

Child Support and Spousal Support

Booklet for Indigenous Women
FAMILY LAW FOR WOMEN IN ONTARIO

All Women.
One Family Law.
Know your Rights.

2019



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 want to view our webinars on “Looking for a Family Law Lawyer”, “About Child Support and Spousal Support”, as well as other family law topics. All these resources are available on our website. You can also listen to an audio recording of this booklet on www.onefamilylaw.ca.

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CHILD SUPPORT

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 another 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.

In these situations, you may want to go to Court, and ask the Court to make an order for child support:

- if your relationship with the other parent is or was abusive;
- if you and the other parent cannot agree about the amount of child support;
- if your agreement with the other parent for

child support breaks down, and

- if the child lives with you for some of the time and you need child support.

In all of these situations, it is a good idea to talk to a lawyer.

If you self-identify as First Nation, Metis or Inuit, Legal Aid Ontario may be able to give you free legal advice on family law issues. You can get information by calling 1-800-668-8258, at no charge.

How long does a parent has to pay child support?

A parent has to pay child support 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 childcare, 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.

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 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 the payor parent's income is or should be. This is called imputing an income. 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.

- If you are on ODSP, the new rule started on January 1, 2017.
- If you are on OW, the new rule started on February 1, 2017.

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 minimum, and a parent who earns less than the minimum amount 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 minimum limit for 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. If a parent has the legal right to see their child, you can only refuse to let that parent see the child if you are afraid for the 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.

SPOUSAL SUPPORT

Spousal support is money that a person pays to their spouse when their relationship ends. Spousal support is meant to help the spouse who has a lower income.

The person who pays support is called the payor. The person who gets support is called the recipient spouse.

Spousal support can be a one-time lump sum

payment or a regular payment such as once a month. Support can be for a set period of time or it may not have an end date.

When you and your spouse separate, you can make your own agreement about support. It is a good idea to put your agreement **in writing**, with the **date**. Each parent must sign it, each in front of another 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, or if your agreement breaks down, you can ask the Court to make an order for spousal support. In all of these situations, it is a good idea to talk to a lawyer.

If you self-identify as First Nation, Metis or Inuit, **Legal Aid Ontario** may be able to give you free legal advice on family law issues. You can get information by calling 1-800-668-8258, at no charge.

If your family does not have a lot of money, it may be difficult to get an order for spousal support.

The law requires that **child support must be paid first**. The Court will only consider your request for spousal support if your spouse has enough money left over after child support has been paid.

Who can ask for spousal support?

You can ask for spousal support if you were married to your partner. You can also ask for spousal support if you and your partner lived together without marrying, if you meet the definition of a “common-law” spouse under Ontario law.

Here is how the Family Law Act defines a common-law spouse:

- you and your spouse have lived together for at least three years; or,
- you and your spouse were in a steady relationship and you have a child or have adopted a child.

Your spouse can be any gender.

Why do Courts award spousal support?

When relationships end, one of you may be better off financially than the other.

This may be because of how you shared responsibilities during the relationship.

For example, if you stayed home to raise children, you may not have earned as much money as your spouse. You may have taken a low-paying job so that your spouse could study to get a higher-paying job. It may also be because one of you is sick or older and unable to work and therefore has a higher level of need.

In these circumstances, the Courts may decide that your spouse must help support you for some time after the relationship ends. This doesn't mean that you do not have to take any steps to support yourself. The Courts expect you to work towards becoming financially independent to the best of your ability.

The law lists things that Courts should think about when they decide whether you should get support. Here are some things courts must consider:

- how long you and your spouse lived together or were married;
- what each of you contributed to the relationship;
- whether you had any orders or agreements about support, for example a domestic contract.

Your partner's behaviour usually does not impact whether or not they will have to pay you support, or the amount of support they will have to pay. For example, if your spouse cheated on you, this does not affect how the Courts decide spousal support.

If your partner was bullying or abusive, the Court only takes this into consideration if it impacts your ability to become self-supporting. The Court may increase the amount and length of time of spousal support in cases of partner abuse.

What do Courts consider when they award spousal support?

Here are some things the law says Courts should

consider when they decide how much support your spouse should pay you:

- how much each of you owns and can earn;
- how long you were married or lived together;
- your and your ex-spouse's age and health;
- how much you can contribute to your own support;
- whether your spouse is able to pay support;
- how long it could take before you can support yourself, and how much it would cost;
- what things you did that made it possible for your spouse to have a career now;
- whether either of you needs to stay home with a child;
- what kinds of child care each of you was responsible for during the relationship;
- how your ability to earn an income was affected by your responsibilities in the relationship.

If you apply for spousal support, you have the right to know the truth about your ex-spouse's finances. This is called full financial disclosure.

How much will the spousal support be?

In the past, the law about spousal support was not very clear. Family Courts across Canada made many different decisions about when it should be ordered, how much it should be and how long it should be paid. To try to make the law more consistent, the federal government created the Spousal Support Guidelines (SSG).

These Guidelines list a range of dollar amounts for support that people should get, in different circumstances. The amounts depend on things like how long you were together, how many children you had, what kind of work each of you did, and how much each of you earned.

The Guidelines are not law, but most lawyers and judges use them to help decide what amount of support is reasonable.

Even though the Guidelines suggest amounts of spousal support, sometimes the Court will order a

different amount, if it feels the Guidelines do not apply to your situation.

The Guidelines may not apply if:

- the relationship was very short;
- the payor makes a lot of money;
- you or your partner has unusual financial circumstances;
- one of you has a long-term disability.

Spousal Support and Social Assistance:

If you are on social assistance (Ontario Works or Ontario Disability Support Program), you have to report to the social assistance office if you are getting spousal support payments. Usually, the amount you get from spousal support is taken out of your social assistance payments.

You may also have to try to get spousal support from your partner, if you apply for social assistance. This rule may not apply to you, if your partner has been abusive or violent towards you or your child. If you are in this situation, it is a good idea to talk to a family law lawyer.

HOW ARE SUPPORT ORDERS ENFORCED?

Orders for child and spousal support in Ontario are enforced by the **Family Responsibility Office (FRO)**. The FRO is a provincial government office. Every Court Order for 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 or spousal support, you can choose to file a copy with the FRO, for help with getting your support payments.

How does the FRO work?

When a child or spousal support Order is filed with the FRO, the payor must send all child and spousal support payments to the FRO. Once the FRO gets the money, it sends it to you. This is true for everyone living in Ontario.

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 or spousal 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?

If the payor is late or misses a payment, the FRO can try to collect the money. If the payor is working, the FRO can order their 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 their bank account. This is called **garnishing a bank 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 missed support payments, 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 a support payment.

The FRO can also 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 person, it can post personal information about the payor on a website about non-paying parents. The FRO will get consent from the support recipient before doing this.

Special rules for Indigenous communities

The FRO is set up under Ontario law. The federal law called the Indian Act has special rules for some Indigenous communities that affect rights and re-

sponsibilities for property, taxes and income.

In some situations, the federal law limits how the FRO can enforce a Court Order for child or spousal support:

- If the recipient (child or partner) and the payor are Status Indians under the Indian Act, then the FRO can apply all of the rules to try to enforce child and spousal support Orders.
- 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 child and spousal support Orders.
- 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 support.

What if the payor doesn't live in Ontario?

The FRO can help you collect support if the payor parent lives anywhere in Canada. This is because all of the provinces have signed agreements that allow the FRO and similar offices in other provinces to enforce child support Orders across these boundaries.

Ontario also has agreements with some other countries including the United States, Bermuda, Ghana, Hong Kong, the United Kingdom, and many countries in Europe. However, different states and countries may have different rules regarding what types of enforcement can be used on which income and property.

If the payor parent lives in a country that does not have an agreement with Ontario, the FRO cannot help you enforce a 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.

It is important to remember that you **cannot** deny a payor parent access to your child for being late or not paying a support payment. If a parent has the legal right to see their child, you can only refuse to let that parent see the child if you are afraid for the 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.

Other resources for Indigenous women:

The Ontario Native Women's Association
www.onwa.ca

Talk4Healing -- a hotline for Indigenous women who need support Phone: 1-855-554- HEAL (no charge)

The Healing Journey – Family Violence Resources for Indigenous Women in Ontario
<http://www.thehealingjourney.ca/inside.asp?321>

Legal Aid Ontario -- If you self-identify as First Nation, Metis or Inuit, Legal Aid Ontario may be able to give you free legal advice on family law issues. You can get information by calling 1-800-668-8258, at no charge.

You can dial 211 for resources in Ontario, including northern Ontario, such as shelters for Indigenous women in Ontario.

For more information about family law for Indigenous Women, visit our website at www.onefamilylaw.ca.

We call upon the earth, our planet home, with its beautiful depths and soaring heights, its vitality and abundance of life and together we ask that it – Teach us and show us the way.

We call upon the mountains, the Cascades, and the Olympics, the high green valleys and meadows filled with wild flowers, the snows that never melt, the summits of intense silence, and we ask that they – Teach us and show us the way.

We call upon the forests, the great trees reaching strongly to the sky with earth in their roots and the heavens in their branches, the fir and the pine and the cedar, and we ask them to – Teach us, and show us the way.

We call upon the creatures of the fields and forests and the seas, our brothers and sisters the wolves and deer, the eagle and dove, the great whales and the dolphin, the beautiful Orca and salmon who share the Northwest home, and we ask them to – Teach us, and show us the way.

We call upon all those who have lived on this earth, our ancestors and our friends, who dreamed the best for future generations, and upon whose lives our lives are built, and with thanksgiving, we call upon them to – Teach us, and show us the way.

And lastly, we call upon all that we hold most sacred, the presence and power of the Great Spirit of love and truth which flows through all the universe, to be with us to – Teach us, and show us the way.

-Chinook prayer Ceremony

You may also view our other FLEW booklets for Indigenous women on our website at www.onefamilylaw.ca:

1. Alternative Dispute Resolution
2. Child Protection
3. Child and Spousal Support
4. Custody and Access
5. Marriage and Divorce
6. How Property is Divided in Family Law
7. Criminal and Family Law

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 or www.undroitdefamille.ca.

Family Law topics available in English*

1. Alternative Dispute Resolution and Family Law
2. Child Protection and Family Law
3. Child Support
4. Criminal and Family Law
5. Child Custody and Access
6. Domestic Contracts
7. Family Law Arbitration
8. Family Law Issues for Immigrant, Refugee and Non-status Women
9. Finding Help with your Family Law Problem
10. How Property is Divided in Family Law
11. Marriage and Divorce
12. Spousal Support

*these booklets are available in multiple formats and languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.

Project Advisory Committee:

Ontario Federation of Indian Friendship Centers
Thunder Bay Indian Friendship Center
Nishnawbe Aski Legal Services
Native Women's Association of Canada

This project was made possible by:

flew Family Law
Education for Women
Women's Right to Know

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droit de la famille
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 Ontario
Funded by the Government of Ontario
Financé par le gouvernement de l'Ontario

 The Law
Foundation
of Ontario



The views expressed in these materials are the views of FLEW and do not necessarily reflect those of the Province. While financially supported by the Law Foundation of Ontario, the content of this publication does not necessarily reflect the views of the Foundation.