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FAMILY LAW FOR WOMEN IN ONTARIO



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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, get legal advice as soon as possible 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" on our website at www.onefamilylaw.ca.

Children have the right to financial support from both of their parents. If you and the other parent do not live together, you must share the costs of caring for your children.

If you have physical custody of your children (they live with you most of the time), you are entitled to **child support** from their other parent. This person is called the

payor. The payor can be a biological 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. If you cannot agree about the amount, or if the agreement breaks down, you can ask the court to make an order for child support. If you have physical custody and need to get child support, talk to a lawyer.

How long must a parent pay child support?

Child support must be paid as long as the child is still dependent. In most cases, this means at least until the child turns 18.

Children under 18 are no longer dependent if they get married or leave home. 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, has a disability or is a full-time student.

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 called the **Child Support Guidelines**. They were updated in 2006. Courts must use the Child Support Guidelines for all applications for child support.

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

- the payor's **gross income**. This means how much income they had before they paid any taxes or made any deductions, and
- how many dependent children the payor is asked to support in that application.

The courts do not have to use the Child Support Guidelines if:

- the child is over 18;
- the child spends at least 40% of her time with each parent, or;
- there are multiple children of the relationship and each parent has a child living with them.

In these cases, the court will look at your family's situation. The amount of support will be based on the income of both parents and what the children need.

In many cases, the court will order the payor parent to pay the basic amount from the Guidelines. However, you may be able to get extra child support for **special expenses** such as fees for day care and education or unusual health care costs. If your child has special expenses, you and the other parent must share the cost. The amount 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 him **undue hardship**. This means that he would not be able to pay for his own living expenses. For example, the court could reduce the amount of support if the payor has a disability or if he is paying support to other dependents.

Can I change the amount of support in the order?

If you and the other parent agree that the amount of child support needs to change, you can sign a new agreement. If you cannot agree on a new amount, either of you can ask the court to change the existing order. This is called **varying the child support order**. You can ask the court to change the amount of child support, or change the terms of the existing order.

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

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 child support, you have the right to know the truth about your partner's finances. This is called **financial disclosure**. You need this information to make sure that the payor is paying the right amount of support. The law says that the payor must give you information about his income every year and that you do not need to ask for it.

Sometimes, the payor parent does not cooperate. He 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, just so he does not have to pay child support.

If this happens, the court can estimate what it thinks his income is or should be. This is called **imputing** an income to the payor parent. The court will use the imputed income to decide how much child support you should be paid.

2. Parents on Social Assistance

If you are on **social assistance** (*Ontario Works or Ontario Disability Support Plan*) you must still try to get support from the other parent. If you do not, your social assistance may be cut or cancelled. If you are receiving

social assistance, every dollar you get in child support will be deducted from the amount of social assistance you get each month.

If you do not have a support order, the government can apply for support on your behalf. You will be expected to cooperate with the application. The government can choose not to apply for support if they cannot find the other parent or if you were abused by the payor parent and there is concern for your safety.

Payor parents on social assistance are still expected to pay some child support if their annual income is more than \$6,700.

Who enforces the orders?

Orders for child support 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. If you and your partner have an agreement about support, you can file a copy with the FRO for enforcement.

How does the FRO work?

When a support order is filed with the FRO, the other parent must send all 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 the support money.

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 his employer to take support from his wages.
- If the payor is unemployed or self-employed, the FRO can try to take money from his bank account. This is called **garnishing** his account. The FRO can also put a **lien** on his personal property such as a car or home. If he tries to sell this property, the FRO will get the money the payor owes.
- If the payor is always late or owes a lot of money in child support, the FRO can try to force him to pay by suspending his driver's licence and other kinds of licenses such as hunting and fishing licenses. It can cancel his passport. It can also take money the

government owes him such as a tax refund or employment insurance benefits.

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 FROs to collect support orders across these boundaries. Ontario also has agreements with some other countries including Bermuda, Ghana, Hong Kong, the Czech Republic and the United Kingdom.

If the payor parent lives in a country that does not have an agreement with Ontario, the FRO cannot help you enforce the support order. The only way you can collect support is to use the laws of the country where the payor lives.

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*

■ Working with Your Lawyer (ST)

1. Alternative Dispute Resolution and Family Law (ST 001)
2. Child Protection and Family Law (ST 002)

3. Child Support (ST 003)

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

** This booklet is available in multiple formats. 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.*