

FAMILY SUPPORT ORDERS SERVICE (FSOS)

How Unpaid Support Obligations May Affect Corporate Liability



Public Legal Education
and Information Service
of New Brunswick

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

P.O. Box 6000
Fredericton, NB E3B 5H1
Telephone: (506) 453-5369
Fax: (506) 462-5193
Email: pleisnb@web.ca
www.legal-info-legale.nb.ca

In collaboration with

Program Support Services
New Brunswick Department of Justice
P.O. Box 6000
Fredericton, NB E3B 5H1



The **Family Support Orders Service (FSOS)** is a part of the New Brunswick Department of Justice and Consumer Affairs. Its goal is to promote a dependable flow of support payments. FSOS focuses on helping parents support their children. FSOS monitors and enforces support orders and agreements filed with the service by:

- ▶ receiving payments from the **Payer** (the person paying the support);
- ▶ keeping records of payments that are made;
- ▶ forwarding the payment to the **Beneficiary** (the person receiving the support);
- ▶ taking steps (when necessary) to ensure the Payer makes the required payments.

What is a 'corporation'?

A corporation is an organization whose member(s) have chosen to formalize their relationship according to certain requirements set out in law. A corporation has a separate legal entity that is different from the legal status of the members. Corporations can sue and be sued in their own right.

What is Corporate Liability for Support?

Corporate liability for support means that if you (the payer) have an order to pay support, a corporation you or your immediate family owns or controls may become responsible for your unpaid support obligations (arrears). If the corporation becomes liable, FSOS may start enforcement action against the corporation. For example, FSOS may report the corporation to a credit reporting agency or it may require anyone who owes the corporation money to pay it directly to FSOS.



A corporation has a separate legal entity that is different from the legal status of the members. Corporations can sue and be sued in their own right.

Once the corporation is made liable under the *Support Enforcement Act (SEA)*, you and your corporation will be legally responsible to pay the full amount owing in arrears and on-going payments under the support order.

Under what circumstances can FSOS hold a corporation liable for support?

The *Support Enforcement Act (SEA)* has specific provisions that allow FSOS to hold a corporation liable for your family support payments if your support order is filed with FSOS and you do not make full payments as ordered by the Court.

If you own a corporation: Section 28 (*SEA*) allows FSOS to take steps to hold the corporation liable when:

- ▶ you are the **only** shareholder and the **only** person with a beneficial interest in the corporation **and**
- ▶ you have not made full payment as ordered by the Court **and**
- ▶ the amount of money owing in arrears is more than **2 months** of support payments.

If you have a controlling interest in a corporation:

Section 29 (*SEA*) allows FSOS to take steps to hold the corporation liable when

- ▶ you, or you and your immediate family, hold enough shares to elect **50% or more** of the directors of the corporation or otherwise control the operations of the corporation, **and**
- ▶ you have not made full payment as ordered by the Court **and**
- ▶ the amount of money owing in arrears is more than **4 months** of support payments.

The *Support Enforcement Act (SEA)* has specific provisions that allow FSOS to hold a corporation liable for your family support payments if your support order is filed with FSOS and you do not make full payments as ordered by the Court.

What steps must FSOS take to hold a corporation liable for support payments?

The steps FSOS must take to hold a corporation liable differ depending on whether you, the payer, own the corporation entirely or have a controlling interest in the corporation.

If you own a corporation: Under Section 28 (SEA), which applies to corporations where you are the sole shareholder and beneficiary, FSOS **does not need to go to court** to make the corporation liable. FSOS may simply serve the corporation with a notice of the amount you owe in arrears on the support order and a statement that the corporation is “jointly and severally liable” with you for the amounts owed.

If you and/or you and your family have a controlling interest in a corporation: Under Section 29 (SEA), which applies to corporations that involve more than one shareholder or beneficiary, FSOS **must obtain a court order** to hold the corporation “**jointly and severally liable**”. FSOS must serve a *Notice of Claim* informing the corporation that it intends to seek an order from the court to hold the corporation liable. The Notice gives the corporation 30 days to make arrangements to comply with the order, or to persuade the payer to personally make the payments he or she owes.

If the corporation does not make satisfactory arrangements with FSOS within the 30 days, FSOS will proceed with the application to the court for an order to hold the corporation liable for the support you owe.

What does it mean to be “jointly and severally liable”?

It means the corporation and you personally are equally responsible for the amount of money you owe on your support payment. It allows FSOS to take action against you, the corporation, or both to enforce payment.

Must FSOS try to enforce family support orders with me personally before it can hold the corporation liable?

FSOS can choose to use enforcement measures against you personally, against the corporation, or both. FSOS **does not** have to exhaust all the enforcement options against you personally before they can use enforcement measures against the corporation.

Any amount of money paid by a corporation for your family support becomes a debt you owe to the corporation. The corporation may demand payment from you and may seek a judgment against you for the amount paid.

How can FSOS enforce payment after a finding of liability?

FSOS can enforce payment against the corporation by issuing payment orders to the corporation's income sources. An income source may be a person, corporation or financial institution that owes, or may in the future owe money to the corporation. These garnishment orders require a person or organization to pay any money they owe to the corporation to FSOS to pay off your support order. Possible garnishees include:

- ▶ clients or customers
- ▶ suppliers
- ▶ shareholders
- ▶ corporate bank accounts (both single and joint accounts)



FSOS can enforce payment against the corporation by issuing payment orders to the corporation's income sources. An income source may be a person, corporation or financial institution that owes, or may in the future owe money to the corporation.

Section 12 (*SEA*) gives FSOS the authority to ask about a corporation's financial information. FSOS may require clients, banks, and others to provide information on the corporation's assets and accounts receivable. FSOS will use this information to determine which individuals or organizations it may serve garnishment orders.

Before FSOS begins enforcement procedures, it must take the proper steps and give consideration to the effect on the corporation. Again, these requirements differ depending on your relationship with the corporation.

If you own a corporation: If the corporation is liable under Section 28 (*SEA*), FSOS may begin enforcement procedures when there is proof that the corporation was served with a Notice stating it is liable for the support payments and arrears. Before doing this, FSOS will consider if enforcement action would be a significant risk to the solvency of the corporation. If enforcing the payment will place the corporation in financial jeopardy, FSOS will proceed in a manner that will reduce the risk, yet allow for effective enforcement.

If you have a controlling interest in a corporation: If the corporation is liable under Section 29 (*SEA*), FSOS may begin enforcement procedures when a court order has been issued making the corporation liable. The Court will have considered whether there will be a serious risk to the corporation's continued solvency. If the Court determines that there would be a significant risk, it will impose conditions on the order to reduce the risk, yet allow for effective enforcement. FSOS must enforce the support payments in accordance with any court imposed conditions.

FSOS may require clients, banks, and others to provide information on the corporation's assets and accounts receivable. FSOS will use this information to determine which individuals or organizations it may serve garnishment orders.

How long will FSOS use enforcement measures against a corporation?

FSOS may continue enforcement action against the corporation until:

- ▶ You or your corporation has paid the unpaid support and is consistently making the regular payments in accordance with your support order.
- ▶ You no longer have a beneficial interest in the corporation. To stop enforcement against the corporation the director must receive both:
 - ▶ Written notice from the corporation that you no longer have a beneficial interest in any shares of the corporation and the date this took effect.
 - ▶ The name and address of the person or organization that acquired your interest in the corporation. If known, the corporation must also provide information on what you have received or will receive in exchange for your shares in the corporation.
- ▶ Your case has been withdrawn from FSOS.

How can I get specific advice on my situation?

If you have an order to pay support and have an interest in a corporation, you or your corporation should consider obtaining legal advice on your specific situation. If there has been a significant change in your financial situation or ability to pay support, you may consider applying to the court for an appropriate variation of your support order. This fact sheet provides only general information about the law in this area.

For information about your support payments 7 days a week contact:

FSOS 24 hour Toll-Free Infoline
1-888-488-FSOS (3767)

Fredericton clients can call **444-FSOS (3767)**

Clients who live outside New Brunswick can call long distance **1-506-444-FSOS (3767)***

**Long distance charges will apply.*