRO can only apply the rules to property that is owned off-Reserve or money earned off-Reserve. The FRO cannot force payment

from any property on, or income earned on, a Reserve. The FRO can still enforce support Orders in other ways, such as reporting the payor to the credit bureau, suspending their driver's licence and passport, and putting them in jail for not paying child support.

It is important to know that you **cannot** deny the payor parent access to your child for being late or not paying child support. You can only refuse to let a parent see their child when they have that legal right, if you are afraid for your child's safety -- in that situation, you should get help right away. You can speak to a lawyer about your options. In an emergency, call the police at 911.

## **What if the payor doesn't live in Ontario?**

The FRO can help you collect support if the payor parent lives anywhere in Canada or the United States. This is because all of the provinces and the states have signed agreements that allow the FRO and similar offices in other provinces and states to enforce child support Orders across these boundaries. Ontario also has agreements with some other countries including Bermuda, Ghana, Hong Kong, the United Kingdom, and many countries in Europe.

If the payor parent lives in a country that does not have an agreement with Ontario, the FRO cannot help you enforce the child support Order unless you have information that the payor parent has income or property in Ontario. Otherwise, the only way you can collect support is to use the laws of the country where the payor lives. To do this, a lawyer may be able to help.

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*There is a greater risk of violence when an intimate relationship is ending. If you are in immediate danger, call 911. If you or someone you know is at risk, visit the FLEW website for information on getting support.*

*If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.*

*You can find more information on how to access services in French on our website at [www.onefamilylaw.ca](http://www.onefamilylaw.ca) or [www.undroitdefamille.ca](http://www.undroitdefamille.ca).*

## Family Law topics available in English\*

1. Alternative Dispute Resolution and Family Law (ENG 001)
2. Child Protection and Family Law (ENG 002)
- 3. Child Support (ENG 003)**
4. Criminal and Family Law (ENG 004)
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)
12. Spousal Support (ENG 012)

*\* Booklets are available in multiple languages and formats. Please see [www.onefamilylaw.ca](http://www.onefamilylaw.ca) for more information. You can also find additional materials on the website to help you understand your family law rights.*

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