



Support Enforcement

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An Information Booklet
for Individuals who
Receive or Pay Support
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This booklet was produced by the Public Legal Education and Information Service of New Brunswick (PLEIS-NB). PLEIS-NB is a non-profit, charitable organization whose goal is to educate and inform the public about the law and legal processes. PLEIS-NB receives core 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.

This booklet replaces a series of publications that had explained the operation of the former Family Support Orders Service which has now been replaced by Office of Support Enforcement.

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This booklet does not contain a complete statement of the law in the area of grandparents' rights, and laws change from time to time. Anyone needing advice on his or her specific situation should consult a lawyer. You can find more information about family law at our website www.familylawnb.ca and more general information on support and other related legal topics on the PLEIS-NB website at www.legal-info-legale.nb.ca.



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The purpose of this booklet is to provide general information on the support enforcement system in New Brunswick. It discusses the rights and responsibilities of Payers and Beneficiaries, how individuals may register a support order or agreement, and the mechanisms available to the Office of Support Enforcement (OSE) to enforce support.

If you are a Beneficiary or a Payer of support, you must contact the office if you have any changes to your personal information.

To Contact the Office of Support Enforcement

There are **three ways** to contact the OSE:

1. Call the Central Office in Grand Falls at: 1-844-673-4499

Staff is available on weekdays from 8:30 a.m. to 4:30 p.m. to answer your questions. You can leave a voicemail after work hours and on weekends. Be sure to contact the office if you have any changes in your contact information. This applies to the Beneficiary and the Payer.

2. Check out the OSE webpage at www.gnb.ca/ose

Did you know... you can access information about your file, find fillable forms for opting into or out of the support enforcement program, request direct deposit or receive information about how to make support payments on the website.

3. Call the 24/7 Toll-Free Infoline – 1-888-488-3767

Fredericton area **444-3767**

Outside New Brunswick **1-506-444-3767** (long distance charges may apply)

The computer and Infoline are updated once daily before 6 am to give you the most current automated payment and enforcement information from your file about your support payments.

Have your **OSE file number and **PIN** ready when you call the Infoline or contact OSE**

OSE file number _____

PIN _____





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1

Getting a Court Order or Agreement for Child and/or Spousal Support

When couples split up they may still have rights and obligations in relation to one another such as ensuring the well-being of their children. They may also have an obligation to make support payments to their spouse. Getting an order or agreement for child and/or spousal support is the first step.

Child Support: At separation or divorce, 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. In fact, it is the right of the child to have the financial assistance of both parents according to their incomes.

Child support is calculated based on the **Federal Child Support Guidelines**. These guidelines standardize the amount of support payable based on the number of children, the payer's income, and the province in which the payer lives. Child support generally lasts until the child reaches the age of majority which is 19 years in New Brunswick. It may continue for a longer period, for example, if the child is enrolled fulltime in post-secondary education.



For more information on how child support is calculated see the publications on the Family Law NB website (www.familylawnb.ca) such as **Child Support** and **Federal Child Support Guidelines: Step by Step**.

Spousal support: Another obligation that may arise is spousal support. Spousal support is money that is paid by one spouse to the other spouse after the relationship has ended. A person may request spousal support after the relationship has ended if he or she is unable to be self-supporting or was financially dependent on the former spouse/partner. Unlike child support, there is no automatic entitlement. However, to simplify the process of calculating spousal support amounts, Justice Canada has released a set of guidelines entitled the **Spousal Support Advisory Guidelines (SSAG)**.

The court can grant spousal support for an indefinite period or a definite period (for a period of two years, for example). The judge will decide based on a number of factors such as how long it might take the dependent spouse to become self-supporting, get a better job or secure his or her financial situation.



Did you know...?

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.

Options for getting an order or an agreement for support

There are a number of ways that separating couples can go about establishing child or spousal support:

Agreement

Often spouses agree on the amount of support. That amount can be set out in an agreement.

Mediation

Help to work out an agreement may be available through mediation services in the community. A legal agreement must be in writing, signed by both parties and witnessed. You can file a copy of the agreement with the court. Then the court will enforce it the same as a court order.

Lawyer

If you cannot agree about support, you should get legal help. Each party should hire a separate lawyer. The lawyers may be able to negotiate support terms that are acceptable to both parties. If you wish to participate in a non-confrontational approach to deal with family law matters, you may wish to seek lawyers who practice collaborative law.

Courts

If spouses or partners cannot agree, they must apply to the court and a judge decides. The court looks at the documents filed by both parties and hears verbal evidence, if any. The judge makes an order fixing the amount of child and/or spousal support. If no support is to be paid, the court dismisses the application.



For more information on options for settling family law matters such as custody, access and support review the publications [When Couples Separate](#) and [Domestic Contracts](#), as well as the [Family Law Fact Sheets](#) on staying out of court.

2

Registering the Order or Agreement with the Office of Support Enforcement

Once you have a support order issued by the New Brunswick Court of Queen's Bench, Family Division under the *Family Services Act* or the *Divorce Act* it will **automatically** be filed with the **Office of Support Enforcement (OSE)**.

The person receiving support may be referred to as the **Beneficiary** or **Recipient**.

The person making the support payments may be referred to as the **Payer**.

OSE staff will contact the Beneficiary by phone and offer to send them a welcome package. At that point, the Beneficiary can choose to opt out – unless the Payer wishes to make payments through the program. If the Beneficiary does not opt out, the OSE sends a welcome package to the Payer.

The OSE is not responsible for enforcing all aspects of your order which may deal with many issues such as custody, access and marital property division. The OSE is responsible only for support enforcement.

What if we made an out of court agreement about support?

If you made your own separation agreement that included provisions for support (with or without the services of a lawyer) you may register your agreement with the Court and then file them with OSE for the purposes of support enforcement. The agreement must meet certain legal requirements.

Who is eligible to enrol in the OSE?

Anyone who receives support or is required to pay family support under a support order or agreement in New Brunswick may file it with the OSE. Going forward, when this booklet refers to an order for support, this applies to an agreement for support.



If the Beneficiary lives outside of New Brunswick, he or she should contact the support enforcement program in that area.

Can I register with the OSE without the other persons' consent?

Yes. Anyone who has an order or agreement for support can register with the OSE. You do not need the other person's permission to enroll. However, once enrolled, neither party will be able to withdraw from the program without the other party's consent.

If you have a court order for support, you will automatically be registered. If you prefer, you may opt out. See section #4 on opting out. If you have an agreement for support, either person can register it with the OSE. It is a personal choice. You do not need the permission of the other party to enroll.

In certain circumstances, other parties may apply to have the order enrolled in the OSE. For example, if the Beneficiary has applied for income assistance, then enrolment in OSE is mandatory. The support payments are made to the Department of Social Development and are only sent directly to the Beneficiary once he/she is no longer on assistance. If the Beneficiary does not agree to sign the form assigning the payments to Social Development, the OSE will forward payments received to the Beneficiary; however, Social Development will deduct the monthly support from the monthly income assistance payment **even if the Beneficiary does not obtain the payment of support.**

When should I contact OSE to update my information?

It is important that the OSE has up-to-date records on the people enrolled. You should call their Grand Falls office at 1-844-673-4499 to inform them of any significant changes, including the following:

- Changes in your employment;
- Changes of address or telephone number;
- Variations in your Order or Agreement for Child support.

The Role of the Office of Support Enforcement

The **Office of Support Enforcement (OSE)** is the agency in New Brunswick that is responsible for carrying out the duties associated with the support enforcement program. This service is part of the Department of Justice and Public Safety.

The role of the Office of Support Enforcement is to promote a dependable flow of support payments and to take appropriate action when support payments registered with the OSE are not being made on time or in full.

When a support order or agreement is filed with the OSE, staff will be responsible for:

- Receiving support payments from the person paying the support (referred to as the Payer);
- Keeping records of all of the payments that are made;
- Forwarding support payments to the person receiving the support (referred to as the Beneficiary or the Recipient);
- Monitoring the payment of the funds; and
- Enforcing support orders and agreements filed with the Court by taking steps to ensure the Payer makes the required payments.

How will I know if my order is registered with the OSE?

Once an order has been filed with the OSE, staff will send information and directions to both parties. You will receive an OSE Case Number and instructions on the two ways of contacting the OSE to find out about the status of your file.

What are the benefits of being enrolled?

Many individuals, both Beneficiaries and Payers, appreciate that a neutral third party is able to receive and send out the support payments. This can make the payment process easier. Not all couples wish to have contact with each other after separation or divorce. The OSE monitors the flow of support and they are able to take enforcement steps if the required support is not made by the Payer.

Support Enforcement

What Steps can OSE take to Collect Support?

When necessary, federal and provincial laws give the OSE the authority to use a number of different methods to collect overdue support payments, such as:

Initiate a Payment Order on an Income Source

This is commonly known as **garnishment**, which is a court order directing that a third party's money be seized to pay off the debt owed. Money included in a garnishment may include, but are not limited to, wages, pensions, income tax refunds, GST credits, worker's compensation benefits, bank accounts, and jointly held bank accounts.

Bring the case to Court for a Judge or Court Administrator to decide

At court, the judge or court administrator would decide on additional enforcement action. This is called an **enforcement hearing**.

Suspend or revoke a Payer's driver's license

This action could be taken if the Payer owes more than **four months** of support payments.



While it may be frustrating when support payments do not arrive on time or in full, you must not deny the Payer access with the children. Courts treat access and support as separate legal issues. Denying the Payer access to the children in violation of a custody/access order does **NOT** help OSE collect your support.

Suspend or revoke a Payer's federal license or passport	If the Payer owes more than more than 3 months of unpaid support OR more than \$3,000 in support, OSE may request the federal government to suspend, refuse to issue, or refuse to renew the Payer's passport and/or federal aviation or marine licence.
Demand information about the Payer	OSE can demand contact information as well as information, wages, salary, other types of income, information surrounding income sources, employment, assets and liabilities, location of assets, including account numbers with financial institutions, financial status, copies of income tax returns, social insurance number, or any other necessary information can be demanded. The OSE may seek this information through banks, government bodies, the Crown or to anyone who may have the information.
Report the Payer to the Credit Bureau	OSE may report the Payer to the credit bureau when the Payer owes more than three months of support payments.

What if enforcement measures do not work? Can OSE impose penalties on the Payer?

Depending on which regulation has been violated, the person is committing an offence punishable under the *Provincial Offences Procedure Act*. To find out which category of offence was committed reference can be found in section 52 of the *New Brunswick Support Enforcement Act*.



In New Brunswick all support orders issued by the Court of Queen's Bench, Family Division are filed with the OSE. In other words, enrolment is automatic. However, sometimes people decide to opt out. Here are some common questions about opting out or withdrawing from the program:

What if I would prefer to get the payments directly from my ex-partner?

That's your choice. The person receiving support, the Beneficiary, may choose to receive payments directly from the Payer instead of using OSE to collect their support.

How do I opt-out of being registered with the OSE?

After being notified of enrolment, the Beneficiary has **8 days to opt out of receiving payments through OSE**. The Payer cannot opt out.

To opt out, the Beneficiary **must** file a **Notice Not To File A Support Order Form**. (This form is accessible and fillable on the OSE website at www.gnb.ca/ose and www.familylawnb.ca)

Is the Beneficiary the only one who can collect the support payments?

The Beneficiary may give written directions to the OSE requesting that the support money they receive be sent to a person named in the support order. That may be someone who has 'care and control of the child'. That person must notify the OSE that they have 'care and control' and the Director of the OSE will assess the situation and decide on redirecting the payment.

Although parties may choose to **opt out** of the support enforcement service, many people choose to enrol to make the payment process easier and to have the assistance of a neutral third party.

Can the payments be sent directly to a child named in the support order? For example, if the child is no longer living with the Beneficiary because they are enrolled in post-secondary education?

If a party requests that the OSE forward money directly to a child attending post-secondary school. The OSE may be able to forward payments they receive from the Payer directly to the child only if:

1. The Beneficiary agrees;
2. The child is enrolled in post-secondary education; **AND**
3. The child does not live with the Beneficiary.

Our order is already registered with the OSE; can I withdraw from the program?

The only way to withdraw from the OSE is if the Director of the OSE withdraws your support order. The Director has the authority to withdraw an order based on the following:

- The Director finds that the Beneficiary is taking steps to enforce the support order without the consent of the Director of the OSE and it has been **30 days** from the date that the Director served both the Beneficiary and the Payer with notice that they intend to withdraw the support order.
- If the amount payable under the support order is not readily verifiable, the amount is small, or there is doubt about the validity of the support order.
- The Beneficiary has accepted payments directly from the Payer in relation to the support order.
- The Beneficiary cannot be located after reasonable efforts have been made to do so.
- One of the parties, the Beneficiary or the Payer, has made an application for withdrawal from the program and notice of this has been served by the Director on the other party. Fourteen (14) days after notice to the other party has been given, if there is no written notification returned to the Director, the order may be withdrawn.
- Other circumstances that have been regulated.

Here are some common questions that people receiving support may ask:

How will I receive support payments from OSE?

OSE will send the Beneficiary the payments received from the Payer:

- directly by mailed cheque, or
- direct deposit.



To receive payments through direct deposit, complete the OSE fillable online Direct Deposit Banking form.

Note: If you are on income assistance, the Department of Social Development may ask you to sign a form called an **assignment form**. If you agree OSE will forward the child support payments it receives from the Payer directly to Social Development rather than to you. If you choose not to sign the assignment form, the OSE will forward you the child support payments received from the Payer. However, Social Development will deduct the amount of monthly child support from the amount of monthly social assistance you receive.

“Assignment” means that child support is being assigned (payable) to Social Development because you are receiving income assistance for your child(ren).

What information will OSE require from me?

OSE requires up-to-date information about your address in order to forward payments or send you information. Without your current address, OSE will not send you payments by cheque or direct deposit.

Can the OSE guarantee that I will eventually get my payments?

The OSE cannot guarantee that you will always receive your support payments. The Payer may fail to send them or may pay them late. It depends on the consistency of the Payer in sending the support payments to OSE. If the payments do not arrive, the OSE will take steps to get them for you.

If the Payer does not make a payment, will OSE still send me the amount owed?

No, the OSE only sends the Beneficiary the payments collected from the Payer. If the Payer does not send in their payment or is late, then the OSE will not make the payment. OSE only forwards money actually paid by the person paying you support.

What should I do if the Payer sends a support payment directly to me?

Once you are registered with OSE, unless you withdraw from the program, the Payer must make all support payments through OSE even if the court order provides for another method of payment. You should not accept payments directly from the Payer because OSE may not have a record of those payments, which can result in errors and double payments.

Report any direct payments to OSE immediately in writing so they can update their records. Continued acceptance of direct payments may result in your order being withdrawn from their program.



Here are some common questions asked by Payers of support:

If our order or agreement is enrolled in the OSE, do I stop paying the other party directly?

Yes, if you have become enrolled with the OSE you should stop paying the Beneficiary. It is important that the OSE is able to keep accurate records of your payments. If you make direct payments while you are already registered in the program, they may not be properly documented. That could result in a need for a double payment or the OSE could start enforcement action.

How can I make payments?

Payments to the OSE can be made:

- **By Mail** – you can send a money order, business cheque or certified personal cheques, made payable to the Minister of Finance. **DO NOT** send personal cheques. Mail your cheques to the Central Payment Unit:

OSE Central Payment Unit

Suite 1089, Chancery Place, PO Box 6000

Fredericton, NB E3B 5H1

- **In person** – you can pay at any Service New Brunswick location around the province.
- **Online** – you can send an electronic payment online through your banking provider.

Can I get a tax receipt for my support payments?

The OSE will provide tax receipts for payments they receive from you. This is not automatic; you must request a receipt. If you have made payments directly to the Beneficiary while your file was enrolled or being enforced by the OSE, OSE can only provide you with a receipt of payments made through the OSE. Payments made directly to the Beneficiary do not appear on the OSE receipt.

What if I can't make my support payments?

If you are having difficulties making your payments to the OSE, you should seek legal advice. Perhaps there has been a significant change in your circumstances and you may need to seek a variation. However, you should be aware that the OSE does **NOT** have the authority to change the amount of child support. It is your responsibility to get a variation order.

Until you have a new order, you must keep paying the amount specified in your order. If you fall behind on your payments contact the OSE. They may be able work with you to create a plan to pay your arrears while you keep up with your payments.



For more information on how to vary an order for child support, see PLEIS-NB's **New Brunswick Child Support Variation Kit** which can be found on our website: familylawnb.ca.

If I stop making payment, how might the OSE enforce support?

Depending on the situation, there are a variety of enforcement options. These are set out on page 8. To give an example, under the *Support Enforcement Act* (SEA), OSE has the right to send a notice to the New Brunswick Registrar of Motor Vehicles to revoke the driver's licence and suspend the driving privileges of a Payer who has a certain amount of unpaid child or spousal support.

OSE will send notice to the Registrar if:

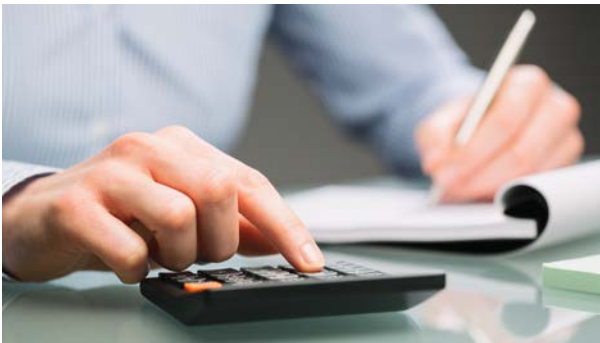
- the Payer owes an amount of support that is greater than **4 months** worth of support payments; and
- all reasonable means of collecting support payments have failed.

You will be notified by the OSE if they intend to send notice to the Registrar of Motor Vehicles to have your licence suspended. Because you are legally required to keep your address up to date with both agencies, you will be considered officially notified 7 days after OSE mails the notice to you. The notice gives you a chance to avoid having your licence revoked either by paying the outstanding arrears in full, or coming to a satisfactory arrangement with OSE to pay off the arrears. You must do this within 30 days. By law, the Registrar is then obligated to notify you and revoke your licence. OSE will not extend the 30 day grace period.

You can appeal the suspension or revocation of your driver's license under section 26(6) of the SEA by appealing to the Court of Queen's Bench, Family Division.

What should I do if I accidentally paid too much one month?

Notify the OSE as soon as possible. They have the authority to either credit the file according to the regulations or return the over-paid amount of money to you.



Arrears

Arrears are missed support payments which are owing to the person entitled to receive support on the order filed with OSE. If you have missed payments, you should contact the OSE as soon as possible about setting up a plan to pay back your arrears. Arrears can accumulate over time and if the Payer owed arrears before the order/agreement was filed with OSE, the arrears may be included in the program. When the support order is filed with the OSE, the Beneficiary (or person to receive support) may complete a signed declaration stating the amount owed. The OSE will then serve this declaration upon the support Payer. If the Payer agrees with the amount, he or she must file a written agreement within 14 days. If the Payer disputes the amount in arrears, within 14 days he or she must file a written dispute over the amount of arrears set out in the declaration.

If no response is received OSE will deem the Payer to have agreed with the amount stated in the declaration. If the declaration is disputed the Director of the OSE will have a court administrator hold a hearing to determine the amount of arrears that are owing under the order.

Retroactive support child support payments

Child support can be calculated retroactively. Retroactive child support is different from child support arrears. Typically, the parent who has primary care of the child(ren) of the relationship asks the other parent to contribute to child support. There may have been no official application to the court. However, over time, the Beneficiary does not receive any payments (or payments are made that are less than the table amount). In some cases, the Beneficiary may be able to apply to the court for an order that the Payer pay the back-log of child support. The courts would generally not go back further than three years into the past. This retroactive order becomes a debt owed to the recipient parent.

Changing a Support Order

If circumstances change, such as the Payer loses their job or get a large pay raise, the amount of child support the Payer is obligated to pay might change. However, the Payer cannot just stop paying or decide to pay a lesser amount. It is up to the Payer to apply to the court to change the support order. This is called a variation. Or the parties can have a new support order or agreement made by consent. Although the Director of the OSE has the discretion to enforce a lesser amount, these fall under very specific and limited circumstances under the law (section 10.3 of the *Support Enforcement Act*). The Payer should take action to change the support order.

For more information on how to vary an order for child support, see PLEIS-NB's **Child Support Variation Kit** which can be found on our website: familylawnb.ca.

Withdrawing from the OSE

Either the person paying support or the person receiving support can apply to the Director of the OSE to withdraw their support order. They can do this by filing a **Notice of Intention to Withdraw from OSE**. This fillable form can be found on the GNB and Family Law NB websites.

If the OSE gets an application for withdrawal, the OSE will notify the other party that the Payer or Beneficiary has applied to withdraw support. The person receiving notice has 14 days to provide a written response saying that they oppose the withdrawal of support. If no response is received the OSE will withdraw the support order.

Ending Payments

If your support order does not specify when the Payer can stop making payments, then you will have to apply for a variation to end the obligation to pay support. You should not just stop paying. If your order is in the OSE program and the Payer stops making the required payment, arrears would begin to accumulate and OSE might take enforcement measures. Generally, the duty to pay child support lasts until the child reaches the age of majority, which in NB is 19 years of age. Support and special expenses may continue past this age if the child is enrolled full-time in post-secondary education or is disabled. On the other hand, support may end sooner if the child gets married, or has withdrawn from parental control such as getting a job and moving out. If you have questions about your specific circumstances, seek legal advice.

Social Assistance and Child Support

If the Beneficiary is on social assistance, they will be asked to sign a waiver turning over the support payments to the Department of Social Development. If the Beneficiary signs the waiver, the money received by the OSE from the Payer is then forwarded to Social Development. If the Beneficiary does not sign the waiver, the monthly child support amount is deducted from their income assistance amount, even on months they do not receive their child support payment. For more information on this, see pages 6 and 13 of this booklet.

Interjurisdictional Orders

If you live in New Brunswick and have a court order for child or spousal support from any Canadian court, you can opt into OSE. To do so, you must file a **Notice to File a Support Order Form** with the Court. 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.

If either you, or the person paying support, live outside the province the OSE can still demand support payments from them. New Brunswick has the *Interjurisdictional Support Orders Act* in which the Province has an agreement with other provinces and territories that proceedings may be commenced in New Brunswick and the support order may be made in another province or territory. Similarly, support orders made by Courts outside the province may be filed as certified copies with the OSE for enforcement in New Brunswick. This is similar to a payment order.

Note: ISO do not apply to orders made under the *Divorce Act*.

For more information about **Interjurisdictional Support Orders (ISO)** and to access the fillable online forms, go to familylawnb.ca and select "family court forms."

Resources:

Support Enforcement

- How Unpaid Support Obligations May Affect Corporate Liability
- How Unpaid Support Obligations May Affect Your Credit Report
- How Unpaid Support Obligations May Affect Your Government Issued Licences

Looking for general information about related family law issues such as custody, access, divorce, and division of property?

OSE Forms

- Notice Not to File Support Order
- Notice to File Support Order
- Application to Withdraw from OSE
- Notice of Arrangement with Income Statement
- Direct Deposit



Check out

www.familylawnb.ca or call the toll-free

Family Law Information Line at

1-888-236-2444.