

Getting Divorced

To legally end your marriage you must get a divorce. Some people think that being separated and living apart ends their marriage, but this is not true.

You must be divorced before you can marry again.

Do I need a reason to get a divorce?

The only legal reason you need for a divorce is marriage breakdown. The law accepts that there has been a breakdown of your marriage if you can prove that you and your spouse have lived separate and apart for at least one year. This means that you have not lived together as a couple during that time.

In some circumstances, spouses can be living separate and apart even though they still live under the same roof. This is possible as long as they are no longer living together as a couple. If this is your situation, it is up to you to prove it. This can be complicated and you should get legal help.

You do not have to wait until you have been separated for a full year to apply for a divorce. You can start the application as soon as you separate, but the court will not give you the divorce until the year is up.

A divorce can be granted without waiting for one year of separation if you can prove that your marriage has broken down because:

- your spouse had sex with someone else after you married (adultery), and you did not forgive the adultery or live together for more than 90 days after finding out, or
- your spouse was physically or mentally cruel to you.

However, if you apply for a divorce on either of these grounds, your spouse might be more likely to oppose it. This could lead to a longer and more expensive process.

How you prove marriage breakdown does not affect decisions the court might make about custody, access, and support. These decisions are not based on who was at fault in the marriage breakdown.

Can there be a divorce if only one of us wants it?

Yes. It is not necessary for both of you to want to end the marriage. If one spouse wants a divorce, the marriage has broken down.

You can get a divorce after one year of separation, even if your spouse does not want one. If you can prove that your spouse committed adultery or

cruelty, you can get a divorce whenever the court can hear your application.

However, if you are the one who committed adultery or cruelty and you are also the one who wants the divorce, you will have to wait until you have been separated for one year. You cannot use your own adultery or cruelty as the reason for the divorce.

Who can apply for the divorce?

Either of you can apply, or you can make a joint application.

If we try to get back together, but it does not work out, do I have to wait for another year?

No, as long as you do not get back together for a period of more than 90 days, or for several periods that add up to more than 90 days. This time will still be counted as part of the time that you are separated. This allows you to try to repair your marriage without delaying your divorce if you are not successful.

Marriage counselling might be an option. In fact, if you see a lawyer about getting a divorce, the law says that in most cases the lawyer must talk to you about counselling.

Can I get a divorce if I am not a Canadian citizen?

Yes. You do not have to be a Canadian citizen to get a divorce in Canada. It also does not matter if your marriage took place in another country.

You can apply for a divorce in any province where either you or your spouse have been living for at least one year. You might be asked to prove that your spouse's home address or your home address is in that province. If you often travel out of the province, you will still be able to get a divorce as long as your permanent home is in that province.

When do we decide about support, property, or who gets the children?

There are a number of things you may need to decide when you separate from your spouse. For example:

- custody (who the children will live with and who will make the major decisions about them),
- access (the right of the children to spend time with a parent if they do not live with that parent),
- financial support for the children,
- financial support for you or your spouse,
- the division of any property you have, including such things as pension benefits,
- who gets to stay in the home, or if it will be sold, and
- who will pay any family debts, or how they will be divided.

You can decide these things as soon as you are separated. You do not have to wait for the divorce.

If you and your spouse can agree about them, you can put them into a written separation agreement. In order for the agreement to be legally binding, each of you must sign it in front of a witness who must also sign it. The agreement can then be included in the divorce

judgment. If the agreement includes support provisions, it can also be registered at the office of the Ontario Court of Justice so that the support terms can be enforced.

Agreements are treated seriously by the court. They are reviewed by the court, and any terms that are clearly unreasonable will not be accepted. However, judges do not usually change property or spousal support terms that you agreed to in writing, even if they would have set different terms if you did not have an agreement. Therefore, you and your spouse should each consult a different lawyer to learn your legal rights before making the agreement. Your lawyers should also look at the agreement before you sign it.

If you and your spouse cannot agree about some or all of these matters, you can have a mediator help you resolve them, or you can have a judge decide them. You can do this at any time. You may need to have some or all of them decided right away, before the required waiting time for the divorce is over. The judge does not need a divorce application in order to consider these matters.

If there is no urgency, you may want to wait and have some or all of these things dealt with by the court at the same time as the divorce. But getting a divorce does not automatically mean that the judge will also decide these other matters unless you include them in your divorce application.

“Custody and Access” and “Child Support and the Child Support Guidelines” are two other publications produced by CLEO. See the back cover of this pamphlet for ordering information.

Are there time limits?

There are no time limits for applying for a divorce. No matter how long you and your spouse have been separated, one or both of you can make a divorce application.

There are also no time limits for asking for support for you or your child. However, spousal support is partly based on need. If you wait a long time before asking for it, a judge may decide that you do not need it. If you do receive support in these circumstances, payments will probably be ordered only from the time of the order and not for the time before you applied.

Although there are also no time limits for custody or access applications, it is important to keep in mind that stability is one of the things that judges consider when deciding where a child should live. If a child has been living primarily with one spouse for any length of time, a judge may be reluctant to make the child move.

There *are* time limits if you and your spouse have to ask the court to decide how to divide up the property you shared while you were married. The time limit for applying for this is one of the following, whichever comes first:

- two years after the date of your divorce or annulment, or
- six years after the day that you separate with no chance of getting back together, or
- six months after your spouse dies.

Can I share my spouse's Canada Pension Plan credits?

The Canada Pension Plan (CPP) is a benefit plan for workers. Most workers and their employers make regular CPP contributions so that when the worker retires or can no longer work because

of disability, he or she gets a pension. The amount of the pension depends on the size of the contributions.

When you separate or divorce, you can apply to CPP for a “division of unadjusted pensionable earnings” (DUPE). This is a division of the pension credits that the two of you earned while you were together. The credits that you and your spouse earned for that period of time are added together and then split evenly between you. If your spouse had more credits than you, this might help you qualify for a pension, or increase the amount of your pension if you already have one.

“CPP Benefits: Are you entitled? Separated? Divorced?” is another publication produced by CLEO. See the back cover of this booklet for ordering information.

How do I get divorced?

It is best to go to a lawyer. Issues such as property, support, custody, and access can be very complicated. A lawyer can help you find out what your legal rights are. They might also be able to help you reach an agreement with your spouse about the issues related to your divorce so you do not have to take those issues to court.

If you are not able to reach an agreement, your lawyer can help present your case to the judge in the best possible way. You have a better chance of getting what you are entitled to if you have a lawyer.

Even if all you want is a simple divorce, it is useful to consult a lawyer. They can advise you about your personal situation and help you get through the court procedure more smoothly. For a simple divorce, you could decide to go to court without a lawyer representing you, but it is still worthwhile to consult a lawyer first.

What if I cannot afford a lawyer?

You usually cannot get legal aid for a divorce. It is easier to get a legal aid certificate for custody and access or support issues. These issues can be dealt with apart from the divorce or together with the divorce application. Contact your local Legal Aid Ontario office to apply for legal aid or to find out if your situation can be covered.

To find the office nearest you, call Legal Aid Ontario at **1-800-668-8258**. In Toronto call **416-979-1446**. You can also check their web site at www.legalaid.on.ca.

If you get a legal aid certificate and cannot find a lawyer to take your case, you might be able to get help from a Family Law Office.

Toronto and Central Ontario:

416-348-0001

1-800-331-9618

Thunder Bay and Northern Ontario:

(807) 346-2950

1-800-393-8140

Ottawa and Eastern Ontario:

(613) 569-7448

1-800-348-0006

Can the terms of the divorce be changed after the divorce?

When the divorce has been granted and the 31-day appeal period is over, the divorce is final. This means that it cannot be undone by anyone, including the court.

However, custody, access, and support are never completely final. Sometimes the court will change these things if there has been a major change in circumstances since the agreement or court order was made.

This publication contains general information only. It is not a substitute for getting legal advice about your particular situation.

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