



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

FAMILY LAW ACT

PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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FAMILY LAW ACT

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FAMILY LAW ACT

CHAPTER F-2.1

1. Definitions

(1) In this Act

- (a) “**child**” includes a person whom a parent has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;
- (a.1) “**child support guidelines**” means the guidelines established by the regulations;
- (b) “**cohabit**” means to live together in a conjugal relationship, whether within or outside marriage;
- (c) “**court**” means the Family Section of the Supreme Court;
- (d) “**domestic contract**” means a domestic contract as defined in Part IV;
- (e) “**parent**” includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;
- (f) “**parental agreement**” means a parental agreement as defined in Part IV;
- (g) “**spouse**” means an individual who, in respect of another person,
 - (i) is married to the other person, or
 - (ii) has entered into a marriage with the other person that is voidable or void;

Polygamous marriage

- (2) In this Act, a reference to marriage includes a marriage that is actually or potentially polygamous, if it was celebrated in a jurisdiction whose system of law recognizes it as valid.

Living separate and apart

- (3) For the purposes of determining when spouses are living separate and apart,
 - (a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other; and
 - (b) a period during which spouses have lived separate and apart shall not be considered to have been interrupted or terminated
 - (i) only because either spouse has become incapable of forming or having an intention to continue to live separate and apart or of continuing to live separate and apart of the spouse’s own volition if it appears to the court that the separation would probably have continued if the spouse had not become so incapable, or
 - (ii) only because the spouses have resumed living together during a period of, or periods totalling, not more than ninety days with reconciliation as the primary purpose. *1995,c.12,s.1; 1997,c.16,s.1 {eff.} Nov. 27/97; 2008,c.8,s.10(2).*

PROCEDURE

2. Staying application

- (1) If, in an application under this Act, it appears to the court that for the appropriate determination of the spouses' affairs it is necessary or desirable to have other matters determined first or simultaneously, the court may stay the application until another proceeding is brought or determined as the court considers appropriate.

Application as prescribed in rules of court

- (2) An application under this Act may be made in the manner prescribed in the rules of court.

Extension of times

- (3) The court may, on motion, extend a time prescribed by this Act if it is satisfied that
- (a) there are apparent grounds for relief;
 - (b) relief is unavailable because of delay that has been incurred in good faith; and
 - (c) no person will suffer substantial prejudice by reason of the delay.

Closed hearings

- (4) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing.

Incorporation of contract in order

- (5) A provision of a domestic contract in respect of a matter that is dealt with in this Act may be incorporated in an order made under this Act.

Act subject to contracts

- (6) A domestic contract dealing with a matter that is also dealt with in this Act prevails unless this Act provides otherwise.

Registration of orders

- (7) An order made under this Act that affects real property does not affect the acquisition of an interest in the real property by a person acting in good faith without notice of the order, unless the order is registered in the proper land registry office. *1995, c.12, s.2.*

2.1 Voidable or void marriage not in good faith

A spouse is not entitled to any rights, or to enforce any rights, under sections 6 or 20 or Part III, if

- (a) the marriage is voidable or void; and
- (b) the spouse did not enter into the marriage in good faith. *2008, c.8, s.10(3).*



MEDIATION

3. Mediation

- (1) In an application under this Act, the court may, on motion, appoint a person whom the parties have selected to mediate any matter that the court specifies.

Consent to act

- (2) The court shall appoint only a person who
- (a) has consented to act as mediator; and
 - (b) has agreed to file a report with the court within the period of time specified by the court.

Duty of mediator

- (3) The mediator shall confer with the parties, and with the children if the mediator considers it appropriate to do so, and shall endeavour to obtain an agreement between the parties.

Full or limited report

- (4) Before entering into mediation, the parties shall decide whether
- (a) the mediator is to file a full report on the mediation, including anything that he or she considers relevant; or
 - (b) the mediator is to file a limited report that sets out only the agreement reached by the parties or states only that the parties did not reach agreement.

Filing and copies of report

- (5) The mediator shall file with the deputy registrar of the court a full or limited report, as the parties have decided, and shall give a copy to each of the parties.

Admissions, etc., in the course of mediation

- (6) If the parties have decided that the mediator is to file a limited report, no evidence of anything said or of any admission or communication made in the course of the mediation is admissible in any proceeding, except with the consent of all parties to the proceeding in which the mediator was appointed.

Fees and expenses

- (7) The court shall require the parties to pay the mediator's fees and expenses and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay.

Idem, serious financial hardship

- (8) The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship.
1995, c.12, s.3; 2008, c.20, s.72(31).

PART I — FAMILY PROPERTY

4. Definitions

- (1) In this Part

- (a) “**family home**” means a family home under section 19 and includes property that is a family home under that section at the valuation date;
- (b) “**net family property**” means the value of all the property, including the income from the property, that a spouse owns on the valuation date after deducting
 - (i) the spouse’s debts and other liabilities on the valuation date,
 - (ii) the value of property that the spouse owned on the date of the marriage, valued at the date of the marriage, less the spouse’s debts and other liabilities on the date of the marriage,
 - (iii) the value of the following kinds of property acquired by the spouse after the date of the marriage and owned by the spouse on the valuation date:
 - 1. A gift or inheritance from a third person.
 - 2. Damages or a right to damages for personal injury, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages.
 - 3. Proceeds or a right to proceeds of a contract of life, accident or sickness insurance, as defined in the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4, if the insurance was not purchased with intent to defeat a claim under this Part.
 - (iv) the value of property owned by the spouse on the valuation date into which property of a kind described in paragraph 1, 2 or 3 of subclause (iii) acquired by the spouse after the date of the marriage can be traced, and
 - (v) the value of property owned by the spouse on the valuation date that the spouses have agreed by a domestic contract is not to be included in the spouse’s net family property;
- (b.1) “**pension benefit**” means any pension, allowance, annuity, return of contributions or other benefit or amount payable under a pension plan to a spouse;
- (c) “**property**” means any interest, present or future, vested or contingent, in real or personal property and includes
 - (i) property over which a spouse has, alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself,
 - (ii) property disposed of by a spouse but over which the spouse has, alone or in conjunction with another person, a power to revoke the disposition or a power to consume or dispose of the property, if the power may be exercised to benefit himself or herself, and
 - (iii) pension benefits, whether vested or not;
- (d) “**valuation date**” means the earliest of the following dates:
 - 1. The date the spouses begin to live separate and apart.
 - 2. The date a divorce is granted.
 - 3. The date the marriage is declared a nullity.
 - 4. The date one of the spouses commences an application based on subsection 6(2) (improvident depletion) that is subsequently granted.

Date and time of valuation

- (2) For the purposes of the definition of “net family property” in subsection (1), except subclauses (iii), (iv) and (v), the value of property that a spouse owns on a given date and the debts and other liabilities of a spouse on a given date shall be calculated as of close of business on that date.



Idem

- (3) For the purposes of subclause (iii) of the definition of “net family property” in subsection (1), the value of property acquired by a spouse after the date of the marriage is the lesser of
- (a) the value calculated as of close of business on the date of acquisition; and
 - (b) the value calculated as of close of business on the valuation date.

Idem

- (4) For the purposes of subclause (iv) of the definition of “net family property” in subsection (1), the value to be deducted is the lesser of
- (a) the value of the property described in paragraph 1, 2 or 3 of subclause (iii) of the definition of “net family property”, calculated as of close of business on the date of acquisition; and
 - (b) the value of the property owned on the valuation date, to the extent that the property referred to in clause (a) can be traced into it, calculated as of close of business on the valuation date.

Idem

- (5) For the purposes of subclause (v) of the definition of “net family property” in subsection (1), the value of property that the spouses have agreed by a domestic contract is not to be included in a spouse’s net family property shall be calculated as of close of business on the valuation date, unless a contrary intention appears from the contract.

Net family property never less than zero

- (6) If a spouse’s net family property as calculated under this section is less than zero, it shall be deemed to be equal to zero.

Onus of proving deduction

- (7) The onus of proving a deduction under subclauses (i) to (v) of the definition of “net family property” in subsection (1) is on the person claiming it. *1995,c.12,s.4; 1997,c.15,s.1; 1998,c.84,s.9 [eff.] Aug. 5/00.*

5. Transfers to defeat claims

- (1) Where a spouse transfers property during his or her lifetime for inadequate consideration or for no consideration and with intent to defeat a claim under this Part, the property shall be deemed to have been owned on the valuation date by the transferor spouse for the purpose of determining his or her net family property.

Presumption of intent to defeat claim

- (2) The fact that a spouse transferred property during the ninety day period ending with the date on which the spouses began to live separate and apart is proof, in the absence of evidence to the contrary, that the transfer was made with intent to defeat a claim under this Part.

Revesting orders

- (3) The court may, on an application under section 7, make an order against the transferee or a subsequent transferee revesting all or part of the transferred property in the transferor spouse, or in the spouse’s personal representative, where
- (a) the value of the transferred property has been included in the spouse’s net family property as a result of subsection (1);
 - (b) there are insufficient assets to satisfy an order made under section 9; and

- (c) the transferee or subsequent transferee had notice that the transfer was made with intent to defeat a claim under this Act.

Compensation for transferee

- (4) Where property is revested in accordance with subsection (3), the transferee or subsequent transferee is entitled to compensation from the transferor spouse, or from the spouse's estate, for any value given as consideration for the transfer
 - (a) less any depreciation in the value of the asset since the transfer;
 - (b) less any amount the court considers just on account of use or enjoyment of the property by the transferee;
 - (c) plus any amount the court considers just on account of improvements to the property by the transferee.

Transferee a party

- (5) A transferee who would be affected by an order made under subsection (3) shall be named as a party to the application. *1995, c.12, s.5.*

6. Equalization of net family properties

- (1) When a divorce is granted or a marriage is declared a nullity, or when the spouses are living separate and apart, the spouse whose net family property is the lesser of the two net family properties is entitled to one-half the difference between them.

Improvident depletion of net family property

- (2) When spouses are cohabiting, if there is a serious danger that one spouse may improvidently deplete his or her net family property, the other spouse may on an application under section 7 have the difference between the net family properties divided as if the spouses were living separate and apart.

No further division

- (3) After the court has made an order for division based on subsection (2), neither spouse may make a further application under section 7 in respect of their marriage.

Idem

- (4) Subsection (3) applies even though the spouses continue to cohabit, unless a domestic contract between the spouses provides otherwise.

Variation of share

- (5) The court may award a spouse an amount that is more or less than half the difference between the net family properties if the court is of the opinion that equalizing the net family properties would be unconscionable, having regard to
 - (a) a spouse's failure to disclose to the other spouse debts or other liabilities existing at the date of the marriage;
 - (b) the fact that debts or other liabilities claimed in reduction of a spouse's net family property were incurred recklessly or in bad faith;
 - (c) the part of a spouse's net family property that consists of gifts made by the other spouse;
 - (d) a spouse's intentional or reckless depletion of his or her net family property;



- (e) the fact that the amount a spouse would otherwise receive under subsection (1) or (2) is disproportionately large in relation to a period of cohabitation within the marriage that is less than five years;
- (f) the fact that one spouse has incurred a disproportionately larger amount of debts or other liabilities than the other spouse for the support of the family;
- (g) a written agreement between the spouses that is not a domestic contract; or
- (h) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement, deterioration, destruction, division or transfer of property.

Changes in value after the valuation date

- (6) The court may award a spouse an amount that is more or less than half the difference between the net family properties if the court is of the opinion that equalizing the net family properties would be inequitable because of a substantial change after the valuation date in the value of any property included in either spouse's net family property.

Equal net family properties

- (7) Where there is no difference between the net family properties of the spouses, the court may award a spouse either or both of the following:
 - 1. An amount in order to avoid a result that would, in the court's opinion, be unconscionable, having regard to the factors mentioned in clauses (5)(a) to (h).
 - 2. An amount in order to avoid a result that would, in the court's opinion, be inequitable because of a substantial change after the valuation date in the value of any property included in either spouse's net family property.

Purposes

- (8) The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in their relationship there is equal contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to the equalization of the net family properties, subject only to the equitable considerations set out in subsections (5) to (7).
1995, c.12, s.6.

7. Application to court

- (1) The court may, on the application of a spouse or former spouse, determine any matter respecting the spouse's entitlement under section 6.

Personal action, estates

- (2) Entitlement under subsections 6(1) and (2) is personal as between the spouses but an application based on subsection 6(1) or (2) and commenced before a spouse's death may be continued by or against the deceased spouse's estate.

Limitation

- (3) An application based on subsection 6(1) shall not be brought after the earlier of
 - (a) two years after the day the marriage is terminated by divorce or judgment of nullity;
 - (b) six years after the day the spouses begin to live separate and apart. *1995, c.12, s.7.*

8. Statement of property

- (1) In an application under section 7, each party shall serve on the other and file with the court, in the manner and form prescribed by the rules of the court, a statement verified by oath disclosing particulars of
- (a) the party's property and debts and other liabilities,
 - (i) as of the date of the marriage,
 - (ii) as of the valuation date, and
 - (iii) as of the date of the statement;
 - (b) the deductions that the party claims under subclauses (i) to (v) of the definition of "net family property" in subsection 4(1); and
 - (c) all property that the party disposed of during the two years immediately preceding the making of the statement, or during the marriage, whichever period is shorter.

Costs related to failure to disclose

- (2) Where a spouse, without reasonable cause, fails to comply fully and accurately with subsection (1), the court shall award the costs related to the failure against the spouse.
1995, c.12, s.8.

9. Powers of court

- (1) In an application under section 7, the court may order
- (a) that one spouse pay to the other spouse the amount to which the court finds that spouse to be entitled under this Part;
 - (b) that security, including a charge on property, be given for the performance of an obligation imposed by the order;
 - (c) that, if necessary to avoid hardship, an amount referred to in clause (a) be paid in instalments during a period not exceeding ten years or that payment of all or part of the amount be delayed for a period not exceeding ten years; and
 - (d) that, if appropriate to satisfy an obligation imposed by the order,
 - (i) property be transferred to or in trust for or vested in a spouse, whether absolutely, for life or for a term of years, or
 - (ii) any property be partitioned or sold.

Financial information, inspections

- (2) The court may, at the time of making an order for instalment or delayed payments or on motion at a later time, order that the spouse who has the obligation to make payments shall
- (a) furnish the other spouse with specified financial information, which may include periodic financial statements; and
 - (b) permit inspections of specified property of the spouse by or on behalf of the other spouse, as the court directs.

Variation

- (3) If the court is satisfied that there has been a material change in the circumstances of the spouse who has the obligation to make instalment or delayed payments, the court may, on motion, vary the order, but shall not vary the amount to which the court found the spouse to be entitled under this Part.



Ten-year period

- (4) Subsections (3) and 2(3) (extension of times) do not permit the postponement of payment beyond the ten-year period mentioned in clause (1)(c). *1995, c.12, s.9.*

10. Determination of questions of title between spouses

- (1) A person may apply to the court for the determination of a question between that person and his or her spouse or former spouse as to the ownership or right to possession of particular property, other than a question arising out of an equalization of net family properties under section 6, and the court may
- (a) declare the ownership or right to possession;
 - (b) if the property has been disposed of, order payment in compensation for the interest of either party;
 - (c) order that the property be partitioned or sold for the purpose of realizing the interests in it; and
 - (d) order that either or both spouses give security, including a charge on property, for the performance of an obligation imposed by the order,
- and may make ancillary orders or give ancillary directions.

Estates

- (2) An application based on subsection (1) may be made by or continued against the estate of a deceased spouse. *1995, c.12, s.10.*

11. Operating business or farm

- (1) An order made under section 9 or 10 shall not be made so as to require or result in the sale of an operating business or farm or so as to seriously impair its operation, unless there is no reasonable alternative method of satisfying the award.

Idem

- (2) To comply with subsection (1), the court may
- (a) order that one spouse pay to the other a share of the profits from the business or farm; and
 - (b) if the business or farm is incorporated, order that one spouse transfer or have the corporation issue to the other shares in the corporation.

Notice

- (3) The court shall not order the transfer or issue of shares in a corporation to a spouse pursuant to clause (2)(b) unless notice is first given to the corporation and the shareholders thereof other than the spouses. *1995, c.12, s.11.*

12. Orders for preservation

In an application under section 7 or 10, if the court considers it necessary for the protection of the other spouse's interests under this Part, the court may make an interim or final order

- (a) restraining the depletion of a spouse's property; and
- (b) for the possession, delivering up, safe-keeping and preservation of the property. *1995, c.12, s.12.*

13. Variation and realization of security

If the court has ordered security or charged a property with security for the performance of an obligation under this Part, the court may, on motion,

- (a) vary or discharge the order; or
- (b) on notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. *1995,c.12,s.13.*

14. Trust presumptions

- (1) Subject to subsection (2), the rule of law applying a presumption of resulting trust shall be applied in questions of the ownership of property between spouses as if they were not married.

Idem

- (2) The fact that property is held in the name of spouses as joint tenants is proof, in the absence of evidence to the contrary, that the spouses are intended to own the property as joint tenants.

Idem

- (3) For the purposes of subsection (2), money on deposit in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants. *1995,c.12,s.14; 2008,c.8,s.10(4).*

15. Constructive trust

- (1) A spouse is not entitled to an equitable remedy, including constructive trust, with respect to property owned by his or her spouse as restitution for his or her contribution, either direct or indirect, to the acquisition, maintenance, preservation or improvement of the property.

Resulting trust

- (2) A spouse is not entitled to an equitable remedy, including resulting trust, with respect to property owned by his or her spouse based on the common or presumed intention of the spouses regarding his or her contribution, either direct or indirect, to the acquisition, maintenance, preservation or improvement of the property. *1995,c.12,s.15.*

16. Conflict of laws

The property rights of spouses arising out of their marriage are governed by the internal law of the place where both spouses had their last common habitual residence or, if there is no place where the spouses had a common habitual residence, by the law of Prince Edward Island. *1995,c.12,s.16.*

17. Application of Part

- (1) This Part applies to property owned by spouses
 - (a) whether they became spouses before, on or after the date on which this Part comes into force; and
 - (b) whether the property was acquired before, on or after that day. *1995,c.12,s.17.*

Application of section 14

- (2) Section 14 applies whether the event giving rise to the presumption occurred before, on or after the date this Part comes into force. *1995,c.12,s.17.*



PART II — FAMILY HOME**18. property**

In this Part “**property**” means real or personal property. *1995,c.12,s.18.*

19. Family home

- (1) Every property in which a married person has an interest and that is or, if the spouses are living separate and apart, was at the time of separation ordinarily occupied by the person and his or her spouse as their family residence is their family home.

Ownership of shares

- (2) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to occupy a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection (1).

Residence on farmland, etc.

- (3) If property that includes a family home is normally used for a purpose other than residential, the family home is only the part of the property that may reasonably be regarded as necessary to the use and enjoyment of the residence. *1995,c.12,s.19.*

20. Idem

- (1) Both spouses have an equal right to possession of a family home.

Possession of family home

- (2) When only one of the spouses has an interest in a family home, the other spouse’s right of possession
- (a) is personal as against the first spouse; and
 - (b) unless a separation agreement or court order provides otherwise, ends on the date a divorce is granted or the marriage is declared a nullity, as the case may be. *1995,c.12,s.20.*

21. Designation of family home

- (1) One or both spouses may designate as a family home any property that is their family home and in which one or both of them has an interest, in the form prescribed by the regulations made under this Act.

Contiguous property

- (2) The designation may include property that is described in the designation and is contiguous to the family home.

Registration

- (3) The designation may be registered in the proper land registry office.

Effect of designation by both spouses

- (4) On the registration of a designation made by both spouses, any other property that is a family home under section 19 but is not designated by both spouses ceases to be a family home until the designation is cancelled.

Effect of designation by one spouse

- (5) On the registration of a designation made by one spouse only, any other property that is a family home under section 19 remains a family home.

Cancellation of designation

- (6) The designation of a family home is cancelled on the registration or deposit of
- (a) a judgment of divorce or nullity;
 - (b) an order under clause 24(e) cancelling the designation; or
 - (c) proof of death of one of the spouses.

When property ceases to be family home

- (7) On the registration or deposit of a judgment, order or proof under clause (6)(a), (b) or (c), the property ceases to be a family home.

Idem

- (8) A designation of a family home is cancelled on the registration or deposit of a cancellation, in the form prescribed by the regulations, executed by the person or persons who made the original designation. *1995, c.12, s.21.*

22. Alienation of family home

- (1) No spouse shall dispose of or encumber an interest in a family home unless
- (a) the other spouse joins in the instrument or consents to the transaction;
 - (b) the other spouse has released all rights under this Part by a separation agreement;
 - (c) a court order has authorized the transaction or has released the property from the application of this Part; or
 - (d) the property is not designated by both spouses as a family home and a designation of another property as a family home, made by both spouses, is registered and not cancelled.

Setting aside transaction

- (2) If a spouse disposes of or encumbers an interest in a family home in contravention of subsection (1), the transaction may be set aside on an application under section 24, unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a family home.

Proof that property not a family home

- (3) For the purpose of subsection (2), an affidavit of the person making the disposition or encumbrance
- (a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;
 - (b) verifying that the person is a spouse who is not living separate and apart from his or her spouse and that the property is not occupied by the spouses as their family residence;
 - (c) verifying that the person is a spouse who is living separate and apart from his or her spouse and that the property was not occupied by the spouses, at the time of their separation, as their family residence;



- (d) where the property is not designated by both spouses as a family home, verifying that a designation of another property as a family home, made by both spouses, is registered and not cancelled; or
- (e) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had actual notice to the contrary, be deemed to be sufficient proof that the property is not a family home.

Idem, attorney's personal knowledge

- (4) The affidavit shall be deemed to be sufficient proof that the property is not a family home if it is made by the attorney of the person making the disposition or encumbrance, on the basis of the attorney's personal knowledge.

Liens arising by operation of law

- (5) This section does not apply to the acquisition of an interest in property by operation of law. *1995, c.12, s.22.*

23. Right of redemption and to notice

- (1) When a person proceeds to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a family home, the spouse who has a right of possession under section 20 has the same right of redemption or relief against forfeiture as the other spouse and is entitled to the same notice respecting the claim and its enforcement or realization.

Service of notice

- (2) A notice to which a spouse is entitled under subsection (1) shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the spouse at his or her usual or last known address or, if none, the address of the family home, and, if notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

Payments by spouse

- (3) If a spouse makes a payment in exercise of the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Realization may continue in spouse's absence

- (4) Despite any other Act, when a person proceeds to realize upon a lien, encumbrance or execution or exercises a forfeiture and there is no response to a notice given under subsection (2), the realization or exercise of forfeiture may continue in the absence and without regard to the interest of the spouse and the spouse's rights under this section end on the completion of the realization or forfeiture. *1995, c.12, s.23.*

24. Powers of court respecting alienation

The court may, on the application of a spouse or person having an interest in property, by order

- (a) determine whether or not the property is a family home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the family home if the court finds that the spouse whose consent is required,

- (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,
- subject to any conditions, including provision of other comparable accommodation or payment in place of it, that the court considers appropriate;
- (c) dispense with a notice required to be given under section 23;
 - (d) direct the setting aside of a transaction disposing of or encumbering an interest in the family home contrary to subsection 22(1) and the revesting of the interest or any part of it on the conditions that the court considers appropriate; and
 - (e) cancel a designation made under section 21 if the property is not a family home.
- 1995, c.12, s.24.*

25. Order for possession of family home

- (1) Regardless of the ownership of a family home and its contents, and despite section 20 (spouse's right of possession), the court on application may, by order
- (a) provide for the delivering up, safekeeping and preservation of the family home and its contents;
 - (b) direct that one spouse be given exclusive possession of the family home or part of it for the period that the court directs and release other property that is a family home from the application of this Part;
 - (c) direct a spouse to whom exclusive possession of the family home is given to make periodic payments to the other spouse;
 - (d) direct that the contents of the family home, or any part of them,
 - (i) remain in the home for the use of the spouse given possession, or
 - (ii) be removed from the home for the use of a spouse or child;
 - (e) order a spouse to pay for all or part of the repair and maintenance of the family home and of other liabilities arising in respect of it, or to make periodic payments to the other spouse for those purposes;
 - (f) authorize the disposition or encumbrance of a spouse's interest in the family home, subject to the other spouse's right of exclusive possession as ordered; and
 - (g) where a false affidavit is made under subsection 22(3), direct
 - (i) the person who made the false affidavit, or
 - (ii) a person who knew at the time he or she acquired an interest in the property that the affidavit was false and afterwards conveyed the interest,

to substitute other real property for the family home, or direct the person to set aside money or security to stand in place of it, subject to any conditions that the court considers appropriate.

Temporary or interim order

- (2) The court may, on motion, make a temporary or interim order under clause (1)(a), (b), (c), (d) or (e).

Presumption in favour of temporary or interim order

- (3) On motion, the court shall make a temporary or interim order for exclusive possession in favour of a spouse who has temporary or interim custody of a child, unless the other spouse satisfies the court that it would be inappropriate to do so having regard to the factors set out in subsection (4).



Order for exclusive possession - criteria

- (4) In determining whether to make an order for exclusive possession, other than in the circumstance described in subsection (3), the court shall consider
- (a) the best interests of the children affected;
 - (b) any existing orders under Part I (Family Property) and any existing support orders;
 - (c) the financial position of both spouses;
 - (d) any written agreement between the parties;
 - (e) the availability of other suitable and affordable accommodation; and
 - (f) any violence committed by a spouse against the other spouse or the children.

Best interests of child

- (5) In determining the best interests of a child, the court shall consider
- (a) the possible disruptive effects on the child of a move to other accommodation; and
 - (b) the child's views and preferences, if they can reasonably be ascertained.

Offence

- (6) A person who contravenes an order for exclusive possession is guilty of an offence and upon summary conviction is liable
- (a) in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both; and
 - (b) in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both.

Arrest without warrant

- (7) A police officer may arrest without warrant a person the police officer believes on reasonable and probable grounds to have contravened an order for exclusive possession.

Existing orders

- (8) Subsections (6) and (7) also apply in respect of contravention, committed on or after the date on which this Part comes into force, of orders for exclusive possession made under Part III of the *Family Law Reform Act* R.S.P.E.I. 1988, Cap. F-3; 1995, c.12, s.25.

26. Variation of possessory order

- (1) On the application of a person named in an order made under clause 25(1)(a), (b), (c), (d) or (e) or his or her personal representative, if the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Variation of conditions respecting sale

- (2) On the motion of a person who is subject to conditions imposed in an order made under clause 24(b) or (d) or 25(1)(g), or his or her personal representative, if the court is satisfied that the conditions are no longer appropriate, the court may discharge, vary or suspend them.

Existing orders

- (3) Subsections (1) and (2) also apply to orders made under the corresponding provisions of Part III of the *Family Law Reform Act*. 1995, c.12, s.26.

27. Registration of order

Orders made under this Part or under Part III of the *Family Law Reform Act*, are registrable against land under the *Registry Act*. 1995,c.12,s.27.

28. Application of Part

(1) This Part applies to family homes that are situated in Prince Edward Island.

Idem

(2) This Part applies

- (a) whether the spouses were married before, on or after the date on which this Part comes into force; and
- (b) whether the family home was acquired before, on or after that day. 1995,c.12,s.28.

PART III — SUPPORT OBLIGATIONS

29. Definitions

(1) In this Part

- (a) “**dependant**” means a person to whom another has an obligation to provide support under this Part;
- (b) “**spouse**” means an individual who, in respect of another person,
 - (i) is married to the other person,
 - (ii) has entered into a marriage with the other person that is voidable or void,
 - (iii) is not married to the other person but is cohabiting with him or her in a conjugal relationship and has done so continuously for a period of at least three years, or
 - (iv) is not married to the other person but is cohabiting with him or her in a conjugal relationship and together they are the natural or adoptive parents of a child. 1995,c.12,s.29; 2002,c.7,s.1; 2008,c.8,s.10(5).

30. Obligation of spouses for support

Every spouse or former spouse has an obligation to provide support for himself or herself and for the other spouse or former spouse, in accordance with need, to the extent that he or she is capable of doing so. 1995,c.12,s.30; 2002,c.7,s.2; 2008,c.8,s.10(6).

31. Obligation of parent to support child

(1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, for his or her child who is unmarried and is under the age of eighteen years or, if eighteen years of age or over, is enrolled in a full-time program of education or is unable, by reason of illness, disability or other cause, to withdraw from the charge of his or her parents or to obtain the necessities of life.

Idem

(2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control. 1995,c.12,s.31; 1997,c.16,s.2 {eff.} Nov. 27/97.



32. Obligation of child to support parent

Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so. *1995,c.12,s.32.*

33. Order for support

- (1) A court may, on application, order a person to provide support for his or her dependants and determine the amount of support.

Applicants

- (2) An application for an order for the support of a dependant may be made by the dependant or the dependant's parent.

Application for support

- (3) An application for an order for the support of a dependant who is a spouse or former spouse, or a dependant child of the spouse or former spouse, may be made by the Minister of Family and Human Services or the delegate of the Minister, where a benefit or assistance is payable in respect of the support of the dependant, pursuant to the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1 or the *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3; *2015,c.28,s.3.*

Setting aside domestic contract

- (4) The court may set aside a provision for support or a waiver of the right to support in a domestic contract or parental agreement and may determine and order support in an application under subsection (1) although the contract or agreement contains an express provision excluding the application of this section,
- (a) if the provision for support or the waiver of the right to support results in unconscionable circumstances;
 - (b) if the provision for support is in favour of or the waiver is by or on behalf of a dependant who qualifies for an allowance for support out of public money; or
 - (c) if there is default in the payment of support under the contract or agreement at the time the application is made.

Adding party

- (5) In an application the court may, on a respondent's motion, add as a party another person who may have an obligation to provide support to the same dependant.

Spousal misconduct

- (6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse or former spouse in relation to the relationship.

Objectives of order for support of spouse or former spouse

- (7) An order made under this section that provides for the support of a spouse or former spouse should
- (a) recognize any economic advantages or disadvantages to the spouses or former spouses arising from the relationship or its breakdown;
 - (b) apportion between the spouses or former spouses any financial consequences arising from the care of any child of the relationship over and above the obligation apportioned between the spouses pursuant to subsection (8);
 - (c) relieve any economic hardship of the spouses or former spouses arising from the breakdown of the relationship; and

- (d) in so far as practicable, promote the economic self-sufficiency of each spouse or former spouse within a reasonable period of time.

Objectives of order for support of child

- (8) An order made under this section that provides for the support of a child should
 - (a) recognize that the parents have a joint financial obligation to maintain the child; and
 - (b) apportion that obligation in accordance with the child support guidelines.

Determination of amount

- (9) In determining the amount and duration, if any, of support for a spouse, former spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including
 - (a) the dependant's and respondent's current assets and means;
 - (b) the assets and means that the dependant and respondent are likely to have in the future;
 - (c) the dependant's capacity to contribute to his or her own support;
 - (d) the respondent's capacity to provide support;
 - (e) the dependant's and respondent's age and physical and mental health;
 - (f) the dependant's needs, in determining which, the court shall have regard to the accustomed standard of living while the parties resided together;
 - (g) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;
 - (h) any legal obligation of the respondent or dependant to provide support for another person;
 - (i) the desirability of the dependant or respondent remaining at home to care for a child;
 - (j) a contribution by the dependant to the realization of the respondent's career potential;
 - (k) repealed by *1997, c.16, s.3*;
 - (l) if the dependant is a spouse or former spouse,
 - (i) the length of time the dependant and respondent cohabited,
 - (ii) the effect of the responsibilities assumed during cohabitation by the spouse or common-law partner on his or her earning capacity,
 - (iii) whether the spouse has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents,
 - (iv) whether the spouse or former spouse has undertaken to assist in the continuation of a program of education for a child eighteen years of age or over who is unable for that reason to withdraw from the charge of his or her parents,
 - (v) any housekeeping, child care or other domestic service performed by the spouse or former spouse for the family, as if the spouse or former spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support,
 - (vi) the effect of the responsibility of caring for a child on the earnings and career development of the spouse or former spouse; and
 - (m) any other legal right of the dependant to support, other than out of public money.



Effect of taxation

- (10) After determining the amount of support under subsection (9), the court shall consider the effect of taxation and may adjust the amount as necessary to take account of it.

Application of child support guidelines

- (11) A court making an order for the support of a child shall do so in accordance with the child support guidelines.

Exception, special provisions

- (12) Despite subsection (11), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines if the court is satisfied,
- (a) that special provisions in an order or a written agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
 - (b) that the application of the child support guidelines would result in an amount of child support that is inequitable given those special provisions.

Reasons

- (13) Where the court awards, under subsection (12), an amount that is different from the amount that would be determined in accordance with the child support guidelines, the court shall record its reasons for doing so.

Exception, consent orders

- (14) Despite subsection (11), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines on the consent of both parents if the court is satisfied that
- (a) reasonable arrangements have been made for the support of the child to whom the order relates; and
 - (b) where support for the child is payable out of public money, the arrangements do not provide for an amount less than the amount that would be determined in accordance with the child support guidelines.

Reasonable arrangements

- (15) For the purposes of clause (14)(a), in determining whether reasonable arrangements have been made for the support of a child,
- (a) the court shall have regard to the child support guidelines; and
 - (b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines. *1995, c.12, s.33; 1997, c.16, s.3; 2000(2nd), c.3, s.62; 2001, c.19, s.16; 2002, c.7, s.2,3; 2005, c.40, s.9; 2008, c.8, s.10(6),(8),(9); 2010, c.31, s.3; 2012, c.17, s.2.*

34. Powers of court

- (1) In an application under section 33, the court may make an interim or final order
- (a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
 - (b) requiring that a lump sum be paid or held in trust;

- (c) requiring that property be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) respecting any matter authorized to be ordered under clause 25(1)(a), (b), (c), (d) or (e) (family home);
- (e) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the dependant's benefit;
- (f) requiring that support be paid in respect of any period before the date of the order;
- (g) requiring payment to a person or agency referred to in subsection 33(3) of an amount in reimbursement for a benefit or assistance referred to in that subsection, including a benefit or assistance provided before the date of the order;
- (h) requiring payment of expenses in respect of a child's prenatal care and birth;
- (i) requiring that a spouse or former spouse who has a contract of life insurance as defined in the *Insurance Act* designate the other spouse or a child as the beneficiary irrevocably;
- (j) requiring that a spouse or former spouse who has an interest in a pension plan or other benefit plan designate the other spouse or former spouse or a child as beneficiary under the plan and not change that designation;
- (k) requiring the securing of payment under the order, by a charge on property or otherwise; and
- (l) requiring that income tax returns, notices of assessment, and notices of reassessment for the previous year be filed annually with the child support service, established by regulations made under section 61, for the review and recalculation, in accordance with the *Family Law Act* Child Support Guidelines (EC668/97) and the *Family Law Act* Administrative Recalculation of Child Support Regulations (EC465/03) of the amount of child support payable under an order.

Assignment of support

- (2) An order for support may be assigned to a person or agency referred to in subsection 33(3)(a) or (b).

Support order binds

- (3) An order for support binds the estate of the person having the support obligation unless the order provides otherwise.

Idem

- (3.1) A person or an agency referred to in subsection 33(3) to whom or to which an order for support is assigned is entitled to the payments due under the order and has the same right to be notified of and to participate in proceedings under this Act to vary, rescind, suspend or enforce the order as the person who would otherwise be entitled to the payments.

Indexing of support payments

- (4) In an order made under clause (1)(a), other than an order for the support of a child, the court may provide that the amount payable shall be increased annually on the order's anniversary date by the indexing factor as defined in subsection (5).

Definition

- (5) The indexing factor for a given month is the percentage change in the Consumer Price Index for Canada for prices of all items since the same month of the previous year, as published by Statistics Canada. 1995,c.12,s.34; 1995,c.12,s.33; 1997,c.16,s.4 {eff.} Nov. 27/97; 2002,c.7,s.2; 2003,c.6,s.1; 2008,c.8,s.10(6).



35. Domestic contract, etc., may be filed with court

- (1) A person who is a party to a domestic contract or parental agreement may file the contract or agreement with the deputy registrar of the court together with the person's affidavit stating that the contract or agreement is in effect and has not been set aside or varied by a court or agreement.

Effect of filing

- (2) A provision for support or maintenance contained in a contract or agreement that is filed in this manner
- (a) may be enforced;
 - (b) may be varied under section 37; and
 - (c) except in the case of a provision for the support of a child, may be increased under section 38,

as if it were an order of the court.

Prior filings with Registrar

- (2.1) For greater certainty, any contract or agreement that has been filed under subsection (1) with the Registrar of the Supreme Court before the date this subsection comes into force is deemed to have been filed under that subsection with the deputy registrar for the purposes of subsection (2).

Setting aside available

- (3) Subsection 33(4) (setting aside in unconscionable circumstances, etc.) applies to a contract or agreement that is filed in this manner.

Enforcement available despite waiver

- (4) Subsection (1) and clause (2)(a) apply despite an agreement to the contrary.

Existing contracts, etc.

- (5) Subsections (1) and (2) also apply to contracts and agreements made before the date on which this Part comes into force.

Existing arrears

- (6) Clause (2)(a) also applies to arrears accrued before the date on which this Part comes into force. *1995, c.12, s.35; 1997, c.16, s.5 {eff.} Nov. 27/97; 2008, c.20, s.72(31).*

36. Effect of divorce proceeding

- (1) When a divorce proceeding is commenced under the *Divorce Act* (Canada), an application for support under this Part that has not been adjudicated is stayed, unless the court orders otherwise.

Arrears may be included in order

- (2) The court that deals with a divorce proceeding under the *Divorce Act* (Canada) may determine the amount of arrears owing under an order for support made under this Part and make an order respecting that amount at the same time as it makes an order under the *Divorce Act* (Canada).

Idem

- (3) If a marriage is terminated by judgment of divorce or declaration of nullity and the question of support is not adjudicated in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms. *1995, c. 12, s. 36.*

37. Application for variation

- (1) An application to the court for variation of an order made or confirmed under this Part may be made by
- (a) a dependant or respondent named in the order;
 - (b) a parent of a dependant referred to in clause (a);
 - (c) the personal representative of a respondent referred to in clause (a); or
 - (d) a person or agency referred to in subsection 33(3).

Powers of court, spouse and parent support

- (2) In the case of an order for support of a spouse, former spouse or parent, if the court is satisfied that there has been a material change in the dependant's or respondent's circumstances or that evidence not available on the previous hearing has become available, the court may
- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
 - (b) relieve the respondent from the payment of part or all of the arrears or any interest due on them; and
 - (c) make any other order under section 34 that the court considers appropriate in the circumstances referred to in section 33.

Powers of court, child support

- (2.1) In the case of an order for support of a child, if the court is satisfied that there has been a change in circumstances within the meaning of the child support guidelines or that evidence not available on the previous hearing has become available, the court may
- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
 - (b) relieve the respondent from the payment of part or all of the arrears or any interest due on them; and
 - (c) make any other order for the support of a child that the court could make on an application under section 33.

Application of child support guidelines

- (2.2) A court making an order under subsection (2.1) shall do so in accordance with the child support guidelines.

Exception, special provisions

- (2.3) Despite subsection (2.2), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines if the court is satisfied
- (a) that special provisions in an order or a written agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
 - (b) that the application of the child support guidelines would result in an amount of child support that is inequitable given those special provisions.



Reasons

- (2.4) Where the court awards, under subsection (2.3), an amount that is different from the amount that would be determined in accordance with the child support guidelines, the court shall record its reasons for doing so.

Exception, consent orders

- (2.5) Despite subsection (2.2), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines on the consent of both parents if the court is satisfied that
- (a) reasonable arrangements have been made for the support of the child to whom the order relates; and
 - (b) where support for the child is payable out of public money, the arrangements do not provide for an amount less than the amount that would be determined in accordance with the child support guidelines.

Reasonable arrangements

- (2.6) For the purposes of clause (2.5)(a), in determining whether reasonable arrangements have been made for the support of a child
- (a) the court shall have regard to the child support guidelines; and
 - (b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines.

Limitation on applications for variation

- (3) No application for variation shall be made within six months after the making of the order for support or the disposition of another application for variation in respect of the same order, except by leave of the court. *1995,c.12,s.37; 1997c,16,s.6 {eff.} Nov. 27/97; 2002,c.7,s.4; 2008,c.8,s.10(8).*

38. Non-application to orders

- (1) This section does not apply to an order for the support of a child.

Application to have existing order indexed

- (2) If an order made or confirmed under this Part is not indexed under subsection 34(4), the dependant, or a person or agency referred to in subsection 33(3), may apply to the court to have the order indexed in accordance with subsection 34(4).

Power of court

- (3) The court shall, unless the respondent shows that his or her income, assets and means have not increased sufficiently to permit the increase, order that the amount payable be increased by the indexing factor, as defined in subsection 34(5), on the anniversary date of the order under this section. *1995,c.12,s.38; 1997c,16,s.7 {eff.} Nov. 27/97.*

38.1 Priority to child support

- (1) Where a court is considering an application for the support of a child and an application for the support of a spouse or former spouse, the court shall give priority to the support of the child in determining the applications.

Reasons

- (2) Where as a result of giving priority to the support of a child, the court is unable to make an order for the support of spouse or former spouse, or the court makes an order for the support of a spouse or former spouse in an amount less than it otherwise would have, the court shall record its reasons for doing so.

Consequences of reduction or termination of child support

- (3) Where as a result of giving priority to the support of a child, an order for the support of a spouse or former spouse is not made or the amount of the order for the support of a spouse or former spouse is less than it otherwise would have been, any material reduction or termination of the support for the child constitutes a material change of circumstances for the purposes of an application for the support of the spouse or former spouse or for variation of an order for the support of the spouse or former spouse.

Non-application of limitation

- (4) Subsection 49(1) does not apply to an action or application for the support of a spouse or former spouse in the circumstances set out in subsection (3). 1997,c16,s.8 {eff.} Nov. 27/97; 2002,c.7,s.2,5; 2008,c.8,s.10(6),(10).

39. Existing orders

- (1) Sections 36 to 38 also apply to orders for maintenance or alimony made before December 31, 1978, or in proceedings commenced before that date, and to orders for support made under Part II of the *Family Law Reform Act*.

Combined support orders

- (2) Where an application is made under section 37 to vary an order that provides a single amount of money for the combined support of one or more children and a spouse or former spouse, the court shall rescind the order and treat the application as an application for an order for the support of a child and an application for an order for the support of a spouse or former spouse.

Existing proceedings

- (3) Where an application for the support of a child, including an application under section 37 to vary an order for the support of a child, is made before the day this subsection comes into force and the court has not considered any evidence in the application, other than in respect of an interim order, before that day, the proceeding shall be deemed to be an application under this Act as amended, subject to such directions as the court considers appropriate. 1995,c.12,s.39; 1997,c.16,s.9 {eff.} Nov. 27/97; 2002,c.7,s.2; 2008,c.8,s.10(6).

40. Restraining orders

The court may, on application, make an interim or final order restraining the depletion of the property of spouse or former spouse that would impair or defeat a claim under this Part. 1995,c.12,s.40; 2003,c.7,s.6; 2008,c.8,s.10(6).

41. Financial statement

- (1) In an application under section 33 or 37, each party shall serve on the other and file with the court a financial statement verified by oath in the manner and form prescribed by the rules of the court.



Order for sealing statement

- (2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection (1) would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Costs related to failure to disclose

- (3) Where spouse or former spouse, without reasonable cause, fails to serve and file a full and accurate financial statement, the court shall award the costs related to the failure against the spouse or former spouse. *1995, c.12, s.41; 2002, c.7, s.2; 2008, c.8, s.10(6).*

42. Order for return by employer

- (1) In an application under section 33 or 37, the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding twelve months.

Return as evidence

- (2) A return purporting to be signed by the employer may be received in evidence as proof, in the absence of evidence to the contrary, of its contents.

Order for access to information

- (3) The court may, on motion, make an order under subsection (4) if it appears to the court that, in order to make an application under section 33 or 37, the moving party needs to learn or confirm the proposed respondent's whereabouts.

Idem

- (4) The order shall require the person or public body to whom it is directed to provide the court or the moving party with any information that is shown on a record in the person's or public body's possession or control and that indicates the proposed respondent's place of employment, address or location. *1995, c.12, s.42.*

43. Arrest of absconding debtor

If an application is made under section 33 or 37 and the court is satisfied that the respondent is about to leave Prince Edward Island and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Act, the court may issue a warrant for the respondent's arrest for the purpose of bringing him or her before the court. *1995, c.12, s.43.*

44. Pledging credit for necessities

- (1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, unless the spouse has notified the third party that he or she has withdrawn the authority.

Liability for necessities of minor

- (2) If a person is entitled to recover against a minor in respect of the provision of necessities for the minor, every parent who has an obligation to support the minor is liable for them jointly and severally with the minor.

Recovery between persons jointly liable

- (3) If persons are jointly and severally liable under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common law supplanted

- (4) This section applies in place of the rules of common law by which a wife may pledge her husband's credit. *1995, c.12, s.44; 2002, c.7, s.2; 2008, c.8, s.10(7).*

45. Order restraining harassment

- (1) On application, a court may make an interim or final order restraining the applicant's spouse, or former spouse, from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the applicant's spouse or former spouse to enter into the recognizance that the court considers appropriate.

Offence

- (2) A person who contravenes a restraining order is guilty of an offence and upon conviction is liable,
- (a) in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both; and
 - (b) in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both.

Arrest without warrant

- (3) A police officer may arrest without warrant a person the police officer believes on reasonable and probable grounds to have contravened a restraining order.

Existing orders

- (4) Subsections (2) and (3) also apply in respect of contraventions of restraining orders made under Part II of the *Family Law Reform Act*. *1995, c.12, s.45; 2002, c.7, s.7; 2008, c.8, s.10(7).*

46. Application for custody

The court may direct that an application for support stand over until an application for custody under the *Custody Jurisdiction and Enforcement Act* R.S.P.E.I. 1988, Cap. C-33 has been determined. *1995, c.12, s.46.*

47. Appeal

An appeal lies from an order of the court under the Part to the Court of Appeal. *1995, c.12, s.47; 2008, c.20, s.72(31).*

48. Contempt of orders of court

- (1) In addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not exceed \$5,000 nor shall the imprisonment exceed ninety days.



Conditions of imprisonment

- (2) An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently. *1995, c.12, s.48.*

49. Limitation

- (1) No application for an order for the support of a spouse or former spouse shall be brought under this Part after the later of
- (a) two years from the date of coming into force of this Act; and
 - (b) two years from the day the spouses begin living separate and apart.

Idem, domestic contract

- (2) If the spouses or former spouses provided for support on separation in a domestic contract, subsection (1) does not apply and no application for an order for the support of a spouse or former spouse shall be brought after default under the contract has subsisted for two years. *1995, c.12, s.49; 2002, c.7, s.8; 2008, c.8, s.10(6), (9).*

PART IV — DOMESTIC CONTRACTS**50. Definitions**

In this Part

- (a) “**cohabitation agreement**” means an agreement entered into under section 52;
- (b) “**domestic contract**” means a marriage contract, separation agreement or cohabitation agreement;
- (c) “**marriage contract**” means an agreement entered into under section 51;
- (d) “**parental agreement**” means an agreement entered into under section 57;
- (e) “**separation agreement**” means an agreement entered into under section 53. *1995, c.12, .50.*

51. Marriage contracts

- (1) Two persons who are married to each other or intend to marry may enter into an agreement in which they agree on their respective rights and obligations under the marriage or on separation, on the annulment or dissolution of the marriage or on death including
- (a) ownership in or division of property;
 - (b) support obligations;
 - (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
 - (d) any other matter in the settlement of their affairs.

Rights re family home respected

- (2) A provision in a marriage contract purporting to limit a spouse’s rights under Part II (Family Home) is unenforceable. *1995, c.12, s.51; 2008, c.8, s.10(11).*

52. Cohabitation agreements

- (1) Two persons who are cohabiting or intend to cohabit and who are not married to each other may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or on ceasing to cohabit or on death, including
- (a) ownership in or division of property;
 - (b) support obligations;
 - (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
 - (d) any other matter in the settlement of their affairs.

Effect of marriage on agreement

- (2) If the parties to a cohabitation agreement marry each other, the agreement shall be deemed to be a marriage contract. *1995, c.12, s.52; 2002, c.7, c.9.*

53. Separation agreements

Two persons who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs. *1995, c.12, s.53; 2002, c.7, s.10.*

54. Form of contract

- (1) A domestic contract and an agreement to amend or rescind a domestic contract are unenforceable unless made in writing, signed by the parties and witnessed.

Capacity of minor

- (2) A minor has capacity to enter into a domestic contract, subject to the approval of the court, which may be given before or after the minor enters into the contract.

Agreement on behalf of mentally incompetent person

- (3) If a person is mentally incompetent,
- (a) the person's committee, if any, unless the person's spouse is the committee;
 - (b) in all other cases, the Public Trustee,

may enter into a domestic contract or give any waiver or consent under this Act on the mentally incompetent person's behalf, subject to the prior approval of the court.

Extended meaning of "spouse"

- (4) In subsection (3), "**spouse**" means a spouse as defined in clause 29(1)(b). *1995, c.12, s.54; 2002, c.7, s.11; 2008, c.8, s.10(7), (12).*

55. Contracts subject to best interests of child

- (1) In the determination of a matter respecting the education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining to the matter where, in the opinion of the court, to do so is in the best interests of the child.

Contracts subject to child support guidelines

- (1.1) In the determination of a matter respecting the support of a child, the court may disregard any provision of a domestic contract or paternity agreement pertaining to the matter where the provision is unreasonable having regard to the child support guidelines, as well as to any other provision relating to support of the child in the contract or agreement.

Clauses requiring chastity

- (2) A provision in a domestic contract to take effect on separation whereby any right of a party is dependent upon remaining chaste is unenforceable, but this subsection shall not be construed to affect a contingency upon marriage or cohabitation with another.

Idem

- (3) A provision in a domestic contract made before this section comes into force whereby any right of a party is dependent upon remaining chaste shall be given effect as a contingency upon marriage or cohabitation with another.

Setting aside domestic contract

- (4) A court may, on application, set aside a domestic contract or a provision in it
- (a) if a party failed to disclose to the other significant assets, or significant debts or other liabilities, existing when the domestic contract was made;
 - (b) if a party did not understand the nature or consequences of the domestic contract; or
 - (c) otherwise in accordance with the law of contract.

Application of (4)

- (5) Subsection (4) applies despite any agreement to the contrary. *1995,c.12,s.55; 1997,c.16,s.10 {eff.} Nov. 27/97.*

56. Contracts made outside Prince Edward Island

The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that

- (a) a contract of which the proper law is that of a jurisdiction other than Prince Edward Island is also valid and enforceable in Prince Edward Island if entered into in accordance with Prince Edward Island's internal law;
 - (b) subsection 33(4) (setting aside provision for support or waiver) and section 55 apply in Prince Edward Island to contracts for which the proper law is that of a jurisdiction other than Prince Edward Island; and
 - (c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not enforceable in Prince Edward Island.
- 1995,c.12,s.56.*

57. Parental agreements

- (1) If two persons who are not spouses enter into an agreement for
- (a) the payment of the expenses of a child's prenatal care and birth;
 - (b) support of a child; or
 - (c) funeral expenses of the child or mother,

on the application of a party, the court may incorporate the agreement in an order, and Part III (Support Obligations) applies to the order in the same manner as if it were an order made under that Part.

Child support guidelines

- (1.1) A court shall not incorporate an agreement for the support of a child in an order under subsection (1) unless the court is satisfied that the agreement is reasonable having regard to the child support guidelines, as well as to any other provision relating to support of the child in the agreement.

Absconding respondent

- (2) If an application is made under subsection (1) and a judge of the court is satisfied that the respondent is about to leave Prince Edward Island and that there are reasonable grounds to believe that the respondent intends to evade his or her responsibilities under the agreement, the judge may issue a warrant in the form prescribed by the rules of the court for the respondent's arrest.

Capacity of minor

- (3) A minor has capacity to enter into an agreement under subsection (1) that is approved by the court, whether the approval is given before or after the minor enters into the agreement.

Application to existing agreements

- (4) This section applies to parental agreements that were made before this Part comes into force. *1995,c.12,s.57; 1997,c.16,s.11 {eff.} Nov. 27/97; 2002,c.7,s.12.*

58. Application of Act to existing contracts

- (1) A domestic contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts entered into before effective date

- (2) If a domestic contract was entered into before this Part comes into force and the contract or any part would have been valid if entered into on or after that day, the contract or part is not invalid for the reason only that it was entered into before that day.

Idem

- (3) If property is transferred, under an agreement or understanding reached before December 31, 1978 between spouses who are living separate and apart, the transfer is effective as if made under a domestic contract. *1995,c.12,s.58.*

PART V — AMENDMENTS TO THE COMMON LAW

59. Unity of legal personality abolished

- (1) For all purposes of the law of Prince Edward Island, a married person has a legal personality that is independent, separate and distinct from that of his or her spouse.

Capacity of married person

- (2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if he or she were an unmarried person and, in particular, has the same right of action in tort against his or her spouse as if they were not married.



Purpose

- (3) The purpose of subsection (1) and (2) is to make the same law apply, and apply equally, to married men and married women and to remove any difference in it resulting from any common law rule or doctrine. *1995, c.12, s.59.*

60. Domicile of minor

The domicile of a person who is a minor is

- (a) if the minor habitually resides with both parents and the parents have a common domicile, that domicile;
- (b) if the minor habitually resides with one parent only, that parent's domicile;
- (c) if the minor resides with another person who has lawful custody of him or her, that person's domicile; or
- (d) if the minor's domicile cannot be determined under clause (a), (b) or (c), the jurisdiction with which the minor has the closest connection. *1995, c.12, s.60.*

PART VI — GENERAL**61. Regulations**

- (1) Repealed by *2002, c.7, s.13.*

Idem

- (2) The Lieutenant Governor in Council may make regulations establishing
- (a) guidelines respecting the making of orders for child support under this Act; and
 - (b) guidelines that may be designated under subsection 2(5) of the *Divorce Act* (Canada).

Idem

- (3) Without limiting the generality of subsection (2), guidelines may be established under subsection (2)
- (a) respecting the way in which the amount of an order for child support is to be determined;
 - (b) respecting the circumstances in which discretion may be exercised in the making of an order for child support;
 - (c) respecting the circumstances that give rise to the making of a variation order in respect of an order for the support of a child;
 - (d) respecting the determination of income for the purposes of the application of the guidelines;
 - (e) authorizing a court to impute income for the purposes of the application of the guidelines;
 - (f) respecting the production of income information and providing for sanctions when that information is not provided.

Adoption of Federal child support guidelines

- (4) In establishing guidelines under subsection (2), the Lieutenant Governor in Council may adopt, in whole or in part, with such modifications as the Lieutenant Governor in Council considers appropriate, the child support guidelines for Prince Edward Island established under the *Divorce Act* (Canada).

Child support service

- (5) The Lieutenant Governor in Council may make regulations, after consultation with the Chief Justice of Prince Edward Island and the Chief Justice of the Supreme Court, respecting the establishment, structure and procedure of a child support service and respecting applications made to, recalculations by and decisions of that child support service. *1995,c.12,s.61; 1997,c.16,s.11 [eff.] Nov. 27/97; 2002,c.7,s.13; 2015,c.36,s.26.*

62. Transitional, sections 6 to 8

- (1) Sections 6 to 8 apply unless an application under section 4 of the *Family Law Reform Act* was adjudicated or settled before May 2, 1995.

Idem, Part II

- (2) Part II (Family Home) applies unless a proceeding under Part III of the *Family Law Reform Act* to determine the rights between spouses in respect of the property concerned was adjudicated or settled before May 2, 1995.

Idem, separation agreement, etc.

- (3) A separation agreement or marriage contract that was validly made before the date on which the Act comes into force and that excludes a spouse's property from the application of section 4 (division of family assets) and section 8 (contribution to property) of the *Family Law Reform Act*
- (a) shall be deemed to exclude that property from the application of section 6 of this Act; and
- (b) shall be read with the necessary modifications. *1995,c.12,s.62.*

62.1 Notice of an order filed in Personal Property Registry

- (1) A notice of an order made under this Act respecting personal property, in the form prescribed by the regulations made pursuant to the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1, may be filed in the Personal Property Registry and, where not so filed, the order does not affect the acquisition of an interest in that personal property by a person in good faith without notice of the order.

Serial numbered goods, number omitted

- (2) Where an order relates to goods that are designated by regulations made pursuant to the *Personal Property Security Act* as serial numbered goods and a notice does not describe those goods by serial number, the notice is deemed not to be filed pursuant to subsection (1) with respect to those goods. *1997,c.33, Schedule.*

62.2 Child support recalculations

- (1) On the establishment of a child support service in the regulations made under section 61,
- (a) an order for child support made under this Act before, on or after the establishment of the child support service; and
- (b) a separation or parental agreement entered into under this Act before, on or after the establishment of the child support service

may be submitted to the child support service, in accordance with the regulations, for the recalculation of the amount of child support payable under the order or agreement, if the order or agreement, as the case may be, provides for recalculation of child support in accordance with the child support guidelines.



Agreements re: administrative recalculations

- (2) The Minister of Justice and Public Safety and Attorney General, on behalf of the Government of Prince Edward Island may, with the approval of the Lieutenant Governor in Council, enter into an agreement with the Minister of Justice, on behalf of the Government of Canada, for a child support service established by the regulations made under section 61, to conduct the administrative recalculation of the amount of child support in orders decided under the *Divorce Act* (Canada). 2002,c.7,s.14; 2003,c.6,s.2; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.

63. Repeal

Family Law Reform Act R.S.P.E.I. 1988, Cap. F-3 repealed. 1995,c.12,s.63.