

Marriage can be a difficult relationship.

[Intended for General Information Only]

Is your marriage breaking down? If it is, you need to understand how the law applies to your situation. But getting legal advice early doesn't mean your marriage is over. Instead, legal advice at an early stage in your difficulties can protect you, clearly establish your legal rights and help you to avoid unnecessary cost and stress later on. This pamphlet highlights information on a number of topics that may be of interest to you if you are thinking about divorce.

The most important thing for you to decide is whether you want to continue with your marriage. If you decide to remain in the relationship, assistance is available to help you and your spouse make the relationship work. But if you decide the relationship is over, you'll need to gather information and to plan how you will deal with the various issues that will arise during the separation and divorce process.

If you are leaving your marriage, you should put together:

- (a) a parenting plan for your children;
- (b) your financial details, including a list of all your assets, liabilities, income and expenses;
- (c) your spouse's financial information, as much as you can. This information can be obtained by court order, if necessary;
- (d) your short and long term goals for how you want to deal with the matters between you and your spouse;
- (e) what you think your spouse's goals are for dealing with the same questions.

You will need to get legal advice about your rights and obligations.

You need to decide how to resolve the outstanding matters between you and your spouse. There are a number of different ways this can be done.

You can sit down together at the kitchen table or in a public place — a coffee shop, for example — and work out a plan of how you both want to settle things. Each of you takes a copy of that outline to your own lawyer.

Your lawyer will work with you to create a settlement agreement which you and your spouse can both sign.

At the other end of the spectrum if you cannot come to an agreement, the lawyers ask a judge to decide the outcome.

In between these extremes of resolving the differences between you and your spouse — completely voluntary on one hand and determined by the court on the other — you and your spouse can try mediation, arbitration, or lawyer-assisted negotiation.

Eventually matters between you and your spouse will be resolved. If the process is seen through to the end, you will be divorced.

Are there children as a result of the relationship?

If there are children you will need a parenting plan in place. Again you and your spouse can work out a plan or it can be determined by the court.

Many kinds of issues will have to be addressed. These may include:

- The costs of raising children - these costs will be shared between you and your spouse.
- Child support - one parent may be required to pay child support to the other.
- Spousal support - one spouse may be required to pay spousal support for an indefinite period or just for a specific period.

- Property division - the property you shared will be divided between you and your spouse.

If you can focus on the differences between you and your spouse in as unemotional a way as possible, you will save yourself time and money. Remember, delay in divorce is common. It often takes time to focus on real needs and interests. It takes time for you and your spouse to adjust to the change in your situation. As this happens, the divorce process evolves.

Should you go to counselling?

"It is not just important but vital to society that spouses with family problems do their best to work them out."

Law Reform Commission of Canada, Report on Family Law.

Sometimes even a strong marriage can become better with counselling to enhance communication or eliminate misunderstanding. However you may find that communicating clearly and in a meaningful way is even more important if the relationship is not strong. Just talking to a neutral counsellor may go a long way in helping you and your spouse to understand and resolve the difficulties in your relationship.

Alberta law regarding married spouses and regarding non married (common law) partners is different. A common law partner might not have the same legal rights, obligations and status as a married spouse. Often people are surprised to find out what rights and obligations they do have. Because this is an area of the law which is constantly evolving, it is important to get early legal advice about your rights and obligations.

Divorce

In Canada, divorce is generally described as "no fault." Either spouse can do something which causes a divorce. However, cause or fault will not effect related matters like the division of property, custody and access of children or financial support obligations.

The Divorce Act permits divorce for a variety of reasons including separation for more than one year, mental cruelty, physical cruelty and adultery. While one spouse can't stop the other person from getting a divorce, divorce can be delayed by disputes about things like children, responsibility for child or spousal support and arguments over property.

A simple uncontested divorce can be done in as little as four months, while a difficult dispute can take several years to resolve.

When parents separate, both must contribute to their children's support. The amount of their contribution is determined by federal child support guidelines and the parents' financial abilities, in conjunction with the needs of the children. These needs are different in each situation, based on the family's lifestyle. Our courts generally will not approve a divorce until the judge is satisfied that the parents have made adequate arrangements for child support.

You will need to get legal advice if you have children and are intending to divorce. The law about child and spousal support is constantly changing. Though there are published guidelines outlining child support, you will need a detailed explanation of the factors that may adjust the basic amount to reflect the facts of your situation.

The court may award spousal support (what used to be called alimony) in some cases. For example, spousal support may be ordered for a spouse who has been at home with children for a number of years and is not immediately able to become employed or to earn an adequate income. Or a person might need additional support because they can work only part time. Or an award may be made to enable a person to retrain toward long-term employment opportunities. The judge will balance the need for support with the ability of the spouse to be self-sufficient.

If spousal support is paid as a result of a court order or a properly prepared and signed separation agreement, it is taxable income to the spouse who receives the payment and tax deductible to the spouse who makes the payment.

Children

Children are not possessions. Children have the right to benefit from the love, care, protection and guidance of both parents. In most cases, parents find the most practical arrangement is custody with one parent and generous access to the other. Joint custody is possible if you and your spouse co-operate, and your living arrangements make it practical.

Access includes the right to have the children visit, including overnight, and to be given information about the children's health, education and welfare. The parent with custody has the right to decide on schooling, religious practices and daily living routines, but often accepts input from the other parent. In dealing with children, it is important to consider the best interests of the child, as opposed to what you yourself want. When the court is asked to decide, the judge will apply the rule that children should have as much contact with both parents as is consistent with the best interests of the child.

Division of property

In dividing property on divorce, the first assumption is that people should have an equal share of property gained by the efforts of each partner. In most cases, contributions of a homemaker and an income-earner are treated the same. Some property is not equally divided. Exempt property includes property owned before marriage, gifts from someone other than your spouse, inherited property, and property which is the subject of a written agreement. But the amount any exempt property has increased in value since it was acquired may be shared equally between married spouses.

For non-married partners the rules are more uncertain. A non-married partner may or may not be entitled to share in the other partner's property depending on the particular circumstances involved. If you are in this situation, you should have your lawyer carefully review your circumstances.

Some family disputes can be handled by the Family Division of the Provincial Court of Alberta while others are heard in the Court of Queen's Bench of Alberta. The Family Division of the Provincial Court of Alberta can only hear a limited number of things. It has limited jurisdiction.

But some family disputes can only be considered by the Court of Queen's Bench of Alberta. Generally speaking, the Court of Queen's Bench can deal with the following matters:

- child support in married and non-married situations
- spousal support
- guardianship
- custody and access
- divorce
- property division
- restraining orders and
- anything else necessary to deal with family matters

If you are unable to hire a lawyer, you may be able to deal with some issues in the Family Division of the Provincial Court of Alberta yourself. But if you hire a lawyer, your lawyer will probably prefer to use the Court of Queen's Bench because of its unlimited jurisdiction.

Choosing a lawyer

When choosing a lawyer, look for a lawyer who is familiar with family law. Look for competence, compatibility and availability. You will want a lawyer with whom you are comfortable, whose judgment you trust and who has the time to deal with your situation.

Most complaints from clients dealing with matrimonial lawyers relate to communication. Divorce is often an extremely stressful and emotional time. Discuss with your lawyer what communication can be expected — copies of letters, frequency of contact, when to call and when to expect calls and the costs. Talk to your lawyer about how you can help maintain good communications.

Your lawyer is required to give you a retainer letter detailing how you will be charged, how much it will cost and when you will have to pay. Most lawyers use the time involved in working on a file as one factor in determining the amount to be charged.

In a matrimonial breakdown, the costs will vary depending on you and your spouse. The fees that you pay to deal with your marriage breakdown will bear no relation to the fees your neighbours paid to their lawyer in their situation. Every case is unique.

Discuss costs with your lawyer early in your relationship with him or her. Tell your lawyer accurately and completely what you need and what concerns you have. This early attention to your exact requirements will save you money in the long run. Be sure to discuss fees with your lawyer periodically as your situation proceeds.

Alternate Dispute Resolution

You have many options besides having matters resolved by the court. Consider negotiation between spouses, negotiation by lawyers, mediation, arbitration and settlement meetings as practical alternatives to the time and expense of going to court.

In the matrimonial area of law, most conflicts that do arise between people who have decided to get a divorce result from some combination of four difficulties:

- not focusing on the development of solutions to problems;
- not getting timely legal advice;
- failing to collect and share relevant information, and
- communicating poorly to the other spouse.

All of these barriers to success can be more easily and economically dealt by some alternate method than going to court.

When you hear your friends and neighbours talking about a "legal separation," they are probably referring to a contract between spouses in dispute. This contract is actually called a separation agreement, minutes of settlement, divorce and property contract, or matrimonial settlement agreement. There is no "illegal" separation.

You may start a divorce on the basis of a one-year separation, calculated from the beginning of the separation. All other matters — custody, access, support and property — can be dealt with during that one-year period.

Your divorce, which would let you remarry, will be granted after the one-year waiting period and a further 31-day appeal period have gone by. This is Canadian law and judges may not make an exception to the one-year rule unless there is adultery by your spouse, or physical or mental cruelty directed towards you by your spouse.

Living as an unmarried partner (common law) does not give you the same legal rights as a married spouse, no matter how long your relationship has lasted.

Parenting After Separation

Parenting After Separation is a mandatory program for separating or divorcing couples in Alberta who have children. Sponsored by the Court of Queen's Bench, The Department of Alberta Justice and Alberta Family and Social Services, the program helps couples to gain an awareness for parenting children after separation. Topics covered in the six-hour seminar include legal, emotional and financial implications of separation, mediation, custody and access options, developing a parenting plan and maintaining your relationship with your children during and after separation. For additional information contact your lawyer or Family Court.

Conclusion

While the law applies equally to everyone, your situation is unique. A marriage in a breakdown is a difficult situation. A confidential meeting with a lawyer at an early stage will often bring peace of mind and help you to make the decisions that are best for you and your family.

This webpage is intended to provide general information only. When you have a legal problem it is best to consult a lawyer. If you do not know a lawyer, you can call the Lawyer Referral Service at 1-800-661-1095.

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