



Community Legal Information Association of PEI, Inc.

# Family Law on PEI

Separation

Divorce

Division of Property

Spousal Support

Custody and Access  
(Parenting  
Arrangements)

Child Support

Annulments

Family Violence

Immigration Status

**Community  
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Association of  
PEI, Inc.**

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## Family Law on PEI

Ending a relationship can be a very difficult time. It may also be a relief or a positive decision. For most families, trying to figure out what to do next can be confusing. This booklet will explain some of the things you need to know about separation or divorce.

Family and friends may offer incorrect information about legal rights in relation to children, support and property in Canada.



### Married Spouses

Spouses who were legally married can choose to separate or to divorce. A divorce legally terminates a marriage. If married spouses separate, but do not get a divorce, they are still legally married.



### Unmarried Spouses

Spouses who lived together but never married (often called “common-law” in English) do not get a divorce. Separation automatically dissolves unmarried relationships.

Under PEI family law, for child or spousal support purposes, couples are considered spouses when they have lived together in a conjugal (sexual) relationship for 3 years or more **OR** are living in a conjugal (sexual) relationship and are the natural, or adoptive, parents of a child or children.

If you are dealing with national government programs like Immigration, Refugees and Citizenship Canada (IRCC) or Canada Revenue Agency (CRA), they may have different definitions of “common-law” relationships. For example, CRA considers you to be spouses after only one year.



## Separation

Canada's *Divorce Act* says that separation for married spouses begins when you and your spouse begin living "separate and apart". Separate and apart refers to the **intention** of at least one spouse to not live together. This intention to not live together as married spouses must be communicated to the other spouse. You do not have to take any further action to make your separation "legal". Sometimes, spouses cannot afford to live apart right away. You can be legally separated and still live in the family home. Examples of living separate and apart, while still in the same house, include sleeping in different rooms and not eating together.

### *Separation Agreements*

A separation agreement is a legally binding contract made between spouses (married or unmarried) at the time of separation, or afterwards. It usually includes information about how property will be divided and how matters relating to the children will be handled. Separation agreements are **not required** when separating or divorcing, but it is a good idea to outline, in writing, how you will divide your property and how you will deal with issues such as child custody. Remember to clearly state the date of your separation in the agreement. This could be important later, if the Court gets involved, such as during divorce proceedings.

You do not need a lawyer to write a separation agreement, but many people hire lawyers to do so. If you write your own, it is a good idea for each spouse to get independent legal advice before signing the agreement.

A separation agreement is legal if both spouses sign it in front of a witness who also signs the document. Witnesses must be at least 18 years old and must be mentally competent. A witness does not need to know the terms of the agreement; they are only there to witness your signatures. The witness may eventually be asked to affirm that you and your ex were both mentally competent at the time of signing and that neither of you were being threatened, or forced to sign.

Once the separation agreement is signed, it is a legal contract. It is important to be sure you fully understand and agree with the terms of the agreement **before** you sign it.

You do not need to file your separation agreement with the Court. It is a private contract between spouses. The agreement can be used in court proceedings if disputes arise.

For a separation checklist, see the CLIA publication called, *What Do I Include in a Separation Agreement?*

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## Division of Property

There are many cultural beliefs about spouses' rights to property both during and after the marriage. For example, cultures that practice bridewealth may believe that if a wife seeks the divorce, she loses her right to the bridewealth unless she can show her husband is at fault. Such practices may not be in accordance with Canadian law.

**Married Spouses:** The law states that the value of any assets acquired during your marriage (and that you still own) is divided equally between spouses. Debts are also equally divided. However, if a 50/50 division does not work for your family, spouses can agree to an unequal division of property or a judge can order an unequal division of property. Spouses can agree to divide their property according to cultural practices if they both agree. This should be written in a separation agreement signed by a lawyer. If the marital property is in another country, it is important to get legal advice on how the Canadian legal system might apply.



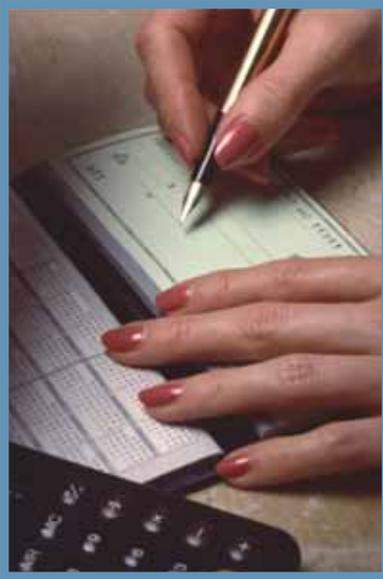
**Unmarried Spouses:** The equal division of property rule does not apply to unmarried spouses. When unmarried spouses separate, the person whose name is on the deed or proof of purchase of the asset may be the only one entitled to it. Unmarried spouses are not responsible for each other's debts, unless they co-signed for the debt or the debt is in both names. However, you and your spouse can agree to a division of property and debts, or one of you can make a claim in court for division of property and debts. If you have contributed time or money towards an asset owned by your spouse, you may wish to speak to a lawyer about making a claim in court for a share in the value of the asset. Pensions from employers or governments may be divisible for unmarried spouses, so it is important to speak to the pension provider for details. For more information on unmarried spouses, see the CLIA publication, *Living Together*.

### Can I force my Ex to Leave the Family Home?

Both married spouses have an equal right to live in the family home and neither one of you can force the other to leave unless there is a court order.

## Spousal Support

In some cultures, a spouse's entitlement to support may be linked to "blame". For example, if the wife had an affair she may not be able to ask for support. If a marriage breaks down before the three year sponsorship period is over, the sponsor may feel they do not have to pay spousal or child support. This is not true in Canada.



Spousal support is money paid by one spouse to the other spouse to help with ongoing expenses after the relationship has ended. Spousal support is not automatic. A spouse asking for support must prove he or she is "entitled" to it. An ex-spouse or partner is usually expected to work and earn money if they are able to. A common-law partner can ask for support, but the couple must have lived together for 3 years or have had a child together. Common-law couples, unlike a married couple, must file for support within two years of separation. Spousal support payments may be, but not necessarily, based on Justice Canada's Spousal Support Advisory Guidelines. Lawyers and judges must consider many factors to decide whether there should be any spousal support and, if so, the appropriate range of support and how long it will last.

## Children

### Custody and Access (Parenting Arrangements)

In some cultures, when a family breaks up, by tradition, the children may stay with the father. In other cases, the children are expected to stay with the mother. Newcomers may not realize that, in Canada, both partners have equal rights to custody. A woman might worry she could lose custody because her husband makes more money. When an immigrant family breaks up, there may be concerns that one parent will take the children back to their country of origin without permission of the other parent (parental abduction).

When parents split up in Prince Edward Island, they have equal right to the children. Until a court order or agreement says otherwise, the law presumes they have joint custody. Parents will have to decide where the children live, the parenting schedule, how decisions about the kids will be made, how much child support will be paid and so on. The types of custody are:



- **Joint custody:** Both parents have the legal right to make major decisions about the child together. The amount of time the children spends with each parent can vary. This is by far the most common type of custody in PEI.
- **Sole custody:** One parent has the legal right to care for the child and make major decisions. The other parent may have access. Sole custody is uncommon in PEI.
- **Split custody:** In split custody arrangements, parents divide custody of their children with each parent having physical custody of one or more children. Split custody is uncommon in PEI.

You and the other parent can come to an agreement between yourselves on custody and access arrangements for your children, or you can get help from a mediator or a lawyer. If you and the other parent can't agree, you can go to court and ask a judge to decide.

If you are afraid the other parent or family members will take the child out of Canada or hide them, there are steps you can take. Tell Passport Canada you do not consent to your child being issued a passport (if they are Canadian citizens.) Ask them to put your child's name on the Passport Control List. Sources of more information about preventing parental abduction:

- Call Passport Canada toll-free at 1-800-567-6868 or TTY services (for people with hearing impairments) 1-866-255-7655
- International Child Abduction: A Guide for Left-Behind Parents at [www.travel.gc.ca](http://www.travel.gc.ca)
- Vulnerable Children's Consular Unit, Global Affairs, toll-free in Canada 1-800-387-3124

If your children are not Canadian citizens, you may wish to contact Canadian Border Services (1-800-461-9999), the embassy of your country, and the agency that issued their passports.

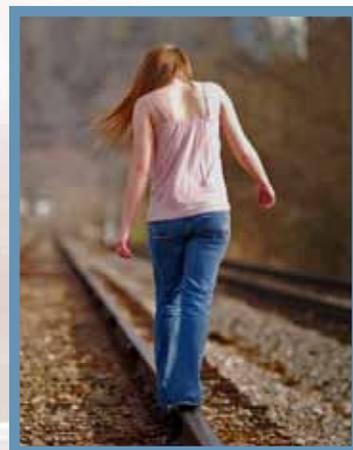


## Child Support

In some countries, children whose parents are not legally married may not have rights to support and inheritance. Some people think that they do not have to pay child support if the couple never lived together. However, under Canadian law, both parents must contribute to the cost of raising their children even if the parents were not married to each other, or never lived together. In Canada, there is no such thing as an illegitimate child.

Across Canada, parents can use the Child Support Guidelines (“Guidelines”) to calculate how much the parent without custody must pay (<http://www.justice.gc.ca/eng/fl-df/child-enfant/cst-orpe.html>). In cases where both parents take care of the child approximately equally (defined as 40% or more of the time), the parent with the higher income usually pays some child support to the other parent, according to the Guidelines.

In Prince Edward Island, child support continues until the child turns 18 (the age of majority). It can last longer if the child is over 18 and has a disability, or illness, or attends post-secondary education full-time.

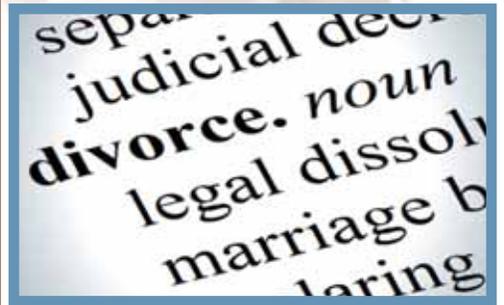


The Guidelines set out the basic monthly amount of child support payable. In addition to the monthly amount of child support, a parent can also ask for more money from the other parent for the child’s “special expenses”, like certain medical, education, extracurricular activities, day care and certain other expenses. If circumstances change, for example, if the paying parent has a big increase or decrease in income, either parent can ask the court to change the support order.

You can apply for a child support order immediately upon separation. For free help applying for a child support order, call the Child Support Guidelines Office: 902-368-6220 (Charlottetown) or 902-888-8188 (Summerside).

# Divorce

Fear of divorce may be rooted in religious and cultural values. In some cultures, only men can initiate divorce proceedings. If a woman divorces, she may never again be able to visit her family. Divorced women may have a lower status. They may be financially dependent and leaving could place a burden on their own families. A Canadian divorce may not be recognized in the couple's country of origin. Wives, especially if they are still in the sponsorship process, may be controlled with threats of divorce. This section will explain the rules in Canada.



The rules for divorce in Canada are in the *Divorce Act*. Either spouse can ask for the divorce. You do not have to show who is at fault. There is no advantage to showing fault. Even if your spouse does not agree to the divorce, you can ask the judge to give you a divorce. Your spouse cannot force you to stay in the marriage. You cannot get divorced without your spouse knowing. Your spouse must have the chance to see the divorce paperwork you file and make a response.

Only a *Divorce Judgment* from a judge can officially terminate a marriage. It is illegal in Canada to get married to another person if you have not “legally” ended the previous marriage. However, you may enter into an unmarried conjugal (sexual) relationship while still married.

To start a divorce in Canada, you or your spouse must be living in Canada for at least one year. You can get a divorce in Canada if you were married in a different country. You do not need to be a Canadian citizen to get a divorce in Canada. You file for divorce in your province of residence. To file for divorce on PEI, you or your spouse must have lived on PEI for at least the last 365 days (one year).

In Canada, you can choose to get a divorce because your marriage has broken down for one of three reasons:

- a one year separation;
- adultery committed by the other spouse;
- mental or physical cruelty committed by the other spouse.

In Canada, most people get divorced after they have been separated for one year. Divorce on the grounds of adultery or cruelty is rare in PEI.

## *One Year Separation*

The *Divorce Act* states that one way of proving marriage breakdown is for the spouses to end the relationship and live “separate and apart” for one year. You can start the process of filing for divorce before the one year is



up, but you cannot complete your divorce until you have been separated for at least one year. For more information on separation, see page: 2.

The one year period of separation must be uninterrupted and continuous up to the time that the *Divorce Judgment* is granted. However, the *Divorce Act* does allow for efforts at getting back together, provided that the time you live together is 90 days or less during that one year. This is called a "trial cohabitation" and does not interrupt the one year period of separation.

#### ***Adultery Committed by the other Spouse***

A second way to prove marriage breakdown is to show that your spouse has committed adultery. You cannot get a divorce because of your own adultery; the adultery must have been committed by your spouse. You will have to provide proof in court.

#### ***Mental or Physical Cruelty Committed by the other Spouse***

The third way to establish marriage breakdown is cruelty. Cruelty may be physical or mental, but it must be of such a kind as to make it intolerable to remain together. You will have to provide proof in court.

### **Contested and Uncontested Divorces**

A contested divorce is when the spouses do not agree on the terms of the divorce. For example, they may disagree about child custody or about who will own the matrimonial home.

If the spouses cannot come to an agreement about the terms of the divorce on their own or with assistance from a mediator or lawyer(s), they may have to go to court. If the divorce goes to a court hearing, a judge will decide on the matters.

An uncontested divorce is when the spouses agree on all the terms of the divorce. An uncontested divorce is filed at the courthouse, reviewed by a judge, and the judge issues a *Divorce Judgment*. No court hearing is

necessary. An uncontested divorce can take between three and six months to complete. A contested divorce often takes much longer. The spouses may not need to hire lawyers for an uncontested divorce, although legal advice is always recommended before signing legal documents.

You may wish to use the **Uncontested Divorce Kit** from [www.cliapei.ca](http://www.cliapei.ca). This kit provides all the forms and instructions necessary to complete an uncontested divorce on PEI. For more information on purchasing the kit, email us at [clia@cliapei.ca](mailto:clia@cliapei.ca) or call us at 902-892-0853 or 1-800-240-9798.



### Other important details:

- If you have dependent children, child support is mandatory. If you apply for a divorce and child support is not being paid, the judge may refuse to grant the divorce until child support is in place and working.
- Once your divorce is complete, the court will issue a *Certificate of Divorce*. The certificate should be kept with your important papers as it is the document required by Vital Statistics for a marriage licence if you remarry, as well as for proof of divorce. If you lose your Certificate, there is a fee to replace it.
- It is a good idea to get a new Will if you are separated or divorced. If you already have a Will, you may wish to remove your ex-spouse from your Will. If you remarry, your Will is no longer valid. For more information on Wills, see CLIA's publication, *Wills*.

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## Annulments



A marriage annulment can be either a religious annulment or a legal annulment.

A religious annulment involves the revoking of a marriage by your place of worship only. This type of annulment is not recognized legally. If you get a religious annulment without a divorce or legal annulment, you are still legally married.

If you would like a religious annulment, speak to your religious leader about the process.

A legal annulment is the legal declaration that a marriage is void and has been since the beginning. If you get a legal annulment, you do not need to get a divorce. Legal annulments are only granted in very rare circumstances.

There are very specific reasons for which you can apply for a legal annulment. Some reasons include:

- **Non-consummation of the marriage:** this occurs if one spouse is permanently unable or unwilling to have sex within the marriage and the other spouse was not aware of the situation before marriage. If the spouses have sex, even once, after the marriage, the marriage has been consummated.
- **Family members:** if the spouses are too closely related to each other by blood or adoption.
- **Underage marriage:** if a spouse is under the age of 18 and married without legal permission.
- **Duress:** if a spouse entered the marriage because they were threatened, coerced, or were otherwise fearful for their safety.
- **Mental Capacity:** if a spouse lacked the mental competency required to enter into a legal contract.
- **Pre-existing marriage:** if a spouse is already married to another person.
- **No consent:** if one or both spouses were unable to provide consent at the time of marriage.

There may be other reasons for a legal annulment. If you believe you might qualify for a legal annulment and would like to pursue one, you will need legal advice.

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## Legal Advice



It is always a good idea to speak with a lawyer when divorcing or separating. This is especially true if you and your spouse cannot agree on the terms of the divorce. You should also contact a lawyer if you do not understand the legal process or if you are unable to complete any parts of the process. The Lawyer Referral Service can provide you with a short consultation with a lawyer for a modest fee. To access this service, call CLIA at 902-892-0853 or 1-800-240-9798.

## Resolving Conflict Outside of Court

If you and your spouse cannot agree on terms of the separation or divorce, you may need professional assistance. Before going to court, consider whether out-of-court conflict resolution might work for your family:

**Mediation** involves you, your spouse, and a neutral mediator. The mediator helps you find a solution by examining underlying issues and finding common ground between you and your spouse. The goal is to create a mutually acceptable agreement. To find a mediator near you, go to [www.mediationpei.com](http://www.mediationpei.com) . If you need help coming to an agreement about your children, there is a free mediation service offered by **Family Court Mediation**: 902-368-6655.

**Collaborative Practice** is when you, your spouse, your collaborative lawyers, and sometimes other support professionals, like a financial or mental health professional, agree to resolve the issues without going to court. The process is based on mutual respect and the best interests of the family. For more information, go to [www.cppei.ca](http://www.cppei.ca) .



## Other Support Services

**Community Legal Information Association (CLIA):** [www.cliapei.ca](http://www.cliapei.ca), [clia@cliapei.ca](mailto:clia@cliapei.ca), or 1-800-240-9798 or 902-892-0853. CLIA provides legal information, referrals, publications on legal topics in both official languages, public speakers, and presentations on legal topics. This is a free, confidential service. We also host the Lawyer Referral Service, which provides a short consultation with a lawyer for a modest fee.

**Family Legal Aid:** 902-368-6540 (Kings and Queens Counties) or 902-888-8066 (Prince County). This program may provide low income applicants with free legal representation for some family law issues. There are criteria that you must meet to be accepted.

**Child Support Guidelines Offices:** 902-368-6220 (Charlottetown) or 902-888-8188 (Summerside). This free service will give you information on the amount of child support your child is entitled to under the Child Support Guidelines. The staff will help you make an application to the Court for child support or for a variation of child support. This office also has forms for cases proceeding under the *Interjurisdictional Support Orders Act*, that is, if the other parent lives in another province or country, you may be able to complete your application on PEI and have it forwarded to the other location.

**Administrative Recalculation Office:** 902-368-4109. If you have a child support order or agreement that provides for yearly recalculation of child support, you can register your order or agreement with this office to get your child support recalculated annually. If your order or agreement does not contain a recalculation clause, you cannot use this service.



**Maintenance Enforcement Program:** 902-894-0383 or 902-368-6010. This office collects and distributes child and spousal support and takes steps to enforce support orders and agreements when they are not paid. You must register your order or agreement with this service to use it.

**Positive Parenting from Two Homes:** 1-877-203-8828 or 902-368-4333. Free education sessions are offered in various Island communities for parents separating or divorcing or parenting from two homes. Sessions help parents deal with concerns about children getting caught in the middle of parental conflict. If both parents participate they will attend separate sessions. There is a program for children in some age groups to help them with their parents' separation or divorce.

**Triple P Parenting:** Triple P is a parenting program that provides ideas and healthy approaches when parenting children and teens. Clients choose the strategies that will work best in their families.  
[www.triplep-parenting.ca/pei](http://www.triplep-parenting.ca/pei)

**Community Mental Health:** Charlottetown 902-368-4430; Summerside 902-888-8180; Montague 902-838-0960. Offers counseling for individuals and families who are having mental health difficulties.



## Family Violence

Family violence takes many forms, including emotional abuse, physical abuse, sexual abuse, cultural abuse, and financial abuse. Anyone can be a victim of family violence. In this section, we will talk about the abuse of women, but the information in this section applies to men as well.

In PEI, as in the rest of Canada, any form of violence is not okay. It is not acceptable if you are harmed by someone who is supposed to love and care for you. There are laws to protect you from physical, emotional, and sexual violence. If you are feeling threatened and unsafe in your home, there is help for you. There are trained people who will understand your situation and can work with you. In Canada, it is a human right that everyone lives free from violence.

You can call the police if someone is hurting you or the children by calling 911. They will come to your house. They will talk to your family. They may lay charges of assault against the abuser. If the assault is serious, they may arrest the abuser. They can apply for an Emergency Protection Order for you, or they can take you to a safe place. If you can't speak English, police will try to arrange translation services.

When you apply for an Emergency Protection Order, you can ask to be able to continue to live in your home if it is safe and that the person who is hurting you must stay away from you. The person may have to continue paying the rent or mortgage and you may be given temporary custody of your children.

You can call Victim Services for information and help with getting an Emergency Protection Order:

- Charlottetown: 902-368-4582
- Summerside: 902-888-8218

Victim Services can also help you through the legal process if the abuser has been arrested and charged with assault. They will make sure you understand your rights and explain everything to you.



PEI Family Violence Prevention Services has an emergency shelter called Anderson House. If you are abused and need a safe place to go immediately, Anderson House may be able to help. It is an emergency shelter for women and their children who are leaving abusive relationships. Anderson House serves women and children in need across Prince Edward Island. The shelter is staffed 24 hours a day, 7 days a week. If you might need to leave your home for safety, call Anderson House for help making a safety plan. The phone number for Anderson House is 902-892-0960 or toll-free 1-800-240-9894. If you are in an emergency situation and are unsafe, call the police at 911.

The phone number for Anderson House is also a crisis line. Even if you are not looking to come into the shelter, you can still call for help about abuse. When you call the crisis line, staff will give you support and information as well as referrals to other kinds of help. Men are welcome to call the crisis line.

You will not be deported just because you leave an abusive relationship, however, you may need to take further steps to keep your immigration status up to date. If you are not sure how the separation will affect your status in Canada, you should consult an immigration lawyer.

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## Immigration Status

Immigrants who were married outside Canada may think they cannot go to court in Canada to resolve family law matters. A sponsored spouse or partner may be afraid their sponsor will have them deported if they separate or divorce their spouse. Immigrants may be fearful of the challenges they might face when navigating the family justice system in Canada.

Immigrants have similar rights to anyone else to use the courts in Canada to deal with their family law issues. Your spouse, partner or sponsor cannot make you leave Canada once you have permanent resident status.

The person who sponsors someone to come to Canada must sign a sponsorship undertaking. If a sponsor changes his or her mind about sponsoring you, they must tell the Case Processing Centre in Mississauga (CPCMEXTCOM@cic.gc.ca) before the visa office issues your permanent resident visa.

Once you are a permanent resident, your sponsor must continue to support you for three years, even if you separate or divorce. Immigration, Refugees and Citizenship Canada will not make you leave Canada just because your sponsor wants you to do so.

If you are an immigrant or refugee with permanent resident status, you cannot be forced to leave Canada simply because you leave your spouse. If you are not a permanent resident, an immigration lawyer can explain how a change in your marital status could affect your right to stay in Canada.

For a wealth of information for newcomers to Canada, check out the Immigration, Refugees and Citizenship Canada website at: [www.cic.gc.ca/english](http://www.cic.gc.ca/english) or telephone: 1-888-242-2100

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## Other Family Law Resources at CLIA

CLIA provides many free resources available online at [www.cliapei.ca](http://www.cliapei.ca) and in paper copies. Other family law publications include:

- Adoption;
- Becoming a Parent;
- Child Support: What You Need to Know;
- Civil Trial Procedure;



- Custody and Access;
- Family Court Procedure;
- Grandparents Parenting on PEI;
- Important Numbers during Separation and Divorce;
- Legal Information for Same Sex Couples;
- Living Together;
- Maintenance Enforcement;
- Names;
- A Parenting Plan for Parents on PEI;
- Resolving Conflict Outside of Court;
- Spousal Support: What You Need to Know;
- The *Family Law Act* in PEI;
- What do I Include in a Separation Agreement?



This pamphlet was published by Community Legal Information Association of Prince Edward Island Inc (CLIA) for information and education purposes only. It contains general information about the law. It does not contain a complete statement of the law in this area and is not a substitute for legal advice.

If you need legal advice, contact a lawyer. If you do not know a lawyer, you may contact one through the Lawyer Referral Service (902-892-0853 or 1-800-240-9798). You can have a brief consultation with a lawyer for a modest fee.

We gratefully acknowledge that this document draws from the PLEIS-NB publication called Family Law Matters For Immigrants in New Brunswick (<http://www.legal-info-legale.nb.ca>). We used PLEIS-NB material with permission.



Community Legal Information Association of PEI, Inc. (CLIA) is a charitable organization that receives funding from Justice Canada, the PEI Department of Justice and Public Safety, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you can visit our website at [www.cliapei.ca](http://www.cliapei.ca), email us at [clia@cliapei.ca](mailto:clia@cliapei.ca), or telephone CLIA at 902-892-0853 or 1-800-240-9798. You can also find us at: [www.facebook.com/CLIAPEI](http://www.facebook.com/CLIAPEI), [www.twitter.com/CLIAPEI](http://www.twitter.com/CLIAPEI) and [www.youtube.com/CLIAPEI](http://www.youtube.com/CLIAPEI).

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Charitable registration number: 118870757RR0001

ISBN: 978-1-897436-80-6

2018

