

The Family Maintenance Act, 1997

being

Chapter F-6.2 of the *Statutes of Saskatchewan, 1997* (effective March 1, 1998) as amended by the *Statutes of Saskatchewan, 2001, c.51; 2002, c.I-10.03 and 5; 2004, c.16 and 66; 2006, c.31; 2012, c.24; 2015, c.22; and 2016, c.29.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER F-6.2

An Act respecting Child and Spousal Maintenance

SHORT TITLE AND INTERPRETATION

Short title

1 This Act may be cited as *The Family Maintenance Act, 1997*.

Interpretation

2 In this Act:

“**agreement**” means an agreement with respect to a matter that is dealt with in this Act that is:

- (a) made in writing; and
- (b) signed by the parties; («*accord*»)

“**child**” means a person who is under the age of 18 years; («*enfant*»)

“**claimant**” means a person seeking maintenance pursuant to this Act; («*partie requérante*»)

“**court**” means:

- (a) the Provincial Court of Saskatchewan; or
- (b) the Family Law Division of the Court of Queen’s Bench; («*tribunal*»)

“**dependant**” means the person for whom maintenance is sought or ordered to be paid pursuant to this Act; («*personne à charge*»)

“**father**” means father as defined in *The Children’s Law Act, 1997*; («*père*»)

“**guidelines**” means the guidelines established or adopted pursuant to the regulations; («*lignes directrices*»)

“**maintenance**” includes support and alimony; («*aliments*»)

“**marriage**” **Repealed.** 2001, c.51, s.5.

“**mother**” means mother as defined in *The Children’s Law Act, 1997*; («*mère*»)

“**parent**” means:

- (a) the father or mother of a child, whether born within or outside marriage;
- (b) the father or mother of a child by adoption; or
- (c) a person who has demonstrated a settled intention to treat a child as a child of his or her family, other than a person who is providing foster care services as defined in *The Child and Family Services Act*; («*père ou mère*»)

“respondent” means a person against whom proceedings are taken pursuant to this Act; (*«partie intimée»*)

“spousal relationship” includes a relationship of two persons who have cohabited as spouses:

- (a) continuously for a period of not less than two years; or
- (b) in a relationship of some permanence if they are the parents of a child; (*« relation conjugale »*)

“spouse” means:

- (a) the legally married spouse of a person;
- (b) a party to a marriage that is voidable and has not been voided by a judgment of nullity or dissolution of marriage;
- (c) for the purpose of proceedings to enforce or vary an order, a party to a marriage with respect to which an order for divorce, dissolution of marriage or decree of nullity has been made; or
- (d) a person who has cohabited with another person as spouses:
 - (i) continuously for a period of not less than two years; or
 - (ii) in a relationship of some permanence, if they are the parents of a child; (*« conjoint »*)

1997, c.F-6.2, s.2; 2001, c.51, s.5.

SUPPORT OBLIGATIONS

Obligation to provide child maintenance

3(1) Every parent has an obligation to provide maintenance for his or her child to the extent that the parent is capable of doing so.

(2) Subject to subsections (4) and (5), the amount of maintenance to be provided pursuant to the obligation mentioned in subsection (1) is to be determined in accordance with the guidelines.

(3) On application, the court shall order maintenance for a child in accordance with the guidelines.

(4) Notwithstanding subsection (3), the court may order maintenance for a child in an amount that differs from the amount that would be in accordance with the guidelines if the court is satisfied that:

- (a) special provisions in an order, judgment or written agreement respecting the financial obligations of the parents, or respecting 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) the application of the guidelines would result in an amount of maintenance that is inequitable given those special provisions.

(5) Where, pursuant to subsection (4), the court orders maintenance for a child in an amount that differs from the amount that would be in accordance with the guidelines, the court shall record its reasons for doing so.

(6) Notwithstanding subsection (3), the court may order maintenance for a child in an amount that differs from the amount that would be in accordance with the guidelines if:

- (a) the parents consent; and
- (b) the court is satisfied that reasonable arrangements have been made for the maintenance of the child.

(7) An order made pursuant to this section continues in effect after the eighteenth birthday of the person for whom maintenance is payable where the person is:

- (a) under the claimant's charge; and
- (b) unable, by reason of illness, disability, pursuit of reasonable education or other cause, to:
 - (i) withdraw from the claimant's charge; or
 - (ii) obtain the necessaries of life.

1997, c.F-6.2, s.3; 2002, c.5, s.2.

Maintenance of persons over 18

4(1) In this section, "**parent**" means, with respect to a person described in subsection (2):

- (a) the father or mother of the person, whether the person was born within or outside marriage; or
- (b) the father or mother of the person by adoption.

(2) On the application of a parent of a person who is 18 years of age or older, the court may order the person's other parent to pay maintenance to the claimant for the benefit of the person if the person is:

- (a) under the claimant's charge; and
- (b) unable, by reason of illness, disability, pursuit of reasonable education or other cause, to:
 - (i) withdraw from the claimant's charge; or
 - (ii) obtain the necessaries of life.

(3) Every parent has an obligation to provide maintenance for a person described in subsection (2) in accordance with the guidelines or, if the court considers that amount to be inappropriate, in an amount the court considers appropriate, having regard to the needs, means and economic circumstances of the person described in subsection (2) and the ability of each parent to contribute to the maintenance of that person.

1997, c.F-6.2, s.4.

Spousal maintenance

5(1) On application, the court may order a person to provide maintenance for his or her spouse, in accordance with need, to the extent that the person is capable of doing so.

(2) An order for the maintenance of a spouse should:

- (a) recognize any economic advantages or disadvantages to the spouses arising from the spousal relationship or its breakdown;
- (b) relieve any economic hardship of the spouses arising from the breakdown of the spousal relationship; and
- (c) insofar as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

1997, c.F-6.2, s.5; 2001, c.51, s.5; 2015, c.22, s.8.

Priority of applications

6(1) Where a court is considering an application pursuant to section 3 or 4 and an application for a spousal maintenance order, the court shall give priority to an application pursuant to section 3 or 4.

(2) Where, as a result of giving priority to an application pursuant to section 3 or 4, a spousal maintenance order is not made or the amount of a spousal maintenance order is less than it otherwise would have been:

- (a) the court shall record its reasons for not making the spousal maintenance order or making the amount of the spousal maintenance order less than it otherwise would have been; and
- (b) any subsequent reduction or termination of the order made pursuant to section 3 or 4 constitutes a change of circumstances for the purposes of an application for a spousal maintenance order or a variation order respecting the spousal maintenance order, as the case may be.

1997, c.F-6.2, s.6.

Amount of maintenance

7(1) In determining the amount, if any, of maintenance to be paid for a dependent spouse, the court shall take into account the needs, means and economic circumstances of the parties, including:

- (a) the age and the physical and mental health of the spouses;
- (b) the length of time the spouses cohabited;
- (c) the measures available for the dependent spouse to become financially independent and the length of time and cost involved to enable the dependent spouse to take those measures; and
- (d) the legal obligation of the respondent to provide maintenance for any other person.

(2) In determining the amount, if any, of maintenance to be paid for a dependant, the court shall not take into account any benefit that the Department of Community Resources and Employment provides to or for the maintenance of the dependant.

1997, c.F-6.2, s.7; 2004, c.66, s.5.

Orders re assets

8(1) On application by a claimant, the Court of Queen's Bench may make an interim or final order restraining the disposition or wasting of assets that would impair or defeat a claim pursuant to this Act.

(2) An application pursuant to this section may be made *ex parte* at the discretion of the court.

1997, c.F-6.2, s.8.

ORDER FOR MAINTENANCE**Powers of court**

9(1) On an application pursuant to this Act, the court may make an interim or final order on any terms and conditions that the court considers appropriate, including one or more of the following provisions:

- (a) that an amount be paid periodically, either for an indefinite or limited period, or until a specified event occurs;
- (b) that a lump sum be paid or held in trust on any conditions the court considers appropriate;
- (c) that maintenance be paid with respect to any period before the date of the order;
- (d) that a person who has a policy of life insurance as defined in *The Saskatchewan Insurance Act*:
 - (i) designate his or her dependant as a beneficiary irrevocably or for the period designated by the court; and
 - (ii) pay all premiums on the policy;
- (e) that a person who has an interest in a pension plan or other benefit plan designate his or her dependant as a beneficiary under the plan and not change that designation;
- (f) where a father is ordered to pay maintenance for a child and whether or not the mother of the child is a spouse of the father, that the father pay in addition:
 - (i) expenses of the mother of the child with respect to prenatal care and the birth of the child;
 - (ii) maintenance for the mother of the child for a period not exceeding three months immediately preceding the birth of the child; and
 - (iii) maintenance for the mother of the child during any period after the birth of the child, not exceeding six months, that the court may determine as a period during which, by reason of the birth of the child, the father ought to contribute toward the maintenance of the mother;

- (g) that costs incurred in obtaining an order pursuant to this Act be paid;
 - (h) that payment pursuant to the order be secured by a mortgage on land, security, deposit or bond in any form that the court directs.
- (2) A provision of an agreement entered into by the parties may be incorporated into an order made pursuant to this Act.
- (3) An order for maintenance pursuant to subclauses (1)(f)(i) and (ii) may be made before or after the birth of the child and whether or not the child survives the birth.

1997, c.F-6.2, s.9.

Variation

10(1) Where an order for maintenance has been made pursuant to this Act or any previous Act which provided for maintenance for a child, spouse or mother of a child or a person described in subsection 4(2), and the court is satisfied that there has been a material change in circumstances since the order was made, the court, on application, may:

- (a) discharge, vary or suspend any term of the order, prospectively or retroactively;
 - (b) relieve the respondent from the payment of part or all of the arrears;
 - (c) order that an irrevocable designation of a beneficiary under a policy of life insurance, pension plan or other benefit plan be revoked; or
 - (d) make any other order pursuant to section 9 that the court considers appropriate in the circumstances.
- (2) Notwithstanding subsection (1), before the court makes an order mentioned in subsection (1) with respect to an order pursuant to section 3, the court shall satisfy itself that a change of circumstances provided for in the guidelines has occurred.
- (3) Notwithstanding subsection (1), where a spousal maintenance order provides for maintenance for a definite period or until a specified event occurs, a court shall not, on an application instituted after the expiration of that period or the occurrence of the event, make a variation order for the purpose of resuming that maintenance unless the court is satisfied that:
- (a) a variation order is necessary to relieve economic hardship arising from a material change in circumstances that is related to the spousal relationship; and
 - (b) the changed circumstances, had they existed at the time of the making of the maintenance order or the last variation order made with respect to that order, as the case may be, would likely have resulted in a different order.
- (4) An application pursuant to this section shall be made:
- (a) where the order in question was made by the Provincial Court of Saskatchewan:
 - (i) to the Court of Queen's Bench, if the proceeding is brought in a place or area designated pursuant to clause 109(1)(n) of *The Queen's Bench Act, 1998*; or
 - (ii) to the Court of Queen's Bench or the Provincial Court of Saskatchewan, if the proceeding is brought in a place or area designated pursuant to clause 109(1)(o) of *The Queen's Bench Act, 1998*; or
 - (b) where the order in question was made by the Court of Queen's Bench, to the Court of Queen's Bench at any judicial centre.

1997, c.F-6.2, s.10; 2001, c.51, s.5; 2004, c.66, s.5.

Filing agreement

11(1) A person who is a party to an agreement made before or after this Act comes into force which includes provisions for maintenance for a child, spouse or mother of a child or a person described in subsection 4(2) may file the agreement in the Court of Queen's Bench together with an affidavit stating that the agreement:

- (a) is in effect; and
 - (b) has not been set aside or varied by a court, an extraprovincial tribunal or another agreement.
- (2) A provision for maintenance contained in an agreement filed pursuant to subsection (1) may be enforced as if it were an order of the Court of Queen's Bench.
- (3) Subsections (1) and (2) apply despite an agreement to the contrary.
- (4) Subsection (2) applies to arrears accrued after December 1, 1990 and before or after the agreement is filed.

1997, c.F-6.2, s.11; 2015, c.22, s.12.

APPLICATION**Standing to make application**

12(1) Any person may apply for an order on behalf of a child.

- (2) A spouse or parent who is a minor has the capacity to commence, conduct and defend a proceeding pursuant to this Act without the intervention of a litigation guardian.
- (3) An application pursuant to this Act, other than an application pursuant to subsection 4(2), may be made by the Minister of Community Resources and Employment, in the name of the Minister of Community Resources and Employment in his or her official capacity or in the name of the dependant, if the Department of Community Resources and Employment is providing a benefit to or for the maintenance of the dependant.

1997, c.F-6.2, s.12; 2004, c.66, s.5.

Application in Provincial Court

13(1) An application made in the Provincial Court of Saskatchewan pursuant to this Act may be commenced by the filing of a notice of application in the form prescribed in the regulations.

- (2) On receiving the notice of application mentioned in subsection (1), the court shall issue a notice to appear in the form prescribed in the regulations for service on each respondent, requiring each respondent to appear at the time and place described in the notice to appear.
- (3) The notice to appear shall be served within the time limits, and the application shall be heard in accordance with any procedures, prescribed in the regulations.

1997, c.F-6.2, s.13.

Application in Court of Queen's Bench

14 An application made in the Court of Queen's Bench pursuant to this Act may be commenced:

- (a) in the form and manner prescribed by and is subject to the Queen's Bench Rules applicable to family law proceedings; or
- (b) in any other manner that the court may permit.

1997, c.F-6.2, s.14.

Mediation

15(1) On an application by a claimant or respondent pursuant to this Act, the court may appoint a person to mediate any matter that is dealt with in the application and that is at issue between the parties.

- (2) No person shall be appointed as a mediator without that person's consent.
- (3) Evidence directly arising from anything said, evidence of anything said or evidence of an admission or communication made in the course of the mediation is not admissible in any civil, administrative, regulatory or summary conviction proceeding, except with the written consent of all parties to the proceeding in which the mediator was appointed and the mediator.
- (4) The court shall specify in an order made pursuant to subsection (1) the amount of the mediator's fees and expenses that each party is required to pay.
- (5) The court may order that one party pay all of the mediator's fees and expenses where the court is satisfied that payment would cause the other party serious financial hardship.
- (6) Where the mediator and the parties are unable to resolve the matter, either party, at any time after the first mediation session, may discontinue the mediation and proceed to have the matters at issue between the parties resolved by the court.

1997, c.F-6.2, s.15; 2006, c.31, s.4.

Duty of claimant's, respondent's lawyer

16(1) It is the duty of every lawyer who undertakes to act on behalf of a claimant or respondent pursuant to this Act to:

- (a) discuss with the claimant or respondent the advisability of using alternative methods to resolve the matters that are the subject of the application; and
- (b) inform the claimant or respondent of the collaborative law services and mediation services known to him or her that might be able to assist the parties in resolving those matters.

(2) Every application presented to the court by a lawyer pursuant to this Act must contain a statement signed by the lawyer certifying that he or she has complied with subsection (1).

1997, c.F-6.2, s.16; 2012, c.24, s.3.

Jurisdiction of court

17(1) No person who is a party to an application pursuant to this Act shall make another application pursuant to this Act to another court with respect to the same matter.

(2) A court may order that an application pursuant to this Act be transferred to another court having other jurisdiction where, in the first court's opinion, the other court is more appropriate to determine the matters in issue that should be determined at the same time.

1997, c.F-6.2, s.17.

Closed hearing

18 Where, in the opinion of the court, the desirability of protecting against the consequences of possible disclosure of personal matters outweighs the desirability of holding a hearing in public, the court may:

- (a) exclude the public from the hearing or any part of it; and
- (b) prohibit the publication of:
 - (i) any matter connected with the application or given in evidence at the hearing; or
 - (ii) any document filed with the court.

1997, c.F-6.2, s.18.

Order in absence of respondent

19 The court may proceed in the absence of the respondent where:

- (a) an application is made pursuant to this Act;
- (b) notice of the application has been duly served on the respondent; and
- (c) the respondent fails to appear.

1997, c.F-6.2, s.19.

Adjournment

20 The court may adjourn a hearing in whole or in part, from time to time, on any conditions that it may consider appropriate.

1997, c.F-6.2, s.20.

Financial statements

21(1) In this section and in section 23, "**court**" means the Provincial Court of Saskatchewan. (*«tribunal»*)

(2) Subject to subsection (3), when an application for maintenance is made pursuant to this Act, the claimant and the respondent shall serve on the other party and file with the court:

- (a) a completed financial statement in the form and manner prescribed in the regulations; and
- (b) any other financial information or documents that the court may order.

(3) The financial statement mentioned in clause (2)(a) need not be filed and served where:

- (a) maintenance is sought only for a spouse; and
- (b) the parties consent.

(4) Where a party fails to file the financial information required pursuant to subsection (2), the court may draw whatever inferences appear to be reasonable having regard to all the circumstances.

1997, c.F-6.2, s.21.

Registration of order

22(1) A maintenance order made by the Provincial Court of Saskatchewan pursuant to this Act or any previous Act that provided for maintenance for a child, spouse or mother of a child or a person described in subsection 4(2), or a copy of the order certified by the person who made the order or by a person acting in his or her stead:

- (a) may be filed in the Court of Queen's Bench; and
- (b) on filing, may be enforced as an order of the Court of Queen's Bench.

(2) Without limiting the generality of clause (1)(b), an order filed pursuant to clause (1)(a) is deemed, for the purposes of *The Inter-jurisdictional Support Orders Act*, to be a support order as defined in that Act.

1997, c.F-6.2, s.22; 2002, c.I-10.03, s.48.

Service

23(1) Subject to subsections (2) and (3), any document required by this Act to be served may be served:

- (a) personally, by any adult, by delivering a copy of the document to the person to be served; or
- (b) by mailing to the person to be served a copy of the document by registered mail or certified mail.

(2) A document may be served on a person by leaving a copy with the person's lawyer if the lawyer accepts service by signing the lawyer's name on a true copy of the document and indicating that he or she is the lawyer for that person.

(3) The court may make an order for substituted or other service by letter, advertisement or otherwise as it considers reasonable or it may make an order dispensing with service where, on an *ex parte* application, the court is satisfied that:

- (a) prompt service of a document cannot be effected;
- (b) the whereabouts of a person to be served cannot be determined; or
- (c) the person to be served is evading service.

1997, c.F-6.2, s.23; 2016, c29, s.4.

Provisional order

24(1) Every application for a provisional order or provisional order of variation within the meaning of *The Inter-jurisdictional Support Orders Act*:

- (a) is to be made to the Court of Queen's Bench at the judicial centre nearest to the place where the claimant resides; and
 - (b) may be made in the absence of the respondent and without service of notice on him or her or proof of his or her ability to pay.
- (2) On an application mentioned in subsection (1), the judge may make any order that he or she might have made if the respondent had been served with notice of the application and failed to appear where:
- (a) it is proven that the respondent is resident in a reciprocating jurisdiction within the meaning of *The Inter-jurisdictional Support Orders Act*; and
 - (b) after hearing the evidence, the judge is satisfied of the justice of the application.

1997, c.F-6.2, s.24; 2002, c.I-10.03, s.48.

Appeal

25(1) An appeal lies from any order made pursuant to this Act within 30 days of the date of the order:

- (a) to the Court of Appeal, if the order under appeal was made by the Court of Queen's Bench or a judge of that court; or
 - (b) to a judge of the Court of Queen's Bench if the order under appeal was made by the Provincial Court of Saskatchewan or a judge of that court.
- (2) There is no appeal of an order made pursuant to clause (1)(b) or section 24, except by leave of the Court of Appeal or a judge of that court.

1997, c.F-6.2, s.25.

No limitation

26 Notwithstanding *The Limitations Act*, there is no limitation period respecting any proceedings pursuant to this Act.

2004, c.16, s.5.

Adding parties

27(1) Subject to subsection (2), in any proceeding concerning maintenance, the court, on the respondent's motion, may add as a party another person who may have an obligation to provide maintenance to the same dependant.

(2) The Minister of Community Resources and Employment shall not be added as a party pursuant to this section.

1997, c.F-6.2, s.27; 2004, c.66, s.5.

Regulations

28 The Lieutenant Governor in Council may make regulations:

- (a) prescribing the forms for the notice of application and notice to appear;
- (b) prescribing time limits for service of a notice to appear;
- (c) prescribing procedures for hearing applications in the Provincial Court of Saskatchewan;
- (d) adopting, in whole or in part and as amended from time to time or otherwise, guidelines for maintenance orders pursuant to section 3 or 4 or establishing guidelines for maintenance orders pursuant to section 3 or 4, including guidelines:
 - (i) respecting the manner in which the amount of a maintenance order is to be determined;
 - (ii) respecting the circumstances in which discretion may be exercised in the making of a maintenance order;
 - (iii) respecting the recalculation of the amount payable;
 - (iv) respecting the circumstances that give rise to the making of a variation order with respect to a maintenance order;
 - (v) respecting the determination of income;
 - (vi) authorizing the court to impute income;
 - (vii) respecting the production of income information and providing for sanctions when that information is not provided;
- (e) prescribing any other matter or thing that the Lieutenant Governor in Council considers appropriate for the purposes of this Act.

1997, c.F-6.2, s.28.

REPEAL, TRANSITIONAL AND COMING INTO FORCE

S.S. 1990-91, c.F-6.1 repealed

29 *The Family Maintenance Act* is repealed.

1997, c.F-6.2, s.29.

Transitional

30 An application for maintenance made pursuant to *The Family Maintenance Act*, as that Act existed before the coming into force of this section, but not completed before this section comes into force, is continued and is to be dealt with pursuant to this Act as if it were made pursuant to this Act.

1997, c.F-6.2, s.30.

Coming into force

31 This Act comes into force on proclamation.

1997, c.F-6.2, s.31.