

Family Law in Quebec

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Courts

- ◉ Superior Court (child custody, access rights, support, division of assets (in the case of divorce or de facto couple for more than \$70,000), divorce)
(42 courthouses in Quebec)
- ◉ Court of Quebec (adoption, youth protection, division of assets (in the case of defacto couple spouses for less than \$70,000))
- ◉ Court of Appeal (Montréal and Québec)

Shared jurisdiction over family law

- **Federal government**: marriage and divorce (custody, access rights and support)
- **Provincial government**: filiation, adoption, issues relating to custody, visitation rights, support obligations and division of property, solemnization of marriages, child protection and administration of justice, including support enforcement

Key applicable laws and regulations

Provincial jurisdiction:

- *Civil Code of Québec*
- *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*

Federal jurisdiction:

- *Marriage Act*
- *Divorce Act*

Parental authority

- The child remains under the authority of his/her father and mother until the age of majority or his/her emancipation.
- The father and mother exercise parental authority together.
- They have rights and duties related to the custody, supervision and education of their child. They must also feed and support their child.
- In the case of parents who are separated:
 - > Day-to-day decisions
 - > Decisions of greater importance

The child's interest

- Any decisions regarding the child must be made in his/her interest and in respect of his/her rights.
- Consideration must be given to the child's moral, intellectual, emotional and physical needs, age, health, character and family environment, and other aspects of the child's situation.

Custody and access

- There is no preferred custody model
 - > The child's interest is the only criterion that must be considered
- Competent parenting skills are presumed
- The method chosen is meant to maximize the relationship with both parents

Support obligation

- ◉ Between spouses and civil union spouses (while living together)
- ◉ Between divorced former spouses (*Divorce Act*)
- ◉ In case of dissolution of civil unions and separation from bed and board (*Civil Code of Québec*)
- ◉ In direct line in the first degree: parents to children and children to parents (regardless of the parents' marital status)

Quebec model for determining child support

- ◉ Applicable to parents residing in Quebec (regardless of the parents' marital status).
- ◉ In the case of divorce, if one parent resides outside Quebec, federal guidelines will apply.

Quebec model for determining child support

In place since May 1, 1997

Why?

- ◉ To meet the child's needs
- ◉ So that support is sufficient and predictable
- ◉ To provide precise and objective standards
- ◉ To facilitate and standardize the calculation of support using a mandatory form

Quebec model for determining child support

For everyday needs

The table for determining the amount takes into account:

- the income of both parents
- the number of children
- custody time

If applicable, other costs may be added, calculated in proportion to income.

Collection of support payments

- Support payments are collected by Revenu Québec
- Support payments are automatically indexed on January 1 of every year (1.8% on January 1, 2015)

Division of property

- ◉ 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)

Why does Quebec family law apply on reserves?

- ◉ Shared jurisdiction
- ◉ Decision in *Derrickson v. Derrickson*
- ◉ Section 88 of the *Indian Act* and application of provincial law concerning family matters

Family services

- ◉ Family mediation
- ◉ Sessions on parenting after separation
- ◉ Service administratif de rajustement de 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

Who can be an accredited family mediator?

Youth centres and the following **six professional orders** may accredit their members:

- Barreau du Québec
- Chambre des notaires du Québec
- Ordre des conseillers et conseillères d'orientation du Québec
- Ordre des psychoéducateurs et psychoéducatrices du Québec
- Ordre des psychologues du Québec
- Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec

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?

- ◉ Quebec Ministère de la Justice:
www.justice.gouv.qc.ca
- ◉ Professional orders and Association des centres jeunesse du Québec
- ◉ Association de médiation familiale du Québec
- ◉ Referrals

Sessions on parenting after separation

A session is about 2.5 hours in length:

- ◉ Psychosocial aspects of separation:
1.5 hours
- ◉ Family mediation and some legal information: 30 minutes
- ◉ Question period

SARPA

(established on April 1, 2014)

- Administrative update of child support for a **minor child** in simple cases of income variation
- Child support was determined in a judgment
- One or both parents may make the request; cost: approximately \$275
- To check your eligibility, visit www.sarpaquebec.ca or call 1 855 LeSARPA (537-2772)

Service d'aide à l'homologation

(established on October 10, 2013)

- Legal aid available to **all parents** who have reached an agreement
- To review a judgment on family matters
- Assistance from a lawyer in preparing documents necessary for such a review
- Parents who are or are not financially eligible (**\$265** per parent, no cost to parents financially eligible for legal aid, subject to eligibility with contribution)

Application of emergency protective measures specific to Quebec

- New protective measures introduced through federal legislation
- Protective measures in effect in Quebec
- Quebec orientation
 - > Quebec policy on domestic violence
 - > 2012–2017 government action plan on domestic violence
- Implementation of federal legislation in this respect
- Importance of initiating discussions with the Government of Quebec