

1994

CHAPTER 27

An Act to amend *The Queen's Bench Act* to create a Family Law Division and to enact Consequential Amendments arising from the enactment of this Act

(Assented to May 12, 1994)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Queen's Bench (Family Law Division) Amendment Act, 1994*.

R.S.S. 1978, c.Q-1 amended

2 *The Queen's Bench Act* is amended in the manner set forth in this Act.

Section 2 amended

3 **The following clause is added after clause 2(f):**

"(f.1) **'family law proceeding'** means a cause or matter, whether based on statute law, common law or the inherent jurisdiction of the court, pursuant to or with respect to:

- (i) *The Children's Law Act*;
- (ii) *The Family Maintenance Act*;
- (iii) *The Matrimonial Property Act*;
- (iv) the *Divorce Act* (Canada);
- (v) *The Enforcement of Maintenance Orders Act*;
- (vi) *The Reciprocal Enforcement of Maintenance Orders Act, 1983*;
- (vii) the determination of parentage or other family relationships;
- (viii) custody or guardianship of, or access to, a child;
- (ix) maintenance of a spouse, child or other person;
- (x) the division of property between spouses, former spouses or persons who have lived together as spouses;
- (xi) judicial separations;
- (xii) annulments;
- (xiii) sections 25 to 28, 34, 35, 38 and 41 of this Act;
- (xiv) *The Adoption Act*;
- (xv) *The Child and Family Services Act*;
- (xvi) *The Homesteads Act, 1989*;
- (xvii) *The Dependants' Relief Act*;
- (xviii) *The International Child Abduction Act*;
- (xix) *The Marriage Act*;
- (xx) *The Parents' Maintenance Act*;
- (xxi) *The Victims of Domestic Violence Act*;
- (xxii) any other Act that confers jurisdiction on the Family Law Division;
- (xxiii) any other proceeding heard in the Family Law Division".

New section 3.1

4 **The following section is added after section 3:**

Family Law Division

"3.1(1) There shall be a division of the court called the Family Law Division.

(2) Family law proceedings brought in the court are to be brought in the Family Law Division”.

Section 7 amended

**5 The following subsections are added after subsection 7(4):**

“(5) The Chief Justice of the Queen's Bench shall assign six judges of the court to act as judges of the Family Law Division.

“(6) The Chief Justice of the Queen's Bench may assign a judge mentioned in subsection (5) to hear causes or matters outside the Family Law Division, but only if the assignment does not prevent that judge from spending the substantial majority of that judge's time hearing causes or matters in the Family Law Division.

“(7) In addition to the six judges of the Family Law Division, the Chief Justice of the Queen's Bench may assign, from time to time, any judge of the court to act as a judge of the Family Law Division.

“(8) Every judge of the court, including the Chief Justice of the Queen's Bench and every judge of the Family Law Division, has jurisdiction to hear and determine any cause or matter in the court, including causes or matters in the Family Law Division.”

New sections 23.1 to 23.9

**6 The following sections are added after section 23:**

**“FAMILY LAW DIVISION**

Jurisdiction of the Family Law Division

**“23.1** The Family Law Division shall hear and determine family law proceedings and, in exercising jurisdiction respecting a family law proceeding, a judge:

- (a) has all the powers and duties of the Court of Queen's Bench and a judge of that court; and
- (b) may exercise the jurisdiction vested in the Provincial Court of Saskatchewan or a judge of that court.

Transfer of cause or matter

**“23.11(1)** A judge, on application or on the judge's own motion, may order that a cause or matter in the Family Law Division be dealt with by the court outside the Family Law Division or transferred to the Provincial Court of Saskatchewan if it also has jurisdiction in the cause or matter where:

- (a) in the opinion of the judge, it is more convenient for the cause or matter to be dealt with by the court outside the Family Law Division or by the Provincial Court of Saskatchewan; or
- (b) the cause or matter is not a family law proceeding.

(2) A judge, on application or on the judge's own motion, may order that a cause or matter in the court be dealt with in the Family Law Division where:

- (a) in the opinion of the judge, it is more convenient for the cause or matter to be dealt with in the Family Law Division; or
- (b) the cause or matter is a family law proceeding.

(3) The Provincial Court of Saskatchewan or a judge of that court may order, on application or on the motion of a judge of that court, that a cause or matter in which the Family Law Division also has jurisdiction be transferred to the Family Law Division where the judge or court considers that it is more convenient for the cause or matter to be dealt with in the Family Law Division.

(4) A judge or court making an order pursuant to this section may give any directions for the transfer and make any order as to costs that the judge or court considers appropriate.

Designation of jurisdiction

**“23.2(1)** In this section and sections 23.21 and 23.3, **‘Act’** means:

- (a) *The Child and Family Services Act*; and
- (b) any other Act designated in the regulations.

(2) The Lieutenant Governor in Council may make regulations designating:

- (a) places or areas in which the Family Law Division has exclusive jurisdiction pursuant to an Act;

- (b) places or areas in which the Family Law Division has concurrent jurisdiction with the Provincial Court of Saskatchewan pursuant to an Act.
- (3) Notwithstanding any provision of an Act to the contrary:
- (a) a proceeding pursuant to an Act in a place or area designated pursuant to clause (2)(a) must be brought in the Family Law Division;
- (b) a proceeding pursuant to an Act in a place or area designated pursuant to clause (2)(b) may be brought in the Family Law Division or in the Provincial Court of Saskatchewan.
- (4) Where a proceeding pursuant to an Act is brought in the Provincial Court of Saskatchewan prior to a designation pursuant to clause (2)(a), the Provincial Court retains jurisdiction pursuant to the Act for the purpose of continuing to hear and determine that proceeding.

#### Transfer of proceedings

- "23.21**(1) A proceeding pursuant to an Act that is commenced in the Provincial Court of Saskatchewan in a place or area designated pursuant to clause 23.2(2)(a) prior to that designation is to be transferred, on the request of a party, to the Family Law Division at the nearest judicial centre.
- (2) The party requesting the transfer shall file with the clerk of the court at the court location where the proceeding is pending a notice requesting that the proceeding be transferred to the Family Law Division at the nearest judicial centre.
- (3) On receipt of a notice requesting that a proceeding be transferred, the clerk shall immediately forward to the local registrar at the nearest judicial centre the file and all of its contents in the proceeding and, unless otherwise ordered, the proceeding shall be continued at the judicial centre specified in the notice as if it had originally been commenced there.
- (4) Any order made by the Provincial Court of Saskatchewan in a proceeding transferred pursuant to this section may be enforced, varied, discharged or otherwise dealt with by the Family Law Division.

#### Transfer to or from Provincial Court

- "23.3**(1) A proceeding pursuant to an Act that is commenced in the Provincial Court of Saskatchewan in a place or area designated pursuant to clause 23.2(2)(b) may be transferred, on application to the Family Law Division, or with the consent of the parties, to the Family Law Division at the judicial centre specified in the order or to which the parties consent.
- (2) A proceeding pursuant to an Act that is commenced in the Family Law Division in a place or area designated pursuant to clause 23.2(2)(b) may be transferred, on application to the Family Law Division, or with the consent of the parties, to the Provincial Court of Saskatchewan at the court location specified in the order or to which the parties consent.
- (3) Any order made in a proceeding transferred pursuant to this section may be enforced, varied, discharged or otherwise dealt with by the court to which the proceeding is transferred.

#### Consolidation of proceedings

- "23.31**(1) A judge may direct that a family law proceeding be consolidated or heard together with a cause or matter that is not a family law proceeding.
- (2) In the directions, the judge shall indicate whether the cause or matter is to be dealt with by the court in or outside of the Family Law Division.

#### Counselling and other services

- "23.4**(1) A judge, on application or on the judge's own motion, may adjourn a family law proceeding where he or she considers that any party to the proceeding or any child affected by the proceeding would benefit from counselling or mediation or professional services.
- (2) Where a family law proceeding is adjourned pursuant to subsection (1), the judge may order a party to pay all or any portion of the fees and expenses specified in the order for any of the services.

#### Custody, access reports

- "23.5**(1) A judge, on application or on the judge's own motion, may adjourn a family law proceeding

and order the preparation of a report for the assistance of the court respecting the custody, access to or welfare of children.

(2) A person who prepares a report for the assistance of the court may, by *ex parte* order of the court, be called as a witness and:

(a) is subject to cross-examination by any party in the proceeding; and

(b) is deemed not to be a witness of any party in the proceeding.

(3) No action lies or shall be instituted against a person who prepares a report or who is required by the court to make recommendations respecting the custody, access to or welfare of children for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by that person in the carrying out or supposed carrying out of that duty.

(4) A judge may specify in an order made pursuant to subsection (1) the amount of any charge for the report that each party is required to pay.

#### Informality of proceedings

**"23.6** A judge, having due regard for the proper administration of justice, shall conduct all family law proceedings as informally as the circumstances of the case permit, and no decision, order or other action of a judge shall be quashed or set aside because of informality.

#### Private hearings

**"23.7** Any family law proceeding may be heard in private at the discretion of the judge.

#### Restraining order

**"23.8** On application, a judge may:

(a) make an order restraining a person from molesting, annoying, harassing, communicating with or otherwise interfering with the applicant or a child in the lawful care or custody of the applicant; and

(b) require the respondent to enter into any recognizance, with or without sureties, or post any bond that the judge considers appropriate.

#### Appeal

**"23.9(1)** Where an appeal is taken against any decision, order, judgment or other determination of the Family Law Division, the appellant shall appeal the decision, order, judgment or other determination to the Court of Appeal notwithstanding any provision of the Act pursuant to which the appeal is being taken.

(2) Where an order is made by the Provincial Court of Saskatchewan in a proceeding that is subsequently transferred to the Family Law Division:

(a) any appeal from that order is to be taken to the Family Law Division; and

(b) the right to appeal, and any procedure relating to the appeal, continue to exist as they existed on the day before the proceeding was transferred".

#### Section 48 amended

##### **7 Section 48 is amended:**

(a) **in subsection (1) by striking out** "or the Unified Family Court for Saskatchewan"; **and**

(b) **in subsection (2) by striking out** "(or the Unified Family Court for Saskatchewan)".

#### Section 49 amended

##### **8 Section 49 is amended:**

(a) **in subsection (1) by striking out** "or a judge of the Unified Family Court for Saskatchewan";

(b) **in subsection (2) by striking out** "or a judge of the Unified Family Court for Saskatchewan"; **and**

(c) **in subsection (3) by striking out** "or a judge of the Unified Family Court for

Saskatchewan”.

Section 53 amended

**9 Section 53 is amended:**

- (a) by repealing subsection (1); and
- (b) in subsection (2) by striking out “(1)” wherever it appears and in each case substituting “(1.1)”.

Section 100 amended

**10 Clause 100(1)(a) is amended:**

- (a) by striking out “or” after subclause (i);
- (b) by striking out “and” after subclause (ii);
- (c) by adding “or” after subclause (ii); and
- (d) by adding the following after subclause (ii):
  - “(iii) resided outside of Saskatchewan at the time of death but the executor or administrator will be a party to an action within Saskatchewan; and”.

TRANSITION PROVISIONS

Transitional jurisdiction of court

**11** Where, by any law, statute or custom, any jurisdiction, duty, power or authority was conferred or imposed on the Unified Family Court for Saskatchewan, on the judges of that court or on any one of them, that jurisdiction, duty, power or authority:

- (a) is conferred or imposed on the judges of the Court of Queen's Bench; and
- (b) is to be exercised or carried out by the judges of the Court of Queen's Bench in as full and ample a manner as it was exercised or carried out by the judges of the Unified Family Court for Saskatchewan before the coming into force of this Act.

Transitional references to Unified Family Court, etc.

**12** Unless the context requires otherwise:

- (a) a reference in any other Act, regulation, rule, order, bylaw, agreement or other instrument or document to the Unified Family Court for Saskatchewan or to a judge of that court is deemed to be a reference to the Court of Queen's Bench, Family Law Division or to a judge of that court, as the case may be; and
- (b) a reference in any other Act, regulation, rule, order, bylaw, agreement or other instrument or document to the registrar of the Unified Family Court for Saskatchewan or to a local registrar of that court is deemed to be a reference to the registrar or a local registrar of the Court of Queen's Bench, as the case may be.

Transitional proceedings continued

**13(1)** Where, on the coming into force of this Act, any action, cause, issue, proceeding or matter is pending in the Unified Family Court for Saskatchewan:

- (a) the action, cause, issue, proceeding or matter is continued in the Family Law Division of the Court of Queen's Bench; and
- (b) any judge dealing with the action, cause, issue, proceeding or matter may continue to deal with it in his or her capacity as a judge of the Court of Queen's Bench.

(2) Where, on the coming into force of this Act, any action, cause, issue, proceeding or matter that is a family law proceeding is pending in the Court of Queen's Bench:

- (a) the action, cause, issue, proceeding or matter is continued in the Family Law Division of the Court of Queen's Bench; and
- (b) any judge dealing with the action, cause, issue, proceeding or matter may continue to deal with it in his or her capacity as a judge of the Court of Queen's Bench.

Records and files

**14** On the coming into force of this Act:

- (a) the records and files of the Unified Family Court for Saskatchewan, whether concluded or not, become the records and files of the Court of Queen's Bench, Family Law Division; and
- (b) the records and files of the Court of Queen's Bench respecting family law proceedings, whether concluded or not, become the records and files of the Family Law Division.

## Transitional cases referred back on appeal

**15(1)** A matter described in subsection (2) is to be dealt with by the Family Law Division of the Court of Queen's Bench as if the matter had originally been before that division.

(2) Subsection (1) applies to an action, cause, issue, proceeding or matter that:

- (a) was before the Unified Family Court for Saskatchewan before the coming into force of this Act; and
- (b) as a result of an appeal:
  - (i) was referred back, before the coming into force of this Act, to the Unified Family Court for Saskatchewan to be dealt with further; or
  - (ii) would, but for this Act, have been referred back to the Unified Family Court for Saskatchewan to be dealt with further.

## Transitional appeals

**16(1)** Where a right to appeal from a decision or order of the Unified Family Court for Saskatchewan or a judge of that court exists before the coming into force of this Act, the right to appeal, and any procedure relating to the appeal, continue to exist as they existed on the day before this Act comes into force.

(2) Where a right to appeal continued pursuant to subsection (1) is exercised, the Court of Appeal has the same jurisdiction, rights, powers, privileges and authority to deal with the matter that it had on the day before this Act comes into force.

## Application for directions

**17** On the application of any person who is interested in an action, cause, issue, proceeding or matter before the Unified Family Court for Saskatchewan or the Court of Queen's Bench that is continued pursuant to section 13, a judge may give directions:

- (a) respecting matters of procedure or the filing of documents in cases for which no provision is made by sections 13 to 16;
- (b) for the purpose of removing or minimizing any procedural difficulty arising after the coming into force of this Act.

## Transitional enforcement of orders

**18** A judgment or order made in any action, cause, issue, proceeding or matter by the Unified Family Court for Saskatchewan or a judge of that court:

- (a) is deemed, after the coming into force of this Act, to be a judgment or order made by the Court of Queen's Bench; and
- (b) may be enforced in all respects as if it had been made by the Court of Queen's Bench.

## CONSEQUENTIAL AMENDMENTS

S.S. 1989-90, c.A-5.1 amended

**19 Clause 2(1)(i) of *The Adoption Act* is repealed and the following substituted:**

- "(i) **`court'** means the Court of Queen's Bench".

S.S. 1989-90, c.C-7.2 amended

**20(1)** *The Child and Family Services Act* is amended in the manner set forth in this section.

**(2) Clause 2(1)(e) is amended by striking out "Unified Family Court for Saskatchewan" and substituting "Court of Queen's Bench".**

**(3) Clause 44(a) is repealed and the following substituted:**

“(a) `court' means the Court of Queen's Bench”.

S.S. 1990-91, c.C-8.1 amended

**21(1)** *The Children's Law Act* is amended in the manner set forth in this section.

**(2) Subsection 2(1) is amended:**

**(a) by repealing clause (c) and substituting the following:**

“(c) `court' means the Court of Queen's Bench or a judge of that court sitting in chambers”;  
**and**

**(b) by repealing clause (l) and substituting the following:**

“(l) `registrar' means the Registrar of the Court of Queen's Bench or a local registrar of the Court of Queen's Bench”.

**(3) The following subsection is added after subsection 6(6):**

“(7) Where an order is made for supervised access pursuant to this section, the court may specify in the order the amount of any cost for the supervision that each party is required to pay”.

**(4) Subsection 10(3) is amended by adding “and the mediator” after “appointed”.**

S.S. 1984-85-86, c.C-43.1 amended

**22(1)** *The Court Officials Act, 1984* is amended in the manner set forth in this section.

**(2) Subsection 3(1) is amended by striking out “, Registrar of the Court of Queen's Bench and registrar of the Unified Family Court” and substituting “and Registrar of the Court of Queen's Bench”.**

**(3) Clause 3(2)(e) is repealed.**

**(4) Clause 11(a) is amended by striking out “, the Court of Queen's Bench or the Unified Family Court” and substituting “or the Court of Queen's Bench”.**

S.S. 1984-85-86, c.E-9.2 amended

**23 Subclause 2(1)(c)(ii) of *The Enforcement of Maintenance Orders Act* is repealed.**

S.S. 1990-91, c.F-6.1 amended

**24(1)** *The Family Maintenance Act* is amended in the manner set forth in this section.

**(2) Clause 2(d) is amended:**

**(a) by adding “or” after subclause (i);**

**(b) by striking out “or” after subclause (ii); and**

**(c) by repealing subclause (iii).**

**(3) Section 6 is amended:**

**(a) in subsection (1) by striking out “or the Unified Family Court”; and**

**(b) in subsection (2) by striking out “to which the application is made”.**

**(4) Clause 8(3)(b) is amended by striking out “or the Unified Family Court” where it appears for the second time.**

**(5) Section 9 is amended:**

**(a) in subsection (1) by striking out “or the Unified Family Court”; and**

**(b) in subsection (2) by striking out “the court in which it is filed” and substituting “the Court of Queen's Bench”.**

**(6) Section 12 is amended by striking out “or the Unified Family Court”.**

**(7) Subsection 13(3) is amended by adding “and the mediator” after “appointed”.**

**(8) Section 15 is repealed.**

**(9) Clause 21(1)(a) is amended by striking out “or the Unified Family Court”.**

**(10) Subsection 23(1) is amended by striking out “or the Unified Family Court”.**

**(11) Clause 24(1)(a) is amended by striking out “or the Unified Family Court or a judge of either of those courts” and substituting “or a judge of that court”.**

S.S. 1990-91, c.F-22.01 amended

**25 Clause 2(2)(c) of *The Freedom of Information and Protection of Privacy Act* is amended by striking out “, the Unified Family Court for Saskatchewan”.**

S.S. 1989-90, c.H-5.1 amended

**26 Clause 2(a) of *The Homesteads Act, 1989* is repealed and the following substituted:**  
“(a) ‘court’ means the Court of Queen's Bench”.

R.S.S. 1978 (Supp.), c.I-12.1 amended

**27(1) *The Interprovincial Subpoena Act* is amended in the manner set forth in this section.**  
**(2) Subsection 3(1) is amended by striking out “, the Unified Family Court for Saskatchewan”.**  
**(3) Section 4 is amended by striking out “, the Unified Family Court for Saskatchewan”.**

S.S. 1979, c.M-6.1 amended

**28 Clause 2(c) of *The Matrimonial Property Act* is repealed and the following substituted:**  
“(c) ‘court’ means the Court of Queen's Bench”.

S.S. 1983, c.R-4.1 amended

**29 Subclause 2(d)(i) of *The Reciprocal Enforcement of Maintenance Orders Act, 1983* is amended by striking out “or the Unified Family Court for Saskatchewan”.**

R.S.S. 1978, c.R-6 amended

**30 Clause 2(a) of *The Recording of Evidence by Sound Recording Machine Act* is amended by striking out “, the Unified Family Court for Saskatchewan” and “or the Unified Family Court for Saskatchewan”.**

#### REPEAL AND COMING INTO FORCE

R.S.S. 1978 (Supp.), c.U-1.1 repealed

**31 *The Unified Family Court Act* is repealed.**

Coming into force

**32 This Act comes into force on proclamation.**