

Spousal 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 wish to acknowledge the contribution of the Court Services Branch of the New Brunswick Department of Justice and Public Safety and members of the Law Society of New Brunswick in the development of this pamphlet.

This pamphlet looks at some general questions about spousal support and provides information on variation and enforcement of support orders. It also outlines the tax rules relating to spousal 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.

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**Public Legal Education
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P.O. Box 6000

Fredericton, New Brunswick, E3B 5H1

Tel: 506-453-5369 Fax: 506-462-5193

Family Law Information Line: 1-888-236-2444

Email: pleisnb@web.ca

www.legal-info-legale.nb.ca

www.familylawnb.ca

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Rights and Obligations

What is spousal support?

Spousal support is money that is paid by one spouse to the other spouse after the relationship has ended. It is sometimes called alimony or maintenance. 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.

Who can get spousal support?

Married couples who are divorcing may request spousal support under the ***Divorce Act***. Married couples who separate but do not divorce, and individuals leaving a common-law relationship, may request support under the ***Family Services Act***. However, to be eligible, a common-law couple must have lived in a family situation for three years and one person must have been substantially dependant on the other person for support. Or, they must have lived together for one year and had a child during that time. The application for spousal support must be made within one year of separating. A judge will decide about support for a common-law partner by considering the same factors used when married couples divorce (i.e. how long you lived together, how dependent you are on your partner, your education, your income, etc.).



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Is spousal support an automatic right?

Unlike child support, spouses are not automatically entitled to receive spousal support. A spouse or partner has a duty to provide for him/herself. This means that any ex-spouse or partner who can work and earn income is expected to do so. A spouse who is unable to be self-supporting or cannot earn enough money to live for one reason or another, may be entitled to spousal support. You should consult a lawyer to find out whether you might be entitled to spousal support and to estimate the amount of support.

Calculating Spousal Support

How is spousal support calculated?

The amount of spousal support depends on need and ability to pay. To decide on spousal support, a judge will look at several factors including:

- Length of the relationship
- Age of both parties
- Education of both parties
- Income levels of both parties
- Net worth of both parties
- Employment history of both parties
- Financial consequences of separation
- Was one person financially dependent on the other during the relationship



Are there any guidelines or tables to help estimate spousal support?

To simplify the process of calculating spousal support amounts, Justice Canada has released a set of guidelines entitled the ***Spousal Support Advisory Guidelines*** (SSAG). They were developed to assist lawyers, judges and individuals wanting to estimate spousal support. They include formulas for estimating spousal support – the formulas involve calculations that take into account these different factors, including whether there are children of the marriage, both parties' income, the length of the relationship, etc. However, there are no “tables” for you to use to calculate spousal support.

You can view the **SSAG** on the Internet.

Are the Spousal Support Advisory Guidelines mandatory?

No. The SSAG are used in an **advisory capacity ONLY**. Unlike the Child Support Guidelines, it is not mandatory that separating couples, lawyers or judges use them.

How long can someone receive spousal support?

The court can grant spousal support for an indefinite period or a definite period (i.e. for a period of two years). 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.

Getting Spousal Support

There are a number of ways that you can go about getting spousal support:

- **Agreement:** Often spouses agree on the amount of spousal 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.
- **Lawyers:** If you cannot agree about spousal support, you should get legal help. Each spouse should hire a separate lawyer. The lawyers may be able to negotiate support terms that are acceptable to both spouses. 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 spousal support. If no support is to be paid, the court dismisses the application.



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)**. This service 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 court order for 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.

How does OSE get the spousal 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

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payment in the mail 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.

Support Enforcement

What happens if the payer does not make payments on time or in full?

OSE monitors and enforces support orders and agreements filed with the service. OSE has the authority under federal and provincial laws to use various methods, when necessary, to collect overdue support payments such as issue payment orders, revoke provincial or federal licenses and so on. For information about the enforcement methods available to OSE, check out the series of PLEIS-NB fact sheets about the various enforcement methods.





Changing a Spousal Support Order

When circumstances change, you can seek a variation of the order or agreement. You do this through agreement, negotiation or a court order. Again, you may use the services of a mediator or lawyer. If you have to go to court, you should seek legal advice. Either person may apply to the court to change the order or agreement.

Income Tax and Support Orders

What are the tax rules for spousal support?

Spousal support is considered taxable income for the person receiving the payments. The spouse making the payments may be able to claim the payments as tax deductions. However, the payor must make the payments on a regular basis according to a court order or an agreement filed with the court. Lump sum payments are not tax deductible.

As well, if the payor is paying child support, he or she must make **all** child support payments **in full** before claiming a deduction for spousal support.

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

If your court order or agreement includes both child and spousal support you will have to determine the amount that is considered spousal support. The portion of the payment which is designated for spousal support must be included as income for the recipient and is deductible from the income of the payer.

For more information on tax rules, see:

<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/p102/support-payments.html>

