

INTERIM DISTRIBUTION OF PROPERTY

This guide was created to help people understand when they might be able to access family property to help cover the costs of their legal proceedings.

This guide does not contain legal advice. If you or someone you care about requires legal advice, please consult with a lawyer.



WHEN PEOPLE SEPARATE, sometimes they have unequal access to income and assets. One partner may have worked, while the other stayed home. One partner may have contributed to RRSPs, TFSAs, or other investments in their own name, while the other was not able to. After the relationship broke down, one partner may have depleted shared accounts and kept the money for themselves. In some situations, like the examples above, one partner may have access to more money to pay for a lawyer and potentially leave the other person without.

To help make sure that both partners have access to family property, BC's *Family Law Act* allows for an "interim distribution of property." This guide answers common questions about an interim distribution of property and explains who may be able to get one.

In this guide, we will follow Maria and Marc. They were married for 10 years and have an eight-year-old child together. Maria is a stay-at-home mom, and Marc works at a tech company, earning \$160,000 each year. Marc also has a savings account, which has about \$80,000. They own a condo in the Fraser Valley, which has \$400,000 in equity.



Maria and Marc separated a few months ago. Maria and the child are living in a friend's basement suite, while Marc remains in the condo. Maria has access to the family's joint bank account but not Marc's savings account. Most of the money in the joint account has been used up, and Marc is not putting more money in.

Maria receives \$500 per month in child tax benefit payments. She does not have any other income. Maria wants assistance from a lawyer to help resolve her family law case but can't afford to pay a lawyer. Marc says that they don't need a lawyer and they should just reach an agreement on their own.



Interim distributions of property are only available to people who are considered "spouses." For the purpose of property division, this normally means that they are married or have lived together for at least two years.

What is an interim distribution?

In some family law cases, a court can order that a portion of the family property or assets can be given to a spouse before all the other family law issues have been decided. This is called an “interim distribution” and can occur if the spouse needs the funds to pay for certain things, including hiring a lawyer or other legal professional for a court proceeding or dispute resolution.

An interim distribution is made under section 89 of the *Family Law Act*, which says that the court can order for part of an asset to be paid to a spouse for the following purposes:

- To pay for family dispute resolution (out-of-court processes including mediation, arbitration, collaborative family law, or the services of a parenting coordinator)
- To pay for all or part of a court proceeding under the *Family Law Act*
- To pay to obtain reports in support of family dispute resolution or a court application (for example funds could be used to pay section 211 assessors or business valuers)¹

An “interim distribution” can occur if the spouse needs the funds to pay for certain things, including hiring a lawyer or other legal professional for a court proceeding or dispute resolution.

An order for interim distribution could allow Maria to use some of the family’s money to obtain legal assistance (such as legal advice or representation in court), before a final decision is made about all of the legal issues affecting her separation from Marc. However, Maria could not ask for an interim distribution to cover her general living costs.

In family law, an “interim” order is a temporary order made by the court before a case is fully completed through an agreement between the parties or after a trial. Even though interim orders are intended to be temporary, because family law often moves slowly, interim orders are often in place for many months or sometimes years. An interim order is a real order and needs to be followed until it is replaced by another interim order or a final order.



When can I apply for an interim distribution?

The main purpose of an interim distribution is to level the playing field between spouses regarding access to justice.²

The court has commented that interim distributions are “meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets.”³

Interim distributions are therefore most often granted when there is a large difference in the economic position of the spouses. If your spouse has a higher income or greater access to assets than you do, or both, an interim distribution may be a good option to help you pay for your court case or dispute resolution.

Where you and your spouse have a similar income or cash flow, it is less likely the court will grant an interim distribution, but it is still possible in some situations.⁴

There is a big difference between Maria’s and Marc’s incomes. Marc also has access to money that was saved during the relationship and Maria does not. Applying for an interim distribution may be a good option for Maria.

Interim distribution is meant to level the playing field regarding access to justice, and is most often granted when there is a large difference in the economic position of the spouses.



“Liquid” assets can be easily converted to cash.



“Non-liquid” assets cannot be readily turned into cash.

How is an interim distribution made?

Interim distributions are most easily made where there are “liquid assets,” such as bank accounts and investments that can be readily paid out. Non-liquid assets include items like cars, homes, and jewellery that cannot typically be used to pay for legal services. (You can’t give a car to a lawyer to pay for their time.)

Some accounts are locked in and cash cannot be withdrawn from them. It is unlikely that such accounts can be used for an interim distribution. Because an RRSP or savings account has a tax penalty or fee associated with withdrawing the money does not mean that it is “locked in.” However, it might be better to use a different asset, if available, that does not have a tax penalty attached to it.

If you have sold the family home or business, there may be money from the sale that you can use in an interim distribution. In some circumstances, an interim distribution using equity from the family home (or other real property) is possible. This will usually involve selling or refinancing the home. (If your spouse will not agree to sell the home, then you would also need to apply to court for an order to sell the home.)

If neither your spouse nor you have liquid assets, or if it is not possible to sell or refinance your home, an interim distribution may not be realistic.

Since Marc has a liquid asset (the family savings account), Maria may be able to get an interim distribution from this account. In some circumstances, Maria may be able to ask the court to order the sale of the condo.

If neither your spouse nor you have liquid assets, or if it is not possible to sell or refinance your home, an interim distribution may not be realistic.



What is the legal test?

When you apply for an interim distribution, you must show the court that you meet two requirements under section 89 of the *Family Law Act*:

- You need the interim distribution for one or more of the three purposes noted on page 3 of this document; and
- The interim distribution would not harm the other spouse's interests (it would not prejudice their case).⁵

To show need, you will usually need to provide the court with evidence about your finances, including how you are not able to cover the expenses with the income and assets you have access to. You will also need to provide information to the court about the expected cost of the family dispute resolution or court proceeding.

Whether the court finds that an interim distribution would be harmful or not to the other spouse will depend on the specific circumstances of your case and the type of assets involved.⁶ Some specific factors in your case that may weigh in favour of an interim distribution include:

- Your spouse has much greater income and assets than you;
- Your case involves complex issues;
- Your spouse has been particularly unreasonable;
- Getting financial documents from your spouse has been difficult;
- You have had to incur significant legal fees to date; or
- You have been unable to pay for legal fees from your income or assets

Maria would like to speak with a family lawyer about her case. If she wanted to seek an interim distribution of property, she would need to gather information about her current finances and Marc's finances. It would be a good idea for Maria to also speak to a lawyer to find out how much money she would need to work with a lawyer.



An “affidavit” is a written statement about your evidence. Your affidavit must be signed in front of a lawyer, notary, or commissioner of affidavits. (Court registries will normally have staff who are qualified to do this if you are having trouble finding someone to help.) You will need to swear or affirm that the affidavit is true. Once signed, the affidavit is given the same weight as if you took the stand in a courtroom.

How do I apply in court for an interim distribution?

You can only apply for an interim distribution in the BC Supreme Court.

If you do not have an open file for your family law matter in Supreme Court, you will need to first start a proceeding. This is typically done by filing a Notice of Family Claim.

To apply for an interim distribution, you will need to file and serve a Notice of Application and affidavit that explains your situation.

You can apply for an interim distribution at various stages in a Supreme Court case, including early in the case in some circumstances.

Maria may be able to get some help from Legal Aid BC, either by talking to Supreme Court duty counsel or by asking Legal Aid to provide a lawyer on a limited retainer, although neither will be able to represent her in court. She may also want to connect with a family law advocate to assist her. You can find a family law advocate through the PovNet map at povnet.org/find-an-advocate.

A relationship breakdown is very stressful, and being unable to use family money can make things even harder.

Resources and supports are available to help you, and we encourage you to connect with support services in your community.

Notes

- 1 *Family Law Act*, SBC 2011, c 25, section 89: “If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund: (a) family dispute resolution, (b) all or part of a proceeding under this Act, or (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.”
- 2 *Bartch v. Bartch*, 2017 BCSC 210 at para. 23.
- 3 *I.F. v. R.J.R.*, 2015 BCSC 793 at para. 192.
- 4 *T.L.L. v. J.J.J.L.*, 2016 BCSC 1353.
- 5 *Bartch* at para. 22.
- 6 *Negus v. Yehia*, 2015 BCSC 857.

Going forward

A relationship breakdown is very stressful, and being unable to use family money can make things even harder.

Resources and supports are available to help you, and we encourage you to connect with support services in your community.

Reach out to Rise if you would like help connecting with other services to navigate your family law matter.



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