

Families and the Law

Financial Support



This booklet explains the law and financial support in Alberta. There is information about:

- child support
- partner and spousal support
- common problems and suggestions on how to resolve them

We've also included some tips and hints that will help you if you are representing yourself in court.

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Legal Centre

Who is this booklet for?

This booklet explains the law and financial support when a relationship ends in Alberta. The booklet has information for people who were legally married and people who lived in a common law relationship. There is information about partner and spousal support, child support, and common problems and how to solve them. We've also included some tips and hints that will help you if you are representing yourself in court.

Family law is complicated. Finding out about the law and your options is a very good first step. There are a lot of people and organizations who can help you. We've listed these referrals at the back of this booklet. Most of the legal words are defined in the margins.

There are other booklets in this series that can help you. Go to www.cplea.ca to find out more.



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Alberta **LAW**
FOUNDATION



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The Centre for Public Legal Education Alberta is a non-profit organization whose mission is to help people understand the law as it affects their everyday lives. We develop plain language booklets, presentations and other learning materials to help people recognize and respond to their legal rights and responsibilities. We have a variety of programs, and provide legal information and referral on many legal topics. For more information, please go to www.cplea.ca.

The contents of this booklet do not constitute legal advice. We make no claims or promises about its accuracy or completeness. If you require legal advice, you should consult a lawyer.

June 2014



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LOOK FOR THE FOLLOWING SYMBOLS TO FIND:



Additional resources and useful links where you can find more information.



Definitions of some of the common terms used throughout the document.



Tips and things to consider that may apply to your situation.

This booklet is based on **Alberta** law.
The law may be different in other provinces.

Child Support

Child support is:

- money that is paid by one parent or guardian to another parent or guardian for the child;
- the right of the child;
- usually paid monthly;
- determined by a set formula; and
- the same for married and unmarried parents.



Child support refers to payments made that provide financial support for the benefit of the child.



You can read the laws online for free by going to the Canadian Legal Information Institute at

www.canlii.org

What is child support?

Child support is payments made that provide financial support for the benefit of the child. The payments are usually made from one parent or guardian to another. The amount of the payments is determined by the Federal Child Support Guidelines. Any deviation from the Guideline amount requires a very good reason.

What laws apply to child support?

The *Divorce Act* and the *Family Law Act* both deal with child support. You need to decide which law applies to your situation. The *Divorce Act* is a federal law, and it only applies to people who are married to each other. The *Family Law Act* is an Alberta law, and it can be used if you are married or unmarried. The laws overlap in some areas, and they use different words to describe similar things. If you are going to make an application in court, then you need to know ahead of time which law you want to use.

The legal tests that a judge applies to decide if child support should be paid are very similar under the *Divorce Act* and the *Family Law Act*.

Where the laws are different, it will be brought to your attention in this booklet.

Who can apply for child support?

You can apply for child support if you:

- are the parent or guardian of the child;
- are the child;
- have care and control of the child; or
- have a judge's permission to make an application.

All parents are obligated to support their children.

Who has to pay child support?

You must financially support a child if you:

- are the biological parent;
- are the adoptive parent;
- are a stepparent that has acted like a parent; or
- are an adult that has acted like a parent.

This obligation exists even if the parent and the child do not have a relationship.

Is child support always paid?

All parents have an obligation to financially support their children while they are minors. This obligation exists, even if the children don't live with that parent, they aren't married to the other parent, and if they don't have any relationships at all with the children.

There is more information about the age of the children impacting child support later in this booklet.

Does the payor still have to pay child support if they live in a different province or country?

Yes, parents have an obligation to financially support their children, even if the parent lives in a different place than the child. You can find information about the *Interjurisdictional Support Orders Act* by going to <http://www.albertacourts.ab.ca/fjs/selfhelp/child-support-initial/interjurisdictional-support-orders/index.php>.



The federal government has developed an online calculator that can help you easily calculate the table amount of child support. You can find it here:

<http://www.justice.gc.ca/eng/fl-df/child-enfant/look-rech.asp>

How much money does a parent have to pay to support a child?

The amount of child support that parents must pay is set by the Federal Child Support Guidelines under the *Divorce Act* and the Alberta Child Support Guidelines under the *Family Law Act*. These different child support guidelines (CSG) are virtually identical. The CSG are mandatory, and there are only very limited exceptions when the CSG will not apply. Each province has its own table under the CSG. The province where the payor lives is the table that should be used to calculate support.

Parents have to pay a table amount of child support, as well as extraordinary expenses.

What is the table amount of child support?

Parents have to pay a basic child support amount, to cover basic living expenses for the children. This amount is calculated using the CSG. The table amount is based on the number of children that support is being paid for, and the income of the payor.

For example, if the payor makes \$44,000 gross per year and there are two children, then the table amount of child support that must be paid is \$618.00 per month.

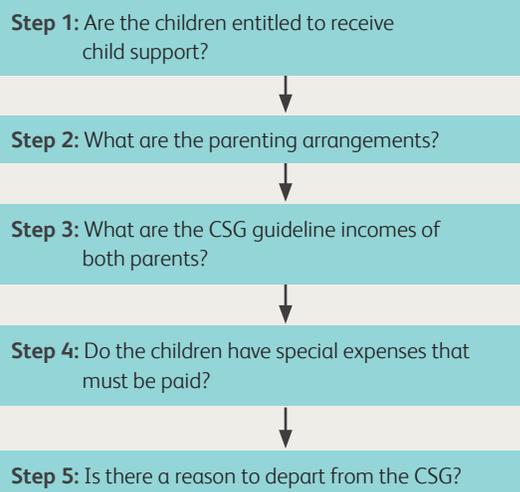
FEDERAL CHILD SUPPORT AMOUNTS: SIMPLIFIED TABLES

Income (\$)	Monthly Award (\$) / Number of Children			
	1	2	3	4
43,200	344	607	818	989
43,300	345	608	819	991
43,400	345	610	821	993
43,500	346	611	823	995
43,600	347	612	825	997
43,700	348	614	827	999
43,800	349	615	829	1,001
43,900	350	617	830	1,003
44,000	350	618	832	1,006
44,100	351	619	834	1,008
44,200	352	621	835	1,010
44,300	353	622	837	1,012
44,400	353	624	839	1,015
44,500	354	625	841	1,017
44,600	355	627	842	1,019
44,700	356	628	844	1,021

This is part of a table that the federal government has developed to help people understand the CSG. You should go to their website to find out more information about the table amounts and how to use them to calculate support. <http://www.justice.gc.ca/eng/fl-df/child-enfant/ft-tf.html>

What does a judge think about when making a child support order?

WHAT DOES A JUDGE THINK ABOUT WHEN MAKING A CHILD SUPPORT ORDER?



The answers to these questions will be explored in detail in the next few pages of this booklet.

Step 1: Are the children entitled to receive support?

Child support must be paid for children who are:

- Under 18, if the child has not voluntarily withdrawn from their parents' charge;
- Over 18, if they meet certain criteria.
 - Under the *Family Law Act*, parents must pay child support if the child is between 18 and 22 years of age and is enrolled in school full time.
 - Under the *Divorce Act*, parents must pay child support if the child is enrolled in post-secondary education or has a disability or illness that prevents the child from living without the aid of their parents.

Step 2: What are the parenting arrangements?

The parenting arrangements are significant when calculating child support.

PARENTING ARRANGEMENTS FOR CHILD SUPPORT PURPOSES



Primary Care to One Parent or Sole Custody

Children live with one parent more than 60% of the time in a year.



Shared Custody

Children live with each parent at least 40% of the time over the year. The way the time is split can vary (50/50, 40/60, 45/55).



Split Custody

One child lives with one parent at least 60% of the time, and the other child lives with the other parent at least 60% of the time.

Primary care to one parent, or sole parenting

The CSG basic child support calculation applies.



You can find the CSG Simplified Table that is used here:

<http://www.justice.gc.ca/eng/fl-df/child-enfant/CSG-lfpae/2011/pdf/aba.pdf>

EXAMPLE

Mary and Doug have two children, and they live with Mary most of the time, and only see Doug every other weekend. They are with Mary over 60% of the time, so Mary has primary care. Doug makes \$81,000 per year gross, which calculates to \$1,159 per month that Doug must pay to Mary.

Income (\$)	Monthly Award (\$) / Number of Children			
	1	2	3	4
81,000	698	1,159	1,527	1,829

Shared parenting

Each shared child counts as a child in both households. Using the CSG, calculate the payment amount for both parents. The difference between the two amounts is what has to be paid. This amount is often called the “set off” amount.

EXAMPLE

Sara and Andrea have two children, and the children live 50% of the time with each parent. Sara makes \$28,000 and Andrea makes \$45,000. The table amount for Sara, based on two children, is \$411. The table amount for Andrea, based on two children, is \$632. To calculate the set off amount, subtract the lower number from the higher number ($\$632 - \$411 = \$221$). Andrea has to pay Sara \$221 in child support.

A judge can decide not to use the table amount in shared custody situations. The judge must consider the recommended table amounts, the increased costs of shared parenting arrangements, and the conditions, means, needs and other circumstances of each parent and the children.

Split parenting

Using the CSG, calculate the payment amount that one parent owes to the other, based on the number of children in that parents’ care. Calculate the support amount for the other parent. The difference between the two amounts is what has to be paid.

EXAMPLE

Dale and Lesley have two children. One child lives with Dale, and one child lives with Lesley. Dale makes \$50,000 and Lesley makes \$98,000. The table amount that Dale would have to pay is \$405 for one child, and the table amount that Lesley would have to pay is \$850. The set off amount is \$445. Lesley would have to pay Dale \$445 per month.

If the living arrangements of the children change, the child support may have to change too.



A judge will require proof of your income. You can provide this proof by providing copies of your tax returns and notices of assessment for the past 3 years, recent pay stubs (or an employment letter that confirms your current income), and copies of any statements of income from other sources (including EI, disability, pension, etc).



When a judge **imputes** an income, the judge is declaring that a parent has a certain income. For example, if one parent does not provide income information, or they provide incomplete or false income information, then the judge can set their income to be a certain amount for child support purposes.

Step 3: What are the CSG incomes of both parents?

Deciding how much a parent's guideline income is can be complex, especially if the payor is self-employed. You may want to seek legal advice.

The parents have to provide their income information to each other, and to the judge. The parents must provide this information to ensure that the amount of child support that is ordered is fair.

A judge can do many different things in order to determine guideline incomes.

- If the employment situation is straight forward, then Line 150 of the Income Tax Return is used. Professional and union dues can be deducted from the Line 150 amount.
- Sometimes using the last year's tax return won't work because the parent has lost their job, changed jobs, or had a raise. If using the previous year's tax return does not reflect the payor's current financial means, then the judge can estimate the parent's income using pay stubs.
- The judge can find the average income amount over three years, and use that amount for child support purposes. This can be helpful when a person's income fluctuates from year to year.

If the payor is a shareholder, director or officer of a corporation, then the judge can determine income by including:

- all or part of the pre-tax income of the corporation (and any other corporation that is related to that corporation);
- personal expenses paid by the corporation; and
- any wages or fees paid to non-arm's length individuals.

A judge can **impute** income to a parent in certain circumstances, including:

- if the parent is intentionally underemployed or unemployed;
- if the parent is not taxed on their income;
- if income has been diverted;
- if the parent fails to provide income information when they are supposed to;
- if the parent unreasonably deducts expenses from income;
- if the parent earns a significant amount of income from sources that are taxed at a lower rate than employment earnings; and
- other situations.

An accountant can be very helpful in determining what your or the other parent's income is, especially if there is a corporation involved.

Step 4: Do the children have special expenses that must be paid?

Special expenses, which are also called “extraordinary expenses” or “section 7 expenses,” are expenses that are incurred for a child that are not for basic living expenses. These expenses could be for things like extracurricular activities, post-secondary education, tutoring, childcare (under certain circumstances), insurance premiums and healthcare.

These expenses are usually shared between parents, in proportion to their incomes.

EXAMPLE

If Traiq earns \$50,000 and Aliya earns \$25,000, then Traiq will pay 2/3 of the expenses, and Aliya will pay for 1/3 of the expense. If a one week day camp over the summer costs \$300, then Traiq would pay \$200, and Aliya would pay \$100.

If the parents end up in court because they don’t agree on the expenses, the judge will consider if the expense is in the child’s best interests, and if the expense is reasonable, given the financial situations of both parents.

From: Kim <parentkim@emailaddress.ca>

Date: March 3, 2014 10:18:52 AM MDT

To: Steve <parentsteve@emailaddress.ca>

Subject: Child Support Special Expenses

Steve,

I am writing this email to begin discussing some upcoming special expenses.

Ben’s math grade has fallen over the past year, and his teacher thinks that he needs some help. His teacher recommended a tutor, with a cost of \$25 per hour. The tutor is available on Thursdays, and can travel to meet Ben at whichever house he is staying at that day. The sessions would be once a week until the end of the school term, which would be approximately \$350. As you pay 2/3 of the special expenses, your cost would be \$233, and I would pay \$117. Will you pay your portion for a math tutor? Please let me know by Monday of next week.

Ben is already asking about going with his friends to camp in July, with a cost of approximately \$400 (you can find the list of camp costs here). Your cost would be \$267, and I would pay \$133. There’s a subsidy available that I’ll apply for, but I didn’t get it last year so I doubt I’ll get it this year. Will you pay your portion for summer camp?

Kim



Special expenses are paid in addition to the CSG amount.

You can avoid a lot of conflict with the other parent by asking for the other parent’s consent to a special expense ahead of time. You should be very clear and state exactly how much the expense will be. It’s a good idea to include proof of the cost (like a sign up form with the fee stated on it, or a quote).

Step 5: Is there a reason to depart from the CSG?

A judge might order that one parent pay more or less than the CSG when:

- the child spends an equal time with both parents (shared parenting);
- the payor is not a biological or adoptive parent, but standing in the place of a parent;
- the payor earns more than \$150,000 a year;
- the child is over 18; or
- the payor would suffer from undue financial hardship if they were ordered to pay the CSG amount.

What is undue hardship?

Undue financial hardship can occur when the parent:

- has an unusually high level of family debt incurred from before the separation;
- has high expenses in relation to exercising parenting time with the child; or
- has to support other people.

Do stepparents have to pay child support?

If an adult has acted like a parent (“stood in the place of the parent”), then that adult may have to pay child support. A judge has discretion to determine if a stepparent or other adult should be obligated to pay child support for the child. The law states that the obligation of the actual parents outweighs the obligations of someone standing in place of a parent. This means that even if the judge decides that someone is standing in the place of a parent, a judge can order that the person can pay less than the CSG amounts.



ARE YOU STANDING IN THE PLACE OF A PARENT?

Did you marry the child's parent?

OR

Were you in a relationship of interdependence of some permanence with the child's parent?

NO

You **are not** standing in the place of a parent.

YES

Did you demonstrate a settled intention to treat the child as your own child?

Think about the answers to the following questions to decide.

- How old is the child?
- How long did you have a relationship with the child?
- What was the nature of your relationship with the child?
 - Does the child think of you as their parent?
 - Were you involved with the child's care, discipline, education or recreational activities?
 - Have you tried to keep in touch with the child since the separation?
- Did you think about becoming the child's guardian, adoptive parent, or changing the child's surname to your own surname?
- Did you provide direct or indirect financial support for the child?
- What kind of relationship does the child have with any of the other parents?

YES

You **are** standing in the place of a parent.

NO

You **are not** standing in the place of a parent.



Blameworthy conduct means that the parent who was supposed to pay child support put their own interests ahead of the child's interest to receive appropriate child support. This could mean that the parent neglected to provide updated income information, refused to provide current financial information, lied about their financial situation, or hid or diverted money.

You should share income information every year with the other parent. By sharing this information, you can hopefully avoid having to make a claim for retroactive child support.

Can a parent be ordered to pay child support for a time period that has already passed?

Sometimes a judge will order “retroactive child support.” This occurs when a judge orders that a parent must pay support now, to make up for not paying the proper amount of child support in the past. These situations are very fact specific. Even if an order is made, the judge will usually not go back more than 3 years from the date that the child support or financial information was requested, unless the payor was involved with **blameworthy conduct**.

What are the factors that determine if a parent must pay child support retroactively?

- Does the recipient have a reasonable excuse for why they didn't seek child support earlier?
- Has the payor been involved in blameworthy conduct in relation to the child support?
- What were the children's circumstances during the time that the support was not paid?
- Would an order for retroactive child support cause financial hardship to the payor?

From: Kim <parentkim@emailaddress.ca>

Date: April 25, 2014 6:21:47 PM MDT

To: Steve <parentsteve@emailaddress.ca>

Subject: Updated Financial Info

 1 Attachment **Notice of Assessment 2013 (475KB)**

Steve,

I am writing this email to request that you provide me with your updated financial information for child support purposes. I have received my Notice of Assessment, and I have attached it to this email for your records.

Please provide your updated Notice of Assessment, along with any other relevant financial documents, by June 1, 2014.

Thanks,

Kim

When can a child support order or agreement be changed?

A child support order or agreement can be changed if there is a significant change in the circumstances of one of the parents. The change must have occurred after the child support order or agreement was made.

Some examples of changes that might be considered significant are:

- a parent making significantly less or more money;
- changes to the amounts that have to be paid for special expenses; or
- a change in the parenting arrangements (for example, if the child moves to live with the other parent).

From: Steve <parentsteve@emailaddress.ca>

Date: April 30, 2014 4:37:21 PM MDT

To: Kim <parentkim@emailaddress.ca>

Subject: New Child Support Calculations

 1 Attachment ► **Letter of Employment (250KB)**

Kim:

I've changed jobs, which will result in a change in my financial circumstances. This change will affect the amount of child support that I can pay for our son, Ben.

My new job pays less than the job I left, but I do not have to travel out of the city as much. I've attached a letter of employment from my new boss that shows how much I will make every pay period. My estimation is that this year, I will make approximately \$10,000 less than I did last year. My income will be close to \$75,000 this year.

Based on the online child support calculator that I used, my child support payments will reduce from \$734 to \$642 per month. I'd like to start the new child support payments as soon as possible. Please let me know if you'll agree to the new child support amount by May 15, 2014.

Steve

A change in income can be a significant change in circumstances. If a parent changes jobs and will have a different income, then they should let the other parent know as soon as possible. The parent whose job is changing should provide proof of the new income amount. This proof could be pay stubs, an employment letter, or any other documentation that shows the gross amount that is being paid.



You can call MEP with questions at 780-422-5555.

What if the child support is not being paid?

You can register your order with the Maintenance Enforcement Program (MEP). The procedure for registering is available on its website at http://justice.alberta.ca/programs_services/mep/Pages/how-to-register.aspx. MEP can enforce an order if the payments are not being made in full, or on time, or if the partner who has to pay the support hasn't made payment arrangements with MEP.

What are the consequences for not paying child support?

The Maintenance Enforcement Program has many different ways to enforce a court order, including:

- garnishing funds from the federal government, employer and bank accounts;
- restricting licences including driver's licence, hunting and fishing licences, and federal licences, including passports;
- registering against real property or personal property;
- seizing assets;
- affecting your credit rating; and
- other actions.

If a parent has not paid child support, and they are not registered with the Maintenance Enforcement Program, then the parent who receives the support should request the child support as soon as possible. The parent should be clear and state the monthly amount and how much is currently owed. The recipient parent can contact the Maintenance Enforcement Program to discuss how to register for it.

From: Kim <parentkim@emailaddress.ca>

Date: June 8, 2014 10:46:08 PM MDT

To: Steve <parentsteve@emailaddress.ca>

Subject: June Child Support

Steve,

I haven't received child support from you this month. You are required to pay me \$734 in child support on the first of every month. Please provide me with payment in full by June 20, 2014. If I do not receive full payment, then I will be considering my legal options including registration with the Maintenance Enforcement Program.

Kim

If the payor owes child support arrears, can a judge wipe out those arrears?

Judges can change the amount of arrears, but they are usually very reluctant to do so. Instead of canceling out arrears, judges will usually postpone the payments, or allow the payor to pay the amount that is owed over time.

The payor must provide full financial disclosure, and prove that there has been a significant and enduring change of income. The payor must also have made efforts to earn more money, and the payor must have a good reason for not asking for a change to the child support order or agreement at the time their income changed.



Having a new family and new financial obligations are not valid excuses to stop paying the full amount of child support to the children from a previous relationship. If your new financial obligations mean that you or your children would suffer undue financial hardship, you must make an application for that remedy.

Partner and Spousal Support

Partner support is:

- paid after separation or divorce if a partner proves that they are entitled to receive it;
- paid only if the partners were married or in an adult interdependent relationship;
- paid from the partner who makes more money to the partner who makes less;
- usually paid monthly;
- used to help meet one partner's expenses;
- used to compensate one partner for the unpaid contributions that were made during the relationship; and
- used to help one partner become able to support themselves.



The partner who makes the payments is called the **payor**.

What is spousal and partner support?

Spousal and partner support are payments made from one spouse or partner to the other spouse or partner. The partner who makes the payments is called the **payor**. The payments are to compensate for choices that were made financially during the relationship, and to help with living expenses. Different terminology is used for different laws. If you are married, then you would refer to the payments as spousal support. If you were not married, then these payments are called adult interdependent partner support.

In this booklet, we are going to refer to all support obligations between separated and divorced partners, married or unmarried, as “partner support.” We are doing this to keep things simple.

What laws apply to partner support?

The *Divorce Act* and the *Family Law Act* both deal with partner support. You need to decide which law applies to your situation. The *Divorce Act* is a federal law, and it only applies to people who are married to each other. The *Family Law Act* is an Alberta law, and it can be used if you are married or unmarried. The laws overlap in some areas, and they use different words to describe similar things. If you are going to make an application in court, then you need to know ahead of time which law you want to use.

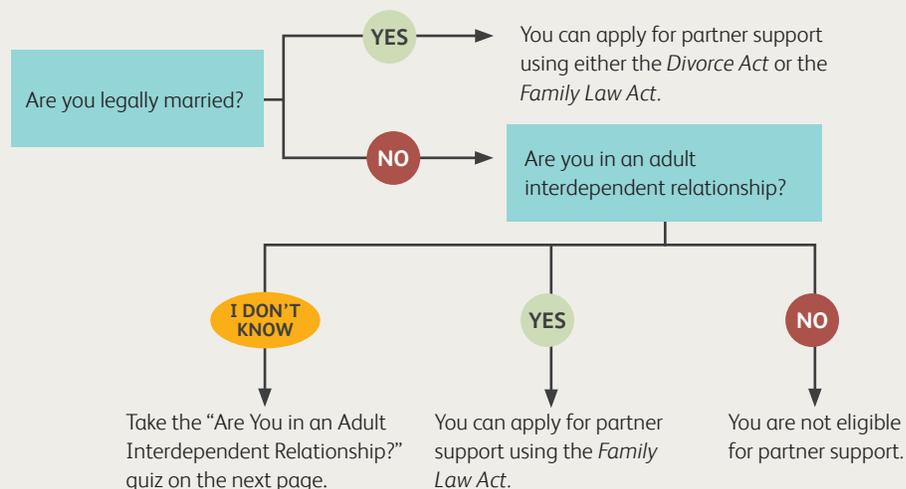
The legal tests that a judge applies to decide if someone should receive spousal support are very similar. Where there is a difference between the *Divorce Act* and the *Family Law Act*, it will be brought to your attention in this booklet.

Who can apply for partner support?

- You can apply for partner support if you are married. You can apply using the *Divorce Act* or the *Family Law Act*.
- You can apply for partner support if you are in an adult interdependent relationship. You can apply using the *Family Law Act*.

If you are not married and you are not an adult interdependent partner, then you cannot apply for partner support.

WHO CAN APPLY FOR PARTNER SUPPORT?



You can read the laws online for free by going to the Canadian Legal Information Institute at

www.canlii.org

I was living common law with someone. Can I get partner support?

The term “common law” is often used to describe a couple who live together, with or without children, but who are not legally married. In Alberta, the law doesn’t use the term “common law” but instead these relationships are called “adult interdependent relationships.” There are certain conditions that must be met before you will be considered to be in an adult interdependent relationship. You can only apply for partner support if you meet the criteria for an adult interdependent relationship.



You can read more about adult interdependent relationships by going to CPLEA's *Living Together* booklet at

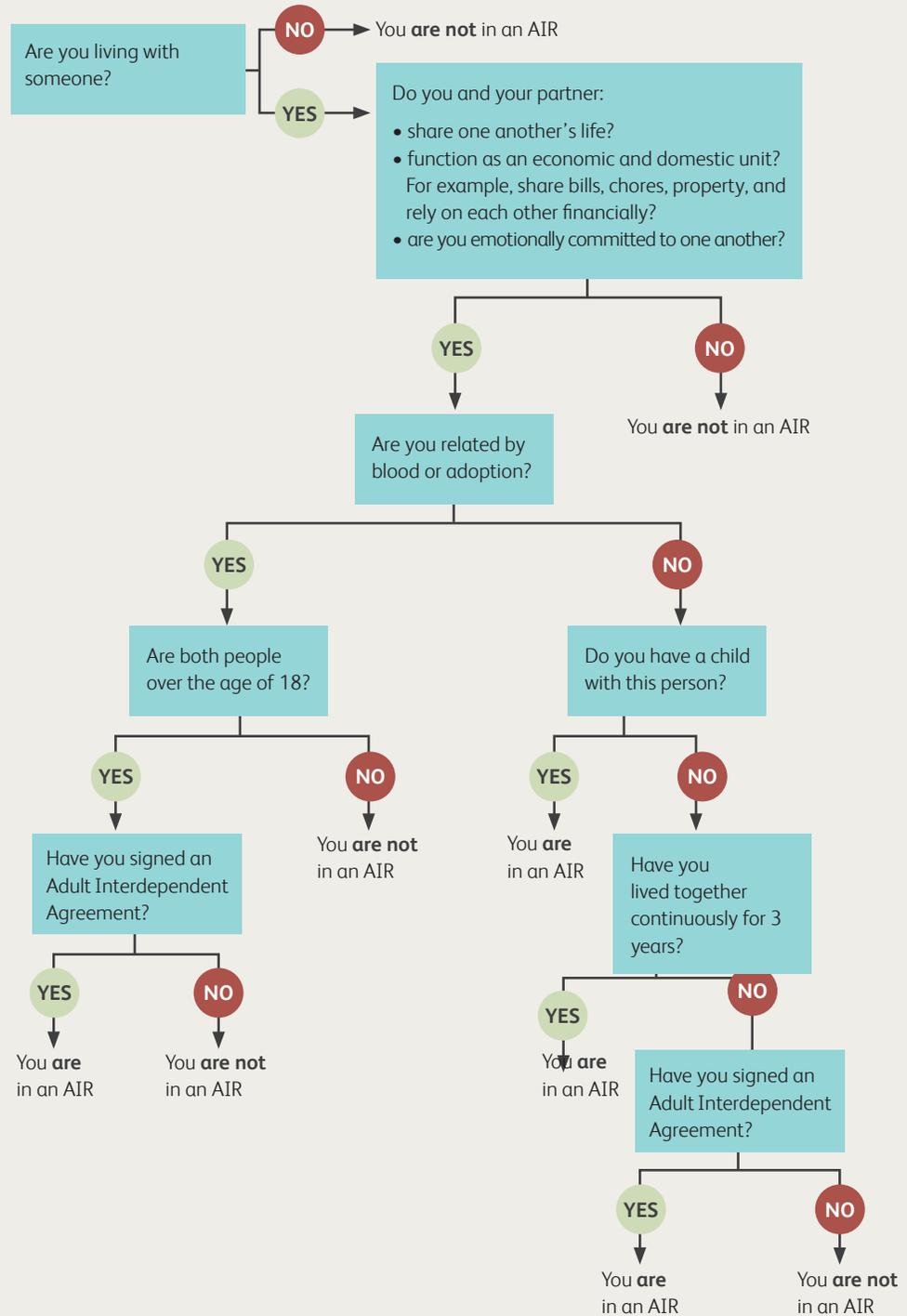
www.cplea.ca



The term "adult interdependent relationship" comes from a law called the *Adult Interdependent Relationships Act*. You can read the law for free at

www.canlii.ca

ARE YOU IN AN ADULT INTERDEPENDENT RELATIONSHIP (AIR)?



What is the purpose behind partner support?

Partner support is awarded for different reasons.

- To compensate one partner for financial decisions made during the relationship. For example, one partner may have stopped working to raise the children.
- To help one partner meet their needs after the relationship ends. For example, if one partner can't meet their reasonable expenses in a budget, or if one partner needs to go back to school to learn new skills to become self-supporting, then partner support may be awarded.
- To honour any contracts that the partners have made. For example, if there was a pre-nuptial or co-habitation agreement.

Is partner support always paid when a relationship ends?

No. Partner support is not an automatic right of a spouse when the relationship ends. A spouse must prove that they are entitled to receive partner support.

Not every couple who separates ends up paying partner support.



How does a judge decide if partner support should be awarded?

WHAT DOES A JUDGE THINK ABOUT WHEN MAKING A PARTNER SUPPORT ORDER?

Step 1: Should the partner receive partner support?

The judge will consider different factors and objectives to answer this question.

A partner support order will not be issued if the answer is no.

YES

Step 2: How much support should be ordered?

Step 3: Should the partner support be paid in a lump sum, or periodically (for example, once a month)?

Step 4: If the partner support payments are periodic, how long should the payments last?

The answers to these questions will be explored in detail in the next few pages of this booklet.

Step 1: Should the partner receive partner support?

Partners that think they should be paid partner support have to prove that they are entitled to receive it. Judges think about different factors and objectives to decide if a partner should receive support. If the partner does not prove that they are entitled to support, then no order will be awarded.

What are the different factors that a judge will consider before a partner support order is made?

How long have the partners inhabited a residence together?

- The longer the relationship, the more likely it is that partner support will be ordered.

What functions did each partner carry out when they lived together?

- Did one partner work, while the other partner stayed at home or only worked part-time? Did both partners work and share domestic tasks?

Is there any agreement or order between the partners?

- Did they have a pre-nuptial or separation agreement?

How much does each partner earn? Do they have other financial resources?

- The bigger the gap in the income between the partners, the more likely it is that partner support will be ordered.

What are the financial needs of each partner?

- One consideration a judge will think about is the standard of living of both partners. How much money does each partner require to meet their needs?

What are the conditions of each partner?

- This includes considering the health of each partner, age, the presence of children, any special needs, etc.



You will have to provide evidence to the judge about the factors. For example, if you are saying that you have a health problem that prevents you from becoming self-sufficient, or that you won't be able to make as much money as you have in previous years, then you could provide a letter or report from your doctor.

The *Family Law Act*, in addition to the factors already listed, has additional things that a judge must consider.

Do either of the partners have legal obligations to support another person?

If the payor lives with someone else, how much does that other person contribute to household expenses?

- If the other person contributes significantly to household expenses, then this increases the ability of the payor partner to pay because there is more money available.

If the partner who receives partner support lives with someone else, how much does that person contribute to household expenses?

- If the other person contributes significantly to household expenses, then this decreases the financial need of the partner.

What are the objectives of a partner support order?

Partner support should:

- recognize financial advantages and disadvantages that a partner faces because of the relationship or the separation;
- ensure that neither partner suffers economic hardships because of the separation;
- if there were financial consequences for caring for the children, then these consequences should be shared between the partners;
- promote each partner becoming self-sufficient within a reasonable period of time.

EXAMPLE

Amy and Jason have dated for a long time. Amy is from Australia. They decide that they want to get married and that Amy will move to Alberta to live with Jason. Amy gives up her very successful job and sells most of her possessions. Her credentials are not recognized in Alberta, so she has a difficult time finding appropriate work. They decide to have children, and Amy stays at home with the children. Jason gets numerous promotions because he is able to focus on his work as Amy takes care of the house and the children's activities. After 15 years, their marriage isn't working out, and they decide to separate.

Amy is not doing very well financially, while Jason is in a very good financial position. Their marriage was long, and Amy took care of the family while Jason was the sole breadwinner. Amy has suffered an economic disadvantage because of the marriage, and because of the separation. She left a successful career, and her credentials are not recognized in Alberta, so she cannot work at the level she is trained for. She has not worked since the children were born, so she is less employable, and she did not have the opportunity to further her own career or go back to school to get the appropriate credentials. Amy suffers economic hardship because she can't maintain a standard of living equivalent to what she had during the marriage without financial support from Jason. Jason has a career and will enjoy a comfortable retirement, while Amy is in a tough financial position. In this case, Amy will receive financial support from Jason.

Step 2: How much partner support should be ordered?

Judges will consider the income of the payor and the financial need of the partner who receives the money. Both partners will need to submit income information and budgets to the judge.

The Spousal Support Advisory Guidelines are not law, but they are used a lot. They provide suggestions to the judge about the amount and duration of partner support. The Guidelines have two formulas, one that is used if child support is being paid, and another if the partners never had children or the children are now independent.

Step 3: Should the partner support be paid in a lump sum, or periodically?

Partner support is commonly paid periodically, on a monthly basis. These payments are taxable for the partner who receives the payments, and tax deductible for the payor.

Lump sum payments are not as common, because many people do not have a lump sum of money readily available. Lump sum payments do not have the tax implications that periodic payments do.

Step 4: How long should the partner support payments last?

Partner support payments are usually set up in one of the following ways.

The partner support payments are reviewed at a set date, or terminated on a set date

The partner support will continue until a certain date or specific event occurs. For example, if one partner is going to return to school to learn new employment skills to become self-supporting, then the order might be reviewed or terminated once the courses are completed.

There is no end date

An indefinite end date does not mean that the support will have to continue forever. If there is a change in circumstances for either party, then an application can be made to vary the amount of support. For example, if the partner who pays the support loses their job, that would be a change of circumstance.

The payment amounts are staggered

The support amount decreases over time until no more support is payable. This is often used when the judge believes that the partner receiving the payments has the ability to become self-sufficient.



While there is not an “official” free software version of the SSAG, you can use the calculator at

www.mysupportcalculator.ca

Or go to the federal government website at

<http://www.justice.gc.ca/eng/fl-df/spousal-epoux/ss-pae.html>

for more information. You could also hire a lawyer to do the calculations for you.

When can a partner support order be changed?

A partner can apply to change the partner support order if substantial evidence has come to light that was not available at the original hearing, or if there has been a significant change in the lives of either partner. Some examples of significant changes are:

- if either partner's income is much higher or lower than when the order was made;
- if either partner remarries; or
- if either partner develops a health concern or disability and needs more financial support, or needs to pay less support than was originally ordered.

If the partner proves that there has been a significant change, then the judge will go through the same legal test as if it were an original support order application.

If the partners are negotiating a settlement, but one partner needs some financial support immediately, can the judge order temporary spousal support?

Yes, a judge can order partner support on a temporary basis. This is usually called an interim order. Judges can also make final orders.

What if the partner support isn't being paid?

You can register your order with the Maintenance Enforcement Program. The procedure for registering is available on its website at http://justice.alberta.ca/programs_services/mep/Pages/how-to-register.aspx. MEP can enforce an order if the payments are not being made in full, or on time, or if the partner who has to pay the support hasn't made payment arrangements with MEP.

What if there is not enough money to pay child support and partner support?

Child support takes priority over partner support. This means that if there isn't enough money to pay both child support and partner support, then the partner who pays may only have to pay child support.



You can call MEP with questions at 780-422-5555

Contacts

Legal Aid Alberta - Service Centres

Offers information, referral and representation services to those who meet financial guidelines across Alberta.
1 866 845 3425

ADR Institute of Alberta

Has a roster list of private mediators.
www.adralberta.com
1 800 232 7214

Collaborative Divorce in Alberta

Has a list of lawyers who practice collaborative law in Alberta.
www.collaborativepractice.ca

Law Society of Alberta Lawyer Referral Service

Can provide the contact information for three lawyers you can contact. You should receive a half hour free consultation.
1 800 661 1095

Family Justice Services

Offers a variety of low cost and free programs to help individuals find solutions to family law issues.
www.albertacourts.ab.ca/fjs/index.php

Family Law Information Centre

Can help you with court procedure, forms and child support calculations, as well as provide you with information and referral.
www.albertacourts.ab.ca/fjs/flic.php

Legal Clinics

Clinics can provide you with legal information and advice.

Calgary Legal Guidance

403 234 9266
clg@clg.ab.ca

Central Alberta Community Legal Clinic

1 877 314 9129
info@communitylegalclinic.net

Children's Legal & Educational Resource Centre (CLERC)

403 207 9029
clerc@clerc-calgary.ca

Edmonton Community Legal Centre

780 702 1725
intake@eclc.ca

Lethbridge Legal Guidance

403 380 6338

Grande Prairie Legal Guidance

780 882 0036
gplg@thecommunityvillage.ca

Student Legal Assistance (Calgary)

403 220 6637

Student Legal Services (Edmonton)

780 492 8244

The **Families and the Law** series has several booklets to help you understand Family Law in Alberta:

- Child Custody and Parenting
- Financial Support
- Property Division for Married and Unmarried Couples
- Representing Yourself in Family Court
- Young Parents

To find these booklets and more, go to www.cplea.ca

Families and the Law

Financial Support

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