

**SUBSTANTIVE QUESTIONNAIRE
CANADA
Responses from the province of Saskatchewan**

1. GENERAL

- **1.1. Introduction to the province/state's legal system**

Saskatchewan is a Canadian province. It has a provincial legislature, which is responsible for making laws to deal with local, i.e. provincial matters. The range of law-making powers of the Legislature is set out in Canada's *Constitution Act, 1867*.

Saskatchewan has a common law tradition.

Canada is a bilingual State with English and French as its two official languages. The majority of residents of Saskatchewan are English-speaking. However, Saskatchewan has a French-language Services Policy that applies to all provincial government ministries, Crown corporations and agencies. Under this Policy, Saskatchewan develops French-language services in priority areas in close consultation with the Francophone community. Saskatchewan will also provide any service in French upon request. Provincial legislation is also available in both official languages.

- **1.2. Overview of the province's/state's regulation of family and minors**

Saskatchewan shares law-making authority with the federal government for custody, access, and child support. Unmarried couples or parents not in a relationship must apply under Saskatchewan legislation for custody, access, and child support orders. Married couples can apply for this relief either under Saskatchewan's legislation or the federal *Divorce Act*, although ordinarily, when a couple applies for a divorce, they seek other relief such as custody under the *Divorce Act* as well. Applications to divide family property must be made under provincial legislation. Provincial law also governs the establishment of parentage, adoption, change of name, child protection, guardianship of the estate of the child, enforcement of custody/access and support orders, and consent to medical treatment. The provincial government provides family justice services such as a program for parents experiencing separation or divorce, family mediation, support enforcement, and custody/access assessments.

Criminal matters that involve family members are regulated by the federal *Criminal Code*.

- **1.3. Fundamental texts in family and child law**

The Children's Law Act, 1997

<http://www.publications.gov.sk.ca/details.cfm?p=462>

The Adoption Act, 1998

<http://www.publications.gov.sk.ca/details.cfm?p=391>

The Inter-country Adoption (Hague Convention) Implementation Act

<http://www.publications.gov.sk.ca/details.cfm?p=571>

The International Child Abduction Act

<http://www.publications.gov.sk.ca/details.cfm?p=574>

The Family Maintenance Act

<http://www.publications.gov.sk.ca/details.cfm?p=534>

The Enforcement of Maintenance Orders Act

<http://www.publications.gov.sk.ca/details.cfm?p=509>

The Inter-jurisdictional Support Orders Act

<http://www.publications.gov.sk.ca/details.cfm?p=573>

The Child and Family Services Act

<http://www.publications.gov.sk.ca/details.cfm?p=460>

The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act

<http://www.publications.gov.sk.ca/details.cfm?p=505>

The Victims of Domestic Violence Act

<http://www.publications.gov.sk.ca/details.cfm?p=929>

The Queen's Bench Act, 1998 - Part XI

<http://www.publications.gov.sk.ca/details.cfm?p=807>

The Family Property Act

<http://www.publications.gov.sk.ca/details.cfm?p=535>

- **1.4. Bilateral arrangements with a foreign country entered into by the province/state in family and child law**

2. ESTABLISHMENT AND RECOGNITION OF PARENTAGE

- **2.1. General**

A parent is the father or mother of a child, whether the child was born within or outside of marriage. A mother or father of a child by adoption is also a parent. *The Vital Statistics Act 2009* provides that the woman who gives birth to a child is considered to be the mother. That Act also provides that a father is the person who acknowledges himself to be the biological father of a child. The Act contemplates the possibility of a child having more than two parents; "other parent" is defined to mean a person other than the mother or father who is cohabiting with the mother or father of the child in a spousal

relationship at the time of the child birth and who intends to participate as a parent in the upbringing of the child. *The Vital Statistics Act 2009* also creates a presumption that a live birth registered under the Act occurred in accordance with the information set out in the Statement of Live Birth (signed by the mother, or mother and father) unless the contrary is proven on a balance of probabilities. *The Children's Law Act* sets out presumptions of paternity, which include:

- (1) at the time of the child's birth or conception the man was cohabiting with the mother, whether or not they were married to each other;
- (2) the man and the mother of the child have filed a statutory declaration, acknowledging that the man is the father of the child, with Vital Statistics or an equivalent official in another jurisdiction in Canada;
- (3) the man signed the birth registration form pursuant to *The Vital Statistics Act, 2009*;
- (4) the man married the mother after the child's birth and acknowledges that he is the father;
- (5) the man and the mother have acknowledged in writing that the man is the father of the child;
- (6) the man has been found or recognized by a court in Canada to be the father of the child.

In cases where contradictory presumptions of paternity apply, no presumption applies. Both the *Vital Statistics Act 2009* and *The Children's Law Act 1997* provide that an applicant may apply to court to determine, based on a balance of probabilities, who shall be recognized as a parent at law. The court may consider the results of a blood test, and the court may draw an adverse inference from a party's refusal to consent to participate in a blood test. *The Children's Law Act* then allows the court to make a declaration of parentage, or a declaration that a person is not the mother or father of the child at law.

The Children's Law Act, 1997 provides that a declaratory order made in another Canadian province or territory shall be recognized in Saskatchewan. Declaratory orders made outside Canada are also to be recognized if at the time the order was made, either parent lived in that jurisdiction, the court that made the order would have had jurisdiction to do so under the conflict of laws rules that are applicable in Saskatchewan, the child was habitually resident in the jurisdiction of the court that made the order, or the child or either parent had a real and substantial connection with that jurisdiction. A Saskatchewan court may decline to recognize an extra-provincial declaratory order where there is new evidence available, or the declaratory order was obtained by fraud or duress.

- **2.2. Legislation**

The Vital Statistics Act 2009

<http://www.publications.gov.sk.ca/details.cfm?p=28725>

The Children's Law Act, 1997

<http://www.publications.gov.sk.ca/details.cfm?p=462>

- **2.3. Bilateral Arrangements**

- **2.4. Competent authorities**

The locations of all Family Law Division Court Houses are listed at:

http://www.sasklawcourts.ca/default.asp?pg=qb_about_sittings

Vital Statistics can be contacted, toll-free in Canada, at 1-866-275-4721

Information is also available at: <http://www.isc.ca/VitalStats/Births/Pages/Register.aspx>

Or email: ask@isc.ca

3. ADOPTION OF MINORS

- **3.1. General**

Adoption is the permanent, legal transfer of all parental rights and responsibilities for a child from the birth parents, or government, to the adoptive parents. The adopting parent becomes the parent and guardian of the child, just as if the child had been born to that parent. The child is granted all the legal rights that a biological child of those parents would have.

It is considered a fundamental right and in a child's best interests to remain with his or her biological family and to be raised by his or her biological parent(s). When this is not possible, adoptive parents can provide a safe, nurturing and permanent family for a child. Both birth parents must consent to the transfer of their parental rights to the adoptive parents. However, a court application can be made to dispense with the consent of a parent.

Intercountry Adoption

Canada is a signatory to the *Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption* (commonly called the "Hague Convention"). It is intended to prevent abuses, such as abduction, sale or trafficking of children. It applies even to adoptions by relatives of the children.

The Intercountry (Hague Convention) Implementation Act implemented the Hague Convention in Saskatchewan. In Saskatchewan, the Minister of Social Services is the Central Authority, and is responsible for carrying out the duties set out in the Convention. Under Saskatchewan's *Intercountry Implementation Act*, all intercountry adoptions involving Saskatchewan must adhere to the Hague procedures, and standards even where the child or prospective parents reside in a country which is not a contracting State.

A proposed adoption must address the adoptability of the child, and specifically include information about what consideration the State of Origin has given for placement of the child within his/her own country. According to the Convention, a 'Central Authority' (which in SK is the Minister of Social Services or his designate) or a 'Competent Authority' (which, in a foreign/non-contracting State, could be an agency or a lawyer, but

still must be sanctioned by the country to perform duties related to adoption) must ensure that a birth parent has been properly counseled on adoption (which must be verifiable) and both States must agree to the adoption proceeding as being in the best interests of the child. Only authorized persons can carry out the process of an adoption. Saskatchewan only accepts proposals of children for adoption where a Central/Competent Authority has been involved and can verify the adoptability of the child. The only exception is where someone is applying to adopt a relative. (However, a State must still be able to verify that a related child is eligible for adoption and meets all eligibility and abandonment requirements.) All adoptions must be done in the interest of creating a true parent-child relationship.

A home study is required for all intercountry adoptions, except where someone is applying to adopt a relative and the sending State is in agreement there be no home study. A report prepared on the child that includes a social history and medical information is also required.

There are no agencies within SK that perform intercountry adoptions, however Saskatchewan residents can use the services of an accredited agency in another jurisdiction.

The Convention prohibits the payment of fees, except reasonable costs, expense, and remuneration, including professional fees. Saskatchewan regulates fees that are charged by agencies licensed in Saskatchewan. Saskatchewan also tries to monitor the fees that Saskatchewan applicants would pay; if there is a suspicion that fees are not being regulated or are not 'reasonable' for the services carried out, Saskatchewan would attempt to intervene with the licensing body.

Parents wanting to adopt must also apply to Citizenship and Immigration Canada. The Department of Citizenship and Immigration Canada may be asked for assistance in investigating the concerns of a competent authority in Canada with respect to possible child trafficking or undue financial gain in the context of intercountry adoptions in a particular country. Where substantiated evidence is collected, applications for immigration or citizenship regarding children adopted in that country may be refused by the Department of Citizenship and Immigration. In such situations, the competent authority in Saskatchewan will also reject applications for adoption from this country.

For further information about intercountry adoptions, parents can review the handbook available at: <http://www.socialservices.gov.sk.ca/intercountry-adoption.pdf/>

- **3.2. Legislation**

The Adoption Act, 1998

<http://www.publications.gov.sk.ca/details.cfm?p=391>

The Intercountry Adoption (Hague Convention) Implementation Act

<http://www.publications.gov.sk.ca/details.cfm?p=571>

- **3.3. Bilateral arrangements with a foreign country entered into by the province/state**
- **3.4 Competent authorities**

Ministry of Social Services
 Provincial Adoption Consultant
 12th Floor, 1920 Broad Street
 Regina, Saskatchewan S4P 3V6
 Tel: +1 (306) 787-5698
<http://www.socialservices.gov.sk.ca/adoption>

The locations of all Family Law Division Court Houses, which are competent to make adoption orders, are listed at:

http://www.sasklawcourts.ca/default.asp?pg=qb_about_sittings

4. CUSTODY, VISITATION RIGHTS, ABDUCTION AND RETURN OF MINORS

- **4.1. General**

Custody and Access

Custody means the ability to make decisions about the care and upbringing of the child, such as what school or church the child should go to, or where the child will live. Access means the **right of a child** to spend time with the parent who does not have custody.

Issues of custody and access can be addressed under the federal *Divorce Act* where the parents are divorcing, or under the provincial *Children's Law Act, 1997* if the parents were never married, or were married and are separated but are not divorcing.

In Saskatchewan, under *The Children's Law Act, 1997* parents who were married, or lived together when the child was born are joint legal custodians of the child with equal rights, powers and duties. The status of joint legal custodians can be altered by court order or by the parents' agreement. Parents can agree that only one of them will have custody, or that someone else will have custody of their child. They can specify rights and duties of each parent, and set up access by the child to one of the parents or any other person.

When parents cannot agree, the court may grant custody of or access to a child to one or more persons. *The Children's Law Act, 1997* sets out factors to consider in determining what living arrangements will be in the best interests of the child:

- the quality of the relationship the child has with the parent seeking custody or access;
- the personality, character and emotional needs of the child;

- the physical, psychological, social and economic needs of the child;
- the capacity of the person seeking custody or access to care for the child;
- the home environment for the child (for custody determination);
- the plans for the child's future (for custody determination);
- the wishes of the child to the extent the court considers appropriate having regard to the age and maturity of the child.

A relationship with both parents is encouraged. When determining custody or access, a child should have as much contact with his or her parents as is in his or her best interests. The court will not consider the parent's past conduct unless it affects the ability to parent or care for the child. The court will not give preference to either parent based on the fact the person is a mother or father.

An order may describe generally, or in detail, how parenting responsibilities are divided or shared between the parents. Access arrangements may also be described generally, such as "reasonable access on reasonable notice," or the access may be set out in detail such as, "access shall occur every second Friday from 6 p.m. to Sunday at 6 p.m." The court may also state where the access should take place, and whether it should be supervised by anyone.

Under *The Children's Law Act, 1997*, people other than parents who have a close relationship to the child, such as grandparents, aunts, uncles, or close friends of the family, who want to maintain contact with the child, can also apply for an access order. The court must still consider what is in the best interests of the child in deciding whether to make the access order.

Parents who do not have custody, but have access to a child, have the same right to make inquiries and be given information concerning the health, education and welfare of the child. They do not however (unless court ordered) have a right to be consulted about, or to participate in, the making of decisions by the custodial parent.

The court may put restrictions on the right of either parent to move so that the child can maintain contact with both parents. In considering whether to allow a parent to move with the child, the court will look at the parent's plans for the child to maintain contact with the other parent, as well as the parent's motivation for wanting to move. Courts are reluctant to allow a parent to move if it appears the motivation for moving is to deprive the other parent and child from spending time together.

In terms of enforcement, a peace officer can be ordered by the court to apprehend and take the child to the parent with the right of custody or access where:

- parent is not taking the child to the other parent even though the custody/access order or
- agreement states that the child should be with that other parent.

The order or agreement says the child must stay in Saskatchewan and a parent tries to take the child out of Saskatchewan anyway.

Where a parent prevented the other parent from spending time with the child, or the

parent has not exercised access in accordance with the order or agreement, and it is in the best interests of the child, a court may:

- order extra access to make up for the missed access (compensatory access),
- require supervision of access,
- require security (ex., a deposit) to ensure the order is followed,
- appoint a mediator, and/or
- change the custody and access order.

Where a parent has intentionally disobeyed court orders, the court may find the parent in contempt. The court can then fine them up to \$5000 or order them to serve 3 months in jail the first time, and \$10,000 or 2 years in jail for any further findings of contempt.

Article 21 of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* deals with access enforcement. Article 21 states that countries should cooperate to “promote the peaceful enjoyment of access rights,” remove any obstacles to the exercise of access. Under this Convention, a Central Authority is appointed in each province and territory. In Saskatchewan, the Minister of Justice and Attorney General is the Central Authority. The Central Authority may initiate or assist with proceedings brought to organize or protect access rights, and/or may attempt to negotiate access terms, either directly with the parents or indirectly through a mediator.

Abduction and Return of Minors

When custody rights are violated and a child is abducted by one of the parents to another country, the best interests of the child may require countries to work together quickly. The *Hague Convention on the Civil Aspects of International Child Abduction* is incorporated into the law of Saskatchewan in *The International Child Abduction Act, (1996)*.

The Convention requires a Central Authority to be designated in each Contracting State or jurisdiction to assist in complying with the obligations set out in the Convention. In Saskatchewan, the Minister of Justice and Attorney General has been designated.

Central Authorities are encouraged to work informally as well as to support the formal legal process in trying to ensure that custody and access rights are respected and to ensure that wrongful removals of children are responded to in a timely manner. As a matter of practice, Central Authorities, including Saskatchewan’s, try to seek voluntary returns where possible. This can be impractical however where there is a flight risk or risk of real harm to the child.

Parents often do not know where a child has been taken or may have limited means to pursue matters personally. An important element of Saskatchewan’s *International Child Abduction Act* is access to information. If it is necessary to determine the whereabouts of the abducting parent or child, the Central Authority can demand information such as current address from any person or public body. The Central Authority may also attempt to locate a child through police, school or other records.

The Central Authority receives and transmits Hague applications. There are standard forms for applicants to complete for any outgoing application (ie, where a child habitually resident in Saskatchewan is taken to another country). The Central Authority ordinarily reviews applications to ensure that everything required under the Convention forms part of the application.

Often the Central Authority will work with local or national police to respond quickly to an abduction. The Central Authority and the local police may work with the Royal Canadian Mounted Police's Missing Children's Services. (See <http://www.rcmp-grc.gc.ca/omc-ned/index-accueil-eng.htm>)

As well, the Central Authority may work with local Child Find agencies.

The Central Authority will work with child protection authorities if

- there is an indication of a child protection risk
- the “custodial” parent is not immediately available to take physical custody of the child on return from the “wrongful removal”

The Central Authority for Saskatchewan does not generally take a role in court proceedings other than to support the provisions and intent of the legislation before the court. For example, the Central Authority may be asked to provide an opinion in an Affidavit that the foreign application falls within the scope of the Convention. Or the Central Authority may be asked for a specific opinion on a matter arising under the Act as it affects the Convention or the role of the Central Authority. The Central Authority may be asked to assist a foreign party in finding counsel to represent him/her. The Central Authority in Saskatchewan has worked in the past with the Law Society of Saskatchewan to provide the names of potential counsel to foreign parents. The Central Authority may also take other action, such as inquiring of the court the status of the case, to try to ensure that processes move quickly under the Act.

When custody rights are not being respected, parties can pursue their civil remedies under family law. This may involve bringing a court application to enforce the custody order or agreement. The *Children's Law Act* allows a court, by order, “to direct a sheriff, peace officer or other person that it considers appropriate to locate, apprehend and deliver a child to a person specified by the court for the purpose of giving effect to the rights of the applicant to custody or access. The court may authorize the sheriff, peace officer or other person to enter and search any place where he or she has reasonable grounds to believe the child may be located. When so ordered, the sheriff, peace officer or other person **shall** do all things reasonably necessary to locate, apprehend and deliver the child in accordance with the order.

The *CLA* also allows a court or applicant to initiate contempt of court proceedings for failure to respect custody/access orders. The court may order imprisonment of up to 90 days for a first finding, and a term of up to 2 years on any subsequent finding.

The court may also make orders to prevent the removal of a child from Saskatchewan or secure the child's prompt safe return to Saskatchewan. The court can also:

- (1) order a person to transfer specific property to a named trustee to be held subject to any terms and conditions that the court considers appropriate;
- (2) in the case of a person from whom payments have been ordered to be made for the maintenance of the child, order that person to make the payments to a specified trustee subject to any terms and conditions that the court considers appropriate;
- (3) order a person to post a bond, with or without sureties, payable to the applicant in the amount the court considers appropriate;
- (4) order a person to deliver the person's passport, the child's passport and any other travel documents of either of them that the court may specify to the court or to a person specified by the court;
- (5) vary the custody or access order or, where the custody or access provisions are contained.

Criminal Code

In some circumstances, parties may also need to use criminal law to enforce custody rights. The federal Parliament has exclusive jurisdiction to make criminal laws pertaining to the abduction of a minor.

- **4.2. Legislation**

The Children's Law Act, 1997

<http://www.publications.gov.sk.ca/details.cfm?p=462>

The International Child Abduction Act

<http://www.publications.gov.sk.ca/details.cfm?p=574>

- **4.3. Bilateral arrangements with a foreign country entered into by the province/state**
- **4.4 Competent authorities**

The Central Authority in Saskatchewan:

Policy Planning and Evaluation

Saskatchewan Justice

310 - 1874 Scarth Street

Regina, Saskatchewan

S4P 4B3

(306) 787-8954 or (306) 787-5709, or go to

<http://www.saskjustice.gov.sk.ca/legislation/summaries/intlchildabdact.shtml#central>

5. MAINTENANCE OBLIGATIONS IN FAVOR OF CHILDREN AND OTHER FAMILY MEMBERS

- **5.1. General**

Child Support

Every parent has an obligation to financially support his or her child. This continues even if parents separate or divorce. Saskatchewan's *Family Maintenance Act* adopts the federal *Child Support Guidelines*. These *Guidelines* apply to all children under the age of 18, and may also apply to a child over 18 if the child is dependent on the parent seeking support because of illness, disability or pursuit of education. In those circumstances, a parent pays child support in the amount of the *Guidelines* or an amount the court considers appropriate.

Sometimes people who act as parents, but are not the child's biological parent, may be ordered to pay child support. These people are usually referred to as *in loco parentis*. Youth under 18 who are parents have the same obligations to pay child support. A spouse or parent who is a minor has the capacity to commence, conduct and defend a court proceeding without a litigations guardian.

Parents can agree on the amount of child support, either on their own, or with the assistance of a mediator or a lawyer. If the parents do not agree on the amount, they may need to bring a court application.

Generally, the amount of child support is based on the paying parent's income. The *Guidelines* allow the amount to be raised by adding extraordinary expenses such as child care costs, costs for medical or dental care such as orthodontics. They also add costs for extracurricular activities if they are beyond what a child with that family income would do, such as private ballet lessons for a gifted young dancer. Where either parent would suffer undue hardship, the amount can be lowered or raised. First, it must be determined if there are circumstances for undue hardship, such as one parent having assumed an extremely high level of debt from the marriage. Second, there is a test to determine the standard of living in each parent's household. The child support amount would be set so both households would have a similar standard of living.

Any child support order can be changed or "varied" if there is a change in circumstances such as the child no longer living at home or the paying parent losing his or her job.

Spousal Maintenance

There is no automatic entitlement to spousal maintenance. Spousal maintenance is intended to help spouses overcome financial inequalities when the inequalities are the result of the spousal relationship, separation or divorce. "Spouses" includes couples who are legally married, who have lived together for at least two years, or had had a relationship of some permanence and have a child together. This includes same-sex couples.

Spouses can agree on any amount they like. If a court is asked to decide the issue of spousal maintenance, the court will consider a number of factors to determine whether a spouse should receive maintenance and, if so, how much. These factors include:

- the needs and means of both parties
- the length of the relationship
- the role each spouse had in the relationship
- the effect of the relationship or its breakdown has had on each spouse
- the ability of the spouse seeking support to become financially independent
- the legal duty of the supporting spouse to support another person

The court does not consider any misconduct, such as adultery.

There are also Spousal Support Advisory Guidelines that may help the court or the parties determine the amount of spousal support. See: <http://www.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/index.html>

Enforcement of Maintenance

Under *The Enforcement of Maintenance Orders Act, 1997*, either parent can register a support order with the Maintenance Enforcement Office (MEO). The Act allows the MEO to garnish a parent's wages or bank accounts or any federal payments such as income tax refunds, revoke licenses, withhold passports and collapse pensions to ensure child support is paid. The order must be registered with the Maintenance Enforcement Office before it can enforce the order. The order cannot be registered by the child.

In situations where the recipient and the payor live in different provinces, *The Inter-jurisdictional Support Orders Act* ensures all provinces and territories cooperate to make and enforce child support orders. **For situations where the payor and recipient live in different countries, Saskatchewan has bilateral arrangements regarding support enforcement with a number of countries (see list below.)** Saskatchewan can not enforce a support order where the payor lives in another country unless Saskatchewan has a bilateral arrangement with that particular country.

- **5.2. Legislation**

The Family Maintenance Act

<http://www.publications.gov.sk.ca/details.cfm?p=534>

The Enforcement of Maintenance Orders Act

<http://www.publications.gov.sk.ca/details.cfm?p=509>

The Inter-jurisdictional Support Orders Act

<http://www.publications.gov.sk.ca/details.cfm?p=573>

- **5.3. Bilateral arrangements with a foreign country entered into by the province/state**

The federal government helps the provinces and territories to set up “reciprocity arrangements” with foreign countries on an ongoing basis. Saskatchewan has reciprocity arrangements in place with several countries. These include most U.S. States, Austria, Comm. Of Bahamas, Cayman Islands, Federal Republic of Germany, The Hong Kong Special Administrative Region of the People’s Republic of China, Ireland, Guernsey, Fiji, Czech Republic, Barbados, Australia, Swiss Confederation, Zimbabwe, Norway, Papua New Guinea, Poland, Sweden, and the United Kingdom.

- **5.4 Competent authorities**

Maintenance Enforcement Office
100 - 3085 Albert Street,
Box 2077, Regina, SK S4S 0B1
Telephone: (306) 787-8961
Toll Free: 1-866-229-9712
Fax: (306) 787-1420
<http://www.justice.gov.sk.ca/maintenance-enforcement>

Inter-Jurisdictional Support Orders Unit
Main Floor, 3085 Albert Street,
Regina, SK S4S 0B1
Telephone: (306) 787-1649
Toll Free: (866) 229-9712
Fax: (306) 798-0772
<http://www.justice.gov.sk.ca/Inter-Jurisdictional-Support-Orders-Unit>

The locations of all Family Law Division Court of Queen’s Bench court houses, which are competent to make spousal and child support orders, and enforce those orders, are listed at:

http://www.sasklawcourts.ca/default.asp?pg=qb_about_sittings

Applications in Regina, Saskatoon, and Prince Albert must be made to the Family Law Division Court of Queen’s Bench.

The Provincial Court of Saskatchewan has jurisdiction to make child support orders in all other locations in Saskatchewan.

http://www.sasklawcourts.ca/default.asp?pg=pc_maps_main_court_offices

6. TRAFFIC IN, SALE OF AND OTHER FORMS OF ABUSE OF WOMEN AND MINORS, INCLUDING SEXUAL ABUSE

- **6.1. General**

Trafficking in Persons

Canada's criminal laws prohibit trafficking in persons. The federal Parliament has exclusive jurisdiction to make criminal laws.

Depending on the circumstances of the abuse, there are several criminal charges which may apply. These include assault, assault with a weapon, assault causing bodily harm, uttering threats, sexual assault, etc. In recent years, Saskatchewan has created specialized Domestic Violence Courts to deal with domestic violence related criminal charges. These courts tend to emphasize treatment and rehabilitation of the offender. For more information, go to:

http://www.sasklawcourts.ca/default.asp?pg=pc_div_domestic_violence_court

Child Protection

The Child and Family Services Act addresses child protection in Saskatchewan. A "child" means, except where the act expresses a contrary intention, an unmarried person actually or apparently under 16 years of age.

A child is in need of protection where as a result of action or omission by the child's parent:

- the child has suffered or is likely to suffer physical harm;
- the child has suffered or is likely to suffer a serious impairment of mental or emotional functioning;
- the child has been or is likely to be exposed to harmful interaction for a sexual purpose, including conduct that may amount to an offence within the meaning of the *Criminal Code*;
- medical, surgical or other recognized remedial care or treatment that is considered essential by duly qualified medical practitioner has not been or is not likely to be provided to the child;
- the child's development is likely to be seriously impaired by failure to remedy a mental, emotional or developmental condition; or
- the child has been exposed to domestic violence or severe domestic disharmony that is likely to result in physical or emotional harm to the child;
- there is no adult person who is able and willing to provide for the child's needs, and physical or emotional harm to the child has occurred or is likely to occur; or
- the child is under 12, and there are reasonable and probable grounds to believe that the child has committed an act that would be criminal if he or she were over 12, services are necessary to prevent recurrence and the child's parent is unwilling or unable to act.

Under *The Child and Family Services Act*, an officer (a peace officer, or a child protection officer approved by the Minister of Social Services) may take physical custody of a child in the following circumstances:

- Where a child is without a parent or guardian and needs assistance to return.
- Where a child has been wrongfully taken from their parent or guardian.
- Where a child under 12 committed an act that would be criminal if the child were over 12.
- Where a parent or guardian is unable to care for the child. In those circumstances,

a parent may agree to have residential services provided for the child. If the child is over 12, the agreement must be explained to the child and where possible, consider the child's views.

- Where a child is not safe in the parental home.

Once it is determined a child is in need of protection, there are several options for the child. Decisions about these options are made based on the best interests of the child.

- An officer informs the parent or guardian of family services available. If the parent or guardian agrees, the family would receive the necessary services.
- A child may be placed into the care of the Minister of Social Services (ie. foster care) if the parent voluntarily consents. The child must be at least three days old. A parent under the age of 18 years can consent to the voluntary committal of his or her child. Once a child is in the care of the Minister, the Minister has all rights and responsibilities of the parent and is the guardian of the child.
- A temporary order may be issued to protect the best interests of the child which may include limiting the parent or guardian's contact with the child.
- A court may order the child to remain with his or her parent(s) or to be placed in the custody of someone with a close relationship to the child, such as member of the child's extended family. The court may order custody of the child be with the Minister of Social Services, either temporarily or permanently with a provision for parents or guardians to visit the child.

Youth aged 16 and 17 may be in need of protection in situations, for example, where:

- they are being abused and remaining in that situation would result in serious risk of personal injury;
- the youth's parents, guardians or caregivers are refusing to provide and care for the youth;
- the youth and his/her parent(s) are in high conflict situations and the family is no longer a resource;
- the youth has serious emotional or physical health concerns, and remaining in the situation would pose a risk to the youth or others, and no other family members are available to meet the youth's needs.

Where a youth could be found in need of protection, he/she may be eligible for support or residential services or financial assistance. Whenever possible the youth's family should provide support and guidance. Work with the youth's family may be required to help the family function better. Providing youth with residential services should not interfere with efforts to reunite the family.

The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act recognizes that children and youth involved in prostitution are victims. The Act focuses on targeting and deterring offenders, and preventing offenders or potential offenders from contacting or communicating with the child victim. The Act:

- Allows for applications for Emergency Protection Intervention Orders to be made in emergency situations and after hours, and via telecommunications;
- Dispenses with the usual notice provisions and court process;

- Allows for substitutional service on the offender if he cannot be served personally;
- Allows for immediate enforcement;
- Relaxes rules of evidence: evidence is based on a balance of probabilities.

Additionally, there is a greater emphasis on outreach, prevention, and intervention services.

Domestic Violence

The Victims of Domestic Violence Act 1994, S.S. 1994 c. V- 6.02. The Act protects any victims who are subject to domestic violence by another cohabitant. Where domestic violence has occurred and the situation is very serious, an emergency intervention order (EIO) can be granted immediately by a Justice of the Peace to provide for the immediate protection of the victim. An EIO is most commonly used to have an abusive spouse removed from the family home for a specific period of time (30 or 60 or 90 days), but may also be used to allow the victim of abuse who has fled to return to the home, accompanied by a police officer, to collect personal belongings for herself and any children with her. Ordinarily, EIO's will also include conditions that an abusive spouse not contact the victim or attend at her workplace. An application can be made by a victim or any other person on behalf of the victim to a Justice of the Peace or court. The people who can help a victim apply are: police officers, mobile crisis workers, or victim service coordinators.

A victim's assistance order (VAO) can be granted where the situation is not urgent. The victim's assistance order can have the same conditions as the emergency order but can have other conditions such as ordering the cohabitant to pay the victim compensation for losses suffered by the victim and any child of the victim. Only the victim or her/his lawyer can apply to court for a VAO.

If the Justice of the Peace is satisfied that a police officer has been refused access to the premises, and a cohabitant who may be a victim will be found there, a warrant can be issued to search the residence (warrant of entry). If the search finds that a cohabitant is a victim, that person can be removed from the residence to assist or examine them.

Other Remedies for Domestic Violence or Harassment

All of the *Queen's Bench Act*, *Children's Law Act*, and the *Family Property Act* give courts the authority to order that one spouse not contact an applicant directly or indirectly, or otherwise engage in harassing behaviours. The respondent may be ordered to not attend the family home or the applicant's place of work.

- **6.2. Legislation**

The Child and Family Services Act

<http://www.publications.gov.sk.ca/details.cfm?p=460>

The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act

<http://www.publications.gov.sk.ca/details.cfm?p=505>

The Victims of Domestic Violence Act

<http://www.publications.gov.sk.ca/details.cfm?p=929>

The Queen's Bench Act, 1998 - Part XI

<http://www.publications.gov.sk.ca/details.cfm?p=807>

The Family Property Act

<http://www.publications.gov.sk.ca/details.cfm?p=535>

- **6.3. Bilateral arrangements with a foreign country entered into by the province/state**
- **6.4 Competent authorities**

The locations of all Family Law Division Court of Queen's Bench court houses, which are competent to hear child protection applications, are listed at:

http://www.sasklawcourts.ca/default.asp?pg=qb_about_sittings

Applications in Regina, Saskatoon, and Prince Albert must be made to the Family Law Division Court of Queen's Bench.

The Provincial Court of Saskatchewan has jurisdiction to hear child protection applications in all other locations in the province.

http://www.sasklawcourts.ca/default.asp?pg=pc_div_family_court