

# **Family Law Update 2016**

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## **FAMILY LAW UPDATE 2016**

1. The news in family law in 2016 Alberta continues to be the economy.
2. As of September 2016, Alberta's unemployment rate was 8.5%, there were almost 100,000 recipients of employment insurance, and housing starts were down 43%. <sup>1</sup> In terms of total layoffs, estimates put the total job loss number at approximately 44,000 <sup>2</sup> since the economic downturn in Alberta began in early 2015.
3. The effects of the economy on family law issues are far reaching and complex. Financial stresses often cause marriages to crumble, while at the same time some couples seem to pragmatically stay together due to limited resources.
4. More people, if forced to litigate, are choosing to represent themselves. In Alberta, the number of self-represented litigants in divorce and family court has increased by 121% since 2006. <sup>3</sup> This has had a serious impact on the resources of the court, and has also presented difficulties for counsel, who are generally used to operating by rules and standard procedure. The cost of litigation, already prohibitive for many, can easily be doubled or tripled when dealing with a self-represented litigant.
5. The courts have grappled with questions of income regularly – what is a person's income? In this economy, how are children supported if the primary wage earner is unemployed? How are children supported if both parents are unemployed?
6. 2016 also brought a change to MEP's section 7 expense enforcement policy; procedural changes at the Courts Centre; and social media is more and more relevant.

### **CHANGES TO MEP'S POLICY RE: SECTION 7 EXPENSES**

7. MEP used to have an internal policy which was made public in mid-2015. It published a list of what they did and did not enforce regarding Section 7 expenses if those expenses were not explicitly laid out in a court order.
8. In *Fraser v. Airhart* 2016 ABQB 136, Justice Veit stated:

Although MEP is honestly, and with the best of intentions, trying to assist parents in solving their child support disputes, MEP has no authority to make determinations either about whether an adult child is able to withdraw from its parents' charge or about whether child-related expenses are s. 7

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<sup>1</sup> <http://economicdashboard.alberta.ca/>

<sup>2</sup> <http://www.cbc.ca/news/canada/calgary/oil-patch-layoffs-how-many-1.3665250>

<sup>3</sup> <http://www.cbc.ca/news/canada/representing-self-court-lawyers-1.3375609>

expenses. MEP's jurisdiction is limited to the enforcement of orders made by the court.

Part of MEP's problem is, of course, that we in the legal community have not been helpful in clarifying s. 7 issues. MEP's statement that it is intending to interpret and enforce the court's intention when the court has not expressed an intention underscores the difficulty of its situation. **The legal community, including judges and lawyers, must be clear in our s. 7 decisions. There is virtually no point in stating that the parties will share s. 7 expenses according to their respective incomes: that is the fall-back position in the Guidelines.**

9. The new policy affects expense claims processed by MEP only on or after May 16, 2016, regardless of when the claims were received by MEP. It does not affect any expense claims added to a MEP file prior to May 16, 2016.
10. From MEP's website: MEP will no longer enforce percentage or proportionate share of expenses unless:
  - the type of expense is clearly stated in the court order or agreement, or
  - the parties agree on the expenses to be shared.
11. As an administrative program, it is not MEP's role to determine what expenses are reasonable and necessary for a family. MEP will continue to enforce orders that set a specific amount for section 7 expenses, or allow for proportionate shares of clearly specified expenses. MEP will no longer enforce general section 7 expenses, unless the parties agree to specific expenses in writing.
12. Examples of specific expenses: <sup>4</sup>
  - child care – if the order says “child care” without further information, MEP will enforce any child care expenses arising from the custodial parent's employment, illness, disability or education or training for employment, for as long as the expenses continue to be incurred (eg “must pay 50% of daycare expenses”)
  - health-related or medical – any specific expenses listed in the court order (eg, “**must pay 50% of orthodontic treatment, prescription drugs, glasses and contact lenses**”)
  - post-secondary education – any specific expenses listed in the court order (eg, “**must pay 50% of university tuition, room and board, and student union fees.**”); if the order only

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<sup>4</sup> [https://justice.alberta.ca/programs\\_services/mep/Pages/Section7expenses.aspx](https://justice.alberta.ca/programs_services/mep/Pages/Section7expenses.aspx)