

Divorce Law Canada

- ❖ Divorce is the legal ending of a marriage.
- ❖ Although a couple may separate and live with other partners the only way that person can marry again is to get divorced.
- ❖ It is not possible to get a divorce if you have been living together without being married.
- ❖ All permanently resident citizens regardless of nationality can apply for a divorce even if they did not marry in Canada.
- ❖ Most divorces in Canada are settled out of court and often there is no need for a divorce lawyer
- ❖ Canada Divorce Law states that it is wise to seek counseling and legal advice first.
- ❖ The divorce rate in Canada has remained relatively stable over the last 10 years with official divorce statistics showing that over a third of all marriages will end in divorce before a couple reaches their 30th wedding anniversary.

Reasons for Divorce

- ❖ The breakdown of the marriage is the only legal reason needed to get a divorce in Canada.
- ❖ **If you have lived apart from your partner for over one year this is enough evidence under Canadian Divorce Law to prove that the marriage has broken down.**
- ❖ The reasons for a divorce do not affect the way custody, access and support to children is decided or the way that property is divided.

- ❖ Only one person needs to file for a divorce to prove that the marriage has broken down.
- ❖ Even if the other spouse does not wish to end the marriage, a divorce will be granted after a year's separation.
- ❖ If you are living separate lives under the same roof and have done so for over a year and you can prove that you have not been living as a married couple during this time, this is also a valid reason for a divorce.
- ❖ If decide to give the marriage another try and the marriage still fails, you can count the time spent trying (as long as it does not amount to more than 90 days consecutive or separate) as part of the one year separation.
- ❖ **Divorcing on the grounds of a one year separation is the cheapest and easiest way to file for a divorce in Canada.**

Quickie Divorces

- ❖ Divorces will be granted before the one year period is over if one of the parties involved can prove that the other party committed adultery by having sex with someone else.
- ❖ The petitioner must prove that they lived apart from the adulterer for more than 90 days once they found out.
- ❖ You may also divorce quickly if you can prove mental or physical cruelty.
- ❖ You cannot file for a divorce and site your own adultery or cruelty if your spouse does not want to divorce.

- ❖ Quickie divorces involve more emotional trauma and are more costly as they are more likely to be contested. In these cases it is worth consulting the advice of a divorce lawyer.

Prenuptial Agreements

- ❖ Before or during the course of your marriage, you and your partner may have signed a prenuptial contract, which is a marriage agreement about how assets will be divided in the event of a divorce.
- ❖ A prenuptial agreement may also cover the payment of maintenance.
- ❖ Prenuptial agreements are legally binding in Canada providing both spouses have signed the agreement in front of a witness who is also required to sign the document.
- ❖ Before drawing up and signing a prenuptial agreement seek independent legal advice.
- ❖ Many couples use the prenuptial contract to list the property and assets they are bringing into the marriage with values and decisions on who will keep them if there is a divorce.
- ❖ A prenuptial agreement overrides the rule of Canadian divorce law that dictates that all property bought during the term of the marriage should be divided equally (i.e. 50/50).
- ❖ Assets will be divided according to the marriage contract but you cannot include decisions about child custody and access in a marriage agreement.

- ❖ You cannot force one party out of the main family residence by means of a prenuptial contract – Canadian divorce law honours each party's right to live in the family home.

Separation Agreements

- ❖ It is more cost effective if both spouses can work together to decide for themselves how to divide assets and property as well as making decisions on the support, custody and maintenance of any children.
- ❖ If it is difficult to reach a decision together on these issues it is worth considering divorce mediation.
- ❖ Once an amicable solution has been found, a divorce lawyer should draw up a Separation Agreement detailing all issues concerning the separation.
- ❖ A Separation Agreement is only legally binding if both parties sign it before a witness who is also required to sign.
- ❖ The Separation Agreement should be filed at the divorce court along with the divorce petition.

Getting for a Divorce

- ❖ In most Canadian provinces, divorce is handled by the Superior Court of Justice known as the Supreme Court.
- ❖ You can apply for a divorce as soon as you separate, but the court will not grant the divorce until one year has lapsed since you parted.
- ❖ One or both spouses can file for a divorce.

- ❖ If both spouses are in agreement and file jointly this is known as an uncontested divorce.
- ❖ It is also possible for one spouse to file for a divorce and for the other not to contest it.
- ❖ If one spouse applies for a divorce and the other is not in agreement, this is known as a contested divorce.
- ❖ If you have been served with divorce papers and you want to contest the divorce, you have to file an Appearance and a Statement of Defence with the divorce court.
- ❖ You must apply for a divorce in the province where you or your spouse has lived permanently for at least one year.
- ❖ Simply filing a divorce application does not mean that issues like child custody, maintenance and access or the division of assets will automatically be decided. The judge will only consider these issues if you have included them in the divorce application.

Divorce Forms

- ❖ Most Canadian divorces are resolved out of court simply by filling in the divorce forms and filing the divorce application with the Superior Court of Justice registry office.
- ❖ Each office has a walk-in service and there is no need to appear before a judge.

- ❖ For uncontested divorces, there are several forms, which need to be filled out before you can hand in your divorce papers to the divorce court. They consist of:-
 - A writ of summons and statement of claim.
 - A requisition, which states that you are asking the court for a divorce.
 - A Divorce Order, which is the document the judge will sign when your divorce is granted.
 - A Registrar's Certificate of Pleadings.
 - A sworn affidavit from both spouses supporting the divorce. If the grounds for the divorce are based on a one year separation, the affidavit must be sworn when one year of separation has passed. You have 30 days to file the affidavit once the writ of summons and statement of claim have been filed with the divorce court.
 - A Child Support Affidavit if any children exist from the marriage. This form must be filled out in full even if you are not asking for child support or if arrangements have already been agreed or made.
 - An affidavit of service if one spouse is filing in an uncontested divorce.
 - If the divorce is contested, the contesting spouse must file a file an Appearance and a Statement of Defence.

- ❖ Along with the application forms and any prenuptial or separation agreement, you need to provide your marriage certificate or a certified copy, which you can obtain from the Department of Vital Statistics in the province where you were married.

- ❖ If you married outside of Canada, you need to provide the original marriage certificate or a certified copy from the government agency where it was registered. The certificate must be translated into English as an Affidavit.
- ❖ You will also have to fill out a Registration of Divorce Proceedings, which will be sent to Ottawa to the Central Registry of Divorce Proceedings. The Central Registry checks their divorce records and informs the Supreme Court Registry that there are no other divorce applications in your name. If there are no other divorce applications pending then your application will be passed to a judge who will grant you a Divorce Order.
- ❖ If one spouse is filing for divorce they must arrange to serve the divorce papers on the other spouse. This cannot be done by the spouse filing the application and it may be necessary to use a private company known as a process server.
- ❖ Whoever serves the papers on your behalf must give you a sworn affidavit of service, which you have to file with the court to prove that the other spouse received the divorce papers.
- ❖ If it is not possible to serve the papers to your spouse for example because their whereabouts is unknown, you can apply to the court for a Substitutional Service Order at an additional cost.
- ❖ If your divorce is mutual and you file the forms jointly there is no need to serve the documents as both spouses will already have a copy.
- ❖ Divorce Forms can be found at: <http://legalcanadacommunity.com/?p=463>

Divorce Costs

- ❖ You cannot submit an application for legal aid when applying for a divorce.
- ❖ The divorce courts charge a fee for you to file your divorce application.

- ❖ There are additional fees for swearing the affidavits necessary to get the divorce order, for the Registration of Divorce Proceedings and if you have to use a process server to serve divorce papers to your spouse.
- ❖ You can pay the fees to the divorce court in cash or by money order, debit card or certified or personal cheque made out to the Minister of Finance.
- ❖ Fees for divorce lawyers vary and are additional to the above divorce costs.

The costs for filing a divorce application are as follows:-

Alberta	\$210.00
British Columbia	\$311.00
Manitoba	\$165.00
New Brunswick	\$132.00
Newfoundland and Labrador	\$140.00
Nova Scotia	\$282.91
Ontario	\$448.00
Prince Edward Island	\$85.00

Quebec	\$162.00
Saskatchewan	\$180.00

Divorce Court Locations

- ❖ Across Canada, there are several divorce courts in each province.
- ❖ In Ontario there are 17 courthouses, which deal in divorce; most are divisions of the Superior Court of Justice.
- ❖ Addresses of all of the Canada Divorce Courts can be found at:

<http://legalcanadacommunity.com/?p=463>

Divorce Timings

- ❖ For an uncontested divorce it takes around six to eight weeks for a legal divorce to be finalized.
- ❖ The timings for contested divorces vary according to the individual issues under discussion and can take up to five months.
- ❖ Once a divorce order is granted, there is a period of 31 days in which any decision made by the court can be contested.
- ❖ It is worth noting that issues regarding children can be contested at any time.
- ❖ After the 31 day period your divorce is legal and you are free to marry again.
- ❖ If the divorce is contested and you or your spouse intend to file an Appearance and a Statement of Defence form with the divorce court. Timings for filing an Appearance vary according to where you served the papers;

- If both parties live in the same province the time available to contest the divorce application is 7 days from the serving of the divorce papers.
 - If one spouse lives in a different province there are 21 days from the service of the divorce papers to contest the application.
 - There are 28 days allowed if one party is in the USA.
 - If papers were served outside of Canada and the US, the spouse has 42 days to contest the divorce.
- ❖ You then have 14 days from the date you filed the Appearance to file a Statement of Defence.

Division of Property, Assets and Pensions

- ❖ It is best if you can both agree on the division of any assets like property, furniture, savings or pension plans and the responsibility for any debts incurred during the marriage.
- ❖ There are time limits associated with the division of assets; you have up to two years from the date of your divorce or up to six years from the date of your separation.
- ❖ If your spouse dies you have six months to ask for a court decision regarding joint assets.
- ❖ Canada Divorce Law dictates that property purchased during the marriage should be divided equally, regardless of whose names are on the deeds.
- ❖ If one or both spouses independently owned property before the marriage, they will have to pay the other spouse half of the increase in the property's value incurred from the date they got married until the date they separate.

This is known as an 'equalization of net family property' or an 'equalization payment'.

- ❖ Inherited property, which was not used as part of the matrimonial home, is excluded from this judgment.
- ❖ The matrimonial home is classed as the one you lived in whilst you were married and under Canada Divorce Law, both spouses have equal rights to live there unless a judge orders otherwise or they decide jointly to sell or rent out the property.
- ❖ The property cannot be rented, sublet, mortgaged or sold without the written consent of both spouses.
- ❖ If you cannot agree on how to split the matrimonial home, a judge will usually decide that the person who has custody of the children, should live there until they decide to move out or until the children become adults.
- ❖ An equalization payment must be made on any assets brought into the marriage. The increase in value is calculated from the date you married to the time you divorce.
- ❖ Gifts received during the course of your marriage from someone other than your spouse do not have to be divided and there is no equalization payment associated with them. This is known legally as 'excluded property' and includes inherited property and insurance payments made on the death of an insured person or because you were involved in an accident.
- ❖ Any claims for the 'division of unadjusted pensionable earnings' known as DUPE must be filed with the [Canadian Pension Plan](#) or CPP.

- ❖ The CPP calculate the amount of pension credits earned by both spouses during the time they were married and then split the credits evenly between both of them.
- ❖ You do not need to have filed an application for divorce in order for the judge to make decisions on matters of the division of assets.

Child Custody, Maintenance and Access

- ❖ If there are children involved in the marriage you should try and determine together who will have custody of them and what access rights the other parent should be allowed.
- ❖ Financial support for the children and sometimes for the other spouse needs to be decided.
- ❖ Canadian law dictates that both parents have a financial responsibility towards their children.
- ❖ If one party has custody of the children the other spouse will be required to pay child support, which is calculated according to their earnings.
- ❖ The court may ask the other spouse to pay more than the guideline child support to accommodate the child's 'special' needs like private school fees or medical bills. Equally the court may award less than the guideline averages if they believe that it will cause unnecessary financial hardship to the other spouse.
- ❖ It is not necessary to go to court to decide these issues, but if you cannot agree you can take your issues to mediation, arbitration or the family law courts where a judge will decide what is in the best interest of the children and will take into account their personal wishes in terms of custody and access.

- ❖ You do not need to have filed an application for divorce in order for the judge to make decisions on matters of the division of assets or the children
- ❖ There is no time limit on which you can make an application for child support.
- ❖ For custody issues, the longer a child remains with one parent the less likely a judge will want to break this stability.
- ❖ If you are applying for maintenance for yourself, it is best to apply as soon as you separate because a judge will only award maintenance on the basis of real need and the longer you are independent from your spouse the less chance you have of proving this fact.