



STARTING FAMILY LAW COURT PROCEEDINGS

In Manitoba, family law matters are dealt with in Family Courts. If there is a Court of Queen's Bench (Family Division) in the area where the parties live, that is the Court that will ordinarily deal with the matter. If there is not (in northern and certain rural areas), The Provincial Court of Manitoba (Family Division) will deal with the matter. However, The Provincial Court does not deal with certain matters, including divorce, property rights and division of family property, use of or access to property, and adoption.

The Court of Queen's Bench has exclusive jurisdiction in Brandon, Selkirk, Winnipeg and the municipalities of Cornwallis, Daly, East St. Paul, Elton, Glenwood, Oakland, St. Andrews, St. Clements, West St. Paul, and Whitehead.

The role of a lawyer – A lawyer will talk with you about your situation and advise you about the **law based on their experience and expertise. A lawyer can give you advice and make recommendations about how you** should proceed. A lawyer will help make sure you are aware of all your rights and obligations and will explain what you may be entitled to claim. A lawyer will ask you for relevant information about things like your finances, your relationships, your children. Your lawyer will prepare any documents that need to be filed in Court. Your lawyer will attend Court hearings with you, speak on your behalf and help guide you through the Court process.

Some people choose to represent themselves, without a lawyer. Some people represent themselves because they cannot afford a lawyer. If you go to Court without a lawyer and make mistakes, your interests may be damaged permanently as you may lose the right to make certain claims if too much time has gone by or if the Court documents you have filed are not correct. People who go to Court without a lawyer are held to the same standard as people who are represented by a lawyer. The only person who can give you legal advice is your own lawyer. Court staff, Family Services staff, Judges and other people's lawyers cannot give you legal advice. However, there are some resources that can help you, like Community Legal Education Association, Legal Help Centre, the Family Law Access Centre, and you should find out if you qualify for Legal Aid.

All claims in Court begin with **Pleadings**. Pleadings are filed in Court, by the parties to a proceeding. Pleadings set out the matters to be decided by the Court. Which pleadings you should use depends on what you are asking for and which laws you are relying on for what you are asking.

A Family Court Proceeding in the Court of Queen's Bench (Family Division) can be started with a **Petition**, a **Notice of Application**, or a **Statement of Claim**. The Pleadings are filed with the Court and then must be served on (given to) the other party or parties who are involved. Other documents such as a copy of your Marriage Certificate with the Petition for Divorce, and an Affidavit with a Notice of Application, a Demand for Financial Information, may also need to be filed with the Pleadings.

In a divorce proceeding, the person asking for the divorce files a **Petition for Divorce** (Form 70A). The Petition for Divorce includes:

- check boxes for the areas of relief that the Petitioner is claiming,
- a section called "Other" for relief not listed in the check boxes, such as child support recalculation service or life insurance,
- a fill-in section on proposed child care and support arrangements.

It explains when a Financial Statement must be included with the Petition. The Petition for Divorce also explains what the other party's options are in terms of responding to the Petition.

The **Petition** (Form 70B) is very similar to the Petition for Divorce, but it would be used by people in common-law relationships or married people not asking for a divorce.

A **Notice of Application** (Form 70E) is used in adoptions and other proceedings.

A **Notice of Application for Guardianship** (Form 70F) is used for guardianship proceedings.

A **Statement of Claim** (Form 14A) can be filed in Family Court where one spouse or partner claims they are entitled to recover money from the other spouse or partner.

If your matter is proceeding in the Provincial Court of Manitoba (Family Division), check to see if there is a form you should use in your Pleadings specified by the Provincial Court Rules, available online at http://web2.gov.mb.ca/laws/rules/regforms_e.php?set=fma. Otherwise, the same forms are used as in The Court of Queen's Bench (Family Division). The forms are modified to say The Provincial Court of Manitoba (Family Division).

A person who is going to become directly involved in a Court action that someone else is starting must have notice of it so they can respond. Therefore, documents that are filed in Court for a Court proceeding must be given to or "served on" the other party. The Court of Queen's Bench Rules set out the specific rules about time frames and methods of service. One major rule is that the person who is starting the Court proceedings cannot personally deliver the documents to the other person in the proceeding. When a person is served with a Petition, Application, or Statement of Claim, they have a certain number of days to respond to the documents (often 20 days). The amount of time will be specified in the document. If the party served with the documents does not respond within that time frame, a Judge may hear and decide the matter without the other party's response. Except for very rare situations where matters can be heard without the other party being notified, Judges will not hear the matter unless they are shown that the other party has received notice of the Court proceedings.

Exceptions to the requirement for serving the other party include Applications for Protection Orders or urgent applications where someone is about to move out of the province with a child. Once the Order preventing that action is granted, the party receiving the Order must serve the other party so the other party is informed and has a chance to respond and ask to have the Order set aside.

Laws dealing with starting family court proceedings can be located online

Court of Queen's Bench Act <http://web2.gov.mb.ca/laws/statutes/ccsm/c280e.php>

Court of Queen's Bench Rules <http://web2.gov.mb.ca/laws/rules/qbr1e.php>

Rule 70 - Family Proceedings <http://web2.gov.mb.ca/laws/rules/qbr2e.php#r70>

Provincial Court (Family Division) Rules <http://web2.gov.mb.ca/laws/statutes/ccsm/c275e.php>

In a family law situation, you might be applying under various statutes. Some of these are:

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

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

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

The Law of Property Act <http://web2.gov.mb.ca/laws/statutes/ccsm/l090e.php>

The Married Women's Property Act <http://web2.gov.mb.ca/laws/statutes/ccsm/m070e.php>

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

The Real Property Act <http://web2.gov.mb.ca/laws/statutes/ccsm/r030e.php>