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Spousal Support

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem" on our website at www.onefamilylaw.ca.

What is spousal support?

Spousal support is money that one spouse pays to the other one when their relationship ends. Spousal support is meant to help the poorer spouse. The person who pays support is called the **payor**. The person who gets support is called the **dependent** spouse.

Spousal support can be a one-time lump sum payment or a regular payment such as once a month. Support can be for a set period of time or it may not have an end date.

Spousal support affects your taxes. If you pay spousal support, you can use the support as a tax deduction. If you receive spousal support, you have to report the money you receive as taxable income.

When you and your spouse separate, you can make your own agreement about support. You do not need lawyers to write this agreement. If you cannot agree, or if your agreement breaks down, you can ask the court to make an order for spousal support.

If your family does not have a lot of money, it may be difficult to get an order for spousal support. The law requires that child support must be paid first. The court will only consider your request for spousal support if your spouse has enough money left over after child support has been paid.

Who can ask for spousal support?

You can ask for spousal support if you were married to your partner. You can also ask for spousal support if you and your partner lived together without marrying if you meet the definition of a “common-law” spouse under the law.

Here is how the *Family Law Act* defines a common-law spouse:

- you and your spouse have lived together for at least three years, or
- you and your spouse were in a steady relationship and you have a child or have adopted a child.
- your spouse can be a man or a woman.

Why do courts award spousal support?

When relationships end, one of you may be better off financially than the other. This may be because of how you shared responsibilities during the marriage. For example, if you stayed home to raise children, you may not have earned as much money as your spouse. You may have taken a low-paying job so that your spouse could study to get a higher-paying job.

In these circumstances, the courts may decide that your spouse must help support you for some time after the relationship ends. This doesn't mean that you do not have to take any steps to support yourself. The courts expect you to work towards becoming financially independent to the best of your ability.

When do courts award spousal support?

The law lists things that courts should think about when they decide whether you should get support. Here are some things courts must consider:

- how long you and your spouse lived together or were married;
- what each of you contributed to the relationship;
- whether you had any orders or agreements about support, for example a domestic contract.

Your spouse's behaviour has nothing to do with whether or not he will have to pay you support or the amount of support he will have to pay.

What do courts consider when they award spousal support?

Here are some things the law says courts should consider when they decide how much support your spouse should pay you:

- how much each of you own and can earn;
- how long you were married or lived together;
- your age and your health;

- how much you can contribute to your own support;
- whether your spouse is able to pay support;
- how long it could take before you can support yourself, and how much it would cost;
- what things you did that made it possible for your spouse to have the career and income he now has;
- whether either of you needs to stay home with a child;
- what kinds of child care each of you was responsible for during the relationship;
- how your ability to earn an income was affected by your responsibilities in the relationship.

If you apply for spousal support, you have the right to know the truth about your partner's finances. This is called **full financial disclosure**.

How much will the spousal support be?

In the past, the law about spousal support was not very clear. Family courts across Canada made many different decisions about when it should be ordered, how much it should be and how long it should be paid. To try to make the law more consistent, the federal Department of Justice created the **Spousal Support Guidelines** (SSG).

The SSG list the most and least amount of support people should get in different circumstances. The amounts depend on things like how long you were

together, how many children you had, what kind of work each of you did and how much each of you earned. The Guidelines are not law, but most lawyers and judges use them to help decide what support is reasonable.

Who enforces orders for spousal support?

Orders for spousal support are enforced by the **Family Responsibility Office** (FRO). This is the same provincial government office that enforces child support orders. Every court order for spousal support is automatically filed with the FRO. If you and your spouse have made an agreement about support, you can also file a copy with the FRO for enforcement.

How does the FRO work?

When a support order is filed, the payor must send all payments to the FRO. Once the FRO gets the money, it sends it to the recipient spouse.

The FRO has many files. Because the office is so busy, you may have to wait several months after you file the order before you will start to receive the support money.

What happens if the payor does not pay?

Sometimes, the payor is late or misses a payment.

Here is what the FRO can do to collect the money:

- If the payor is working, the FRO can order his employer to take support from his wages.
- If the payor is unemployed or self-employed, the FRO can try to take money from his bank account. This is called **garnishing** his account.

The FRO can also put a lien on his personal property such as a car or home. If he tries to sell this property, the FRO will get the money the payor owes.

- If the payor is always late or owes a lot of money in support, the FRO can try to force him to pay by suspending his driver's licence and other kinds of licenses such as hunting and fishing licenses. It can cancel his passport. It can also take money the government owes him such as a tax refund or employment insurance benefits.

What if the payor doesn't live in Ontario?

The FRO can help you collect support if your spouse lives anywhere in Canada or the United States. This is because all of the provinces and the states have signed agreements that allow FROs to collect support orders across these boundaries. Ontario also has agreements with some other countries including Bermuda, Ghana, Hong Kong, the Czech Republic and the United Kingdom.

If your spouse lives in a country that does not have an agreement with Ontario, the FRO cannot help you enforce the support order. The only way you can collect support is to use the laws of the country where the payor lives.

If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law topics available in English*

1. Alternative Dispute Resolution and Family Law (ENG 001)
2. Child Protection and Family Law (ENG 002)
3. Child Support (ENG 003)
4. Criminal and Family Law (ENG 004)
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)

12. Spousal Support (ENG 012)

** This booklet is available in multiple formats and languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*



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