

Child Support



**Public Legal Education
and Information Service
of New Brunswick**

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Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a registered charity whose goal is to provide the public with information on the law. PLEIS-NB receives funding and in-kind support from the Department of Justice Canada, the New Brunswick Law Foundation and the New Brunswick Office of the Attorney General. We also wish to acknowledge the contribution to the development of this pamphlet of the New Brunswick Department of Justice and Public Safety and members of the New Brunswick Law Society. Funding for this publication was provided by Justice Canada.

This publication looks at some general questions about child support and provides information on variation and enforcement of support orders. It also outlines the tax rules relating to child support. It provides information for beneficiaries and payers. This pamphlet does not contain a complete statement of the law. Anyone needing specific legal advice should consult a lawyer.

Published by:



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Revised November 2017 ISBN: 978-1-55471-742-2

Rights and Responsibilities

What is child support?

Child support is the money paid by one parent to the other parent for the support of their children. It is used to help cover the costs of raising a child such as feeding, clothing, housing, and otherwise providing for everyday needs. It is the right of the child to have the financial assistance of both parents.

Who can get child support?

Children under the age of majority are always entitled to support whether or not their parents are married. In New Brunswick the age of majority is 19 years. Parents usually deal with support issues after they separate or as part of their divorce application. It is usually the parent that the children live with most of the time who receives child support payments from the other. The parent getting child support is called the *beneficiary*. Although they are two separate legal issues, parents often apply for custody and child support at the same time. It is usually best to deal with these matters as early as possible

Who pays child support?

Biological parents, adoptive parents and sometimes step parents are responsible for contributing to the financial costs of raising their children according to each parent's income. Usually the parent who does not have physical custody of the children pays child support to the other parent for their children's financial needs. The parent paying child support is called the *payer*.



What if one parent does not want to be involved in the child's life or has never been in a relationship with the mother?

A parent's decision not to be involved in his or her child's life does not end the obligation to pay support. For example, 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 the parents never had an ongoing relationship with each other. 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.

Did you know: If you are married, you will not be granted a divorce unless a judge has determined that your child support order or agreement is fair and in accordance with the [Child Support Guidelines](#).

Can someone other than the biological parent be ordered to pay child support?

A "step-parent" may also be liable to pay child support. This includes anyone who has contributed to the support of the child and stood in the place of a parent to that child.

When does the duty to pay child support end?

This depends on the circumstances surrounding the support order or agreement. The duty to pay child support generally lasts until the child reaches the age of majority, which is 19 years of age in New Brunswick. The order may last longer if the child is in a full-time educational program or is disabled. The court may end an order before a child reaches the age of majority if the child gets married or withdraws from parental control.

Calculating Child Support

How is child support calculated?

The basic amount of child support that the beneficiary receives is calculated under the **Federal Child Support Guidelines**.

What are the Child Support Guidelines?

The **Guidelines** are a set of rules and tables which help parents, judges and lawyers determine the basic amount of the child support payments. The Federal Guidelines were adopted by the New Brunswick government. The Guidelines have applied to divorcing parents (under ***Divorce Act***) since May 1997 and separating or unmarried parents (under the ***Family Services Act***) since May 1998. The federal child support tables were [updated on November 22, 2017](#) to reflect more recent tax rules. Prior to that, the [2011 tables](#) applied.

How much child support will I get?

The amount of child support to be paid is based on a percentage of the support paying parent's annual income and the number of children entitled to support. This amount reflects the average spending on children by parents at a similar income level. You can use Justice Canada's "**Child Support On-line Look Up**" to determine the basic amount you might expect to get. You will have to know the annual gross income of the paying parent. You must set the calculator to the province where the payer lives and works even if the children live in another province.

The guidelines protect a basic amount of income for the self support of the payer. For example the tables provide for a low-income level below which a parent pays no support.



What if I don't know the income of the non-custodial parent?

Whenever support is involved, the court will ask each parent to provide one another and the court with financial statements, three years of tax returns, and pay stubs (or income assistance/employment insurance statements) for the last three months. If the parents agree on the amount of support, only one year of tax returns is required. The paying parent will have to give true and complete information about his or her income. If financial statements are not provided when required, a court may simply estimate how much a parent has to pay.

Do the Guidelines consider the income of new partners or spouses?

Generally, the Guidelines do not consider the income of other members of the household such as new spouses or common-law partners. They treat parents' financial obligations toward the children independently. The amount the payer must contribute is set according to his or her own annual income. The situations where the court would look at the income of other household members is when one parent makes an **undue hardship** claim (see below) or if a step-parent is required to pay.

Can the amount of child support differ from the table amount?

Yes. Not all families or children are alike and the amount of child support awarded may be adjusted in certain circumstances. The Guidelines are intended to set a minimum level for contribution. The amount of support may differ from the table amount because of:

- **special expenses** for the child
- court finds that the table amount would cause **undue hardship**

- parent paying support contributes to the special needs or educational expenses of children over the age of majority
- type of custody arrangement involves each parent having custody of a child (**split custody**), or the children spend 40% or more of their time with both parents (**shared custody**)
- support payor's income is over \$150,000 a year
- order or agreement contains special provisions which benefit the children
- parents have negotiated an out-of-court agreement.

What are special expenses?

Special expenses for the child may include child care, medical care, educational costs, post-secondary education or extracurricular activities. The Guidelines recognize that payments can be higher than the table amount if the support payer can afford to contribute to special expenses. These expenses are usually divided between the parents in proportion to their incomes, but you can agree on other arrangements. The support payer's share is added to the basic table amount. Parents can negotiate special expenses out of court. If parents cannot agree, they can ask the Court to decide if the special expenses are necessary and reasonable. The Court would then determine the amount that the payer must contribute.

When might someone claim undue hardship?

If a paying parent feels that the amount of child support ordered by the court would create undue hardship, he or she can apply to the court to reduce it. When one of the parents applies to the court to change a support order based on "undue hardship", the court considers the standard of living of both of the households. It is rare for the court to lower a support order because of undue hardship. Generally, the court only lowers the

amount if the standard of living of the payer's household would be lower than the child's household. Some situations that might justify a finding of undue hardship are:

- an unusually high level of family-related debt.
- significant costs to visit the children, such as travel or accommodation.
- obligations for the support of other children or dependants.


How do custody and access arrangements affect child support?

In most cases, if the child lives with one parent for 60% or more of the time, that parent is entitled to receive child support. This is often the case in sole custody situations. Joint custody does not necessarily mean that the children live an equal amount of time with each parent. However, if both parents have the children for at least 40% of the time, a situation known as "shared custody" or "joint physical custody", it could affect the calculation of child support. As well, the calculation is affected where each parent has one or more of the children living with him/her (split custody) more than 60% of the time in the year. For more information on calculating child support in such situations, see the **Federal Child Support Guidelines: Step by Step**.

Getting Child Support

There are a number of ways that parents can arrange for child support payments. No matter which method you choose, a legal agreement must be in writing, signed by both parties and witnessed. You should file a copy of the agreement with the court so that it can be enforced the same as a court order.

Parental Agreement: Some parents can work out a support agreement on their own. Using



the Child Support Guidelines parents can find out how much support a judge would probably order. One parent can get a lawyer to put the agreement in writing; the other parent should get a different lawyer. Both parents need to know that the agreement protects their rights and their children's rights.

Mediation: 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. Each parent should take the agreement to a lawyer before they sign it.

Legal Advice: 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. Where the parents wish to participate in non-confrontational approach to deal with family law matters, they may seek lawyers who practice collaborative law.

Go to Court: If you still cannot reach an agreement, your lawyers will go to court and ask a judge to decide. The judge will look at the documents filed by both parties and hear verbal evidence, if any. The judge will then make an order fixing the amount of child support. Except in rare cases, the judge **must** follow the Guidelines. If no support is to be paid, the court would dismiss the application.

Parents who cannot afford a lawyer may contact their local legal aid office. If they qualify, the **New Brunswick Legal Aid Services Commission** will handle their case. For more information, go to www.legalaid.nb.ca.

What if the non-custodial parent is unemployed or can't afford to pay much?

Even if a parent or someone who stood in the place of a parent cannot afford to pay much right now, it's important for the custodial parent to get an **order** as soon as possible. In some situations you may have to apply to the court within a certain period of time. You can always apply to vary the order if a **payor's** financial situation improves at some later time.

What if the beneficiary is on income assistance?

Parents on income assistance who have custody of their children are expected to make reasonable efforts to get child support from the other parent. If they don't have an order or agreement, they must give information about the other parent to the Department of Social Development who can help them get a voluntary support agreement. If necessary, the Department can apply to the court for an order. The beneficiary should get legal advice before signing any agreement worked out on their behalf. While they are on income assistance, the support payments will go the Department and the beneficiary will get the regular benefit. Once they are no longer on assistance, the support payment will go directly to the beneficiary.

Filing a Support Order or Agreement with the Court

In New Brunswick, support orders issued by the New Brunswick Court of Queen's Bench, Family Division under the *Family Services Act* or the *Divorce Act* are automatically filed with the



Office of Support Enforcement (OSE) which is part of the New Brunswick Department of Justice and Public Safety.

Beneficiaries and/or payers who do not have court orders and who make their own support agreements (with or without the services of a lawyer) may register these agreements with the Court and then file them with OSE if the agreement meets certain legal requirements.

Opting Out: The person receiving support, the beneficiary, may choose to receive payments directly from the payer instead of using OSE to collect their support. To ensure the support order will not be filed with OSE, the beneficiary must file a ***Notice Not To File A Support Order Form***.

If you live in New Brunswick and have a Canadian order, you can opt into OSE. To do so, you must first file your order/separation agreement with the Court and then file a **Notice to File a Support Order Form** with the OSE. This is also possible for orders from American states or some other countries. Check with OSE if you have questions about a support order made outside of Canada. If the beneficiary lives **outside** of New Brunswick, he or she should contact the office responsible for enforcement of support in his or her area.

How does OSE get the support payments from the payer and into the hands of the beneficiary?

The payer must select a method for sending the support payments to OSE. OSE then sends the payment by regular mail or direct deposit to the beneficiary. OSE does not pay beneficiaries until the due date specified in the support order or agreement. Any overpayments or early payments received by OSE will be credited when future obligations come due.

Enforcement of Support

What if my support payments do not arrive?

If your order is filed with OSE, they will enforce it – even if the payments are coming from someone living in another province. OSE has the authority under federal and provincial laws to use various methods, when necessary, to collect overdue support payments.

Can I stop the paying parent from seeing the children if he/she gets behind in support payments?

No. You cannot deny the other parent access to the child, even if he/she is behind in support payments. OSE will take steps to enforce the order.

How will OSE enforce my support order/agreement?

OSE can use various methods to collect overdue support, including, for example, getting a payment order (commonly known as **garnishment**), reporting a payer to a credit bureau, suspending or revoking a payer's driver's licence (if the payer owes an amount greater than 4 months of support payments), make a payer's family owned corporation liable for support owed by a payer, ask the federal government to suspend, refuse to issue, or refuse to renew the payer's passport or certain federal license (if the payer owes an amount greater than 3 months of support payments).

If necessary, OSE can bring the case to court for a judge or court administrator to decide on additional enforcement action. This is called an **enforcement hearing**. For further information about the enforcement methods available to OSE, check out PLEIS-NB's booklets about the various enforcement methods.

If your order is not part of the provincial enforcement service, you should seek legal advice about how to take enforcement action in court.

Changing a Child Support Order

Who can change an existing child support order?

The custodial parent or the support paying parent, or both, may reopen an existing child support order or agreement to change the amount of support. This applies to orders made under the [Divorce Act](#) and the [Family Services Act](#). Changing a child support order is called a “variation”.

When can a parent change an order or agreement for child support?

Either person may apply to court to vary the order **whenever a change in circumstances would result in a different child support payment based on the Guidelines**. This gives parents a simple way to update support payments. Parents can also renegotiate an agreement when circumstances change, if there are special expenses, or the support payments are causing undue hardship. Either person may also seek to vary an older order or agreement to meet the Guidelines.

How do I get a child support order changed?

There are several ways to change your child support order or agreement:

- The support-paying parent and the custodial parent can agree on a new level of support based on the Guidelines. This can be written up in a new agreement or included in a consent order that is filed with the court.

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- Both parents can agree to use the services of mediator to help them reach a new agreement.
- Parents can seek the assistance of lawyers. They cannot have the same lawyer. If one or both parents meet the financial eligibility requirements and their order was made under the ***Family Services Act***, they can apply to Legal Aid for assistance.
- Either of the parents can apply to the court to change the amount of the award. If you wish to make your own application, you should check out PLEIS-NB's ***Family Law NB*** website at www.familylawnb.ca, or call our toll-free family law information line at 1-888-236-2444.

Income Tax and Child Support Orders

What are the tax rules for child support?

Since May 1, 1997, child support payments made under a court order or agreement are tax exempt for the recipient. The paying parent cannot claim the child support as a tax deduction.



What does Canada Revenue Agency consider as child support payments?

To be considered a child support payment by Canada Revenue Agency (CRA), the payment **must be** payable on a “periodic” basis. That means the payment **is part of** a series of payments that may be payable monthly, quarterly, semi-annually, or annually. The payments must be in a court order or an agreement filed with the court and the order has to set out the timing of the payments. Only a new order or agreement can change the payment schedule.

CRA does not recognize support payments based on money that individuals give or receive without an order. Generally, lump sum payments are not considered child support, but you should check with CRA because there are some exceptions.

Canada Revenue Agency (CRA) refers to beneficiaries as “recipients” and they refer to support payments or awards as “allowances”. For more detailed information about tax rules, you should check out the **bulletin on “Support Payments”** on Canada Revenue Agency’s website.

What if my child support is included with spousal support payments?

If your court order or agreement includes both child and spousal support you will have to determine the amount that is considered child support. The portion of the payment which is designated for child support is not income for the recipient and it is not deductible from the income of the payer.

Are legal fees for establishing child support tax deductible?

Payers of support cannot claim any legal fees to establish, negotiate, or contest child support payments. A recipient of support payments may claim the following tax deductible legal fees:

- collect late support payments;
- establish the amount of support payments from your current or former spouse or common-law partner;
- establish the amount of support payments from the legal parent of your child (who is not your current or former spouse or common-law partner) where the support is payable under the terms of an order;
- try to get an increase in support payments; or
- try to make child support non-taxable.

Neither the recipient or the payer can claim legal costs incurred to:

- get a separation or divorce; or
- establish custody or visitation rights to a child.

