



Resolution Services



General Information Booklet

SPOUSAL /PARTNER SUPPORT

General Information Spousal / Partner Support

CONTENTS

Introduction	1
When Can Spousal Support Be Ordered?	2
What Factors are Considered When Making a Spousal Support Order?	4
How Much Spousal Support is to be Paid?	5
<i>The Without Children Formula</i>	6
<i>The With Children Formula</i>	7
<i>Child Support Takes Priority Over Spousal Support</i>	7
How Long is Spousal Support Payable?	8
<i>No Double Dipping</i>	8
Changing Spousal Support	9
Exchanging Income Information	10
Providing Evidence for Court	11
More Information	12

Resolution Services and Court Staff cannot give you legal advice, or predict the outcome of your case. This booklet provides general information only. You should speak to a lawyer for legal advice about your own situation

**These instructions have been prepared for you by
Resolution Services. Contact us at:**

Calgary

7th floor, Calgary Courts Centre
601 - 5 Street SW
Phone 403-297-6981

Edmonton

8th floor, Brownlee Building
10365 – 97 Street
Phone 780-415-0404

Grande Prairie

Main Floor, Court House
10260 - 99 St.
Phone: 780-833-4234

Lethbridge

1st Floor, Court House
320 - 4 St. S
Lethbridge AB T1J 1Z8
Phone: 403-388-3102

Red Deer

Main Floor, Court House
4909 - 48 Ave
Phone: 403-340-7187

Medicine Hat

Court House
460 First Street SE
Medicine Hat, AB T1A 0A8
Phone 403-529-8716

**Outside these centres, call the
Resolution Services Contact Centre at 1-855-738-4747**

Introduction

If your application deals with spousal support or partner support, you should read this booklet before starting to fill out your court forms.

This booklet will give you general information about the law relating to spousal and partner support, and the principles applied by the court when deciding spousal and partner support matters. This information is general in nature, and is not intended to be an in-depth discussion of all legal issues relating to spousal support.

We recommend that you speak to a lawyer to find out how the law would be applied to your situation.

If you need further information, please contact Resolution Services. They can answer questions you have about:

- steps for getting or changing a spousal or partner support order or opposing these applications; and
- general information and court procedures for other family law matters.

The staff at Resolution Services cannot tell you:

- whether or not you are entitled to receive spousal or partner support or required to pay spousal or partner support; or
- how much spousal or partner support you may be ordered to pay or to receive.

When Can Spousal Support Be Ordered?

Throughout the rest of this booklet, we will refer to spousal and partner support simply as “spousal support”.

Spousal support may be ordered by the court if the parties are applying for a divorce (or, in some cases, if they are divorced) and if the parties are ending an Adult Interdependent Relationship.



Tip:

You are in an Adult Interdependent Relationship if you are in a relationship of interdependence with another adult

- for three years; or
- for less than 3 years if you have signed an Adult Interdependent Partnership agreement; or
- for less than 3 years if the two of you have a child together.

For more information on Adult Interdependent Relationships, contact Resolution Services.

If parties are applying for spousal support as part of a divorce, the court will apply the spousal support provisions of the *Divorce Act (Canada)*.

The court will apply the spousal support provisions of the *Family Law Act* if:

- the parties are applying for spousal support after living in an Adult Interdependent Relationship; or
- the parties were married, but have not yet started a divorce action.

These two statutes are similar, but have some differences.

What are the Objectives of Spousal Support?

Both the *Divorce Act (Canada)* and the *Family Law Act* discuss the objectives of a spousal support order; in other words, the purpose of a spousal support order. The objectives are to:

- recognize any economic advantages or disadvantages to the spouses coming out of the marriage or occurring because the marriage has ended;
- divide up any financial costs arising from the care of the children over and above the child support;
- lessen any financial hardship of the spouses which may have taken place because of the end of the marriage; and
- as much as possible, encourage the spouses to become able to support themselves within a reasonable period of time.

Both statutes say that the misconduct of the parties is not to be considered when deciding whether or not to grant spousal support and the amount to be paid. A spousal support order is not intended to punish a spouse for bad behaviour or to reward a spouse for good behaviour.

What Factors are Considered When Making a Spousal Support Order?

The *Divorce Act (Canada)* says that when making a spousal support order, the court must think about the condition, means, needs and other circumstances of each spouse, including:

- how long the spouses lived together;
- the functions performed by each spouse during the time they lived together; and
- any order, agreement or arrangement relating to support of either spouse.

The *Family Law Act* also lists the above factors. However, that Act also tells the judge to think about these factors:

- whether or not either of the spouses / partners have a legal obligation to support another person (e.g. another spouse or children);
- if the paying spouse / partner lives with someone else, how much that person contributes to their household expenses (and by doing that, increases the ability to pay support); and
- if the recipient spouse / partner lives with someone else, how much that person contributes to their household expenses (and by doing so, decreases the financial need).

How Much Spousal Support is to be Paid?

The judge will look at all of the facts set out by the parties, and will consider the objectives and the factors, and must decide, first of all, if the spouse / partner asking for spousal support is entitled to spousal support. If the judge finds that the person is not entitled to spousal support, then that is the end of the matter.

If the person is entitled to spousal support, then the judge will go on to decide the amount to be paid. Again, the judge will look at the objectives and the factors to make that decision.

In recent years, the courts have turned to the Spousal Support Guidelines to help them make a decision as to the amount of spousal support.



Tips:

The Spousal Support Guidelines are different from the Child Support Guidelines, even though both have similar names.

The Child Support Guidelines are part of laws, passed by the Parliament of Canada and the Alberta Legislature, and must be followed by the courts.

The Spousal Support Guidelines are not part of laws, but rather, are suggestions that have been made by a group of Law Professors, lawyers and other experts. In many cases, judges will follow these guidelines, but they do not have to do so. For that reason, it is important to talk to a lawyer to find out what amount of spousal support (if any) may be ordered in your case.

A simple summary of the guidelines will be provided in this booklet. However, you can read the entire guidelines at <http://www.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/toc-tdm.html>

In most cases, special software is needed to calculate spousal support. If you would like to know the amount of spousal support to be paid in your particular case, you must talk to a lawyer. **Resolution Services staff can not calculate spousal support amounts for you.**

In most cases, when spousal support is paid on a periodic basis (i.e. monthly or annually rather than in a lump sum), the person receiving the spousal support will claim it as income on their income tax return. The person paying the spousal support will claim the amount paid as a deduction. If you want to know whether spousal support is taxable in your case, you should talk to an accountant.

The Without Children Formula

If the parties do not have children, or if the children are all grown, then the Without Children formula applies. This formula will give a "low end" and a "high end" amount.

Low End amount:

1. Find the difference between the gross incomes of each of the parties.
2. Multiply that difference by .015
3. Now, multiply that number by the number of years the parties lived together.

The result is the "low end amount".

High end amount:

1. Find the difference between the gross incomes of the two parties.
2. Multiply that number by .02
3. Multiply that number by the number of years the parties lived together.

The result is the high end amount – HOWEVER, the most that will be paid is the amount that will result in both parties having equal net incomes.

Example:

The payor spouse has an income of \$100,000 and the recipient spouse has an income of \$20,000. They lived together 20 years.

- Difference between incomes: \$80,000
- $\$80,000 \times .015 \times 20 = \$24,000$ (or \$2000 per month) – this is the low end amount
- $\$80,000 \times .02 \times 20 = \$32,000$ (or \$2667 per month) – this is the high end amount.

If the judge decided to follow the spousal support guidelines, the judge would pick an amount between \$2000 and \$2667 per month.

The With Children Formula

When parties have dependent children, the formula for calculating spousal support is more complicated, and you must use special software to calculate the amounts.

In general terms, the formula calculates the net disposable incomes of each party, after paying taxes, deductions and the children's costs, and then calculates the amounts of spousal support to be paid that would leave the recipient with between 40 and 46% of the total of the two parties' net disposable incomes.

There are variations to this formula if there is shared or split custody, or if the children live with the party who will be paying the spousal support.

Child Support Takes Priority Over Spousal Support

The *Divorce Act (Canada)* and the *Family Law Act* each state that when making support orders, the court must give priority to child support over spousal support. If there is not enough money to pay both child and spousal support, then it is the spousal support that is to be reduced. In those cases, though, it may be possible for the court to increase the spousal support after the children are grown and no longer in need of child support.

How Long is Spousal Support Payable?

The length of time that spousal support must be paid depends upon the objectives and factors that are discussed on pages 3 and 4 of this booklet.

However, the Spousal Support Guidelines do offer guidance to the courts for making the decision about how long support should be paid.

When there are no children, the Spousal Support Guidelines say that support should continue for between ½ and 1 year for each year that the parties lived together.

If parties lived together for more than 20 years, or if you add the years of living together to the recipient's age, and the total is greater than 65, then the support will be paid indefinitely.

When there are children, the Spousal Support Guidelines say that the courts may use the same guidance as above, or, for shorter marriages, they may order that support may end when the youngest child starts school, or when the youngest child finishes school.

As you can see, there is a wide range when it comes to how long spousal support is payable. The parties may agree or the judge will decide based upon the objectives and factors, and the particular facts of the case.

No Double Dipping

In cases of long term relationships, spousal support may be payable indefinitely. However, in those cases, the parties have usually divided up their assets, including pension plans.

If that has happened, when the payor retires, the payor will be living on their share of the pension. If they were to continue paying spousal support, the recipient would then be double dipping – i.e. receiving property that has already been divided. In those cases, the payor may be able to return to court to have the spousal support reduced or terminated.

Changing Spousal Support

A party can apply to change a spousal support order if there is a change in the condition, means or other circumstances of either of the parties.

However, if the spousal support order has a clause that says that support is to end at a specific date, and the party receiving the support wishes to extend it, the *Divorce Act* says that the party applying must also prove:

- The variation order is needed to relieve economic hardship;
- The economic hardship arose from the change in circumstances;
- The economic hardship and/or the change in circumstances are related in some way to the marriage; and
- If the parties had known that the change in circumstances would occur at the time they entered into the previous spousal support order, that order would have been different from what it was.

Exchanging Income Information

In order to negotiate spousal support, or to make an application to the court for spousal support, it is important that both parties provide the other with proof of their incomes.

You can ask the other parent for income information by filing and serving a "Notice to Disclose" in the Court of Queen's Bench or a "Request for Financial Information" in Provincial Court.

The judge may impute (set or assign) income to a party, or award costs against a party who has not provided proper income information.

In most cases, the information that the two of you will exchange will include the following:

- copies of your tax returns and notices of assessment and reassessment for each of the three most recent taxation years from Canada Customs and Revenue Agency;
- copies of the three most recent pay stubs showing gross pay for the year to date, or other proof of current income;
- copies of statements from employment insurance, social assistance, a pension, workers compensation, disability insurance or any other source of income showing the total income from that source for the current year; and
- if you are self employed, financial statements from the business and/or corporate tax returns.

Providing Evidence for Court

When you apply for, or to change, a spousal support order or to reduce or cancel arrears, it is necessary to provide full and detailed financial disclosure to the court, under oath (usually in the form of an affidavit).

The requirement that the information be under oath is an important one. A decision to make or to change a court order can only be made on accurate and complete information. This evidence must be sworn or affirmed to be true. If there is no such sworn evidence, it is as if the judge has no evidence on which to base the spousal support order.

Evidence cannot be "hearsay" - that is, you cannot say in an affidavit things that you did not see or hear personally. If someone else told you an important fact, you must have that person provide an affidavit with that fact.

Willfully providing false information under oath, whether in an affidavit or in a court proceeding, is a crime under the Criminal Code. You could be sentenced to a maximum of fourteen years in prison.

It is important to spend the time to make sure you have provided all of the evidence the judge will need. You will not get a second chance to provide evidence to the court. If all of your evidence is not provided at the time of your application, the judge can either make a decision based upon the evidence that is provided, or can order you to provide the information and to pay costs as a penalty.

More Information

In this booklet, we have explained the laws relating to spousal support in general terms. For more specific information, the actual laws can be found as follows:

The *Divorce Act (Canada)* <http://laws-lois.justice.gc.ca/eng/acts/D-3.4/index.html>

The Alberta *Family Law Act*
http://www.qp.alberta.ca/1266.cfm?page=f04p5.cfm&leg_type=Acts&sbncIn=9780779794591&display=html

The Spousal Support Guidelines <http://www.justice.gc.ca/eng/fl-df/spousal-epoux/ssag-ldfpae.html>

For information on how spousal support is treated for tax purposes:
Canada Revenue Agency <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/spprtpymnts/menu-eng.html>

This publication has been prepared by Resolution Services, and provides general information about the law as of the date it was written. It is not intended to provide you with legal advice. If you want advice on your case, speak to a lawyer.