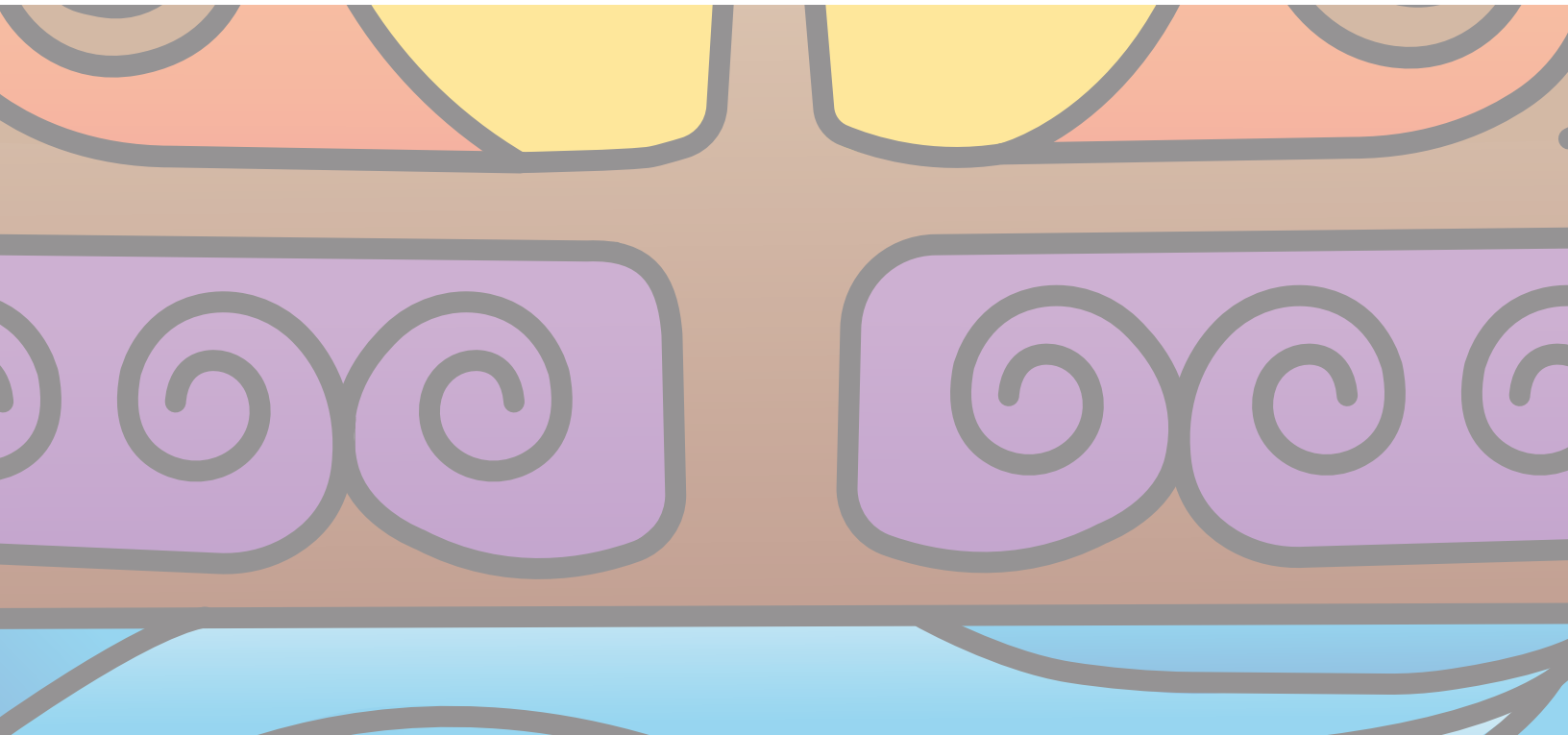
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WHAT IS CHILD SUPPORT AND HOW TO ACQUIRE IT

Child support refers to a **financial contribution provided by one parent to the other to help ensure their child or children's well-being.** The amount is determined based on what the paying parent is capable of providing and the needs of the child.[1] Child support is meant to benefit the child and can be used to pay for food, housing, clothes, and daily expenses.[2]



Who Is Child Support for?

Every child under 19 years old in New Brunswick has the right to receive child support, regardless of whether their parents were ever married.[3] Additionally, children who have reached the age of majority, but remain under the care of their parents and are dependent on their parents because of illness, disability, pursuit of education, or any other cause, are eligible to receive child support.

Though child support payments go to the receiving parent, it is important to remember that the money is **for the benefit of the child.**

Who Pays Child Support?

Generally, determining who pays child support depends on who has the child the majority of the time. The parent who has the child in their care for the majority of the time **receives** the child support, and the parent who has the child for the minority of the time **pays** the child support. “Majority of parenting time” is 60% of the time or more, while “minority of parenting” is less than 40% of the time.[4]

A parent is anyone who has shown that they intend to treat a child as part of their own family.[5] This includes biological parents, adoptive parents, and sometimes step-parents, but does not include foster parents or relatives who act as caretakers under the *Child and Youth Well-being Act.*

A parent must pay child support even if they are not active or do not want to be active in a child’s life. It does not matter if the parents were married or ever in a relationship.[6]

How Do I Pay Child Support?

There are different ways that child support payments can be set up. These arrangements must be written down, signed by both parents, and witnessed. It should also be filed with the court so that it can be enforced like a court order if needed.[7]

The different ways to arrive at a child support order are:

1. **Parental agreement:** Parents can work together to come to an agreement regarding child support using the *Federal Child Support Guidelines: Step-by-Step.*[8] A lawyer should put the agreement in writing, each parent should have their own lawyer review the agreement, and then it can be signed and witnessed. A parent who is involved with the agreement can file it with the Court.[9]

2. **Family dispute resolution process:** Parents who are unable to work together to reach an agreement can use resources outside of court, like negotiation or mediation, to reach an agreement. Parents can hire lawyers to negotiate the child support agreements, or the parents can use the services of a professional mediator. A court may also order parties involved to use family dispute resolution processes to try to come to an agreement, before holding a trial.[10] This process will typically save money and court resources.

   Like an agreement reached on their own, an agreement reached through a family dispute resolution process will need to be in writing, signed, and witnessed. Again, it might be a good idea to file this type of agreement with the Court.

3. **Court order:** When parents cannot reach an agreement on their own and are also unsuccessful reaching an agreement through a family dispute resolution process, they can go through a trial. The Court will apply the *Federal Child Support Guidelines*, taking into account the child's needs and the capacity of the paying parent.



How Is Child Support Calculated?

Generally, child support in New Brunswick is calculated using the tables found in the *Federal Child Support Guidelines.* The tables set out monthly amounts of child support, **based on the paying parents' annual income and the number of children being supported.**[11]

The *Guidelines* do not specify any child support amounts for parents making less than $12,000. The *Guidelines* do not increase child support amounts for parents making more than $150,000. In this situation, the Court can award child support amounts as if the parent was making only $150,000, or increase the child support amounts, depending on the circumstances of each case.

The Court can apply the *Guidelines*, or they may order different child support amounts. If the Court does not follow the *Federal Child Support Guidelines,* they must explain why. The Court will consider whether the amount is appropriate, whether the paying parent can actually afford to pay the amount without undue hardship, the circumstances of both parents, and the needs and best interests of the child.[12]

Courts can also consider special or extraordinary expenses when calculating child support. A parent may be ordered to pay all or some of these expenses. Extraordinary expenses could be:

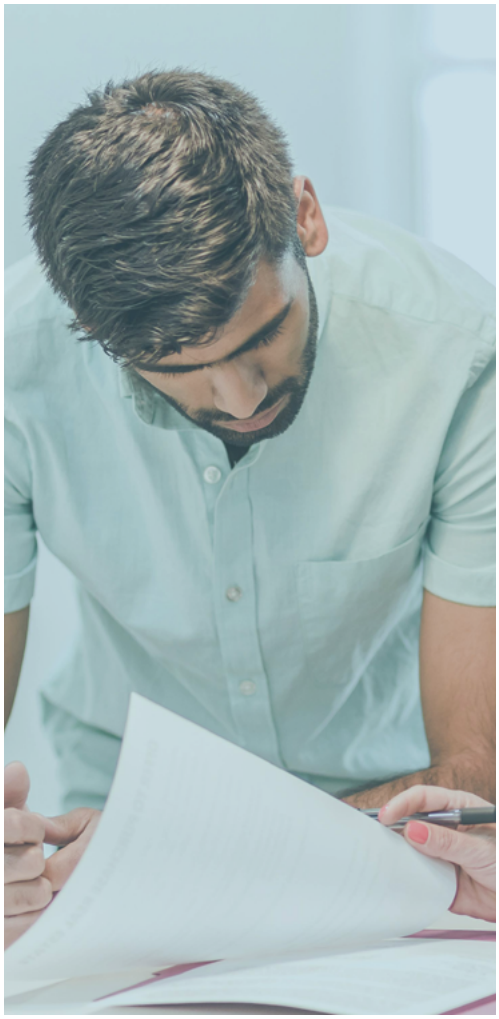
- Health and dental insurance premiums;
- Other health-related expenses;
- Child care that results from parental work obligations, illness, or disability;
- Post-secondary education;
- Extracurricular activities; and
- Other education-related expenses for the particular needs of the child.[13]

Special and extraordinary expenses will be considered if they are necessary and reasonable, based on the best interests of the child and what the parents can afford.

Parents who are coming to their own agreement can also agree to pay child support amounts that are outside of what is prescribed in the *Federal Child Support Guidelines.* The Court will not see these as unreasonable, if both parents have agreed to the amounts.[14]

What Happens if My Income Changes?

Child support payments can be adjusted if the paying parent's income or circumstances change. Like with the initial child support agreement or order, parents can agree to an updated child support amount by consenting to it and updating their agreement, through a family dispute resolution process, or by a court order. Any person named in a child support order, or the Minister of Social Development can apply to the Court to change an order.



The Court can cancel, change, or suspend payments by making a new order or judgement based on the change in circumstance. Part of this new order will be the new amount the paying parent must pay to the receiving parent.[15]

Parents may also be eligible to register with the Child Support Recalculation Service.[16] This service annually recalculates the amount of child support owed in a child support order,[17] as long as the parents provide their updated financial information.[18] The recalculated amount will be distributed to the parents and filed with the Court.[19]

How Is Child Support Paid?

Child support can be paid, as ordered by the court, or by agreement as:

- A recurring payment, monthly or otherwise; or
- A one-time, lump sum payment that may be held in trust.

How Is Child Support Calculated When Both Parents Have Equal Parenting Time?

When both parents each have at least **40% of the parenting time** with the child, child support is calculated by looking at what each parent would owe, calculated using the *Federal Child Support Guidelines* table.

Considerations would also be made for the increased costs of shared parenting arrangements like doubling the housing for the child, costs of transportation if there is significant travel involved, as well as the ability of both parents to pay additional support and the circumstances of the living arrangements.[20] **Child support, if any is owed, will have to be decided on a case by case basis.**

Sometimes, there are multiple children and each parent has majority parenting time with one or more of the children. When this happens, child support orders typically are made for the difference between the amounts that each spouse would otherwise have to pay.[21] It becomes more of an exercise in equalization between the parents.

How Is Child Support Enforced?

Child support can be enforced by court order, or if a party to a child support agreement registers their support agreement with the Court. In both cases, the agreements will be enforced through the Office of Support Enforcement (OSE). It is their duty to make sure that child support orders are being followed. The OSE can take the following steps to enforce the child support order:

- **Garnishment:** A payment order to the paying parent's place of employment. Money from wages, pensions, income tax refunds, GST credits, worker's compensation benefits, banks accounts, and jointly held bank accounts can be taken by the OSE to fulfill child support obligations;[22]
- **Enforcement hearing:** The administrator from the OSE can schedule an administrative hearing or a hearing in Court to resolve child support non-payment;[23]
- **Suspend or revoke paying parent's driver's licence:** If a parent has not been paying their child support payments, the OSE can suspend or revoke their driver's licence.

How Long Does Child Support Last?

Child support typically lasts until the child reaches the age of majority, 19 years old. However, child support can continue past that age if the child does not leave their parent's charge, for instance, if they go on to post secondary studies, or have a disability or illness.

Can a Parent Be Stopped From Seeing Their Child if They Do Not Pay Child Support?

No, a parent's right to parenting time with their child is not connected to child support payments. These are separate issues.

How Is Child Support Taxed?

Generally, child support orders or agreements made after April 1997 are not tax deductible for the paying parent and are not considered income for the receiving parent. This is only true if the payments are made on a periodic basis — monthly, quarterly, semi-annually, or annually.[24] The Canada Revenue Agency (CRA) will not consider them to be support payments if child support is paid in a single lump sum payment.[25]



[1] *Family Law Act,* SNB 2020, c 23, s 10 ["*FLA*"].

[2] "Child Support", *Public Legal Education and Information Service of New Brunswick,* online <https://pomis.legalinfonb.ca/publication-files/Child_Support_EN.pdf>. ["PLEIS-NB Child Support"].

[3] PLEIS-NB Child Support; *see also FLA* at s 10, "every parent has an **obligation**… to provide support…".

[4] *Federal Child Support Guidelines,* SOR/97-175 ["*Federal Guidelines*"]; see also *Child Support Guidelines*, NBR2021-19, s3(1): New Brunswick applies the Federal Child Support Guidelines with some exception.

[5] *FLA* s 1.

[6] *FLA*, s 15; PLEIS-NB Child Support states this, but I couldn't find a reference to it in the Federal Guidelines or the *FLA*, outside of s.15.

[7] *FLA*, s 79(1).

[8] "Federal Child Support Guidelines: Step-by-Step", *Government of Canada* (2022-12-21) online <https://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/guide/start-com.html#h1>.

[9] *FLA*, s 79(1).

[10] *FLA*, s 8(1).

[11] *Federal Guidelines supra* note 5 at Schedule I.

[12] *FLA*, s 12.

[13] *Federal Guidelines*, s 7.

[14] *FLA*, s 12(6).

[15] *FLA*, s 22.

[16] "Child Support Recalculation Service", *Government of New Brunswick*, online <https://www.gnb.ca/en/topic/laws-safety/courts-jails/recalculation-service.html#:~:text=The%20Child%20Support%20Recalculation%20Service,long%20as%20you%20are%20enrolled.> see the criteria for eligibility of the program.

[17] *FLA*, s 33.

[18] *FLA*, s 44.

[19] *FLA*, s 38.

[20] *Federal Guidelines*, s 9.

[21] *Federal Guidelines*, s 8.

[22] *Support Enforcement Act*, SNB 2005, c S-15.5, s 18 – 25.

[23] *Support Enforcement Act*, ss 31 and 33; *see also* Public Legal Education and Information Service of New Brunswick, "Support Enforcement" (2018) at page 8, online <https://pomis.legalinfonb.ca/publication-files/Support_Enforcement_EN.pdf>.

[24] "Amount you can claim or report" *Government of Canada* (2024-01-23), online <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/support-payments/what-amount-claim-report.html#ftrprl>.

[25] "Lump Sum Payments" *Government of Canada* (2024-01-23) online <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/support-payments/lump-payments.html>.

Resources

Visit the following links for additional information:

- **Child Support**
  Public Legal Education and Information Service of New Brunswick
  Click Here
- **Support Enforcement**
  An Information Booklet for Individuals who Receive or Pay Support,
  Public Legal Education and Information Service of New Brunswick
  Click Here
- **Office of Support Enforcement**
  Government of New Brunswick
  Click Here
- **Federal Child Support Guidelines: Step by Step**
  Click Here
- **Child Support Recalculation Service**
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