

Family Law 101



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It provides general information on Alberta law only. © CPLA

ABOUT CPLEA

The Centre for Public Legal Education Alberta, also known as CPLEA, is a not-for-profit, non-government organization committed to making the law understandable for Albertans. We offer free legal information and learning resources in plain language.

Our resources increase awareness and understanding of the law and empower Albertans to take action and, ultimately, gain better access to justice.

Visit www.cplea.ca to learn more about the laws that impact your life.

CPLEA is the operating name for the Legal Resource Centre of Alberta Ltd.

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Department of Justice
Canada

Ministère de la Justice
Canada

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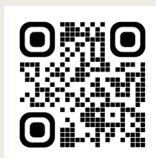
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Introduction

This booklet summarizes key information about legal issues that arise within families, including during a separation. Family law is complicated but understanding the law and your legal options doesn't have to be.

This guide is a good starting point. But we have more information to help you along your journey! Visit family.cplea.ca – CPLEA's website all about family law in Alberta. Look for tips throughout this guide that refer you to specific pages on the website where you can find more detailed information on the topic.

This guide provides information about the laws in Alberta only. The law may be different in other provinces.



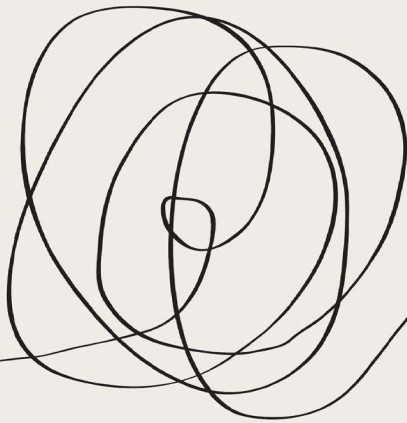
Visit CPLEA's website about family law in Alberta!

Find more information about who is a child's guardian, how to get or change a parenting order, how to communicate with the other person, where to get legal support and much more.

Get started at family.cplea.ca

This guide replaces CPLEA's **Families and the Law** series of booklets and info sheets. It brings together information that was formerly found in the following documents:

- Financial Support
- Moving and the Divorce Act
- Moving with Children
- New Parents
- Parenting Time and Contact
- Property Division
- Resolving Family Law Disputes
- Separation Agreement Checklist
- Separation and Divorce
- Travelling with Children



Family law issues
can be overwhelming.
You're not alone

For Those Experiencing Violence

Family violence can occur in any family and in any relationship, regardless of gender, age, income level, sexual orientation or cultural background. It can take many forms, and be a one-time incident or a pattern of behaviour over time.

Family violence is never okay.

If you are in immediate danger, call 911.

If you or someone you know is experiencing family violence, there are legal tools, such as **Emergency Protection Orders (EPO)**, to help keep away the person causing harm.



Learn more on the **What do to about family violence** page at family.cplea.ca

Find more helpful resources to help keep yourself and your children safe on the **If you are in danger** page at family.cplea.ca

Family Laws and Courts

Five laws and two courts deal with family issues in Alberta. Which law and court applies to your situation depends on what issues you need to resolve.



Learn more on the **Family courts and laws** page at family.cplea.ca

THE LAWS

Alberta's *Family Law Act* deals with many family law issues, including:

- figuring out who a child's parents and guardians are
- surrogacy
- child support
- spousal support and partner support
- parenting time
- the powers and responsibilities of guardianship
- contact with a child

Alberta's *Family Property Act* sets out how to divide property when a marriage or adult interdependent relationship ends.

Canada's *Divorce Act* deals with divorces and only applies to spouses who are or were legally married.

Alberta's *Child Youth and Family Enhancement Act* deals with:

- adoptions
- concerns about a child's safety and well-being, including when Children's Services gets involved or apprehends a child

Alberta's *Protection Against Family Violence Act* sets out the process to get an Emergency Protection Order (EPO) and a King's Bench Protection Order (KBPO).

The *Divorce Act* applies across Canada while the other laws apply only in Alberta. The law may be different in other provinces.

THE COURTS

Alberta Court of Justice

The court can deal with the following issues:

- parenting time
- decision-making authority
- child support
- spousal and partner support
- granting an Emergency Protection Order (EPO)
- dealing with Children's Services

It cannot deal with issues that only the Court of King's Bench can deal with.

PROS

- lower court fees
- fewer formal rules and processes
- more locations across the province
- more user-friendly for those who are representing themselves

CONS

- cannot deal with all family law issues
- does not allow **questioning**

Court of King's Bench of Alberta

The court can deal with all issues the Court of Justice can deal with **plus**:

- exclusive possession of the family home or household goods
- divorces and other family issues under the *Divorce Act*
- dividing property under the *Family Property Act*
- dividing personal property or real estate using general property principles, including the law of unjust enrichment
- declaring who a child's parents are, called a **declaration of parentage**
- declaring spouses or partners are not going to reconcile, called a **declaration of irreconcilability**
- holding money in trust or dealing with real estate
- adoption
- surrogacy

PROS

- can deal with all family law issues, including divorces and dividing property
- allows the **questioning** process

CONS

- higher court fees
- more complicated process and rules
- fewer locations across the province



**Not sure which court or law applies to your situation?
Take our quiz to find out!**

Visit family.cplea.ca/find-the-right-court-and-law/
or capture the QR code.

Types of Relationships

Alberta law defines two types of relationships: married couples and adult interdependent partners. Other common relationships not defined in law include unmarried couples (who are not married and not adult interdependent partners), separated couples and those who have a child together but do not live together.

Knowing your marital status helps you figure out which laws apply to you and the benefits you are entitled to, both during your relationship and if your relationship ends.



Find more information about the topics below in the **In a relationship** section at family.cplea.ca

MARRIED COUPLES

Marriage is a legal union between two people that is regulated by Alberta laws. The people in a marriage are known as **spouses**.

A marriage exists once a ceremony takes place between two people who are eligible to get married. The law says who can marry you and what must happen at the marriage ceremony.

You cannot get married if:

- you are 16 or 17 years old and your parents or the court do not give permission
- you are younger than 16 years old
- you are married to someone else
- you are too closely related to the other person
- you do not have capacity to marry, meaning you do not understand the nature of marriage, are named in a guardianship or trusteeship order, or are under the influence of drugs or alcohol

To end a marriage in Alberta, you must file for divorce in the Court of King's Bench. A marriage officially ends 31 days after the court grants a **divorce judgment**.

Learn more about the divorce process on page 33.



Learn more on the **What is your marital status** and **Get married** pages at family.cplea.ca

ADULT INTERDEPENDENT PARTNERS

An **adult interdependent relationship**, or **AIR**, is unique to Alberta and is defined in the *Adult Interdependent Relationships Act*. The people in an adult interdependent relationship are known as **adult interdependent partners**, or **AIPs**. The law treats AIPs similar to spouses, including when dividing property and claiming support if the relationship ends.

People often use the term “common law” to describe a couple that lives together, with or without children, but is not married. The Canadian government, other provinces, benefits plans and more recognize common law relationships. But Alberta uses the term “adult interdependent relationship”.

An AIR is a relationship of commitment and permanence. It does not have to be a romantic or sexual relationship.

It exists in three situations:

1. Two people have signed an Adult Interdependent Partner Agreement.
2. Two people have lived together in a relationship of interdependence for three or more years.
3. Two people live together in a relationship of interdependence and have a child together, by birth or adoption.

A “**relationship of interdependence**” exists where two people share one another’s lives, are emotionally committed to one another and share their home and finances.

You *can* be an AIP even if:

- you are married to someone else but are living with a new partner
- you are under 18 years old but not related to your partner
- you are related by blood or adoption to your partner, are 18 years or older, and have signed an Adult Interdependent Partner Agreement
- you are not in a romantic or sexual relationship with the person you are living with

You *cannot* be an AIP:

- if you are already an AIP to someone else
- if you are married and living with your spouse
- to someone you provide live-in domestic support and personal care for payment, such as a paid live-in caregiver



Not sure if you’re in an adult interdependent relationship? Take our quiz to find out!

Visit family.cplea.ca/am-i-in-an-adult-interdependent-relationship/ or capture the QR code.

An AIR ends if one of the following happens:

- you and your partner make a written agreement that says the relationship is over, that you intend to live separate and apart and that there is no possibility of reconciliation
- you and your partner live separate and apart for one year, and one or both of you intends that the relationship is over
- you marry each other or one of you marries someone else
- you or your partner did not sign an Adult Interdependent Partner Agreement but one of you signs one with someone else
- one or both of you get a **declaration of irreconcilability** under the *Family Law Act*



Learn more on the **What is your marital status** and **Move in together** pages at family.cplea.ca

UNMARRIED COUPLES

If you are not married and not in an adult interdependent relationship, the law does not define your relationship.

Examples of unmarried couples include:

- someone you are in a romantic relationship with but do not live with
- someone you have lived with for less than three years that you do not have children with and have not signed an Adult Interdependent Partner Agreement with

Family laws do not apply to your relationship. There are no legal requirements to be in or end these relationships. If you separate and have assets and debts together, civil laws about property apply to help you figure out how to divide everything up.

SEPARATED COUPLES

Being “legally separated” is not a legal status in Alberta.

- If you are separated from your spouse and no longer living together but not yet divorced, then the law still considers you to be married until you get a divorce judgment from the court.
- If you and your adult interdependent partner have separated, you are now former adult interdependent partners.

CO-PARENTS WHO DON'T LIVE TOGETHER

If you have a child together but do not live together, family laws about being a parent or guardian and child support may apply to you.

Have a Baby

There are many ways to grow your family, including through birth, surrogacy and adoption. The law on these options is mostly found in Alberta's *Family Law Act* and *Child, Youth and Family Enhancement Act*.



Find more information about the topics below in the **Pregnancy and adoption** section at family.cplea.ca

RIGHTS OF THE MOTHER AND FATHER DURING PREGNANCY

The **birth mother** is the person who gives birth to the child.

During pregnancy, a birth mother has the following rights:

- to make medical decisions if they understand their situation, the information they are given about treatment and the consequences of a decision for or against medical treatment
- to get an abortion
- to not be discriminated against at work for being pregnant, meaning their employer cannot fire them or treat them differently than non-pregnant employees
- to request and receive accommodation at work to allow them to work safely while pregnant

A **biological father** is a male person the law presumes to be a biological father based on their relationship with the birth mother. Learn more on page 16.

A biological father has no legal right to be involved with a pregnancy. This means the birth mother can make all decisions about the pregnancy without discussing them with the father.

A biological father does have rights once the child is born, including a right to have a relationship with the child. A biological father also has responsibilities towards the child, such as paying child support if the child doesn't live with them.



Learn more on the **Rights of parents during pregnancy** page at family.cplea.ca

ABORTION

Abortion is the early ending of a pregnancy. It is different from a miscarriage, which happens when a pregnancy ends on its own. A birth mother can get an abortion without consent from the biological father. You do not need a referral from or to anyone to get an abortion.

In Canada, abortion is legal until 20 weeks into the pregnancy. They are performed at a hospital or a clinic that performs abortions. Alberta Health Services has a list of abortion services across the province to help you find a provider that is right for you. Visit albertahealthservices.ca and search for "Abortion Services".

There is no cost for an abortion in Alberta if you have a provincial health care card from Alberta, Saskatchewan, the Northwest Territories or Nunavut.

MyHealth Alberta has more information about abortions and what to expect. Visit myhealth.alberta.ca and search for "Abortion".

ADOPTION

To adopt a child means to become the child's legal guardian.

Adoption is a legal process. The court confirms an adoption by granting an **adoption order**, which says who the child's guardians are. An adoption order may also take away guardianship rights from the child's previous guardians.

There are three types of adoptions. All the child's guardians must consent to the adoption.

FROM GOVERNMENT CARE

Adopt a child whose guardian is Children's Services

PRIVATELY

Adopt a child who is not in government care.

- This may be a **direct adoption** where you adopt a child you know, such as your spouse's child or a relative.
- You may work with a **licensed adoption agency** to connect with an adoptable child. The agency helps with the adoption process.

INTERNATIONALLY

Adopt a child from another country, usually with the help of a licensed adoption agency.

If you are placing your child for adoption, it is a good idea to talk to someone to make sure this is the right decision for you. You could talk to a family member, close friend, counsellor or adoption agency. Call **211** to find supports in your area.

Alberta's **Post Adoption Agency** runs the **Ongoing Information Exchange**, which allows adoptive parents and birth family members to keep in contact with each other by exchanging non-identifying photos, letters and cards until the child turns 18. Both the adoptive parents and the birth family members must agree to take part in the program. Learn more on the Government of Alberta's website:

www.alberta.ca/records-registry-connections



Learn more on the **Adopt a child** and **Place a child for adoption** pages at family.cplea.ca

SURROGACY

A **surrogate** is someone who agrees to become pregnant, carry and give birth to a child for someone else, known as the **intended parent**. Surrogacy is allowed in Alberta and governed by the *Family Law Act*.

The surrogate and the intended parent must sign a **surrogacy contract** that says the intended parent is the legal parent of the child that the surrogate gives birth to. An intended parent cannot pay a surrogate for their services, but they can reimburse them for expenses directly related to the pregnancy and birth.

If the intended parent is using a donor egg or sperm or both, they should have a contract with the donor(s). The contract should say what is being donated, whether the intended parent is paying the donor and that the donor will not be the child's parent. This donor contract is separate from the surrogacy contract, even if the surrogate and the donor are the same person.

Once the child is born, the intended parents must get a court order naming them as the child's legal parents. If one or more intended parents provided the egg or sperm, they must get a **declaration of parentage**. If both the egg and sperm came from donors, the intended parent must get an **adoption order**.



Learn more on the **Work with a surrogate** page at family.cplea.ca

What To Do When Your Relationship Ends

Separating from a spouse or partner can be stressful and overwhelming. This section provides practical and helpful tips to help you prepare for legal issues that may come up.



Find more information about the topics below in the **Ending a relationship** section at family.cplea.ca

SEPARATION VS. DIVORCE

Separation is when you and the other person are no longer in a committed relationship. A separation begins on the date you and the other person break up, known as your separation date.

What legal steps you must take to make your separation final depends on your marital status.

MARITAL STATUS	STEPS TO TAKE
Unmarried couples	No further court process is needed to make your separation final. However, you may still need to deal with other issues, like dividing property, parenting and child support.
Adult interdependent partners	No further court process is needed to make your separation final. However, you may still need to deal with other issues, like dividing property, parenting, child support and partner support.
Married couples	You must get a divorce to make your separation final. Learn more about the divorce process on page 33. You may also need to deal with other issues, like dividing property, parenting, child support and spousal support.

THINGS TO START DEALING WITH

The decision to end a relationship is a difficult and emotional one. You may not know where to start to separate from your spouse or partner. Below are steps you can take to start the process.

○ KEEP YOURSELF AND YOUR CHILDREN SAFE

Separations can be an unsafe time in a relationship. **If you are in danger, call 911.**

Learn more about relationship violence on page 5.

○ GET SUPPORT

It is a good idea to get support through this process. This could be from family, friends, professionals and more.

○ REVIEW ANY AGREEMENTS BETWEEN YOU AND THE OTHER PERSON

Review any agreements you and the other person signed before or during the relationship, such as a **prenuptial agreement**, **cohabitation agreement** or **post-nuptial agreement**. It might deal with issues such as parenting, child support or spousal/partner support, and dividing property.

If your agreement does not cover certain issues, or if you never had an agreement, you will have to take further steps to resolve them.

○ WORK TOGETHER WITH THE OTHER PERSON

If you feel safe and comfortable doing so, you and the other person can discuss how you want to move forward.

On your own or with the help of a professional, you can make a **separation agreement** that says how you agree to resolve all separation issues.

Learn more about separation agreements on page 32.

○ MOVE OUT OF THE FAMILY HOME

It is possible to separate from someone but continue to live in the same home with each other while you divide your lives. However, many people feel that continuing to live together after separation is not in their best interests.

If you decide someone needs to move out, think about how that will happen, both logistically and financially.

Whatever you decide to do short-term does not have to be the same as how you agree to deal with the home long-term. At some point, you and the other person will have to divide your assets and debts, including the family home.

○ MAKE A PLAN IF YOU HAVE CHILDREN

If you have children, you need to figure out where they will live, how you will co-parent, who pays child support and more. Supporting your children and maintaining healthy relationships and stability is very important during this difficult time. Learn more about these topics in the other sections of this booklet.



Learn more about each of these steps on the **What to do when your relationship ends** page at family.cplea.ca

Care for Children

Parents and guardians have legal rights and responsibilities towards children, which are set out in both Alberta's *Family Law Act* and Canada's *Divorce Act*.



Find more information about the topics below in the **Caring for Children** section at family.cplea.ca

PARENTS

A child's parents are their birth mother and biological father, their adoptive parents or their intended parents.

- A **birth mother** is the person who gives birth to a child.
- A **biological father** is a male person the law presumes to be a biological father based on their relationship with the birth mother.
- An **adoptive parent** is a parent named in an **adoption order**.
- An **intended parent** is named in a **declaration of parentage** or adoption order as the parent of a child born via assisted reproduction, such as sperm, egg or embryo donation or surrogacy.

Parents have legal obligations towards their child, such as paying child support. This is true even if the parent does not have a relationship with their child. Learn more about child support on page 22.



Not sure if you're a parent? Take our quiz to find out!

Visit family.cplea.ca/am-i-a-parent/ or capture the QR code.

GUARDIANS

Guardians are responsible for the care and well-being of the child, which also means making major decisions for the child.

A child's parents are usually their guardians. A parent is a child's guardian if:

1. they acknowledge they are the child's parent, and
2. they show they intend to take on the responsibilities of being a guardian within one year from learning of either the pregnancy or the child's birth, whichever comes first.

A parent can give up their guardianship rights or a court can limit or terminate them.

A guardian's responsibilities and powers include:

- making daily decisions about the child
- supervising the child's daily activities
- deciding where and with whom the child will live and who they have relationships with
- deciding about the child's education, extra-curricular activities and work
- deciding the child's cultural, language, religious and spiritual upbringing
- consenting to the child's medical treatments
- dealing with any legal proceedings relating to the child
- appointing someone to act on the guardian's behalf in an emergency or when the guardian is temporarily absent
- receiving health, education and other information that affects the child
- making sure the child has food, shelter, medical care and clothing
- nurturing the child's physical, psychological and emotional development
- guiding the child towards being an independent adult

Usually, guardians must financially support the child, which includes paying child support. Learn more about child support on page 22.



Not sure if you're a guardian? Take our quiz to find out!

Visit family.cplea.ca/am-i-a-guardian/ or capture the QR code.

PARENTING TIME

Parenting time is the time a parent or guardian has with a child. During this time, a parent/guardian is responsible for the child. They can make day-to-day decisions about the child unless the court orders otherwise.

Parents can make a **parenting plan** or the or the court can make a **parenting order**. The law does not assume a child should spend 50% of their time with each parent. All decisions about parenting time must be in the **best interests of the child**.

DECISION-MAKING AUTHORITY

Only a guardian can make major decisions for a child. This is different from having parenting time and making day-to-day decisions for a child. For example, a major decision could be what school the child goes to or if the child goes to counselling.

Guardians must make decisions in the **best interests of the child**. If there is more than one guardian, usually they must make decisions together unless a court order says otherwise.

The *Family Law Act* refers to decision-making authority as the 'responsibilities of guardianship.' The *Divorce Act* refers to it as 'decision-making responsibility.'

BEST INTERESTS OF THE CHILD

The "best interests of the child" is a core principle in family law. It says that all decisions about a child must be in the child's best interests, not in the interests of the parents, guardian or some other person. It applies to all decision-makers, including the courts, parents, guardians, mediators and arbitrators.

The law lists factors to consider when making a decision for a child:

- the child's physical, psychological and emotional needs, including their need for stability
- the history of care for the child
- the child's cultural, linguistic, religious and spiritual upbringing and heritage
- the child's view and preferences, where appropriate to consider
- any plans proposed for the child's care and upbringing
- any family violence
- the nature, strength and stability of the child's relationships
- each parent or guardian's ability and willingness to care for and meet the needs of the child, and to communicate and co-operate on issues about the child

- the benefit to the child of building and maintaining meaningful relationships with each guardian or proposed guardian
- the ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship
- any civil or criminal proceedings related to the child's safety or well-being



Learn more on **The best interests of the child principle** page at family.cplea.ca

TYPES OF PARENTING ARRANGEMENTS

There are four types of parenting arrangements. Each arrangement has different parenting time and decision-making roles for the parents. The parenting arrangement also impacts how you calculate child support.

TYPE	WHAT IT IS	EXAMPLE	ROLES OF PARENTS
Primary parenting	The child spends more than 60% of their time with one parent, known as the primary parent.	The child lives with Parent A and sees Parent B every other weekend.	Both parents have parenting time, but the primary parent has significantly more than the other parent. Both parents or only the primary parent may have decision-making authority.
Shared parenting	The child spends at least 40% of their time with each parent.	The child rotates spending one week with Parent A and one week with Parent B.	Both parents have almost equal parenting time. The parents may also share decision-making authority.
Split parenting	One or more children live with one parent and the other children live with the other parent.	The youngest child lives with Parent A and the oldest child lives with Parent B.	Each parent has different parenting time with different children. The parents may share decision-making authority for all children, or each parent may have decision-making authority for the children that live with them.
Sole parenting	The child lives and only spends time with one parent.	Parent A cares for the child 100% of the time and Parent B does not see the child.	Only the sole parent has parenting time with the child. The other parent has no parenting time. The sole parent also likely has sole decision-making authority for the child.

PARENTING PLANS AND PARENTING ORDERS

A **parenting plan** is a written agreement that describes each parent's parenting time with and decision-making authority for a child.

Parents can work together or get help from a professional to create a parenting plan. A parenting plan must be in the best interests of the child, not necessarily of the parents. You can also turn your parenting plan into a **consent order** so the court can enforce it if need be.

The court can also make a parenting plan and include it in a **parenting order**. You may need to get a parenting order if you and the other parent cannot agree on a parenting plan or if one parent is not following the parenting plan.

You can agree to change a parenting plan if your parenting arrangement changes, such as if one parent moves away. If you have a parenting order, a judge must change it. It is not a good idea to informally agree to a different arrangement than what's stated in a parenting order.



Make your own parenting plan by following the steps on the **Make a plan for how to co-parent** page at family.cplea.ca



Get or respond to a parenting order by following the steps on the **Get or respond to a court order** page at family.cplea.ca

WHEN A PARENT WANTS TO MOVE

If you have parenting time with or decision-making authority for a child, you must take certain steps before you move. This applies even if you are moving without your child. A move may be within the same city or to another city, province or country.

If the other parent wants to move with your child, you can object to the move. If you cannot agree on whether your child should move, the court will decide what is in your child's best interests.

Anyone who moves a child without permission from the court or both parents may be forced to return the child or be charged with kidnapping.



Learn more on the **When one parent wants to move** page at family.cplea.ca

WHEN A PARENT WANTS TO TRAVEL

If you are travelling with a child, there are legal requirements you must obey, both in Canada and abroad. For example, all children, including babies, need passports to travel outside of Canada. If only one parent is travelling internationally with the child, they must have a court order or written consent from the other parent to travel.



Learn more on the **When you travel with a child** page at family.cplea.ca

CONTACT WITH A CHILD FOR NON-GUARDIANS

Contact means the time that someone who is not a guardian has with a child. This could be a parent who is not a guardian, a grandparent or another person who has a relationship with the child. Contact can take many forms, including visits, phone calls or other forms of communication. A person with contact does not get to make decisions about the child's life.

The child's guardians can agree to let someone have contact with their child or the court can decide by making a **contact order**.



Learn more on the **Spend time with a child if you're not their caregiver** page at family.cplea.ca

LEARN HOW TO CO-PARENT AFTER SEPARATION

Parenting After Separation (PAS) is a free online course created by the Government of Alberta to help parents learn how to communicate with each other after a separation. The court encourages every parent to take it even if the court does not order it.

Once you have completed PAS, you can take a second course called **Parenting After Separation for Families in High Conflict**.

Learn more on the Government of Alberta website:
pas.albertacourts.ab.ca

Child Support

Child support is money paid by one parent/guardian, called the **payor**, typically to another parent/guardian, called the **recipient**, to financially support the child when parents are not together.

Both Alberta's *Family Law Act* and Canada's *Divorce Act* deal with child support though child support is calculated the same way under both.



Find more information about the topics below in the **Support payments** section at family.cplea.ca

WHO PAYS CHILD SUPPORT

Usually the child's biological, adoptive or intended parent, or someone named as the child's parent or guardian in a court order, must pay child support.

A person who acted like a parent of a child, such as a stepparent or a parent's partner, may also have to pay child support. If the person does not agree to pay child support, the person or the child's parent can ask the court to decide. The law says the child's parents have a bigger obligation to pay child support than someone who is standing in the place of a parent.

A payor must pay child support even if they do not see the child or have a relationship with them.

A parent's obligation to pay child support starts as soon as the parents separate. If a parent does not pay child support when they're supposed to, the recipient can ask for **retroactive child support** back to the date when the payor's legal obligation started.

Child support continues at least until the child turns 18. It can continue on if the child is not financially independent because they're studying full-time or has injuries, disabilities or a medical condition.

TYPES OF CHILD SUPPORT

There are two types of child support.

Section 3 child support (also called **basic child support**)

- A payor must pay this amount.
- Provides for a child's day-to-day expenses, such as housing, food, clothing and school supplies.

Section 7 child support (also called **special or extraordinary expenses**)

- Parents usually share Section 7 expenses in proportion to their incomes.
- Covers financial support that goes beyond day-to-day expenses, such as: childcare, extra medical and dental expenses, therapy, extra-curricular activities like sports or clubs, and post-secondary education.

CALCULATE CHILD SUPPORT

The **Child Support Guidelines** set out how to calculate Section 3 child support and Section 7 child support. Both the *Divorce Act* and the *Family Law Act* use the same guidelines.

Child support payments are based on:

- the **gross incomes** of the parents/guardians
- the parenting arrangement (learn more on page 19)
- the province where the payor lives
- the number of children

The Government of Canada's **Child Support Table Look-up** web page helps you calculate child support. Visit www.justice.gc.ca and search for "Child Support Table Look-up".

PARENTING ARRANGEMENT	CALCULATE SECTION 3 CHILD SUPPORT PAYMENTS	EXAMPLE
Primary parenting	The payor is the parent who does not have primary care of the child.	Both parents live in Alberta. They have three children together. The children live mostly with Parent B. This means Parent B has primary care of the children and Parent A is the payor parent.
Sole parenting	Use the payor's gross income to calculate child support.	Parent A must pay monthly support to Parent B.
Shared parenting	The payor is the parent who earns more income. For each parent, calculate the child support amount as if they were the payor. Subtract the smaller child support amount from the larger child support amount. The result is how much the payor owes.	Parent A makes less gross income each year than Parent B. Both parents live in Alberta. They have one child together. The child alternates weeks with each parent, and the parents share time over the holidays. This means they share parenting. Parent A would owe less monthly support than Parent B. The difference between these two amounts is how much support Parent B pays to Parent A. Parent A does not pay Section 3 child support.

PARENTING ARRANGEMENT	CALCULATE SECTION 3 CHILD SUPPORT PAYMENTS	EXAMPLE
Split parenting	<p>Each parent owes child support for the children who spend at least 60% of their time with the other parent. The payor is the parent who owes more child support.</p> <p>For each parent, calculate the child support amount as if they were the payor based on the number of children not living with that parent. Subtract the smaller child support amount from the larger amount. The result is how much support the payor owes.</p>	<p>Parents A and B have two children. The oldest child lives with Parent A while the youngest child lives with Parent B. Parent A makes more gross income each year than Parent B.</p> <p>Parent A would owe monthly child support for the youngest child while Parent B would owe monthly child support for the oldest child.</p> <p>Since Parent A makes more gross income, they owe more child support. They are the payor and must pay Parent B an amount of support equal to the difference between the amount each parent owes for the child not living with them. Parent B does not pay Section 3 child support.</p>

Sometimes, the amount set out in the Child Support Guidelines is not appropriate. This may be the case if:

- the parents have shared parenting but there are increased costs of sharing parenting time or the conditions, means, needs and other circumstances of each parent and the child warrant more child support
- one parent makes over \$150,000 gross income per year
- the child is over 18 years old

Parents can work together or get help from a professional to calculate child support. If you make an agreement about child support, you can turn it into a **consent order** so the court can enforce it if need be.

The court can also calculate child support and include it in a **child support order**. You may need to get a child support order if you and the other parent cannot agree on child support or if one parent is not paying the correct amount of child support.

You may need to recalculate child support if your parenting arrangement changes, such as if one parent moves away. It is not a good idea to informally agree to a different amount of child support than what's stated in a child support order.



Learn more on the **Calculate child support** page at family.cplea.ca

WAYS TO COLLECT AND PAY CHILD SUPPORT

The payor can pay child support to the recipient directly or through the Maintenance Enforcement Program (MEP).

Paying child support directly to the recipient may work if the two of you have a good relationship. The payor and recipient's agreement or order should say how and when the payor pays child support. For example, the payor may e-transfer money or send a cheque. Do not accept or pay in cash.

The payor should also label each payment so it can be traced later if necessary. For example, in the message section of the e-transfer or on the memo line of the cheque, the payor should note the month and year and that the money is for child support, such as "April 2024 child support".

The **Maintenance Enforcement Program** is a free service of the Government of Alberta that collects child support from the payor and distributes it to the recipient. To use this service, one parent must register. To register, you must have a child support order or file a Maintenance Enforcement Support Agreement with the Court of King's Bench.

Once registered, MEP can collect and distribute both regular and overdue payments. MEP cannot adjust child support amounts or calculate **retroactive child support**. Learn more about MEP on the Government of Alberta's website:

www.alberta.ca/maintenance-enforcement-program

If the payor is not paying child support in full or on time, you can register for MEP if you haven't already done so. If you are not registered with MEP, you can try asking the payor for the missing payments or get or change a child support order from the court.



Learn more on the **Collect child support** and **Pay child support** pages at family.cplea.ca

Spousal and Partner Support

Spousal or partner support is money paid by one spouse/partner, called the **payor**, to the other spouse/partner, called the **recipient**, to financially support the recipient after the relationship ends.

Spousal support is only available to spouses or former spouses. **Partner support** is only available to former **adult interdependent partners**. Learn more about who are adult interdependent partners on page 9.

Alberta's *Family Law Act* deals with both spousal and partner support while Canada's *Divorce Act* only deals with spousal support.



Find more information about the topics below in the **Support payments** section at family.cplea.ca

WHO PAYS SPOUSAL OR PARTNER SUPPORT

Not all spouses/partners should pay or receive spousal/partner support. Eligibility for support, and the amount and length of support, depend on the situation. The spouses/partners may also agree to support in a **cohabitation agreement**, **prenuptial agreement**, **post-nuptial agreement** or **separation agreement**. Learn more about separation agreements on page 32.

The goals of spousal/partner support are to:

- make sure neither spouse/partner has an economic advantage or disadvantage from the relationship or because the relationship ended
- divide up the costs of caring for the children over and above child support
- lessen financial hardship on a spouse/partner because of the relationship ending
- encourage spouses/partners to work towards supporting themselves

TYPES OF SPOUSAL OR PARTNER SUPPORT

There are three types of spousal/partner support. A recipient can be eligible for more than one type of spousal/partner support at a time.

Compensatory spousal/partner support

- Payments to repay the recipient for their unrewarded roles or contributions during the relationship.

- Often the working spouse/partner pays this support to a stay-at-home parent. It recognizes how the stay-at-home parent gave up their career and financial independence to care for the family.

Non-compensatory spousal/partner support

- Payments to help the lower earner become financially independent over time. It increases their income while they better their career or finances.

Contractual spousal/partner support

- Payments set out in an agreement between the spouses/partners. Examples of contracts that could address spousal/partner support include a **pre-nuptial agreement**, **post-nuptial agreement**, **cohabitation agreement**, **separation agreement** or **consent order**.

CALCULATE SPOUSAL OR PARTNER SUPPORT

The **Spousal Support Advisory Guidelines (SSAG)** set out a range of support payment amounts and for how long a payor owes support for a variety of situations. Even though the SSAG refer to spousal support only, adult interdependent partners can also use them to calculate partner support.

The SSAG are not law, which means they are not strictly used like the Child Support Guidelines are for calculating child support. However, lawyers and courts use them as a starting point for calculating spousal/partner support.

Using the SSAG, there are different formulas depending on whether you are also calculating child support. The spouses/partners or the court may also choose a different amount of support that better fits the situation. Note that the SSAG are not appropriate to use in every situation.

You can use a free online calculator, such as **MySupportCalculator** (mysupportcalculator.ca) and **DivorcePath** (www.divorcepath.com), to help you calculate spousal/partner support according to the SSAG. But these tools are not always correct, so it's a good idea to ask a lawyer to double-check the numbers.

Spouses/partners can work together or get help from a professional to calculate spousal/partner support. If you make an agreement about spousal/partner support, you can turn it into a **consent order** so the court can enforce it if need be.

The court can also calculate spousal/partner support and include it in a **spousal/partner support order**. You may need to get a partner/support order if you and the other person cannot agree on support or if one person is not paying the correct amount of support.



Learn more on the **Calculate spousal or partner support** page at family.cplea.ca

WAYS TO COLLECT AND PAY SPOUSAL OR PARTNER SUPPORT

The payor can pay spousal/partner support to the recipient directly or through the Maintenance Enforcement Program.

Paying support directly to the recipient may work if the two of you have a good relationship. The payor and recipient's agreement or order should say how much and when the payor pays spousal/partner support. For example, the payor may e-transfer money or send a cheque. Do not accept or pay in cash.

The payor should also label each payment so it can be traced later if necessary. For example, in the message section of the e-transfer or on the memo line of the cheque, the payor should note the month and year and that the money is for spousal/partner support, such as "April 2024 spousal support".

The **Maintenance Enforcement Program** is a free service of the Government of Alberta that collects spousal/partner support from the payor and distributes it to the recipient. To use this service, one person must register. To register, you must have a spousal/partner support order or file a Maintenance Enforcement Support Agreement with the Court of King's Bench.

Once registered, MEP can collect and distribute both regular and overdue payments. MEP cannot adjust support amounts or calculate **retroactive spousal/partner support**. Learn more about MEP on the Government of Alberta's website:

www.alberta.ca/maintenance-enforcement-program

If the payor is not paying spousal/partner support in full or on time, you can register for MEP if you haven't already done so. If you are not registered with MEP, you can try asking the payor for the missing payments or get or change a spousal/partner support order from the court.



Learn more on the **Collect spousal or partner support** and **Pay spousal or partner support** pages at family.cplea.ca

Divide Property After a Separation

Separating couples must divide the assets they come to own and the debts they incur during the relationship. Different categories of property are dealt with in different ways. How you divide your property also depends on the legal status of your relationship.

Assets	Debts
<ul style="list-style-type: none">• real estate, such as the family home, vacation properties, farmland and investment properties• money in bank accounts• investments, including GICs, TFSAs, RRSPs, RRIFs, stocks and bonds• insurance policies, including life and disability• pensions, including Canada Pension Plan (CPP)• tax refunds• business interests• trusts where you are a beneficiary• valuable personal property, such as jewelry and collectibles• pets or animals• tools, furniture, appliances, vehicles, trailers, boats• inheritances	<ul style="list-style-type: none">• money still owing on mortgages• lines of credit• car loans• other loans, such as personal loans or student loans• overdrafts• credit cards

WHEN TO DIVIDE YOUR PROPERTY

Separating couples should start thinking about dividing their assets and debts soon after the separation. It is a good idea to start this process when you have a clear mind so that you don't make rash decisions or give up property you are entitled to.

If you need the court to make an order about dividing your property, there are deadlines to do so:

- Adult interdependent partners and unmarried couples have two years from their separation date to apply to court to divide assets and debts.
- Spouses have two years from the date the court grants their divorce to apply to court to divide assets and debts. You can also apply anytime before then, including while you're still married.

Learn more about adult interdependent partners on page 9.

THE LAWS ABOUT DIVIDING PROPERTY

Alberta's *Family Property Act* and general property principles both deal with dividing property. Which law you use depends on your relationship status and what property you are dividing.

Family Property Act

Applies to spouses and adult interdependent partners who separated on or after January 1, 2020.

Read below about the different categories of property and how to divide them.

General property principles

Apply to:

- unmarried couples who separate
- property that spouses or adult interdependent partners acquired before they moved in together or got married, whichever happened first

General property principles, including the law of **unjust enrichment**, do not assume property should be divided equally. Instead, the general rule is that property acquired during the relationship belongs to the person who paid for it or is its registered owner.

CATEGORIES OF PROPERTY UNDER THE FAMILY PROPERTY ACT

There are three categories of property under Alberta's *Family Property Act*. The property in each category is divided differently. These rules apply to spouses and adult interdependent partners, not to unmarried couples.

Exempt property

This property is not divided after a separation. One spouse/partner keeps it without the other spouse/partner getting something of equal value in return.

The following may be exempt property:

- inheritances or gifts one spouse/partner received from someone else that they did not mix with other property
- pensions, investments, RRSPs and other assets earned before the spouses/partners started living together
- property one spouse/partner owned before the spouses/partners started living together
- an award or settlement of tort damages or proceeds from non-property insurance policies, such as payouts for personal injury cases

If the value of the exempt property increases over the relationship, the increase may be exempt or divided equally or unequally, depending on the situation.

To claim exempt property, you must still have the exempt property or be able to trace its value to current property. If you mixed the property with other property, known as comingling, you will lose some or all of the exemption.

Property that may be divided unequally

This property is divided unequally based on what is fair in the circumstances. One person may keep a lot more of the property while the other person keeps a lot less.

The following property may be divided unequally:

- any increase in value of exempt property
- property purchased using income received from exempt property
- property acquired after separation
- a gift from one spouse/partner to the other

Property that will be divided equally

This property is shared equally unless it would be unfair to do so. This is usually property acquired during the relationship. If the spouses lived together before getting married, this includes assets and debts they acquired while living together before marriage.

The following property may be divided equally:

- the family home
- vehicles
- pensions, investments, RRSPs and other assets acquired during the relationship
- debts, such as mortgages and credit cards, incurred during the relationship



Learn more on the **Rules for dividing everything up** page at family.cplea.ca

Make a Separation Agreement

A **separation agreement** is a formal contract between you and the other person that explains how you have resolved issues that come up after a separation. It can include who pays support, how to parent your children and how to divide your property.

Making a separation agreement allows you and the other person to have more say and control over how you deal with issues after your separation than if you let a court decide. If you are married, it also means you may be able to apply for a joint divorce, which is a faster court process.

You can make a separation agreement if you are in a relationship and thinking of separating or if you have already ended your relationship.

WHAT TO INCLUDE IN YOUR AGREEMENT

What you include in your separation agreement depends on your unique situation and what you and the other person can agree to.

Below are some things to consider including in your separation agreement:

- if you have children, which parent will have parenting time when and who has decision-making authority for the children
- if you have children, which parent pays child support, as well as how you will pay support and share special expenses
- whether one spouse/partner will pay spousal/partner support, and if so, how much support they will pay and when and how they will pay it
- how you will divide your property, including how you will value property and whether any property is exempt
- whether one person will stay in the family home or if you'll both find new homes
- how you and the other person will share financial information with each other to calculate support and divide your property

PUT THE AGREEMENT IN WRITING

Your agreement must be in writing. You can choose to write it yourself or you can get help from a professional.

Before you sign the agreement, each of you should get **independent legal advice**. This means that you each meet with a different lawyer, who will go through the agreement with you. They will explain what you are entitled to under the law and whether the agreement is fair for you.

If your agreement deals with dividing property, you must each get a **Certificate of Independent Legal Advice** from a lawyer if you want the Alberta courts to recognize your agreement. When the courts recognize your agreement, it means they can enforce it later if someone is not following it. If you do not have Certificates of Independent Legal Advice, the courts may not be able to do anything if the other person is not following your agreement.



Learn more on the **Make a separation agreement** page at family.cplea.ca

The Divorce Process

To get a divorce in Alberta, you must meet all the following criteria:

1. You and your spouse are legally married according to either the laws of Canada or the laws of another country whose marriages Canada recognizes. If you are not sure if Canada recognizes your marriage, get legal support.
2. Your marriage has broken down, known as the grounds for divorce (learn more on page 34).
3. You or your spouse have lived in Alberta for at least a year before you file for divorce in this province.

You also need the following documents:

- the original marriage certificate
- if you made one, an original or copy of a **separation agreement**, **pre-nuptial agreement** or **post-nuptial agreement** between you and the other person
- copies of any current court orders related to your separation, including about parenting, child support, spousal support or dividing property

Getting divorced usually involves more than the divorce itself. It also includes resolving issues about parenting and child and/or spousal support payments, all known as **corollary relief**, as well as dividing property. The court will not grant a divorce until you have dealt with corollary relief or have a court order severing the divorce from corollary relief. You should start dealing with these other issues as soon as you have separated, even before you file for divorce.

A **divorce judgment** is a court order that grants a divorce for the people named in it. The judgment is final 31 days after the court grants it.

GROUNDS FOR DIVORCE

To get a divorce, you must prove your marriage has broken down. A breakdown in a marriage can happen in one of three ways, known as **grounds for divorce**:

1. **You and your spouse have been separated for at least one year with no chance of getting back together.**

The one-year period is not interrupted if you get back together for 90 days or less and then separate again. If you get back together for more than 90 days and then separate again, the one-year period restarts.

2. **You or your spouse committed adultery, that is, had sexual relations with someone else while you two were married.**

You do not need to wait one year to get a divorce. However, one of you has to prove to the court that the adultery happened.

3. **Either spouse treats the other cruelly.**

You do not need to wait one year to get a divorce. However, one of you has to prove to the court that the cruelty happened.

THREE DIVORCE PROCESSES

There are three divorce processes you can follow, depending on your situation.

JOINT DIVORCE	UNCONTESTED DIVORCE	CONTESTED DIVORCE
<p>It can be an option if you have an agreement that resolves all issues between you or you can resolve these issues without going to court.</p> <p>You and the other person file a joint application for divorce.</p>	<p>One person (the plaintiff) files for divorce and the other person agrees to the divorce and corollary relief terms or chooses not to respond to the divorce.</p> <p>The court grants a divorce based on the plaintiff's court documents.</p>	<p>You and the other person do not agree on the terms of your divorce.</p> <p>You and the other person must both file court documents. The person who files for divorce is the plaintiff and the person who responds to the divorce is the defendant.</p> <p>If you later come to an agreement, the court can grant an uncontested divorce instead.</p>



Learn more on the **Get a divorce** page at family.cplea.ca

Resolve Legal Issues

There are many ways to resolve family legal issues out of court, including with the help of professionals. Remember, going to court takes time and money. It should be a last resort.



Find more information about the options below in the **Getting help** section at family.cplea.ca

WORK TOGETHER WITH THE OTHER PERSON

This is a good option if you and the other person feel safe and comfortable and can communicate clearly with each other. If you and the other person get stuck, you can always get help from a professional.

Working together may **not** be a good option if:

- you are concerned about or have experienced family violence
- you do not feel safe or comfortable with the other person
- there is a power imbalance in your relationship
- you and the other person cannot communicate effectively with each other
- you have a protection order that prohibits or limits how and when you communicate with each other

WORK WITH A PROFESSIONAL

○ **LAWYERS**

Lawyers are trained professionals who have completed law school and are licensed to practice law.

You can hire a lawyer to help you with all or some of your case. Depending on your income, you may also qualify for free or reduced fee legal help.

○ **MEDIATORS AND ARBITRATORS**

Mediators and arbitrators are trained professionals who help you and the other person resolve issues without going to court. Many family law mediators and arbitrators are also lawyers. They can help with a specific legal issue or with several issues over time. These services are often cheaper and faster than going to court and allow you to have more input in the outcome.

Mediators help you and the other person work together to come to an agreement. They can offer perspective or help you figure out a compromise.

Arbitrators hear from both you and the other person before making a decision, much like a **justice**.

This is a good option if you and the other person need help resolving your legal issues after separation and want to do so without going to court.

○ **PARENTING EXPERTS**

Parenting experts are psychologists and social workers with training and experience in helping families resolve issues about parenting time, decision-making authority and contact.

This is a good option if you and the other person need help resolving your parenting issues and want to do so without going to court.

○ **FINANCIAL PROFESSIONALS**

Financial professionals include financial planners, accountants, tax specialists and business valuers.

This is a good option if you and the other person have complex finances. They can help you value your property and divide everything in a tax efficient way. They can also help you figure out your income to calculate child support or spousal/partner support, especially if one of you is a business owner.

○ **COUNSELLORS AND PSYCHOLOGISTS**

Counsellors and psychologists can help you and the other person better understand yourselves and each other. They can also help you figure out boundaries for your new relationship after separation, especially if you will be co-parenting for years to come. You can attend counselling individually or together.

This is a good option if you and the other person struggle to communicate, regardless of the issue you are dealing with, and want to build a new relationship going forward.

○ **SOCIAL WORKERS**

Social workers work in various places, including at free legal clinics and agencies providing social services. They are often a trusted first point of contact for many people. They can help you figure out which issues are legal ones and where to get more help.

GO TO COURT

If you and the other person cannot work together and cannot agree on getting help from a professional, you may need to go to court. The court can make decisions about all family law issues, including parenting, support payments and property.

The court usually requires you and the other person to try to resolve the disputes outside of court, including with the help of professional, before you can get help from the court. An exception to this rule is if you are concerned about family violence.

Remember, going to court takes time and money. It should always be a last resort. Many families successfully resolve their disputes outside of court in a way that allows them to have a positive relationship going forward.



Learn more in the **Going to court** section at family.cplea.ca

Glossary

An **adoption order** is a court order that says who the child's guardians are. It may also take away guardianship rights from the child's previous guardians.

Children's Services is the Government of Alberta office responsible for keeping children safe. They get involved when they believe children are not safe with or are being neglected by their parents or guardians. Children's Services can impose conditions on parents/guardians as well as remove a child from their home and place them in another home temporarily.

A **cohabitation agreement** is an agreement an unmarried couple signs just before or after they move in together. It usually says how they will manage assets and debts while they are together and, if they separate, who, if anyone, will pay support.

A **consent order** is when you get a court order about something you and the other person agree to without the court's help.

A **declaration of irreconcilability** is a declaration from the Court of King's Bench that says spouses or adult interdependent partners have no prospect of reconciling with each other. It is one way to prove a relationship is over.

A **declaration of parentage** is a court order that says someone is or is not a child's parent. The Court of King's Bench can make this declaration if the child was born in Alberta or a parent lives in Alberta.

An **Emergency Protection Order**, or **EPO**, restricts a family member who is causing harm from contacting and being near you. You can get an EPO 24 hours a day, seven days a week in emergency situations without letting the other person know.

Gross income is income before taxes are deducted.

A **justice** is a judge in either the Alberta Court of Justice or the Court of King's Bench of Alberta.

Questioning is a step before Special Chambers or trial in the Court of King's Bench. It is a way to gather evidence about each person's position and help resolve the issues before the court date. Questioning used to be called discovery.

A **post-nuptial agreement** is an agreement signed by a married couple who plan to separate. It says how they will divide their property, who will pay support, and the parenting plan and decision-making authority for their children.

A **prenuptial agreement** is an agreement a couple signs before they get married that clearly says it continues in effect once they get married. It usually says what will happen if you separate, such as how to divide your assets and debts and who, if anyone, will pay support.

Retroactive child support is back pay of child support to correct the non-payment, underpayment or overpayment of child support in the past. This can happen when there is no agreement or order about child support, or when the agreement or order includes an incorrect amount of child support.

Retroactive spousal/partner support is back pay of support to correct the non-payment, underpayment or overpayment of spousal/partner support in the past. This can happen when there is no agreement or order about spousal/partner support, or when the agreement or order includes an incorrect amount of support.

Unjust enrichment is a claim under property law principles that a person makes to protect property rightfully owed to them. To prove unjust enrichment, you must prove:

1. One person received an enrichment (benefit).
2. You suffered a loss or spent money on the property.
3. There is no legal reason for the enrichment (for example, it wasn't a gift).

More Resources

LEGAL SUPPORT

There are many types of legal support available to help resolve family law issues. These include:

- free legal support provided by volunteer lawyers at community legal clinics across Alberta if you meet their eligibility criteria
- reduced fee legal services provided by Legal Aid Alberta
- for a fee legal services provided by lawyers, legal coaches, mediators and arbitrators

GOVERNMENT SERVICES

The Government of Alberta offers free programs to help with the following:

- figuring out which court form to use
- coming to an agreement about child support
- recalculating child support
- preparing for and accessing the court system with the help of a family court counsellor
- mediating issues between parents who have at least one dependent child
- collecting and enforcing court-ordered child support and spousal/partner support

COURT SERVICES

Libraries at courthouses across the province can also help you find legal resources and information.



Not sure where to get help? Use our online tool to find legal supports near you!

Visit family.cplea.ca/find-legal-support/ or capture the QR code.



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