

# Families and the Law

# Financial Support



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Canada**

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## Who is this booklet for?

This booklet is for anyone looking for information about the law on financial support when a relationship ends in Alberta. It has information about child support, and partner and spousal support (depending on whether or not you were legally married).

This booklet is one of six in a series called **Families and the Law**. The other booklets in the series may help you further understand family law in Alberta:

- New Parents
- Separation and Divorce
- Parenting Time and Contact
- Resolving Family Law Disputes
- Property Division for Married and Unmarried Couples

Family law in Alberta is complicated. Finding out about the law and your options is a good first step. There are a lot of people and organizations who can help you. See the end of this booklet for a list of resources.

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

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

The information contained in this booklet was correct at the time it was produced. Be aware that there may have been subsequent changes which make the information outdated at the time you are reading it. The Legal Resource Centre of Alberta will not be responsible for any loss arising from reliance on or action taken (or not taken) as a result of this information.

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For more information, please visit [www.cplea.ca](http://www.cplea.ca).



# Contents

## 4 Child Support

- 4 What is Child Support?
- 4 Laws about Child Support
- 5 Who Can Apply for Child Support?
- 5 Who Has to Pay Child Support?
- 7 Calculating Child Support
- 15 Changing a Child Support Order or Agreement
- 16 Retroactive Child Support
- 17 Enforcing Payment of Child Support
- 18 Child Support Arrears

## 19 Partner and Spousal Support

- 19 What is Partner or Spousal Support?
- 20 Laws about Partner Support
- 21 Who Can Apply for Partner Support?
- 23 Calculating Partner Support
- 28 Changing a Partner Support Order or Agreement
- 29 Enforcing Payment of Partner Support
- 29 Paying Child Support and Partner Support

## 30 Resources

### 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.



**Child support** is payment for financial support for the benefit of the child.

A **guardian** handles the care, maintenance and well-being of a child. A child's parents are usually the child's guardians but the court can change who the child's guardians are.

**Payor** is the person who makes a support (spousal, partner or child) payment.

**Recipient** is the person who receives a support (spousal, partner or child) payment.



The Government of Alberta has agreements with other provinces, states and countries to make, change or enforce support orders if the payor lives outside Alberta.

For more information, review the Government of Alberta's website: [alberta.ca/child-spousal-partner-support](http://alberta.ca/child-spousal-partner-support)

Or the Government of Canada's website: <http://bit.ly/3pO6naA>

# Child Support

## What is Child Support?

**Child support** is:

- money paid by one parent or **guardian** (the **payor**) to another parent or guardian (the **recipient**) for the child
- the right of the child
- usually paid monthly
- calculated using a set formula
- the same for married and unmarried parents

**All parents have an obligation to provide financial support for their child. This obligation exists even if:**

- the child does not live with that parent
- the parents are not married to each other
- the parents do not have a relationship with the child
- the parent lives in another province or country

## Laws about Child Support

The *Divorce Act* and the *Family Law Act* both deal with child support. You need to figure out which law applies to your situation.

### **Divorce Act**

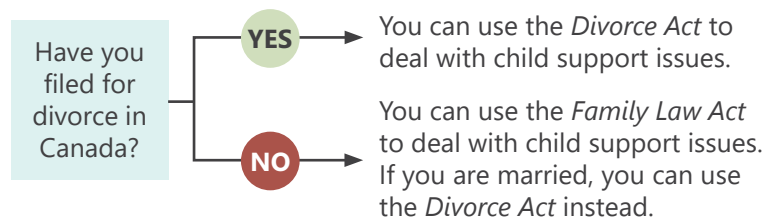
- federal law (applies across Canada)
- only for married or divorced people
- uses words such as: spouse, decision-making responsibility

### **Family Law Act**

- provincial law (applies only in Alberta)
- for married or unmarried people
- uses words such as: parent, guardian

**Both Acts** use words such as parenting time, contact and support.

## WHAT LAW CAN I 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.



You can read the laws online for free on the Alberta King's Printer website:  
[kings-printer.alberta.ca/Laws\\_Online.cfm](https://kings-printer.alberta.ca/Laws_Online.cfm)

## 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
- have a judge's permission

## Who Has to Pay Child Support?

You must financially support a child if you:

- are the biological parent
- are the adoptive parent
- are named as a child's parent in a court order
- are an adult that has acted like a parent to the child

An adult has acted like a parent ("stood in the place of the parent") if that person:

- is married to or was in a relationship of interdependence of some permanence with the child's parent (such as a step-parent), and
- has treated the child as their own.

A judge decides if a step-parent or other adult should pay child support for the child. The law says that the child's parents have a bigger obligation to pay child support than someone who is standing in the place of a parent.

***All parents  
are  
obligated  
to support  
their  
children.***

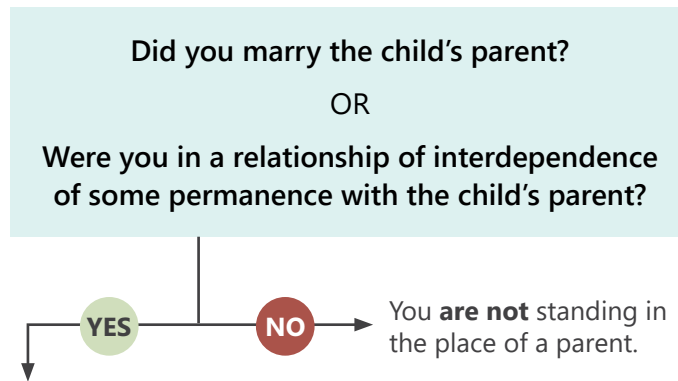


The **King's Bench Child Support Resolution Program (KBCSR)** in Edmonton and Calgary deals with calculations and recalculations of child support as well as spousal or partner support where child support is also an issue. Family Docket Court may order you to attend, or you and the other parent can voluntarily agree to attend. To schedule a meeting, contact:

**In Edmonton:**  
email [CSRP.Edmonton@just.gov.ab.ca](mailto:CSRP.Edmonton@just.gov.ab.ca) or call 780.427.1907

**In Calgary:**  
email [CSRP.Calgary@just.gov.ab.ca](mailto:CSRP.Calgary@just.gov.ab.ca) or call 403.297.3875

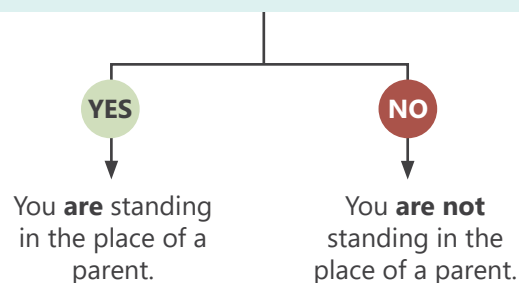
## ARE YOU STANDING IN THE PLACE OF A PARENT?



### 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 or 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?





# Calculating Child Support

**Child support is made up of two parts:**

## Basic Amount

The basic amount of child support is meant to cover basic living expenses for the child. It is called the “**section 3 amount**” or “**table amount**” of child support because it is calculated using the Federal Child Support Guidelines (if using the *Divorce Act*) or the Alberta Child Support Guidelines (if using the *Family Law Act*). The Federal and Alberta Child Support Guidelines are similar. The table amount is based on the number of children and the gross annual income of the payor. It is mandatory. There are only limited exceptions when the Guidelines will not apply.

## Special Expenses

Special expenses are also called “**extraordinary expenses**” or “**section 7 expenses**.” These are expenses that are not basic living expenses. These expenses include things like extracurricular activities, post-secondary education or unexpected medical expenses. Parents usually share these expenses in proportion to their incomes.

The Federal Child Support Guidelines have a different table for each province. To calculate support, use the table for the province where the payor lives.

Parents can agree to pay child support in a written agreement, such as a pre-nuptial agreement, cohabitation agreement or separation agreement. If the parents cannot agree on child support, then a judge decides how the parents will pay child support.

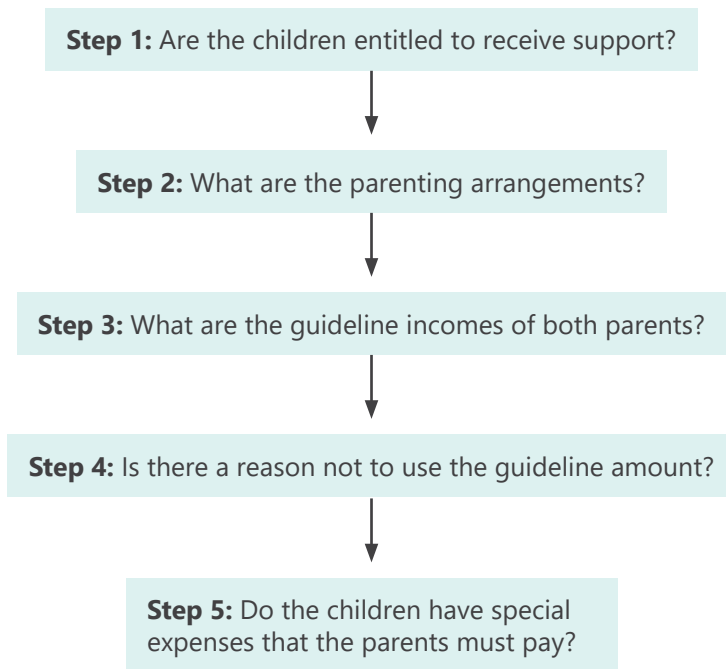


Use the federal government’s online calculator to find the amount of child support to be paid under the *Divorce Act*. You can find it here: <http://bit.ly/39GJQ9Z>



An **adult interdependent relationship** is a type of relationship for unmarried people. There are certain criteria you must meet for your relationship to be an adult interdependent relationship. These criteria are set out in the *Adult Interdependent Relationships Act*. The people in an adult interdependent relationship are adult interdependent partners.

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



### Step 1: Are the children entitled to receive support?

Parents must pay child support for children who are:

- Under 18, if the child has not voluntarily withdrawn from their parents' charge. (A child can voluntarily withdraw by getting married or being in an **adult interdependent relationship**.)
- Over 18, if the child goes to school full-time or has a disability or illness that prevents the child from living without the support of their parents.



## Step 2: What are the parenting arrangements?

The parenting arrangements are very important when calculating child support.

### PARENTING ARRANGEMENTS FOR CHILD SUPPORT PURPOSES



#### Primary Care to One Parent or Sole Parenting

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



#### Shared Parenting

Children live with each parent at least 40% of the time over the year. Each parent's time with the children can vary (50/50, 40/60, 45/55, etc.).



#### Split Parenting

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

Calculate child support using the appropriate Guideline for the payor parent.

#### EXAMPLE

Sam and Ray are divorced and have two children. The children live with Sam most of the time and only see Ray every other weekend. Sam has primary care since the children are with them over 60% of the time in a year. Ray makes \$81,000 gross per year. Using the Federal Child Support Guidelines, Ray must pay basic child support of \$1,184.000 per month to Sam.

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

## Shared Parenting

Child support for shared parenting is not a straightforward calculation. First, calculate child support using the appropriate Guideline for both parents. Each shared child counts as a child in both households. Calculate the difference between the two amounts (the “set-off” amount).

However, the amount of child support must also take into account:

- the increased costs of shared parenting arrangements, and
- the condition, means, needs and other circumstances of each parent and the children.

Sometimes the set-off amount will be appropriate and sometimes it will not be. An arbitrator or judge can decide what child support should be.

### EXAMPLE

Bob and Kim were never married and have three children. The children live 50% of the time with each parent. Bob makes \$28,000 gross per year, and Kim makes \$45,000 gross per year. The Alberta Child Support Guidelines apply since Bob and Kim were never married. The table amount for Bob is \$593.00 per month, and the table amount for Kim is \$882.00 per month. Kim and Bob agree that Kim should pay the set-off amount of \$289.00 per month. If they cannot agree, they can ask an arbitrator or judge to decide the amount of child support.

## Split Parenting

Calculate child support using the appropriate Guideline for each parent based on the number of children in the other parent’s care. The parent with the higher table amount pays the difference between the two amounts (the “set-off” amount) to the other parent.

### EXAMPLE

Dale and Lesley have three children and are divorced. One child lives with Dale, and two children live with Lesley. Dale makes \$50,000 gross per year. Lesley makes \$98,000 gross per year. The table amount that Dale would have to pay is \$723.00 per month for two children. The table amount that Lesley would have to pay is \$867.00 per month for one child. The set-off amount is \$144.00, which Lesley must pay to Dale.

## Step 3: What are the guideline incomes of both parents?

Calculate each parent's guideline income to figure out how much money is available for support. The parents must provide their current income and financial information to each other and to the judge. This helps everyone know that the amount of child support is fair.

Figuring out a parent's guideline income can be complicated, especially if the payor owns a business. You may want to get legal advice.

**You can prove your income by providing:**

- copies of your tax returns and notices of assessment for the past three years
- recent pay stubs or an employment letter confirming your current income
- copies of any income statements from other sources (including EI, disability, pension, etc.)

**Judges use different methods to figure out what the parents' guideline incomes are to calculate child support:**

- For simple employment situations, use Line 15000 (formerly Line 150) of the parent's Income Tax Return. A parent can deduct professional and union dues from their Line 15000 amount.
- Sometimes using the last year's tax return will not work because the parent has lost their job, changed jobs or had a raise. In this case, the tax return will not reflect the parent's current financial means. The judge can estimate the parent's income using pay stubs or a letter of employment.
- The judge can use a parent's average income amount over the last three years as the guideline income if a parent's income changes from year to year.
- If the parent is a shareholder, director or officer of a corporation, the judge can determine income by including in the parent's income:
  - all or part of the pre-tax income of the corporation and any other corporation that is related to that corporation
  - an amount equal to the value of services the parent provided to the corporation



When a judge **imputes** an income, the judge is declaring that a parent has a certain income. If one parent does not provide income information or provides incomplete or false information, then the judge can set their income to be a certain amount.

- 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 the parent lives in a country with tax rates that are a lot lower than those in Canada
  - if income has been diverted
  - if the parent's property is not being properly used to generate income
  - if the parent does not provide income information when they are supposed to
  - if the parent unreasonably deducts expenses from income
  - if the parent earns a lot of income from sources that are taxed at a lower rate than employment earnings (such as dividends or capital gains)
  - the parent receives incomes or other benefits from a trust

An accountant can be very helpful in figuring out a parent's guideline income, especially if a business is involved.

A judge can order certain government agencies to provide financial information about a parent who is not voluntarily providing the information. The government agencies include the Department of Employment and Social Development, the Canada Revenue Agency and the Canada Employment Insurance Commission.

## Step 4: Is there a reason not to use the guideline amount?

Calculate the guideline amount using the parenting arrangements and guideline incomes. A judge will consider if there is a reason a parent should not pay the guideline amount of child support.

**A judge can order that one parent pay more or less than the table amount when:**

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

## Step 5: Do the children have special expenses that the parents must pay?

**Parents usually share special expenses in proportion to their income. Special expenses include:**

- child care expenses
- medical and dental insurance premiums
- health-related expenses that exceed insurance reimbursement by at least \$100 annually
- extraordinary expenses for school or other educational programs that meet the child's particular needs
- expenses for post-secondary education
- extraordinary expenses for extracurricular activities

### EXAMPLE

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



**Undue financial hardship** can occur when the parent:

- has an unusually high level of family debt incurred from before the separation
- incurs high expenses in spending parenting time with the child (such as travel)
- has to support other people.

If the parents end up in court because they do not agree on the expenses, the judge will look at whether:

- the expense is in the child's best interests, and
- the expense is reasonable given the financial situations of both parents.

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 is a good idea to include proof of the cost (like a sign-up form or a quote).

**From:** Alex <parentalex@emailaddress.ca>

**Date:** May 3, 2021 10:18:52 AM MST

**To:** Jordan <parentjordan@emailaddress.ca>

**Subject:** Child Support Special Expenses

Jordan,

I am writing this email to discuss 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 which costs \$25 per hour. The tutor is available on Thursdays after school 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. The total cost is 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.

Second, Ben is already asking about going with his friends to camp in July. The camp costs 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? Please let me know within two weeks because registration is due on June 1st.

Thank you,

Alex

## Changing a Child Support Order or Agreement

You can ask the court to change a child support order if:

- new and important evidence comes up that was not available when the original order was made, or
- the circumstances of one of the parents has changed since the original order was made.

Some examples of changes of circumstances are:

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




The **Child Support Recalculation Program** is an Alberta government program that annually recalculates child support based on the parents' current income tax information. You can register with the program if you have a valid child support order or child support agreement. It is recommended you register at the same time as you register with MEP. For more information, visit: [alberta.ca/child-support-recalculation](https://alberta.ca/child-support-recalculation)

**From:** Jordan <parentjordan@emailaddress.ca>

**Date:** May 25, 2021 4:37:21 PM MST

**To:** Alex <parentalex@emailaddress.ca>

**Subject:** New Child Support Calculations

 1 Attachment > Letter of Employment (250MB)

Alex:

I have changed jobs. 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. I estimate 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.

This change will affect the amount of child support that I can pay for our son, Ben. Based on the online child support calculator that I used, my child support payments will go from \$747 to \$650 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 June 15, 2021.

Jordan

A change in income can be a significant change in circumstances. If a parent changes jobs and will have a different income, they should let the other parent know as soon as possible. The parent whose job is changing should provide proof of their new income. Examples of proof of income include pay stubs, an employment letter or any other document showing the parent's gross income.



**Blameworthy conduct**

means the payor put their personal interests ahead of the child's interest to receive child support. This could mean that the payor did not 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 with the other parent each year. By sharing this information, you can hopefully avoid having to make a claim for retroactive child support.

## Retroactive Child Support

Sometimes a judge will order retroactive child support. This happens when a judge orders a parent to pay child support now to make up for not paying the proper amount of child support in the past.

Whether or not the judge orders this depends on the circumstances of each case. Retroactive child support usually only goes back a maximum of 3 years from when child support was requested in a court application, unless the payor was involved in **blameworthy conduct**.

**What factors determine if a parent must pay child support retroactively?**


- Does the person requesting child support have a reasonable excuse for why they did not ask for 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 child support was not paid?
- Would an order for retroactive child support cause financial hardship to the payor?

**From:** Alex <parentalex@emailaddress.ca>

**Date:** June 1, 2022 6:21:47 PM MST

**To:** Jordan <parentjordan@emailaddress.ca>

**Subject:** Updated Financial Info

 1 Attachment > Notice of Assessment 2021 (475 MB)

Jordan,

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 July 1, 2022.

Thank you,

Alex

## Enforcing Payment of Child Support

If you are a recipient of child support, you can register your child support order with the Maintenance Enforcement Program (MEP). MEP can enforce an order if the payor is not making payments in full or on time or if the payor has not made payment arrangements with MEP.

MEP can collect payments in different ways, including:

- garnishing funds owed to the payor by the federal government (such as income tax refund) or by the payor's employer
- garnishing funds from the payor's bank account
- withholding vehicle registrations or suspending the payor's driver's license
- restricting hunting and fishing licenses
- denying and cancelling federal licenses, such as passports
- registering notices against real property (land) or personal property
- seizing assets
- affecting the payor's credit rating



The procedure for registering is on MEP's website:

[alberta.ca/maintenance-enforcement-program](https://alberta.ca/maintenance-enforcement-program)

You can call MEP with questions toll free at 310.000 then 780.422.5555

**From:** Alex <parentalex@emailaddress.ca>

**Date:** November 5, 2022 9:15:21 PM MST

**To:** Jordan <parentjordan@emailaddress.ca>

**Subject:** November Child Support

Jordan,

I haven't received child support from you for 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 November 20, 2022. If I do not receive full payment, then I will consider my legal options including registering with the Maintenance Enforcement Program.

Alex

If a parent has not paid child support and they have not registered with the Maintenance Enforcement Program, then the recipient should request the child support as soon as possible. The recipient should clearly state how much they are owed. The recipient can contact the Maintenance Enforcement Program for more assistance.

## Child Support Arrears

When child support payments are overdue, the child support is “in arrears”.

**When child support is in arrears, a judge can:**

- order the payor to pay the full amount in arrears
- change the amount in arrears, or
- cancel the amount in arrears.

Judges are very hesitant to change or cancel the amount in arrears. There would have to be a really good reason why the parent should not have to pay the arrears, such as if it would be really unfair for the payor to pay the amounts owing. Usually, judges will postpone the payments or allow the payor to pay the amount they owe over time instead.

**If a payor is asking a judge to change or cancel child support arrears, they must:**

- provide full financial disclosure
- prove that there has been a significant and long-lasting change to their income
- have made efforts to earn more money
- have a good reason for not asking the judge to change the child support order or agreement at the time when their income changed (instead of letting arrears add up)

Having a new family or 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 any of your children would suffer undue financial hardship, you must provide evidence of this to the judge.

# Partner and Spousal Support

## What is Partner or Spousal Support?

### Partner Support

- payments made by one adult interdependent partner (including a former adult interdependent partner) to another adult interdependent partner
- only applies to couples that are or were in an **adult interdependent relationship**

### Spousal Support

- payments made by one spouse or former spouse to another spouse or former spouse
- only applies to married or divorced couples

### Partner and spousal support is:

- paid after a separation or divorce if a partner or spouse proves they should receive it
- paid by the partner or spouse who makes more money (the **payor**) to the partner or spouse who makes less money (the **recipient**)
- usually paid monthly



**Adult interdependent relationship** is a type of relationship for unmarried people. There are certain criteria you must meet for your relationship to be an adult interdependent relationship. These criteria are set out in the *Adult Interdependent Relationships Act*.

The people in an adult interdependent relationship are adult interdependent partners.

**Payor** is the person who makes a support (spousal, partner or child) payment.

**Recipient** is the person who receives a support (spousal, partner or child) payment.

*The term “common law” describes partners who are not legally married and who are living together, with or without children. In Alberta, the correct legal term is an adult interdependent relationship.*



If you don't know if you are in an adult interdependent relationship, take the test on page 22 to learn more.



For more information on adult interdependent relationships, see CPLEA's booklet called **Living Together: Adult Interdependent Relationships** at: [www.cplea.ca/publications](http://www.cplea.ca/publications)

In this booklet, any support obligations between separated or divorced partners, married or unmarried, is "partner support." Spouses, former spouses, adult interdependent partners and former adult interdependent partners are "partners".

#### The purposes of a partner support order are to:

- recognize financial advantages and disadvantages that a partner faces because of the relationship or separation
- make sure that neither partner suffers economic hardships because of the separation
- share financial costs of children between the partners
- promote each partner becoming self-sufficient within a reasonable period of time

#### Examples of when partner support may be ordered:

- One partner has stopped working to raise the children and has no income when the relationship ends.
- One partner needs to go back to school to learn new skills to be able to support themselves one day.

Judges can order partner support on a temporary basis. This is an **interim order**. A judge usually makes an interim order if the partners are negotiating an agreement but one partner needs financial support immediately. Judges can also make a more permanent order called a **final order**. The court can always change a final order for partner support in the future if circumstances change (so it is never truly 'final').

## Laws about Partner Support

The *Divorce Act* and the *Family Law Act* both deal with partner support. You need to figure out which law applies to your situation.

#### ***Divorce Act***

- federal law (applies across Canada)
- only for married or divorced people

#### ***Family Law Act***

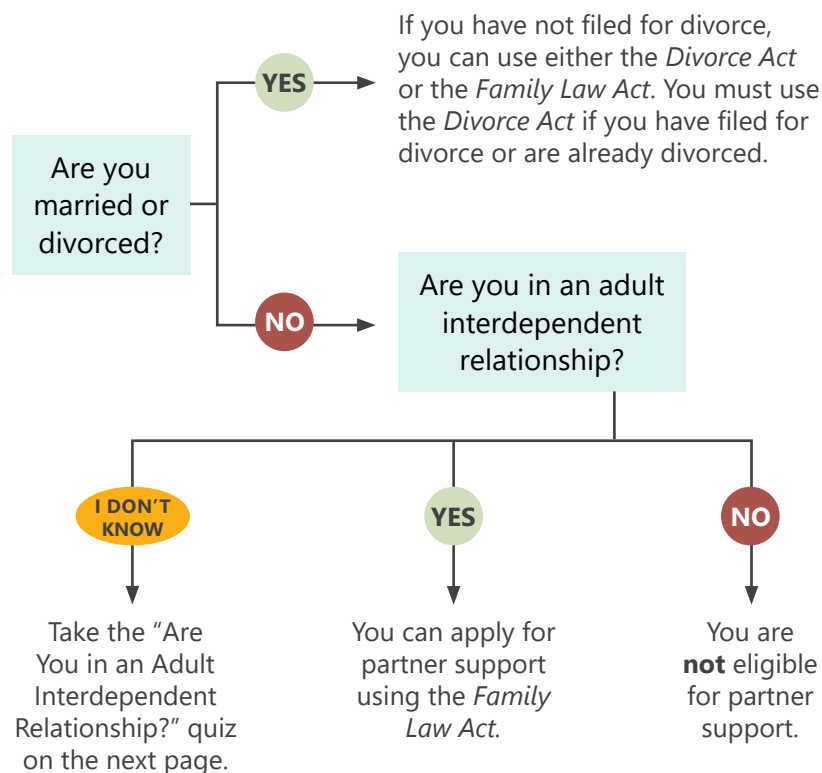
- provincial law (applies only in Alberta)
- for married or unmarried people

The legal test a judge uses to decide if someone should receive spousal support are very similar under the *Divorce Act* and the *Family Law Act*. Where there is a difference, 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 or divorced. You can apply under the *Divorce Act* or the *Family Law Act*.
- You can apply for partner support if you are or were in an adult interdependent relationship. You can apply under the *Family Law Act*.

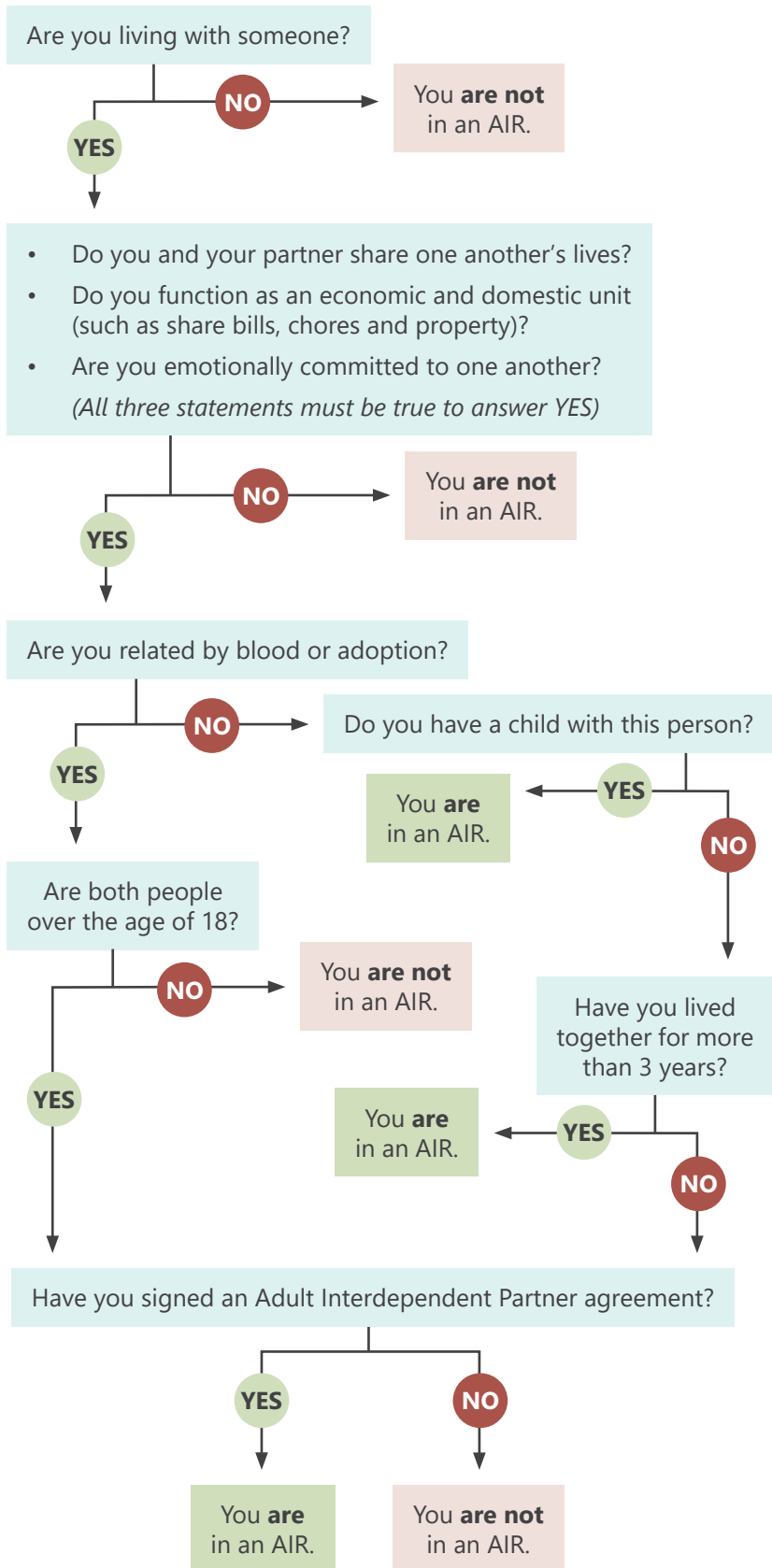
### WHAT LAW CAN I USE?"



You can read the laws online for free on the Alberta King's Printer website:

[kings-printer.alberta.ca/Laws\\_Online.cfm](https://kings-printer.alberta.ca/Laws_Online.cfm)

## ARE YOU IN AN ADULT INTERDEPENDENT RELATIONSHIP?



AIR = Adult Interdependent Relationship.



## Calculating Partner Support

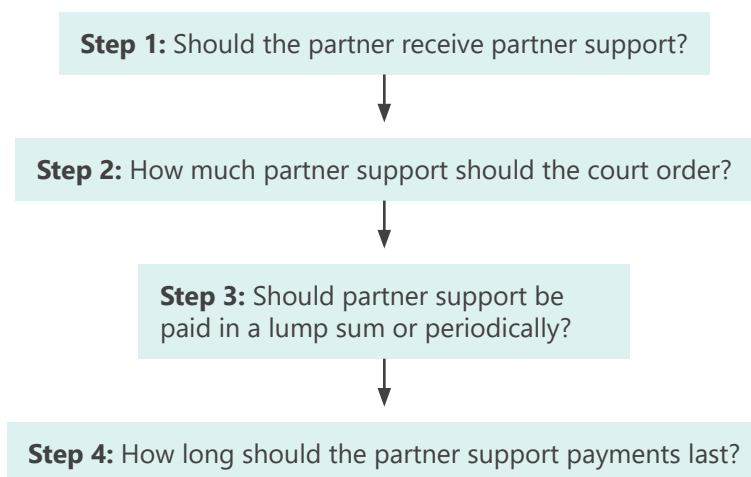
You and your partner can agree on how much partner support will be paid. This should be set out in a written agreement, such as a **pre-nuptial agreement**, a **cohabitation agreement** or a **separation agreement**. If you and your partner cannot agree, then a judge decides if one partner should pay partner support to the other.

A **pre-nuptial agreement** is an agreement signed by a couple before they get married. It must clearly say that it continues in effect after the couple gets married. A pre-nuptial agreement usually says what will happen if the couple separates, such as how to divide property and who will pay support.

A **cohabitation agreement** is an agreement signed by a couple just before or after they move in together and are not married. It can say what happens while the couple lives together and if they separate, such as who pays for what, how to divide property and if anyone will pay support. If the couple later gets married, the cohabitation agreement may come to an end. It depends what the agreement says.

A **separation agreement** is an agreement signed by a couple after they separate. It can say how they will parent, how to divide property and if anyone will pay support. The court may uphold a separation agreement if it meets the requirements set out in law. Most importantly, each person must get independent legal advice from different lawyers before signing the agreement to make sure the person understands their rights in the agreement.

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



*Not every couple who separates has to pay partner support.*

## Step 1: Should the partner receive partner support?

Not every partner is entitled to receive partner support. You must prove that you should receive it. If you cannot prove that you should receive partner support, then the court will not make an order for support.

### **A judge will think about the following before making an order about partner support:**

- **How long have the partners lived together?**  
The longer the relationship, the more likely it is that the court will order partner support.
- **What roles did each partner perform when they lived together?**  
Did one partner work while the other partner stayed at home? Did both partners work and share household chores?
- **Is there any agreement or order between the partners?**  
Do they have a pre-nuptial, co-habitation 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 a judge will order partner support be paid.
- **What are the financial needs of each partner?**  
Keeping in mind that the partners should have similar standards of living at the end of a relationship, how much money does each partner need to meet their needs?
- **What are the conditions of each partner?**  
This includes considering the health, age and special needs of each partner and whether they have any children, etc.

### **If you are asking for partner support under the *Family Law Act*, a judge will think about the factors listed above plus the following:**

- **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 a lot to household expenses, then this increases the ability of the payor to pay because there is more money available.

- **If the recipient lives with someone else, how much does that person contribute to household expenses?**  
If the other person contributes a lot to household expenses, then this decreases the financial need of the recipient.

A judge can order certain government agencies to provide financial information about a person who is not voluntarily providing the information. The government agencies include the Department of Employment and Social Development, the Canada Revenue Agency and the Canada Employment Insurance Commission.

### EXAMPLE

Amy and Jason got married 15 years ago. Amy is from Australia. She gave up her very successful job and sold most of her possessions when she moved to Canada to be with Jason. Her credentials were not recognized in Alberta, so she has had a hard time finding a job in her field of training. Amy and Jason have two children, and Amy is a stay-at-home mom. Jason works outside of the home and got numerous promotions during their marriage. He was able to focus on his career because Amy took care of the house and the children's activities. Amy and Jason decide to separate.

Amy is not doing very well financially, while Jason is in a very good financial position. Their marriage was long. Amy took care of the family while Jason was the sole breadwinner. Amy has suffered an economic disadvantage because of the marriage and then separation. She left a successful career in Australia and cannot work in Alberta at that level because her credentials are not recognized. She was unable to further her own career or go back to school to get the appropriate credentials because she stayed home with the children. Amy suffers economic hardship because she cannot maintain a standard of living like she had during the marriage. Jason has a career and will enjoy a comfortable retirement. In this case, Amy should apply for spousal support, and it is likely that a judge will award it.



You will have to provide evidence to the judge to prove you should get partner support. For example, if you say that you have a health problem that prevents you from becoming self-sufficient or making as much money as you have in previous years, then you should provide a letter or report from your doctor.



There is no official online calculator to figure out partner support. But, you can use the calculator at: [mysupportcalculator.ca](http://mysupportcalculator.ca) or go to the federal government website at: <http://bit.ly/3pJHigC> for more information. You can also retain a lawyer to do the calculations for you.

## Step 2: How much partner support should the court order?

A judge considers the income of the payor and the financial need of the recipient. Both partners will need to submit income information and budgets to the judge.

The **Spousal Support Advisory Guidelines** suggest the amount of support that a partner should pay and for how long. These guidelines are not law, but judges use them as a starting point. The Guidelines have two formulas: one if there are children and another if there are no children.

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

Partner support is usually paid on a monthly basis. These payments are taxable income for the recipient and tax deductible for the payor (unlike child support payments).

Lump sum payments are not as common because many payors do not have a lump sum of money available to pay the recipient. The government does not tax lump sum payments in the same way as periodic payments.

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

The order or agreement about partner support should say when partner support ends. There are different ways to say for how long one partner must pay partner support:

### **The partner support payments end on a set date.**

The partner support will continue until a certain date or specific event occurs. For example, if the children are not yet in school, then the order might say partner support ends once the children are in school full-time.

### **The partner support payments can be reviewed after a set date.**

The partner support will continue until the parties go back to court after the review date. For example, if one partner is going back to school to get a better job so they can support themselves, then the order might say the court may review the order once the courses are completed.

### **There is no end date.**

This does not mean the support continues forever. If either partner's situation changes, then they can apply to the court to change the amount of support. For example, if the payor loses their job, this would change their ability to pay support. They could apply to the court to change the amount of support they pay.

### **The payment amounts are staggered.**

The support amount decreases over time until no more support is paid. The judge may use this method when they think the recipient will become self-sufficient over time.

## Changing a Partner Support Order or Agreement

A partner **cannot** ask the court to change the partner support order if the order says support is “non-variable” (cannot be changed).

**A partner can ask the court to change the partner support order if:**

- new and important evidence comes up that was not available when the original order was made, or
- there has been a major change in the lives of either partner since the original order was made.

**Some examples of major life changes are:**

- one partner’s income is much higher or lower now than it was before
- one partner remarries or enters into a new adult interdependent relationship
- a partner develops a health concern or disability and either needs more financial support or needs to pay less support than was originally ordered

If the partner proves there is new evidence or there has been a major life change, then the judge will go through the same steps as if it were an original partner support order application.

If there is a written agreement about partner support, both partners can agree to change it. The court can change a written agreement in rare circumstances. If you are wanting to change a written agreement about partner support and your partner does not agree, you should contact a lawyer. An agreement cannot change an existing partner support order.

***Each partner should see a lawyer to make sure the agreement is enforceable.***

## Enforcing Payment of Partner Support

If you receive partner support, you can register your partner support order with the Maintenance Enforcement Program (MEP). MEP can enforce an order if the payor is not making payments in full or on time or if the payor has not made payment arrangements with MEP.

**MEP can collect payments in different ways, including:**

- garnishing funds owed to the payor by the federal government (such as income tax refund) or by the payor's employer
- garnishing funds from the payor's bank account
- withholding vehicle registrations or suspending the payor's driver's license
- restricting hunting and fishing licenses
- denying and cancelling federal licenses, such as passports
- registering notices against real property (land) or personal property
- seizing assets
- affecting the payor's credit rating

## Paying Child Support and Partner Support

Child support takes priority over partner support. This means that if there is not enough money to pay both child support and partner support, then the payor may only have to pay child support.



The procedure for registering is on MEP's website:

[alberta.ca/maintenance-enforcement-program](https://alberta.ca/maintenance-enforcement-program)

You can call MEP with questions **toll free** at 310.000 then 780.422.5555



# Resources

## LEGAL SERVICES

### **Law Society of Alberta Lawyer Directory**

The Lawyer Directory allows people to search for information on a specific lawyer or find a lawyer who can help you with your legal issue based on certain search criteria.

[www.lawsociety.ab.ca/public/findalawyer/](http://www.lawsociety.ab.ca/public/findalawyer/)

### **Legal Aid Alberta**

Toll-free: 1.866.845.3425

[www.legalaid.ab.ca](http://www.legalaid.ab.ca)

### **Edmonton Community Legal Centre (ECLC)**

Legal clinic in Edmonton. Call for hours and eligibility.

780.702.1725

[www.eclc.ca](http://www.eclc.ca)

### **Student Legal Services (SLS)**

Legal clinic in Edmonton. Call for hours and eligibility.

780.492.2226

[www.slsedmonton.com/](http://www.slsedmonton.com/)

### **Calgary Legal Guidance (CLG)**

Legal clinic in Calgary. Call for hours and eligibility.

403.234.9266

<https://clg.ab.ca/>

### **Student Legal Assistance (SLA)**

Legal clinic in Calgary. Call for hours and eligibility.

403.220.6637

<https://slacalgary.com/>

### **Community Legal Clinic – Central Alberta**

Legal clinics in Central Alberta. Call for hours and eligibility.

**Central Alberta:** 403.314.9129

**Fort McMurray:** 587.674.2282

**Lloydminster:** 587.789.0727

**Medicine Hat:** 403.712.1021

[www.communitylegalclinic.net](http://www.communitylegalclinic.net)

### **Grande Prairie Legal Guidance**

Legal clinic in Grande Prairie. Call for hours and eligibility.

780.882.0036

<https://www.eclc.ca/grande-prairie-clinic>

### **Lethbridge Legal Guidance**

Legal clinic in Lethbridge. Call for hours and eligibility.

403.380.6338

[www.lethbridgelegalguidance.ca/](http://www.lethbridgelegalguidance.ca/)

### **Alberta Legal Coaches & Limited Services**

List of lawyers offering legal coaching and limited scope retainers.

<https://albertalegal.org/>

### **Association des juristes d'expression française de l'Alberta**

Centre albertain d'information juridique.

780.450.2443

[www.ajefa.ca/](http://www.ajefa.ca/)

## GOVERNMENT & COURT SERVICES

### Alberta Court of Justice – Family

<https://albertacourts.ca/cj/areas-of-law/family>

### Court of King's Bench – Family

<https://albertacourts.ca/kb/areas-of-law/family>

### Court and Justice Services (CJS)

Resolution and court support services across Alberta.

1.855.738.4747

[www.alberta.ca/court-and-justice-services](http://www.alberta.ca/court-and-justice-services)

### Family Court Assistance

Edmonton Family Court Counsellors: 780.427.8343

Calgary Family Court Counsellors: 403.297.6981

[www.alberta.ca/family-court-assistance](http://www.alberta.ca/family-court-assistance)

### Family Mediation

Government of Alberta mediation service for low income Albertans. Offices in Edmonton and Calgary.

Calgary: 403.297.6981

Edmonton: 780.427.8329

Elsewhere in Alberta: 403.355.2414

[www.alberta.ca/family-mediation](http://www.alberta.ca/family-mediation)

## OTHER RESOURCES

### Alberta Law Libraries

Help with finding legal information. Locations across the province.

<https://lawlibrary.ab.ca/>

### Alberta Family Mediation Society

Roster of family mediators.

Toll-free: 1.877.233.0143

<https://afms.ca/>

### Arbitrations in Alberta

Find a family law arbitrator in Alberta.

<https://divorcearbitrations.ca/>

### ADR Institute of Alberta

Roster of mediators and arbitrators.

Toll-free: 1.800.232.7214

<https://adralberta.com>

### Collaborative Divorce Alberta Association

Directory of Collaborative Divorce professionals.

<https://collaborativepractice.ca/>

### LawNow Magazine – Family Law Column

Recent articles on family law issues.

[www.lawnow.org/category/columns/familylaw](http://www.lawnow.org/category/columns/familylaw)

Families and the Law

# Financial Support



[info@cplea.ca](mailto:info@cplea.ca)  
[www.cplea.ca](http://www.cplea.ca)



Edmonton Community  
Legal Centre

[intake@eclc.ca](mailto:intake@eclc.ca)  
[www.eclc.ca](http://www.eclc.ca)