



## New Law on Shared Custody by Jodi L. Wyman

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In family law, shared custody arrangements are becoming more common. Separating parents will try, by agreement or court order, to split the time they have with their children on a more or less equal basis. When this works, it can be a way for the children to spend as much time as possible with both parents, they see their parents continue to make decisions together and the children may not feel as if they have lost their mother or father by seeing them only a couple of times each month.

When shared custody does not work, it leads to an increase in parental conflict or children being upset by how much they have to move back and forth between homes. They may not feel as if they have a permanent home when they split their time evenly between two houses.

When parents share their time equally, the child support is usually an offset amount between each parent's support obligation. The higher income earner pays the other parent the difference between their two support amounts.

In some cases, the non-custodial parent has the children frequently, but not quite fifty percent of the time. According to the child support guidelines, the child

support payable by that parent can be adjusted if they have their child or children at least forty percent of the time.

Judges and lawyers have been struggling for years to find a way to calculate whether a parent has the child forty percent, or thirty percent, or thirty-eight point five percent of the time.

Some Judges have done an hour by hour calculation as to the child's schedule, some simply count overnights at each parent's house. Some include holidays, and some do not. Some include the hours the child spends in school, some do not.

The Manitoba Court of Appeal recently tried to give some guidance on this issue.

First, the Court made it clear that "a strictly mathematical calculation" is not appropriate. Judges should not be sitting down with a calculator and counting hour by hour where the children spend their time. They should look at the time the children spend with each parent and in particular the amount of time each parent is responsible for the children's needs.

The Court recognized that having the children for the day when they

are in school, or for eight hours when they are sleeping, is different than having them for meal times, homework, sports, bedtime etc. Judges can create their own way of deciding how evenly the time is shared, but they should use a big-picture, holistic approach.

Secondly, the Court was helpful in providing some factors that Judges should consider in these types of cases. For example, they should look at how the parenting situation evolved, the quality of time the children spend with each parent, and whether there are costs associated with the time (such as meals or extracurricular activities).

Some other factors to look at would be summer vacation time, holiday arrangements, whether visits are regularly cancelled and the children's wishes.

The new rules by the Manitoba Court of Appeal try to balance giving Judges some guidance in making these difficult decisions, but also giving courts flexibility to deal with every family on a case-by-case basis.