

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

In Canada, the federal Parliament and provinces and territories share responsibility for matters relating to child support. The federal *Divorce Act* and the *Federal Child Support Guidelines* apply if parents are already divorced or planning to divorce.

### *Child Support*

Pursuant to the *Divorce Act*, a Canadian court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage. A “child of the marriage” is a child who is under the age of majority and who has not withdrawn from their parents’ charge, or has reached the age of majority and is under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life. In many cases, child support continues until the children complete a post-secondary degree, and, in fewer cases, later.

The Federal Child Support Guidelines (Federal Guidelines) are regulations made under the *Divorce Act*. They set out some rules and tables to show how much child support parents should pay when they divorce. The Federal Guidelines were implemented in 1997 and have streamlined the process for determining child support. A parent paying child support must pay the child support amount set out in the court order or agreement in Canadian dollars. The table for the province of the parent living in Canada will apply. For more information on determining child support obligations, please refer to *The Federal Child Support Guidelines: Step-by-Step*

<http://canada.justice.gc.ca/eng/pi/fcy-fea/lib-bib/pub/guide/index.html>

Provincial and territorial laws and provincial and territorial child support guidelines apply if parents are not married to each other and are separated, or they are married to each other and are separated, or planning to separate, but have decided not to divorce.

### *Spousal Support*

Spousal support, when sought in the context of a divorce, is governed by the federal *Divorce Act*. The legislation is relatively open-ended and incorporates a variety of factors and objectives. Much room is left for judicial discretion. In an effort to make spousal support more predictable and consistent, informal, advisory guidelines were developed for family law professionals to use when giving advice to clients.

Unlike the Federal Child Support Guidelines, the Spousal Support Advisory Guidelines (<http://canada.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/index.html>) have not been legislated. They simply provide suggestions on the appropriate ranges of spousal support amounts and duration of support, in a variety of situations.

### *Enforcement of Support Obligations*

The provincial and territorial governments are also responsible for enforcing child support orders and agreements. Each province or territory has its own maintenance or support enforcement legislation and enforcement program. If a paying parent does not continue to pay child support after moving outside Canada, the other parent may contact their provincial or territorial maintenance enforcement program (MEP). The MEP can provide information about enforcing a child support order when the paying parent lives outside Canada. Although the federal government does not directly enforce support orders, it has implemented legislation – the *Family Orders and Agreements Enforcement Assistance Act* (FOAEAA) and the *Garnishment, Attachment and Pension Diversion Act* (GAPDA) – to complement the enforcement activities of the provinces and territories. The FOAEAA allows the federal government to:

- Search certain federal information banks to help find paying parents who have not complied with their order or agreement;
- Seize federal money; for example, income-tax refunds and Employment Insurance benefits owed to a support payer. The money seized is used to pay a support debt; and
- Deny passports and certain federal licenses to payers who persistently fail to make their support payments.

Under the GAPDA, federal employees' salaries and pension benefits can be seized to pay family support debts.

[See questionnaire completed by the province of Saskatchewan]