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A GUIDE TO THE LAW IN ALBERTA REGARDING

SUPPORT FOR UNMARRIED PERSONS AND THEIR CHILDREN UNDER THE *FAMILY* *LAW ACT*

version: 2010

GENERAL

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THEIR CHILDREN UNDER THE *FAMILY LAW*
*ACT***

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WHO IS COVERED BY THE ALBERTA FAMILY LAW ACT?

The Alberta *Family Law Act* governs support for non-married parents, adult interdependent partners (common law) and married parents who are separated but not seeking divorce.

Married persons who are seeking support as part of a divorce application must apply under the Canada *Divorce Act*. Please see our pamphlet on this topic.

WHO ARE ADULT INTERDEPENDENT PARTNERS?

In Alberta, adult interdependent relationships are defined in the *Adult Interdependent Relationships Act*.

Under the *Adult Interdependent Relationship Act*, adults are in an interdependent relationship other than marriage when they:

- a. Have an agreement to become interdependent partners;
- b. Have lived together in a relationship of interdependence for at least three years; or
- c. Have lived together in a relationship of interdependence of some permanence (which could be for less than three years) but have a child from the relationship by birth or adoption.

A relationship of interdependence exists when two people share one another's lives, are emotionally committed, and work together in sharing domestic and economic responsibilities.

Adults in an interdependent relationship are able to apply through Provincial Court, or Court of Queen's Bench, for child and spousal support. Please also see our 'Parenting Time' and 'Common-Law Property' pamphlets for other related information.

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WHAT IS SUPPORT?

Support is a term that refers to the money that is paid by one spouse/parent/partner for the support of his or her other spouse/partner and/or children. Parents are under a legal obligation to provide for the needs of their children. Support is used to pay for such things as adequate food, shelter, schooling, clothing and medical treatment. However, depending on the circumstances, may include other items. Spousal support (money paid to support a spouse) can also be called alimony.

Support is usually a fixed sum, paid on a regular basis every month. It may also be paid yearly or, in certain rare cases, in a lump sum. If there is a verbal or written agreement reached between two spouses/partners/parents concerning spousal or child support this will be taken into consideration by the Court. However, Judges will make support orders based on the current financial position of the spouses/partners/parents. If the situation changes, either spouse, partner or parent can apply to vary (change) the support order.

Usually, if a support agreement is made up with the help of a lawyer, the Court will approve the amount, as it will likely follow the Child Support Guidelines. An agreement which does not follow the Guidelines will not be approved by the Court.

CHILD MAINTENANCE

1. Who is a Parent?

The Court can make presumptions about who is the parent of a given child. A female person who gives birth to a child is presumed to be the biological mother of the child.

A male person is presumed under the law to be the biological father of a child if:

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- a. He was married to the mother of the child when the child was born;
- b. He was married to the mother of the child and the marriage ended less than 300 days before the birth of the child;
- c. He got married to the mother of the child after the birth of the child and acknowledged that he is the father of the child;
- d. He lived with the mother of the child for 12 consecutive months during which time the child was born and he acknowledged that he is the father of the child;
- e. He is registered as the father of the child on the child's birth certificate; or
- f. A Court has found him to be the father.

These presumptions can be rebutted with appropriate evidence and the Court may request a DNA test to establish who the father is. If a person refuses to provide a DNA sample, the Court may presume he is the father. Step-parents or other people standing in the place of a parent may also be considered parents and can be obligated to pay support.

2. The Child Support Guidelines

The Alberta *Family Law Act* formally adopts the Alberta Child Support Guidelines. These guidelines are mandatory and modelled after the Federal Child Support Guidelines that are used for divorcing parents. This is so that there is consistency in the amount of child support payments in Alberta.

3. Factors the Court Considers when Awarding Child Support

The Child Support Guidelines ensure a base amount for child support depending upon the income of the person who is paying (the 'payor') and the number of children involved. On top of the

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guideline amount, the payor may also have to pay a portion of any special expenses. These could include things like:

- a. Child care;
- b. Medical and dental premiums;
- c. Health related expenses that exceed \$100 annually;
- d. Extraordinary school expenses;
- e. Post-secondary education;
- f. Extra-curricular activities.

The costs of these special expenses are paid proportionally to the parent's income. The Court will also take into consideration any undue hardships such as high access costs, high levels of debt, or a legal duty to support other children. It is important to note that the Court will also take into consideration the standard of living for each of the parents.

4. Duration of Child Support Orders

Under the *Family Law Act*, parents are under a legal obligation to provide for the needs of their children. This applies until the child turns 18 or is living independently. A parent is also obligated to provide for a child between the ages of 18 and 22 if the child is unable to withdraw from his or her parents' financial support because he or she is a full-time student.

If the child is married or is in an adult interdependent relationship, voluntarily withdrawn from the parent's care, or is living an independent lifestyle, the parents are no longer obligated to provide for the adult child's needs.

5. Support is NOT Tied to Parenting Time

Parents must understand that payment of support is not tied to parenting time (or 'visitation'). Support orders, parenting time and contact orders are distinct. If one parent does not pay child support, the other parent cannot deny contact with the child. Also, if one parent denies the other parent contact with the child, the

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other parent cannot stop making support payments. Only the Court can vary a support order.

A parent who is paying child support but not getting parenting time has limited options. There is no governmental agency that can remedy this. A parent in this situation can return to Court to seek enforcement of the any order through a contempt proceeding or through a change in the order.

Parents who wish to negotiate for parenting time and child support may get help from Family Mediation Services. Be aware that parents **MUST** attend the Parenting After Separation Seminar offered through the Alberta Courts. (See the referral section of this pamphlet for contact information). This seminar is designed to help parents understand the process and effects of separation and to encourage parents to make positive choices about how they will continue to parent their children after separation.

SUPPORT FOR SPOUSES AND ADULT INTERDEPENDENT PARTNERS

Maintenance can be awarded under Alberta's *Family Law Act* for married spouses who are separated and not divorcing and for adult interdependent partners.

Married spouses who are divorcing are governed by the federal *Divorce Act*.

1. Factors the Court Considers

In making a spousal or adult interdependent partner support order, the Court can consider the length of time the parties lived together and the functions each party performed during the time they lived together. The Court can also consider support obligations that one of the spouses/partners may already have to any other person and the new financial situation of the couple. If

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one of the spouses has entered into a new relationship where they share expenses with their new partner, it can affect the amount of support awarded.

When making a support order, the Court does not consider any misconduct of a spouse or adult interdependent partner unless:

- a. It unreasonably prolongs or aggravates the need for support, or
- b. It unreasonably affects the ability to provide support (intentional unemployment, for example).

2. Objectives of Spousal or Adult Interdependent Support Orders

The support order should recognize the economic advantages and disadvantages of the parties arising from the relationship or its breakdown. It should also spread the financial consequences arising from the care of any child of the relationship between the spouses or adult interdependent partners. Support should, as much as possible, promote the economic self-sufficiency of each spouse or partner within a reasonable time.

3. Priority of Child Support

The Courts give priority to child support obligations over spousal support obligations. This means that child support must be paid before any spousal support. Also, spousal support amounts can be reduced to give priority to child support obligations. Therefore, any change to the child support order can then result in spouses being able to apply for a change in the spousal support order.

4. Types of Support Agreements

Spouses or adult interdependent partners may enter into two types of written agreements:

- a. Where one spouse/partner agrees to pay support for the other spouse/partner.

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- b. Where one spouse/partner agrees the other spouse/partner does not have to pay support.

These written agreements cannot vary an already existing Court order for support. The Court is able vary these written agreements in certain situations. For specific situations of when these agreements can be altered, please speak with a lawyer.

Please note that this is only applicable to spousal support. Parents may not contract out of paying child support. Child support is the right of the child, and cannot be given up by parents.

5. Termination of Spousal or Adult Interdependent Partner Support Orders

A spousal or adult interdependent partner support order terminates upon the death of the spouse or adult interdependent partner receiving support. The termination of a support order does not affect any arrears (debts) owing under the order before it is terminated.

GENERAL INFORMATION

1. Disclosure of Financial Information

A spouse, parent or adult interdependent partner must provide their current financial information as long as a support order is in place. This might be done on an agreed upon date every year or by written request. If a partner fails to comply with this request, a Court may force them to provide the information, find them in contempt, or calculate their income in any amount it considers appropriate. Please see a lawyer for advice.

2. Possession of the Home and Property

A spouse or adult interdependent partner may be given exclusive right to live in the family home and/or use household goods as

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part of a support order. The Court can also evict a spouse or adult interdependent partner from the family home. In deciding who gains possession of the home, the Court considers many factors including the needs of the children, lease agreements and the financial situations of the parties.

3. The Maintenance Enforcement Program

Support orders are automatically filed with Director of Maintenance Enforcement, but in practice they are only enforced when the recipient parent applies. They may register with the Maintenance Enforcement Program (MEP) to receive support payments. Under this program, support is paid to the Director of Maintenance Enforcement. The money is then directly deposited from the government to the person receiving support. MEP does not charge any fees to the person who is receiving the payments.

To opt out of the program, the receiving parent should file a notice in writing stating that he or she does not wish to have the order enforced by MEP. A person who opts out of the program is responsible to enforce the order on their own. If the parties have their own agreement and wish to have the agreement enforced by MEP, the proper form of agreement must be completed by both parties. This form is available from Maintenance Enforcement and is also available on the Maintenance Enforcement website [www.justice.gov.ab.ca/mep/].

The Director of Maintenance Enforcement has broad powers to collect support payments. To make sure that a parent, spouse, or adult interdependent partner pays support, the Director may do the following:

- a. Make deductions from wages (maximum of 40% gross wage);
- b. MEP can take money payable to the debtor from bank accounts, mutual funds, rent or contract fees;

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- c. Garnish income tax refunds, GST rebates, Canada Pension Plan income, and Employment Insurance payments;
- d. The debtor may be prevented from transferring any property he or she wishes to sell, and allows MEP to seize assets including vehicles, shares and bonds;
- e. The debtor may have his or her driver's licence, registration, licence plates, or abstracts restricted or suspended;
- f. Recreational licences for fishing and hunting may be restricted;
- g. MEP may cancel current driver's licences for account more than 60 days in late payments;
- h. Passports can be revoked;
- i. MEP may prevent an owner from re-mortgaging or selling real estate without first making payments. In some cases MEP may force sale of real estate;
- j. Failure to make child support payments may be registered as bad debt and affect credit;
- k. If assets are being kept in the name of a company, MEP can apply for a court order allowing the company's assets to be used to pay for the debt;
- l. MEP may seize assets the debtor tries to sell; and/or
- m. If assets are being put in someone else's name to avoid collection, MEP can apply for a court order allowing for their seizure.

The Court has the power to have a payor who tries to leave Alberta to avoid making payments arrested. Photographs and names of debtors may also be posted on the Maintenance Enforcement website. The information that is gathered is only used to enforce maintenance payments and is otherwise confidential. The Maintenance Enforcement Program has also introduced deterrent penalties:

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- a. A \$25 penalty for each month that a payment is late or not made at all;
- b. A \$50 returned item penalty for payments returned for non-sufficient funds or 'stop payments';
- c. A \$200 penalty for failure to return a Statement of Finances when requested;
- d. A \$50 direct payment penalty to discourage direct payment between debtors and creditors;
- e. \$50 service fee for substitutional service on a debtor or creditor by serving MEP;
- f. \$200 re-registration service fee for a client who asks MEP to re-open a file that was closed due to that client's lack of cooperation; and/or
- g. Interest collection on late payments (4.25% in 2008)

If the parent, spouse, or adult interdependent partner who is owed payments is on Income Support (social assistance), he or she must register with the Maintenance Enforcement Program to receive support payments. In this situation, the government has all the rights to the payments. If the support amount is lower than the Income Support benefits, the debtor (or the person who pays the support) owes the government the amount of support.

4. Non-Payment of Support

Occasionally, orders for support are not paid. Sometimes a parent defaults for financial reasons, such as the loss of employment or other setbacks. In this situation, the defaulting spouse or parent should apply to the Court for a review of the support order. The amount of support which must be paid MAY be reduced if the defaulting person can show that there has been a change in his or her circumstances that would justify a decrease in payments. The Court may also give a parent some time to get his or her finances in order if he or she acquired debts after the relationship ended as a result of honest efforts to maintain the children's standard of living. If a parent paying support has

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difficulty making payments because he or she has spent money on things that are solely for his or her own pleasure, the Court will not be very sympathetic and the children's claim for support will take priority.

5. Variation of Support Orders

Because parents of children will exchange financial information on a yearly basis under the Child Support Guidelines, there is usually no need to go to Court to vary child support. As income changes, so does the amount payable. The Child Support Recalculation Program (RP) can assist parents recalculate their child support amount without having to go to Court. For more information on the RP visit www.recalculation.gov.ab.ca. As long as the child remains eligible for child support, the order will rarely be changed even if the the parents remarry or live in common law relationships. A Court will not allow a payor parent to escape his or her parental responsibilities by remarrying. Nor will the Court allow a child of the first family to live at a significantly lower standard than those of the second family. Child support orders are only varied in cases where it is causing undue hardship for the parent who is paying support. The Courts have a specific test for what may be considered undue hardship. If you believe this may apply to you, contact a lawyer for further information.

A paying parent has no say in how the basic maintenance payments are to be spent. The paying parent may have a say in spending for extra-curricular activities. If there is clear and convincing evidence that the support payments for the child are being improperly spent, and the child is being improperly provided for, the paying parent may apply to the Court to change the custody order.

Spousal support orders, however, can be varied in the Court where the order was originally granted. The amount of support that must be paid may be reduced if the person can show that

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there has been a change in his or her circumstances that would justify a decrease in payments. If the income of the person receiving support payments changes, the payment amount may also be varied upon application.

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REFERRAL NUMBERS

Family Mediation Services (Edmonton) [780] 427-8329
[www.albertacourts.ab.ca/cs/familyjustice/MediationServices.p
df](http://www.albertacourts.ab.ca/cs/familyjustice/MediationServices.pdf)

Family Court Services [780] 427-8343
[www.albertacourts.ab.ca/go/FamilyJusticeServices/tabid/120/defa
ult.aspx](http://www.albertacourts.ab.ca/go/FamilyJusticeServices/tabid/120/default.aspx)

Federal Government Child Support Guidelines
[http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/legis/fcsg-
lfpae/index.html#ab](http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/legis/fcsg-
lfpae/index.html#ab)

Lawyer Referral Service 1-800-661-1095
[www.lawsocietyalberta.com/publicservices/lawyerReferralService.
cfm](http://www.lawsocietyalberta.com/publicservices/lawyerReferralService.
cfm)

Legal Aid Society of Alberta [780] 427-7575
www.legalaid.ab.ca

Maintenance Enforcement Program [780] 422-5555
www.justice.gov.ab.ca/mep/

Parenting After Separation Seminar (Edmonton) . [780] 413-9805
www.the-family-centre.com/pas/pas.html
[www.albertacourts.ab.ca/cs/familyjustice/ParentingAfterSeparatio
n.pdf](http://www.albertacourts.ab.ca/cs/familyjustice/ParentingAfterSeparatio
n.pdf)

[www.albertacourts.ab.ca/go/CourtServices/FamilyJusticeServices/
CoursesSeminarsforParentsandFamilies/tabid/126/Default.aspx](http://www.albertacourts.ab.ca/go/CourtServices/FamilyJusticeServices/
CoursesSeminarsforParentsandFamilies/tabid/126/Default.aspx)

Provincial Court - Family Division [780] 427-2743

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www.albertacourts.ab.ca/go.aspx?tabid=430

Queen's Bench Family Law Information Centre . . [780] 415-0404
www.albertacourts.ab.ca/familylaw/
[www.albertacourts.ab.ca/cs/familyjustice/FamilyLawInformatio
nCentre.pdf](http://www.albertacourts.ab.ca/cs/familyjustice/FamilyLawInformatio
nCentre.pdf)
Student Legal Services (Civil/Family Office) [780] 492-8244
www.slsedmonton.com