

Quebec Family Law

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Jurisdiction of family law

Federal government is responsible for marriage and divorce (custody, access rights and support)

Federal jurisdiction:

- Marriage Act
- Divorce Act

Provincial governments are responsible for filiation, adoption, issues relating to custody, visitation rights, support obligations and division of property, solemnization of marriages, child protection and administration of justice, including enforcement.

For Quebec:

- *Civil Code of Quebec*
- *Code of Civil Procedure*
- *An Act to Facilitate the Payment of Support*
- *An Act to Promote Access to Justice Through the Establishment of the Service Administratif de Rajustement des Pensions Alimentaires pour Enfants*
- *Regulation respecting the determination of child support payments*
- *Regulation respecting family mediation*

Support obligation between spouses (QUEBEC)

- Support obligation between spouses (married) and civil union spouses (Civil Union under the CCQ and while living together)
- Support obligation between divorced former spouses (Divorce Act)
- In case of dissolution of civil unions and separation from bed and board (CCQ) (The judgment of separation from bed and board will lead to the partitioning of the family patrimony, the liquidation of the matrimonial regime, and a decision on child custody and accessory measures such as support payments.)

Support obligation (QUEBEC)

- There is no support obligation between common-law partners
- In direct line in the first degree: parents to children and children to parents and regardless of parents' marital status

Division of property (married couples)

- Family patrimony (imperative)
 - Family residences
 - Furniture for the use of the household
 - Motor vehicles used for family transportation
 - Benefits accrued during the marriage under a retirement plan
- Matrimonial regime (partnership of acquests or separation of property)

Division of property between common-law partners

There is no division of property between common-law partners each partner keep its own property, unless otherwise agreed (Agreement)

In Quebec, we call common-law partners: « de facto couples »

Some of Quebec family law do apply on reserves

- Because of the shared jurisdiction:
filiation, adoption, issues relating to custody, visitation rights, support obligations and division of property, solemnization of marriages, child protection and administration of justice, including enforcement
- *Derrickson v. Derrickson*
- Section 88 of the *Indian Act* and application of provincial law concerning family matters

MRP Act brings new principles in Quebec on-reserve land

- Application of Common Law principles where we are used to Civil Law;
- Might bring difficulty for the Courts and Judges in applying Common Law principles
- In order to remediate to the situation, the communities could be developing their own MRP Acts based on Civil Law principles instead of using the Common Law draft prototype.

MRP Act brings new principles in Quebec on-reserve land

The Province of Quebec, as of now, did not appoint a designated Judge who would have jurisdiction to hear cases arising from application of the MRP Act concerning the Emergency Protective Order

Considering this, if someone needs an Emergency Protection Order in Quebec and on-reserve land, there is no designated Judge that can hear it's case

Principal differences: couples living on reserve

Common Law	Married spouses
Division of real property under the federal law (<i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>)	Division of real property under the federal law (<i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>)
No family patrimony exists. The division of assets (other than matrimonial real property) will be based on right of ownership	Division of family patrimony (with the exception of real property) according to CCQ includes furniture, pension plans, vehicles)
No spousal support	Possibility of obtaining spousal support (Divorce Act)
Child custody and support payments for children CCQ	Child custody and support payments for children CCQ

Quebec government family services

- Family mediation
- Sessions on parenting after separation
- Service administratif de rajustement des pensions alimentaires pour enfants (SARPA)
- Service d'aide à l'homologation (SAH)

Family mediation

- A conflict resolution method
- Whereby an impartial mediator works with the parents
- To help them negotiate a fair agreement
- Subject to free and informed consent for all
- Confidential

Family mediation

- Duration and cost
 - 2.5 hours of information on parenting after separation
 - Mediator fees are paid by the Quebec Ministère de la Justice for parents with dependent children
 - 5 hours for the separation process, or
 - 2.5 hours for a review
- The cost of additional time is paid by the parents at the rate determined by regulation (\$110/hour)

Family mediation

- Where to find a mediator
 - www.justice.gouv.qc.ca
 - Association de médiation familiale du Québec
 - Mobile Mediation Clinic for First Nations Communities
www.facebook.com/mediationclinic

Sessions on parenting after separation

- A session is about 2.5 hours and it covers the following topics:
 - Psychosocial aspects of separation
 - Family mediation and some legal information
 - Questions period

<http://www.justice.gouv.qc.ca/english/programmes/mediation/seance-parentalite-a.htm>

SARPA

- Administrative update of child support for a minor child in simple cases of income variation
- Child support was determined in a judgement
- One or both parents may make the request

www.sarpaquebec.ca or 1 855 537-2772

Service d'aide à l'homologation

- Legal aid available to all parents who have reached an agreement
- To review a judgement on family matters
- Assistance from a lawyer in preparing documents necessary for such a review
- Parents who are not financially eligible

<http://www4.gouv.qc.ca/EN/Portail/Citoyens/Evenements/separation-divorce/Pages/recourir-service-aide-homologation.aspx>

For More Information

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