

Your spouse's behaviour has nothing to do with whether or not he will have to pay you support or the amount of support he will have to pay.

How does the court decide on the amount of 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 own and can earn
- how long you were married or lived together
- your age and your 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 the career and income he now has
- 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 partner's finances. This is called full **financial disclosure**.

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 Department of Justice created the **Spousal Support Guidelines (SSG)**.

The SSG list the most and least amount of support 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 support is reasonable.

HOW ARE SUPPORT ORDERS ENFORCED?

Orders for child support and spousal support are enforced by the **Family Responsibility Office (FRO)**. The FRO is a

This project was made possible by:

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

fodf Femmes ontariennes et
droit de la famille
Le droit de savoir

Funded by: / Financé par:
Ontario



The views expressed in these materials are the views of the Ontario Native Women's Association (ONWA) and FLEW and do not necessarily reflect those of the Province.

This brochure is made possible by Family Law Education for Women (FLEW), a public legal education project funded by the government of Ontario. FLEW's goal is to provide information to women about their family law rights in Ontario. FLEW has also produced materials on the following topics: Family Law Arbitration, Domestic Contracts, and Family Law Issues for Immigrant, Refugee and Non-status Women. For information about materials available in other languages and formats, please see visit www.onefamilylaw.ca and www.undroitdefamille.ca.

provincial government office. Every court order for support is automatically filed with the FRO. If you and the payor 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 payor 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 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 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 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.

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Child and Spousal Support



CHILD SUPPORT

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 can not 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.

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 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**

“Grandfather Great Spirit fill us with the light. Give us the strength to understand, and the eyes to see. Teach us to walk the soft earth as relatives to all that live.”

- Sioux prayer

disclosure. To make sure the amount of support is correct, you have the right to full financial disclosure from the payor parent once a year.

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.

SPOUSAL SUPPORT

Spousal support is money that one spouse pays to the other one when their relationship ends. Spousal support is meant to help the poorer spouse. The person who pays support is called the **payor**. The person who gets support is called the **dependent 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.

Spousal support affects your taxes. If you pay spousal support, you can use the support as a tax deduction. If you receive spousal support, you have to report the money you receive as taxable income.

When you and your spouse separate, you can make your own agreement about support. You do not need lawyers to write this agreement. If you cannot agree, or if your agreement breaks down, you can ask the court to make an order for spousal support.

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 the 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 a man or a woman.

Why do courts award spousal support?

When your relationship ends, one of you may be better off financially than the other. This may be because of how you shared responsibilities during the marriage. 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.

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.

When do courts award spousal support?

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