



Community Legal Information Association of Prince Edward Island, Inc.

The *Family Law Act* in PEI

This pamphlet provides an overview of the *Family Law Act*. This *Act* defines the term spouse and covers the areas of spousal support, child support and division of property.

In Prince Edward Island, the definition of “spouse” is:

- two people who are legally married, or
- two people who have lived together in a conjugal (sexual) relationship for 3 years or more, or
- two people who are living together in a conjugal (sexual) relationship and are the natural or adoptive parents of a child or children.

The term “common-law” is no longer a legal term because it is contained within the definition of spouse.

What is the *Family Law Act*?

The *Family Law Act* is a provincial act that regulates how separating couples deal with child support and spousal support, whether married or not, and the division of property between legally married persons. The *Family Law Act* does not deal with the division of property between people who are leaving unmarried spousal relationships. Whenever you are ending a long-term relationship, whether you are married or not, it's a good idea to speak with a lawyer. You both need legal advice.

Mediation

What is mediation?

Mediation is a process in which the couple separating meet with a neutral mediator and try to reach a mutually acceptable agreement. Mediation can be used to settle disagreements around division of property, custody, or support. It is a cooperative process for settling disputes. If you go to court, you are in conflict with the other party and a judge decides the outcome of your situation. You have to follow the court order whether or not you agree.

Some couples use mediation instead of going to court or they go to court only in the areas where they have not reached agreement. Mediation can be less expensive, less emotionally distressing, and can result in a satisfactory conclusion for both sides.

Does the *Family Law Act* encourage mediation?

The *Act* encourages mediation. It allows a judge to appoint a mediator to help with disagreements between a couple. The couple must agree on the mediator. When the process is complete, the mediator files a report with the court about the mediated agreement.

Does mediation cost anything?

Mediation is a professional service and there is a cost that must be paid by the couple. This may or may not be divided equally. The judge may order how the cost should be divided.

There is a free mediation service available through Family Court to deal with custody, access and child support issues. To find out if you are eligible for this service, call 368-6056.

How do we find a mediator?

Check in the Yellow Pages of the phone book or call Community Legal Information Association (892-0853 or 1-800-240-9798) for a list of mediators. There are many private mediators and some lawyers do mediation. If you are worried about the cost, ask how much mediation will cost when you first speak to the mediator.

Dividing Property

This section applies only to legally married spouses.

How do we divide our property?

First, you must calculate what your net property is worth. To do this, you look at what you owned at the date of separation and determine its value. If you can't agree on the value, an outside valuer may be brought in to appraise your property and place a value on it. Everything you own is part of this valuation including:

- land
- houses
- personal property such as cars, jewellery, boats
- savings and investments
- tools
- business interests (including farming and fishing)
- pensions and RRSPs

Once the decision has been made about the total value of everything you own together, you start making deductions such as:

- the debts you owe (mortgage, car loan, etc.)
- the value of any property each of you owned on the date of your marriage
- damages for personal injury settlements, and
- proceeds from life or accident insurance policies (in certain cases)

There are other deductions that may be made and there are circumstances that may change whether something is deducted or not. It is important to speak to a lawyer or a divorce accountant when you divide your property.

The result of these calculations is the net value of your family property. Each of you gets half of that total value. You negotiate who takes what and record what has already been taken by either party. In the end, one of you may owe an equalization payment to the other so that what each of you has is of equal value.

Where can we get help to reach agreement about how to divide the property?

If you need help reaching agreement on the terms of a separation agreement, you can contact a mediator or a lawyer. A lawyer works for you alone, so your spouse will have to find another lawyer who will give him or her independent legal advice. A mediator can work with both of you to decide what to include in a separation agreement. Your lawyers can then use this agreement as a basis of a separation agreement. For more information, CLIA has a handout called “What Do I Include in a Separation Agreement?”

If we can't agree and go to court, can the judge order an unequal division of property?

If a judge determines that an equalization agreement would not be fair, he or she can order an equalization payment which is different from the amount reached through the calculation described earlier. The kinds of things that would be looked at are:

- one spouse not knowing about debts owed by the other spouse before marriage;
- debts made recklessly or in bad faith;
- an intentional or reckless lessening of the value of the property;
- the number of years married if less than five years;
- an unequal sharing of responsibility to support the family; and
- any other relevant circumstances.

The judge can also look at how the value of the property has changed since you have been separated.

What if my spouse sells some property just before we separate?

If your spouse sold or transferred the property just so that you would not be able to have your share of it, the court can decide to treat it as though he or she still owned it when you separated.

If the property was transferred within 90 days of separation, your spouse must prove that this was not done in order to prevent you from receiving your fair share. If it was transferred more than 90 days before you separated, it will be up to you to prove that it was done to prevent it being shared with you.

Can I make my spouse leave the family home?

Both of you have an equal right to live in the family home and neither one of you can force the other to leave unless there is a court order for "exclusive possession".

Court orders depend on individual circumstances and will only be made if it is in the best interests of the children to stay in the home, or if:

- there is a written agreement
- one spouse's financial situation merits it or
- there has been violence committed against one of you by the other

If there has been violence in the family, the victim may use the *Victims of Family Violence Act* to stay in the family home and have the abuser removed. For more information about this *Act*, contact Victim Services at 368-4582 in Charlottetown or 888-8217 in Summerside.

CLIA has pamphlets called "Family Violence in PEI" and "Court Orders for Your Protection" that you can get by phoning 892-0853 or 1-800-240-9798 or on our website at www.cliapei.ca.

Child and Spousal Support

Separating parents who were never married, or are not getting a divorce, pay support according to the *Family Law Act*.

Parents who are already divorced, or are in the process of getting a divorce, pay support according to the *Divorce Act*.

When is child support paid?

Parents have a joint financial responsibility to their children. When you separate, one parent may have to pay child support to the other.

How do you figure out how much child support must be paid?

Factors that affect child support are:

- the province you live in
- your custody arrangements
- the number of children
- medical, extracurricular, child-care and other extra expenses
- whether your child is in post-secondary education

Basic child support is calculated using the Child Support Guidelines tables. Child support is not taxable for the receiving parent and not deductible for the paying parent.

For more information on child support call CLIA (892-0853 or 1-800-240-9798) or the Child Support Guidelines Offices (Charlottetown 368-6220 or Summerside 888-8188).

When does child support end?

The *Act* says that every parent must provide for their children if:

- the child is under 18 years of age; or
- the child is older than 18 and enrolled in a full-time program of education; or
- the child is unable to support him or herself because of illness or disability.

If your child is 16 or older and has voluntarily left home against your wishes, then you may not have to pay child support.

What is spousal support?

The law says that you must try to support yourself after a separation or divorce. However, if one of you is unable to support yourself or will suffer a big drop in income or standard of living as a result of the separation, a claim for spousal support can be made. There are spousal support advisory guidelines that are not law but are being used by the courts to determine how much spousal support must be paid and for how long.

Spousal support is taxable income for the person receiving support and is a deductible expense for the person paying support.

More information about the guidelines can be found at the Department of Justice Canada website or in CLIA's pamphlet "Spousal Support: What You Need To Know".

Family Violence

Is there anything in the *Family Law Act* to help people who are being abused by their spouse?

You can apply for a restraining order under the *Family Law Act* to have your spouse or former spouse ordered to stop molesting, annoying or harassing you. If you wish to apply for a restraining order, contact a lawyer and explain your situation.

The *Victims of Family Violence Act* makes it possible to obtain an Emergency Protection Order which gives the police the power to take whatever steps are necessary for the immediate safety of the victim. The *Act* also allows for a Victim Assistance Order which gives the victim longer term protection from abuse until more permanent arrangements can be made under the *Family Law Act* or *Criminal Code*.

For more information about the *Victims of Family Violence Act* you can get pamphlets from Community Legal Information Association: 1-800-240-9798 or 892-0853, or you may contact Victim Services: Charlottetown, 368-4582, or Summerside, 888- 8217.

This pamphlet has been prepared by Community Legal Information Association of Prince Edward Island Inc.(CLIA) for informational and educational purposes only. It contains general information about one area of the law. It does not contain a complete statement of the law in this area. If you need legal advice, contact a lawyer. If you do not know a lawyer, call the Lawyer Referral Service 1-800-9798 or 892-0853. A half hour appointment through this service will cost you \$10 plus taxes.

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