

## Separation and Divorce

# Child Support





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## What is child support?

Parents who do not live together sometimes have an arrangement where a child lives most of the time with one parent. This arrangement can be in writing or not. If it is in writing, it is usually included in a “separation agreement” or “court order”.

The parent the child lives with most of the time usually has most of the expenses of raising the child. The other parent must help with those expenses by paying money to the parent the child lives with.

This is called child support. The parent who pays child support is called the “payor” parent.

## Who must pay child support?

Every parent has a legal duty to support their dependent children to the extent that they can. For more information about who is a dependent child, see [page 15](#). A parent can be the birth mother or father, an adoptive parent, or sometimes a step-parent.

A step-parent is someone who has treated their spouse's children as members of their own family. It does not matter if the spouses were legally married to each other or living common-law. But the more time that has passed since the step-parent had an ongoing relationship with the child, the less likely it is that the court will order the step-parent to pay child support. This is especially true if their social and emotional relationship with the child has ended.

More than one parent could have a legal duty to pay child support for the same child. For example, if a child's birth parent and step-parent separate, the other birth parent and the step-parent might both have to pay support for the child.

A biological father has a legal duty to support his child financially. This is true even if he was never married to, lived with, or had an ongoing relationship with his child's mother. If a man denies that he is the biological father, a court can give him a chance to have a blood or DNA test to find out. If he refuses, a court may assume that he is the biological father.



## How do you arrange for child support to be paid?

Some parents are able to work out a support agreement on their own. They can use the Child Support Guidelines to see how much support a judge might order. There is more information about the Child Support Guidelines later in this booklet.

It is a good idea for one of the parents to get a lawyer to put the agreement in writing and the other parent to get a different lawyer to check it. That way each parent can make sure it says what they meant, and that it protects their rights and their children's rights.

Some parents need help to work out a support agreement. They can go to a family mediator who will help them work out an arrangement they can both accept. Because a mediator cannot give legal advice, it is best for each parent to take a copy of the agreement

to their own lawyer before they sign it. Then the signed agreement should be filed with the court.

Many courthouses provide mediation services. For more information call the Ontario Association for Family Mediation at **1-800-989-3025** or visit their website at [www.oafm.on.ca](http://www.oafm.on.ca).

Parents who cannot agree about support payments should get legal help. Each parent should hire a separate lawyer. The lawyers may be able to negotiate support terms that both parents accept. If not, they can go to court and ask a judge to decide. The judge will make a court order saying how much child support must be paid.

For more information about getting legal help, see [pages 21 to 24](#).

## **How is child support determined?**

The amount of child support is based on the Child Support Guidelines unless the parents agree to something different.

Parents who reach an out-of-court agreement about support do not have to apply the Guidelines. But they should look at the Guidelines before deciding how much support will be paid. If they do not apply the Guidelines, their agreement should say why not. If the court is later asked to consider the amount of support, the judge can change the amount to reflect the Guidelines.



## How are basic child support amounts calculated?

### Table Amount

The Child Support Guidelines have a Child Support Table for each province and territory. The Table shows the monthly amounts of support to be paid, based on the “gross income” of the payor parent and the number of children the support is for. Gross income means before taxes and most other deductions. It is usually the amount on line 150 of the parent’s income tax return.




In simple cases, the Table determines how much money will be paid. In more complicated cases, the Table is used as the starting point for deciding the amount of support.

The Child Support Table for each province and territory is different. If both parents live in Ontario, the Ontario Table applies. If the payor parent lives outside of Canada and the other parent in Ontario, the Ontario Table applies. If the payor parent lives in another Canadian province or territory, the Table for that province or territory applies.

To get a copy of the Child Support Table for Ontario call **1-888-373-2222**. Or visit the Department of Justice Canada’s website at [www.justice.gc.ca/eng/pi/fcy-fea](http://www.justice.gc.ca/eng/pi/fcy-fea) and click on “Federal Child Support Amounts: Simplified Tables” to find a Table for each province and territory. You will also find an online tool on the

site called “Child Support Online Lookup” that will calculate the amount for you.

Here are some examples of monthly child support payments for the Simplified Table for Ontario:

Income per year	 1 child Support payment per month	 2 children Support payment per month	 3 children Support payment per month
\$10,000	\$28	\$61	\$66
\$12,500	\$76	\$165	\$178
\$18,000	\$156	\$281	\$380
\$30,000	\$270	\$444	\$598
\$40,000	\$367	\$601	\$773
\$50,000	\$462	\$753	\$986

Sometimes a judge will not accept what the payor parent says their income is. Instead, the judge may use an amount of income that is reasonable based on things such as the parent’s work history, past income, and education.

The judge will then apply the Table to that income. A judge might do this if the parent:

- fails to provide the required income information,
- is unemployed or underemployed on purpose, or
- is self-employed or working “under the table”, and there is reason to believe they do not report all of their income.

## **Are there some expenses not covered by the Table amount?**

Parents who pay support may also have to contribute toward certain expenses in addition to the amount shown in the Table. These are called “special” or “extraordinary” expenses. Here are some examples:

- the cost of child care needed for the other parent to go to work or school or because of that parent’s health needs,
- medical and dental insurance premiums for the child,
- health-related expenses for the child, such as orthodontic, prescription drug, therapy, or hearing aid costs,
- the cost of school or educational programs to meet the child’s particular needs,

- expenses for post-secondary education for the child, and
- the child's extracurricular activities, such as sports or music lessons, that will not be covered by the Table amount.

The court will look at whether the expense is necessary for the child's best interests and whether the amount of the expense is reasonable. If the parents used to live together, the court will also look at the spending pattern of the family before separation.

If the expense is necessary and reasonable, the parents usually share it in proportion to their gross incomes. This means that the incomes of both parents will be considered. If a child makes a contribution toward their own expenses, it will be deducted before the expense is divided between the parents.

## **When will the child support payments be different from the Table amount?**

The following are some situations where the amount of support might be different from the Table amount:

### **Step-parents**

The court may order a step-parent to pay an amount that is different from the Table amount if there is also another parent with a duty to support the child.

## **Shared custody**

If each parent has the child at least 40% of the time, the Child Support Guidelines say there is “shared custody”. In this situation, the amount of support paid might be less than the Table amount because it is assumed that both parents are paying for the child’s ordinary expenses.

The Guidelines do not tell the judge how to figure out how much time is spent with each parent. It is up to the parent who claims to have shared custody to prove that the child is with them at least 40% of the time. What counts is the actual time the child spends with each parent, not what the separation agreement or court order says.

The Guidelines do not say how to calculate support in a shared custody situation, so it is difficult to know in advance what a judge would decide. It is a good idea to get advice from a lawyer first.

First the court will figure out the Table amount for each parent based on their gross income and subtract the smaller amount from the larger amount. The remaining amount is called the “set off”.

Then the court considers the additional costs of a shared custody arrangement. For example, the parent who the child spends less time with may also have costs for shelter, bedding, and clothing for the child.

The judge can also look at the situation of each parent, including whether they live with a new spouse who shares expenses, or have other dependants to support. The judge can consider all of this information when they set support amounts for shared custody.

## **Split custody**

Sometimes one or more children will live with each parent. When this happens, each parent has to pay support according to the Guidelines for any children living with the other parent. The parent who has to pay the higher amount must pay the difference to the other parent.

“Shared custody” and “split custody” are terms used in the Child Support Guidelines to refer to the amount of time a child spends with each parent. They are not related to “sole custody” and “joint custody” which only refer to the right to make decisions about a child. For more information about sole custody and joint custody, see CLEO’s booklet called **Separation and Divorce: Child Custody, Access, and Parenting Plans**. See the [back cover](#) to find out how to order it or view it online.

## **Medical and dental insurance**

When medical and dental insurance is available to one parent through work or at a reasonable rate, the court may order that parent to get or continue coverage for the child. This is in addition to any other support that parent might be providing.

## **When can the court order child support without applying the Guidelines?**

The only times the court can order amounts without applying the Guidelines are when:

- both parents agree, and the judge thinks the arrangements made for child support are reasonable, or
- the judge thinks that the Guideline amount would be unfair because there is some special arrangement that benefits the child.

## **What information is needed to determine child support?**

The payor parent is required to provide detailed information about their income within 30 days after a support application is made. If the income of the other parent is also considered when determining support, that parent must provide the same information.

Examples of information that must be provided include:

- income tax returns,
- statements of earnings from employers,
- financial statements if the parent owns a business, and
- notices of assessment and reassessment.

If support is ordered by the court, the parent who had to provide financial information must update this information if the other parent asks. The other parent can only ask for an update once a year.

If support is included in a separation agreement, it is a good idea for the parent receiving support to make sure the agreement says the other parent must update their financial information each year.

## **How is child support enforced?**

An Ontario government office called the Family Responsibility Office (FRO) can enforce support payments. The court automatically files all support orders with the FRO. Separation agreements can also be filed there if they have been filed with the court. The FRO tells the payor parent to make all support payments to the FRO. When the FRO receives a payment, it sends a cheque to the other parent, or deposits the money directly into that parent's bank account.

If any payments are missed, the FRO takes action to enforce the order or agreement. To do this, the FRO needs up-to-date information about the payor parent. This includes their full name, address, social insurance number, place of employment or business, income, and any property they own. The parent receiving support puts this information on a "Support Deduction Information Form" which is available at the



court. This form is given to the FRO along with the support order or agreement. It is important to update this form whenever the information changes.

Sometimes parents receiving support withdraw from the FRO because it is easier to receive payments directly from the other parent. But if there are problems later and they want to re-file with the FRO, they might have to pay a fee.

The FRO has different ways to collect unpaid support from the payor parent. It can:

- have the payments automatically deducted from their wages or other income (for example: sales commissions, Employment Insurance, Workers' Compensation, income tax refunds, severance pay, and pensions),
- register a charge (a lien) against their personal property or real estate,
- take money from (garnish) their bank account, or garnish up to half of a joint bank account that they have with someone else, or
- make an order against anyone who is helping them hide income or assets that should go toward support.

The FRO can also put pressure on parents who do not make their support payments by:

- suspending their driver’s licence,
- reporting them to credit bureaus so that it will be difficult for them to get loans, or
- cancelling their passports.

The FRO can help collect money from a payor parent who lives in Canada, the United States, or another country that Ontario has an agreement with. If Ontario does not have an agreement with the country where the payor parent lives, the FRO cannot help you collect support.

The FRO cannot change the amount that the order or agreement says the payor parent has to pay. If either parent thinks that a change in the situation justifies a change in the support amount, they can try to get a new agreement or go to court to try to get the support order changed.

To contact the Family Responsibility Office, visit their website at [www.mcsc.gov.on.ca/mcsc/english](http://www.mcsc.gov.on.ca/mcsc/english) and click on “Family Responsibility Office”, or call:

Toll-free..... **1-800-267-7263**  
Toronto area ..... **416-326-1818**  
TTY ..... **1-866-545-0083**

## How long does child support continue?

Child support must be paid as long as the child remains dependent. A dependent child is any child under the age of 18 unless:

- the child has married, or
- the child is at least 16 years old and has “voluntarily withdrawn from parental control”.

A child who is 18 or older may also be considered dependent if they cannot support themselves because:

- they have a disability or illness, or
- they are going to school full-time. (This usually continues until the child turns 22 years old or gets one post-secondary degree or diploma, but a judge may order support to continue even longer.)



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When the judge decides how much support should be paid for a child who is 18 or older, they take into account any earnings or income the child receives from other sources.

Child support continues even if the parent receiving it gets married or starts to live with someone else.

## **When can a parent apply for child support?**

Parents who have their children living with them after separation can apply for child support at any time. Usually they apply right after they separate. They often apply for custody and child support at the same time. It is usually best to deal with these matters as early as possible.

Sometimes parents do not want or need child support at first. They can apply for child support later when the need occurs.

## **Is it possible to get retroactive child support?**

Yes. It is possible to get child support for a period of time before the application for support was made. The court will consider:

- why the application for support was delayed,
- the behaviour of the payor parent,

- the child’s circumstances in the past and in the present, and
- whether awarding support retroactively will cause hardship.

Generally, the court will limit the retroactive support to the past 3 years, unless the payor parent acted in a blameworthy way.

## Can a parent be stopped from seeing their children if they do not pay child support?

No. The law usually gives parents “access” to their children if they do not live with them. Access is also a right of the child. Access can be limited or refused only if the parent’s behaviour is likely to harm the child. The law assumes that it is usually good for a child to have a relationship with both parents.

Access and child support are separate issues. A parent cannot be denied access to their child because they have not paid child support. And a parent might still have to pay child support even if they do not have access. For more information see CLEO’s booklet called **Separation and Divorce: Child Custody, Access, and Parenting Plans**. See the [back cover](#) to find out how to order a copy or view it online.

## How are child support payments taxed?

The parent who receives child support is not taxed on it. The parent who pays child support cannot deduct the payments from their taxable income. This is different from how spousal support is taxed.

## What about parents on social assistance?

Parents on social assistance who have their children living with them must try to get support from the other parent. If they do not make reasonable efforts, they may get less assistance or none at all.

If they do not already have a support agreement or order, they usually are expected to get one. They must give information about the other parent to a family support worker who can help them get a support agreement or order. They should get legal advice before signing any agreement worked out on their behalf.

They may not have to try to get support if the other parent:

- has a history of violence toward them or their child,
- cannot be found (but they must give their worker any information they have that might help find the other parent), or
- is not working and cannot afford to pay support.

In most cases, the amount of child support they get will be deducted from their social assistance.

Usually, the child support payments go directly to them, and the same amount is deducted from their monthly social assistance cheque. But if there is a history of the payor parent missing payments, the child support payments can be “assigned” to go directly to Ontario Works (OW) or the Ontario Disability Support Program (ODSP). Then the parent receiving support will get their full social assistance cheque without deductions for support, even when the support payments are missed.

For more information see the CLEO publication, **Support payments when you are on social assistance**. See the [back cover](#) to find out how to order a copy or view it online.

Payor parents on social assistance are expected to pay child support according to the Child Support Guidelines. The Guidelines do not require support payments from parents whose income is less than about \$10,820 a year.

## How can a support agreement be changed?

If both parents agree, they can make a change to the agreement or make a new agreement. The changed agreement or new agreement must be dated, signed by both parents, and signed by a witness. It should be

filed with the court where the original agreement was filed, and then mailed to the FRO. If it is not filed with the court, the FRO cannot enforce the new support amount.

If the parents cannot agree about changing the agreement, then either parent can go to court and ask the court to make an order about support. If you do go to court to change an order, the judge will almost always apply the Child Support Guidelines.

## **How can a support order be changed?**

A court order can also be changed, but only by the court. Either parent can ask the court that made the original order to change it. Unless the other parent agrees, the court will do this only if there has been a significant change in circumstances. For example, if:

- the payor parent's income has gone up or down,
- the child has withdrawn from parental control, or
- the child has moved from one household to another.

A change in the income of the parent receiving support is usually not a reason to change the order. This is because that parent's income is not usually taken into account when support is set.



## Finding a lawyer

The Law Society of Upper Canada has a directory of all lawyers who are licensed to practice law in Ontario. Make sure the lawyer you hire has experience with family law. The Law Society also has a Directory of Certified Specialists who focus on family law.

The Law Society Referral Service can give you the name of a lawyer in your area who can give you a free consultation for up to 30 minutes. There is no charge for this referral service.

Visit the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca) and click on “**Find a Lawyer or Paralegal**”, or call them at:

Toll-free..... 1-800-268-8326

Toronto area ..... 416-947-3330

## What if I cannot afford a lawyer?

You may be able to get help from Legal Aid Ontario. Legal Aid Ontario helps low-income people get legal assistance through a broad range of services. You must be financially eligible to receive most of these services. Call Legal Aid Ontario to find out if you are eligible. Legal Aid Ontario also offers many services over the phone. You do not have to meet any financial requirements for general information and referrals.

Visit their website at [www.legalaid.on.ca](http://www.legalaid.on.ca) or call them at:

Toll-free..... 1-800-668-8258

Toll-free TTY.....1-866-641-8867

Toronto area (accepts collect calls).... 416-979-1446

Toronto area TTY ..... 416-598-8867

Legal Aid Ontario offers the following family law services:

- **Family Law Information Centres**

The Ministry of the Attorney General has established a Family Law Information Centre in every courthouse that deals with family law. All of the Centres have free pamphlets on topics such as separation and divorce, court procedures, and family mediation. Many of the Centres have staff who can give information and make referrals to community agencies and legal services.

Advice lawyers from Legal Aid Ontario are available at some locations at certain hours. An advice lawyer can give general information on family law matters free of charge. If you are financially eligible, the advice lawyer may be able to give you legal advice for your specific case. To find a Family Law Information Centre in your area, call Legal Aid Ontario.

- **Family Law Service Centres**

At Family Law Service Centres, if you are financially eligible, you can receive help with documents, legal representation, and referrals to other types of services. These centres are located in Toronto, North York, Newmarket, Brampton, Chatham, and Sarnia. It is important to use the centre in the region where your court case is located.

- **Family Law Offices**

There are two family law offices in Ontario: one in Ottawa and one in Thunder Bay. If you are financially eligible, the lawyers and paralegals at these offices can help with issues including custody, access, support, child protection, and restraining orders.

- **Family duty counsel**

If you do not have a lawyer, duty counsel may be able to give you immediate advice about family law issues and basic court procedure. Services are available in most court locations in Ontario. You must be financially eligible for duty counsel assistance. Duty counsel can give advice, speak to the court on your behalf, or help you negotiate a settlement.

- **Family Law Information Program**

The Family Law Information Program is an online resource available on the Legal Aid Ontario website. This program is designed to help you to make informed decisions about legal issues and practical family issues.

- **Summary legal advice**

You may be able to get free advice about your family law issue from a lawyer for up to 20 minutes. This service is only provided over the phone. You do not meet the lawyer in person. You must be financially eligible to receive summary legal advice. Call Legal Aid Ontario to find out if you are eligible.

- **The certificate program**

If you are financially eligible, you can apply for full representation for your case by a lawyer through Legal Aid Ontario's certificate program. Legal Aid Ontario provides certificates to cover the cost of lawyers. Certificates are reserved for the most serious legal matters, such as domestic violence, child protection, or complex family law cases. Your case must qualify to receive representation.







**This booklet gives only general information.  
You should get legal advice about your own  
situation.**

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