Ending A Marriage

Not all marriages last a lifetime. Some couples get divorced, while others decide, for religious, or personal reasons, to obtain an annulment. Married couples may also choose to live apart but remain legally married.

A Separation Agreement is a domestic contract that sets out the terms and conditions of the separation, such as division of assets and property, support payments, and other matters the couple may want to include. Each party usually consults a separate lawyer. The courts would not normally become involved unless a dispute arose.

Divorce is the legal ending of a valid marriage.

A divorce is initiated when one spouse files a petition for divorce. The Petition for Divorce will include reasons for the divorce and requests or arrangements regarding support payments and child custody.

Petitioner: the person seeking a divorce

Respondent: the person being sued for divorce

A judge cannot grant a divorce without being satisfied that reasonable arrangements have been made to support the children. If the divorce is granted, it takes effect on the 31st day after the decision was handed down. The waiting period provides a dissatisfied party the opportunity to appeal and also allows for the possibility of reconciliation.

When the final certificate of divorce is issued, the marriage is formally dissolved. At this point both spouses are free to remarry.

Certificate of Divorce: a legal document that terminates the marriage

# Grounds to Obtain a Divorce

1. Lived separate and apart at least 1 year prior to the start of proceedings
2. Physically separated
3. Mental aspect that marriage has ended
4. separate bedrooms
5. sexual relationship ends
6. not preparing meals/eating together
7. not holding yourself out as a couple
8. Adultery: Sexual intercourse by a married person with someone other than his/her spouse
   * adultery must occur after marriage ceremony

* cannot force someone to admit adultery
* evidence of relationship of couple and opportunity for sexual relations is enough

1. Cruelty: the mental or physical behaviour of one spouse causing harm to the other, making staying together intolerable.

* Physical cruelty is usually proven through statements by witnesses, medical or police reports, or photos
* Mental cruelty is more difficult to establish in court due to the lack of visible signs
* The petitioner must prove that he/she was the object of cruel treatment, that the cruelty was the result of the respondents behaviour, and that because of the cruel treatment, remaining together would be intolerable
* Today we often refer to cruelty as spousal abuse

Spousal abuse is an attempt to control or intimidate the other partner. It may involve physical or psychological cruelty, but it can also include sexual or financial abuse.

In Canada, the following forms of spousal abuse are considered crimes:

* Physical abuse – punching, slapping, burning, cutting, stabbing, and shooting
* Psychological abuse – stalking, damaging property, and making threats
* Financial abuse – taking partner’s paycheque; withholding money for food or medical treatment
* Sexual abuse – sexual activity or touching without consent

Prevention of a Divorce

Situations that involve deception for the purpose of obtaining a divorce can prevent a divorce from being granted. Collusion, Condonation, and Connivance are three legal barriers to divorce.

Collusion: an agreement between the spouses to deliberately lie or deceive the court in order to obtain a divorce.

*Example: The couple may lie about an adulterous relationship in order to avoid having to wait for the one year separation period. Such an act constitutes fraud and is an absolute bar to divorce.*

Condonation: one spouse forgives the other for an act that is being used as grounds for divorce.

*Example: Suppose a spouse petitions for a divorce on the grounds of adultery. The couple is then reconciled and all is forgiven. At this stage, the wronged spouse cannot seek a divorce on the grounds of adultery.*

Connivance: one spouse encourages the other to commit an act that would constitute grounds for divorce.

*Example: If one spouse asked the other to commit adultery in order to obtain a divorce, the courts would consider this act connivance and would not grant the divorce.*

Main differences upon separation between being married and being in a common law relationship

1. Division of property. Upon a marriage ending, there is an automatic right to equalize family property acquired during the marriage. However, if you are in a common law relationship, you have no such right in Ontario. Instead, you must rely on the nebulous legal concept known as “unjust enrichment” - you must show that your common law partner was unjustly enriched at your expense. This is one of the most complicated areas in Canadian family law. As well, because it is so complicated, and there are no clear rules, it becomes very expensive and time-consuming to enforce your rights, and often people are unable to do so.
2. Possession of the matrimonial home. Upon a marriage ending, there is an automatic right to stay in the matrimonial home, even if it is not in your name. You have no such right in a common law relationship in Ontario - if your name is not on the home, you could simply come home one day and find yourself locked out.
3. Special treatment of the matrimonial home. If you are married, your matrimonial home is treated differently when dividing property in Ontario. Normally, when your marriage ends, the value of any property you owned when you married is yours -- it is not divided. This is not the case with the matrimonial home. If you own a home on your wedding day, your home is automatically divided between you and your spouse. This is not the case in a common law separation.
4. Spousal support. If you are married, you have an automatic right (or obligation) to receive (or pay) spousal support upon separation. If you are living in a common law relationship in Ontario, you do not obtain this right until you have lived together for three years, or are living in a relationship of some permanence and you are the natural or adoptive parents of a child.
5. Time limit to apply for spousal support. If you were married, you always have the right to apply for spousal support, no matter how long has passed since you separated. If you weren't married, you need to ensure that you apply for spousal support within 2 years of separation.
6. Orders restraining depletion of property. If you are married, and you believe that your partner will make his or her money disappear so that you can't divide the assets, you can get a court order stopping them from doing that. However, you have no such right in a common law relationship.
7. Succession rights on intestacy. If you are married, and your partner passes away without a will, you automatically receive a share of your partner's estate. If you were in a common law relationship in Canada, you have no right to get anything. Instead, you must bring a claim for unjust enrichment against your partner's estate.
8. Equalization payment on death. If you are married, and your spouse does not give you a fair share of his or her assets in their will, then you have a remedy against this, namely asking for an equalization payment from your partner's estate. If you weren't married, you have no such right, and must rely on the nebulous legal concept known as "unjust enrichment.