

The Family Law Series

**Child
Support
and the
Child
Support
Guidelines**

This booklet has two sections:

Child Support

Questions and answers - **pages 1-16**

The Child Support Guidelines

Questions and answers including the rules to calculate the amount of support - **pages 17-31**

What is child support?

All dependent children have a legal right to be financially supported by their parents. When parents live together with their children, they support the children together.

Parents who do not live together often have an arrangement in which a child lives most of the time with one parent. That parent is said to have custody of the child. This arrangement can be written in a separation agreement or court order (sometimes called legal custody), or not (sometimes called “de facto” custody).

Either way, the parent with custody has the main responsibility for the day-to-day care of the child. Therefore that parent has most of the ordinary expenses of raising the child. The other parent must help with those expenses by paying money to the parent with custody. This is called child support.

Who is considered a parent?

A parent can be the birth mother or father, an adoptive parent, or a step-parent. A step-parent is anyone who has been married to someone with children, or who has lived as a couple with

someone with children, and who has shown an intention to treat those children as members of his or her own family.

Who pays child support?

All parents have a legal responsibility to support their dependent children to the extent that they can. A parent with custody has most of the day-to-day expenses of child-raising, and is entitled to receive child support from the other parent.

The parent with custody is entitled to child support even if he or she remarries or starts to live with someone else.

The amount of child support is usually set according to the Child Support Guidelines. These are explained in more detail starting on [page 17](#) of this booklet.

More than one parent can have a legal duty to pay child support for the same child. For example, if a parent with custody of a child separates from their marriage or common-law spouse who is not the child's birth parent, both the child's other birth parent and the step-parent may have a legal duty to pay child support.

A biological father has a legal duty to support his child financially even if he has never been married to, or lived with, the child's mother. This is true even if he never had an ongoing relationship with the mother. If a man denies that he is the biological father of a child, the court can order him to have a blood test to determine whether or not he is.

How long does child support continue?

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

- the child has married, or
- the child is 16 years of age or over and has voluntarily withdrawn from parental control.

Child support might also continue after a child turns 18 years of age if the child is unable to be self-supporting because he or she:

- has a disability or illness, or
- is still going to school full-time. Even if the child is not living at home while going to school, as long as the child's primary residence is with the parent with custody,

the parent without custody might have to continue to pay child support. This usually continues until the child turns 22 years of age or gets one post-secondary degree or diploma. In some circumstances, a judge might order support to continue even longer.

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

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 or as part of their divorce application. 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 with custody do not want or need child support at first, but later their situation changes. They can apply for child support when the need occurs, even after a divorce and all other matters arising from the separation have been settled.

But if a step-parent is asked to pay support, 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 support payments. This is especially true if the step-parent's social and emotional relationship with the child has ended.

A parent can apply for custody and support even while living separately under the same roof after their relationship with the other parent is over. But usually the court will not make any order for custody and support until one parent has actually moved out.

How do you arrange for 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 find out how much support a judge would probably order. The paying parent will have to give true and complete information about his or her income.

One parent should get a lawyer to put the agreement in writing. The other parent should get a different lawyer to check it. That way, each parent will be able to make sure the agreement

says what they intended, and that it protects their rights and their children's rights, before they sign it.

Other parents need some help to work out a support agreement. They can go to a mediator who will meet with both of them and help them work out an arrangement that they both can accept. The mediator does not offer legal advice. An agreement reached with the help of a mediator should still be taken to each parent's lawyer before they sign it. Then it should be filed with the court.

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 are acceptable to both parents. If not, they will go to court and ask a judge to decide. The judge will make a court order saying how much child support must be paid.

Parents who cannot afford a lawyer should contact their local legal aid office. If they qualify for a legal aid certificate, Legal Aid Ontario will pay for a lawyer. The parents can still choose their own lawyers as long as the lawyers accept legal aid cases. The legal aid office has a list

of local family law lawyers who accept legal aid cases. Anyone who has trouble getting legal aid should contact their community legal clinic for help. See [page 31](#) of this booklet for contact information.

Can parents be kept from seeing their children if they do not pay their child support?

No. The law assumes that it is usually good for a child to have a relationship with both parents. Keeping a parent from seeing his or her child is considered punishing the child. The law will not punish a child because his or her parent fails to pay child support.

The law gives parents who do not have custody “access” to their children so they can spend time together. Access can be refused or limited only if the parent’s behaviour is likely to harm the child. The courts will not refuse access because the parent does not pay support. And the parent with custody should not refuse access for this reason. There are other ways to get support from a non-paying parent.

How is child support enforced?

Enforcement is done through a provincial government office called the Family Responsibility Office (FRO). The court automatically files all support orders made after July 1, 1987 with the FRO. Separation agreements can also be filed there if they have been filed with the court and then mailed to the FRO. The parent who is to pay support is told to make all support payments to the FRO. When the FRO receives a payment, it sends a cheque to the parent with custody, or deposits the money directly into that parent's bank account. It only does this after it has received the money from the paying parent.

If a payment is missed, the FRO takes action to enforce the order or agreement. To do this, the FRO needs as much up-to-date information about the paying parent as possible. This includes his or her full name, address, social insurance number, place of employment or business, income, and any property he or she owns. The information about the paying parent goes 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.

The FRO uses different ways to get the payments that are owed. It can:

- get the payments directly from the parent who is supposed to pay support,
- have the payments automatically deducted from the parent's wages or other income (other income includes things like sales commissions, Employment Insurance, Workers' Compensation, income tax refunds, severance pay, and pensions),
- register a charge (a lien) against the personal property or real estate of a parent who fails to pay the support that he or she owes,
- garnish (take money from) the bank account of a parent who fails to pay support, or garnish up to 50% of a joint bank account that he or she has with someone else, or
- make an order against another person who is helping a parent hide or shelter income or assets that should go toward support.

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

- suspending their driver's licences,
- reporting them to the credit bureau so that it will be difficult for them to get loans, or
- cancelling their passports.

Once the order or agreement is filed with the FRO, then it is the FRO, not the other parent, that is responsible for any actions taken to enforce it.

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

Parents who have an obligation to pay support should also know that the FRO cannot change the amount that the order or agreement says they have to pay. If they think that a change in their financial situation justifies a reduction in the amount of support they should pay, they must get a new agreement or go to court to get the support order changed.

To contact the FRO call:

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

You can also visit their web site. Go to www.mcsc.gov.on.ca/mcsc/english and click on “Family Responsibility Office”.

How are child support payments taxed?

Parents who receive child support payments under an agreement or court order made after April 30, 1997, do not have to include those payments in their taxable income. Parents who make these payments cannot deduct the payments from their taxable income.

This tax rule does not apply to continuing support paid under agreements or court orders made *before* May 1, 1997. The old rule still applies until the agreement or order is changed. Under the old rule, parents receiving support must pay tax on the amount received, and parents paying support can deduct the payments from their taxable income.

The new tax rule means that more of the support money received by the parent with custody is available to spend on the children. It also means that parents paying child support under an agreement or court order made after April 30, 1997, will have less after-tax income than parents paying the same amount according to an agreement or order made under the old tax rule. Courts take this into account when making new support orders.

Parents who have a support arrangement under the old tax rule may agree that they want the new tax rule to apply. They can do this if they both sign a form called “Election for Child Support Payments (T1157)”, that says they want the amount of support to stay the same but the new tax rule to apply. You can get this form from any tax services office. Or you can call the Canada Revenue Agency (CRA) at **1-800-959-2221** and ask to have a copy mailed to you, or download a copy from their web site at www.cra-arc.gc.ca/forms.

If one parent wants to change to the new tax rule, but the other does not, the parent who wants the change must apply to court to change the existing child support order or agreement. Parents thinking of doing this should be aware

that when the court makes a new child support order or changes an existing order or agreement, it must apply the Child Support Guidelines. The Guidelines are explained starting on page 17 of this booklet.

What about parents on social assistance?

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

If they do not already have a support agreement or order, they 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. Their local community legal clinic, legal aid office, or Lawyer Referral Service can provide free legal advice. See page 31 of this booklet for contact information. Legal aid is not available if the amount of support would probably not be enough to get them off social assistance.

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

- has a history of violence towards 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 (if he or she starts working again, then support can be re-ordered).

The amount of any child support they receive is deducted from their social assistance. So, their total income does not change because of the child support. Usually, the payments go directly to them, and that same amount is deducted from their monthly social assistance cheque. But if there is a history of non-payment, the child support payments can be assigned to Ontario Works (OW) or the Ontario Disability Support Program (ODSP). Then they will get their whole social assistance cheque, even when the support payments are not paid.

Parents on social assistance who *do not* have custody are expected to pay child support to the extent that they can, as set out in the Child

Support Guidelines. Currently, the Guidelines do not require support payments from parents whose income is less than about \$6,700 a year.

Can a support agreement or order be changed?

Yes, if both parents agree, they can simply make the change to the existing agreement or make a new agreement. The agreement must be dated, signed by both parents, and signed by a witness. The new agreement should be filed with the court where the original one 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.

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

- the paying parent's income has gone up or down significantly,

- the child has withdrawn from parental control,
- the child has moved from one household to another, or
- the child has medical expenses.

If the order has not been changed since the Child Support Guidelines became law in 1997, then the fact that the Guidelines are now in effect is also enough reason for the court to consider changing the order.

A change in the income of the parent receiving support is not usually a reason to change the order. This is because, under the Child Support Guidelines, that parent's income is not usually taken into account when support is set. But there are some circumstances in which their income is considered when support is ordered. See pages 22 to 29 of this booklet for more information. In these circumstances, the judge might change the support order because of a change in the income of the parent receiving support.

Remember, if you do go to court to change an order, the judge will almost always apply the Child Support Guidelines. Before applying for a change, find out how the Guidelines would affect you.

What are the Child Support Guidelines?

In 1997, the federal government brought in a set of new rules and tables for calculating the amount of support a parent who does not have custody of his or her child must pay to the parent who has custody. These rules and tables were later adopted by the Ontario government and are set out in the Child Support Guidelines.

When do the Guidelines apply?

If parents go to court to get a child support order, in almost all cases the court must use the Guidelines to set the amount. This is true whether the order is applied for under:

- the Divorce Act by parents who are divorcing, or
- the Family Law Act by parents who were never married, or who were married and have separated but are not getting a divorce.

The Guidelines must also be applied whenever a parent applies to the court to change any support order, even if it was originally made before the Guidelines came into effect.

Parents who reach an out-of-court agreement about support do not have to apply the Guidelines if they do not want to. But they should look at the Guidelines before deciding how much support will be paid. If they do not apply the Guidelines, the agreement should say why not.

Although parents can make their own agreements without considering the Guidelines, if the court is later asked to consider the amount of support, the judge can change the amount to reflect the Guidelines.

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.

In all other cases, the court must apply the Guidelines.

How are basic child support amounts calculated?

The Child Support Table in the Guidelines sets out the amounts of support to be paid, depending on the “gross income” of the paying parent and the number of children that the support order covers. Gross income means before taxes and most other deductions. The amounts to be paid are based on the average amounts of money that parents at various income levels spend to raise a child.

In simple cases, the table alone will determine how much money will be paid. In more complicated cases, the table is used as the starting point.

There is a different table for each province and territory. If both parents live in Ontario, the Ontario table applies. Also, if the paying parent lives outside of Canada and the parent with custody lives in Ontario, the Ontario table applies. But if the paying parent lives in another province or territory, the table for that province or territory is the one that applies. You can get a copy of the Child Support Table for Ontario by phoning **1-888-373-2222**. Or you can visit the Department of Justice Canada’s web site at www.canada.justice.gc.ca/en/ps/sup and click on “Simplified Federal Child Support Tables” to find the table for each province and territory.

The table sets out the amount of support that must be paid at different income levels from \$8,000 to \$150,000, depending on the number of children. A base amount is given for every \$1,000 increase in income, along with a way to calculate amounts in between.

There is also a Simplified Table where you can look up the paying parent’s income to the nearest \$100, without having to do any calculations. Here are some examples from the Simplified Table:

Examples of Monthly Support Payments			
Income	1 child	2 children	3 children
\$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 does not accept a parent's statement of income. Instead the judge uses 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 deliberately unemployed or underemployed, or
- is self-employed or working "under the table", and there is reason to believe they do not report all of their income.

Before the Guidelines came into effect, judges had more flexibility in deciding the amount of support. Now, in simple cases, judges must order the amount shown in the table.

Judges can order different amounts, but only in special cases. And they must use the table amount as a guide. See the following pages for more information.

When can the court set an amount that is different from the table amount?

Special expenses

In addition to the support amount set out in the table, parents who pay support may be required to contribute toward certain added expenses.

These expenses can include:

- the cost of child care needed for the parent with custody to work or go to 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,
- special expenses for a school or educational program to meet the child's particular needs,
- expenses for post-secondary education for the child, and
- in rare cases, special expenses for the child's extracurricular activities.

Before the court orders a parent to pay any of these expenses, or sets the amount of the

payment, the court will consider whether the expense is necessary for the child's best interests. It will also consider whether the amount of the expense is reasonable in relation to the financial resources of the parents and the children. 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 are expected to share it in proportion to their gross incomes. This means that the income of the parent receiving support will be considered, along with the income of the parent paying support. And any contribution the child makes towards his or her own expenses will be deducted before the expense is divided between the parents.

Age of the child

The amounts set out in the table apply to a child under the age of 18. If support is to be paid for a child who is 18 years of age or older, the judge has a choice. Depending on the circumstances, the judge can order the table amount or another amount that he or she thinks is more suitable. If the judge sets an amount different from the amount in the table, he or she must consider

the financial ability of each parent to contribute to the support of the child. The income of the parent receiving support is taken into account, and also the needs and any financial resources of the child.

Different custody arrangements

Shared custody

The amount of support shown in the table is ordered only when the parent with custody has the child most of the time. The more time the parent without custody spends with their child, the more of the ordinary expenses of raising the child they are assumed to be paying. If each parent has the child at least 40% of the time, the Guidelines say there is “shared custody”. When there is shared custody, the amount of support paid to the parent with custody might be less than the amount set out in the table. Shared custody only refers to the amount of time spent with the child. It has nothing to do with which parent has the authority to make decisions about the child. It is not the same as “joint custody”.

The Guidelines do not tell the judge how to figure out how much time is spent with each parent. For example, whether time in school is time with a parent, whether it is the number of

hours, days, overnight stays, or meals that are counted, or whether an overnight stay counts as one day or two days. Different judges have counted time in different ways. But judges do agree that it is up to the parent who claims they have shared custody to show that the child is with him or her at least 40% of the time. Judges also agree that what counts is the actual time the child spends with each parent and not the arrangement described in an agreement or court order.

If the judge finds that a child spends at least 40% of their time with the parent who pays support, that changes the way the amount of support is figured out. Then the judge will look at the gross income of *each* parent and the amount of time the child spends with each parent. The judge can also look at the circumstances of each parent. For example, one parent might live with a new spouse who shares expenses, or they might have other dependants to support. The judge can consider this information when deciding how much support should be paid.

The Guidelines do not provide a formula for setting the amount of support in these circumstances. Different judges have used different methods.

When a child spends a large amount of time with each parent, this can add to the costs of the paying parent without significantly reducing the costs of the parent who has custody. Each parent has to provide shelter for the child. It is difficult for the child to pack up all their belongings when going from one parent to the other. So, each parent may need to have things like bedding, pyjamas, toys and games, and clothes. There may also be extra transportation costs. Judges are to consider these extra costs when they set support amounts for shared custody.

These are some of the things that judges consider when deciding how much support should be paid when each parent has the child at least 40% of the time. The amount of time a child spends with each parent can greatly affect the amount of child support. It is important that parents think about this when they are scheduling time with their children. It is difficult to know in advance how a judge will deal with the questions raised by shared custody. So, it is a good idea to get advice from a lawyer first.

Split custody

Sometimes when parents with more than one child separate, one or more of the children will live with each parent. When this happens,

child support depends on the income of both parents. How much support each parent would owe for any children living with the other parent is figured out according to the Guidelines. The parent who owes the higher amount must pay the difference between the two amounts to the other parent.

Take the example of one parent with custody of two children and an income of \$25,000, and the other parent with custody of one child and an income of \$45,000. According to the table, the parent with the lower income owes the other parent \$211 a month in support for the one child who lives with that other parent. The parent with the higher income owes the other parent \$680 a month in support for the other two children. When you subtract \$211 from \$680, the higher-income parent owes the other parent \$469 a month in child support.

Undue hardship

In certain circumstances, a judge can order an amount that is either higher or lower than the table amount if following the tables would cause undue hardship to one of the parents or to the child.

Some of the circumstances that might be considered to cause undue hardship include:

- travel or other costs make it unusually expensive for the parent without custody to see his or her child,
- one parent has an unusually high level of debt related to supporting the family before separation, and
- the amount of support determined according to the table would make it difficult for a parent to fulfill a legal duty he or she has to support other dependants.

But it is rare for the support amount to be changed because of hardship. Even if the judge finds that the amount set according to the table would cause hardship, it will not be changed unless it would cause the household of the parent claiming hardship to have a lower standard of living than the other household. When comparing the standard of living of the two households, the judge will look at the total income of each household and the number of people in each.

This is the only situation in which the income of people other than the parents (or sometimes the children) is taken into consideration when determining how much support should be paid.

Incomes over \$150,000

When the parent who is to pay child support has an income of more than \$150,000, they must pay the table amount for the first \$150,000. For the additional income, the judge will probably also order the table amount. But in rare circumstances the judge may order a lower amount based on the financial ability of each parent and the means, needs, and circumstances of the children.

Step-parents

The court must consider the Guidelines when setting the amount of support to be paid by a step-parent. But the court must also look at whether there is any other parent. This could be a birth or adoptive parent, or another step-parent. If there is another parent with an obligation to support the child, the court may order the step-parent to pay an amount that is different from the amount set out in the Guidelines.

Medical and dental insurance

When medical or 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.

What information is required?

The parent with the obligation to pay support is always required to provide detailed information about his or her income within 30 days after a support application is made. And if the income of the parent with custody is also to be considered when determining the amount of support, that parent must provide the same information.

After support has been ordered by a court, a parent who was required to provide financial information must update this information at the request of the other parent. But this information cannot be requested more than once a year.

When making a separation agreement, it is a good idea for the parent receiving support to make sure the agreement sets out a similar obligation for the other parent to update their financial information.

Where to get legal help

To find the community legal clinic or legal aid office nearest you, look under “Legal Aid” or “Lawyers” in your phone book. You can also check Legal Aid Ontario’s web site at <www.legalaid.on.ca/en/locate> or phone them:

Toll-free	1-800-668-8258
Toronto area	416-979-1446
Toll-free TTY	1-866-641-8867
Toronto area TTY	416-598-8867

To contact the Lawyer Referral Service call **1-900-565-4577**.

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