



Government  
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Saskatchewan

# **An Introduction to Child and Family Law**

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# Outline

- Court system
- Marriage and common-law spouses
- Breakdown of a marriage or common-law relationship
  - Division of family property
  - Support
  - Custody/access and enforcement
  - Family violence – civil remedies



# Court system in Saskatchewan

- Most family law court actions are at the Court of Queen's Bench
- To get a divorce, custody/access order, or division of property order, you must apply to the Court of Queen's Bench.
- In some locations, you can apply to provincial court for child support, declaration of paternity, and matters of child protection.



# Court System and Legislation

- Married couples can apply under federal *Divorce Act*, or provincial legislation
- Unmarried couples can only apply under provincial legislation – *The Children's Law Act*, and *The Family Maintenance Act*,
- property division under *The Family Property Act* (must be brought within 2 years of separation)



# Spousal Relationships

- Marriage
- Common-law relationships. Note that there is no universal definition of common law relationship – look to the specific benefit or Act to determine what definition of “common-law” is being used.
- Common-law and married spouses basically have same rights



# Ending a Spousal Relationship

- No specific court application is required to end common-law relationship
- Divorce application to end marriage, based on
  - Living separate and apart 1 year (most common ground)
  - Adultery
  - Cruelty



# Ending a Spousal Relationship

- At the time of separation, couples may have a variety of issues to sort out: custody/access, child support, property division, spousal support.
- Most can be sorted out by agreement. Only need a court order for divorce.





# Definition of Family Property

- real or personal property
- Existing at the time an application is made under *The Family Property Act*
- Either or both spouses own or hold an interest in property, even if a third person also owns/has an interest



# Division of Family Property

- *The Family Property Act* has a presumption of 50/50 division of property between the spouses. (Note “spouse” = 2 years or more)
- Shareable property is essentially any property that is obtained, or which increases in value, during the relationship
- Exemptions, and equitable considerations



# Division of Family Property

- Order for Exclusive possession (off-reserve) of the matrimonial home entitles one party to live in the house while the proceedings are underway, and may also provide that the other spouse is restrained from attending at or near the home
- Exclusive possession of household goods



# Division of Family Property

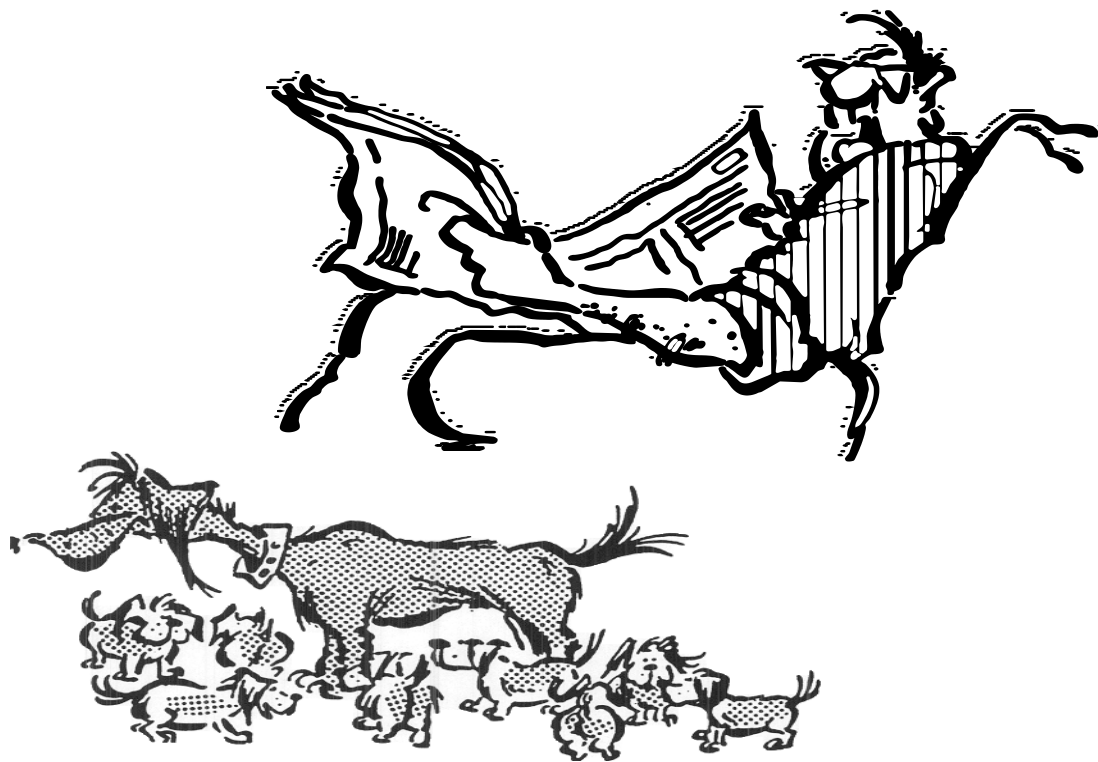
- The court can also make orders:
  - For the transfer of property to a spouse on an interim or final basis, including \$
  - Preventing a spouse from wasting family assets
  - Fining a spouse for not complying with an order for exclusive possession of the home



# Division of Family Property

- Couples can enter into an Interspousal Agreement to settle the division of family property, before, during or after the relationship. The *Family Property Act* states that an Agreement is binding if it is in writing, signed by both parties in front of a witness, and each has had independent legal advice prior to signing.





**“What do you mean, you ‘got custody?’”**

# Custody and Access - Definitions

## Custody

- Parental rights and obligations towards the children including the right to consent to medical procedures etc.

## Access

- Right of the children to a relationship with non-custodial parent or relative. The equality of access is usually agreed to or set out with great particularity in a court order.



# Custody and Access

- The CLA states that where parents cohabited after the birth of the child, they are joint custodians of the child
- Where the child has only lived with one parent following his/her birth, that parent is the sole custodian of the child
- The parents of a child can enter into an agreement to vary custody rights or provide for access





# Custody and Access

- A parent or “a person having, in the opinion of the court, a sufficient interest” may apply to the court for custody of, or access to, a child (CLA)
- s. 16 *Divorce Act* – either or both spouses or any other person may apply
- The court may use terminology of custody and access, but may also use “parenting time” or specify who can make what decisions about the child
- Note that the court always has the power to make custody/access orders even if the parents have a written agreement, and even if there is already a “final” order.



# Best Interests of the Child

- In making an order, the court will have consideration only for the best interests of the child. Factors considered to determine the best interests are in section 8 of *The Children's Law Act* and include:
  - The quality of the relationship the child has with the person seeking custody and any other person who may have a close connection with the child;
  - The home environment to be provided for the child;
  - The plans the person who is seeking custody has for the future of the child; and
  - The personality, character and emotional needs of the child.



# Custody and Access - Enforcement

- In Saskatchewan, *The Children's Law Act* provides a wide spectrum of remedies. Examples include compensatory access, supervision of access, appointing a mediator or varying the custody order.
- **NOTE** that a court always has the power to make custody/access orders even if the parents have an agreement in writing, and even if there is already a “final” court order.



# Child Support

## Presumption

- Parents have legal obligation to support children. Support is the right of the child. Those who stand *in loco parentis* may also have obligation
- The level of child support is based on the non-custodial parent's current income. Tables exist for each province that indicate the support level for the payor's income level.

## Discretion

- The court has discretion to increase or decrease support levels.



# Child Support

- Go to: <http://www.justice.gc.ca/eng/fl-df/child-enfant/index.html>
- Support orders or agreements can be enforced by the Maintenance Enforcement Office: call 1-866-229-9712 for more info or go to <http://www.justice.gov.sk.ca/Default.aspx?DN=07e24160-8bf8-4a30-a9a6-0e568d4c7c54>



# Spousal Support

- Married and common-law spouses can apply
- must show entitlement to support (ex. dependency during relationship, economic hardship on breakdown of relationship)
- written agreements regarding spousal support will likely be upheld by a court



# Family Law Information

- The Public Legal Information Association of Saskatchewan (PLEA) at: [www.familylaw.plea.org](http://www.familylaw.plea.org)
- Justice Canada:  
<http://www.justice.gc.ca/eng/pi/fcy-fea/>
- Family Law Information Center (provide information not advice) toll-free at 1-888-218-2822
- Saskatchewan's Family Justice Services:  
<http://www.justice.gov.sk.ca/familyjusticeservices>



# Family Law Services and Advice

- Pro Bono Saskatchewan: 569-3098 or toll-free at 1 (855) 833-7257 or <http://www.pblsask.ca/>
- Legal Aid: <http://www.legalaid.sk.ca/>
- Private practice lawyers – yellow pages
- Family Matters: 1-844-863-3408 or [www.saskatchewan.ca/family-matters](http://www.saskatchewan.ca/family-matters)
- Dispute Resolution Office: 787-5747





# Child Abuse

- Child abuse includes physical, sexual, and emotional abuse
- Note that children involved in prostitution are considered to be children in need of protection
- Children who witness family violence may also be considered children in need of protection



# Child Abuse

- *The Child and Family Services Act* creates obligation for everyone to report child abuse to Social Services or police
- The Act requires officers to investigate reports of child abuse



# Counsel for Children Program

- New program began fall of 2014
- Program may appoint, or court may order, a lawyer to represent a child or youth who is the subject of child protection proceedings, at no cost to the child/youth.



# Counsel for Children Program

- More likely to be for older children and youth as they need to be able to give lawyer instructions and agree to having a lawyer.
- Lawyer can ensure the child's voice is part of the decision-making at any stage (mediation, case conferencing, court)



# Spousal Violence

- Remedies include (page 46):
  - *The Victims of Interpersonal Violence Act* – Emergency Intervention Orders – contact police or mobile crisis/victim service coordinators to apply for one. EIO's can: grant the victim exclusive occupation of the off-reserve home (abuser must leave it), **order the abuser not to communicate with the victim or children**, and other necessary conditions



# Family Violence

- Restraining orders under other legislation: *Queen's Bench Act*, *Children's Law Act*, *Family Property Act*, or peace bond under CC. Talk to your lawyer about these remedies.
- Criminal Code charges. If a family member or partner assaults or threaten to cause harm to another partner/family member, it should be reported to the police. Note that where a partner is charged and released, it should be with conditions that he/she not contact the victim.





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