

## **Regulation of maintenance obligations in favor of minors and other family members in Saskatchewan**

### **MAINTENANCE OBLIGATIONS IN FAVOR OF CHILDREN AND OTHER FAMILY MEMBERS**

#### **Child Support**

Every parent has an obligation to financially support his or her child. This continues even if parents separate or divorce. Saskatchewan's *Family Maintenance Act* adopts the federal *Child Support Guidelines*. These *Guidelines* apply to all children under the age of 18, and may also apply to a child over 18 if the child is dependent on the parent seeking support because of illness, disability or pursuit of education. In those circumstances, a parent pays child support in the amount of the *Guidelines* or an amount the court considers appropriate. See questionnaire completed by the federal government of Canada for further information matters dealing with maintenance obligations including the *Child Support Guidelines*.

Sometimes people who act as parents, but are not the child's biological parent, may be ordered to pay child support. These people are usually referred to as *in loco parentis*. Youth under 18 who are parents have the same obligations to pay child support. A spouse or parent who is a minor has the capacity to commence, conduct and defend a court proceeding without a litigations guardian.

Parents can agree on the amount of child support, either on their own, or with the assistance of a mediator or a lawyer. If the parents do not agree on the amount, they may need to bring a court application.

Generally, the amount of child support is based on the paying parent's income. The *Guidelines* allow the amount to be raised by adding extraordinary expenses such as child care costs, costs for medical or dental care such as orthodontics. They also add costs for extracurricular activities if they are beyond what a child with that family income would do, such as private ballet lessons for a gifted young dancer. Where either parent would suffer undue hardship, the amount can be lowered or raised. First, it must be determined if there are circumstances for undue hardship, such as one parent having assumed an extremely high level of debt from the marriage. Second, there is a test to determine the standard of living in each parent's household. The child support amount would be set so both households would have a similar standard of living.

Any child support order can be changed or "varied" if there is a change in circumstances such as the child no longer living at home or the paying parent losing his or her job.

#### **Spousal Maintenance**

There is no automatic entitlement to spousal maintenance. Spousal maintenance is intended to help spouses overcome financial inequalities when the inequalities are the result of the spousal relationship, separation or divorce. "Spouses" includes couples who

are legally married, who have lived together for at least two years, or had had a relationship of some permanence and have a child together. This includes same-sex couples.

Spouses can agree on any amount they like. If a court is asked to decide the issue of spousal maintenance, the court will consider a number of factors to determine whether a spouse should receive maintenance and, if so, how much. These factors include:

- the needs and means of both parties
- the length of the relationship
- the role each spouse had in the relationship
- the effect of the relationship or its breakdown has had on each spouse
- the ability of the spouse seeking support to become financially independent
- the legal duty of the supporting spouse to support another person

The court does not consider any misconduct, such as adultery.

There are also Spousal Support Advisory Guidelines that may help the court or the parties determine the amount of spousal support. See: <http://www.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/index.html>

### **Enforcement of Maintenance**

Under *The Enforcement of Maintenance Orders Act, 1997*, either parent can register a support order with the Maintenance Enforcement Office (MEO). The Act allows the MEO to garnish a parent's wages or bank accounts or any federal payments such as income tax refunds, revoke licenses, withhold passports and collapse pensions to ensure child support is paid. The order must be registered with the Maintenance Enforcement Office before it can enforce the order. The order cannot be registered by the child.

In situations where the recipient and the payor live in different provinces, *The Inter-jurisdictional Support Orders Act* ensures all provinces and territories cooperate to make and enforce child support orders. **For situations where the payor and recipient live in different countries, Saskatchewan has bilateral arrangements regarding support enforcement with a number of countries (see list below.)** Saskatchewan can not enforce a support order where the payor lives in another country unless Saskatchewan has a bilateral arrangement with that particular country.