

# Separation and Divorce



## **When Your Relationship Ends**

Knowing your legal rights  
and responsibilities

Begin a better ending

F A M I L Y   L A W   S E R I E S



The end of a relationship can be an emotional time and sometimes it is hard to reach an agreement with your spouse. There are a number of different ways that you can resolve these issues.

# Knowing your legal rights and responsibilities

If you are married or in a common-law relationship, certain laws apply when you separate and no longer live together as a couple. Under these laws, your legal rights and responsibilities may continue after the relationship is over.

When separating, you and your spouse need to make decisions on a number of important things, including:

- custody and access (where your children live and who makes decisions);
- division of property (how the things you own together are divided); and
- what child and spousal support will be paid (money paid from one spouse to another).

## Common Law vs. Marriage

- A **common-law** relationship ends when you and your spouse separate.
- A **marriage** does not end when you separate. Although you and your spouse may be separated, you stay legally married until you divorce.

The end of a relationship can be an emotional time and sometimes it is hard to reach an agreement with your spouse. There are a number of different ways that you can resolve these issues. You should pick the one that works best for you. The decision is up to you, but if you don't want to deal with your spouse, it may be easier to negotiate through a lawyer or go to court.

There are four main ways to settle disputes during a separation:

- by agreement with your spouse;
- mediation;
- negotiation by lawyers; and
- going to court.

Each option has its benefits and drawbacks. Reaching agreement with your spouse gives you the most control over the terms of the separation; going to court means that a judge will make the decisions.

No matter which option you choose, always talk to a lawyer. She can review an agreement you and your spouse make on your own or with a mediator, or she can represent you in negotiations or in court.

## Lawyer Representation

If your spouse has been violent or abusive, you should consider having a lawyer negotiate on your behalf or going to court. Dealing directly with your spouse may not be a good option when there has been violence in your relationship.

## By Agreement

If you and your spouse can agree on the terms of your separation, this may be your best option. The agreement will reflect your situation and you will have made the decisions.

The decisions you and your spouse make should be written out in a separation agreement and signed. You can also agree on these things just by talking, but it is better to have it written down. The courts will enforce a written and signed agreement unless something in the agreement is against the law. It is harder to enforce a verbal agreement.

Before you sign a separation agreement, you should have your own lawyer review it to make sure your rights are protected.

## Mediation

In mediation, you and your spouse meet with a third person, a mediator. The mediator doesn't take sides but helps you and your spouse make decisions about how to separate. He will not make decisions for you. Mediation is not counseling to help you get back together.

The mediator prepares a written agreement based on the decisions you make. You should take this agreement to a lawyer for review and advice before signing it.

Family lawyers and other professionals can be mediators. The Department of Justice also offers mediation for couples who are separating. Contact the Law Society for a list of mediators, or call the Department at 1-866-217-8923.

## Negotiation By Lawyers

You can reach an agreement with your spouse with the help of a lawyer who negotiates on your behalf. Your lawyer will meet with you to find out what kind of custody, access, property and support you want. He will then negotiate with your spouse or their lawyer and advise you as the negotiations proceed.

Negotiation can also take a more collaborative approach where you, your spouse and the lawyers meet to negotiate a solution.

## Going To Court

If you and your spouse can't agree or your lawyer can't negotiate an agreement, then you can go to court and ask a judge to decide for you. When you go to court, you can ask a judge to decide everything, or if you have reached agreement on some things, you can go to court just on those things you can't agree on.

Going to court can be more expensive, and also means you have no say in the decisions made. A judge decides based on the information that is put before her in court. She doesn't know you, your spouse and your children as well as you do, so the more you can agree on, the more the terms of the separation will work for you and your family.

Because going to court can take a long time, the judge may make decisions for the short term before a full hearing is held. These are called interim orders and provide temporary answers to questions of financial support and who will care for the children.

If you do go to court, you should have a lawyer.

# Key Issues In Separation

## Custody And Access

Some of the biggest questions in a separation are about children:

- Who will the children live with: one parent, the other, or both?
- How will decisions be made about the child?
- Will the other parent have access to the children?
- What financial support will be paid?

These are usually referred to as custody, access and child support.

If you and your spouse can agree, you will have an arrangement that works best for your child. If questions of custody and access go to court, the judge will make decisions based on what she thinks is in the best interest of the child.

For more information on custody, access and child support, please see the Custody and Access brochure or speak with a court worker or lawyer.

## Property

The items you and your spouse own together, such as a house, car or other possessions, are called "property". Property also includes things like savings, bank accounts and pensions. During a separation, deciding who gets what is called "division of property".

## Legal Aid

If you can't afford to pay for a lawyer, legal aid may provide one for you.

Usually, all the property you and your spouse got during the relationship is divided equally. However, some things can't be divided, like a car or house. Instead, the total value of the property is added up and divided in half. If one of you wants to keep more than half of the property, he or she may have to pay money to the other spouse.

## Spousal Support

When you separate or divorce, sometimes one spouse may have to pay financial support to the other. This is called "spousal support". Not everyone gets spousal support: it depends on how you supported each other during the relationship, how long you were together and whether you can both support yourselves after the relationship ends.

Spouses can agree to pay support as part of a separation agreement or let a judge decide. A judge will consider whether the spouse has a right to spousal support. She will look at what financial advantages or disadvantages the spouses had during the relationship and as a result of the break-up. The judge will also consider what other financial obligations must be paid, such as child support.

Spousal support can be paid as one lump-sum payment or as regular payments over a period of time. If you are receiving or paying support, the Maintenance Enforcement Program provides assistance with payment and collection of spousal support. For more information, see the brochures "Paying Support" and "Receiving Support".



## Divorce

If you are married and you separate from your spouse, you stay legally married until you are divorced.

To apply for a divorce in the NWT, you or your spouse must have lived in the NWT for one year. To get a divorce, you must show that your marriage has broken down. This is called the “grounds” for divorce.

There are three ways to show marriage breakdown:

- you and your spouse have been separated for one year;
- your spouse has committed adultery (sexual intercourse with another person); or
- your spouse has treated you cruelly, such as physical or emotional abuse.

If you are applying for a divorce on the grounds of adultery or cruelty, you should speak to a lawyer for advice.

You will need a divorce before you can marry again.

If you and your spouse have a separation agreement and both want a divorce, you can file a joint petition. This is the easiest way to divorce. Your joint petition is submitted to the court and your divorce becomes final 31 days after you receive a judgment.

If you and your spouse can't agree on the terms of your separation or on getting a divorce, you must go to court. You should contact a lawyer for advice.

Your lawyer will present your evidence at a hearing or trial, and the court will make a final decision on your divorce, called a “judgment”. The judgment will set out the terms of the divorce such as child and spousal support, division of property, and custody and access of children. Each spouse has 31 days to file an appeal; otherwise, the divorce becomes final.

Even if you have begun the court process, you and your spouse can still resolve issues by agreement before a trial or hearing ends.

## Important Contact Information

Legal Services Board

(Legal Aid) . . . . . 867-873-7450

Collect calls are accepted from outside of Yellowknife

Legal Service Board

Court Workers . . . . . 867-873-7450

Child Support Guidelines

(Federal Justice). . . . . 1-888-373-2222

<http://canada.justice.gc.ca/en/ps/sup/index.html>

Law Line . . . . . 867-920-3160

Toll Free . . . . . 1-888-920-3160

Canada

