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# INTERIM RELIEF IN FAMILY MATTERS

Sometimes it can take a long time for trials and other court proceedings to be finished and for final orders to be made. Some matters can't wait, for example, custody or support. But, you can ask for an interim motion so that you can get an interim order **for now** that will be in effect until your case is decided on a final basis.

Matters that may need to be dealt with before a trial, using interim motions include:

- custody, access and non-removal orders,
- child support,
- spousal support,
- sole occupancy of the family home,
- protection and prevention orders,
- orders to preserve property,
- orders for interim equalization payments.

Interim motions may also be used for procedural matters, to help move the case along, for example:

- getting an order for substitutional service,
- getting financial disclosure,
- assessing children and other parties,
- property appraisals,
- making sure the rules about discovery are followed,
- striking out parts of affidavits (called expunging),
- separating or consolidating proceedings (separating proceedings is called severing).

To start an interim proceeding, you need to file a Notice of Motion, an affidavit that may have exhibits attached and a Motion Brief (Form 70R).

The Notice of Motion says what you are asking for. For example, in claims for child support, the Notice of Motion would say whether the claim is for an amount in the prescribed Manitoba child support table, an amount for special or extraordinary expenses or another amount under the guidelines.

The affidavit will explain the facts. It sets out your story, your evidence. There are specific court rules about what information can be put into an affidavit. Exhibits, or documentary proof, may be attached to the affidavit.

Each party is allowed to file one affidavit. But, the party who filed the original Notice of Motion and affidavit is allowed to file a second affidavit, replying to only new matters raised in the other party's affidavit.

Parties can be asked questions about their affidavit (cross-examined) by the other lawyer or the other party. Proposed witnesses can also be cross-examined. Cross-examinations take place out of court, usually in a lawyer's office. A court reporter is present. The transcript of the cross-examination is filed with the court and either party can use it when they argue their motion.

Affidavits must be filed before 2 pm at least 14 days before the hearing date, or 4 days before the date the matter is returnable before the court. The affidavit must be served 10 days before the hearing date.

Affidavits by the party responding to the motion must be served on the other party and filed before 2 pm at least 7 days before the hearing date.

Affidavits in reply must be served on the other party and filed in the court office before 2 pm at least 4 days before the hearing date.

The Motion Brief (which lays out your argument to the Court);

- sets out the matters in issue,
- includes a list of documents to be referred to by either party, including the date of filing and other identifying details,
- sets out the party's position on the issues,
- includes relevant cases and statutory provisions (if a specific point of law is going to be relied on), and
- includes calculations, for example child support, spousal support, forgiveness of arrears.

The party who filed the Notice of Motion must file and serve their Motion Brief at least 4 days before the hearing date, or if the hearing date is less than 7 days after the date it was obtained, before 2 pm at least 2 days before the hearing date.

The party responding to the Notice of Motion must file and serve their Motion Brief at least 2 days before the hearing date, or if the hearing date is less than 7 days after the date it was obtained, before 2 pm at least 1 day before the hearing date.

Motions can be heard without notice to the other party (without them knowing) when the matter is urgent or it is necessary for other reasons. This may include situations where there is a concern the other party may abduct a child, may become violent or try to hide assets. It is possible to have an emergency hearing after normal court hours.

In most cases, you must have a Case Conference (a settlement hearing before a Judge) before the interim motion can go ahead. You can ask the court to waive this requirement, pursuant to Court rules.

Interim motions are usually heard and decided by the court based only on the Notice of Motion and affidavit evidence and exhibits. The parties will not usually be called to speak to give evidence when the motion is heard. Each party or the party's lawyer will argue his or her side of the motion. You are allowed to attend and it would be a good idea to do so. At the end of the hearing the judge will make a decision or reserve making the decision. After the hearing is over, the parties, or their lawyers will draft an order and will submit it to the court to be signed by the judge.

For more information see:

**Court of Queen's Bench Rules, Rule 70 Family Proceedings (Manitoba Regulation 553/88)** - <http://web2.gov.mb.ca/laws/rules/qbr2e.php#r70>

**The Family Maintenance Act** - <http://web2.gov.mb.ca/laws/statutes/ccsm/f020e.php>

**Divorce Act** - <http://laws-lois.justice.gc.ca/eng/acts/d-3.4/>

**The Domestic Violence and Stalking Act** - <http://web2.gov.mb.ca/laws/statutes/ccsm/d093e.php>

**The Family Property Act** - <http://web2.gov.mb.ca/laws/statutes/ccsm/f025e.php>

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