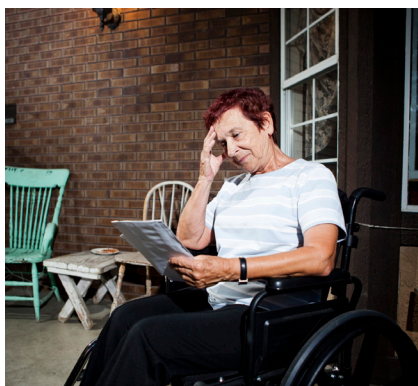


Separation and Divorce

Spousal Support



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What is spousal support?

Spousal support is money paid by one spouse to the other after they separate or divorce.

Spousal support is almost always paid by the spouse with the higher income to the spouse with the lower income. The gender of the spouses does not matter.

Who can get spousal support?

Both married and unmarried (common-law) spouses may be able to get spousal support, or may have to pay spousal support. If the spouses are not married, they must have lived together as a couple:

- for at least 3 years, or
- for any length of time if they were in a relationship of “some permanence” and had a child together.

What is spousal support for?

The purposes of spousal support are to:

- recognize a spouse's contributions to the relationship,
 - share the financial costs of caring for a child,
 - relieve financial hardship,
 - help a spouse become able to contribute to his or her own support, or
 - correct any economic advantage or disadvantage to a spouse caused by the relationship or the relationship breakdown.
- For example, if a spouse gave up their job to care for the children, they may not be able to become self-supporting right away.

In most situations, spouses are expected to try to become self-supporting as soon as possible.



How do you get spousal support?

Spousal support can be negotiated and agreed on by the spouses and written into a separation agreement. This is often done along with other issues such as child support, parenting arrangements (custody and access), and property division.

Lawyers and mediators can help the spouses reach an agreement. But if the spouses cannot agree, a judge or arbitrator can decide.

There is more information about these topics in other publications in CLEO's Family Law Series. See the [back cover](#) of this booklet to find out how to order copies or view them online.

How do judges decide on spousal support?

A judge may decide that one spouse must pay support because of his or her ability to pay and the other spouse's financial need. Or the reason may be to compensate the other spouse for unpaid work that he or she did during the relationship.

If the judge decides there should be spousal support, the judge must then decide the **amount** of support and for **how long** it must be paid. The judge will take into account things such as:

- the length of the relationship,
- whether there are children and what arrangements have been made for them,
- the roles the spouses played during the relationship,
- the age of each spouse, and
- each spouse's financial situation.

The judge may also consider the Spousal Support Advisory Guidelines (SSAGs).

What are the Spousal Support Advisory Guidelines?

The Guidelines have been used since 2008 to help people decide how much spousal support should be paid and for how long. They are only guides, but they are often used by lawyers and judges. The Guidelines cannot be used to decide **if** someone should get spousal support or not. That must be decided first.

The Guidelines take many things into account and are quite complicated. When all the information has been gathered and a calculation has been done, the Guidelines will give low, middle, and high ranges of support amounts to consider. This can help the spouses or a judge decide what amount is right depending on the circumstances.



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Can you calculate your spousal support amount yourself?

Until recently, this was very difficult to do without the special software that lawyers and judges use. Now you can go online and use the calculator at www.mysupportcalculator.ca. But this website can do only simple calculations, and takes into account only employment income. So it is usually best to consult a lawyer to be sure you have considered everything and fully understand your spousal support rights or obligations.

Is it possible to get retroactive spousal support?

Depending on the circumstances, it is sometimes possible to get spousal support for a period of time before the application for support was made.

What if a spouse is on social assistance?

Separated spouses on social assistance must try to get any spousal support they might be entitled to. 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 spouse 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 spouse:

- 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 spouse), or
- is not working and cannot afford to pay support.

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

Usually, the 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 spouse missing payments, the support payments can be “assigned” to go directly to Ontario Works (OW) or the Ontario Disability Support Program (ODSP). Then the spouse 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.

How is spousal support paid?

Spousal support is usually paid each month, but sometimes it can be paid in a “lump sum” (all together).

How are spousal support payments taxed?

Monthly spousal support is taxable for the spouse receiving support (the “recipient”) and tax deductible for the spouse paying support (the “payor”). This is different from how child support is taxed.

But if the support is paid all at once in a lump sum it is not taxable for the recipient and the payor cannot claim it as a tax deduction.

How is spousal support enforced?

A provincial 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 spouse to make all support payments to the FRO. When the FRO receives a payment, it sends a cheque to the recipient spouse, or deposits the money directly into the recipient'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. This includes their full name, address, social insurance number, place of employment or business, income, and any property they own. The recipient 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 recipient spouses withdraw from the FRO because it is easier to receive payments directly from the other spouse. 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. 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 spouses 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 you collect money from a payor 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 lives, the FRO cannot help you collect support.

The FRO cannot change the amount that the order or agreement says the payor has to pay. If either spouse 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 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 spousal support continue?

Some agreements or orders set a date when support payments will end, and some do not. If no end date is set, support continues unless the agreement or order is changed.

Spousal support does not automatically end if the recipient spouse remarries or starts living with someone.

How can a support agreement be changed?

If both spouses 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 spouses, 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 spouses cannot agree about changing the agreement, then either spouse can go to court and ask the court to make an order about support.

How can a support order be changed?

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

- the payor's or recipient's income has gone up or down,
- the arrangements about the children have changed, or
- the judge thinks that the recipient should now be self-supporting.

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 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 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 TTY416-598-8867

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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