



Community Legal Information Association of Prince Edward Island, Inc.

Islanders' Guide to the Family Law Act

What is the Family Law Act?

The Family Law Act is a provincial Act. It regulates how Prince Edward Islanders deal with:

- the division of property between legally married persons,
- child support, and
- spousal support

when a marriage breaks down.

The Family Law Act does not deal with the division of property between people who are leaving common law relationships. The division of property in these cases depends on ownership and whether the court finds that one person holds the property on behalf of the other (in trust). 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 outside of the formal justice system where 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, as opposed to court which is an adversarial process. Some couples use mediation instead of going to court or they try mediation and go to court only if it fails. When it's successful, mediation may reduce costs, be less emotionally distressing than court for the parties and children and result in a satisfactory conclusion for both sides.

Does the Family Law Act encourage mediation?

Yes, the Act allows a judge to appoint a person to mediate (settle) any disagreements between a couple. For this to happen, a person must agree to act as a mediator, and the couple must agree on the mediator. When the process is complete, the mediator files a report with the court. This either details everything the mediator thinks is relevant or sets out only the final results (details of the agreement reached or the fact that there is no agreement). The couple decides before mediation begins which kind of report shall be filed.

Does mediation cost anything?

Yes, it is a professional service and there is a cost which must be paid by the couple. This does not have to be divided equally; and the judge may direct how the cost should be

divided. In some cases where a couple disagrees about child custody there is a free mediation service available through Family Court. To find out if you are eligible for this service call the Family Court Counsellors in the Charlottetown Courthouse at 368-6056.

How do we find a mediator?

Check in the yellow pages of the phone book, ask friends, call Community Legal Information Association for our list of family mediators or call family court. There are family counsellors who are mediators and some lawyers do mediation. Mediation PEI can also direct you to mediators. If you are worried about the cost, ask how much mediation will cost when you first speak to a mediator.

Dividing Property

How do we divide our property?

First of all you must decide what each person's net property is. To do this you look at what each person will keep after the break-up and determine its value. The valuation date is usually the date of separation. If you can't agree on the value, an outside valuer (you can find one through a real estate office for your land) 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, jewelry, boats etc.,
- savings and investments;
- tools;
- business interests (including farming and fishing);
- pensions; and RRSPs.

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

- the debts you owe (mortgage, car loan etc.);
- the value of any property you owned on the date of your marriage;
- the value of gifts (from someone other than your spouse) or inheritances you've received;
- damages for personal injury settlements; and
- proceeds from life or accident insurance policies (in certain cases).

When you've made these calculations you will know what the net value of family property is for each person. You then deduct the lower amount from the higher one, divide the balance in half and the amount you reach is the Equalization Payment which must be paid by the spouse with the higher net family property value to the spouse with the lower net family property value.

Example

Mr and Mrs Doe have separated -- their assets:

Mr Doe is going to keep the house worth \$75,000, furniture worth \$10,000, and a car worth \$15,000. The total value of this property is \$100,000.

Mrs Doe will keep furniture worth \$10,000, a car worth \$20,000 and savings of \$5,000 for a total of \$35,000.

Neither of them have a pension, RRSP, or other assets -- their deductions:

Mr Doe will be paying the outstanding mortgage of \$25,000 on the house and a car loan of \$5,000. When his father died Mr Doe was left \$10,000 insurance which he used as a down payment on the house and this money can be "traced" to the house. He can also deduct this \$10,000 from his gross value leaving him with a net family property value of \$60,000.

$$\$100,000 - (\$25,000 + \$5,000 + \$10,000) = \$60,000.$$

Mrs Doe has no debts to pay and had no gifts or inheritances. Her savings of \$5,000 were saved before the marriage and have never been touched. Since this was her property owned on the date of the marriage she is able to deduct it from her gross value of \$35,000 leaving her with a net value of \$30,000.

$$\$35,000 - \$5,000 = \$30,000.$$

The equalization payment:

Since their net property values are different they would subtract Mrs Doe's \$30,000 from Mr Doe's \$60,000 for a balance of \$30,000. In order to equalize their net property value, Mr Doe will have to give Mrs Doe \$15,000 so that each would end up having a net family property of \$45,000.

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

If you need help to reach agreement about what to write into a separation agreement, you can obtain it from a mediator or from a lawyer. A lawyer works for you alone (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.

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

Yes. A judge can order an equalization payment which is more or less than the amount reached through the calculation described earlier if an equal division would not be fair.

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;
- gifts given between the spouses;
- 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.

You have to make an application to the court no later than six years after you begin living apart or two years after your divorce, whichever is sooner.

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 any of it, the court can decide that (act as if) he or she still owned it when you separated.

If the property was transferred within 90 days of separation then 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, or stay away, 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.

Child and Spousal Support

This pamphlet deals only with the Family Law Act. 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 in the process of obtaining a divorce are covered by the Divorce Act.

When is child support paid?

Parents (whether married, living together, or living apart) have a joint financial responsibility to their children. When you separate, one of you often ends up being the "custodial" parent--the parent with whom the children live most of the time, and the parent who pays most of the bills associated with raising children. The other parent has a responsibility to help with this cost through the payment of child support which is calculated according to that person's income.

How do you figure out how much child support is needed?

The first step to deciding how much child support must be paid is to obtain the calculation tables put together for each province and territory. These are based on the income of the non-custodial parent and adjusted according to directions given in the federal child support guidelines.

When there are special costs such as medical expenses or special education costs the extra amount for that expense is calculated using each parent's income and added to the basic amount. Both parents' incomes are also used where one person claims undue hardship; where each parent has one or more children living with him or her; or when

each parent has the child in his or her care for the same amount of time and contributes essentially the same financial amount for the child's benefit.

If you can't agree on an amount for child support and the dispute goes to court, the court will usually ask for not only the income stated on the last three years of income tax statements but also for the latest evidence of present pay. Going to court is a long, hard and expensive process for both parents and children. If you are involved in a dispute about child support, speak to a lawyer.

The laws on child support and taxation changed in 1997 when child support was no longer taxable in the hands of the custodial parent and no longer deductible for the noncustodial parent. Spousal support is still considered taxable income for the person receiving support and is still a deductible expense for the person paying support. The new child support guidelines apply in cases where support is paid under a divorce order. When parents have never been married or have lived common law, the guidelines are being used by the courts in P.E.I. on an advisory basis.

When does child support end?

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

- they are under 18 years of age; or
- they are older than 18 and enrolled in a full-time program of education; or
- they are unable (because of illness or disability) to support themselves.

This is the same regardless of whether you have been legally married, living in a common law relationship, or have never lived together.

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

Who pays the tax on child support payments?

In the past, the parent receiving the child support payment would pay taxes on that support, and the parent paying support would get a tax deduction. For all orders or agreements reached after May 1, 1997 the person receiving the child support payments does not have to claim it as income and the person paying child support can no longer deduct it from income.

An order made before May 1, 1997 will continue to be taxed as it has been in the past unless you apply to have the order changed. Depending on the circumstances this may or may not be in your best interest. Speaking with a lawyer will help you decide what is best in your case.

What is spousal support?

Spousal support is paid when married couples separate, if (as a result of the marriage or its breakdown) one person is unable to support herself or himself.

Examples

A couple married for 30 years separate. The woman has stayed at home and raised five children, including one child who was disabled and needed constant care. The husband has followed a career in government and earns a good salary. After the separation, the

woman is now over 50 years old and has no experience outside of the home in the workplace. It is not likely that she will be able to find employment and support herself.

Or

Violence has occurred during the marriage and the woman, who is the victim, is unable to work because of psychological problems caused by years of abuse.

In the same circumstances spousal support can be ordered for unmarried people who have lived together in a common law relationship for more than three years (or less if they are the natural or adoptive parents of a child). It may also be ordered if, as a result of the separation, one person has suffered a serious economic disadvantage.

Example

A couple had lived together for some time when the woman was offered a job in Toronto which paid far more than she was getting in PEI. She persuaded her partner to give up his job on the Island and move to Toronto. Once there, he was unable to find work in his chosen profession, their relationship ended and his partner moved out. Spousal support must still be declared as income and tax must be paid by the person receiving the payments.

Family Violence

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

Yes, you can apply for a restraining order to have your spouse, or former spouse, ordered to stop molesting, annoying or harassing you. This applies equally to legally married couples or couples in common law relationships.

If you wish to apply for a restraining order contact a lawyer and explain your situation. If you don't know a lawyer call the [Lawyer Referral Service](#) at 892-0853.

A new provincial law, the Victims of Family Violence Act was proclaimed in December 1996. This act makes it possible to obtain an Emergency Protection Order which gives the police power to take whatever steps are necessary for the immediate safety of the victim. It 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 other law.

For more information about the [Victims of Family Violence Act](#) you can obtain a pamphlet 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 the Community Legal Information Association of Prince Edward Island Inc.(CLIA) for informational and educational purposes only. It is based on material produced for a series of Family Law workshops. It contains general information about one area of the law, the Family Law Act. 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 you may contact one through the [Lawyer Referral Service](#), phone 1-800-9798 or 892-0853 in the Charlottetown area. You will be given the

names of two lawyers. A half hour appointment with one of them through this service will cost you \$10 plus tax. As changes in the law and court procedure occur, the information in this pamphlet may become out of date.

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Community Legal Information Association of Prince Edward Island Inc. is a charitable organization funded by the Department of Justice Canada, the Office of the Attorney General P.E.I., the Law Foundation of Prince Edward Island and other funding sources. Funding from Status of Women Canada assisted in the development of this material.

CLIA provides Islanders with useful, understandable information about our laws and the justice system. You may support the Association through volunteering, becoming a member or by making a donation. Charitable registration number: 118870757RR0001

ISBN 978-1-894267-98-4