

An Overview of the New Brunswick Court System and Family Law

Matrimonial Real Property Toolkit Training Workshop

Moncton, NB

October 6, 2015

Outline

1. New Brunswick court system structure
2. Family Law – Provincial and Federal
3. FHRMIR Act- Implementation in NB
4. Family Justice Resources

New Brunswick Court System

NB Court of Appeal

Court of Queen's
Bench

Trial
Division

Family
Division

Probate
Court

Provincial
Court

Youth
Court

Small Claims
Court

NB Court System

- Province is responsible for the administration, maintenance and function of all levels of courts on a day-to-day basis.
- All family law actions start at the Court of Queen's Bench, Family Division, ("Family Court"); child and adult protection, adoption, spousal rights and obligations (including spousal support), child rights and obligations (including custody, access and child support), division of marital property, and divorce.
- Family Division has 8 court locations - Edmundston, Woodstock, Fredericton, Saint John, Moncton, Miramichi, Bathurst and, Campbellton.

Family Law- Provincial Acts

- *Family Services Act*
- *Child Support Guidelines* (Federal legislation adopted by NB)
- *Marital Property Act*
- *Support Enforcement Act*
- *Interjurisdictional Support Orders Act*

Family Law - Provincial

Family Services Act

- Married / Common Law Spouses / Parents
- Custody & Access
- Child and/or Spousal Support
- Exclusive Possession of the Home
- Restraining Orders
- Adoptions
- “Best Interests of the Child”

Marital Property Act

- Marital Property Division

Protections- Family Violence

NB Family Services Act

- Ex-Parte (Rule 37.04)
- Restraining Orders
 - married spouses living separately (FSA s.128)
 - when a custody order is made (FSA s. 132(1))
- Exclusive Possession of the Marital Home with an application for child/spousal support (FSA s.116(d))
- Criminal Code charges/peace bonds

Federal FHRMIR Act

- Ex-Parte
- Emergency Protection Orders
- Married or common law
- One partner must be First Nation Member or Indian
- Family Violence defined (s. 16(9))
- Exclusive Occupation- 90days

Family Law- Federal Acts

- ***Divorce Act*** - Petition for Divorce to end marriage:
 - Lived separate and apart for 1 year (no fault divorce)
 - Adultery
 - Mental or Physical Cruelty
- ***Child Support Guidelines***
 - Rules and Tables - Federal legislation
 - Judges required to apply the guidelines in all child support matters heard at court
- ***Spousal Support Advisory Guidelines***
- ***Civil Marriage Act***
- ***Family Homes on Reserves and Matrimonial Interests or Rights Act***

Provincial Plans Re: Implementation

- Interdepartmental Implementation Committee - provides strategic direction to prepare the court system and other stakeholders for the new *Act*;
- Government officials and representatives from Aboriginal Affairs Secretariat and ECO - Women's Equality Branch - Violence Against Aboriginal Women
- Three sub committees formed to work on addressing the impact of the federal act: Court Preparation; Enforcement and; Communications.

Provincial Plans Re: Implementation

- Designation of judges to hear Emergency Protection Orders
- Federal Regulation regarding EPOs
- Considering amendments to the NB *Rules of Court*
- Determining if existing court forms need to be amended
- Communications / Education materials for the NB Judiciary, Court Staff , Sheriff Services, OAG- Crown Prosecutors, Legal Aid, etc.

Family Justice – Resources

**Parent
Education for
Separating &
Divorcing
parents**

**Family Advice
Lawyers and
Family Duty
Counsel**

**Court Ordered
Evaluations
Support
Program**

**Family
Division Case
Management
Model
(Saint John)**

**Family Support
Orders Service
(FSOS)**

**Family Law
Information
Line (PLEIS)**

**Family Law
Workshops
PLEIS &
Justice**

**NB Legal Aid
Services
Commission**

‘For the Sake of the Children’ Parent Education Program

- Free
- Voluntary
- Province-wide registration through a toll-free family law information line run in cooperation with PLEIS-NB 1-888-236-2444
- Available in both official languages in every judicial district



Family Advice Lawyer Service and Family Duty Counsel

- Family Advice Lawyer Services (advance legal info. for self represented) community based across N.B. 1-855-266-0266 or 506-658-2261 in the Saint John jurisdiction.
- Family Duty Counsel - Legal representation for individuals on first appearance where the “state” is on the other side (i.e. child protection matters)

Court Ordered Evaluations Support Program (COESP)

- Contested custody/access matters at court.
- Court ordered assessments to determine post separation parenting arrangements in the best interests of the children (custody and access).
- Voice of the Child assessments
- The amount of financial assistance depends upon income.
- Application forms at Family Court Offices or online at www.familylawnb.ca

Family Division Case Management Model – Saint John

- Provides streamlined access to services and expedient resolutions of family law disputes in the Judicial District of Saint John.
- Ensures appropriate and efficient streaming of cases in the family court system, particularly for self-represented litigants.
- A team of court staff led by a Case Management Master triages cases and manages them to early resolution. The model also includes: a Triage Coordinator, in-house mediation services, on-site advice lawyer services, family duty counsel, an on-site Family Law Information Centre and a rule of court which governs the case management model.

Family Support Orders Service (FSOS)

- Collects support payments from payers and their income sources and takes enforcement measures when support has not been paid.
- Payments can be made ‘over the counter’ at local SNB centres in approx. 40 locations.
- 24 hour Toll Free Info line with file and pin #
 - Fredericton 444-3767
 - 1-888-488-488-3767 (all other NB clients)
 - 1-506-444-3767 (clients outside of NB)

Family Law Information Line (PLEIS)

- Free general info. on family law matters and guidance with family law forms and court procedures.
- Toll free 1-888-236-2444
 - Fredericton region 444-3855
 - Out of Province 506-453-5369
- Partnership with Public Legal Education and Information Service of New Brunswick (PLEIS-NB);

Family Law Workshops - PLEIS

- “Navigating the Family Justice System” workshops designed to inform and educate self represented litigants on family law matters
- Topics covered include:
 - Doing Your Own Divorce;
 - Changing a Child Support Order;
 - Preparing for a Family Court Hearing;
 - Separation; Legal Considerations.
- A fee of \$20.00 fee is charged at some workshops, to cover materials

New Brunswick Legal Aid Services Commission

- Assists low income individuals deal with certain family law matters
- Gives priority to screening those cases that are urgent or can directly benefit children
- Financial means testing required to determine eligibility for covered services

QUESTIONS ??

