

Legal Considerations

Parenting can be tough, even at the best of times.

After separation or divorce, it can be even more challenging.

It's important to remember that while you might be thinking about parenting arrangements and money issues...

Your children's basic needs don't change.

They still need to feel safe...

... secure...

... and loved...

Family Law in Manitoba recognizes that the children's best interests are the most important things to consider when making parenting decisions.

Unless there is a risk to the children, kids do best when both parents and important family members, such as grandparents, are involved in their lives.

it's important to get information on the legal issues you might face as a parent early on in the separation process.

And there are a number of resources available to help. Resources you can find on the Family Law Manitoba Website

Chapter 1: Parenting Responsibilities

When parents don't live together, their most important job is deciding how to care for, and make important decisions about their children.

Because you know your children best, you play an important role in making a parenting plan that will work best for your children and your family.

When you're talking about parenting arrangements or a parenting plan, you might hear a number of different terms.

But no matter what terms you hear, the two most important questions to ask are:

When will your children spend time with each parent? And

How will you make decisions about your children?

Here are the most common areas you may have to think about.

Parenting Time. What will the weekly or regular parenting schedule be? And how will you deal with school breaks, in-service days, holidays, special days, birthdays and other special events? How will the children keep contact with grandparents and other important family members?

Health Care. How will you address the children's health and dental care needs? Who will take the children to appointments? When and how will you share information if only one parent is at the appointment? And who will care for the children if they get sick or if there is an emergency? Who is your emergency third party contact if you are unreachable?

You have to think about education. What school or programs will the children attend? How will you handle parent-teacher meetings and other school activities? Who will the emergency contacts be? And for younger children, how will you make choices about day care and pre-school?

You will need to think about things like culture, language, religion and spirituality.

What values are important to you and your children and how will they be accommodated by both parents?

And there are other things to think about as well like:

Deciding what extra-curricular activities children will take part in, how they will be scheduled, who will transport and how to pay for them.

How to handle day-to-day decisions such as routines and expectations, screen time, homework and chores.

How you as parents will resolve disputes when you can't agree on an issue.

And how will you communicate with each other about your children...

... and with your children...

Especially when they are with the other parent?

While making arrangements, you may find it helpful to talk to others such as mediators, counsellors, a child psychologist, elders and lawyers.

And once you have a parenting plan in place, you may want to talk to a lawyer about making it official in a separation agreement or court order.

But if you are unable to agree on a plan, you may need to talk to a lawyer about your options.

CHAPTER 2: Child Support

Both parents must provide financial support for their children – whether or not there is a court order.

Parents have an obligation to support both their biological children...

... and adopted children.

In fact, if you were like a parent to your partner's children, you may also have an obligation to provide support for them after a separation.

So how long must a parent pay child support?

At least until the child turns 18. But it can go beyond that if the child...

... continues on in school or post-secondary education...

... or remains dependent on the parents due to an illness or disability.

Manitoba has Child Support Guidelines to determine the amount of child support. The Guidelines include Tables that set out monthly child support amounts.

The monthly Table amount depends on factors including:

The paying parent's total income before taxes
The province or territory where they live;
The number of children to be supported

The parenting arrangements in place, and whether or not a child is over the age of 18 and still requires support, may also affect the amount of child support.

In addition, you may also have to pay towards other "special" or "extraordinary" expenses in addition to the monthly Table amount of child support payments.

This could include things like:

- Childcare
- Health and medical expenses
- Education expenses
- And extracurricular activities like sports or music lessons.

These costs are usually shared in proportion to the parents' incomes.

The guidelines require the paying parent to give the other parent complete financial information on request. In many cases, both parents must provide their financial information to the other one.

Changes to Manitoba law that are expected to come into effect in 2020 will allow you to apply to the Child Support Service, rather than the court, for a decision on your family's child support

payments. These decisions will be based on the Child Support Guidelines and will have the same effect as a child support order made by the court.

Information about this process, once it is in effect, will be available on the Family Law Manitoba website. If a court application for a child support order is made...

... the court will look at the parent's past and current income and decide what the parent is likely to earn from all sources for the current year.

In some cases, a parent's income does not properly reflect their ability to pay child support.

For example, if a parent has income that is non-taxable – like disability income – the court may consider that person's income to be higher... so the child support amount would be higher.

But a child support payment can also be changed. In Manitoba, there are two ways to do that.

The first way is for the Child Support Service to recalculate the amount if your child support order is eligible for recalculation.

Approximately every two years, the Child Support Service will recalculate Child Support based on current financial information.

One or both parents must provide financial information upon request.

If you disagree with the recalculated child support amount, you will have 30 days to apply to the court for a change and a judge will decide the child support.

The other way to change a child support order is by making an application to the court to change or vary the order. This approach will usually involve legal fees.

A court can look at other factors beyond a recalculation such as whether a child is now over 18 and whether it's still appropriate to apply the Child Support Guidelines for an adult child in the same way as for a minor child.

Maybe the child is no longer dependent on the parents. The child may have changed homes or moved from living primarily with one parent to a shared custody arrangement.

In that case, the court can re-examine the amount of child support.

The court can also backdate the change in child support, requiring the paying parent to pay the difference if the backdated change increases the amount payable.

Manitoba's Maintenance Enforcement Program can also look at the circumstances of a case.

In some cases, it can stop enforcing support for an adult child if it determines the case is no longer eligible.

The parent receiving child support must tell the Maintenance Enforcement Program when an adult child is no longer eligible for support...

... but the parent paying support can also ask program staff to determine if enforcement of support for an adult child should continue.

Manitoba's Maintenance Enforcement Program monitors and collects child support payments.

It does this when child support is set out in a court order... in a family arbitration award... or in an agreement that indicates that the Program can collect the support.

If there are any missed payments – which are called arrears of child support...

They can be enforced through the Maintenance Enforcement Program through a variety of ways including:

- garnishing income
- garnishing payments from the federal government, including income tax refunds and GST rebates
- suspending driver's licenses
- late payment penalties
- or taking the matter to court for a hearing to find out why the support has not been paid and what action – if any – the court should take.

Chapter 3: Spousal Support and Common-law Partner Support

You may be wondering how spousal support or common-law partner support is determined.

It involves two factors:
entitlement and terms of payment.

Married or common-law couples who have separated are eligible to apply for spousal support or common-law partner support whether they are same sex couples or opposite sex couples.

To be eligible to apply for common-law support, a couple must either have registered their common-law status with Manitoba's Vital Statistics Agency...

... have lived together for at least a year, and have a child together...

... or have lived together three or more years and do not have children.

How is the amount determined?

The amount of support an eligible spouse or common-law partner is entitled to receive is determined on a case-by-case basis.

Unlike Child Support Guidelines, the Spousal Support Advisory Guidelines are not mandatory.

Still, they are a useful tool that can be used by lawyers, mediators, arbitrators or judges to try to determine the appropriate amount of spousal support or common-law support, and the length of the support.

When both child support and spousal or common-law partner support are to be determined, priority is given to child support.

In some cases, even when a spouse or common-law partner is entitled to support, the amount of spousal or common-law support may be reduced – or not be payable – until child support is no longer required.

Unlike child support, spousal and common-law support payments are tax-deductible to the payor.

The person receiving the payment must claim it as income at income tax time.

Spousal or common-law support can be a complicated issue.

It's a good idea to talk to a family law lawyer about your rights and obligations.

Chapter 4: Family Property

In Manitoba, The Family Property Act sets out rules for dividing the value of family property between spouses or common-law partners, whether same or opposite sex.

In cases of common-law partners, the Act applies to those either who have registered their relationship with Manitoba's Vital Statistics Agency or who have lived together for at least three years.

Usually, any property acquired during your relationship is considered shareable property under The Family Property Act.

There are generally three types of property that are exceptions: inheritances, gifts from third parties to one person in the relationship and pre-acquired property.

The value of assets and debts are determined as of the date of separation. The date of separation is referred to as the valuation date.

Basically, an inventory list is made of the assets and debts of each party.

The value is based on fair market value on the valuation date. This value is of all property.

For example, household contents would be valued at fair market value, meaning what it was worth on the valuation date.

Jointly held assets, such as a joint bank account or jointly owned family home, are not included in the family property accounting, but are valued as of the date they are being dealt with.

If the home is in one person's name only, the value is determined as of the date of separation or date of valuation.

If the home is jointly owned, then the value is determined as of the date it is dealt with, for example, when it is sold or when one spouse or common law partner buys the other one out.

What happens when the values are determined?

The values are listed in an inventory called a comparative family property statement.

The statement lists all property, including such things as real estate, bank accounts, investments, RRSPs, pensions, household contents and vehicles.

Debts, such as mortgages, bank loans, lines of credit and credit cards are included.

Some assets could affect your income tax filing, so that is considered.

The debts are subtracted from the assets of each party, resulting in a net asset figure for each party.

Those are added up and each party is entitled to half of that amount.

The comparative family property statement is a useful tool in listing the assets and debts of each party to resolve the issues, whether by negotiation, or mediation, arbitration or court.

Evaluating and dividing family property can be a complicated process, so getting legal advice is recommended.

CHAPTER 5: Family Dispute Resolution

There are a number of legal issues that separating parents need to sort out, such as parenting responsibilities, child support, spousal or common law support and property distribution.

Choosing an effective family dispute resolution method is very important. The process may include negotiation, mediation, collaborative law and arbitration.

In some cases, parents may be able to resolve issues by direct negotiation, on their own or with the help of a lawyer.

This involves discussions between the parents to try to come up with an agreement.

If an agreement is reached, a lawyer can then draft it into a legal document.

A lawyer can make sure you have all the information you need to make decisions and can give you advice specific to your situation.

Even if you negotiate without a lawyer, you should have one review the agreement to make sure you understand your legal rights and obligations.

Mediation involves a trained person who is a neutral third party, a mediator, who can help you resolve your differences.

You, as the parents, make the decisions but the neutral mediator helps you consider all the options.

A mediator cannot force a decision upon the parents.

Each issue is addressed one at a time, usually starting with parenting plan issues, then dealing with financial issues and ending in an agreement.

Mediators work in a variety of settings, including both government and private offices.

Some mediators deal only with parenting plan issues, while some deal with both parenting plan and financial issues.

Mediation is not for everyone. For example, if there have been very high levels of conflict or family violence, it may not be possible for parents to mediate safely and effectively.

Parents who prefer to resolve issues outside of court, with the help of lawyers, have another option.

Collaborative law is a process wherein the lawyers are the advisors who guide you, and sit at the negotiation table with you.

You are still responsible for the decision-making, but the lawyers are there to help you.

The collaborative process can also involve other professionals, such as parenting coaches, child specialists, and financial advisors.

Collaborative law works best when there is a commitment from both parents to resolve all issues without going to court.

If an agreement cannot be reached and you opt to go to court, the lawyer you hire must not have been involved in the collaborative law sessions.

In Manitoba, a neutral qualified person, a family arbitrator, can make a family arbitration award or decision.

Both parents agree to allow the family arbitrator to make a decision.

Family Arbitration is a private process and you must pay for the family arbitrator's service.

The family arbitrator will make the decision for you if you cannot agree on the issues through other methods of dispute resolution, such as negotiation, mediation or collaborative law.

A family arbitrator's decision (a "family arbitration award") is enforceable in the same manner as a court order.

Arbitration is different from mediation.

For example, mediation is a non-binding process where the mediator's role is to help the parties reach an agreement themselves – the mediator does not impose an agreement on them.

In arbitration, on the other hand, the arbitrator listens to the parties' positions and makes a binding decision about how matters will be resolved. This is similar to what a judge would do in court.

Parents may have to pay for family dispute resolution services. In some circumstances, services may be available at no cost, such as to families who are eligible for Legal Aid.

CHAPTER 6: Domestic Violence

Domestic violence or intimate partner violence refers to violence or threats of violence, including physical, sexual, emotional, and psychological abuse. It can also involve stalking.

Under The Domestic Violence and Stalking Act, a person subjected to domestic violence or stalking can apply for a protection order from a designated justice of the peace.

Applications can be made in person by the applicants themselves, by phone, or with the help of a police officer, a lawyer, or a specialist called a protection order designate or P.O.D.

The person who applies for a protection order must provide information, under oath, about the stalking or domestic violence.

A protection order is enforced by the courts and can result in criminal charges if a person does not obey that protection order.

A person who disobeys a protection order could be arrested.

After the protection order is made, the alleged abuser will be notified and given 20 days to ask the Court of Queen's Bench to set it aside.

Under The Domestic Violence and Stalking Act, a person can also choose to apply for a prevention order, which can only be granted by a judge of the Court of Queen's Bench.

A prevention order can go farther than a protection order. It can include the types of conditions included in a protection order, but the Act also gives a judge the authority to order additional measures to protect the applicant.

Please note that the application process for a prevention order is more formal, so it takes longer than it does for a protection order.

If you are threatened or assaulted or in a situation of immediate danger, call 911 immediately.

Chapter 7: The Court Process

If you are unable to resolve your issues with the other parent, you may have to go to court.

It's recommended that you consult a family lawyer for assistance with the court process as well as with legal advice.

If you choose to represent yourself in court, you will be treated the same as if you had a lawyer.

How do you begin a family court proceeding?

Start by filing a document called a petition. It may also be called a petition for divorce, notice of application, or sometimes, a statement of claim in court.

And how do you notify the other parent?

You must have a copy of the document delivered personally to the other parent by someone other than yourself.

You may be asking, "What do I do if the other parent and I agree about what we want?"

In that case, you can file a consent order in court.

After reviewing the matter, a judge may grant the proposed order without you and the other parent having to go to court at all.

But if the other parent does not agree with what you want?

Then, the other parent must file a document explaining their side and give a copy of the document to you.

What if the other parent doesn't file a response in court?

After the deadline for a response has passed, and the other parent hasn't filed a response, you may have default noted by the registrar of the court and file an affidavit.

An affidavit is a sworn document that sets out the facts relevant to the application.

After reviewing the matter, a judge may grant the orders requested or order that additional affidavit evidence be given to the court on some, or all, of the issues.

What if the matter cannot be resolved by agreement or without going to court?

Separation and divorce in the Family Division of the Court of Queen's Bench in Manitoba are subject to the Triage or Case Management model to help resolve any outstanding issues.

Here's how that model works.

First is the Prerequisite Completion.

Depending on the outstanding issues, the parties must do certain things, provide, and file certain documents – prerequisites – before they will be able to meet with a judge at a Triage Conference.

Prerequisites include things like:

Making sure all court documents have been filed and served;

Both parties having previously trying to resolve the matters outside of the court process. For example, through mediation or, settlement meetings, and, etc.;

Depending on the proceeding, certain documents must also be filed – such as:

- A Certificate showing attendance at completion of the ***For the Sake of the Children*** parent information program
- A Marriage Certificate (if applicable)
- A written parenting plan
- An assessment report regarding parenting, if required
- Comparative Family Property Accounting and
- Financial statements (Form 70D) and income tax documents.

You may also need something called Motions before the Master.

If you need an order to help you complete the prerequisites (like needing to compel the other parent to provide financial information or to require an evaluator to do an assessment regarding parenting plan issues), you may apply to the Master of the Court of Queen's Bench.

When prerequisites are completed, parties may attend the court's Triage Screening Co-ordinator to be given a date for a triage conference before a triage conference judge.

At the Triage Conference, both parties will attend in person, with their lawyers if they are represented, before the triage conference judge.

Sometimes, the judge may allow attendance by telephone or video conference.

The judge will review all issues in dispute and will try to resolve the dispute in a co-operative way.

If matters cannot be resolved, the judge will schedule a case conference to take place within 30 days.

The judge could also schedule a prioritized hearing within 30 days, if there are issues that need immediate resolution.

At the same time, the judge will set a first case conference date to occur 30 days after the prioritized hearing.

Sometimes, there may be what is called an emergent hearing.

Generally, you cannot make an application to a judge before a triage conference, unless it involves:

- immediate risk to a parent or child
- removal of a child from Manitoba; or
- loss or destruction of property.

At your first case conference, both parties must attend in person, unless the judge allows attendance by telephone or video conference.

A case conference judge will review all areas still in dispute and will try to resolve the dispute in a co-operative way.

If an agreement is reached, the judge may make a final order.

And if there are matters that must be determined before the trial date, the judge will decide these issues and may schedule subsequent further case conferences before the trial date.

Next, each party must file a trial readiness certificate at least 45 days before the trial date.

If a party fails to file a trial readiness certificate, costs may be awarded against them but the trial or hearing will proceed.

Finally, after all the previous steps are done, it will be time for the trial or final hearing. This is where parents will testify before a judge and may call witnesses to prove their cases.

The judge will decide on the issues.

Keep in mind that while family dispute resolution is necessary, going to court is a last resort that has greater financial and emotional costs than processes such as mediation or collaborative law. And after a final order is made by the judge, as parents, you will need to continue to work with one another to respond to your children's need for safety, security, and love.