



a guide
to the law for
saskatchewan women





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family law

spousal relationships

In Saskatchewan, different forms of intimate relationships are legally recognized as “spousal relationships”. In addition to formal marriages, Saskatchewan law recognizes some common law relationships as spousal relationships. Under Saskatchewan law, the same legal rights and obligations apply to all persons in a recognized

spousal relationship, whether that relationship is a legal marriage, an unmarried, opposite sex relationship, or a same-sex relationship.

Persons in a spousal relationship do not give up any of their basic legal rights and freedoms upon entering a spousal relationship. Each spouse remains their own person in the spousal relationship and generally has the legal right to go about their life, independent of their spouse.

legally recognized spousal RELATIONSHIPS

marriage: the legal union of two people, solemnized before a civil or religious official, along with required formalities, such as a valid marriage licence.

common law relationships: where two individuals, either of the opposite or same sex, have cohabited as spouses continuously for a period of at least two years.

parents of a child: in some instances, where the parents of a child have lived together as spouses in a relationship of less than two years, but of some permanence, they will be recognized as being in a “spousal relationship”.

For example, women in spousal relationships have the same right to freedom of belief and expression as single individuals. Women in spousal relationships can enter into contracts in their own right. The law does not assume that women in spousal relationships will change their surname upon entering into a spousal relationship, although they may choose to do so. And, one spouse is not automatically responsible for the other spouse's debt simply because they are in the spousal relationship.

Persons in a spousal relationship do, however, have certain rights and obligations in relation to the other spouse and any children of the relationship. While each spouse has the right to own property and earn money in their own right, the other spouse will have an interest in property or money acquired during the relationship. In a spousal relationship, each spouse has an obligation to financially support the other spouse, if that support is needed. Each spouse has an equal right to live in the family home during the relationship, regardless of who “owns” the home, or pays the rent or mortgage. In the absence of a custody order or agreement, parents are the joint guardians of their minor children when they have lived together after the birth of the child, and both parents have an obligation to support their children.

During a spousal relationship spouses may disagree about these notions, but generally not to the point that either spouse needs to rely on the law. As these notions usually become legal issues only if the couple separates, they will be discussed more fully under the heading “Relationship Breakdown”. Before turning to that, however, we will examine a few aspects of spousal relationships in more detail.

It is important to note that individuals in a relationship that is not a legally recognized spousal relationship may still have rights that stem from the relationship. The law that applies in these situations is far less clear, and varied, depending on the individual circumstances. Legal advice is recommended.

● **legal marriages**

Although different forms of relationships are recognized as “spousal relationships”, the requirements for a legal marriage are somewhat different. In order to create a valid marriage, you and your partner must be...

- unmarried at the time of the marriage ceremony
- over the age of 18 - persons aged 16 or 17 may marry provided that they have the consent of their parents or guardian; persons under 16 cannot marry without the consent of a judge
- not within the prohibited degrees of consanguinity (blood relationship)

prohibited
degrees of
CONSANGUINITY

An individual may
NOT
marry their...

- grandparent ▪ parent ▪
- child ▪ grandchild ▪
- sibling ▪

As well, there are certain formalities that must be followed. Everyone who gets married in Saskatchewan needs a marriage licence. Licences are available at most jewelry stores and local town or city halls for a fee of \$50. Identification such as a valid driver's licence or birth certificate must be presented.

The licence issuer will read a **statutory declaration** that both you and your marriage partner must complete and sign in the presence of the issuer. If either you or your future spouse is unable to understand English, you must arrange to have an interpreter present.

The statutory declaration is a series of questions and information covering matters such as your names, addresses, current marital status and any blood relationship between the two of you that would prohibit the marriage. If either party is divorced, a final divorce document must be presented.

Marriages are solemnized or legalized through either a religious or civil ceremony. Both clergy members and marriage commissioners must be registered in Saskatchewan in accordance with *The Marriage Act* in order to perform marriage ceremonies. In both religious and civil ceremonies, two witnesses over the age of 18 are required.

Marriage licences usually become effective the day after you sign the statutory declaration and remain effective for a period of 90 days from the time of signing.

- **homestead rights**

Homestead rights protect spouses who are not the registered owners of their homestead. A homestead is any property that a couple in a legally recognized spousal relationship has lived in, as their family home, during the relationship. *The Homesteads Act* sets out certain steps that must be followed before a homestead is sold, transferred, mortgaged, rented or otherwise disposed of.

Originally, homestead protection was intended to protect married women from losing the family home. At the time the legislation was first introduced, it was very common for a husband to hold title to the couple's home in his name only. Before then, as sole legal owner, a husband could deal with the family home as he pleased, without the knowledge or consent of his wife.

The Homesteads Act reflects modern circumstances and offers protection to a spouse in a legally recognized spousal relationship where the other spouse is the only registered owner of the property. The law protects the non-owning spouse, whether that spouse is in a legal marriage, or a common law relationship.

When only one spouse is the registered owner of a homestead, he or she can only sell or otherwise deal with an interest in the homestead if the non-owning spouse

consents. If a non-owning spouse consents, they must sign an acknowledgement separate and apart from the owning spouse, indicating that they understand they are giving up their homestead rights freely and voluntarily.

The right to enforce homestead rights ends when legally married spouses divorce or common law spouses have been separated for 24 months.

- **wills**

Entering or ending a spousal relationship can affect the validity of a person's Will. A Will made *before* marriage is automatically cancelled when the person who made the Will marries. A Will made by an individual in a common law relationship is also automatically cancelled after the couple has lived together for two years - the point in time when such a relationship becomes legally recognized as a "spousal relationship".

This automatic cancellation can be avoided by preparing a Will *in contemplation* of the spousal relationship. A Will prepared before entering a spousal relationship that expressly declares that it is made in contemplation of a planned relationship with a specific person will continue to be valid after the spousal relationship begins.

Wills made *after* a person marries or has been in a common law relationship for two years are valid. Because this distinction is sometimes confusing, it may be helpful to look very briefly at the public policy or rationale behind this law.

When a Will is automatically cancelled at the beginning of a legally recognized spousal relationship, a new spouse and any children are protected by *The Intestate Succession Act*, which provides for a spouse and any children before all others that could benefit from the estate of the deceased. This presumes that the deceased person would have wanted to provide for the surviving family. However in the absence of instructions in a Will, the law makes an arbitrary distribution for that purpose.

If a Will is prepared in contemplation of a specific spousal relationship in the future or after the spousal relationship has begun, it is clear that the testator made decisions regarding the distribution of their estate knowing that they had a spouse or a spouse and children. In this case, in the event that a spouse and children are not properly provided for under the Will, they can apply under *The Dependent's Relief Act* or *The Family Property Act* to obtain a fair share of the deceased person's estate.

It is very important for people entering a spousal relationship to know whether their Will is going to continue to be valid after the relationship begins. If a person dies without a valid Will, their property is divided according to *The Intestate Succession Act*, regardless of their wishes regarding the distribution of their property. This Act is discussed in detail under the heading "Money and Property". It is important that individuals understand the effect that entering a spousal relationship can have on their Wills and make appropriate arrangements to ensure they have a valid Will.

It is equally important for individuals to understand that ending a spousal relationship may also revoke, or cancel, a Will. Portions of a Will may be revoked upon divorce, or in the case of a common law couple, when they have been living apart for two years. However, separation of married couples, without a divorce, will not cause this partial revocation.

- **debts and credit**

Taken alone, entering a spousal relationship does not affect an individual's ability to secure credit. Within a spousal relationship, each spouse can maintain their autonomy and independence. They can maintain separate bank and credit accounts for their own use and disposal. Either spouse can apply for credit without the other spouse's involvement.

Historically, women lost many of these rights upon marriage and were unable to legally own property that was free from

their husband's claim and control. Throughout the last century new laws were enacted, enabling married women to own property in their own name and stand behind their own debts.

Today, neither spouse is automatically responsible to a third party for their spouse's debts, although many spouses may voluntarily take out a loan together or co-sign for one another. As between third parties (lending institutions, credit card companies) and spouses, the only debts both spouses are responsible for are debts where...

- one spouse co-signs a loan for the other spouse
- both spouses agree with a creditor that they are both responsible for the debt
- one spouse guarantees to the creditor the debt of the other spouse by signing a guarantee document

Let's look at an example. During a spousal relationship one spouse may purchase a major appliance on a credit card that is in his or her name alone. As between the cardholding spouse and the credit card company, the cardholder is the only party responsible for the debt. The other spouse is not responsible to the credit card company for the debt and the credit card company cannot require the non-cardholding spouse to assume responsibility for the debt.

Between the spouses, however, one spouse may be able to claim that the other spouse should share the responsibility for a debt that relates to "family" property, such as a major appliance that is enjoyed by both spouses and not intended to be the property of one spouse alone. But, this claim is between the spouses and does not change the responsibility of the cardholder to the credit card company. During the course of a spousal relationship, this situation can usually be worked out between the spouses. As it may become more problematic in the event that the couple separates, this matter will be more fully discussed under the heading of "Relationship Breakdown".

- **change of names**

Individuals in a legally recognized spousal relationship have a choice about the surname they will be known by. Either spouse can choose to use...

- the surname they were given at birth - the term “maiden name” is often used in relation to women
- their spouse's surname
- the legal surname they were using immediately before their current spousal relationship
- a double surname made up by both spouses' surname - the name can't contain more than two components and may be hyphenated or not (Wilson Greene, Greene Wilson, Wilson-Greene, or Greene-Wilson)

While it is not necessary to apply for this type of name change, persons who are in a spousal relationship that is not a legal marriage must file a declaration confirming the relationship. The declaration must be signed by both spouses.

Although simply choosing to change your surname in the course of a spousal relationship will not alter your birth records, you can arrange to change your name on all business documents, such as bank accounts, hospitalization cards and driver's licences, by contacting the related agency directly. Individuals that change their surname as a result of a spousal relationship can change their name back to a previous surname at any time. Individual agencies may charge a fee to issue replacement documents.

- **interspousal agreements**

Spouses can draw up a legal contract that sets out the rights and responsibilities of each spouse during the spousal relationship. Sometimes this type of contract is

called a **cohabitation agreement**. When the contract is prepared after the relationship breaks down, it is commonly called a **separation agreement**.

Although couples may orally agree to any number of matters, an agreement regarding the division of family property must be in writing to be legally enforceable. *The Family Property Act* also requires each spouse to get independent legal advice with regard to agreements dividing property. Sections of an agreement that seek to predetermine the custody of, or access to, any children of the relationship in the event that the relationship ends will not be enforceable.

Each spouse should consult their own lawyer before signing any agreement. A lawyer can ensure that the agreement says what the spouses want it to say and that the agreement is legally enforceable. It is important that each spouse fully understand their rights and obligations before entering into an agreement. Once made, a legally binding contract cannot be changed unless both parties agree, or a court orders a change. While a court can always override aspects of an agreement that deal with a child's well-being, it will only change other aspects of an agreement in extraordinary circumstances.

relationship breakdown

When a couple decides to separate, a number of questions must be answered. Who will get what property? Will either of them continue to live in the family home? Where will the children live? Who will make decisions about the children? How much will each spouse contribute financially to the support of the children? Will one spouse pay support to the other spouse?

A court order or other legal document is not required for spouses to live separate and apart. However, legally married spouses must obtain a divorce in the form of a court order

before their marriage is legally at an end. Common law spouses do not need to go through any legal procedure in addition to living separate and apart to end their relationship. Common law spouses generally have 24 months after they separate to claim an interest or benefit stemming from that relationship. Individuals leaving common law relationships should check the specific legislation or benefit program to determine the time frame within which claims must be made.

Spouses' mutual obligations do not end automatically upon separation. Spouses can, however, deal with many issues related to the breakdown of the relationship during this time. Practically speaking, there are a number of issues that must be dealt with once spouses separate. There are a number of ways to deal with such matters. Reaching an agreement that settles issues related to the breakdown of a spousal relationship allows spouses to decide for themselves how to resolve disputes, rather than have a court decide for them. An agreement can include solutions that meet the needs of each spouse. Working out an agreement can also improve communication skills for spouses who must continue to deal with each other after separation or divorce.

Both spouses must agree on the terms of an agreement. This is not always possible when a couple is separating. It may not be possible for each spouse to feel confident that a fair and equitable settlement can be reached, perhaps because one spouse is more financially secure, or in cases where there has been domestic abuse or violence.

If no agreement can be reached, a court can make orders about division of family property, custody, access, maintenance and divorce. Courts can make **interim orders** to cover the time between the time an application for a particular order is made and the time the parties or the court make a final decision.

resolving family law disputes:

ALTERNATIVES TO COURT

by agreement: If a couple agrees on the terms of their separation, they can write the terms in an agreement. Each spouse should consult their own lawyer to ensure that they understand their rights, that the agreement accurately reflects their intentions, and that the agreement is enforceable.

collaborative approach: Each spouse works with their own collaborative lawyer that has been trained to negotiate settlements that meet the spouses' needs. Through four-way meetings, the spouses are able to cooperate with one another in a non-adversarial setting, while receiving legal advice and advocacy throughout the process. The parties must commit to reaching a settlement through a collaborative process outside of the courts and agree that the lawyers will not represent the clients in court if no agreement is reached.

mediation: With the assistance of a trained mediator, spouses are guided towards an agreement that can provide practical solutions to their problems. A mediator is an independent third party who can facilitate communication and help spouses find solutions that they may not have considered before. Mediation is not couples counselling or therapy.

negotiation: Separating couples who cannot reach an agreement on matters related to the breakdown of their relationship may negotiate an agreement through their lawyers. Negotiation allows spouses who are unable to deal directly with each other to compare views with the other side in the context of their legal rights and obligations.

- **dividing family property**

The Family Property Act establishes how family property is viewed in Saskatchewan. This law recognizes that both spouses contribute to child care, household management and financial support. It states that each spouse is generally entitled to an equal share of their family property. It is important to note that family debt will also be considered in order to achieve a fair and equitable distribution. Property may be physically divided, leaving each spouse

with possession of a variety of items making up their share of the family property. Because many assets, such as a car, cannot be cut in half, one spouse may get the whole of that particular item and the other spouse may get something else of equal value.

As a general rule, family property includes any real or personal property owned by one or both spouses, or by one or both spouses and a third person, at the time an application is made under the Act. Real property includes land and anything attached to the land, such as buildings. Personal property includes movable objects like household goods, jewelry and cars. Family property also includes such things as businesses, pensions and bank accounts.

Family property also includes the family home. A family home is the place where one or both spouses have lived or intended to live and consider their family home. It can be a house, a part of a house, a mobile home or a condominium. The home can be owned or leased by one or both spouses. In the city, the family home includes the lot the house is on. In the case of farmland, it includes the home quarter.

Under *The Homesteads Act*, a family home cannot be sold or mortgaged without the consent of both spouses, even if it is owned by one spouse alone. The right to enforce homestead rights ends when legally married spouses divorce or common law spouses have been separated for 24 months.

For the purposes of dividing family property, the family home is treated somewhat differently than other family property. The value of the family home will be divided equally unless it would be unfair and unjust to do so. This means that in some cases a home that was owned solely by one spouse before the relationship will be divided equally between the spouses. The court will only consider it unfair if there are extraordinary circumstances or if it would be unfair to a spouse who has custody of the couple's children.

The court will also equally divide the rest of the family property, other than the family home, unless it would be unfair to do so. In deciding if it would be unfair to divide this property equally, the court considers different factors than when dividing the family home, such as...

- how long the separating couple lived together and how long they have lived apart
- when the property was acquired
- any contributions made by someone else to help buy the property
- tax liabilities if the property has to be sold
- the value of any family property outside of Saskatchewan
- debts of the spouses
- any interest that another person has in the property

The value of property acquired before the spousal relationship began, except the family home, is exempt unless the court orders otherwise. This means that the value of that property at the time the spousal relationship began would not be divided according to the Act. The spouse who owned the property would receive the amount that it was worth at the start of the spousal relationship. Any increase in the value of the property since that time could be divided according to the Act.

*on-reserve
property*
RIGHTS

Saskatchewan law concerning dividing family property when spouses separate applies to Aboriginal people whether they live on a reserve or not, however the courts cannot transfer ownership of reserve land or give someone the right to occupy reserve land. The courts can divide any other property, other than real property, that is on reserve land. Real property is property that is attached to the land, like a house. The courts can also make an order requiring the spouse who will continue to occupy the family home on a reserve to compensate the other spouse by paying money.

In dividing the property, the court will not consider improper or immoral conduct of the parties unless the conduct impacts the family property. For example, the court will always consider whether a spouse has been wasting family property, giving it away or selling it to avoid having it divided but other behaviour that doesn't affect family property is not considered by the court.

▶ **property agreements**

Spouses can make an agreement to divide their property in whatever way they think is best. If the agreement is made in the manner specified in *The Family Property Act*, a court will not change the way the property is divided, unless the agreement was grossly unfair and one-sided at the time it was made. The Act specifies that an agreement must be in writing and must be signed by each spouse in front of a witness. Each spouse must also get advice from his or her own lawyer before signing the agreement. Each spouse then has to acknowledge in writing, apart from the other spouse, that he or she understands the agreement and its effect on his or her rights.

If the agreement is not made in the manner specified in the Act, the court can change the way the property is divided. However, the court would consider the agreement when dividing the property.

▶ **court orders dividing property**

If the spouses do not make an agreement in the manner specified in *The Family Property Act*, either spouse can ask the court to divide the property at any time during the spousal relationship, including when he or she is separated or immediately after the death of a spouse. Legally married spouses must make the application before they are divorced. Common law spouses must make the application within 24 months following their separation.

► **possession of the family home**

Under *The Family Property Act*, the court can also make an order allowing one spouse to have possession of the family home. “Possession” refers to who will live in the home, not who owns or rents it. It is possible for the court to award one spouse sole or partial **ownership** of the house and the other spouse the **right to possession**.

The court will decide the terms of the possession. The court can order a spouse to be given possession for his or her lifetime or any shorter period, for example while any children are still living at home. The court can also order that one spouse be given exclusive use of any or all of the household goods. The court can decide who will be responsible for repairs and mortgage payments. The court may require the spouse who has possession to make a payment to the other spouse.

Where one spouse has possession and the other spouse owns part of the house, the court can make an order that prevents the sale of the house or places conditions on the sale of the property.

In deciding whether to give one spouse possession of the home and what conditions to include in the order, the court must consider...

- the needs of the children
- the conduct of the spouses towards each other and towards the children
- the availability of other accommodation within the financial means of either spouse
- each spouse's financial condition
- any binding agreement that was made between the spouses or, if the court sees fit, any other written agreement

- any orders that have been made regarding maintenance, custody of children or division of property
- other relevant circumstances

Either spouse can apply to the court to change or end the order for possession if circumstances change after the original order was made.

● custody

When couples separate, a number of different terms may be used to describe several different arrangements regarding child custody. These terms include “sole custody”, “joint custody”, “shared custody” and “split custody”. Regardless of the terms used, there are two aspects of caring for children that can be divided when parents are not living together. One aspect is the right and responsibility to make major decisions for the child, such as decisions regarding schooling, medical treatment, child care and religious instruction. The other aspect concerns where the child will live.

Separating parents can agree on a custody arrangement that works for them or they can request that a court determine the matter for them. In the absence of a custody order or agreement, parents are the joint guardians of their minor children when the parents have lived together after the birth of the child. If the parents of a child do not live together after the birth of the child, the parent with whom the child lives has sole custody, unless there is an agreement or court order stating otherwise.

▶ sole custody

Sole custody exists when one parent has custody of a child. The child lives with the custodial parent and this parent makes the decisions concerning the child's life. If one parent has custody, the other parent usually has access.

► **other custody arrangements**

Instead of sole custody, parents may share decision-making responsibilities relating to the child, or parents may share time spent living with the child, or both. For example parents may share decision-making responsibilities even when the child resides with only one parent. Alternatively, parents may share decision-making responsibilities and time spent living with the child. The way in which these responsibilities are divided or shared can vary greatly and can be tailored to suit different families.

A custody order or agreement can be detailed or general. It can say that the parents will agree on how to divide child care responsibilities or it can specify that the child will live with one parent on certain days and the other parent on other days. An agreement or order could provide that each parent have responsibility for the child for six months of the year. It could also provide that the child live with one parent but that both parents will agree on all major decisions.

When custody arrangements involve shared decision-making, the parents will need to continue dealing with each other on a regular basis because the decisions about the children must be agreed to by both parents. A mediator may be able to help the parents solve problems that arise.

● **access**

Access refers to the right of the child to spend time with a parent or another person who does not have custody. When one parent has sole custody, the other parent is usually allowed access. The purpose of access is to allow the child to continue to have a relationship with the other parent or other person, such as a grandparent, if it is in the child's best interest.

A parent with access to a child has the same right as the parent with custody to receive information about the child's health, education and welfare.

Access can be specific and state the exact days the non-custodial parent can see the child. It may also be very general and allow reasonable access. Reasonable access has the advantage of being flexible. If parents do not agree on what reasonable access is, they can mediate, negotiate or apply to court.

● **factors the court considers**

If parents do not reach an agreement on custody and access arrangements, they can ask the court to decide the matter. In deciding custody and access, the court considers only the best interest of the child. To decide what is best for the child, the court will consider: the child's needs; the relationship the child has with each of his or her parents; and, depending on the child's maturity, the wishes of the child. The older and more mature the child, the greater weight his or her wishes will have.

The court may also consider a number of other things, such as...

- the child's personality or character
- the willingness of the parent applying for custody to allow the child to have contact with the other parent
- where the child had been living before the custody application was made
- the child's relationship with others such as brothers and sisters
- the ability of the parent to be a good parent
- the kind of living situation the child will have with the parent
- the plans the parent has for the child

enforcing custody and access

ORDERS OR AGREEMENTS

A person who has a custody order or agreement but is being denied custody may apply to court for help in enforcing the court order or agreement. The court can order the police to locate and deliver the child to the person who is entitled to custody. If the access parent is not returning the child according to the order or agreement, the court may put other restrictions on the access. For example, the court may order that future access be supervised, that the parents mediate their disagreement, or that the access parent provide his or her address and telephone number to the custodial parent.

Unless the other parent consents or the child is removed to protect him or her from danger or harm, it is a criminal offence for a parent to take a child away from the parent who has a court order for custody. This applies no matter where in Canada the court order was made. If a parent takes a child, the other parent can call the police. The police can get the child back and arrest and charge the parent.

In certain circumstances, criminal charges may be laid against a parent who takes a child away from the other parent, even if there is not a Canadian court order for custody. If a child under the age of 14 years has

been living with one parent and the other parent takes the child, the police can be called and charges may be laid.

If a parent takes a child out of Canada contrary to a custody order or brings a child into Canada contrary to a custody order made elsewhere, the order may be enforceable under international child abduction agreements. A person may be able to enforce the order directly or by contacting Saskatchewan Justice.

If an access parent has difficulty getting to see the child, he or she may apply to the court for help. If the access order or agreement provides for reasonable access, the access parent may want to get a court order or agreement that provides for specific access. If the problem continues, the access parent may ask the court for a further order. For example, the court may order additional access times to make up for the times when the access parent was denied access; the court may appoint a mediator to help the parents resolve the disagreement; or the court may order the custodial parent to pay the expenses that the access parent paid as a result of being denied access. In extreme cases, a parent could be found in contempt of court and jailed.

The court will not assume that either parent should have custody of the child because of the child's age or sex. For example, the court will not presume that a very young child should live with his or her mother or that a son should be raised by his father. The court may not consider the conduct of a parent in determining custody, unless that behaviour is likely to affect the ability to care for the child. For example, the fact that a parent is addicted to drugs or alcohol is important in deciding whether that parent has the ability to care for the child.

- **maintenance for spouses and children**

Maintenance is a payment made by one spouse to the other spouse for the support of that spouse or for the support of their children. Maintenance for the support of a spouse is called spousal maintenance or spousal support. Spousal maintenance is generally paid by one spouse to the other spouse directly, although in some cases it may be paid to a third party, for example to a bank to cover mortgage payments. Child maintenance is paid to the spouse who has custody of the children. It is not generally paid directly to the children, except where a court has allowed payment to be

payments

Maintenance can be paid either periodically or in a lump sum. A lump sum means there will be only one payment. Although lump sum payments can be ordered for child or spousal maintenance, they are not usually ordered for child maintenance.

Periodic maintenance can be paid for an indefinite period ("until further ordered"), until a certain date (until Dec 31, 2015), or until the happening of a certain event ("until all children of the relationship have moved out"). A court can order interim child or spousal maintenance to be paid during the time between an application to the court for maintenance and the point at which the court makes its final decision. When the court makes its final decision, it may make an order different from the interim order.

made to, for example, a child who is attending post-secondary education, and may not be residing with either parent.

Maintenance can either be paid in accordance with an agreement made between the parties themselves or court order if the spouses cannot agree on the amount.

▶ **spousal maintenance**

There is no automatic right to spousal maintenance. Divorcing and separating spouses can reach an agreement on spousal maintenance. Spousal maintenance is taxable income to the spouse receiving it and is a tax deduction for the spouse paying it. An agreement should distinguish between money to be paid as child support and money intended for spousal support. If no distinction exists, the global amount will be treated as child support for tax purposes.

If no agreement can be reached, a spouse can apply for a court order regarding spousal maintenance. A spouse can ask the court for a spousal support order on its own, or along with other matters such as custody, access, division of property, or divorce.

▶ **factors the court considers**

When deciding whether to order spousal maintenance, and if so determining the amount, the court will consider the condition, means, needs and other circumstances of each spouse, including...

- how long the spouses have lived together
- what role each spouse had in running the household
- any court order or agreement regarding maintenance of the spouse or children

The law also says that an order for spousal maintenance should...

- recognize the effect the spousal relationship or its breakdown has had on each spouse's financial position
- relieve any financial hardship arising from the breakdown of the relationship
- promote economic self-sufficiency of each spouse within a reasonable amount of time

▶ **child maintenance**

Both parents have an obligation to support their children. The parent who has custody can apply for maintenance for the child. Child maintenance is payable while the child is under the age of majority (18) or over the age of majority but still dependent on the parent because of illness, disability, or other reason, such as full time attendance in school.

▶ **determining the amount of maintenance**

There are guidelines in place that set out a fixed amount of support for each child depending on the paying parent's income and the average cost of raising children. Payment schedules show the basic amount that the paying parent should pay. Child support guidelines aim to make child support orders more consistent and predictable. The basic amount may be increased from the amount set out in the guidelines if there are out of the ordinary expenses for a child, including unusual costs related to health care, child care, education or extracurricular activities. On the other hand, the basic amount may be reduced if paying that amount would cause undue hardship. The court may also depart from the guidelines if special provisions have been made for the benefit of the child.

Spouses may reach their own agreement about child support and when it can be varied. This agreement does not have to be based on the guidelines, but a court could refuse to approve an agreement that was totally inadequate to meet the child's needs.

A court may also order that a spouse or child be designated as a beneficiary under a life insurance policy, pension plan or other benefit plan, for example, a dental plan.

► **taxation of child maintenance**

The law regarding the taxation of child maintenance payments changed in May 1997. Child maintenance payments under court order made on or after May 1, 1997 are taxable to the parent who makes the payments. This means that the parent who makes the payments cannot claim a deduction for income tax purposes and the parent who receives the payments does not include this amount as income for income tax purposes.

The reverse applies to people who obtained an order before May 1, 1997. However, a person who obtained an order before May 1, 1997 may apply to have the order varied to reflect the tax changes. If you do not want to go back to court and if both parents agree, you may choose to file an election (Form T1157) with the Canada Revenue Agency to come under the new rules. Filing an election will only change the tax treatment of the order; it will not change the amount.

► **enforcing a maintenance order**

Simply because the court has ordered a person to pay maintenance, or they have agreed to pay maintenance, does not mean that they will do so. *The Enforcement of Maintenance Orders Act* is designed to make enforcing court orders and agreements for maintenance simple and effective. This law

sets out the methods that can be used to collect on a court order or agreement for maintenance and sets up an office that collects payments for persons entitled to receive maintenance.

All child and spousal maintenance orders or agreements made in Saskatchewan can be registered in the Queen's Bench Court of Saskatchewan and enforced as orders of that court. If the person who is required to pay maintenance does not live in Saskatchewan, the order or agreement must be registered in a court in the province where they live. The order or agreement can then be enforced as a court order of that province.

Maintenance orders can be enforced by the person entitled to receive the payments (the payee) or through the Maintenance Enforcement Office (MEO). The MEO has been set up by the Government of Saskatchewan to collect maintenance payments. This saves the person entitled to support the trouble and expense of enforcing the court order or agreement. The order or agreement must be registered with the Maintenance Enforcement Office if it is to be enforced by them. Once an order is registered at the MEO, the payee can no longer enforce the order on his or her own.

To register an order or agreement, you must fill out a form and send it to the Maintenance Enforcement Office in Regina. A copy of your agreement or court order must also be sent to the Maintenance Enforcement Office. If you do not have a copy of the order, you can get one from the Court House where it was made. Before sending an agreement for registration with the MEO, you must register it with the court or send an affidavit (a sworn statement) stating that the agreement is in effect and has not been set aside or changed.

The spouse or parent who is required to pay (the payor) is then notified that they must make payments to the Maintenance Enforcement Office. If the payments are not made, the MEO may send a default letter. If there is no reply,

the MEO will determine what course of action to take, and may commence collection action. The time to process an application varies.

► **methods of enforcement**

The Enforcement of Maintenance Orders Act sets out the methods that can be used in Saskatchewan to collect money owing under a court order or agreement for maintenance. These methods include garnishment or writs of execution. These remedies are much the same as those used to collect other debts, but there are some differences.

The most common method used to collect debts is garnishment. A continuing garnishment requires the payor's employer to deduct maintenance payments from each paycheque. A continuing garnishment is put in place by serving copies of it on the employer. A garnishment order can be obtained from the court to get at other money that could be applied to the maintenance payments. For example, a bank account can be garnished.

A debt can also be collected with a writ of execution. A writ of execution is a formal order of the court directing the Sheriff to seize and sell goods or property to satisfy a judgment. This process is often time-consuming.

When debts other than maintenance payments are collected by garnishment, a portion of the salary of the person owing money is exempt. Similarly, certain property cannot usually be seized under a writ of execution. However, these exemptions of wages or property do not ordinarily apply when the debt is for maintenance payments.

Sometimes the payor wastes property, gives it away or sells it to avoid having to pay the court order or agreement. If necessary, you can apply to the court for an order that would prevent the other party from dealing with the property.

If the payor is leaving Saskatchewan to avoid enforcement of the court order or agreement, the police can make an arrest. The payor would then attend court for a hearing regarding their ability to pay the maintenance. If the payor moves to another province, you must register and enforce the court order or agreement in that province.

Another way to enforce a court order for maintenance is by taking the other spouse to court. The MEO or the local registrar of the court can issue a summons requiring the payor to appear in court and explain why he or she is not paying. If a person does not appear in court, they can be arrested and brought to court. The court may order payment of arrears, order security to be given for the payments or even send the non-paying individual to jail for up to ninety days. In some circumstances, driver's licences may be suspended.

It is important to note that while most remedies can be pursued by the payee herself, certain remedies, such as licence and passport suspensions, are only available through the MEO. For more information about maintenance enforcement, contact the Maintenance Enforcement Office (MEO).

* *Throughout the following section on divorce, the use of the term "spouse" refers only to a legally married spouse.*

divorce

An application to the court is required to obtain a divorce. The procedure is fairly simple if both spouses agree. Usually, the most difficult questions concern child custody, family property division and maintenance payments, not the divorce itself. When spouses seek a divorce, these related matters are generally dealt with at the same time. If the court has issued any interim orders on these matters before the divorce is finalized, a final order is usually issued along with the divorce order. Even if the spouses have reached a final agreement on these matters, they are usually incorporated into the divorce order.

If the spouses can agree on these other issues, the court application to obtain a divorce is quicker, much simpler and less expensive. If the spouses are unable to agree, the court can make the decisions for them.

A court order for divorce ends the marriage and leaves the spouses free to remarry.

► **grounds**

A court will grant a divorce if there is a breakdown of the marriage. Marriage breakdown can be established by showing adultery, cruelty or separation of one year or more.

Adultery occurs when one spouse has sexual intercourse with someone other than his or her spouse.

Cruelty occurs when one spouse treats the other in such a way that it would be unreasonable for the spouse to continue to live with him or her. Cruelty can be conduct that causes physical or emotional harm, but the spouse does not have to intend to hurt the other. The court will consider the effect of the conduct on the victim and will decide whether the conduct amounts to cruelty.

Separation of one year happens when the spouses do not live together for one year. This is the most common ground for divorce. A brief attempt at reconciliation during the year will not prevent the couple from divorcing if the reconciliation is unsuccessful. They can still be considered to have been separated for one year if they lived together for no more than ninety days after the initial separation.

forms kits

Forms kits are available for people who want to make application for an uncontested divorce. The kits contain forms and instructions and are available through Court of Queen's Bench locations across the province. The kits are \$25, plus tax. The cost of the kits does not include court costs for issuing and filing the documents.

There is also a Variation of Maintenance kit, which may be obtained free of charge.

► **bars to a divorce**

Although they are rarely used, there are circumstances under which the court could refuse to grant a divorce. These are collusion (when two or more persons agree to commit a fraud), condonation (when one spouse voluntarily forgives a spouse for an act which might be a ground for divorce), connivance (when one spouse agrees to an act which they would normally resist, such as permitting their spouse to commit adultery), or a chance of reconciliation.

The court can also refuse to grant a divorce or can delay a divorce if reasonable arrangements have not been made for the maintenance of any children of the marriage.

► **procedure**

The spouse who is seeking the divorce must have a petition for divorce issued by the local registrar at the Court House. Spouses may file a joint petition where they are in agreement about the divorce. A lawyer generally prepares the petition and has it issued for the spouse. A petition is a legal document that outlines the grounds for the divorce and other information dealing with matters like custody and access, child and spousal support and division of family property. The spouses' marriage certificate must be filed at the Court House when the petition is issued.

The spouse who files the petition is called the petitioner. The spouse who is being sued for a divorce is called the respondent. After the petition is issued, the petitioner serves a copy of it on the respondent. Generally, if the respondent does not want to contest or fight the divorce, the petitioner simply needs to satisfy the court that there are grounds for a divorce, wait a certain period of time, and file the appropriate documents. The court can then grant the divorce.

A respondent who wants to contest or fight the divorce must file an answer at the court office. He or she will probably get

a lawyer to do this. A respondent may choose to dispute some portions of the petition even if he or she agrees that there are grounds for a divorce. He or she may not agree with the proposed custody or maintenance arrangements, or other relief asked for in the petition. The respondent may then file a counter-petition. The counter-petition sets out the respondent's proposals regarding disputed matters.

Divorce proceedings can be very complicated if the divorce itself is contested or if there are custody, maintenance or property issues to be settled. Spouses may wish to attempt to mediate or negotiate the issues and consult with a lawyer.

If the court is satisfied that there are grounds for divorce and there are not any bars to the divorce, a judgment for divorce will be issued. A divorce may be granted together with an order dealing with custody, access, maintenance and division of property, or by itself. The divorce is final 31 days after the judgment is issued. The purpose of the waiting period is to allow for an appeal. The court may shorten the waiting period under special circumstances.

After the 31 days have passed and an appeal has not been started, the divorce is final and the spouses are free to remarry. The court will issue a certificate that is proof of the divorce.

adoption

Adoption law allows an adopting parent to become the parent of a child born to someone else. The adopted child becomes for all purposes the child of the adoptive parents. At the same time, the adopted child ceases to be the child of his or her birth parents. *The Adoption Act* and its regulations set out adoption procedures in Saskatchewan.

Adopting a child generally involves an application to the court, either through Community Resources and Employment, formerly Social Services, or a private lawyer.

Children may be placed with a prospective adoptive family before the adoption is made final by a judge. This allows for an adjustment period for the parents and the child, as well as an opportunity for an objective third party to observe the interaction between family and child.

Generally, persons adopting a child in Saskatchewan must be adult residents of Saskatchewan. The court may allow other individuals to apply to adopt a child in Saskatchewan if such application is considered to be in the best interests of the child. There are several types of adoption. The legal procedures vary depending on the type of adoption that is being carried out.

- **domestic adoption**

Domestic adoption involves the adoption of a child who is permanently in the care of the Minister of Community Resources and Employment. A child can become permanently committed to the care of the Minister if both birth parents complete a voluntary committal shortly after the birth of their child, a process commonly referred to as “placing” a child for adoption. A child may also become permanently committed to the care of the Minister after being apprehended, if all other attempts to resolve the problems that lead up to the apprehension have failed. Children who are permanently in the

homestudy REPORT

The homestudy report is an important step in the adoption process. It contains information gathered from a number of sources on the ability of potential adoptive parents to parent an adopted child, and usually includes information about the applicant's social, family and financial history, personal references, medical reports and a criminal record check.

Once completed, the homestudy is registered at the Central Adoption Registry. Birth parents considering placing a child for adoption can then consider a number of homestudies that may meet their expectations for potential adoptive parents of their child.

care of the Minister may be adopted if they are legally available for adoption and adoption is considered to be the best “lifeplan” for them.

Domestic adoptions are processed through Community Resources and Employment by matching children with potential adoptive parents who have a completed a homestudy report.

- **independent adoption**

Independent adoption involves birth parents making arrangements for someone known to them to adopt their child. The process is usually facilitated by a lawyer.

Both birth parents must consent to the adoption and receive independent legal advice, meaning that each birth parent must have their own lawyer for the purpose of providing consent.

- **assisted adoption**

Community Resources and Employment provides a program to assist adoptive families who are interested in adopting a child with special needs who is in the care of the Minister.

- **intercountry adoption**

Individuals wanting to adopt a child from another country must meet certain requirements set out by each particular country. Prospective adoptive parents can get help from Community Resources and Employment, or handle the matter independently with only some involvement from the Department. The procedures and laws can be very complex and costly. It is important to research the matter fully and obtain assistance from experienced, trusted individuals or organizations.

- **step-parent adoption**

A step-parent may adopt their spouse's child, with the consent of their spouse and the other birth parent. Such adoptions are usually facilitated through a lawyer.

- **adult adoption**

Individuals 18 years of age or older may be adopted provided that they consent to the adoption and the court feels that the reason for the adoption is acceptable.

post adoption SERVICES

By law, records of all adoptions finalized in Saskatchewan must be maintained. Birth parents, birth family members, adoptive parents and adults who were adopted as a child may access post-adoption services, such as search and information services. Information that could be used to identify an adoptee or birth parent will not be released without written permission of the party in question, but non-identifying background information may be obtained upon request. Birth parents can register their willingness to exchange information or have contact. Reunion services can be accessed if both parties are registered and both request a reunion. There is a fee for services, except requests for non-identifying background information.

child protection services

In Saskatchewan, we have laws to protect children against abuse or neglect by a parent or guardian. These laws are designed to prevent child abuse and neglect, and to protect children in abusive situations. These laws are also designed to help families stay together, if possible, by providing counselling and support services to families in need.

Responsibility for the safety and well-being of children is shared by all professionals and the community when parents do not ensure the safety of their children. Anyone who has reason to believe that a child is abused or neglected has a legal duty to report it. Suspected child abuse or neglect can be reported to any Community Resources and Employment office, a community crisis centre, or police service.

If you think you may be abusing or neglecting your own child, talk to someone. Help is available. Community Resources and Employment can provide assistance through their family services programs. Help is also available in the community through family service bureaus, daycare centres, support or self-help groups and agencies offering family counselling and parenting classes.

In Saskatchewan, child protection services are provided by the Department of Community Resources and Employment. First Nations Child and Family Services Agencies (FNCFSAs) provide similar services to First Nations children living on reserve. The police have the same authority as Community Resources and Employment and FNCFSA to apprehend children.

When a child protection agency gets a report involving child abuse or neglect, they must investigate the matter to determine whether the child is abused or neglected, and whether the child is in danger. The agency may question the child, the parents, and other care providers to get all the facts. Other professionals such as teachers, medical professionals and counsellors may assist in the process. The police and Crown Prosecutors may also investigate.

There are many cases where a child needs some form of help from outside the family, but is not at risk of serious harm. In such situations, some form of

child abuse AND NEGLECT

Child abuse can take on many forms including physical violence, sexual abuse, or emotional abuse such as making unreasonable and repeated demands on a child.

Child neglect includes not providing enough food, clothing, shelter, or health care for a child. It may also include leaving young children alone without proper supervision or care.

Protection services may be provided to children who may suffer physical or emotional harm because of family violence and to children under 12 who have committed a criminal act.

family services may be offered. Services may be counselling about nutrition or anger management. In many communities parent aides are available to help parents. There may be a family support centre or a parent support group that can help the parent.

If the child protection agency decides that a child needs to be protected, the parents of the child must be advised. The agency must offer services to the parent, such as counselling and support services. If the child is in danger, the agency will take the necessary steps to protect the child.

This may include offering family services or, as a last resort, removing the child from the home to safety, if no other arrangements can be made. The child must be returned when the child is no longer in danger. This may not happen until after a child protection hearing is held.

If your child is apprehended, you must be told...

- the reasons for the child's apprehension
- the contact information for the child protection worker in charge of your file
- that you have a right to contact a lawyer

● child protection hearings

If your child is not returned within 48 hours, the child protection agency must ask the court for a protection hearing. This request must be made within seven days and the hearing itself must be scheduled at the earliest possible date within 37 days after your child is taken away. You will be given written notice of the date, time and place of the hearing, as well as an indication of the evidence of abuse or neglect that will be brought forward at the hearing.

During this time, your child will stay in a safe place, such as a foster home, medical facility, or with relatives. You may be allowed to visit, depending on the circumstances.

At the hearing the judge listens to all the evidence, including the reasons the agency removed your child, anything that your child, yourself or the other parent has to say, and any evidence that came out at any other civil or criminal trials. The hearing may be held in private so that the evidence does not become public knowledge.

You may bring a friend, family member or lawyer for support and advice.

The judge must think of what is best for your child. If the judge decides that your child is abused or neglected, the judge may still return the child to your home. The judge may place certain conditions or restrictions on your child's return. The judge may decide that your child should be placed with another person who has an interest in the child, such as a family member. In some cases the judge may decide that it is necessary to place your child in the care of the agency. If your child is not returned to your home, you may still be allowed to visit your child.

If the agency is looking into a report about your child you may want to contact a lawyer right away. You may also want to contact a lawyer if you believe that the agency is not respecting your rights. A lawyer can advise you of your rights and help you through the process. A lawyer can also attend meetings with the agency and help you prepare for a protection hearing. A lawyer may also be able to refer you to other professionals that can help work through the problem.

signs *of abuse* OR NEGLECT

Some common signs of abuse or neglect include situations such as...

- unexplained injuries or repeated injuries of the same type
- running away from home
- frequently absent from school or sick
- inadequately fed or clothed
- exposure to violence at home

If you don't know who to call you can look through the yellow pages and call a lawyer who practices family law. You can also call the Lawyer Referral Service, operated by the Law Society of Saskatchewan. If you don't think you can afford a lawyer you can contact your nearest Legal Aid Office to find out if you qualify for assistance.

resources

Canada Revenue Agency (CRA)

Regina Tax Services Office	Saskatoon Tax Services Office
206 - 1783 Hamilton Street	340 - 3rd Avenue North
Regina, SK S4P 2B6	Saskatoon, SK S7K 0A8
Individual Income Tax Enquiries:	1-800-959-8281
Forms and Publications Order Service:	1-800-959-2221
Canada Child Tax Benefits Enquiries:	1-800-387-1193

www.ccra-adrc.gc.ca

The CRA administers tax laws for the Government of Canada and most provinces and territories and can provide information about various social and economic benefit and incentive programs delivered through the tax system, including guides, brochures, forms and news releases.

Collaborative Lawyers of Saskatchewan

Toll-free: 1-866-347-8545

www.collabsask.com

Provides information about the collaborative law process and links to lawyers.

Community Resources and Employment

www.dcre.gov.sk.ca/services/famyouth

Formerly Social Services. Provides services for families and information regarding matters such as adoption, child protection services, child care, family violence and post-adoption. Check your Government Blue Pages for local contact information.

Dispute Resolution Office

3rd Floor, 3085 Albert Street
Regina, SK S4S 0B1

Phone: (306) 787-5747 Fax: (306) 787-0088

www.saskjustice.gov.sk.ca/DisputeResolution

Provides dispute resolution/mediation services to the public. Common areas for family mediation are separation and divorce, estates, and parent/teen conflicts.

Family Law Information Centre and Support Variation Project

323 - 3085 Albert St.

Regina SK S4S 0B1

Phone: (306) 787-5837 Fax: (:306) 787-0107

Assists eligible parents with limited income who have a child support order or agreement registered in Saskatchewan and who want to vary that order or agreement; provides resources and information to the public in the area of child support and family law.

Family Justice Services Branch

Saskatchewan Justice

100 - 3085 Albert St.

Regina, SK S4S 0B1

Phone: (306) 787-8961 Toll-free: 1-866-229-9712

www.saskjustice.gov.sk.ca/FamilyJustice/default.shtml

Offers a variety of support services outside of the courtroom for people dealing with family law matters, as well as information about the Child Support Guidelines. Does not provide lawyers or legal services. It is recommended that everyone involved in a family matter consult with a lawyer, either privately or through Legal Aid.

Federal Child Support Guidelines

Toll-free: 1-888-373-2222

www.canada.justice.gc.ca/en/ps/sup

Provides information about how to use the child support guidelines, workbooks and simplified tables.

Justice Canada

www.justice.gc.ca

Provides information about programs and services, including child support, family law assistance services, and parenting after divorce.

Lawyer Referral Service, Law Society of Saskatchewan

Phone: (306) 359-1767 (in Regina)

Toll-free: 1-800-667-9886

www.lawsociety.sk.ca

Can provide help finding a lawyer for a particular area of the law or a certain geographical area.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

Maintenance Enforcement Office, Saskatchewan Justice

100 - 3085 Albert St.

Regina, SK S4S 0B1

Phone: (306) 787-8961 Fax: (306) 787-1420

Automated Info Service: (306) 787-9931 in Regina

1-800-247-7838 outside Regina.

Registers court orders and agreements that provide for child and/or spousal maintenance. Once registered, MEO monitors files for payments and automatically takes enforcement action when necessary. Open to all Saskatchewan residents,

regardless of economic status. Through the Automated Info Service people who are registered with the MEO can gain access (with a password) to certain information on their files. As well, general information about the MEO is available on the same line to the general public (no password is required for this part of the service).

Marriage Unit

323 - 3085 Street
Regina, SK S4S 0B1
Phone: (306) 787-4132

www.saskjustice.gov.sk.ca/FamilyJustice/marriage

Provides information about licence requirements and marriage ceremonies in Saskatchewan, contact information for marriage commissioners and answers to other frequently asked questions.

Queen's Printer - FreeLaw®

Walter Scott Building
B19 - 3085 Albert Street
Regina, SK S4S 0B1
Phone: (306) 787-6894
Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Status of Women Office (Saskatchewan)

Saskatchewan Labour
400 - 1870 Albert Street
Regina, SK S4P 4W1
Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.

Vital Statistics

100 - 1942 Hamilton Street
Regina, SK S4P 4W2
Phone: (306) 787-3251
Toll-free: 1-800-667-7551

www.health.gov.sk.ca/ps_vital_statistics.html

Administers a province-wide system for registering births, deaths, marriages, changes of names, etc. in the province, and issues related certificates.



criminal justice system

criminal law

Criminal law sets a standard of behaviour for all people who live in our country. Its main purpose is to protect society and to keep the community peaceful and safe. When a person breaks a criminal law both the victim of the crime and the peace and security of the community are harmed. Because criminal laws are considered necessary to keep order in society, everyone is expected to know what the laws are. In fact, the *Criminal Code* says that not knowing about a law is no excuse for breaking it.

Because we view crimes as wrongs against society, the victim or person who has been wronged does not have to prosecute the crime. Crown Prosecutors, representing the public, prosecute criminal cases.

Most criminal law is found in the *Criminal Code*. This law lists criminal offences and describes some of the procedures that the police and the courts follow when dealing with people who are arrested or charged with criminal offences. Criminal law is also found in other statutes such as the *Controlled Drugs and Substances Act*. These federal laws apply across Canada.

Court procedure and possible sentences vary according to the category of offence. The two main categories of criminal offences in Canada are “summary conviction offences” and “indictable offences”.

Many offences can be prosecuted as either a summary or indictable offence. The Crown Prosecutor makes this choice. These offences are called “dual offences”.

The less serious criminal offences are called **summary offences**. Summary means in a quick and simple manner. Many dual offences end up being prosecuted as summary conviction offences. The Crown Prosecutor may choose to prosecute a dual offence as an indictable offence if, for example, the accused person has a criminal record or where the circumstances make the crime more serious. Currently, the maximum penalty for a summary conviction offence is a fine of up to \$2000 and/or a jail term of up to six months.

The more serious offences are called **indictable offences**. Crimes such as murder, impaired driving causing bodily harm or death, incest, sexual assault with a weapon, aggravated assault, arson, robbery and perjury are indictable offences. Maximum sentences are higher than those given for summary conviction offences and the court procedure can be more complicated.

An accused person does not have to prove their innocence. The accused person is presumed innocent unless and until the prosecution proves guilt beyond a reasonable doubt. A person accused of a crime is entitled to a fair trial in a court of law. No person may be punished for a crime without admitting guilt or being found guilty at a criminal trial.

- **provincial offences**

Although our Constitution gives the power to make criminal law only to the federal government, it also gives the provinces power to make laws in the areas of law that it regulates. These laws create provincial offences.

While these offences are not strictly speaking criminal, there are many similarities. All provincial offences are treated as summary conviction offences and may result in jail sentences and/or fines. The procedures and rules are often the same as true criminal court cases. A conviction under provincial law does not form part of a criminal record. The province does, however, keep records for its purposes. For example, the province keeps records of driving offences for licensing purposes. A conviction under *The Traffic Safety Act* of Saskatchewan forms part of an individual's driving record in this province. Provincial officials use the driving record to decide whether to renew or suspend a driver's licence. Drivers with a record may have to pay a surcharge to renew their licence the following year.

Sometimes a particular activity that would normally be dealt with under provincial law becomes so prevalent or dangerous that the federal government decides to make it a criminal offence to protect the public interest. Drinking and driving is an example of a driving related offence found in the *Criminal Code*, not only a driving offence governed by provincial law.

- **proof of offences**

A person charged with a criminal offence is presumed innocent until that person pleads guilty or is proven guilty in court. The Crown Prosecutor must prove that the accused person is guilty - the accused person does not have the burden of proving that they are innocent.

At any criminal trial the Crown Prosecutor must prove beyond a **reasonable doubt** that the accused person committed a criminal offence. The judge, or the members of the jury if there is one, cannot find the person guilty if they have a reasonable doubt about the accused person's guilt. The Crown does not have to prove with absolute certainty; however they do have to prove more than probability.

Reasonable doubt exists if, after considering all the evidence, the judge or jury is unsure whether the accused person committed the offence. To convict, the judge or the jury must believe that the only sensible explanation, considering all the evidence, is that the accused person committed the crime.

- **elements of an offence**

To be found guilty of a crime, a person must have done something that is against the law while having what is called a “guilty state of mind”. The prosecution tries to prove that the accused person intended their criminal behaviour or that they had a state of mind that was criminal. The person's state of mind is not a question of motive. It is merely a question whether they intended the act. At any criminal trial the prosecution must prove these two things...(1) the criminal behaviour, and (2) the accused person's state of mind.

- ▶ **the criminal behaviour**

The criminal behaviour must fit precisely within the definition of criminal behaviour set out in the law. Most often the criminal behaviour is an act, something the accused person did. Sometimes the criminal behaviour is *not doing* something that the law requires in certain circumstances. This is called “an omission”. For example, it is an offence to fail to provide food for your dependent children. Failing to assist a police officer who needs and asks for help is also an offence.

The criminal law sets out exactly what amounts to a crime, both the person's behaviour and the circumstances under which it must take place. For example, section 175(1)(a) of the *Criminal Code* creates the offence of causing a disturbance...

175.(1) Everyone who
(a) not being in a dwelling-house, causes a disturbance in or near a public place,

(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,
(ii) by being drunk, or
(iii) by impeding or molesting other persons...
is guilty of an offence punishable on summary conviction.

The Crown Prosecutor must show that...

- the accused person acted in one of the ways listed (fighting, being drunk, bothering people, etc.)
- the accused person was not in a dwelling-house
- the disturbance was caused in or near a public place
- the accused person's activity caused a disturbance.

If the Crown Prosecutor cannot prove any one of the above, there is no offence.

The criminal behaviour must be voluntary. For example, if you fell into a coma and did not provide food for your children, you could not be found guilty of failure to provide necessities of life. Movements that are beyond a person's control are not voluntary.

► the state of mind

The Crown Prosecutor must prove that the accused person *intended* to do the criminal act. Here we look at the person's state of mind when he or she committed the act or omission that is the subject of the offence.

Different criminal offences require different states of mind. Most criminal offences require intention, recklessness or negligence. By way of comparison, most provincial offences do not require proof of a "guilty mind". These are called "absolute liability" offences. An example is speeding. In a speeding offence, what the driver was thinking or whether they intended to drive over the speed limit is not relevant. For other provincial offences, called "strict liability" offences,

the accused person may be acquitted if they showed diligent efforts to avoid breaking the law. Since most criminal offences require intention, recklessness or negligence, we will discuss these states of mind more fully.

Intention is when the accused person meant to do what they did. For example, let's look at shoplifting. Shoplifting is theft. A person who knowingly takes something from a store without paying for it commits theft. A preoccupied shopper who genuinely forgets to pay for something is not guilty of shoplifting.

We will sometimes be responsible for the unintended results of our actions. **Recklessness** is when a person realizes there is a certain risk involved, but commits the act anyway, regardless of the risk. For example, the charge of murder can result from either intention or recklessness. One part of the definition of murder says a person is guilty of murder if they intend to cause another person's death. Another part says a person is guilty of murder if they injure someone, knowing that the injuries are likely to cause death and are reckless as to whether the victim dies or not.

Negligence is failing to act the way a responsible person would act in the same circumstances. A person who is negligent does not look ahead to the consequences as we expect everyone to do. Where the definition of a crime includes negligence, a person can be guilty of criminal behaviour without actually thinking about the result. Criminal negligence is not the same as negligence in a civil case. Usually criminal negligence involves behaviour that is extremely careless.

A common example of criminal negligence occurs in driving cases. A person can be found guilty of criminal negligence if another person is injured or killed in a car accident as a result of the accused person's criminally negligent driving. For example, a driver may be found criminally negligent if his or her actions are far below the standard of a cautious

and careful driver and if these actions caused the accident. The driver may be guilty even if they did not realize their behaviour could cause an accident.

How does the Crown Prosecutor prove what the accused person was thinking at the time of the crime? It can be difficult. Only the accused person knows for certain what they were thinking. The Crown Prosecutor must rely on proof that a criminal act occurred and proof of statements or actions that show what the person was thinking.

For example, in a murder case, proof that the accused person threatened to “get” the person who was killed may be accepted as evidence.

criminal charges

A criminal charge is serious. If the police charge you with a criminal offence, you should talk to a lawyer. This following information gives an outline of what to expect if you are charged with a criminal offence.

The police may charge you with a crime if they believe you committed a criminal offence. A criminal charge does not mean that you are guilty. You are innocent until you plead guilty or a judge finds that you are guilty after a trial.

The police may charge you at the scene of the offence, at the police station, or at any other time or place after the offence.

● arrest

Being charged with a criminal offence does not always result in arrest. A police officer has four options. The police may...

- give you a summons to appear in court without arresting you
- give you an appearance notice without arresting you

- arrest you, give you an appearance notice and then release you, or
- arrest you and keep you in jail until you appear in court

An appearance notice or a summons tells you what you are charged with and when you have to go to court. The notice may also tell you when to go to the police station for fingerprints and photographs. It is a separate criminal offence to fail to appear in court or at the police station at those times.

If you are arrested you have the right to talk to a lawyer. You will also have the right to a bail hearing if the police do not release you.

● **fingerprints and photographs**

The police have the right to take your fingerprints and photograph after they charge you with most criminal offences. If they arrest you, they will generally take your fingerprints and photographs while you are in custody. If they do not arrest you, they will give you written notice of when to go to the police station for fingerprints and photographs. If you do not show up, they can charge you with the offence of failing to appear for fingerprints and photographs.

● **duty to appear in court**

Whether or not you must personally appear in court will depend on the offence. Someone else can appear for you if you are charged with a summary offence. You can find out from the Crown Prosecutor whether you have to appear in person.

If you do not appear in court when you are supposed to, the judge can issue a warrant for your arrest. You will be charged with the offence of failing to appear.

alternative measures

FOR ADULTS

The alternative measures section of the *Criminal Code* provides certain adults facing criminal charges an opportunity to accept responsibility for their criminal actions without the requirement of a formal court process. Alternative measures address the needs of the victim, the accused and society. Options include restitution or compensation, personal service work for the victim, community service work, mediation, and counselling and treatment programs.

If alternative measures would be an appropriate way to hold an accused person accountable for their actions, the accused person may be referred to an alternative measures program. Usually, the police make a recommendation to the Crown Prosecutor if they feel an accused person might be a candidate for the program. In deciding whether a person is suitable, the Crown will look at the protection of society, the needs of the accused, the interests of society and the interests of the victim. An accused person has a choice not to participate if they would rather have their case heard in the traditional fashion. The accused person must fully and freely agree to participate in the program. They must also accept responsibility for their criminal behaviour. The measures cannot be used if the accused person denies their guilt. Victim participation is encouraged but not required, except in mediation.

Before agreeing to participate, the accused person must also be advised that they have the right to consult with a lawyer. The Crown must have enough evidence to proceed with the criminal charges in the courts. This protects people from participating in alternative measures programs when the Crown could not go ahead and take the charge through the courts in the traditional fashion.

Generally, persons with substantial criminal records or recent charges will not be eligible. Certain violent offences may prevent a person from becoming eligible. As well, *Criminal Code* driving offences involving alcohol cannot be dealt with through the alternative measures program.

When mediation is used a mediator will arrange for the accused and the victim to meet in person. Both individuals have an opportunity to talk about their experience and their thoughts and feelings surrounding the offence. With the help of a mediator, the accused and the victim try to work out an agreement that addresses the needs of the individuals as well as society.

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Agreements typically involve the accused performing community service, paying the victim for damages caused or attending counselling. The agreement may also include anything else that both agree would be fair in the circumstances. Mediation may be particularly useful when the victim and the offender have an ongoing relationship.

At any time during the process the accused person can ask that their case be returned to court. If the terms of an agreement are not met, the matter may also be referred back to the courts. In any event, admissions made by the accused in the process cannot be used against the accused in court.

If the accused successfully completes the process, the matter is considered closed. Any charges in relation to the offence are dismissed. The person will not have a criminal record for that offence.

- **first appearance**

At your first court appearance your name appears on a list called a “court docket”. When it is your turn a court official calls you. You will then go to the front of the court and stand in front of the judge. At that time, a court official will read the charge.

If you do not have a lawyer the judge will usually ask you if you want to talk to a lawyer. If you tell the judge that you would like to talk to a lawyer, then they will give you another date to return to court. If the judge does not ask, you can ask the judge for time to talk to a lawyer.

If you already have a lawyer, or do not want to see a lawyer, the judge will ask you if you understand the charge. You will then be asked to plead guilty or not guilty.

For some serious offences you have the right to choose to have your trial in either Provincial Court or the Court of

Queen's Bench, with or without a jury. This is called making an *election*. If you elect to have your trial in the Court of Queen's Bench, you will not make a plea until you appear before the Court of Queen's Bench.

You should talk to a lawyer before you make an election or plead guilty to a criminal offence.

- **pleading not guilty**

If you plead not guilty, the Crown Prosecutor will have the responsibility of proving that you are guilty. If the Crown Prosecutor fails to do so at a trial, the judge acquits you.

After you plead not guilty the judge sets a date for your trial or preliminary inquiry. Your case will be adjourned until that date. The court holds a preliminary inquiry only when you elect to have your trial in the Court of Queen's Bench.

At a preliminary inquiry a Crown Prosecutor presents evidence to show that you committed the crime. The judge decides if there is enough evidence to go ahead with a trial. The Crown does not need to prove its case beyond a reasonable doubt at this stage.

At trial, the Crown Prosecutor and the defence lawyer call witnesses and argue their case. If the charges are proved at trial, the judge or jury finds you guilty. If the charges are not proved, you are found not guilty.

- **pleading guilty**

If you plead guilty, you admit in court that you committed the offence. After you plead guilty or are found guilty after a trial, the judge will sentence you.

Before the judge sentences you, the Crown Prosecutor tells the judge what happened. You or your lawyer will then have a chance to speak. The judge wants to know something about

you and why you committed the offence. You may have to return to court more than once even if you plead guilty. The judge may want a pre-sentence report or time to think about a proper sentence. A pre-sentence report contains information about you to help the judge decide on a proper sentence.

- **changing your plea**

You can change a not guilty plea at any time before the court finds you guilty.

It is very difficult to change a guilty plea. You cannot change it just because you got a harsher sentence than you expected.

- **sentences**

Sometimes the law sets a minimum sentence for an offence. The judge must give you at least the minimum sentence. When no minimum sentence is set out, the judge can choose from a number of types of sentence that include...

- a **discharge**...the judge gives you a discharge rather than showing a conviction for the offence. An absolute discharge takes effect right away. A conditional discharge means that you must meet conditions set by the judge.
- a **fine**...you must pay money to the court. There will likely be a jail term if you do not pay the fine. You can ask the judge for time to pay your fine. You can also ask to take part in a fine option program. A fine option lets you do community service to work off your fine.
- a **suspended sentence**...the judge postpones sentencing you for a period of time. The judge sets conditions that you must meet during that time. The conditions are written in a probation order. If you meet all the conditions, no further punishment is imposed. If you do not meet the conditions, you can be brought back to court to be sentenced.

- **restitution**...the judge orders you to pay money to the victim of your crime for any damage or loss caused by your crime.
- **prohibitions**...the judge can prohibit certain things, for example the judge can suspend your driver's licence or order that you cannot own a firearm.
- **imprisonment**...serious matters can result in a jail term.
- **conditional sentences**...the convicted person receives a jail term but is permitted to serve the term in the community as they pose no safety risk to the public.
- **intermittent sentences**...sentences of up to 90 days can be served on weekends.

The judge can order you to pay a victim surcharge. You cannot pay the surcharge by fine option.

● **appeals**

Either you or the Crown Prosecutor can appeal a finding of guilty or not guilty. A sentence may also be appealed by either side.

● **publication**

There is a possibility that your name could appear in the paper or on TV. Criminal court proceedings are open to the public. The media can decide whether they wish to publish or broadcast the name of an adult charged with an offence.

The court may prohibit publication if it might identify the victim of a crime of a sexual nature.

● **criminal records**

The police keep a record of criminal charges and convictions. Other agencies, such as the courts, also keep records of the

outcome of trials. The police information system keeps track of people who are convicted of federal offences, for example, offences under the *Criminal Code* or the *Controlled Drugs and Substances Act*. A person's criminal record does not include convictions under a provincial law, such as *The Traffic Safety Act* or *The Alcohol and Gaming Regulation Act*. The police may have a record of people who commit these offences too. A person convicted of a criminal offence who moves to another province still has a criminal record.

The Royal Canadian Mounted Police keep a central computerized file of people's criminal convictions. The RCMP, the police and other law enforcement agencies use this national information system to find out if a person has a criminal record.

- **criminal records and pardons**

The Criminal Records Act creates a procedure for applying for pardons. A pardon allows people who have completed their sentence and not been in trouble with the law again to have their record kept separate and apart from other criminal records. The policy is that convictions should not have a negative impact on the person's character forever.

If you have been found guilty of a federal offence and did not receive a discharge, you can apply to the National Parole Board for a pardon. You must complete the sentence given by the court and wait a certain time, from three to five years, before applying. On application, if the conviction was for a summary conviction offence the Board will issue a pardon to you if you have not committed a criminal offence for three years. In the case of indictable offences, the Board will grant a pardon, on application, if it is satisfied that your conduct has been good and you have not had any new convictions for five years. Pardon Application Guides are available online (www.npb-cnrc.gc.ca/pardons/pardon_e.htm) or through the National Parole Board nearest you.

If you receive a pardon and are later convicted of an indictable offence, the pardon automatically ends. The National Parole Board may take away a pardon if you are later convicted of a summary conviction offence. This is called revoking a pardon.

If you received an absolute or conditional discharge you do not need to apply for a pardon. Following a waiting period of one year for absolute discharges and three years for conditional discharges, the RCMP automatically removes the record of a discharge from their computers. This applies for discharges given after July 24, 1992.

To have information about discharges received before July 24, 1992 removed from the system, write to the Royal Canadian Mounted Police, Pardon and Purge Services, Box 8885, Ottawa, ON K1G 3M8, Fax: (613) 957-9063, website: www.rcmp-grc.ca/crimrec/pandp_e.htm.

It is important to note that pardons only apply to federal offences and only require federal departments and agencies to keep criminal records separate and apart from other criminal records. Provincial courts and municipal police forces are not required to keep conviction records separate and apart.

Federally-regulated employers cannot use application forms that ask about convictions for offences which have been pardoned and cannot discriminate on the basis of convictions that have been pardoned. As these provisions only apply to the federal government and federally-regulated businesses, provincial employers are not prohibited from asking about criminal convictions.

It is also important to note that a pardon is not recognized outside of Canada. The authorities responsible for immigration to a particular country should be contacted for information regarding entering their country.

resources

Adult Alternative Measures Programs

600 - 1874 Scarth Street

Regina, SK S4P 4B3

Phone: (306) 787-5096

[www.saskjustice.gov.sk.ca/Comm_Services/
adult_alternative.shtml](http://www.saskjustice.gov.sk.ca/Comm_Services/adult_alternative.shtml)

The Community Services Branch of Saskatchewan Justice supports community justice programs throughout the province in delivering alternative measures programming.

Adult Corrections Services

700 - 1874 Scarth Street

Regina, SK S4P 4B3

Phone: (306) 787-3490

www.cps.gov.sk.ca/Corrections

Administers the sentences of offenders sentenced to imprisonment for two years less a day or to community supervision, such as probation.

Complaints and Administrative Investigative Support Services

Phone: (306) 780-7509 (Regina)

Receives and investigates complaints against the RCMP.

Elizabeth Fry Society of Saskatchewan

201, 165 - 3rd Avenue South

Saskatoon, SK S7K 1L8

Phone: (306) 934-4606

www.elizabethfry.ca

Provides support and information to women in conflict with the law or at risk of being in conflict with the law. Offers

programs and public education, and works toward reform in the criminal justice system.

John Howard Society of Saskatchewan

2332 11th Avenue
Regina, SK S4P 0K1
Phone: (306) 757-6657

www.sk.johnhoward.ca

Provides services to persons incarcerated as well as victims of crime; deals with alternative measures programming and services for youth offenders.

Lawyer Referral Service, Law Society of Saskatchewan

Phone: (306) 359-1767 (in Regina)
Toll-free: 1-800-667-9886

www.lawsociety.sk.ca

Can provide help finding a lawyer for a particular area of the law or a certain geographical area.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

National Parole Board

www.npb-cnrc.gc.ca

An independent administrative tribunal that deals with all aspects of parole; also deals with pardons and provides information to victims.

Public Complaints Commission

600 - 1919 Saskatchewan Drive
Regina, SK S4P 4H2
Phone: (306) 787-6519

Receives complaints against the police and directs investigations against the police.

Provincial Court Payment and Information Centre

Toll-free: 1-800-661-2024

Provides information about payment of summary offence tickets, how to fight a traffic ticket and deal with outstanding fines to the provincial government.

Saskatchewan Aboriginal Courtworker Program

600 - 1874 Scarth Street
Regina, SK S4P 4B3
Phone: (306) 787-6467

Provides support and information to accused persons going through the criminal justice system.

Queen's Printer - FreeLaw®

Walter Scott Building
B19 - 3085 Albert Street
Regina, SK S4S 0B1
Phone: (306) 787-6894
Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Status of Women Office (Saskatchewan)

Saskatchewan Labour
400 - 1870 Albert Street
Regina, SK S4P 4W1
Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.

Victims Services

610 - 1874 Scarth Street
Regina, SK S4P 4B3
Phone: (306) 787-3500 Toll-free: 1-888-286-6664

www.saskjustice.gov.sk.ca/VictimsServices

Provides support and services to victims of crime and information about the criminal justice system, victim impact statements, crisis intervention programs, restitution and compensation.

Women Offender Programs and Services

Correctional Service of Canada

Prairie Regional Headquarters

2313 Hanselman Place

P.O. Box 9223

Saskatoon, SK S7K 3X5

Phone: (306) 975-4850

www.csc-scc.gc.ca/text/prgrm/fsw/fsw_e.shtml

Delivers programs to federally sentenced women, including programs related to living skills, substance abuse, literacy, abuse survivors and parenting.

victims

of crime, violence and
abuse

domestic violence

The Victims of Domestic Violence Act provides for some assistance to victims of domestic violence through three types of specialized orders - emergency intervention orders, victim's assistance orders and warrants of entry. The law applies to women and men who suffer violence from their live-in partners, whether they are married, living common-law, or in a gay or lesbian relationship. It applies to parents of children, whether they have ever lived together or not. The law also protects children and older adults living in a family environment.

domestic VIOLENCE

Domestic violence can include physical harm and damage to property, forced confinement and sexual assault. A threat that causes a reasonable fear of physical harm or damage to property is also an example of domestic violence.

- **emergency intervention order**

Emergency intervention orders can give relief to a victim in an emergency. Police officers, mobile crisis workers and victims services coordinators can help victims apply for an order requesting...

- exclusive occupation of the family home

victims
of crime, violence and
abuse

- a police officer to remove the abuser from the family home
- a police officer to be present and supervise while the abuser or the victim takes personal belongings from the family home
- a restraining order prohibiting the abuser from contacting the victim

Special Justices of the Peace are available at any hour of the day or night to hear applications. Before making an order, the Justice of the Peace must determine that “domestic violence” has occurred and be satisfied that the matter is serious or urgent enough that it should not wait until it can come before a judge.

An emergency order of this type can be granted without the abuser being present. Once granted, however, it will not become effective until the abuser is given notice of it. Also, because these orders are designed to deal with emergency situations, they must be confirmed afterwards by a judge.

*domestic
violence*
COURTS

In some Saskatchewan centres there are special courts to deal with domestic violence cases. These courts are designed to deal with the specific needs of the victims of domestic violence, their families, and the accused. They can provide for early intervention and a multi-disciplinary approach to dealing with domestic violence. For example, the accused can choose to plead guilty and have sentencing postponed until a treatment program has been completed. Successful completion of a treatment program can then be considered when deciding on an appropriate sentence. Support is provided to the victim throughout the process. Victims can be assisted with safety planning, varying release conditions, preparing for court if there is a trial, and preparing victim impact statements. Victims can also receive referrals for counselling and updates on the offender's progress in treatment.

The judge must review the order and supporting papers within three working days of getting the documents from the Justice of the Peace. If the judge is not satisfied that there was evidence to support the order, a rehearing of the matter may be scheduled.

- **victim's assistance order**

These orders are similar to an emergency intervention order, but are designed to be used in non-emergency situations. Application is made to a judge, who may make any of the orders available as emergency intervention orders. Other orders are available too. For example, a judge may order the abuser to pay compensation because the victim has suffered a loss of money as a result of the abuse. Compensation may be for things such as loss of earnings, medical and dental expenses, moving expenses, out-of-pocket losses, or legal expenses.

- **warrant of entry**

Warrants of entry are designed to be used where there is concern about domestic violence in connection with a person who cannot act on their own. A Justice of the Peace may order that a police officer be allowed to enter and search a place. The order may only be made after a potential abuser has refused to give a police officer access to a person who may be the victim of domestic violence. The warrant allows the police to enter and search the place. They may examine or assist a victim and, if necessary, remove the victim.

sexual assault

Sexual assault is a crime. It involves sexual contact, such as kissing, touching, fondling and intercourse, without consent. A person may be charged with...

- sexual assault

victims
of crime, violence and
abuse

- sexual assault with a weapon, threats to a third party or causing bodily harm
- aggravated sexual assault

● **what is consent?**

Consent means to voluntarily agree to engage in sexual activity. When threats or force are used to obtain consent it is not voluntary. If a person, such as your boss, teacher, doctor, or family member uses power they have over you to obtain your consent, your consent is not voluntary.

Consent must be clear. If you are too afraid to yell or resist or fight back your consent cannot be implied. You have the right to decide whether to have sexual relations with another person.

You can consent to some sexual activities without consenting to all sexual activities. For example, you may agree to go on a date and to hold hands or kiss but nothing more even if you have agreed to have sexual relations on previous occasions. Agreeing to some sexual activity does not mean you consent to all sexual activities. You have the right to say “No” to anything, at any time. No one has the right to force you into unwanted sexual activity, no matter what has happened before. “No” means “no” - always.

● **sexual assault is wrong**

Anyone who forces sexual activity on you can be charged with the offence of sexual assault. It does not matter whether the person is a stranger or someone you know, such as a date, friend, relative, spouse or partner.

The offence of sexual assault carries a sentence of up to ten years in prison. Assaults involving weapons, threats or injuries carry longer maximum sentences, up to life imprisonment for aggravated assault.

- **what to do**

If you are sexually assaulted you should get help right away. You can contact the police, a doctor or sexual assault centre. A sexual assault centre can send someone to give you support and information, accompany you to the hospital and help you work through the process of deciding whether to report the incident to the police.

It is important to get medical attention, even if the assault did not involve sexual intercourse. If you decide to seek medical attention or to report the incident to the police, you should not clean yourself, change or throw away your clothes, comb your hair, or take any drugs or alcohol. If you do any of these things it may be harder to gather evidence about the person who attacked you.

Even if you do any of these things you should still seek medical attention and call the police. It is a good idea to write everything you remember down on paper. Your notes may be helpful if you need to give evidence at a later time.

- **victims services**

Victims Services Programs are available throughout the province. These programs are designed to provide information and support to victims of crime. They also offer assistance and support to victims who are required to testify and can provide a liaison between the victim, the police and the court. Compensation to victims may be available for some expenses that result from the crime.

- **the police can help**

The police can try to help in a number of ways. They can take you to get medical attention, gather evidence and interview possible witnesses. They may also refer you to victims services and other available resources.

The police will ask you detailed questions and prepare a statement for you to review and sign. The police will use your statement and other evidence to try to find the person responsible for the assault. If the police are able to locate a suspect, they may ask you to help to identify the suspect. The suspect may be arrested and charged.

- **will the suspect be held in jail?**

Not necessarily. If the police do in fact charge the person, they may keep the person in jail until their first appearance in court. A judge will decide whether to release the accused or hold them over for trial and must consider your safety and security. The accused may be released on certain conditions. For example, the judge may require the accused to post bail or report to the police regularly. The accused is usually ordered not to contact you in person, by phone or mail. If you are afraid that the accused may try to harm you or stop you from giving evidence at the trial, tell the police or the Crown Prosecutor.

- **what happens next?**

If the accused pleads not guilty, you may have to go to a preliminary hearing and trial to give evidence about what happened. You should talk to the Crown Prosecutor before the hearing or trial to find out when and where court will take place, what questions the Crown Prosecutor will ask, as well as what to expect from the defence lawyer. If you do not understand what the Crown Prosecutor tells you, ask them to explain it further or in simpler terms. You have the right to know about the case and be prepared for the trial. You can bring someone with you for support.

- **will I be asked about my sexual history?**

Evidence about your past sexual activities, whether with the accused or any other person, cannot be used to attempt to show that you consented to the sexual assault. Such evidence

cannot be used to suggest that you are not a credible witness or that your testimony should not be believed. In specific situations, however, the judge may allow some questions about your past sexual activities if the judge decides that this information has some bearing on the case at hand.

- **will the court be open to the public?**

Court proceedings are usually open to the public, but you do have the right to have your identity protected from being in the news. To do so, tell the Crown Prosecutor to request that the judge make an order saying your identity cannot be made public in the media. In very limited circumstances, the public may be excluded altogether - but this is unusual.

- **what happens if the accused is convicted?**

If the accused pleads guilty or is found guilty after a trial, the judge will determine the sentence that the offender will receive. The offender may not be sentenced immediately; the judge may hold a sentencing hearing at a later date and may ask for a pre-sentence report.

A pre-sentence report is prepared by a probation officer and includes background information about the offender's family, education, employment history and criminal record. You can provide the court with a victim impact statement that explains how the crime has affected you and your family.

The judge will consider factors such as how much force was used, the harm suffered, and the offender's background and criminal record. The judge will also consider any aggravating factors. For example, if the offender abused a position of trust or authority, the sentence will be harsher.

harassment, threats and stalking

If someone is harassing, threatening or repeatedly phoning or following you, it may be considered an offence under the *Criminal Code*. While these types of behaviour are frequently

associated with family violence, the offender can be anyone: a current or former partner, a co-worker, casual acquaintance or total stranger. Such behaviour can be directed towards an individual, their family, their friends or co-workers and may involve other criminal acts such as break and enter, assault or unlawful confinement.

● **criminal harassment**

It is a criminal offence for anyone to make you reasonably fear for your safety or the safety of someone you know by...

- repeatedly following you or someone you know
- repeatedly visiting, calling or writing you or someone you know
- watching your home or workplace
- threatening you or someone in your family

No actual injury need occur. The offender does not need to have intended to harm you. If their behaviour would cause a reasonable person to fear for their safety, it is criminal harassment.

● **intimidation**

It is a criminal offence for anyone to try to force you to do something or prevent you from doing something by...

- using violence against you, your family or your property
- threatening you or your family with violence or damage to your property
- following you
- taking your things
- chasing after you by car
- watching your home or place of work

- **uttering threats**

It is a criminal offence for anyone to threaten to...

- kill you or cause bodily harm to you
- damage, destroy or burn your property
- kill, poison or injure your animal

- **indecent or harassing telephone calls**

It is a criminal offence to make an indecent telephone call or to repeatedly call someone to harass them. It is also a criminal offence to tell someone false information with the intent to injure or alarm them.

- **extortion**

Extortion means using threats or violence to get someone to do something or to obtain something. Extortion is a criminal offence. Many people think of extortion as involving only money, but this is not always the case. For example, a person could be convicted of extorting an act of sexual intercourse.

- **causing a disturbance**

It is a criminal offence to cause a disturbance in a public place. It is also an offence to loiter, molest or obstruct people in a public place. Causing a disturbance could cover such things as fighting or yelling on the street or shouting or harassing someone in a bar, restaurant or shopping mall.

- **getting help**

If you are being harassed, intimidated or threatened, get help. Ask a friend to stay with you. Call the police. Change your phone number. Make a note of the name of the person who is bothering you, if you know it. If possible, record the dates of the occurrences along with a description of what

happened. Keep a record of anyone who may have witnessed the occurrences.

If the harassment or threats are made by phone, use the call-trace feature through your phone company. Information about this feature can be found in the front pages of your phone book or you can contact the phone company. Call-trace allows the phone company to provide the police with evidence that can be used in court. You can also record the phone calls yourself.

DO NOT PUT YOURSELF AT RISK.

- **calling the police**

If someone has been uttering threats, harassing or intimidating you, call the police. Get the badge number of the officer you talk to so that you can refer to it if you need to call the police again. The police can investigate to find out who is disturbing you. If the police decide to charge a suspect, that person may be arrested or summoned to appear in court at a later date. Ask the police to keep you informed about your case and indicate concerns about your safety. The police or Victims Services can tell you whether someone has been charged in connection with your case, whether he or she has been arrested or released and provide information about any scheduled court appearances. Even if the person is arrested, they may be released. You must take steps to protect yourself, such as staying with a friend or at a shelter.

The police cannot keep a person in jail for more than 24 hours without charging them. The police and the Crown Prosecutor can ask that the court require the person to stay away from you as a condition of their release.

- **going to court**

If the police arrest and charge the person, you may be required to testify in court as a witness. Crown Prosecutors

handle criminal cases. They decide whether there is enough evidence to justify taking the case to court.

If the matter goes to court and the accused pleads guilty or is found guilty at trial, he or she could be sent to jail. The court may also order that the offender not have any contact with you and that they not attend at or near your home or workplace. They may also prohibit the offender from possessing any weapons or require the offender to attend counselling.

dating violence

Dating violence can take on many forms. It may involve sexual, physical or emotional abuse of one person by another in a dating relationship. The relationship may be ongoing or simply consist of one “date”, but is distinguished from domestic violence where the parties live together.

Some forms of dating violence may be criminal. A criminal assault means any threat or use of force, if the person who threatens or uses force intended their actions and the other person did not consent to it. A sexual assault is any kind of assault as described above that involves a degree of sexual activity, such as kissing, fondling or sexual intercourse. Anyone who forces sexual activity on another person could be charged with the crime of sexual assault. It does not matter if the parties know each other or are dating each other - even spouses may be charged with this offence.

Agreeing to certain things does not mean that you are agreeing to any or all sexual activity. Sexual assault is when another person forces sexual activity on you even if you have agreed to: go home with them or invited them into your home; gone out on a date with the person and agreed to hold hands or kiss; or had sexual relations with the person before. You have the right to say “No” to anyone, anytime. No one has the right to force you into unwanted sexual activity, no matter what has happened before.

Victims of dating violence who have been physically or sexually assaulted have the same legal options as those assaulted by strangers. Such assaults can result in criminal charges or civil suits. If you are sexually assaulted, you should get help right away. You can call a sexual assault centre, go to a hospital for medical care and/or call the police. A sexual assault centre can send someone to give you support and information, as well as discuss the criminal process with you. If you need medical care, go to the nearest emergency department and tell them what happened. Even if the assault did not involve sexual intercourse, you should still get medical attention.

Many, many incidents of dating violence go unreported. Studies suggest that victims of sexual assault are much more likely to report the crime when it is committed by a stranger, rather than a friend or date. Often people don't think of dating violence as potentially criminal behaviour and may blame the victim. Alcohol and drugs are frequently a factor in dating violence. It is important to note that the *Criminal Code* states that it is not a defence that an accused person believed that the victim consented to the activity where the accused person's belief was the result of: self-induced intoxication; willful blindness; or where the accused did not take reasonable steps to find out whether the victim was consenting.

Dating violence hurts everyone. Education is essential to solving the problem and helping people determine what a healthy dating relationship is. The causes of dating violence are complicated, but there are some things you can do to avoid situations that could lead to dating violence. Some suggestions include recognizing controlling or possessive behaviour, setting sexual limits, communicating clearly, avoiding situations that make you uncomfortable and not otherwise placing yourself at risk. For more information, you can contact a sexual assault centre or crisis centre, a community support group, local mental health clinics or your local police service.

- **dating violence myths and realities**

myth Women are at a great risk of being assaulted by strangers.

reality Canadian, British and U.S. studies indicate that women are at far greater risk of being assaulted by men they know. Dating partners are more dangerous than strangers.

myth Jealousy is a sign of love.

reality Jealousy is the most common reason for assaults in dating relationships. When a man continually accuses a woman of flirting or having an affair, and is suspicious of everyone he sees with her, he is possessive and controlling.

myth When a woman gets hit by her partner, she must have provoked him in some way.

reality No one deserves to be hit. Whether or not there was provocation, violence is always wrong. It never solves problems, although it often silences the victim.

myth Women in abusive dating relationships stay because they enjoy being abused.

reality Women who are abused by their dating partner do not stay in the relationship because they like being bullied. Most victims want to improve their relationship rather than end it. Adolescent girls, in particular, feel social pressure to stick it out because having a “bad” boyfriend is better than having no boyfriend at all.

myth Men cannot control their sexual urges, and if a woman gets her date sexually aroused, she deserves what she gets.

reality Men are capable of controlling themselves. That's why forcing sex on a partner is illegal. Even if a woman has consented to petting or necking, she still has the right to control her own body. When a woman says NO or NO MORE, then the man is required by law to stop.

myth Men have the right to expect sexual favours if they pay for dates or if they have a long-standing relationship with a woman.

reality This myth is particularly persistent among teenagers. In fact, it is unreasonable to expect sex in return for initiating and paying for dates. And not every long-term relationship has to lead to “going all the way”. Sex must be voluntary, and both partners have to agree on when they are ready.

myth Maybe things will get better.

reality Once violence begins in a dating relationship, it usually gets worse without some kind of intervention. Waiting and hoping he'll change is not a good strategy. Partners in an abusive relationship need help to break out of the pattern.

myth “Name-calling” doesn't hurt anyone.

reality Emotional abuse is often considered harmless “name-calling”. But name-calling hurts - that's why people use it. Emotional abuse lowers the victim's self-esteem, sometimes permanently. For many women it is the most damaging aspect of abusive relationships.

myth I can tell if a guy is going to be a “hitter” just by looking at him.

reality Abusers come in all sizes and shapes. They are not the stereotypical muscle-bound thugs portrayed in the media. They are in the classroom, at the dance, or living next door.

myth It'll never happen to me!

reality Dating violence can happen to you. It is not limited to a particular social class, or any single ethnic or racial group. Some women are victimized on their first date while others are assaulted after dating a long time. Everyone is at risk.

SOURCE: Dating Violence Fact Sheet, National Clearinghouse on Family Violence, Health Canada

peace bonds

If you fear for your safety, or the safety of your children or property, help may be available in the form of a peace bond. The individual that you fear may be a current or former spouse, a co-worker, casual acquaintance or total stranger. If you know who the person is, you can apply to the court for a peace bond.

- **what is a peace bond?**

A peace bond is a court order that requires another person to “keep the peace” for a certain amount of time and obey any other conditions ordered. A peace bond is not a criminal conviction. As long as the conditions of the peace bond are met, the individual will not be charged with a criminal offence with regard to the peace bond. If, however, the conditions of the peace bond are broken, the individual can be charged with a criminal offence. If convicted, the person can be fined and/or jailed and will then have a criminal record.

- **how can I get a peace bond?**

If you have a real fear that someone is going to harm you, your children or your property, you can go to the police station or Crown Prosecutor’s office to sign a formal statement, called an Information, explaining exactly why you are afraid. The individual that is causing you fear can then be required to appear in court. If necessary, the police can arrest the individual and take them to court.

A Crown Prosecutor will explain the situation to a judge. You do not have to be present at this time, but may choose to attend. Ask the police for the time, date and place that is set out in the summons.

If the court is satisfied that you have reasonable grounds to fear for your own safety or the safety of your children or property, the judge will ask the individual responsible to enter into a peace bond.

If the individual agrees to the peace bond the judge will grant the order right away. The individual must read and sign the peace bond, indicating that they understand the bond and agree to follow conditions, such as...

- keep the peace and be of good behaviour
- not harm or harass you
- not see, phone, write, or otherwise contact you

If the court is satisfied that you have reasonable grounds to fear an individual but that individual will not voluntarily agree to enter into a peace bond, the judge will order a hearing.

● **what happens at a hearing?**

A hearing is similar to a trial. If the judge orders a hearing you must attend court on the hearing date. A Crown Prosecutor will conduct the case on your behalf. The other individual may be represented by a lawyer or may speak for themselves at the hearing. The judge hears both sides, including testimony from you, the other individual and any other witnesses. After considering all of the evidence, the judge will decide whether or not to order the peace bond.

● **how does a peace bond work?**

A peace bond may protect you by discouraging the other individual from harming you. With a peace bond, the judge will order the individual to keep the peace and be of good behaviour. For your safety, the judge will also consider other conditions, such as ordering that the individual not contact you or your family, be around your home or workplace, or possess any weapons.

The judge can order the peace bond for any set period of time, up to twelve months. If the individual will not agree to enter into the peace bond after a judge's order, the individual can be placed in jail for up to twelve months.

After the peace bond expires, if you still fear for your safety, the safety of your family or property as the result of a new incident, you can apply for a new peace bond. You cannot rely on the same incidents to extend the peace bond beyond the twelve month period.

protecting **YOURSELF**

By itself, a peace bond may not protect you from violence at the hands of another individual. The individual may ignore the court order. The possibility of a criminal record may not be enough to stop them from being violent. While the individual can be arrested for breaking the court order, you should also have a safety plan in place, in case you find yourself in a crisis situation.

DO NOT PUT YOURSELF AT RISK.

If you are afraid you are going to be hurt, or if you have already been hurt, call the police. The police may be able to...

- charge the individual with breaking the peace bond, if one was signed
- restrain a violent individual
- lay assault charges
- lay other charges, such as criminal harassment, intimidation or uttering threats
- arrest and keep the individual in jail for a period of time

If you need support to deal with a violent individual, call a crisis or help line. Ask about treatment programs for violent individuals. Contact Victims Services. Go to a mental health clinic or other counsellor for support and information. Talk to a member of the clergy or an elder.

Whether or not you have a peace bond in place, if you need immediate protection, call the police, go to the nearest shelter, or call a crisis line.

- **breaking the peace bond**

By breaking any of the conditions of the peace bond the individual is committing a crime. The police can arrest the individual and may charge them with a criminal offence. If the police charge the individual and they deny the charge, there will be a trial. You will then have to give evidence about how the individual broke the conditions of the peace bond.

If the person pleads guilty to the charge you will not be required to attend court, but may choose to do so. After the individual pleads guilty or is found guilty, the judge will decide the sentence for the offence. You may want to provide the court with a victim impact statement so that the judge can consider how the individual's actions affected you.

You may want to ask the police about the availability of Victims Services in your area. Victims Services can provide information and support to victims.

- **making contact**

If you decide that you want to see the individual after a peace bond is in place, talk to the police or Crown Prosecutor and ask that the peace bond be changed to allow the individual to make contact with you. Do not invite the person to see you unless the peace bond has been changed to allow it, or the peace bond has expired.

- **legal assistance**

You do not need a lawyer to get a peace bond. However, a lawyer can help you get a court order to remove an abuser from your home in the case of domestic violence. They may also be able to help you get an order that prohibits the individual from contacting you, your children, your employer or others at your workplace. Compensation may be available to you to help cover the expenses stemming from the other

person's actions. A lawyer may also help you get a custody order if you want to leave your spouse because of threats or violence. The order can set out if, where and when your spouse can see the children.

You may be eligible for Legal Aid. If you cannot afford a lawyer, contact your local Legal Aid office for information about applying for Legal Aid. If you want to hire a private lawyer, you can contact the Lawyer Referral Service, operated by the Law Society of Saskatchewan toll-free at 1-800-667-9886. You may also want to look through your phonebook or talk to friends and relatives.

a word about victim testimony

Sometimes victims of crime do not wish to give evidence in court. However, in some cases they will be required to do so. Witnesses and victims have a vital role to play in the administration of justice. Their testimony is a very important part of the Crown's case against the accused. To ensure that all the facts in a case will be presented to the court, witnesses and victims may be required to give evidence.

If the Crown Prosecutor needs a witness to testify, they will receive a document called a witness subpoena. This means the witness must go to the court at the time indicated on the subpoena. Usually the Crown Prosecutor will contact the witness before the date of the trial to go over their testimony before the trial. If called to give evidence, the witness must truthfully tell the court what happened, whether they want to or not.

Witnesses and victims may have fears and concerns about testifying in court. They may be worried about giving personal information. They may be unsure about understanding and answering questions well. They may be worried about not remembering important dates, times or other details. These concerns are normal. The Crown Prosecutor and

provincial victim/witness services can provide witnesses and victims with information about what to expect in court and options that may make testifying easier.

It is important for witnesses and victims to get the assistance they need to enable them to appear and testify in court as required. If a person, including a witness or victim, ignores a subpoena to appear in court they can be arrested and brought before a judge. If a witness or victim refuses to testify in court they could be held in contempt of court and face a fine, or jail, or both. Witnesses and victims should ask the Crown Prosecutor or victim services personnel to help them prepare to testify in court.

In cases where a victim wants to have charges dropped, they may be referred to a victim/witness coordinator for review of the case. The victim/witness coordinator can also help prepare and assist the Crown Prosecutor in preparing a reluctant or frightened witness for court.

A victim's testimony is very important to the case. Sometimes it is the only evidence available and a criminal charge may be proven solely on that evidence.

resources

Aboriginal Family Violence Programs

www.saskjustice.gov.sk.ca/VictimsServices/programs/ab-family-violence.shtml

Has community-based programs designed to help Aboriginal families living in urban centres deal with abuse and violence. Currently operating in Saskatoon, Regina, Prince Albert, Yorkton and the Battlefords. Contact Saskatchewan Justice for more information or the Saskatchewan Women's Directory for contact information for individual programs.

Family Violence Services

Community Resources and Employment
2045 Broad Street
Regina, SK S4P 3V7
Phone: (306) 787-3700

[www.cr.gov.sk.ca/services/famyouth/
familyviolence.html](http://www.cr.gov.sk.ca/services/famyouth/familyviolence.html)

Works in partnership with communities, families and individuals to foster family relationships free of violence and abuse; funds women's shelters and crisis centres, outreach services and public education on abuse issues.

Justice Canada

Communications Branch
Ottawa, ON K1A 0H8
Phone: (613) 957-4222

www.canada.justice.gc.ca

Works to ensure that Canadians enjoy a justice system that is fair, accessible and efficient; provides information about our justice system and a number of current initiatives.

Lawyer Referral Service, Law Society of Saskatchewan

Phone: (306) 359-1767 (in Regina)
Toll-free: 1-800-667-9886

www.lawsociety.sk.ca

Can provide help finding a lawyer for a particular area of the law or a certain geographical area.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

victims
of crime, violence and
abuse

National Clearinghouse on Family Violence
1909D1, 9th Floor, Jeanne Mance Building
Tunney's Pasture
Ottawa, ON K1A 1B4
Toll-free: 1-800-267-1291

www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/index.html

National resource centre that provides information about family violence, including a referral and directory service, fact sheets, research findings, statistics and much more.

Provincial Association of Transition Houses (PATHS)

1940 McIntyre Street
Regina, SK S4P 2R3
Phone: (306) 522-3515

www.abusehelplines.org/

Provides help and information about violence issues and abuse in relationships.

Queen's Printer - FreeLaw®

Walter Scott Building
B19 - 3085 Albert Street
Regina, SK S4S 0B1
Phone: (306) 787-6894
Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Status of Women Office (Saskatchewan)

Saskatchewan Labour
400 - 1870 Albert Street
Regina, SK S4P 4W1
Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.

Victims Services

610 - 1874 Scarth Street
Regina, SK S4P 4B3
Phone: (306) 787-3500 Toll-free: 1-888-286-6664

www.saskjustice.gov.sk.ca/VictimsServices

Provides support and services to victims of crime and information about the criminal justice system, victim impact statements, crisis intervention programs, restitution and compensation.



victims
of crime, violence and
abuse

women's health

saskatchewan health insurance plan

Canadian residents are entitled to basic and necessary medical treatment paid for by the province where they live. Residents of Saskatchewan can benefit from our publicly-funded, publicly-administered health care system. If you are travelling elsewhere in Canada, you can still get the same treatment you would get at home in Saskatchewan.

- **services provided free of charge**
 - Medically necessary doctor and hospital services, including...
 - doctor visits
 - x-rays
 - lab tests
 - diagnostic tests
 - surgical procedures
 - Physiotherapy or occupational therapy provided by a therapist under contract with a Saskatchewan health authority
 - Screening mammography for women aged 50-69

- Immunization services, including...
 - children's immunization program
 - influenza vaccine for individuals over 65 or others considered at risk
- Sexually transmitted infection (STI) treatment, including treatment and medications available free of charge through STI clinics and doctors
- HIV testing through private doctors, STI clinics, and HIV anonymous testing clinics
- Optometric services for individuals that...
 - are under 18, or
 - receive a Saskatchewan Income Plan supplement, or
 - receive benefits under the Supplementary Health Program or Family Health Benefits (will receive periodic, routine eye examination and glaucoma testing for individuals over 40)
- Alcohol / Drug Abuse / Problem Gambling treatment and services for individuals and their families
- Services for mental health problems and disorders through health regions
- Some Home Care services, such as case management and assessment, home nursing and physical/occupational therapy
- **subsidized services***
 - Some medically directed air ambulance services
 - Some road ambulance services for seniors
 - Institutional long-term care, such as that provided in nursing homes, health centres and hospitals
 - Some Home Care services, such as personal care, respite and home management services
 - Some chiropractic services
 - Podiatry Program (foot care) provided by a health region

- Some Hearing Health Services/Hearing Aid Plan services
- Some dental services, including...
 - certain oral surgery procedures to treat specific conditions caused by accidents, infection or congenital problems
 - orthodontic services for cleft palate, by referral
 - some medically required extractions prior to certain surgical procedures
- Prescription Drug Services, providing prescription drugs at a reduced cost for individuals or families with relatively high drug costs
- Saskatchewan Aids to Independent Living may provide equipment and services to individuals with a long-term physical disability

* Many of these programs offer additional reduced costs or waiver of fees to qualifying low-income individuals and families. Contact Saskatchewan Health for more information.

● **services not covered**

- Non-medically necessary services or procedures and cosmetic procedures
- Physiotherapy or occupational therapy services provided privately by therapists not under contract with a Saskatchewan health authority
- Private Home Care services not provided or funded by a Saskatchewan health authority
- Routine dental examinations and other regular dental services
- Routine eye examinations for persons over 18
- Contact lenses, eyeglasses, hearing aids, artificial limbs, crutches
- Private podiatry services
- Naturopath and osteopath services
- Massage therapy
- Lodging in personal care homes

- Medical examinations for employment, insurance, etc.
- Services provided by health facilities other than hospitals unless under agreement with Saskatchewan Health

patients' rights

As a patient, you are entitled by law to certain basic rights. In this section we will briefly examine your rights when receiving **health care treatment** provided by health care professionals. This treatment includes medical and dental treatment such as diagnosing and responding to illness, as well as preventative measures such as immunization.

● consent to medical treatment

Generally, health care treatment cannot be given to you without your consent. With a few exceptions, you are the only one who can consent to your own medical treatment.

In order to give consent, you must be **legally competent**, or mentally capable, of making your own decision.

You must be of **clear mind**, meaning you should not be under the influence of any medication or other pressure that could cloud your ability to make a decision about your own treatment.

Your consent must be **informed**. The health care provider should tell you about the nature and consequences of the treatment before you consent to it. You have the right to

under EIGHTEEN

You do not need to be over a particular age to provide valid consent to your own medical treatment - you can consent to your own medical treatment if you are old enough to understand the nature and consequences of the treatment. However if the treatment is not covered by provincial medical services, the health care provider may require your parents to agree to cover the cost of treatment.

weigh the risks over the advantages. Your health care provider cannot make this decision for you.

Health care providers must explain to you, so that you understand...

- the nature of the treatment and why it is necessary
- the usual risks, side effects, or benefit to the treatment
- any risks that have serious consequences, such as death, even if the risk is very small
- how treatment might affect your life
- how the treatment may affect your work and financial situation
- the consequences of refusing treatment
- who will perform the treatment procedure

As a patient, you must share some of the responsibility. Make sure that all your questions are answered before you give your consent.

Finally, your consent to medical treatment must be **voluntary**. No one should unduly influence you, intimidate you, or give you false information to try to get your consent. You have the right to consent to, or refuse, treatment.

There are some exceptions to the requirement for your consent to medical treatment. For example, in an emergency situation where you are **unable** to consent to or refuse treatment, health care professionals may treat your immediate condition to save your life. Also, if you have certain commu-

refusing *medical* TREATMENT

Medical treatment requires your consent. You have the right to refuse any medical treatment if you are mentally competent and mature enough to understand the nature of the treatment. However, some communicable diseases such as tuberculosis or hepatitis C may be treated without your consent.

nicable diseases and refuse to consent to treatment that will restore you to a non-infectious state, health care professionals may seek an order that requires you to have such treatment.

As a parent of a child that is too young to consent to medical treatment, you may consent or refuse treatment on the child's behalf. However, if you are refusing to consent to life-saving treatment, a social worker or peace officer may determine that the child is in need of protection and may apprehend the child under *The Child and Family Services Act*. If the issue cannot be resolved, a court hearing may be requested. If the court determines that the child is in need of protection, the Minister of Community Resources and Employment stands in the position of the parent and is able to consent to treatment on behalf of your child.

- **choice of doctor and hospital**

Generally, you have the right to choose any doctor you wish. Of course, the reality is that in many areas of the province there are a limited number of doctors. Except in emergency situations, a particular doctor does not have to accept you as a patient. Many doctors limit the number of patients they take. Specialists often require a referral from your family doctor.

Doctors may not refuse to treat you for any discriminatory reason. *The Saskatchewan Human Rights Code* prohibits discrimination on the basis of religion, creed, marital or family status, sex, sexual orientation, disability, age (18-64), colour, ancestry, nationality, place of origin, or receipt of public assistance.

You cannot demand that a doctor provide a particular service or treatment, for example a treatment that they are not trained or qualified to do, or which is morally or ethically unacceptable to that doctor.

You have the right to seek a second opinion from another health care professional. Health care decisions are yours to make. You should get enough information so that you are comfortable with the decision that you make.

Not all hospital facilities provide the same services. Hospitals in larger cities generally provide a complete range of services, although they may be divided up between hospitals within the city. Regional hospitals have a smaller range of services than those provided for in Saskatoon and Regina. Local hospitals, in turn, offer an even smaller range of services. You cannot expect hospitals to provide services that they do not offer.

Additionally, not all doctors have hospital privileges. Hospitals decide which doctors have hospital privileges. You cannot expect a doctor to treat you in a hospital where that doctor does not have privileges.

● **patient responsibilities**

You are an integral part of your medical treatment. To benefit most from your health care, you should accept the following responsibilities...

- follow safety standards
- share information with health care providers
- treat health care providers with respect and dignity
- protect your own privacy, as well as the privacy of other patients
- make informed health care decisions
- designate someone to consent to treatment on your behalf, if necessary
- make sure you understand procedures and treatments options and ask questions when in doubt

- **confidentiality**

The information you give your health care provider is confidential. Medical records in your doctor's office should only be used for your personal medical care. Medical records in a hospital may only be used by the health care providers for your medical care.

There are a few exceptions, however, where personal health information may be disclosed. For example, health care professionals have a duty to report certain communicable diseases because of the threat they pose to public safety. It is also possible that your medical records could become relevant in a court case, for example where a medical condition is relevant. If another party to a court action wants access to your medical records without your consent, that person would have to apply for a court order. Even if a judge allows access, they may limit the court order so that only the lawyer of the party would have access to the records and only for the limited purpose of the court action.

the health information

PROTECTION ACT

The Health Information Protection Act provides safeguards to protect the privacy of personal health information in any form, including both paper and electronic records. The legislation sets out governing principles recognizing that...

- personal health information is private and shall be dealt with in a manner that respects the individual
- the primary purpose of collecting personal health information is to benefit the individual that the information relates to
- personal health information is essential to the provision of health services and must be collected only on a need-to-know basis
- individuals must be able to access their own personal health records
- individuals and corporations involved in Saskatchewan's health system must protect the security, accuracy and integrity of personal health information

You generally have the right to look at and copy all information in your medical records. This includes any information that your doctor considered in providing advice or treatment, including records prepared by other doctors that your doctor may have received.

The College of Physicians and Surgeons requires that doctors give you a copy of your medical record upon request. Doctors can charge a reasonable fee to cover expenses related to providing access to records and photocopying. Requests for hospital records must be made in writing and may require payment of a reasonable fee to cover related expenses.

It is important to note that your right to access to your personal health information is not absolute. Doctors may deny access if they believe that it is not in your best interest to inspect the medical records. Patients can apply to court to have the issue decided. Your doctor may justify their decision to deny you access. Denial of such access is rare and could possibly happen if you are being treated for mental disease or illness.

● **complaints**

If you believe that your health care professional is not handling your care properly, discuss it with them directly, if possible. If this is not possible, or you are still not satisfied, there are several other options available to you. You may be able to resolve the issue through a process such as mediation or you can make a formal complaint against a health care provider through the place where you had the treatment. Some facilities have a patient advocate or representative that can help you file a complaint. Regional Health Authorities have a quality of care coordinator that can provide information and direction about your rights and options. Many health care professionals must be licenced to practice and are members of a professional association that sets standards and deals with complaints and disciplinary proceedings against its members. Complaints regarding a

licenced health care provider can be directed to their professional association.

Sometimes the misconduct of a health care provider may be criminal. You can complain to the police or Crown Prosecutor if you believe that a health care provider has committed a criminal offence against you.

You may be able to sue a health care provider if you have suffered harm as a result of treatment where the health care provider did not follow the usual practice of a reasonable health care provider under the circumstances. You may also be able to sue if the health care provider did not get your informed consent to treatment, or if the treatment went beyond what you consented to. There are specific time limits and notice requirements and you should consult a lawyer as soon as possible.

health care directives

You can help ensure that your wishes concerning health care treatment will be respected even if you become unable to make or communicate your wishes. A **health care directive** allows you to give health care professionals directions about your treatment in the event that you become incapacitated. It is prepared in advance and takes effect when you are no longer capable of consenting to or refusing treatment.

A health care directive gives your doctor or other health care provider directions about what kind of measures are acceptable to you when you can no longer say what choices you want. Health care providers must follow the directive if it provides specific directions about treatments you consent to or refuse. If the situation or treatment was not planned for, your directive will be used as a guide. You may also name another person, known as a **proxy**, to make health care decisions for you in the event that you become incapacitated.

You may name two or more proxies if you wish. These may be named as alternate or joint proxies. You can leave all health care decisions up to your proxy or leave specific directions for some situations and leave other decisions up to your proxy. A health care directive cannot permit active euthanasia or assisted suicide.

A directive must be prepared while you still are capable of making health care decisions - it is too late once you become incapacitated. A person is considered capable of making health care decisions when they are able to understand information about potential treatments, and the consequences of making or not making a decision, and are able to communicate the decision.

The decision whether or not to make a directive is up to you. The law clearly recognizes your right to direct the types of treatment that are acceptable to you through an advance

making a health care

DIRECTIVE

In order to prepare a health care directive, you must be at least 16 years of age and capable of making health care decisions. The law requires that a directive be handwritten or typed. It must be dated and signed either by you or someone else who is not your proxy or your proxy's spouse. If someone else signs for you, they must do so in your presence and have their signature witnessed by a third person. If you sign your own directive, it does not need to be witnessed.

If you name a proxy, you should discuss your treatment wishes clearly and completely. You should choose someone you trust. If your proxy knows your wishes, they must act according to your wishes. If your proxy does not know your wishes, they must act according to what they believe is in your best interests.

You should make your wishes known to your family and friends, as well as your family doctor.

If you no longer want your directive to be binding, you may revoke it orally or in writing. You may also destroy it, or make a new directive, which will replace your old directive. A directive will not be in effect while you are capable of making and communicating health care decisions.

health care directive, but you can simply choose not to prepare a directive.

If you do not prepare a health care directive - or your directive does not deal with a particular situation, and you have not named a proxy to make decisions for you - your nearest relative can consent on your behalf.

Your nearest relative is determined in the following order...

- your spouse or person you live with as a spouse
- your adult daughter or son
- your parent or legal guardian
- your adult sister or brother
- your grandparent
- your adult grandchild
- your adult aunt or uncle
- your adult niece or nephew

selected issues

● abortion

If you are facing an unplanned pregnancy, it is important for you to be fully informed about all available options open to you, including abortion, adoption and parenting. Talk to your doctor, public health office, women's health clinic, pastor, elder, or other spiritual counsellor.

There is no law against abortion in Canada. The Supreme Court of Canada has ruled that the *Criminal Code* provisions limiting lawful abortions to situations where the procedure is performed by a qualified doctor in an “accredited” or “approved” hospital and the majority of a therapeutic abortion committee has certified, in advance, that the continuation of the pregnancy would endanger the woman's life or health violate section 7 of the *Charter of Rights and Freedoms*.

Approximately 99% of all abortion services in Saskatchewan in 2004/05 were provided in three hospitals located

throughout the province. In some smaller centres there may be individual doctors that perform abortions. Abortions performed in a hospital are fully funded by the provincial government. As discussed earlier, a woman must consent to this procedure and, in law, the choice to terminate a pregnancy lies entirely with the woman.

No court in Quebec or elsewhere has ever accepted the argument that a father's interest in a fetus, which he helped create, could support a right to veto a woman's decisions in respect of the fetus she is carrying.

- Supreme Court of Canada in *Tremblay v. Daigle*

● emergency contraceptive pills

Emergency contraception is not intended to take the place of other methods of birth control and does not prevent the spread of sexually transmitted diseases like AIDS. Ask your family doctor or public health department for more information.

Some forms of emergency contraception pills (ECPs), sometimes referred to as “the morning-after pill”, have been approved for use in Canada and are available in Saskatchewan. ECPs can prevent pregnancy within 72 hours of unprotected sex by preventing ovulation (when an egg is released from a woman's ovary), inhibiting fertilization, or by preventing implantation. ECPs will not work if a woman is already pregnant (when a fertilized egg has implanted in the uterus) and will not cause an abortion. In Saskatchewan, this method of emergency birth control is currently available through your family doctor, walk-in clinics or hospital emergency rooms free of charge or for a minimal cost. This medication is also available without a prescription through a pharmacist.

You have the legal right to access emergency contraception even if you are under the age of 18, provided that you are considered mature enough to make your own health care decisions.

● sexually transmitted infections

Certain sexually transmitted infections (STIs), such as syphilis, hepatitis (B, D), chlamydia, and human immunodeficiency virus (HIV), including acquired immune deficiency syndrome (AIDS), represent a threat to public health and must be reported under *The Public Health Act*.

If you are aware or suspect that you may have been exposed or infected with such a disease, it is your responsibility to consult with a doctor or clinic nurse. Treatment for sexually transmitted infections is available free of charge through STI clinics and doctors. If you are diagnosed with one of these diseases, you are responsible for taking treatment as long as necessary to control the spread of the disease. If no treatment is available, it is your responsibility to take all reasonable steps to reduce the risk of infecting others.

You must also provide information about people you have had contact with and, in most cases, either advise them of your diagnosis or request that the doctor or clinic nurse do so for you. In most cases, public health officials cannot name the source of the exposure.

Public Health officers may require people to do or not to do certain things in order to decrease or eliminate the health risks communicable diseases pose. A person may be required to...

- undergo testing
- attend counselling to learn about effective measures for dealing with the disease, reducing risk behaviours and reducing the spread of the disease
- not behave in any manner that would expose another person to infection
- receive treatment or counselling until the person no longer poses a public health risk
- do anything necessary to give effect to an order under *The Public Health Act*

resources

AIDS Information Line

Toll-free: 1-800-667-6876

Canadian Health Network

www.canadian-health-network.ca

Online information about health and well-being and links to online health information across the country.

Canadian Women's Health Network

Toll-free: 1-888-818-9172

www.cwhn.ca

Provides information sharing, education and advocacy for women's health and equality.

College of Physicians and Surgeons of Saskatchewan

211 - 4th Avenue South

Saskatoon, SK S7K 1N1

Phone: (306) 244-7355

Toll-free: 1-800-667-1668

www.quadrant.net/cpsc

Licensing and governing body for doctors and surgeons in the province. Receives complaints from patients who are dissatisfied with the treatment received from a doctor.

Communicable Disease Control Unit

www.health.gov.sk.ca/ph_ph_cdc_unit.html

Online publications on topics such as meningococcal disease/meningitis, HIV, AIDS and anonymous testing.

First Nations and Inuit Health Branch

Health Canada
18th Floor, 1920 Broad Street
Regina, SK S4P 3V2
Phone: (306)780-5413

www.hc-sc.gc.ca/fnihb

Works with First Nations and Inuit people to improve and maintain the health of Aboriginal people.

Health Canada

www.hc-sc.gc.ca

Health Canada is the federal department responsible for helping the people of Canada maintain and improve their health.

HealthLine, Saskatchewan Health

1-877-800-0002

HealthLine is a free, confidential 24-hour health advice telephone line, staffed by registered nurses. They can provide you with immediate, professional health advice or information, and direct you to the most appropriate source of care. HealthLine can help you decide whether you should treat your own symptoms, go to a clinic, wait to see your doctor, or go to a hospital emergency room.

HealthLine Online

www.saskhealthlineonline.ca

A public service for the residents of Saskatchewan, this online resource is designed to help you better understand and manage your health and the health of your family, prevent and treat common illnesses and injuries, and to know when to contact your doctor or health care professional.

Lawyer Referral Service, Law Society of Saskatchewan

Phone: (306) 359-1767 (in Regina)

Toll-free: 1-800-667-9886

www.lawsociety.sk.ca

Can provide help finding a lawyer for a particular area of the law or a certain geographical area.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

Medical Services and Health Registration Branch

3475 Albert Street

Regina, SK S4S 6X6

Phone: (306) 787-3475

Toll-free: 1-800-667-7551

www.health.gov.sk.ca/ph_med_services.html

Provides information about health care coverage regarding physicians, chiropractors, optometrists etc., as well as out-of-province and out-of-country coverage. Call toll-free number for information on the Saskatchewan Health Services Card and information on benefits and registration.

Prairie Women's Health Centre of Excellence

University of Saskatchewan

107 Wiggins Road

Saskatoon, SK S7N 5E5

Phone: (306) 966-8658

University of Regina Extension

CB309, College & Scarth

Regina, SK S4S 0A2

Phone: (306) 585-5727

Supported by Health Canada, the Centre is dedicated to improving the health status of Canadian women by conducting policy-oriented and community-based research on the social and other determinants of women's health.

Queen's Printer - FreeLaw®

Walter Scott Building
B19 - 3085 Albert Street
Regina, SK S4S 0B1
Phone: (306) 787-6894
Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Saskatchewan Health

T.C. Douglas Building
3475 Albert Street
Regina, SK S4S 6X6
Toll-free: 1-800-667-7766

www.health.gov.sk.ca

Provides information about programs and services available to Saskatchewan residents. Online health articles on a variety of topics and links to expanded information.

Status of Women Office (Saskatchewan)

Saskatchewan Labour
400 - 1870 Albert Street
Regina, SK S4P 4W1
Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.

rights and freedoms

the “persons” case

On October 18, 1929 the British Privy Council handed down a decision in what would become known as the Persons Case. At issue was the appointment of women to the Senate, and more specifically whether women were included in the legal interpretation of the word “persons”. The case ultimately confirmed women's right to be appointed to public office.

It may seem strange to us now to question whether women could be politicians, judges and members of the House of Commons. But the English common law had not been generous with women's rights. At common law, women were not eligible to hold any important office unless Parliament passed a law that specifically said women were eligible.

Until the late nineteenth century, married women didn't have the right to own property themselves. At the time of the Persons Case, women in most Canadian provinces had only recently won the right to vote. For example, women in Manitoba, Saskatchewan, Alberta and British Columbia didn't have the right to vote before 1917. It was two more years before women were allowed to vote in federal elections. The times were changing, but even as late as 1927 it was unclear exactly what legal rights women had.

Five prominent Alberta women - the Alberta Five - were anxious to see things change. Emily Murphy, Henrietta Muir Edwards, Nellie McClung, Louise McKinney and Irene Parlby took their case to court and on to the Supreme Court of Canada. The issue was whether women were included in the legal interpretation of the word “persons”. At the time, the law stated that only “qualified persons” were to be appointed to the Senate. On the basis of previous cases the Supreme Court decided against them, finding that women did not fit the legal definition of “qualified person”.

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The women appealed their case to the British Privy Council, which was the final court of appeal from decisions of the Supreme Court at that point in history. The judges of the British Privy Council ruled in their favour, recognizing that women were eligible to become Senators and marking an important milestone in the history of women's rights.

The decision stated "that the exclusion of women from all public offices is a relic of days more barbarous than ours. And to those who would ask why the word "person" should include females, the obvious answer is, why should it not?"

Human rights are more than mere statutes and regulations. They deal with an area of law that works to recognize and protect rights and freedoms that belong to all individuals. Human rights law seeks to encourage a peaceful society by establishing a minimum degree of respect for all members of the community. This respect is based on recognizing inherent worth and a right to dignity within each person.

Human rights fall into many different categories. There are "fundamental" freedoms, including freedom of religion and freedom of speech. There are "legal" rights, such as protection against arbitrary arrest or detention and the right to remain silent. Finally, there are "egalitarian" rights. Egalitarian rights are anti-discrimination rights. These rights encourage equal opportunity and benefit for everyone by prohibiting discrimination based on characteristics such as race, religion, disability, and sex.

In Canada, many laws protect our basic human rights. The *Canadian Charter of Rights and Freedoms* prohibits both the federal and provincial governments from violating our fundamental, legal and egalitarian rights. The *Charter* requires governments to ensure that fundamental rights and freedoms are upheld whenever they pass a law, take action or make a decision.

The *Canadian Human Rights Act* deals with discrimination by federal government and federal Crown corporations that act as employers or service providers. It also covers people working in fields that fall under federal jurisdiction, such as banks and railways, as well as people living on reserves or military bases.

The *Saskatchewan Human Rights Code* protects our human rights and aims to eliminate discrimination by requiring that individuals receive equal treatment in various aspects of everyday life, such as housing and accommodation, employment, education, and the provision of public services.

- **canadian charter of rights and freedoms**

The *Canadian Charter of Rights and Freedoms* is a part of our constitution, and became law in Canada in 1982. Any legislation or other action by any government in Canada must respect the rights and freedoms protected by the *Charter*. *Charter* rights include legal rights, such as the right to be safe from unreasonable search or seizure, democratic rights, such as the right to vote, fundamental freedoms, such as freedom of religion, and the right to equal treatment.

Section 15 of the *Charter* deals with equality before and under the law. Under section 15, individuals can claim equal protection and benefit of the law, without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. In addition, the courts have broadened the interpretation of section 15, to prohibit discrimination on comparable grounds, such as sexual orientation.

The rights and freedoms guaranteed in the *Charter* are protections only against government actions and laws. This applies to agents of the government, such as police officers, social workers or administrators. If you feel that your rights or freedoms have been infringed by any level of government, you can bring a court action to have the law struck down or

changed. If you have been charged with a criminal offence, you may be able to raise an argument to exclude evidence from being used against you at trial. In cases of extreme violations, you may be able to argue that you should be acquitted because your rights under the *Charter* were infringed.

- **language rights**

* This information on language rights is based on material kindly provided by the *Association des juristes d'expression française de la Saskatchewan (AJEFS)*.

Canada is a bilingual country that recognizes both French and English as official languages. Language rights allow people to use the official language of their choice when dealing with government and the courts. Language rights apply throughout Canada. Language rights may be particularly important for groups of people who speak one official language in a province where most people speak the other official language, for example Fransaskois people or Anglo-Quebecers.

Language rights are protected in a number of ways. They are found in both the Constitution and the *Canadian Charter of Rights and Freedoms*. They are also protected by the *Criminal Code* and federal legislation called the *Official Languages Act*.

The Constitution and the Charter give citizens the right to use French or English in both federal and provincial courts and when communicating with federal departments or agencies. Canada's laws are published in both French and English and both versions are equally valid.

The *Criminal Code* gives people accused of a crime the right to be tried before a judge and jury who understand the language the accused speaks.

The *Official Languages Act* gives English speaking people and French speaking people the right to be served in their own language by federal offices. This right can only be exercised in geographic areas where there is a significant demand for such services. The Act also ensures that English and French speaking people have equal access to jobs in the federal civil service.

You can make a complaint to the Commissioner of Official Languages regarding anything covered by the *Official Languages Act*. You may want to make a complaint if you...

- were not able to obtain services in your preferred official language in a federal government office that is designated as bilingual
- find it difficult to work in your preferred official language as an employee of the federal public service in a region designated as bilingual for purposes of “language of work”
- believe that your opportunities for employment or advancement in the federal public service have been limited by the official language that you prefer using

Complaints are treated as confidential unless you authorize the Commissioner’s office to reveal your name. Complaints can be made by phoning, writing or faxing the Commissioner of Official Languages. Complaints can also be made in person at the head office or a regional office.

● **canadian human rights act**

The federal government has its own human rights code. It deals with discrimination by the federal government and federal Crown corporations. It also deals with people working in areas that fall under federal jurisdiction. This includes things such as banks, railways, radio and television stations, airlines or mining operations.

The *Canadian Human Rights Act* says that it is illegal to discriminate against anyone on a number of grounds. The prohibited grounds include race, colour, national or ethnic origin, religion, family status or pardoned criminal conviction.

An employee or client of any institution or organization that falls under federal jurisdiction can file a complaint with the federal Human Rights Commission if they believe that they have been discriminated against. If the complaint is within the commission's responsibility, an investigator will be assigned to look into the facts. The client or employee who made the complaint (called the complainant) and the person or organization they complained against (called the respondent) may be able to resolve the complaint themselves. If so, the matter ends there. However, if the parties cannot come to an agreement, the investigator will prepare a report for the commission.

If the commission believes that there is not enough evidence to support the allegation, it will dismiss the complaint. However, if they believe that there is enough evidence, they may appoint a conciliator to try and bring about a settlement. Or, the commission can refer the matter to a tribunal, which will hear all of the evidence and make a decision.

Like the commission, the tribunal can dismiss the case if there is not enough evidence to support the complaint. If the tribunal finds that the complaint is valid, it can order a number

did you know
THAT...

According to the Canadian Human Rights Commission's 2005 Annual Report, sex remains one of the most frequently cited grounds of discrimination, at 12% of all complaints, second only to disability.

Under the *Employment Equity Act*, employers under federal jurisdiction are required to promote workplace equity for women, Aboriginal peoples, persons with disabilities and visible minorities.

of possible measures to remedy the situation. For example, the tribunal might order that those responsible for the discrimination...

- stop the discriminatory practice
- make a plan to correct existing discriminatory practices and avoid future ones
- compensate the complainant for lost wages or injured feelings
- pay costs of settling the complaint

If either the complainant or respondent do not like the tribunal's decision they can appeal it to the Federal Court, and ultimately to the Supreme Court.

● the saskatchewan human rights code

The Saskatchewan Human Rights Code promotes and protects individual dignity and equal rights for the people of Saskatchewan. Under this law, the Human Rights Commission investigates complaints from people who believe they have been discriminated against, in areas not covered by federal jurisdiction.

The Code prohibits discrimination in a variety of areas, such as employment, education, publications, public services, contracts and housing. It is against the law to discriminate against someone in any of these areas by reason of a person's religion, creed, marital or family status, sex, sexual orientation, disability, age (18-64)*, colour, ancestry, nationality, place of origin or receipt of public assistance.

* For current information on age-based discrimination contact the Saskatchewan Human Rights Commission.

If you believe that you have been discriminated against because of any of the reasons listed in the Code, you can make a complaint to the Saskatchewan Human Rights Commission. If the Commission believes that your complaint is warranted, they can investigate it and attempt to settle your complaint through negotiation and mediation. If a settlement cannot be reached, they can refer it to an independent

body to hear and decide the case. Any party who does not agree with the independent body's decision can appeal it to the courts, on a question of law only.

The Status of Women Office has compiled a *History of Saskatchewan Policy and Legislation Affecting Women and Children* that highlights some historic moments for women's rights in Saskatchewan. Some examples follow.

1907 The first *University Act* for the University of Saskatchewan stated that female students would not be discriminated against because of their gender, and could participate equally with men in any university activity.

1919 *The Naturalization Act* allowed a British subject who married an "alien" (a foreigner) to retain her citizenship. Previously, the wife automatically took her husband's nationality and lost her citizenship rights.

1920 *The Public Health Act* provided expectant mothers with a maternity grant.

1950 *The Jury Act* was amended to allow women to be called for jury duty, where previously only men could serve.

1953 *The Equal Pay Act* provided equal pay for women for work of comparable character to that performed by men in the same establishment.

1976 *The Change of Name Act* was amended allowing women to legally retain their family name upon marriage.

1979 *The Matrimonial Property Act* recognized the contributions of both spouses to childcare, household management and financial provision and recognized that both spouses are generally entitled to an equal share of matrimonial property.

1993 The Occupational Health and Safety Act was the first legislation of its kind to recognize sexual harassment as a threat to the health and safety of workers

1995 The Victims of Domestic Violence Act was passed offering protections to victims of domestic violence.

2003 The Action Plan for Saskatchewan Women was released.

resources

Canadian Human Rights Commission

Prairies and Nunavut (Manitoba, Saskatchewan,
Northwestern Ontario, and Nunavut)
175 Hargrave Street, Room 750
Winnipeg, MB R3C 3R8
Phone: (204) 983-2189
Toll-free: 1-800-999-6899

www.chrc-ccdpc.ca

The Commission has a variety of publications available that explain human rights and the work of the Commission. They are available as a sound recording, in large print, in braille and on computer diskette. For further information or to order publications, please contact the Canadian Human Rights Commission in Ottawa or the nearest regional office.

Canadian Heritage

Prairies and Northern Regional Office
2nd Floor, 275 Portage Avenue
Box 2160
Winnipeg, MB R3C 3R5
Phone: (204) 983-3601

www.pch.gc.ca

Canadian Heritage is responsible for national policies and programs that promote Canadian content, foster cultural

participation, active citizenship and participation in Canada's civic life, and strengthen connections among Canadians.

Lawyer Referral Service, Law Society of Saskatchewan

Phone: (306) 359-1767 (in Regina)

Toll-free: 1-800-667-9886

www.lawsociety.sk.ca

Can provide help finding a lawyer for a particular area of the law or a certain geographical area.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

Office of the Commissioner of Official Languages

Head Office

3rd Floor, 344 Slater Street

Ottawa, ON K1A 0T8

Toll-free: 1-877-996-6368

Fax: (613) 993-5082

www.ocol-clo.gc.ca

Regional Office

Suite 200, Centre-Ville Building

131 Provencher Boulevard

Winnipeg, MB R2H 0G2

Toll-free : 1-800-665-8731

Fax :(204) 983-7801

Liaison Office

Suite 120

2220 12th Avenue

Regina, SK S4P 0M8

Phone: (306) 780-7866

Fax: (306) 780-7896

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B19 - 3085 Albert Street
Regina, SK S4S 0B1
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Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Saskatchewan Human Rights Commission

3rd Floor
1942 Hamilton Street
Regina, SK S4P 2C5
Phone: (306) 787-2530
Toll-free: 1-800-667-8577

8th Floor
122 - 3rd Avenue North
Saskatoon, SK S7K 2H6
Phone: (306) 933-5952
Toll-free: 1-800-667-9249

www.gov.sk.ca/shrc

The Saskatchewan Human Rights Commission's job is to discourage and eliminate discrimination against everyone under provincial jurisdiction. The best way to protect yourself from discrimination is to know and respect *The Saskatchewan Human Rights Code*. Contact the Commission for more information.

Status of Women Office (Saskatchewan)

Saskatchewan Labour
400 - 1870 Albert Street
Regina, SK S4P 4W1
Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

rights
and freedoms

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.

Women's Legal Education and Action Fund (LEAF)

703 - 60 Clair Avenue

Toronto, ON M4T 1N5

Phone: (416) 595-7170

Toll-free: 1-888-824-LEAF (5323)

www.leaf.ca

A national, non-profit organization committed to using the provisions of the *Canadian Charter of Rights and Freedoms* to promote equality for women.

work

labour standards

In Saskatchewan, *The Labour Standards Act* guarantees basic employment rights to employees. Employers are required to provide at least the minimum standard of working conditions set out in the Act. The Act deals with matters such as minimum wage, hours of work, vacation and holiday pay, parental leave, and notice provisions for lay-off or dismissal.

These standards apply to most employment situations, although there are some types of work situations that are not covered by the Act. For example, the Act does not cover self-employed individuals and independent contractors, employees who are employed primarily in farming, ranching or market gardening, or individuals employed by the federal government or in a field, such as banking or railways, that falls under federal jurisdiction.

It is important to note that even where *The Labour Standards Act* applies to a particular employment situation, certain types of work may be exempt from some provisions of the Act. For example, individuals who are employed entirely in a managerial position

work

are not covered by the part of the Act that deals with hours of work. Similarly, teachers are not covered by the parts of the Act that deal with hours of work, annual and public holidays.

- **rates of pay**

The Minimum Wage Board is responsible for establishing the **minimum wage** for employees covered under the Act. Minimum wage is currently \$7.55 per hour (March 2006). Employees on a monthly salary must be paid at least once per month; other employees must be paid at least twice each month. Payment is due no later than six days after the end of the pay period.

Most employees are entitled to “**minimum call-out**” pay each time they are required to report for work, even if it turns out that they are not needed. Minimum call-out pay is currently \$22.65 (March 2006). If an employee actually works, they are entitled to either the minimum call-out pay or their regular wages for the time worked, whichever is greater. The minimum call-out provisions do not apply to employees called back for overtime, students during the school year, janitors, caretakers, school bus drivers and noon-hour supervisors employed by a school board.

Work weeks run from Saturday midnight to the following Saturday midnight. Generally, an employer must pay an employee **overtime pay** when the employee works more than eight hours in a 24 hour period or more than 40 hours in a week. Overtime pay is 1.5 times an employee's regular hourly wage. Unless there is an emergency, employees are not required to work more than four hours of overtime per week. Your employer cannot take any kind of disciplinary action if you choose not to work those extra hours.

- **breaks and rest periods**

Generally, employees who work for six hours or more receive an unpaid meal break of at least 30 minutes. However, if you are expected to do some work, or be available to do some work during a meal break, you are entitled to be paid for the meal break period. Employers are not required to give employees coffee breaks, but if permitted, the employee must be paid for the coffee break period.

Employees are entitled to eight consecutive hours of rest every 24 hours, unless there is an emergency. You can agree to work shifts that leave you with less than eight hours of rest, but are entitled to refuse such shifts without penalty or punishment from your employer.

Employees who usually work 20 hours or more in a week are entitled to 24 consecutive hours away from work once every seven days. Employees working in the retail trade are entitled to two consecutive days off every seven days, unless the retail business has 10 or fewer employees or the employee works less than 20 hours per week.

Employees are entitled to at least one week's notice regarding their work schedule or any changes to it. The notice should be posted in a convenient place where employees can easily see it.

- **public holidays**

Under *The Labour Standards Act*, 10 days of the year are designated “public holidays” - Christmas Day, New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Saskatchewan Day, Labour Day, Thanksgiving Day and Remembrance Day. When a public holiday falls on a Sunday, Monday is usually observed as the public holiday, unless the employee's workplace is usually open on Sunday, in which case the holiday remains unchanged. The Act does not

work

prohibit work on these public holidays, but there are special provisions that apply...

- Employees are entitled to receive public holiday pay for each and every public holiday that falls during their period of employment. Public holiday pay is usually calculated based on 1/20 of your regular earnings over the four weeks before a public holiday. Employees are entitled to this pay whether or not they actually work on the public holiday.
- Employees who actually work on a public holiday get paid at the rate of one and one-half times their regular pay, in addition to the standard holiday pay.
- In a week that includes a public holiday, employees are entitled to receive overtime pay after eight hours in one day or 32 hours of work in that week. Any hours worked on the public holiday are not included in the 32 hours.

your social INSURANCE NUMBER (SIN)

You must have a SIN to work in Canada. A SIN is a nine-digit number used to manage programs such as Employment Insurance (EI) and Canada Pension Plan (CPP). Employers are required to ask to see all new employees' SIN cards as soon as they are hired. In turn, all new employees are required to show their employer their SIN cards within three days of starting work. Employers must keep your SIN confidential - it may only be used for income-related information.

You may also be required to provide your SIN to Government of Canada departments or agencies, such as Human Resources and Social Development Canada (HRSDC) or Canada Revenue Agency (CRA), or persons who prepare a tax return on your behalf.

Your SIN card should not be used as a piece of identification, for instance when cashing a cheque or renting an item.

Application forms are available from HRSDC offices or online at www.hrsdc.gc.ca

There is no fee for first-time applicants, although a small fee may be charged for replacement cards.

- **sickness**

Employers are not required to pay wages to employees who miss work because they or a member of their family is ill or injured. Some employers do provide sick pay for a set number of days per month or year.

An employer cannot fire you for missing work because you, or a member of your immediate family that is dependant on you, is ill or injured, if you have worked for them continuously for at least 13 weeks if...

- your absences do not exceed 12 days in a calendar year, or
- your absence is due to serious illness or injury and does not exceed 12 weeks in a 52 week period

An employer also cannot dismiss an employee who has worked for them continuously for at least 13 weeks if the employee is absent for 26 weeks or less because of an injury for which they are receiving Worker's Compensation.

*compassionate
care leave and*
BENEFITS

If a member of your family is gravely ill and is at risk of dying within 26 weeks you may be eligible for compassionate care leave and benefits to allow you to provide care or support to the ill family member. Care or support includes providing psychological or emotional support, arranging for care by a third party or directly participating in the care. You can receive benefits to care for your child, your spouse, your parents, your spouse's parents, grandparents, siblings, uncles, aunts, nieces, nephews and other close relatives.

Compassionate care benefits are paid through Employment Insurance and you must have accumulated 600 insured hours in the previous 52 weeks or since your last claim. The basic benefit is 55% of your average insured earnings up to a set maximum. You can take up to eight weeks of leave (two-week waiting period and six weeks of benefits) in a 26 week period. The maximum that you can take in one year is 16 weeks. Your employer cannot dismiss you because you are away from work and waiting for or receiving compassionate care benefits.

Employees may be entitled to receive Employment Insurance benefits if they are sick for an extended period of time and meet other eligibility requirements.

- **annual holidays and holiday pay**

After one year of employment, employees are entitled to a minimum three weeks paid holiday annually. After ten years of employment with the same employer, employees are entitled to a minimum of four weeks paid holiday annually.

Employees are entitled to take their holiday days in one continuous period, but can request to take them in shorter periods. Although your employer and you should try to arrange for holiday time that works for both of you, your employer has the last word when it comes to deciding when you can take your holidays. In this case the employer is required to give you at least four weeks notice of when your holidays are scheduled.

If there is a public holiday during an employee's holidays the employee is entitled to an extra day of holidays and public holiday pay.

If an employee is entitled to an annual paid holiday and does not take a holiday the employee will receive holiday pay. This must be paid by the employer not later than 11 months after the employee became entitled to take paid holidays. The employee will receive either three or four weeks wages, depending on the number of weeks holidays the employee was entitled to.

- **parental leave**

The Labour Standards Act provides that pregnant employees, primary caregivers of newly adopted children, and parents of newborn children who have been employed by the same employer for at least 20 weeks in the last 52 weeks, are entitled to take unpaid leave.

Pregnant employees and primary caregivers of newly adopted children can take up to 18 weeks unpaid maternity or adoption leave. No more than 12 of those weeks can be taken prior to the arrival of the baby, leaving six weeks following the arrival of the baby. An additional 34 weeks of parental leave can be combined with maternity or adoption leave.

By law, no employer can dismiss, lay-off, suspend or otherwise discriminate against an employee because she is...

- pregnant
- temporarily disabled due to pregnancy
- applying for maternity leave

The parent who does not take maternity or adoption leave can take up to 37 weeks of unpaid parental leave at some time between up to 12 weeks before the estimated date of birth or adoption and 52 weeks after the child is born or is adopted. This allows either or both parents to remain at home for a combined maximum of 89 weeks within the first year of their child's life.

Employees must give their employer four weeks written notice, where possible, prior to the beginning of their leave. Maternity or adoption leave and parental leave must be taken in one continuous period.

Employees must give their employer at least four weeks notice before the date on which they plan to return to work. Employees returning

did you know

THAT...

The Saskatchewan Human Rights Commission and Saskatchewan Labour produced *Pregnancy, Parenting and the Workplace* in 2006. This book includes information for employers and employees on topics such as working through pregnancy, maternity, adoption and parental leave and benefits, returning to the workplace and caring for sick or injured children when you are working.

Please see the resource section for contact information.

from maternity, adoption or parental leave are entitled to receive at least the same rate of pay and benefits they were receiving before the leave, with no loss of seniority.

The leave parents are entitled to under labour standards is unpaid but Employment Insurance provides benefits to eligible new parents. For information on these benefits please see the Employment Insurance section of this chapter.

● **termination and notice requirements**

After three months of employment with the same employer, employees are entitled to written notice, or pay in lieu of notice, before their employment can be terminated. The minimum notice depends on the employee's length of employment. During the notice periods, employees must receive at least their regular rate of pay and their hours of work cannot be cut. The only exception to this notice requirement is when an employer terminates an employee for "just cause", such as when an employee is caught stealing or engages in some other form of serious misconduct. When proper notice is not provided, the employee is entitled to pay in lieu of notice. Pay in lieu of notice is equal to the employee's normal wages for the minimum notice period required under the Act.

The minimum notice requirements are*...

LENGTH OF EMPLOYMENT	NOTICE REQUIRED
▪ 3 months - 1 year	1 week
▪ 1 - 3 years	2 weeks
▪ 3 - 5 years	4 weeks
▪ 5 - 10 years	6 weeks
▪ 10 years and over	8 weeks

* It is important to note that these notice periods are the minimum period of required notice under *The Labour Standards Act* and that in some instances a court may award employees additional pay in lieu of notice under the common law. Employees facing termination, especially long-term employees, should consult a lawyer.

workplace

SURVEILLANCE

Have you ever felt as though your boss was keeping a close eye on you? For some it may be closer than you think. With advances in monitoring technology many employers are beginning to use discrete forms of surveillance to keep an eye on their employees.

Employers have the ability to watch their employees on hidden cameras, monitor their e-mail, and record Internet sites that an employee visits. However, if used for the wrong purposes, such workplace surveillance techniques could place an employer in a large amount of legal trouble.

An employer could face criminal charges if they listen to or record an employee's communications. However, a court must find the employer has unjustly invaded the employee's privacy. The courts have not yet clearly defined the phrase "an unjustified invasion of privacy".

Employers must be prepared to show that there is a justifiable need, such as where a high amount of company property is disappearing. Devices cannot be used to simply monitor work performance without the permission of the employee.

Even if an employer stays within the *Criminal Code* rules relating to private communications, they could still find themselves in trouble in civil court. *The Privacy Act* of Saskatchewan says that a person may be sued for the invasion of privacy if they perform certain acts such as spying, listening in on conversations, or using personal documents. Employers may have a defence if the actions were consented to or if the actions were necessary to lawfully defend persons or property.

Consent by an employee may be obtained directly. Consent may also be implied if an employee is part of a union that has signed an agreement with the employer that includes a clause giving permission to use surveillance. However, employers must be aware that some agreements expressly prohibit the use of surveillance under any circumstances.

If an employee decides to sue an employer for an invasion of privacy, the court will look at two factors before making a ruling. First, the court will see if there has been consent given by the employee. Secondly, if there has been no consent or no

...continued on next page

work

...continued from previous page

agreement signed with the union, the court will balance the interests of the employee against the interests of the employer.

An employer must show that the surveillance was used in a reasonable manner and for a legitimate security purpose that outweighs the privacy interests of the employee. There must also be no other alternatives available to the employer.

The present law shows that the ability of an employer to legally use workplace surveillance depends on the individual circumstances. The dignity of the employee will weigh heavily on the minds of the court. As a result, employers may want to look upon surveillance as a last resort and seek legal advice beforehand.

occupational health and safety

Under *The Occupational Health and Safety Act*, employers are required to protect the health and safety of their workers. Employers are required to provide, a reasonably safe work environment and must provide necessary information, training and supervision to their workers.

Workers have the right to be advised about any job-related hazards, including information about how to recognize and deal with hazards. Workers have the right to participate in health and safety issues in the workplace. Workers also have the right to refuse work they believe to be unusually dangerous. Your employer cannot discipline you for exercising these rights.

In turn, workers are required to use safeguards provided and follow safe work practices and procedures required under *The Occupational Health and Safety Regulations*.

All places of employment under provincial jurisdiction with more than 10 workers must establish an occupational health committee made up of between 2 and 12 members chosen by the workers. Workplaces with 5 to 9 workers must have a designated occupational health and safety representative chosen by the workers for that purpose.

Occupational health committees and health and safety representatives are intended to help maintain safety in the workplace. By working with and providing information to these representatives, workers can provide valuable information that can help ensure everyone's safety.

- **refusing dangerous work**

Workers are entitled to refuse work that they reasonably believe is unusually dangerous. Unusual dangers can include situations that would normally stop work or are otherwise unusual and situations that the worker is not trained or able to deal with. Workers can continue to refuse the work until the situation is resolved to the worker's satisfaction or an investigation has found that the work is not unusually dangerous.

- **working alone**

Employers have certain responsibilities when workers work alone, meaning that they are the only worker or employee, or that they work in isolated places, and assistance is not readily available in the event of injury, illness or emergency. Employers must consult with the workers, either directly or through a representative, to identify associated risks. Once identified, the employer must take all reasonable steps to eliminate or reduce the risks. Such steps must include establishing an effective means of communication such as a two-way radio, telephone or cellular phone, or other effective means of communication. Other means to reduce or eliminate risks may include regular contact between the worker and the employer, limitations on specific activities, minimum training or experience requirements, personal protective equipment, safe work practices and procedures, or emergency supplies.

work

- **harassment**

In consultation with workplace representatives, employers must develop a written policy to prevent harassment. The policy must be posted where workers can easily refer to it. The policy must define harassment and state that every worker is entitled to be employed free of harassment. The employer must agree in the policy to take reasonable steps to prevent workplace harassment and correct offending behaviour if it does occur. The policy must explain how harassment complaints may be brought forward and state that the employer will not disclose names of those involved or circumstances surrounding the incident, unless required for the purpose of investigating the complaint or taking corrective action in relation to the complaint, or where it is required by law. The policy must also describe the procedure that will be followed to inform the involved parties about the results of any investigation.

Harassment means any objectionable conduct, comment or display that is directed at a worker and made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, age, disability, physical size or weight, nationality, ancestry or place of origin and constitutes a threat to the health or safety of the worker.

- **violence**

Some places of employment are required to specifically address workplace violence issues by implementing a written policy on workplace violence.

Workplaces where violence policies are required include: health care facilities; drug stores and pharmacies; late-night retail outlets; liquor outlets and licensed beverage

Violence means attempted, threatened, or actual conduct that causes or is likely to cause injury, including any threatening behaviour that gives a worker reason to believe that they are at risk for injury.

work

rooms; police, corrections, security and other law enforcement services; crisis counselling and intervention services; financial institutions; and taxi and transit services. Policies apply to the conduct of everyone at the workplace, not just the workers, including the public, customers, supervisors and managers.

Through consultations with occupational health committees, occupational health and safety representatives or workers themselves, violence policies must identify circumstances that have led to, or are likely to give rise to, violent situations. Policies must outline the procedures used to inform workers of the nature and extent of the risk from workplace violence, the actions that will be taken to minimize the risk, and procedures for reporting and investigating violent incidents. Employers must commit to providing training programs that cover: recognizing potentially violent situations; using available safeguards to minimize or eliminate risks to workers; developing appropriate responses to violent incidents; and procedures used to report violent incidents.

transportation AT NIGHT

Employers in certain places of employment such as hospitals, hotels, nursing homes, restaurants and educational institutions must provide night workers with transportation home, if their shift ends between 12:30 A.M. and 7:00 A.M.

washrooms

In workplaces where there are 10 or more workers and both male and female workers are employed, separate toilet facilities must be provided for each sex, in numbers proportionate to the number of male and female workers.

work

heavy LIFTING

Where heavy lifting is required, workers must receive training in safe methods for lifting or carrying heavy loads. Wherever possible, employers must provide suitable equipment for handling heavy or awkward loads. Where the use of equipment is not reasonably possible, steps to adapt the loads for easier handling must be taken. Employers must ensure that workers do not risk injury by lifting loads that are too heavy or awkward for that worker.

work–life balance

Meeting the dual demands of work and family can be difficult. Improving access to parental leave, ensuring job security and increasing benefit periods under social programs such as EI are just some of the ways in which governments are trying to better support working families. Recent trends recognize that the stress of balancing family and work life reaches beyond new parents, as most everyone has obligations and interests outside of work.

A number of factors contribute to the stress that working families experience. *Work-Life Balance in Saskatchewan: Realities and Challenges*, a 1998 report prepared for the Government of Saskatchewan, reports that...

- over 70% of Saskatchewan families depend on dual incomes
- 67% of women with pre-school children are in the paid labour force
- between 45% and 51% of employees have the additional responsibility of caring for aging parents

More and more workplaces are taking steps to address the challenges faced by working families as they attempt to balance the demands posed by work and family life. In response,

work

the Work and Family Unit of Saskatchewan Labour now provides support and services to employees and employers who want to learn more about becoming a family-friendly workplace. Their mandate is to “provide leadership and co-ordinate government activities to help reduce the negative impacts of people's inability to balance their work and family responsibilities” and “to work with business, labour and community organizations to help them develop and implement work and family strategies.”

The Unit recognizes that...

Work-family conflict costs both employers and employees in terms of family tension, absenteeism, productivity, retention, employment, and stress-related illness. It is to everyone's benefit to have productive, not distracted, employees who can contribute to families, communities, and a healthy economy.

Becoming a “family-friendly” workplace can involve a combination of strategies, tailored to a particular workplace, such as flex-time, family leave options, job-sharing, enhanced benefit and leave choices, reduced working hours, workplace flexibility (i.e. working from home) and stress management.

For more information, contact the Work and Family Unit of Saskatchewan Labour. Please see the resource section for contact information.

discrimination

- **discrimination and sexual harassment**

The Saskatchewan Human Rights Code prohibits employers from discriminating against employees on the basis of religion, creed, marital or family status, sex, sexual orientation, disability, age (18-64), colour, ancestry, nationality, place of origin*

work

or receipt of public assistance. Sexual harassment is a form of discrimination that is against the law. It is any unwanted sexual conduct that interferes with rights guaranteed by *The Saskatchewan Human Rights Code*. Sexual harassment in the workplace is specifically prohibited by the Code and by *The Occupational Health and Safety Act*.

* For current information on age-based discrimination contact the Saskatchewan Human Rights Commission.

Sexual harassment may be verbal, physical, or by other display. It may happen only once, or several times. It is never invited and is always unwelcome. It is behaviour that the harasser knew, or should have known, would be unwanted. It can take many forms, which include sexual remarks, “dirty jokes”, sexual advances or invitations, displaying of offensive pictures, leering, physical contact like touching or pinching, or actual assault.

Most sexual harassment occurs in the workplace. The harasser is most often a man in authority who uses this power to intimidate another employee, usually a woman. The victim is often reluctant to complain for fear of retaliation or economic consequences, like loss of scheduled hours or even her job.

Of critical importance in matters of sexual harassment is how the victim perceives what is happening. Courts have found that women are more negatively affected by sexual harassment than men are.

What may be a lighthearted joke to many men may be offensive to many women. Because of this, sexual harassment may be seen as any behaviour the victim feels is offensive. Such behaviour can cause victims feelings of humiliation, shame, embarrassment, and anger. This can harm job performance; cause anxiety, headaches, or sleeplessness; and lead to absenteeism and high staff turnover.

A victim of sexual harassment can take many steps to try and correct the situation. The victim can tell the harasser, verbally or in writing, to stop the unwelcome behaviour immediately. A complaint can be made to the harasser's supervisor, with a request that action be taken.

Employers are responsible for protecting employees from sexual harassment. If the workplace is unionized, the victim's steward can be told about the harassment so action can be taken. Victims can document the harassing behaviour by writing down exact details of each incident along with times, places and names of witnesses. A complaint can be made to the Saskatchewan Human Rights Commission. The Commission can investigate complaints, and a monetary award may be made to compensate for humiliation and loss of income or self-respect. Any type of retaliation by the employer for complaining to the Human Rights Commission is against the Code. Victims can also contact an occupational health officer at Saskatchewan Labour.

Employers are obliged to provide a discrimination-free workplace. They are responsible for the actions of all personnel employed, including harassing behaviour between employees. If an employer knows that one employee is harassing another, and does nothing to intervene, the employer too may be at fault. Employers may achieve a discrimination-free workplace by establishing certain safeguards, such as a code of conduct, an anti-harassment policy, a confidential complaint process, a monitoring system, and penalties for sexual harassment. These should be made well-known to all employees.

- **equal pay**

Female and male employees are entitled to equal pay for similar work when certain factors are present: the work must be performed in the same organization; the employees must be exposed to the same working conditions; and the work

work

must require similar skill, effort and responsibility. “Similar” does not mean that the jobs and requirements must be identical, but they must resemble one another in several ways or be much alike.

Skill includes the intellectual and physical abilities needed to do the work. Responsibility involves factors such as supervision of others, and accountability for equipment and safety. Working conditions include things like noise, air quality, space and other physical or psychological factors in the workplace.

These rules apply except where payment for work is based on seniority or a merit system. Pay rates can differ if the workplace has a wage system that applies to everyone and gives pay raises according to seniority, or length of service, with the employer. Pay rates can also differ if a wage system based on merit, or good performance, is in place for everyone. Differing rates of pay may also be in place for workplace trainee programs that are equally available for males and females and lead to their career advancement when completed.

Employers are prohibited from lowering the pay of any employees so as to comply with the legislation. Complaints can be made to the Labour Standards Branch of Saskatchewan Labour and may be referred on to the Human Rights Commission if no resolution is found. Employers cannot discipline an employee for making a complaint regarding equal pay.

- **pay equity**

The concept of pay equity is different than laws requiring equal pay. Pay equity requires equal pay for “work of equal value”. This allows comparisons between the wages that men and women receive even when their jobs are very different. Rates of pay are compared for jobs that involve the same

work

skills, effort, responsibility, and working conditions. This allows comparison between the wages paid for two very different jobs, for example nurses and police officers or caretakers and secretaries.

Saskatchewan does not have any specific legislation that deals with pay equity. The Government of Saskatchewan has implemented pay equity within the public sector. This includes people working for government departments, Crown corporations, agencies, boards, and commissions. Saskatchewan also has an *Equal Pay for Work of Equal Value and Pay Equity Policy Framework*. This framework sets out the minimum standards for implementing pay equity in a workplace.

If an employee does not receive equal pay for work of equal value a complaint can be made to the Saskatchewan Human Rights Commission on the grounds of discrimination based on gender. The Human Rights Commission will consider unequal pay a violation of human rights only if women, working in a female-dominated position, receive less pay than men, working in a male-dominated position, for work that is obviously and clearly of equal or greater value. If an employee is governed by federal law a complaint can be made to the Canadian Human Rights Commission.

women entrepreneurs

Women Entrepreneurs Week recognizes the significant contribution made by women to the provincial economy. In 2005 women owned and operated approximately one-third of Saskatchewan businesses. Women Entrepreneurs of Saskatchewan Inc. is a non-profit organization that provides loans, business advice, mentoring and training opportunities for women entrepreneurs in Saskatchewan. Please see the resource section for contact information.

work

employment insurance (EI)

The particulars of this program can be complicated and vary widely, depending on factors such as where you live, how long you have worked, the type of benefit or combination of benefits you are applying for, and the timing of your application. Detailed information is available from your nearest Human Resources and Social Development Canada Office, or online at www.hrsdc.gc.ca

Across Canada, the Employment Insurance program provides temporary financial assistance and other support to unemployed workers to help them get back to work. This federal program is administered by Human Resources and Social Development Canada and the Canada Employment and Immigration Commission (CEIC).

Under the program, employers and employees are required to pay into the plan. Generally, benefits are available to eligible individuals who have lost their job due to circumstances such as shortage of work or seasonal lay-offs, and individuals that are off work due to illness, parental leave or maternity leave.

Eligible individuals will have paid into the program (insurable hours) for a specified period of time (the qualifying period) and must meet other requirements.

EI payments are taxable income, meaning that applicable federal and provincial taxes will be deducted from your payment before you receive it. The gross amount of your payment (the full amount before deductions) must be included as income on your tax return.

applying for

EMPLOYMENT INSURANCE

You can apply for EI if you have paid into the EI program and are currently unemployed. Applications should be made during your first full week of unemployment. If you delay your application for more than four weeks, you may suffer a loss of benefits.

Make sure that you have the following information with you at the time you apply for Employment Insurance...

- your social insurance number (SIN)
- a Record of Employment (ROE), if available, from each job that you had within the last 52 weeks
- personal identification, such as driver's licence, birth certificate or passport
- bank account information or voided personalized cheque
- details about your termination if you quit or were fired
- medical certificate, if you are claiming sickness benefits
- certificate of adoption if you are an adoptive parent applying for parental leave
- salary information from your most recent job, including your gross salary (meaning total earnings, including tips and commissions), your total gross earnings for your last week of work, and any gross amounts received, or to be received, as vacation pay, severance, pension, etc.

● regular benefits

Regular benefits are generally available to eligible individuals that have lost their job and are able and willing to return to work, but have been unable to find a job. Regular benefits are generally not available to individuals that quit or are fired for cause.

In order to be eligible for regular benefits, you must have been out of work for at least one full week and worked a certain number of insurable hours within the past 52 weeks or since your last claim (the qualifying period). In some very limited circumstances, this qualifying period can be extended.

work

The minimum number of required insurable hours varies depending on where you live and what the unemployment rate is in your area. However, every hour worked, including overtime, counts toward your minimum number of required hours. Hours spent on paid leave, such as vacation, also count as insurable hours. In most areas, individuals will need between 420 and 700 insurable hours in the last 52 weeks to qualify for benefits.

It is important to note that individuals accumulate insurable hours at the same rate, regardless of rate of pay. That means that whether you work for minimum wage or some higher amount, each hour worked is credited in the same fashion with regard to required hours.

It is also important to note that certain factors may increase the number of required insurable hours during your qualifying period, for instance, if you are in the workforce for the first time; have violations from previous EI claims; or have been away from the workforce for more than two years without having received maternity or parental benefits in the past five years.

The maximum period that regular benefits can be paid ranges from 14 to 45 weeks within a 52 week period, depending on the number of insurable hours you have accumulated and the unemployment rate in your area. The basic

Generally, when you are fired from your job due to your own misconduct you will not be paid regular benefits. After losing that job, you must work the required minimum number of insurable hours at another job to get regular benefits. You may, however, still be eligible for sickness, maternity and/or parental benefits if you have enough insurable hours to qualify for these benefits.

If you voluntarily leave a job you may also not be eligible for benefits. Whether you will be eligible depends on whether you left the job for "just cause". Examples of things that may be considered just cause for leaving a job include being required to work excessive overtime or in conditions that endanger your health or safety, quitting to move with your spouse or major changes in your work duties.

benefit rate is 55% of your regular earnings, up to a maximum amount set under the legislation.

If you return to full-time employment, your benefits will stop. You can, however, earn up to 25% of your regular earnings or \$50 per week, whichever is the greater, without changing your benefit amount for that week. Any amount you earn above this limit will be deducted from your benefit payment, dollar for dollar. All amounts earned while collecting benefits must be reported.

- **maternity and parental benefits**

- ▶ **maternity benefits**

Maternity benefits are available to eligible birth mothers or surrogate mothers. In order to be eligible for maternity benefits, you must have worked 600 hours in the last 52 weeks or since your last EI claim. The basic benefit rate is 55% of your regular earnings, up to a maximum amount set under the legislation.

Maternity benefits can be paid for a maximum of 15 weeks. Benefits can begin up to eight weeks before the baby is due and can be collected up to 17 weeks after the birth or the due date, whichever is later. The program allows for some flexibility about the period in which benefits can be paid. For example, the payment period can be delayed in the event that the baby is hospitalized.

- ▶ **parental benefits**

Eligible biological and adoptive parents can receive parental benefits while they are caring for a newly born or adopted child. These benefits are in addition to any maternity benefits that may have been received. In order to be eligible for parental benefits, you must have worked for at least 600 hours in the last 52 weeks or since your last claim. You must

work

sign a declaration indicating the baby's date of birth or, in the case of adoption, the date of the child's placement for adoption and the name and address of the adoption authority.

Parental benefits can be paid for a maximum of 35 weeks and must normally be paid within 52 weeks of the child's birth or placement, in the case of adoption. The benefits can be claimed by one or both parents. If both parents claim parental benefits, however, the benefit period must be shared between the parents, up to a maximum of 35 weeks. You can apply for parental benefits at the same time that application for maternity benefits is made.

► **sickness benefits**

Sickness benefits are available to eligible individuals whose illness or injury prevents them from working. In order to be eligible for sickness benefits, your regular weekly earnings must have decreased more than 40% and you must have accumulated at least 600 insured hours in the last 52 weeks or since your last EI claim. You must provide a medical certificate indicating when you can be expected to be able to return to work.

Sickness benefits can be paid for a maximum of 15 weeks, but may be combined with parental benefits for a maximum of 50 weeks or with maternal and parental benefits for a maximum of 65 weeks. The basic benefit rate is 55% of your regular earnings, up to a maximum amount set under the legislation.

work

► **the family supplement**

Additional benefits may be available to low-income families with children through the Family Supplement feature of the EI program. If you or your spouse receives the Canada Child Tax Benefit, the supplement will automatically be added to any EI payments you receive. *If you and your spouse claim Employment Insurance benefits at the same time, only one of you can receive the Family Supplement.* The supplement is based on your net family income and the number of children and their ages, up to the maximum EI weekly rate.

● **reporting income**

Many social programs, such as social assistance and EI have income reporting requirements in order to establish eligibility and ongoing entitlement. Banks and other financial institutions may also require some form of income reporting when applying for credit.

Individuals may be required to report income to the Canada Revenue Agency (CRA). Generally, Canadian residents are required to report income from all sources if any income tax is due as a result of that income, or in other specific circumstances.

did you know
THAT...

Individuals who are unable to complete their income tax and benefit return, and can't afford to pay for assistance, may be able to get help through the Community Volunteer Income Tax Program? The program, operated by CRA, can provide assistance to low-income individuals who have simple tax situations. For more information about this program, call 1-800-959-8281.

work

Taxable income generally includes income such as wages and salary, tips and gratuities, some indirect benefits such as free meals or parking, investment interest, income from business or real estate rental, severance pay, EI benefits, spousal maintenance, and other deemed income. Income is reported by filing a tax return.

Everyone is eligible for certain deductions or exemptions, up to a particular dollar figure. Some examples of allowable deductions are EI premiums, CPP and RRSP contributions, professional dues, child care expenses, tuition fees, some medical expenses, and business losses. Generally, you will not have to pay any income tax if your allowable deductions or exemptions are greater than your income. If your income is greater than your allowable deductions or exemptions, you will be required to pay income tax on the amount that is over and above.

If you are an employee, your employer will withhold some of your pay for income tax and other federal programs, such as EI. Other workers, such as contractors or self-employed individuals, will not have these “source deductions”.

If the total amount deducted by your employer is less than any amount owing, you will need to pay the difference. If your employer deducts more than the amount owing, you will receive a refund.

It is your responsibility to determine whether or not you owe any income tax in a given year. This can be done by completing a tax return for the year in question. Taxes are determined in relation to your income, and your personal or family situation. For instance, each individual may claim a basic exemption up to a specified dollar figure. Additional deductions may be available for dependent children or other dependent individuals under your care.

work

Even if you are not required to file a tax return, you may benefit from doing so. The money raised from income tax and other taxes helps to pay for public services funded by the government. Filing a tax return will help you determine whether you are eligible for these services and programs, in addition to calculating any taxes or refunds owing.

The tax year runs from January 1 to December 31. Returns must generally be filed no later than April 30 of the following year.

tax returns

There are a few specified situations where you must file an annual income tax return. Other than situations where taxable capital gains may occur or you are required to pay back benefits (EI, OAS, etc.), the most common situations that require that you file a tax return are that...

- you have to pay tax for the tax year in question
- you want to receive a refund because you paid too much income tax in the tax year
- you want to apply for GST/HST credit
- you want to apply for Canada Child Tax benefits
- you want to apply for provincial tax credits
- CRA has requested that you file a return
- you are required to contribute to the Canada Pension Plan (CPP)

volunteer work

Volunteer work “contributes to the well-being of an individual or the community, and is usually coordinated by a non-profit or public sector organization, and pays no wages or salary” (Source: Volunteer Canada).

There are many benefits to volunteering. Volunteer Canada reports that some people volunteer to provide a needed

work

service or advance a worthy cause, while others volunteer for personal development reasons. Many volunteers are motivated by a combination of the two rationales.

It is important for volunteers to understand their legal rights and responsibilities. Perhaps most importantly, volunteers must understand that they may be personally responsible for their own actions even when they are performing volunteer duties. The extent that a volunteer may be held personally responsible for their actions may be affected by the relationship between the volunteer and the organization for which they volunteer.

Our society requires individuals to take reasonable care when going about their daily business. In law, this is sometimes referred to as the “duty to take reasonable care”. Sometimes this duty is set out in statutes with regard to certain activities, such as driving a car. But individuals are also expected to take reasonable care even when an activity is not specifically dealt with under a statute or law. Individuals must generally take care not to act in such a way that might cause damage or injury to another. When an individual fails to take such reasonable care, they may be sued for their negligence.

did you know

THAT...

According to the 2004 Canada Survey of Giving, Volunteering and Participating ...

- 45% of Canadians aged 15 and older had volunteered during the one-year period preceding the survey
- these volunteers contributed a total of almost 2 billion hours (an amount equivalent to 1 million full-time jobs)
- volunteers contributed an average of 168 hours over the course of a year
- approximately 20% of the volunteers used the internet in some way during their volunteer activities

This notion of duty to take reasonable care extends to volunteers. Individuals are not forced to perform volunteer work, but if they choose to do so, they must exercise reasonable care. To some extent, a volunteer's risk of being held liable for damage or injury will depend on the degree of responsibility the volunteer has in relation to the activity.

Although volunteer work may expose you to some risk, it is important to understand that you can take certain steps to protect yourself without giving up all the benefits that volunteer work can provide. Learning more about the law and volunteers can provide you with knowledge that you can use to protect yourself. The resource pages for this section can provide you with a good starting point.

In the 2004 *Canada Survey of Giving, Volunteering and Participating* almost all volunteers surveyed (92%) reported that making a contribution to their community was an important reason for volunteering. Other reasons reported by many volunteers were using their skills and experience, being personally affected by the cause, exploring their strengths, networking and joining friends who also volunteered with the organization.

why VOLUNTEER?

Many people find that volunteering can be a great way to...

- learn new skills or use and develop existing skills
- interact with other volunteers in your community
- explore new career options or interests and learn more about them
- meet new people and make new contacts
- gain valuable experience and references
- discover the satisfaction that can come from helping others
- enhance self-confidence and self-esteem

work

Volunteer Canada suggests that individuals considering volunteering with an organization should consider these questions before they make a commitment...

1. What is the organization's mission?
2. What will the volunteer work involve?
3. Are there opportunities for advancement and variety?
4. Is there a written job description?
5. What is the required time commitment?
6. How will the volunteer work advance the organization's mission?
7. What skills will be used/developed?
8. Will the work be supervised?
9. What is the work environment like?
10. Are out-of-pocket expenses incurred by volunteers reimbursed?
11. How is the organization funded?
12. How many volunteers are involved?
13. Does the organization run background checks on volunteers?
14. What is the risk that a volunteer could be sued?

resources

Canada Revenue Agency

Regina Tax Services Office
260 - 1738 Hamilton Street
Regina, SK S4P 3A3

Saskatoon Tax Services Office
340 - 3rd Avenue North
Saskatoon, SK S7K 0A8

www.cra-arc.gc.ca

The Canada Revenue Agency administers tax laws for the Government of Canada and most provinces and territories and can provide information about various social and economic benefit and incentive programs delivered through the tax system, including guides, brochures, forms and news releases.

Canada-Saskatchewan Business Service Centre

#2, 345 - 3rd Avenue South
Saskatoon, SK S7K 1M6
Phone: (306) 956-2323
Toll-free 1-800-667-4374

www.cbcs.org/sask

Provides single-point entry to government programs and services dealing with business needs.

Employment and Social Development Canada

1020 - 1874 Scarth Street
Regina, SK S4P 4B3

Phone: (306) 787-5473 www.employmentandsocialdevelopment.ca

Provides information about services and programs for job seekers and employers. Offers support and training for job seekers and employers. Provides information about employment insurance and other benefits.

Freedom of Information and Protection of Privacy

1020 - 1874 Scarth Street
Regina, SK S4P 4B3

Phone: (306) 787-5473 www.saskjustice.gov.sk.ca/foi

Deals with requests for access to records containing information possessed or controlled by the provincial government.

Human Resources and Social Development Canada

Saskatchewan Regional Office
1783 Hamilton Street

Regina, SK S4P 2B6
Phone: (306) 780-5408

www.hrsdc.gc.ca

Works to enable Canadians to fully participate in the workforce and community. Provides information about Employment Insurance Income Benefits, income security and employment programs and contacts for local HRSDC offices throughout Saskatchewan.

work

Labour Standards

Labour Standards Call Centre:

Toll-free: 1-800-667-1783

www.labour.gov.sk.ca/standards

Promotes and enforces provincial employment standards established under *The Labour Standards Act*; provides information on minimum wage, hours of work, overtime and holiday pay, and leaves of absences.

Lawyer Referral Service, Law Society of Saskatchewan

Phone: (306) 359-1767 (in Regina)

Toll-free: 1-800-667-9886

www.lawsociety.sk.ca

Can provide help finding a lawyer for a particular area of the law or a certain geographical area.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

Occupational Health and Safety

Regina

400 - 1870 Albert Street

Regina, SK S4P 4W1

Toll-free: 1-800-567-7233

Saskatoon

122 - 3rd Avenue North

Saskatoon, SK S7K 2H6

Toll-free: 1-800-667-5023

www.labour.gov.sk.ca/safety

Provides information about rights and responsibilities in the workplace and dealing with safety issues at work, including dealing with infectious materials, noise, ventilation, ergonomics, thermal conditions, violence and harassment.

work

Privacy Commission of Canada

112 Kent Street
Ottawa, ON K1A 1H3
Phone: (613) 995-8210
Toll-free: 1-800-282-1376

www.privcom.gc.ca

Monitors the federal government's collection, use and disclosure of its clients' and employees' personal information.

Queen's Printer - FreeLaw®

Walter Scott Building
B19 - 3085 Albert Street
Regina, SK S4S 0B1
Phone: (306) 787-6894
Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Saskatchewan Federation of Labour

220 - 2445 13th Avenue
Regina, SK S4P 0W1
Phone: (306) 525-0197

www.sfl.sk.ca

Represents members from national and international unions on provincial, national and international issues relating to social and economic justice.

work

Saskatchewan Human Rights Commission

3rd Floor

1942 Hamilton Street

Regina, SK S4P 2C5

Phone: (306) 787-2530

Toll-free: 1-800-667-8577

8th Floor

122 - 3rd Avenue North

Saskatoon, SK S7K 2H6

Phone: (306) 933-5952

Toll-free: 1-800-667-9249

www.gov.sk.ca/shrc

The Saskatchewan Human Rights Commission's job is to discourage and eliminate discrimination against everyone under provincial jurisdiction. The best way to protect yourself from discrimination is to know and respect *The Saskatchewan Human Rights Code*. Contact the Commission for more information.

Social Insurance Numbers (SIN)

Social Insurance Registration

Box Office 7000

Bathurst, NB E2A 4T1

Toll-free: 1-800-206-7218

www.hrsdc.gc.ca

Provides information about Social Insurance Numbers, how to apply for a new or replacement SIN, FAQ's and links.

Status of Women Office (Saskatchewan)

Saskatchewan Labour

400 - 1870 Albert Street

Regina, SK S4P 4W1

Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

work

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.

Volunteer Canada

330 Gilmour Street
Ottawa, ON K2P 2P6
Phone: (613) 231-4371
Toll-free 1-800-670-0401

www.volunteer.ca

Provides information on volunteering in Canada, statistics, links and resources for volunteers and volunteer organizations.

Women Entrepreneurs of Saskatchewan Inc.

112 - 2100 8th Street East	1925 Rose Street
Saskatoon, SK S7H 0V1	Regina, SK S4P 3P1
Phone: (306) 477-7173	Phone: (306) 359-9732
Toll-free: 1-800-879-6331	

www.womenentrepreneurs.sk.ca

Non-profit organization that works with women to provide business advice, financial assistance and access to loans, networking, training programs, referrals, and mentorship opportunities.

work

Work and Family Unit

Saskatchewan Labour
Sturdy Stone Building
8th Floor, 122 - 3rd Avenue North
Saskatoon, SK S7K 2H6
Phone: (306) 933-7983

www.workandfamilybalance.com/

Works with government, business, labour, and community organizations to help reduce the negative impacts of people's inability to balance their work and family responsibilities; provides resources and services, training, and consultation to employers, employees and community organizations.

Worker's Compensation Board

200 - 1881 Scarth Street
Regina, SK S4P 4L1
Phone: (306) 787-4370
Toll-free: 1-800-667-7590

www.wcbsask.com

Administers a compensation system on behalf of workers and employers to provide financial protection, medical benefits and rehabilitation services to workers and their dependents in the case of injury or death arising out of employment.

money

and property

credit

- **what is credit?**

Credit simply is the ability to receive a thing, service or other benefit now, with a promise to pay for it later. Credit agreements are not limited to business transactions. In fact, many kinds of credit are available to the average consumer. Some examples of common credit arrangements are...

- store charge accounts
- credit cards, whether from a department store, gas station or bank
- book, music or movie club memberships
- “rent to own” agreements
- bank loans (personal loans, mortgages or personal guarantees)
- home utility accounts for telephone, electrical or natural gas services

- **applying for credit**

Whether or not a business or other service provider gives you credit is a matter of individual policy for that business. Businesses are *in the business* of selling

products or services at a profit. They will generally want your business, if it will help them to make their profit.

When a business decides whether or not to extend credit to you, they must balance their desire to sell you a service or product against the inconvenience of not being paid right away and the risk of not getting paid at all.

The business will ask for information from you to help them assess the risk of giving you credit. Some of the things they may ask for are proof of income, a statement of assets and debts, whether you own your home, and how long you have lived at your current residence. They may also want to check your credit rating.

- **credit reports**

When a business considers giving credit to someone, it may ask a credit reporting agency for a credit report on that individual. Looking at information about how the person handled other debts helps the business decide whether or not to give new credit.

Credit reporting agencies collect and sell information relating to a person's credit history. Individuals, financial institutions and other businesses may report debts that you have with them to a credit reporting agency. The report may include information such as your name and address, different loans or credit cards that you have with them and information about your payment history. In Saskatchewan, *The Credit Reporting Act* licenses and regulates credit reporting agencies. All credit reporting agencies must be licensed. These agencies have a responsibility to provide accurate and fair information.

The agency cannot include certain information in your credit file, including information about a first time bankruptcy that was discharged six years or more ago, information that cannot be confirmed and, generally, any other unfavourable

information that is more than six years old unless it was voluntarily provided by you. The credit report cannot contain information about your race, creed, colour, ancestry, ethnic origin or political affiliation. Information cannot be included in a credit report unless the name and address of the source of the information is also included or can be readily determined by the consumer.

The information in your credit file can only be released to certain individuals, such as someone who requires the information to make a decision about your application for credit, insurance, employment, tenancy or other legitimate business purpose. The person requesting the credit report must get your consent or give you written notice that a credit report will be obtained and provide you with the name and address of the credit reporting agency that will provide the report. Information in a credit report can be released to government or police agencies without your consent and without notice.

Consumers themselves may request access to their credit report and are entitled to all the information in their file, including the sources of the information and the names of anyone to whom a credit report has been provided in the last six months, free of charge.

Although it is an offence to knowingly supply false or misleading information to a credit reporting agency, mistakes can occur. If you feel that your credit record contains inaccurate or incomplete information, you are entitled to notify the agency in writing that you wish to dispute the accuracy of the information contained on your file. The agency must then investigate the matter and correct any errors and delete any information that they are unable to verify.

If, after the investigation, the agency is still of the opinion that the information on file is reasonably accurate and should not be deleted, the agency will ask you to file a brief statement setting forth the nature of your dispute. Once

received, your file will clearly note that the information is disputed. Your statement disputing the information, or an accurate summary of it, will be attached to your credit report and from then on, form part of your credit file. As well, anyone who received a credit report in the preceding six months will be advised of any deletions or disputes.

- **credit ratings**

Your credit rating will depend upon what you have done, and how stable you have shown yourself to be in financial matters, such as paying bills or managing credit cards. If you have had trouble paying bills or repaying loans in the past, a bank or store may be reluctant to give you credit for their goods or services.

Having a bad credit rating can cause problems when you apply for new credit. However, it can be just as much trouble to have no credit rating at all. This can happen in a spousal relationship where only one of the partners manages or controls household finances. This may have significant consequences in the event of a relationship breakdown or the death of the partner with financial control.

For example, in a spousal relationship, all home utilities may be under the husband's name alone. Perhaps the wife has signing privileges on her husband's credit card, but not her own credit card. She may not work outside of the home. In this scenario, if the husband died or the couple separated, the wife may have difficulty obtaining credit in her own right. This is because she has not established her own record of handling debt or other financial obligations.

A bank or business might be reluctant to grant credit to her without a record that shows her to be a safe credit risk. The wife may be denied credit altogether, or be forced to have someone co-sign or guarantee the indebtedness. This in turn limits her opportunities and independence.

- **interest rates**

Many items that people buy are purchased using a bank loan or under a sales agreement with a business. Businesses and banks that lend credit or money usually require that the person pay back the money “with interest” through monthly payments. This means that, in addition to paying back the amount you borrowed, each monthly payment will include a borrowing charge called “interest”. The interest rate is a percentage of the amount owing. If a payment is missed you may be charged interest on the amount owing, including past interest. This is sometimes called **interest on interest**.

It is important for people to know just how much extra it will cost them to pay later for goods or to borrow money. People may want to shop around for the best deals or reconsider a loan or purchase if the cost is too high. So how do you find out about **credit charges**? The law in Saskatchewan requires creditors to disclose certain information when they advertise credit arrangements. If the credit being offered is for a loan of a sum of money or for the purchase of goods the ad must disclose both the interest rate and the total cost of borrowing the money. Consumers should be aware however that ads where space or time is limited, for example radio, television or billboard ads, are not required to disclose the total cost of the credit. Advertisements for things like lines of credit, where the total amount borrowed and the interest rate can change over time, must tell consumers what the starting interest rate is and any other finance charges.

Creditors must also provide you with additional information when you enter into a credit agreement. Depending on the type of credit agreement, you must be informed of a number of things including the interest rate, the circumstances where interest will be added to principal, how your payments will be divided between principal and interest and the total cost of the credit including any default charges.

money
and property

Borrowing money or receiving goods on credit almost always results in the borrower paying interest or credit charges. However, it is common to see offers to “pay no interest” until a certain date. Saskatchewan law requires creditors who make “interest free” offers to tell consumers about any strings that may be attached to the offer. For example an ad that entices people to buy furniture with “no money down and no payments or interest” until a year later must also disclose whether interest still builds up during this period but does not have to be paid, if there are any conditions attached to the offer, what those conditions are and the amount of interest that would have to be paid if the conditions are not met. If the ad does not disclose the information required by law it will be assumed that unconditional interest-free credit is being offered. Similarly if a creditor offers to allow you to miss a payment and make it up later the creditor must tell you if you will be paying interest on the missed payment.

But how much interest can a creditor charge? Under the federal *Interest Act* a person may agree to any rate of interest that they feel is reasonable. However, this may be restricted by other federal legislation. For example, the *Criminal Code* says that the maximum amount of annual interest allowed by law is 60%. Charging an annual interest rate that exceeds 60% is a criminal offence and could result in up to five years in jail.

The *Interest Act* also specifies that where interest is payable under an agreement but the actual interest rate is not provided, the interest rate will be five percent per year. Both federal and provincial laws offer protection from questionable creditors who are in a position to take advantage of individuals.

Another way Saskatchewan people are protected from excessively high interest rates is *The Consumer Protection Act*. The Act prohibits unfair business practices that have a

goal of taking advantage of a consumer. Retail businesses cannot include terms or conditions within an agreement that are harsh, oppressive or excessively one-sided. This means that a creditor cannot include an excessively high interest rate because it would place a difficult responsibility on the consumer and make the terms of the agreement too one-sided. The Act also does not allow a business to sell goods at a price that grossly exceeds the price that a consumer might pay for the goods elsewhere. If the interest rate is unreasonably high then this provision of the Act could be violated.

Whatever the interest rate, the faster you pay off the debt the less interest you will pay. Under Saskatchewan law, except for mortgages, you are entitled to pay off the full amount of the loan at anytime without prepayment charges or penalties. You are also entitled to pay more than is due on any payment date. If you pay the full amount owing you are entitled to a refund of a portion of any finance charges you paid for the loan.

All too often people ignore provisions in lending agreements that deal with interest charges. Individuals must protect themselves by knowing their rights. Read your lending agreement carefully to ensure that the annual interest is written into it, that the agreement is reasonable and that the total price, with interest and charges, is included. This should allow you to know exactly what you are spending and avoid unpleasant surprises in the future.

- **insurance and optional services**

Sometimes creditors require you to purchase insurance on a loan. Creditors may themselves sell this type of insurance. However, under Saskatchewan law you can purchase loan insurance from another company. You may want to do this if you are able to get a better price elsewhere. The creditor has the right to not agree to a different insurer but only if there are reasonable grounds.

When you enter into a credit arrangement you may agree to buy other optional services. For example you may buy a vacuum on credit and also agree to purchase repair and maintenance services. If you later decide you do not want these services you can cancel with 30 days notice.

- **credit cards**

Using a credit card is another way of creating a debt. A credit card represents a contract between you and the credit card company. Most banks, department stores and gas stations have their own credit cards. Generally, credit card debts are unsecured debts. Credit card companies charge interest on any unpaid amount and usually require a minimum monthly payment.

It is important for spouses to establish their own credit rating - they cannot rely on the record of the other partner when applying for credit in their own name. Keeping credit cards or charge accounts in their own name - when they are paid on time - can help spouses establish a positive credit rating in their own right. Establishing a good credit rating is something that either spouse can do on their own, without the consent or involvement of the other spouse.

Credit card companies cannot send you credit cards in the mail that you did not apply for. Under Saskatchewan law a credit card application must show the interest rate of the card, whether there is a “grace” period that is interest-free and the amount of any other finance charges or fees.

The credit card agreement must also tell the card holder the extent to which they are responsible for unauthorized transactions. You will be responsible for a maximum of \$50 or the amount set by your agreement, whichever is less. You will not be responsible for any amount if your card is lost or stolen and the purchases were made after you notified the company that the card was lost or stolen. If someone uses your number, without your agreement, you are also not

responsible for any charges if you notify the company within 30 days of receiving your statement that someone else used your number. You can notify the credit card company of lost or stolen credit cards or unauthorized use of your card number verbally or in writing.

debt

Using credit may seem harmless and can help to get what you need or want right away. Of course, when you use credit, it always leads to something most people find less pleasant. No matter how quickly you intend to pay for the thing you have received, credit arrangements always create debt.

In its simplest form, debt is an obligation for you to pay another person at some time in the future. For example, when you use credit, you will have a legal obligation to make future payments to the person who supplied the item, service or other benefit. Before using credit, it is a good idea to know where the money is going to come from to pay the debt.

secured and UNSECURED DEBT

It is important to distinguish between secured and unsecured debt, as the distinction will affect the methods a creditor can use to collect the debt. .

secured debts: one where you borrow money and promise the creditor money or goods, also called "security" or "collateral", if you don't repay the debt. The creditor can seize the security or collateral if you don't pay back the debt as agreed, or if you break other terms of the agreement. This often is how car or furniture loans and mortgages are set up.

A secured creditor can enter your home to repossess goods given as security or collateral only by agreement or with your permission. If the secured creditor is not able to repossess the goods, they may go to court to get an order for you to hand over the goods, and may also get an order against you for any further money owing on the goods.

unsecured debts: one where you do not give the creditor security or collateral. If you don't pay an unsecured debt, the creditor must sue you to get a court judgment that will allow the creditor to collect the debt.

money
and property

Determining whether you really can afford the purchase is best determined before you sign a contract for credit.

Most credit arrangements are voluntary. When you choose to enter a credit agreement, you accept the obligation to pay in the future and agree to the payment terms. Some kinds of debt are not voluntary. Rather, they are obligations to pay which are imposed by law, not by voluntary agreements. Involuntary debt can include things like spousal or child maintenance, property taxes or income taxes. These still are legal obligations to pay, even if you did not explicitly agree to them.

Regardless of how debt arises, it is a legal obligation to pay. If you have difficulty making payments, you may be able to re-finance your obligations or make alternate arrangements with the creditors. If you miss payments and do not work out an arrangement with the creditor, the creditor may choose other methods to collect the debt and take additional action. For example...

Additional remedies related to debt collection that may be available in relation to family maintenance payments are discussed in the Family Law chapter.

- **Default charges** may be added to an overdue amount if these kinds of charges are provided for in the original agreement. However, under Saskatchewan law these charges can only be for reasonable legal costs to recover the debt. The creditor can also charge a reasonable amount for costs incurred because the debtor paid with a cheque that bounced.
- **Some creditors may refuse to provide service** after missed payments. For example, creditors such as utility or telephone companies have the authority to cut off services when payments have been missed.
- **A creditor can demand you repay the whole amount borrowed** if you cannot make scheduled payments, but only if your agreement contains an “acceleration clause”. An

acceleration clause states that the whole debt becomes due if payments are not made as agreed upon. Creditors must serve you with written notice that you have defaulted on a payment if they want to accelerate the loan. Payment on the loan cannot be accelerated until at least 10 days after this notice was sent.

- A creditor may hire a collection agency to collect unpaid debts or loans. Collection agencies have almost the same power as any other creditor trying to collect an unpaid debt. They generally cannot collect an unsecured debt by seizing your goods or through garnishment of your wages or other money without first taking you to court and getting a judgment on the debt.
- Some consumer transactions create a “lien”. A lien is a claim on your property, such as a commercial lien on a vehicle for repair work or a builder's lien on property for renovations. In some circumstances a lien holder can force the sale of property. Even if the lien holder is unable to seize and sell the property, the lien will likely prevent you from selling the property without taking care of the outstanding debt that led to the lien.
- A creditor may sue you and get a judgment from the court. This allows creditors to garnish bank accounts and some of your wages, or to have the Sheriff seize some of your property.

- **garnishment**

A creditor may be able to garnish your wages or bank accounts. This remedy is usually available after a creditor gets a judgment against you. Garnishment allows your creditor to take money that someone else owes you in order to pay your debt. For example, a creditor can garnish your bank account. As well, your employer could be required to forward your wages to your creditor in the same way.

Generally, a portion of your wage is exempt from garnishment. For example, under the current law, you are permitted

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to keep \$500 per month for living expenses plus \$100 per month for each of your dependents. These exemptions do not apply to some creditors, such as Canada Revenue Agency and the Maintenance Enforcement Office. They are able to garnish all available funds, unless the court grants you an exemption. Most creditors cannot garnish Employment Insurance benefits, social assistance payments, income tax refunds, old age or Canada Pension Plan payments, unless these payments are first deposited in your bank account. Only creditors like Canada Revenue Agency, Canada Student Loans, and Maintenance Enforcement can garnish these payments directly.

debt collection

ON RESERVES

Special considerations apply to collecting debts by seizing property or garnisheeing money situated on a reserve. The *Indian Act* prevents creditors, who are not themselves Indians or bands, from collecting debts by taking the real or personal property of an Indian or band that is located on a reserve.

This protection only applies if the person who owes money is a registered “Indian” under the Act. It also only applies to property on a reserve or property given to an Indian or a band under a treaty or other government agreement.

This protection does not prevent creditors from reclaiming goods sold under a conditional sales agreement. In a conditional sale the seller continues to have rights to property until the purchase price is paid in full.

● **seizure**

An unsecured creditor with a judgment against you can ask the court to issue a “writ of execution”. A writ of execution allows the creditor to ask the Sheriff to seize and sell enough of your goods to pay the amount of the judgment. The Sheriff can only seize goods such as vehicles, furniture or stereo

equipment that belong to you alone. Goods that cannot be seized by the Sheriff include equity in your home up to \$32,000 and certain personal items, business or trade tools, or a vehicle required by you to carry out your work duties.

● **income taxes**

Anyone who earns more than a certain amount of income must pay income tax. The Canada Revenue Agency (CRA) collects income taxes on behalf of the federal and provincial government.

Once you have been assessed as owing income tax, and either do not dispute it or have run out of appeals, CRA expects you to make prompt payment of the liability. If you do not they can take a number of measures to collect the amount owing. These include...

- notices or correspondence offering an opportunity to pay, and warning of legal action if payment is not made
- garnisheeing wages, bank accounts and some Registered Retirement Savings Plans
- asking the Sheriff to seize some of your goods
- registering a lien against your house or other land that you own

Unlike other creditors, CRA does not need a court judgment to garnishee your money or seize and sell some of your goods.

You may be able to arrange a payment plan with CRA. If you are not able to borrow or otherwise arrange your finances, they may accept payments over time to settle the debt. In some instances, they may waive any interest on the debt if you can convince them that it would be the only way for you to pay the taxes within a reasonable period of time.

taxation ON RESERVES

Individuals who come within the definition of “Indian” in the *Indian Act* are exempt from paying income taxes on income located on a reserve.

The exemption also applies to personal property located on a reserve. By legislation, Treaty benefits are considered to be located on reserve, regardless of where they actually are.

People who are registered under the *Indian Act* also do not pay provincial sales tax (PST) or federal sales tax (GST) on items delivered to a reserve and do not pay PST or GST if they make a purchase from a business located on a reserve. They also do not pay GST on services purchased on a reserve and performed on a reserve, for example having a house on a reserve painted or getting a haircut from a business located on a reserve.

Reserve land is also exempt from property taxation by government. First Nations, however, can tax reserve lands.

- **property taxes**

If you have overdue taxes on your land, the municipality that assessed the taxes can register a lien against the property. In order to remove the lien against your property, which you would need to do if you were selling or mortgaging the property, you would have to pay the outstanding taxes. Eventually, if taxes are outstanding for a lengthy period of time, the municipality can apply to have title transferred to its name.

- **co-signing a loan/personal guarantee**

If you co-sign a loan you are agreeing in writing, along with the borrower, to repay the debt to the lender. A guarantee is similar, in that you are promising to make good on the debt if the borrower fails to make payments. In either case, you do not have to have control over the loan proceeds or otherwise benefit from the loan to be legally bound to pay the debt.

For example, you may have co-signed your spouse's loan application or guaranteed a promissory note for the family business. If your spouse or the family business cannot make payments, the lender will look to you to pay the debt. It doesn't matter whether you have received or spent any of the money. The fact that you co-signed or guaranteed the loan makes you just as liable to the lender as if you borrowed the money in your own name and spent it all yourself. In fact, the lender may have more means of collecting the debt against you as a guarantor than it does against the borrower. You should consult a lawyer prior to signing a guarantee.

Your credit rating can also be affected if you are not able to pay the loan that you have co-signed or guaranteed for someone else. You should be sure that you can pay the other person's loan and be prepared to do so, if called upon by the lender.

Even if the principal borrower makes payments, having co-signed or guaranteed a loan can affect your ability to get credit for yourself. A lender may see that you have a potential liability under the other person's loan, and decide that adding another liability in your own right is too much of a risk, in case you are called on at some point to make payments as a co-signer or guarantor for the first loan.

- **managing debt**

Many times and for many reasons a debtor is unable to meet their debt obligations. If you are experiencing difficulty paying your debts on time or in full, there are several things that you can do.

- Prepare a budget. A sensible budget can help you manage a current debt load or get out of debt altogether. Sometimes a budget can prevent serious debt problems. Budget plans come in various forms, from simple record-keeping to sophisticated systems.

- Talk to your creditors either directly or through a representative such as a mediator. Explain why you have fallen behind in payments and outline your financial situation, current income, and obligations. Suggest an alternate payment plan, for example, temporarily making smaller payments, only paying the interest for a few months, or arranging to return the item. Follow up with a letter to your creditor if you have agreed to an alternate payment plan.
- Consolidate your debts and get one new loan from a bank, trust company or credit union to cover all your debts. This leaves you with one monthly payment to make, usually over a longer period of time. Lenders may require security for a consolidation loan.
- Make a consumer proposal to your creditors. A consumer proposal is an offer of settlement made to your creditors to modify your debt payments. For example, you may propose to pay a lower monthly payment over a longer period of time, or pay a percentage of the debt in full satisfaction of the entire debt. Creditors may or may not accept the proposal.
- Contact the Provincial Mediation Board for information about personal debt management, budgets, orderly payment of debts and credit-counselling programs. Some restrictions apply.
- Discuss personal bankruptcy or consumer proposals with a trustee in bankruptcy.

bankruptcy

Bankruptcy is a debtor's last resort. It is a legal process that stops any legal proceedings started by unsecured creditors to collect what is claimed by them, and ultimately cancels most debts. To file for bankruptcy, you must have debts of at least \$1,000, and be able to show that you are unable to pay your debts now or in the future.

In Saskatchewan, a first bankruptcy stays on your credit rating for six years, and may seriously affect your ability to get credit. It will be a major factor that lenders consider when deciding whether or not to grant you new credit in the future.

- **filing for bankruptcy**

To file for bankruptcy you must contact a bankruptcy trustee. Trustees are found under “Bankruptcy” in the yellow pages of the phone book and charge a fee for performing duties related to the bankruptcy, although many offer free initial consultations. A trustee may refuse to accept a bankruptcy if, for example, you do not have enough assets to pay the trustee's fees. If you cannot find a trustee to accept the bankruptcy, you can contact the Office of the Superintendent of Bankruptcy, a branch of Industry Canada. The Official Receiver of that department will appoint a trustee if you have written refusals from two other trustees.

Once a trustee accepts the bankruptcy, they take charge of your assets. You no longer have any rights to any assets the trustee takes. The trustee acts on behalf of all your creditors to distribute the assets. Creditors file their claims with the trustee. The trustee then sets up a meeting with your creditors and yourself to discuss the bankruptcy. The trustee sells your assets and divides the proceeds among

The federal government's Office of the Superintendent of Bankruptcy reports that consumer bankruptcies reached their peak in 1997, with 85,300 cases filed. This number dropped for two years, then increased gradually until 2004 (except for a slight dip in 2002). The Office of the Superintendent of Bankruptcy notes the overall decline in bankruptcies is largely due to the increased use of consumer proposals as an alternative to bankruptcy.

Under a bankruptcy, secured creditors are treated differently than other creditors. They can seize and sell assets covered by their security agreement, even after bankruptcy proceedings have begun. They may also make a claim for any unsecured portion of the debt as part of the bankruptcy.

your creditors. The trustee's fees for these services also come out of the proceeds. Unsecured creditors cannot take any other legal actions against you during the bankruptcy unless the court gives them permission.

● **exempt goods and property**

A trustee will sell your assets to help satisfy your debts. However, certain assets are exempt from seizure, meaning that you will be allowed to keep them in spite of the bankruptcy. These items include...

- food
- clothing
- bedding
- furniture and appliances up to a value of \$4,500
- a vehicle that is necessary to carry out your duties while at work.

The first \$32,000 of your home is also exempt from seizure. However, most mortgages allow the lender to call the mortgage due and foreclose if you declare bankruptcy. A lender may allow you to keep your house if you can pay the mortgage payments. Farmers can generally keep the home quarter and some machinery.

● **discharge from bankruptcy**

Generally, if the trustee and the creditors agree, a first-time bankrupt is automatically discharged nine months after the date of the bankruptcy. The trustee is, however, required to recommend a discharge with conditions if you did not make the agreed payments or you choose bankruptcy instead of proposing a viable repayment proposal. You will not qualify for an automatic discharge if you do not receive the counselling that is required under your bankruptcy.

If you or your creditors disagree with the trustee's recommendation, the matter may go to mediation. If no agreement can be reached, the matter will go before a judge. The judge may grant an absolute discharge or a conditional discharge. An absolute discharge means the bankruptcy process is over and you are released from your debts.

If the judge grants a conditional discharge, you must meet the conditions before the court grants the discharge. A condition may be that you pay a portion of your wages to the trustee for the next year or two. The court sometimes orders that some debts, such as debts from court judgments in personal injury cases, be paid in full before a discharge will be granted.

The court rarely delays the discharge or refuses to grant a discharge. Refusal may happen if the debtor...

- is guilty of fraud
- commits an offence under the *Bankruptcy and Insolvency Act*, such as fraudulently disposing of property or transferring assets to family members
- fails to comply with any order of the court
- does not cooperate during the bankruptcy

bankruptcy

STATS

The federal government's Office of the Superintendent of Bankruptcy reports that...

- the average age of people who filed for bankruptcy in 2004 was 42.5
- 55.5% of bankruptcy filings in 2004 were by men
- generally more divorced/separated people file for bankruptcy than people who are married or living common-law
- in 2004 the average net annual income of people who filed for bankruptcy was \$18,300; 28% lower than the Canadian average income \$25,400

- **after the discharge**

Bankruptcy does not affect all debts. Debts such as court fines, maintenance payments, and debts obtained by fraud must be repaid. Student loans cannot be discharged for ten years. You are still able to apply for credit, even before the discharge, although your credit history will obviously be a factor. If the credit applied for is more than \$500, you must reveal that you are an undischarged bankrupt person.

After the discharge, you regain many of the rights you had before bankruptcy. You can own property and apply for credit. However, a bankruptcy recorded in your personal credit record remains there for six years, if it is a first time bankruptcy and longer if it is not your first bankruptcy. If you apply for credit, the lender may check your credit record. Many creditors refuse to give credit to someone who has had a bankruptcy, especially a recent one. The creditor may give credit if you can give security for the loan.

social assistance

Social assistance is available to people in financial need under the Saskatchewan Assistance Plan. Generally, assistance is provided when an eligible person cannot meet their basic living expenses. This assistance can come in the form of cash payments or the direct provision of goods and services.

Everyone has a right to apply for assistance, but you must complete and sign an application form to show that you qualify for benefits. Contact your local Community Resources and Employment office to apply for social assistance. You can find the phone number in the blue pages of the telephone book. If you are in an emergency situation and have an urgent need, tell the person that you first contact at Community Resources and Employment. However, even if you receive emergency benefits, you still need to apply separately for regular assistance.

To apply for social assistance, you need to provide identification and other relevant documents for each member of your family, as well as information about your income, expenses and assets. The amount of benefits that you are entitled to receive depends on things such as the size of your family, your income, expenses and where you live. The plan sets a maximum amount that you can receive based on your situation. In addition to receipt of benefits, you may be eligible for supplementary health coverage, which covers needs such as dental care, eyeglasses, hearing aids, prescriptions and ambulance service.

You may be able to receive additional sums to cover special expenses. These include things such as clothing requirements for a new job, travel expenses for medical treatment, or child care costs while you attend school or look for a job.

If you apply for benefits, your eligibility or the amount you are entitled to receive is determined by staff members of the Department of Community Resources and Employment. If you do not agree with a decision, you can appeal it within 45 days of receiving notice. The department has forms available for you to use to start the appeal process.

retirement income

- **federal pensions**

There are two types of federal income security programs, the Old Age Security Program (OAS) and the Canada Pension Plan (CPP).

- ▶ **OAS**

The *Old Age Security Program* is funded from general tax revenues. Benefits are adjusted regularly to reflect changes to the cost of living, shown by the Consumer Price Index.

There are three parts to the OAS Program - Old Age Security, Guaranteed Income Supplement, and the Allowance/ Allowance for Survivor benefits.

- *Old Age Security Pension* is a basic pension, and you must apply to receive this benefit. To qualify for OAS pension benefits, you must: be 65 years of age or older; have at least 10 years of residence in Canada after you turned 18; and meet the legal requirements for resident status. Benefits are classified as taxable income. You do not have to be retired to receive this benefit.
- The *Guaranteed Income Supplement* (GIS) provides additional money, on top of the Old Age Security pension, to low-income seniors living in Canada. You may be eligible for this benefit if you receive OAS pension benefits and have little or no other income. The amount of this benefit is based on your income and whether you have a spouse. These benefits must be renewed every year. The amount of the payments may change when they are renewed. If your income level changes or you enter or leave a spousal relationship the amount of your benefit may change. These benefits are not considered taxable income. Benefits will cease upon your death, or if you leave Canada for more than six months.
- The *Allowance* and *Allowance for the Survivor* are non-taxable benefits, intended as a stop-gap benefit, to help lower income people between 60 and 64, until they are eligible for other pension benefits. To qualify for Allowance benefits, you must be between the ages of 60 and 64 and meet all of the following conditions...
 - be the spouse or surviving spouse of an OAS pensioner who also is eligible for the Guaranteed Income Supplement
 - have lived in Canada at least 10 years since the age of 18, and
 - be a legal resident of Canada

Benefits will end if you leave Canada for more than six months.

► **CPP**

The *Canada Pension Plan* is a social insurance program, funded through equal contributions by employees and employers. Employees' contributions are deducted from their earnings. Employers' contributions are paid directly to the government, along with the employees' portion.

The plan covers most employees and self-employed people between the ages of 18 and 70. If you have made at least one valid contribution to the plan, you are entitled to retirement benefits. If you are disabled, have made enough contributions and meet certain requirements in the CPP legislation, you may be eligible for disability benefits. Both retirement and disability benefits paid under CPP are taxable income.

The amount of these benefits is based on your earnings during the contributory period. This is the amount you earn beginning on either your 18th birthday or January 1, 1966, whichever is later, and ending on your 70th birthday or your retirement, whichever is first. Some periods may be excluded from the contributory period, such as periods of disability or low earnings, or if you left the labour force to raise children.

The amount of the retirement pension is 25% of your average monthly earnings during the contributory period. Generally, you can receive these benefits beginning at age 65. You may be eligible for reduced benefits between the ages of 60 and 64, if you have stopped working and your income is below a certain level. However, if you postpone receiving this benefit (up to age 70), you can increase the amount of the benefit you receive.

CPP pension benefits may be assigned between spouses. This means that each partner will receive an equal share of the

benefits earned by both parties. In addition, the credits that the spouses have built up may be split equally between them, if the spouses separate or divorce. Credit splitting may affect the amount of benefits that each spouse is entitled to receive.

If your spouse contributed to CPP, then you may be entitled to survivor benefits upon the death of your spouse, even if you did not make any contributions. This benefit can continue even if you enter a new spousal relationship. However, if you are widowed more than once, you cannot receive more than one survivor's pension.

In addition to possible survivor benefits, a lump sum may be paid into the estate of a deceased person, if he or she made contributions for a certain period of time. If the deceased person did not make a Will, the death benefit will be paid to the person responsible for paying funeral expenses, the surviving spouse or next-of-kin, in that order.

● employer pensions

Some employers offer a pension plan to their employees. Sometimes, membership in the pension plan is a requirement of employment. Employer pension plans are separate from the federal programs. In Saskatchewan, employer plans are governed by *The Pension Benefits Act*.

Eligibility for benefits, the amount of benefits and details of survivor benefits vary from plan to plan. However, provincial law sets out some common minimum standards. These include...

- full-time employees can join their company's pension plan after 24 consecutive months of work
- plans must allow for early retirement within 10 years of the normal retirement age (early retirement may reduce the amount of pension benefits a member receives)

- retirement may be postponed, up to December 31st, in the year in which the member turns 69
- plans must offer protection to a plan member's spouse through survivor benefits

Employment pension plans can vary greatly and may contain more generous terms than the minimum requirements under provincial legislation. If you require specific information about an employment plan, you should contact the plan's administrator or your employer.

● **registered retirement savings plans**

Registered Retirement Savings Plans (RRSPs) are personal saving plans for an individual's retirement income. Contributions (up to a maximum amount) are tax-deductible. Income on the investments in the plan is not taxable. However, withdrawals from the plan are considered taxable income.

You can name a spouse as a beneficiary of your RRSPs. If a spouse is named as beneficiary, the RRSPs of the deceased spouse can be transferred to an RRSP of the surviving spouse without any tax liability. An RRSP can be transferred to a disabled and dependent child's RRSP, again without tax penalty. The RRSP could be transferred to an annuity for a financially dependent child or financially dependent grandchild under the age of 18, to provide benefits for that person up to the age of 18. If your RRSP is not transferred in any of these ways, it will be considered to be cashed in on the day you die, and taxed as income for the current year.

Depending on your circumstances, RRSPs may be considered family property. This means that if a spousal relationship ends, the value of the couple's respective RRSPs that accumulated during the relationship can be included in a calculation and division of family property. In this situation, it

may be that a portion of one spouse's RRSP needs to be transferred to an RRSP for the other spouse to equalize the division of property.

managing your property

- **power of attorney**

There may be times when you want someone else to handle some of your financial and/or personal affairs. Perhaps you are going away on an extended trip out of the country. Perhaps you are concerned about a medical condition that will reduce your mobility or ability to make decisions. Whatever the reason, a Power of Attorney can help you ensure that your property is looked after and that someone you chose can make personal decisions, even if you are not able to do it yourself.

A Power of Attorney is a legal document that allows you to give someone else the authority to act on your behalf. You name another person to make decisions and act in your place. As long as you are able, you still can act on your own behalf and have control over your affairs. However, the person you appoint, called the **Attorney**, will be able to deal with your affairs with just as much authority as you could yourself.

The power you grant to your Attorney can be as broad or as narrow as you choose. You can allow the Attorney to make decisions in all aspects of your business, from banking to land ownership. You can also allow your Attorney to make any personal decisions, except health care decisions. Alternatively you can choose to appoint an Attorney for a very narrow purpose. The appointment could be for a certain period of time, such as while you are away on holidays, or you may appoint an Attorney for a specific purpose, such as selling a certain piece of land for you. You may also make a **contingent** Power of Attorney that only becomes

effective when a certain event occurs, such as becoming legally incompetent.

You can name anyone you want as your Attorney, provided that person is...

- at least 18 years old
- able to appreciate the consequences of making or not making the decisions he or she is authorized to make
- able to understand the information that is relevant to making the decisions he or she is authorized to make

There are other limits on who can act as an Attorney. For example, an undischarged bankrupt cannot act as a property Attorney. Also if the person you want to appoint has been convicted of certain criminal offences, you must acknowledge in writing that you know about the conviction and still want to appoint the person. A person who provides personal care services to you cannot be your Attorney.

You appoint someone to be your Attorney by naming them in a Power of Attorney document. A Power of Attorney should be in writing and should be signed by you. If you want your Attorney to be able to continue to act for you if you no longer have the capacity to act for yourself, there are additional requirements. This type of Power of Attorney is called an **Enduring Power of Attorney**. The document must clearly state that you want the person to be able to continue to act for you in the event that you lack capacity to act for yourself. The document must be in writing and be signed and dated by you. The document must also be witnessed. It can be witnessed by a lawyer who has given you legal advice on the document. Alternatively, it can be witnessed by two adults with capacity. The witnesses cannot be the Attorney being appointed or a family member of either the Attorney or yourself. Witnesses must complete a witness certificate in the form required by the legislation.

money
and property

When you appoint an Attorney, you give that person the authority to legally bind you by whatever they do on your behalf. The Attorney cannot use the appointment for personal gain. An Attorney has a duty to keep accurate accounts of how he or she dealt with your money or property. However, if an Attorney has misused the appointment, your only remedy may be to sue him or her, to try and recover any losses that you suffered. For this reason, you need to choose someone that you can trust. If you don't want to call upon a friend or relative, you can appoint a corporate Power of Attorney, such as a bank or trust company. Any person you want to appoint can refuse to act as Attorney if they don't want to take on that responsibility.

A Power of Attorney can be ended in a number of ways. You can cancel it by giving written notice to the Attorney named in the Power of Attorney. You should also notify anyone who may have dealings with the Attorney. Your Attorney may choose to end their appointment and no longer act as Attorney under the document. You may set a specific date as a deadline for when the appointment ends or, if you appointed the Attorney to do only a specific thing, such as selling your house, then the appointment will end when that task is completed. The Power of Attorney will also automatically end in some circumstances, for example, if the Attorney becomes bankrupt or mentally incompetent. Unless the Power of Attorney is enduring, it will also end if you become mentally incompetent.

A Power of Attorney helps to look after your property and personal matters when you are alive. However, the Attorney's authority ends automatically upon your death. To look after your property after your death, you need to prepare a valid Will.

- **wills and intestacies**

A Will is a legal document that sets out who you want to leave your property to after you die. Its main purpose is to say how you want your property to be divided. When you do not have a Will, you are said to be “intestate”. Being intestate can cause major problems for your family, friends and business partners.

Having a valid Will can help ensure that your property goes to the people you want to receive it. When you do not have a Will, the law decides who will get your property. In Saskatchewan, *The Intestate Succession Act* sets out a system for dividing the property of people who do not have a Will. However, just relying on *The Intestate Succession Act* can make administering your estate more complicated, especially if it means tracking down distant relatives who may be entitled to share in your property.

If you own property jointly with another person, and there is a right of survivorship, that property will not go through your estate if you are the first to die. Property that is jointly owned with a right of survivorship passes automatically to the surviving owner or owners. The surviving owners of real property do not have to go through the Court to register the new title in their names. They simply file the appropriate documents with the provincial land registry system (ISC).

Most Wills are prepared by lawyers. A lawyer can ensure that the requirements for a valid Will are met, and that the Will clearly states your intentions. A lawyer can give you advice about the contents of your Will and general estate planning. You also may want to seek professional advice with respect to any tax planning issues, such as generational transfer of farm properties or “roll-overs” to defer capital gains taxes.

money
and property

Generally, any mentally competent person over the age of 18 years can make a Will. In a few cases, you can make a Will when you are under the age of 18, where...

- you are legally married
- you have been in a continuous spousal relationship for at least two years
- you are on active duty with the armed forces

You will have some legal obligations to provide in your Will for any dependents. As well, your spouse may be able to make a claim against your estate, to ensure a fair share of family property. For the most part, however, a Will is meant to establish your wishes on how your property should be distributed. This means that you should be free from any force, threat or undue influence by anyone else when you make your Will. A Court can invalidate a Will if it is made with any sort of improper influence or pressure against the person who made it.

Minor changes to a Will often are made with a Codicil. Codicils are most frequently used to give specific smaller pieces of property, such as special dishes or keepsakes, to a specific person. These types of gifts are usually listed in the Codicil. Generally, a Codicil is a separate document, used in addition to your Will, but the Will should refer to it. Changes can be made directly on your Will, but unless they are completely in your own handwriting and signed by you, you must have two witnesses sign with you. Codicils must also be entirely in the testator's handwriting and signed, or else properly witnessed.

Major changes to how you want your property distributed usually are done through a completely new Will. You can cancel your old Will by saying so in a valid new Will. Alternatively, you can cancel a Will by destroying it, or writing and signing a separate document that indicates that

you are cancelling your old Will. Like all testamentary documents, this paper must either be in your own handwriting and signed by you, or signed by you and two witnesses.

Your Will should be kept in a safe place, where the Executor can easily locate it. You may want to keep it in a safety deposit box or a lawyer's Will safe, to protect it from being lost or destroyed.

Alternatively, the Court of Queen's Bench can keep your Will, for a modest fee. It is a good idea to advise your Executor of the Will's location.

wills

ON RESERVES

If a person who is an "Indian", as defined in the *Indian Act*, lives on a reserve his or her Will is governed by the *Indian Act*. Wills of Indians who do not live on a reserve are governed by the provincial legislation described above. The formalities, such as witnesses, do not need to be followed if the Will is governed by the *Indian Act*. There are also limits on who can inherit a right to possession of reserve land; a person must be a member of the band with which the reserve land is associated to be able to inherit the right to possess reserve land. The *Indian Act* also has detailed provisions concerning who inherits property when an Indian living on a reserve dies without a Will.

resources

Better Business Bureau of Saskatchewan

201 - 2080 Broad Street

Regina, SK S4P 1Y3

Phone: (306) 352-7601

www.bbbsask.com

Develops, encourages and promotes ethical business practices in the marketplace through voluntary self-regulation; offers membership to companies or individuals that meet Bureau's Standards of Membership and support the BBB's Principles.

Canadian Consumer Information Gateway

www.consumerinformation.ca

Online information and tools from provincial and territorial governments and their partners; search engine allows for easy access to information on things like food recalls, consumer scam alerts, financial calculators, consumer protection and much more.

Canada Revenue Agency (CRA)

Regina Tax Services Office	Saskatoon Tax Services Office
206 - 1783 Hamilton Street	340 - 3rd Avenue North
Regina, SK S4P 2B6	Saskatoon, SK S7K 0A8

Individual Income Tax Enquiries: 1-800-959-8281

Forms and Publications Order Service: 1-800-959-2221

Canada Child Tax Benefits Enquiries: 1-800-387-1193

www.ccra-adrc.gc.ca

The CRA administers tax laws for the Government of Canada and most provinces and territories and can provide information about various social and economic benefit and incentive programs delivered through the tax system, including guides, brochures, forms and news releases.

Community Resources and Employment

www.dcre.gov.sk.ca/financial

Provides information about family health benefits, provincial training allowance, Saskatchewan Assistance Plan, Employment Plan, Child Benefit, and Income Plan.

Consumer Protection Branch

Suite 500, 1919 Saskatchewan Drive
Regina, SK S4P 4H2
Phone: (306) 787-5550
Toll-free: 1-888-374-4636

www.saskjustice.gov.sk.ca/cpb

Helps consumers with problems in the marketplace and provides consumer information regarding areas such as consumer scams, credit reporting agencies, collection agents, direct sellers, training courses, motor dealers, charitable fund raising businesses, auction companies, and funeral and cremation services.

Credit Reporting Agencies

These agencies can be contacted for credit reports. Individuals are entitled to a copy of their own credit report free of charge. The two major national Credit Reporting Agencies are:

Equifax Canada, 1-800-465-7166

www.equifax.ca

Trans Union of Canada, 1-866-525-0262

www.tuc.ca

Human Resources and Social Development

www.sdc.gc.ca/en/home.shtml

Provides an overview of Canada's retirement income system (CPP, OAS, Private Pensions Plans) as well as information on disability and survivor benefits.

money
and property

**Industry Canada's Office of the
Superintendent of Bankruptcy**

Regina Office
600 - 1945 Hamilton Street
Regina, SK S4P 2C7
Phone: (306) 780-5391

Saskatoon Office
7th Floor,
123 - 2nd Avenue South
Saskatoon, SK S7K 7E6
Phone: (306) 975-4298

strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/en/home

Helps to ensure that estates in bankruptcy, commercial re-organizations, consumer proposals and receiverships are administered in a fair and orderly manner; provides information about consumer debt and bankruptcy.

Industry Canada's Strategis

strategis.ic.gc.ca

Canada's online business and consumer site; provides information to consumers on a variety of topics including credit card debt, banking, consumer rights, dealing with debt and bankruptcy.

Lawyer Referral Service, Law Society of Saskatchewan

Phone: (306) 359-1767 (in Regina)
Toll-free: 1-800-667-9886

Can provide help finding a lawyer for a particular area of the law or a certain geographical area.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

money
and property

Provincial Mediation Board

120 - 2151 Scarth Street
Regina, SK S4P 2H8
Phone: (306) 787-5387
Toll-free: 1-888-215-2222

122 - 3rd Avenue North
Saskatoon, SK S7K 2H6
Phone: (306) 933-6520

www.saskjustice.gov.sk.ca/provmediation

Provides budgeting advice and counselling to individuals with personal debt problems.

Queen's Printer - FreeLaw®

Walter Scott Building
B19 - 3085 Albert Street
Regina, SK S4S 0B1
Phone: (306) 787-6894
Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Saskatchewan Pension Plan (SPP)

Box 5555
Kindersley, SK S0L 1S0
Phone: (306) 463-5410
Toll-free: 1-800-667-7153

www.spp.gov.sk.ca

Provides information about the Saskatchewan Pension Plan, as well as forms, answers to frequently asked questions, publications and more.

money
and property

Status of Women Office (Saskatchewan)

Saskatchewan Labour
400 - 1870 Albert Street
Regina, SK S4P 4W1
Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.

legal

representation, information
and options

seeing a lawyer

Often, people do not think of visiting a lawyer until after they find themselves in a difficult situation. However, a lot of problems may be avoided by going to a lawyer before major decisions are made. The following situations are some examples where a lawyer should be consulted for advice...

- buying or selling a home or other real estate, organizing a business or making a major purchase
- ending a spousal relationship (common law or legal marriage)
- adopting a child
- making a Will or planning an estate
- signing a large or important contract
- handling accidents involving personal injury or property damage
- defending a criminal charge
- bringing or defending a civil suit (other than in Small Claims Court)

Many more situations require the advice of a lawyer. Other situations involve the law, but people other

than lawyers may be able to provide valuable advice and information. In a business situation, a business organization, agency or accountant can be a good source of information.

For many other problems, government agencies may be able to provide some assistance. It all depends on the nature of the problem before you. Experience with legal problems and knowledge of the law will help you in deciding whether or not the advice of a lawyer is needed.

● **what to expect from a lawyer**

The Law Society of Saskatchewan regulates the conduct of Saskatchewan lawyers. It sets standards lawyers must meet in order to practice law. Lawyers must be competent in the law and have the necessary skills to practice law. In the course of providing this service, a lawyer should...

- keep you reasonably informed
- respond to your telephone calls
- respond within a reasonable time to communications that require a reply
- inform you of proposals of settlement and explain them properly
- not withhold information from you or mislead you in order to cover up negligence or mistakes
- make a prompt report when the work is finished

A lawyer has a duty to hold in strict confidence all information acquired about you in the course of the professional relationship. As well, a lawyer owes a duty to you not to withdraw services except for good cause and upon notice appropriate in the circumstances.

● **how to find a lawyer**

Finding a lawyer knowledgeable in a particular area of law may require some research. The Law Society of Saskatchewan

does not allow lawyers to advertise that they are a “specialist”, “expert” or “leader” in any particular area of law. Lawyers in Saskatchewan are, however, allowed to advertise with regard to preferred areas of practice.

To do so, a lawyer must have been practicing law for at least three years and must regularly practice in the field of law indicated as a preferred area. At least 20% of the lawyer’s time must be devoted to that area.

A lawyer may also advertise that their practice is “restricted” to specific areas of law. To do so, a lawyer must give a written yearly notice to the Law Society indicating their restricted areas of practice. This does not ensure that a lawyer has extensive experience in a particular area, only that their practice is restricted to the designated areas and that they do not practice other types of law.

● how legal fees are determined

Lawyers may charge an hourly rate, they may charge a fee for a particular service, or they may work on a contingency basis. The Law Society has developed a schedule of fees, called a **tariff of costs**, which serves as a guideline for lawyers and the public. This schedule is not binding in any manner; rather it suggests appropriate charges for particular services. It can be adjusted depending on the experience of the lawyer, the time the job takes and the professional skill required.

finding a

LAWYER

There are many ways to find a lawyer. You can...

- ask a friend, co-worker, or acquaintance
- check your telephone directory
- contact a lawyer and ask if they have experience with the particular area of law that you need help with. If they don’t, ask them if they can refer you to someone who does.
- call the Lawyer Referral Service of the Law Society of Saskatchewan at 1-800-667-9886

legal

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In addition, many services are not specified in the tariff. A lawyer will, for example, be frequently asked to advise, negotiate, settle, compromise and give opinions on important matters. In such cases, charges are usually made on an hourly rate. Hourly rates will vary depending on the individual lawyer and their expertise.

For some transactions, lawyers may choose to charge on a fee-for-service basis rather than an hourly rate. This is sometimes called a flat fee. Matters such as land transactions, work related to estates and debt collections are frequently billed in this fashion. When determining their fee for legal work in these areas, many lawyers charge a percentage of the value of the property, estate or debt. The tariff might suggest what percentage would be appropriate to charge.

Legal fees payable to a lawyer representing the Executor or Administrator of an estate are set out in the Rules of Court. This schedule is more than a guideline. It indicates the maximum amount a lawyer can charge in certain situations. The rules also indicate that these fees may be reduced where the Executor or Administrator does the bulk of the work. On the other hand, a lawyer may be entitled to additional fees for extra work relating to the estate, such as dealing with disputes regarding the distribution of assets.

There are times when a lawyer will agree to work on a contingency basis. This means that instead of charging on an hourly basis, the lawyer will take a percentage of the settlement received. This type of agreement is sometimes made when a client could not otherwise afford to pay a lawyer. Under this arrangement, lawyers generally agree to take 20-50% of any money that is awarded to their client. If the client isn't awarded any money, the lawyer will not receive any legal fees, but the client will usually be responsible for payment of any **disbursements**.

Disbursements are expenses that must be paid in the course of dealing with the matter at hand. For example, clients must generally pay for any long distance phone calls that must be made as well as the cost of filing or registering documents regardless of the fee arrangement.

It is possible that a lawyer will ask for a retainer before doing any legal work. This is common practice in the legal profession. Under some circumstances, money that a lawyer is given in advance may also be put into a trust account and used toward payment of fees or disbursements owing.

If you have received legal services, you may not understand an item on your legal bill or feel overcharged. In this case, you should go back to the lawyer and ask for an explanation. Lawyers keep close track of the time spent on each matter and should be able to tell you the precise reason for the cost. If you are still not satisfied, you may want to contact the Law Society. Another option is to have your bill “taxed”. This means asking a court official to go over the bill to see if the charges are appropriate. In Saskatchewan, *The Legal Profession Act* states that an application to have the bill taxed must be made to the court within one month after delivery of the bill. Under special circumstances the court may waive this limitation. A general information package on taxing a lawyer’s bill is available from the Law Society of Saskatchewan.

keeping costs DOWN

Be organized whenever you contact your lawyer, whether in person or on the phone. Be sure that you have provided your lawyer with all the information they need from you. Provide clear, concise instructions and limit your discussions to legal aspects of your case. Remember that you are paying for your lawyer’s time. Be clear from the start about how you will be notified about the progress of your file. Get assurance that your lawyer will contact you if needed and contact your lawyer only when necessary. Ask your lawyer if there is anything else you can do to help keep your costs down.

- **firing a lawyer**

If you are not happy with the service you are receiving, you can certainly fire your lawyer. However, you must pay what is owed for work already done. Once an account is paid, you are entitled to receive documents and materials on your file so that you may pass them on to the lawyer who takes over your case. If you prefer, your new lawyer may ask to have the file transferred directly to them. Anyone who has a serious complaint about a lawyer can report the matter to the Law Society. The complaint will be investigated and possibly sent to the Society's Discipline Committee for further action.

Starting over with a new lawyer can be costly and time consuming. Before changing lawyers, you may want to try to resolve your concerns with your lawyer. It is very important that you and your lawyer understand one another. Tell your lawyer if you don't understand something and don't be afraid to ask questions. Discuss your concerns with your lawyer and be sure you understand what is going on with your file and the reasons behind it. Once you understand the situation clearly, as well as the limitations of the legal system, you may be satisfied. If you are still dissatisfied or feel that the lawyer-client relationship is simply not working, move on. If you feel that your lawyer has not met the standards for the profession, contact the Law Society.

alternatives to hiring a lawyer

Not every legal problem requires a lawyer. Sometimes people can deal with the situation if they have the right information. Others times, legal representation may be advisable, but not everyone can afford to hire a lawyer. If the problem is a serious one, the final fee for a lawyer might well be thousands of dollars. You may want to consider other alternatives.

- **small claims court**

Small Claims Court provides an informal and inexpensive method to settle civil disputes. Civil disputes normally arise when someone feels that the wrongful actions of another person have caused them injury of some kind. Matters relating to consumer transactions, contracts, or landlord/tenant disputes, for example, may be handled by Small Claims Court.

Small Claims Court is set up in a way that allows individuals to present their own legal problems without the aid of a lawyer. In most cases, people represent themselves. The cost of undertaking an action in Small Claims Court is minimal. Currently, claims of less than \$5,000 may be heard in Small Claims Court. If the amount claimed is more than \$5,000, it will have to be heard in the Court of Queen's Bench (unless the individual gives up the portion of the claim over \$5,000). It is almost always necessary to rely on a lawyer if a matter is being dealt with in the Court of Queen's Bench.

In almost every case there will be a case management conference (CMC) before a case goes to trial in Small Claims Court. The purpose of the CMC is to try to settle some or all of the issues. In some cases this may mean that a trial is not necessary, in other cases it may mean that the trial will be shorter and simpler.

Some examples of typical Small Claims actions are...

- claims against retail stores which refuse to exchange or repair defective goods
- claims against debtors for such matters as N.S.F. cheques, promissory notes that have not been paid, or other forms of debt
- claims for lost or damaged goods
- claims against companies or individuals for the return of deposits

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There are some subject matters, however, which will not be heard in Small Claims Court. These include...

- any matter where the title to land is brought into question
- cases involving libel and slander
- actions against a bankrupt

before you sue

- Write a Demand Letter to the party you are filing against. This is a brief letter stating what the claim is about and the amount of the claim. It should set out a reasonable time limit for response and notice that you are going to begin legal action if the matter is not dealt with satisfactorily by the date specified.
- Keep a copy of the letter. If the amount is not paid by the date specified, or the matter is not otherwise resolved, you may begin your action.
- Call the Small Claims Court in your area or the nearest Provincial Court to arrange an appointment with the Clerk of the Court.
- Bring all your proofs of claim, invoices, estimates, bills, contracts, etc.
- Have a good idea of when things took place, events, dates, etc., to keep the interview brief.
- Have the correct names and addresses of the Defendant(s).
- Fees payable for issuing a summons must be paid in cash at the time of the interview - cheques are not accepted.

● **legal aid**

In Saskatchewan, lawyers at the Legal Aid Commission are available to act for people who cannot afford to hire a lawyer and who need assistance in the areas of criminal law and family law (except family property issues). The provincial and federal governments fund our legal aid system.

► **eligibility**

Eligibility is based on a number of factors, including the area of law involved and financial need. Legal Aid will only provide services for particular matters and, even then, only if there is some merit. In very general terms, the following factors are considered in determining merit...

- Are the legal costs reasonable compared to the relief sought?
- Are there serious legal or financial consequences?
- Is there a possible defence to the charge?
- Is there a reasonable likelihood of success?
- Would a reasonable person of modest means take the matter to court?
- Has the client kept appointments and provided required information?
- Has the client followed reasonable legal advice from the lawyer?

Provided their case has merit, those who fall within one of the categories listed below are eligible for Legal Aid...

- individuals supported by social assistance, under either a federal or provincial program
- individuals whose level of income is not higher than the social assistance level
- individuals whose income would be reduced to the social assistance level as a result of the cost of legal services - here the individual may be asked to share in the costs of providing legal services

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► **services**

Legal services provided to eligible individuals are generally restricted to the following matters...

CRIMINAL	FAMILY
<ul style="list-style-type: none">▪ serious offences▪ offences where imprisonment or loss of livelihood is likely▪ appeals	<ul style="list-style-type: none">▪ divorce▪ custody & access▪ maintenance▪ child protection

Usually, civil law matters attended to by Legal Aid are restricted to family law. However, there are rare situations where Legal Aid may assist an individual with a civil law matter if their livelihood is in danger or where extraordinary hardship may result.

In addition, there are some areas of the province (northern Saskatchewan, for example) where Legal Aid may provide service to meet special needs. Regardless of financial eligibility, immediate, temporary advice is available to everyone upon arrest or detention.

Some of the services that Legal Aid does not cover are...

- change of name
- welfare appeals
- E.I. appeals
- Workers Compensation applications
- Wills and Estates
- small claims
- foreclosure
- income tax returns
- parole hearings

- municipal matters
- immigration matters
- “fee-generating” matters such as family property actions, wrongful dismissal disputes, etc.

If a person is denied services or has services withdrawn, they may appeal the decision to the Legal Director or the Chairperson of the Legal Aid Commission, Central Office.

● a word about mediation

Mediation is when a third party acts as a middle person to help parties resolve their differences. A mediator is a neutral person who helps parties by bringing them together in a neutral space. A mediator is trained in ways to help the two sides communicate in a non-threatening way. Mediation can provide parties to a dispute with an opportunity to creatively problem-solve and arrive at their own solution to the problem.

A mediator is not a negotiator, a counsellor or a psychologist. A mediator does not impose or negotiate a solution. The mediator merely helps the two sides come to an agreement and resolve their own conflict. Sometimes mediated agreements are finalized by a lawyer.

Mediation works by allowing the two people to come together in a less stressful atmosphere. The mediator is present to help create a climate where the two people can resolve their differences themselves. A mediator does not take sides, try to lay the blame on one person, or pressure a person to accept a settlement proposal. The mediator’s job is to help people define the problem and come up with different ways to solve it. The mediator helps people decide what solution will work best for everyone, but the people who are in conflict are the ones who decide how to resolve it.

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Mediation can help people solve many types of problems. It is often used in disputes involving family or criminal law and consumer problems. Mediation is also used in some schools to help children learn how to resolve their differences in a positive way.

Mediation allows people to reach a solution that considers their own needs. It can be less costly than dealing entirely with a lawyer and the courts. People may be more likely to respect an agreement or solution that they had a part in making. Mediation gives the people involved in the dispute a chance to come up with a solution themselves, rather than having it imposed by the courts. During the process, the two sides may develop communication skills and learn techniques to solve problems. These problem-solving skills can be used the next time there is a conflict.

researching the law

We often have questions about the law. Sometimes it is necessary to get legal advice to help resolve a problem. Legal research can be very complex and will often require the expertise of a trained professional. Sometimes we are just curious about a particular law. Sometimes we need information about our rights and obligations or have questions about a particular legal process. Finding answers to our questions can involve doing research in a number of places: a public library, a law library or government department. There are several sources of law, including written laws, called statutes, and judicial decisions, called case law. Often to have a full picture of what a law is, we need to know both what statute law there is as well as what case law exists in the area. Statutes help us to know what a particular law says, while case law can help us to understand how a particular law applies to a particular situation. Again, this may require advice from a lawyer.

Our statute laws can be passed by Parliament or the provincial Legislative Assembly, depending on whether the federal government or the provinces have the constitutional responsibility for that area of the law. Municipal governments fall under provincial responsibility and also pass laws called bylaws. The Office of the Queen's Printer publishes and distributes the authoritative versions of all Government of Saskatchewan Acts and Regulations, and other government legislative publications including the Rules of Court. Federal legislation is available through the Department of Justice, Canada.

Judges interpret statutes when they decide cases in court. They often look to related case law to see what other judges have said. These judicial decisions form part of the law, just as statutes do.

When a judge gives written reasons for a decision in a court case, those reasons are recorded and are available to the public. Legal publishers select cases of significance to be reported and printed in law reports. Law reports are available at law libraries as well as some public libraries.

There are many law reports available. Some provinces have a provincial report, such as the Saskatchewan Reports or the Alberta Reports. Legal publishers also publish reports or digests of important cases from particular geographical areas, such as the Western Weekly Reports. There are also collections of cases that deal with a particular subject area, such as family law, insurance law, bankruptcy law and criminal law. Law libraries also have digests or reference works to help in researching the law.

legal information

Public libraries and regional libraries often have general legal information and copies of important legislation. They can be a good beginning point for some understanding of a problem or question.

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Many government departments and agencies have publications and fact sheets on a wide range of topics that outline rules and regulations, appeal processes and other resources. Most departments are listed in the blue pages of your telephone directory. Several resources are available online, including government departments and educational sites. Many federal departments can be reached through the Government of Canada's website. Many provincial departments can be reached through the provincial government's website. Both websites provide access to actual legislation, as well as general legal information, answers to frequently asked questions (FAQ's) and links to other government departments and related organizations.

Books, booklets and pamphlets about the law may be the easiest place to turn when you are looking for general legal information. In addition to government agencies, community organizations and special interest groups can often provide publications that may provide answers to your general questions about particular laws.

The Public Legal Education Association of Saskatchewan (PLEA) provides legal information and education. PLEA produces booklets and pamphlets on various topics, such as Small Claims Court, Criminal Law, When Couples Separate and Wills and Estates. PLEA also has a speakers' bureau through which free information sessions on specific legal topics, such as Wills or buying a house can be arranged. PLEA does not give legal advice for specific problems. However, PLEA can help with general legal information, including suggestions on where to turn with a problem. PLEA is a province-wide service.

In addition to general legal information, specific legal forms may be required for a variety of reasons. Many legal forms are "prescribed by law", meaning that a particular form must be used for a particular purpose. For example, when a

child is born in Saskatchewan, that child's birth must be reported to the Vital Statistics branch of Saskatchewan Health. This requirement is found in *The Vital Statistics Act*, which also requires that the necessary information be provided "in the prescribed form". Both federal and provincial legislation have prescribed forms. Other examples of situations that require the use of a prescribed form include applying for a change of name, obtaining a marriage licence, incorporating a business, filing for divorce or declaring bankruptcy.

Prescribed forms are set out by a legislative body and can be found in either the governing statute itself or in the accompanying regulations for that particular Act. The Office of the Queen's Printer publishes and distributes forms related to Saskatchewan statutes. Paper copies of forms can be ordered, for a fee, or individuals can use the Queen's Printer online service to search for forms related to particular statutes and print them off for their own use. The Queen's printer also has form kits for some types of actions, for example incorporation of a non-profit organization and applications for adult guardianship. Forms related to federal legislation are available through the Department of Justice, Canada.

When a legal matter involves a court action, the particular court that will hear the case will also have prescribed forms that must be used. For example, Small Claims Court forms are contained in the Small Claims Regulations, 1998 and are available from the office of the Small Claims Court Registrar. Forms used in Court of Queen's Bench proceedings can be found in the Court of Queen's Bench Rules for Saskatchewan. These are available from the Queen's Printer, the Law Society of Saskatchewan as well as law libraries and larger public libraries.

Some more commonly used forms and forms kits may be available through your local Court of Queen's Bench. Various

other commonly used forms may be available from individual Court Houses, but selection and availability varies. Contact your local Queen's Bench Court House for more information.

There are also several situations that require a legal form of one kind or another, but the particular form is not one that is prescribed by law. For example, separation agreements, employment contracts, or car lease agreements do not need to be contained in a prescribed form. In many of these situations, the forms used have become standardized over time. These types of forms are known as "precedent" forms.

Precedent forms are not always available to the general public. There are some commercially published forms available in bookstores, stationery stores and through the internet. Consumers cannot assume that these forms will comply with our laws. Reference volumes, such as O'Brien's Encyclopedia of Forms (Canada Law Book), may also be available at law libraries and larger public libraries across the province. Again, consumers cannot assume that these forms will suit their purposes.

Lawyers often develop their own forms specific to their area of expertise. For matters where there is no form prescribed by law, it is often advisable to seek legal advice and assistance. Even when a generic form is available, it may not be appropriate to an individual's particular situation and legal advice from a professional may be required. Many lawyers offer free initial consultations.

Learning more about your legal situation will help you determine whether general legal information is sufficient or whether you need legal advice from a lawyer. Even when legal advice is required, background legal information can help you understand the process and make informed decisions.

resources

Canadian Legal Information Institute

www.canlii.org

Provides free access to Canadian full-text court decisions available on the web.

Government of Canada

canada.gc.ca

Provides access to information published by many federal departments and agencies.

Government of Saskatchewan

www.gov.sk.ca

Provides access to information published by many provincial departments and agencies.

Justice Canada

www.justice.gc.ca

Provides information about programs and services, special initiatives and the laws of Canada.

Law Society of Saskatchewan

1100 - 2500 Victoria Ave

Regina, SK S4P 3X2

Tel: (306) 569-8242 (inquiries)

www.lawsociety.sk.ca

Governing body for the legal profession in Saskatchewan; responsible for setting standards for admission, standards of professional conduct for practicing lawyers, and disciplinary procedures for lawyers who violate those standards.

Lawyer Referral Service, Law Society of Saskatchewan

Tel: (306) 359-1767 (in Regina)

Toll-free: 1-800-667-9886 (elsewhere in the province)

Operated by the Law Society of Saskatchewan, this service can provide individuals with the name and address of a lawyer in their area with whom they can discuss their legal matters at an initial rate of \$25 for the first half hour.

Legal Aid Commission

Toll-free: 1-800-667-3764

www.legalaid.sk.ca

Provides legal services to eligible individuals for some criminal and family law matters; eligibility is based on a number of factors including area of law and financial means.

Publications Centre

www.publications.gov.sk.ca

Provides central access to Saskatchewan government and related publications.

Public Legal Education Association of Saskatchewan

#300, 201 - 21st Street East

Saskatoon, SK S7K 0B8

Tel: (306) 653-1868

www.plea.org

Provides general legal information and free booklets on law.

Queen's Printer - FreeLaw®

Walter Scott Building

B19 - 3085 Albert Street

Regina, SK S4S 0B1

Phone: (306) 787-6894

Toll-free: 1-800-226-7302

www.qp.gov.sk.ca

Provides free online access to up-to-date versions of all Government of Saskatchewan Acts and Regulations, and

other legislative publications through the FreeLaw® service. Paper copies available for a fee.

Saskatchewan Justice

1874 Scarth Street
Regina, SK S4P 3X2
Tel: (306) 787-8971

www.saskjustice.gov.sk.ca

Responsible for the administration and delivery of justice in Saskatchewan and the protection of basic legal rights and relationships. Provides information on a broad range of legal topics and links to various branches of the department dealing with matters such as consumer protection, marriage, the criminal justice system, victims services, family law, dispute resolution, privacy, mediation, and the Public Guardian and Trustee.

Status of Women Office (Saskatchewan)

Saskatchewan Labour
400 - 1870 Albert Street
Regina, SK S4P 4W1
Phone: (306) 787-7401

www.swo.gov.sk.ca

Works to achieve social, economic and political equality for women. Publishes the Saskatchewan Women's Directory, designed to provide a ready source of information about services of interest to women.

Status of Women Canada

www.swc-cfc.gc.ca

Promotes gender equality and the full participation of women in economic, social, cultural and political life; works to improve women's economic autonomy and well-being, eliminate systemic violence against women and children, and advance women's human rights.



Notes



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public legal education association of saskatchewan

The Public Legal Education Association of Saskatchewan (PLEA) is a non-profit, non-government organization which exists to educate, inform, and empower through law-related education. PLEA's goal is to assist the public in becoming more informed about the law and the legal system.

organize a **speakers bureau** for your
group or organization

request **free publications** on various areas of the law

search our web site at www.plea.org

For more information on these and other PLEA services, contact:



Public Legal Education Association of Saskatchewan
Saskatoon, Saskatchewan
Tel: (306) 653-1868 Fax: (306) 653-1869 E-mail: plea@plea.org

educate, inform,
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a guide
to the law for
saskatchewan women

featuring...

- family law
- criminal justice system
- victims of crime, violence and abuse
- women's health
- rights and freedoms
- work
- money and property
- legal representation, information and options



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