

Things You've Always Wanted to Know About Child Support, but Thought you Couldn't Ask: Understanding the Law on Child Support

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Child and Spousal Support for Legal Support Staff

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THINGS YOU HAVE ALWAYS WANTED TO KNOW ABOUT CHILD SUPPORT BUT THOUGHT YOU COULD NEVER ASK:

UNDERSTANDING CHILD SUPPORT

DETERMINE WHICH STATUTE GOVERNS: IS CHILD SUPPORT A RESULT OF DIVORCE, COMMON-LAW OR OTHER?

Child support is a statutory duty imposed by the state to ensure that a child is financially supported. The Federal *Divorce Act*¹ and the Provincial *Family Law Act*² are very similarly worded statutes that set out the criteria for support to be paid.

The *Federal Child Support Guidelines*³ and *Alberta Child Support Guidelines*⁴ are the regulations or the workbook to facilitate the process.

The federal government's jurisdiction over child support is located in its power over divorce under s. 91(26) of the *Constitution Act* of 1867. *Divorce Act* files can only be heard in the Court of Queen's Bench. *Family Law Act* files can be heard in both the Provincial Court and Court of Queen's Bench.

The provinces have jurisdiction over child support when it is not a result of divorce.⁵

To summarize: the *Divorce Act* only addresses child support for married couples while the Provincial *Family Law Act* addresses child support for married and non-married parties. As the *Family Law Act* is a provincial statute, they vary from province to province.

The Divorce Act

s. 15.1(1) of the *Divorce Act* allows a 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.

s. 15.1(3) of the *Divorce Act* states that a court making an order shall do so in accordance with the applicable guidelines.⁶

¹ *Divorce Act*, R.S.C. 1985, c.3 (2nd Supp) [DA]

² *Family Law Act*, S.A. 2003, c.3 F-4.5 [FLA]

³ *Federal Child Support Guidelines*, SOR/97-175 (*Divorce Act*) [FCSG]

⁴ *Alberta Child Support Guidelines* Alta. Reg. 147/2005 (*Family Law Act*) [ACSG]

⁵ *Jackson v Jackson*, [1973] S.C.R. 205 at p.211

⁶ *Supra* note 1

The Family Law Act

s. 50(1) of the *Family Law Act* allows the court to make an order requiring a parent to provide support for his or her child on application by

- (a) the child;
- (b) parent or guardian of the child;
- (c) a person who has the care and control of the child; or,
- (d) any other person with leave of the court where the court considers the application would be in the best interests of the child.

s. 51(1) of the *Family Law Act* states that in making a child support order, the court shall do so in accordance with the prescribed guidelines.⁷

It is important to note that there are differences between the *Divorce Act* and the *Family Law Act* in Alberta with regards to child support. For example, under the *Family Law Act* child support terminates at the age of 22 years of age (unless disabled) whereas the *Divorce Act* does not have a termination date for paying child support.

QUESTION: Can an adult child make an application under the *Divorce Act* or *Family Law Act* for child support?

NO. The *Divorce Act* only allows the spouses to make an application and the adult child cannot bring an application for support.

YES. The *Family Law Act* allows the child, a parent or guardian of the child, a person who has the care and control of the child, or any other person with leave of the court where the court considers the application would be in the best interests of the child, to make a child support application.

The Federal Child Support Guidelines and the Alberta Child Support Guidelines⁸

The *Federal Child Support Guidelines* and the *Alberta Child Support Guidelines* provide the working process for child support.

⁷ *Supra* note 2

⁸ *Supra* note 3 and 4