



**Community Legal Information Association of
Prince Edward Island, Inc.**

Spousal Support: What You Need to Know

Are you separating or divorcing?

Are there children in your relationship?

Do you now pay or receive support?

If you are in any of these situations, you can benefit from information about spousal support.

This pamphlet will explain the law about spousal support (alimony). Spousal support is the money paid by one spouse to the other. Support is also sometimes called maintenance.

According to the *Domestic Relations Act*, “spouse” is defined as:

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

The law says that you must try to support yourself after a separation or divorce. But, 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 may be made. Spousal support can be ordered:

- while you retrain
- while you find a job
- while you stay home to care for young children
- if you were damaged by the relationship (as in some abuse situations)
- if you are disabled and cannot work
- if you are too old to retrain for work

There are now “Spousal Support Advisory Guidelines” that may be used to determine how much spousal support is paid and for how long. These guidelines are not law, but

advisory. However, they are often considered by the courts when deciding on spousal support.

There are different formulas used for different situations, such as whether or not there are dependent children, how long you were together, and other factors. More information about these Guidelines is available at the website of the Department of Justice Canada (www.justice.gc.ca). At this site, do a search for “Spousal Support Advisory Guidelines”.

A spouse may be entitled to support even if he or she is working - this depends upon the history of the relationship between the spouses. The judge will look at:

- how long the spouses have lived together
- what role each spouse played in the marriage (for example, one spouse was a fulltime homemaker)
- whether one spouse will suffer financial hardship because of the marriage breakdown

If your circumstances make it unreasonable to expect you to become self-supporting or if your income is much lower than the other spouse’s after separation, you may be able to get support for a period of time or even indefinitely.

Spousal support will only be awarded:

- if you are entitled to it;
- if the other person can afford to pay it; and
- after child support has been considered.

What happens at income tax time?

At income tax time, spousal support can be deducted from the income of the person who pays it and must be added to the income of the person who receives it.

If you have an order that includes both child and spousal support, payments go first towards child support. This means that a paying parent will not get a tax deduction for spousal support until child support is fully paid.

Family support orders usually state how much is for spousal support and how much is for child support. If your support order does not specify this, it is assumed that everything paid is for child support.

How do you get spousal support?

There are two ways to get spousal support:

One:

If both of you can agree on the amount to be paid and the conditions, a written agreement can be reached and signed out-of-court.

Out-of-court settlements can be done through mediation or a collaborative law process, in which you meet in face-to-face discussions with your spouse. With the help of a neutral mediator or collaborative lawyer, you negotiate to reach an agreement that is acceptable to both of you.

If these processes work, it can save time and money, create less stress for the family, and keep your dispute more private than going to court. It allows you to create your own solutions. Mediation or collaborative law can help you work out an agreement that keeps everyone's best interests in mind, and is particularly beneficial if you have children.

To be legally binding, your agreement must be signed by both of you and witnessed. You should have a lawyer check your agreement to make sure it is correct and complete. If your spouse's lawyer wrote the agreement, you should have your own lawyer look at it before you sign it.

You can register your agreement with the Maintenance Enforcement office. If payments are not made according to the schedule, the Maintenance Enforcement office will take steps to enforce your agreement.

Two:

You can make an application to have a hearing in Family Court. It is a good idea to get help from a lawyer if you are going to court to be sure that your interests are being looked after and the necessary papers are properly prepared.

Any order or agreement should be carefully looked at before you sign it. A signed agreement for support is a binding contract.

The P.E.I. *Family Law Act* states that you must make a claim for spousal support within two years from the date you separate.

If your claim is part of a divorce application, your case falls under the federal *Divorce Act*. There are no time limits under the *Divorce Act* for applying for spousal support. You can apply when you are divorcing and you can re-apply later if:

- your first application for spousal support was denied or reduced in favor of child support, and
- your child support is now stopped or reduced.

Can I change spousal support?

Yes. You can change an agreement or order if you both agree to the changes and put those changes in writing.

If you can't agree, you or your spouse can apply to the Court for a change or variation to this order or agreement. For a variation to be granted, a significant change must have occurred in your or your spouse's financial situation. If you are not divorced, at least six months must have passed since your last agreement or order was made. If you are divorced, the six-month time restriction does not apply and you can reapply for spousal support or apply for a variation of your spousal support under the *Divorce Act* if:

- your first application for spousal support was denied or reduced in favor of child support, and
- your child support is now reduced or stopped.

It is a good idea to speak to a lawyer if you think you are eligible for spousal support. If your spouse will not agree to pay spousal support, you may need to take your case to court to get it ordered by a judge. Informing yourself about the Spousal Support Advisory Guidelines and talking to your lawyer about using these in your application may be a good plan. If you do not know a lawyer, call the Lawyer Referral Service at 892-0853 or 1-800-240-9798. A 30-minute consultation with a lawyer through this service costs \$10 plus taxes.

Where can I get more information?

If you need legal information, call Community Legal Information Association of P.E.I. at 892-0853 or 1-800-240-9798.

If you need tax information, call Canada Revenue Agency at 1-800-725-4425.

If you need legal advice, you can phone the Lawyer Referral Service at 1-800-240-9798 or 892-0853. A 30-minute appointment with a lawyer will cost \$10. + taxes. Further time with a lawyer will be at the lawyer's rate.

For more information on collaborative law, go to the website at www.collaborativelawpei.com.

This information has been prepared by Community Legal Information Association of Prince Edward Island, Inc. It contains general information about family law and family court. It does not contain legal advice. To obtain legal advice, contact a lawyer. If you don't know a lawyer, call the Lawyer Referral Service at 892-0853 in the Charlottetown area or 1-800-240-9798 toll-free. The Lawyer Referral Service provides you with a half hour appointment with a lawyer for \$10 plus tax.

Community Legal Information Association of PEI, Inc. (CLIA) is a charitable organization that receives funding from the Department of Justice Canada, the PEI Department of Justice and Public Safety, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you can telephone CLIA at 892-0853 or 1-800-240-9798, visit our website at www.cliapei.ca or email us at clia@cliapei.ca.

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Charitable registration number: 118870757RR0001

ISBN: 978-1-894267-83-0

December 2006

Revised July 2010