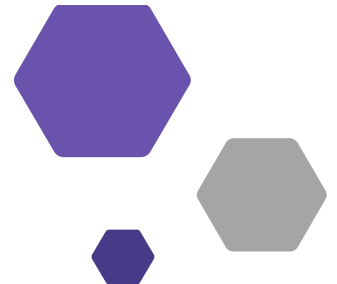


Financial Transparency in Family Separations – Under the New Family Triage Model

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Many changes came with the new Family Division Triage Model in Manitoba that came into force on February 1, 2019. Most noticeable is the new upfront financial income and asset disclosure requirements that must be provided to the court before any matter can proceed to a judge. While under the previous legislation there were similar requirements to disclose income and assets, some of the rules related to only one party and the timing of the disclosure was unclear or later in the process. Under the former rules, it became common for parties (or their counsel) to provide financial disclosure at the last second, sometimes causing inordinate delays which reduced the efficiency of precious court time and resources.

Full financial disclosure of both parties

The Financial Statement is a four-part court form, sometimes referred to as a 70D. The four parts are: Annual Income, Monthly Expenses, Assets of Both Parties, and Debts of Both Parties.

Previous legislation provided that a party filing his/her Financial Statement didn't necessarily have to complete all four parts, only the part or parts relevant to the issues raised in the pleadings. A party might not have even been required to file it, such as in the case of a parent who had primary care of a child and was only seeking the table amount of support for that child and no contribution to special or extraordinary expenses (sometimes referred to as section 7s) from the payor parent.

The new Triage Model demands that each party prepare his/her own Financial Statement and it is mandatory that all four parts are completed even if the relevance of some of those parts is low or non-existent to the issues in the pleadings.

Criticism has been raised that the new requirement to fully complete the Financial Statement is incredibly intrusive of the privacy of parties. For example, if the sole issue is bare table amount of child support to be paid, what relevance do the assets or debts of either party have to do with that determination? For parties who have been separated and all issues were resolved decades ago, the new disclosure requirement has low relevance. For example, parents of a child who separated 20 years ago, the child is now an adult and has finished university and is no longer a dependent living with the parent who was receiving child support. The payor parent applies to the court to terminate child support. Under the Triage Model, the payor parent has to complete all four parts of the Financial Statement including the assets and debts currently in his/her possession. Some of the assets and debts may be jointly held with a new partner. The new partner may feel somewhat vulnerable as any assets jointly owned will have to be disclosed.

Few people realize, and some lawyers forget, that these documents once completed and filed with the court are publicly accessible. Your best friend or worst enemy could request a copy of the court file for a small copy fee. The Financial Statement also requires that the last three years of income tax returns and the three most immediate consecutive paystubs be provided. All of these documents contain personal information that we are repeatedly cautioned about disclosing –social insurance number, birth date, home address, and full legal name. Sometimes banking information, account numbers and credit card numbers are also provided in affidavits, as the statements are attached as exhibits. While the likelihood of some identity thief or nefarious organization attending the court to request copies of files may be low, and our court registrars would certainly have their suspicions raised, the possibility exists. Out of an abundance of caution, parties should black-out the most important details, such as social insurance numbers and account numbers, at the very least.



Failure to provide transparent and complete financial disclosure under the Triage Model may result in more severe penalties, both financial and procedural to the party who is not disclosing. For a party wishing to move the matter along to obtain a judicial decision, it is important that he/she comply with the new disclosure requirements promptly. The matter will not progress and will not pass Pre-Triage Screening until the disclosure requirements are satisfied. For the party wishing to delay issues, or who simply refuses to disclose, there are financial penalties up to \$5,000 (same as under the previous legislation) and procedural remedies, such as that party's Answer may be struck, allowing the moving party to proceed to resolution without the other party's input.

New Comparative Family Property Statement

The Comparative Family Property Statement is a new court form which provides a comparison of each party's position on the value of assets and debts between them, at a glance. Notably, household contents and vehicles are missing subcategories of assets.

The new form has omitted these assets to encourage parties to come to an agreement on the "small stuff". Parties who are disputing the value of furniture that was in the family home face the possibility of a determination that the furniture was "jointly owned" between the parties and therefore is already equally shared. The parties may be directed to obtain an appraisal of the furniture.

A major change, which impacts average and lower income families, is the omission of vehicles on the new property statement. In Manitoba, vehicles can only be registered to one person. For some families, their major assets are a home and vehicles. Therefore, omitting vehicles from a family property accounting can have a significant impact on an accounting and equalization for these families. Judicial opinion has circulated that Kijiji advertisements will not be accepted as evidence of fair market value. If the asset isn't worth getting a professional appraisal, then it probably isn't worth fighting over. However, parties can certainly circulate such ads amongst themselves to come to an agreement on the value of a vehicle outside of judicial intervention.

Counsel are encouraged to collaborate, complete and file with the court a single "joint" copy of the Comparative Family Property Statement laying out each party's position and documents (bank statements and appraisals) which support the claimed value of the assets. If necessary, each party may submit his/her own one-sided form.

If there is an asset in dispute, parties are further encouraged to agree to a sole appraiser and accept his/her valuation of the object as binding. Following this suggestion has benefits; the parties can share the cost of one appraiser rather than two, and they receive a valuation from the appraiser that may avoid additional costs and steps in the litigation and may result in a consent order. This suggestion may not work for every family separation, especially where one party has exclusive control over an asset or there is significant mistrust between the parties.

Conclusion

The new Triage Model demands not only full financial transparency between parties, but requires out-of-court attempts to reach agreement on the issues in dispute. The days of last-minute financial disclosure or non-disclosure are a thing of the past. It is now necessary for all financial disclosure and required documents to be provided prior to a matter being heard by a judge.



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Suzette assists families going through divorce and separation with: property division, child custody disputes and child and spousal support issues. She also prepares separation agreements, prenuptial and cohabitational agreements, provides independent legal advice, and Will preparation.