



All Women. One Family Law.  
Know your Rights.

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

**fodf** Femmes ontariennes et  
droit de la famille  
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 also find it helpful to view our webinars "Looking for a Family Law Lawyer" and "Financial Support After Breakup – What Women Should Know About Spousal and 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 even if:

- they do not live with the child;
- they do not see the child;
- they are not married to the other parent; or
- they never lived with the other parent.

If you have physical custody of your child (the child lives with you most of the time), you are entitled to **child support** from the other parent. You are the **recipient** and the other parent is called the **payor**.

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, and get both parents to sign it. It is best if each parent gets a lawyer to look at it, and to 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 dependent. 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 dependent if they get married or leave home.

The parent with physical custody is entitled to receive child support even if she 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 parent with custody 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 dependent children the payor is responsible for supporting.

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 will 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 and education or unusual health care costs. 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 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.

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 he pays 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 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 his income every year and that you do not need to ask for it unless you have agreed otherwise.

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, 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 his 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 receive.

## **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 child 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 and there is concern for your safety.

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 his annual income seems very low.

### **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 child support is automatically filed with the FRO. If you and your ex-partner have an agreement about child support, you can choose to file a copy with the FRO, to make sure it is followed.

### **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.

## 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 money for support payments from his 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 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 license and/or cancelling his passport. It can also take money that the government owes him such as a tax refund or employment insurance benefits, to make child support payments.

You **cannot** deny the payor parent access to your child because he is late paying child support or behind in his payments. You can only refuse to allow access if you are afraid for your child's safety and 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 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 child support Order. 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.



• *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.*

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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).*

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## 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)

*\* This booklet is available in multiple formats and languages. 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.*

