

Separation and Divorce

Separation and Divorce Introduction

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Reviewed by: JES



This Guidebook provides information about separating and getting a divorce in the BC Supreme Court. It applies to separating couples who can reach agreement without a trial, as well as those who require a judge to settle their disputes.

NOTE: This Guidebook does not provide legal advice and must not be used as a substitute for the advice that a lawyer may provide. This Guidebook provides general information to help people with matters in the BC Supreme Court.

Married and Unmarried Spouses

Being a spouse comes with significant legal rights and responsibilities, particularly when the relationship breaks down. When spouses decide they no longer wish to be in a relationship, there are laws that govern how to deal with the consequences. These laws may impact significant areas of your life including:

- How your property is divided, and
- Whether you will have to pay or could receive spousal support

As such, it is important to know who qualifies as a spouse and when that spousal relationship began. You are a spouse if:

- You are or were married
- You are not married but you have lived in a “marriage like relationship” with your partner for a certain amount of time. This is also known as a “common law” relationship or marriage. If you in a common law relationship, you have the same rights and responsibilities as a married couple



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What is a spouse? Government of BC

In BC, you are considered common law under the *Family Law Act* after living in a marriage like relationship for 2 years. However, if you have lived together in a marriage like relationship for any amount of time (even less than 2 years) *and* you have a child together, you are considered common law for the purpose spousal support only.

If you lived together in a marriage like relationship before getting married, the law says your spousal relationship began on the day you began to live together.

When your spousal relationship began is important, particularly for property division, as all property and debt acquired during the spousal relationship may be divided between spouses according to the law.



Read the Rules

S.3 Spouses and relationships between spouses, *Family Law Act*

Even if you are not considered a spouse, certain aspects of family law may still apply to you, particularly if you have children or there are protection concerns.

Separation

There is no such thing as a “legal” separation. You do not need to apply for anything in court to be separated. A married couple or a couple living in a married like relationship are separated when at least one of them decides to separate and stop living together. This often looks like one person moving out of the residence, but not always. Sometimes people will continue living under the same roof after separating. They may sleep in different beds, not eat meals together, and not attend social functions as a couple, for example.

It is **very important** to make clear the date you separated, particularly if you continue to live under the same roof, as property or debt acquired up until the day you separate may be divided between spouses.



Learn More

Learn more about separation from Legal Aid BC's [Going through separation](#)

Divorce

A divorce is a court order that ends a marriage. If you are married, you cannot marry someone else until you get a divorce, no matter how long you and your ex have been separated.

Only legally married couples can get a divorce. If you were married outside of British Columbia, BC Courts will generally (but not always) consider your marriage legal if it is considered valid in the province, territory, or country that you got married. You can get a divorce in British Columbia if you or your spouse has lived in British Columbia for at least a year before applying for a divorce and you meet all the other divorce criteria.



Learn More

[Getting a divorce](#), Legal Aid BC

You can only get a divorce if there has been a “breakdown of the marriage”. A breakdown in marriage can occur in one of three ways:

1. You and your spouse have been separated for at least one year with no chance of getting back together. The one-year period is not interrupted if you get back together for 90 days or less and then separate again. If you get back together for more than 90 days and then separate again, the one-year period will restart.
2. You or your spouse committed adultery (had sexual relations with someone else while you were still in a relationship).
3. Either spouse treats the other cruelly.

You would have to prove adultery or cruelty in court which can be complicated, so most people simply wait a year and apply under option 1.

If you have children, a judge will not grant you a divorce order until they are satisfied that you have made reasonable arrangements to take care of the children, including adequate child support.

You can file some of the documents required to get a divorce with the BC Supreme Court before you have been separated a full year, but the registry will not finalize your divorce until at least one year has passed.

Alternatives to court

In BC, most separating spouses can work out agreements about the key issues without having a trial. Some may have made an agreement on the issues prior the breakdown of the relationship, such as a prenuptial or cohabitation agreement. Many will work out agreements after they have separated, usually called separation agreements. If you are married, you will still need the Supreme Court to grant you a divorce order but coming to an agreement on all the other issues will significantly speed up the process.

You and your ex may be able to work out agreements on your own, or you may need help. There are many types of services to assist separating couple come to an agreement including:

- Mediation,
- Lawyer-led negotiation,
- Family Justice counsellors, and
- Collaborative family lawyers.

See the [**Family Law Guidebook: Legal Help Services.**](#)

If separating spouses are not able to reach agreement, they need to file court documents and a judge will make decisions to settle their family law disputes. This is an expensive, stressful process, and tends to increase conflict levels between separating spouses. Studies have shown that a conflict-based divorce is one of the most stressful things in life and that it is bad for the health of both parties. Children of separating spouses tend to suffer significant harm when involved in a long, high conflict separation.

The Law

The two main laws affecting separating couples in British Columbia are:

- The ***Divorce Act***, a federal law that applies to all of Canada, and
- The ***Family Law Act***, which only applies to British Columbia.

If you were never married, you do not need to worry about the *Divorce Act* as it *only* applies to married or previously married couples. Any family law issues for unmarried couples will be dealt with under the *Family Law Act*.

If you are or were married, you can use either the *Divorce Act* or the *Family Law Act* to deal with issues related to parenting arrangements, child support, and spousal support. However, only the *Family Law Act* can be applied to disputes about family property (division of assets and debts) and only the *Divorce Act* can be applied to get a divorce.

It is common for married parties to use both the *Family Law Act* and the *Divorce Act*. For example, they may deal with property, child support and parenting arrangements under the Family Law Act and only use the Divorce Act to legally end their marriage.

Legal Issues	Divorce Act	Family Law Act
Divorce	Yes	No
Parenting arrangements	Yes	Yes
Child support	Yes	Yes
Spousal support	Yes	Yes
Property division	No	Yes
Protection orders	No	Yes

While the laws are similar in many respects, there are differences. If you need help deciding which law to apply under it is best to get legal advice.



Learn More

[The Law for Family Matters](#), JP Boyd on Family Law

The Courts

There are three levels of court in British Columbia: Provincial Court, Supreme Court and the Court of Appeal. In BC, all three levels of court hear family law cases. Each level of court has its own processes and rules. The Court of Appeal only hears cases that have first been decided in the other courts.

The BC Provincial Court family division is sometimes called Family Court. It hears cases and makes decisions under the *Family Law Act* about parenting arrangements, child and spousal support, and protection orders. It cannot make orders about property division or under the *Divorce Act*. Property and divorce must be dealt with in the BC Supreme Court.

The BC Provincial Court has rules and procedures that are generally easier to understand and follow than the BC Supreme Court. It is also less expensive. However, some people find that the formality of Supreme Court helps in complicated cases. Furthermore, the Supreme Court's power to impose costs may discourage difficult parties from making unnecessary applications. See the table below that lists some of the differences between the two courts.

Provincial Court	Supreme Court
Fewer rules and easier to understand	More rules and more complex
Less formal and more flexible	More formal and less flexible
Less paperwork	More paperwork
More people representing themselves	More lawyers representing clients
More locations	Less locations
No filing fees	Filing fees: \$200 to start, plus...
Cannot award costs, just expenses	Can award costs and expenses

Many BC couples in conflict deal with parenting arrangements and support issues in Provincial Court and then move their case to BC Supreme Court to deal with property issues and get a divorce.

Learn More



To learn more about laws related to separation and divorce, as well as choosing which court to hear your case, visit [HowToSeparate.ca](https://www.howtoseparate.ca) and [Understanding the Legal System for Family Law Matters](#), JP Boyd on Family Law.

More and more, the courts are recognizing the significant negative impact that high conflict family court proceedings can have on children. New research shows that children can suffer trauma from the court process. This trauma can have long term impacts on their mental and physical health, and even contribute to shorter lifespans.

Learn More



To learn more about the potential impact of a high conflict family court proceeding on a child go to the [Transform Family Justice System Collaborative](#).

There is a duty on all those involved in the family law process, including and especially the parents, to minimize the negative impacts of the separation on the children. It is therefore of central importance that parents only consider the best interests of the children when making any parenting decision or agreement. Additionally, parents have a responsibility to minimize the conflict witnessed by their children and above all abstain from using their children as bargaining chips in a negotiation process.

Learn More



If you have children, you should complete an online course called [Parenting After Separation](#) to learn more about the laws regarding parenting arrangements and child support and to learn strategies to reduce conflict and put a child's best interests first.

Best Interests of the Child

The *Divorce Act* was updated in 2021 and now resembles the *Family Law Act* when it comes to parenting after separation. Significantly, the *Divorce Act* no longer uses the terms “custody” and “access” to describe parenting arrangements. The Act is now centred around the rights of the children and not on which parent “wins” custody over them. Parents now have “parenting time” and “decision-making responsibility”.

Under the *Divorce Act* and the *Family Law Act*, a judge may *only* consider the best interests of the child when making parenting orders. This includes considering the child’s physical, emotional, and psychological wellbeing, but there are a number of specific factors judges must consider.



Read the Rules

s. 16(1) Divorce Act and s.37 Family Law Act for the full list of factors the court will look at when considering the best interests of the child

Parenting Arrangements

Parenting arrangements describe when parents or guardians spend time with a child and who has the responsibility for making important decisions regarding the child’s upbringing. Every family is different, so it is usually best to make an agreement between the parents. However, the court can make orders if the parties cannot agree. As the child grows up and family dynamics change, orders and agreements may need to be changed to reflect the new circumstances. Changing an order or agreement can usually be negotiated between the parties but they can also apply to the court to change an order. Remember that a judge will only consider the best interests of the child when making a parenting order.

Child Support

Child support is the legal right of the child. Child support is not linked to parenting time. Parents are legally required to financially support their children, even if they rarely get to see them. Likewise, a parent cannot be denied parenting time because they have fallen behind on child support payments.

The parent who spends less time with the child usually pays the other parent child support. If the child spends roughly the same amount of time with each parent, the parent with the higher income will pay support to the other.

There are guidelines that set out the minimum amount of child support a parent must pay. Parents cannot agree to an amount of child support that is lower than the guidelines and a parent cannot refuse to pay support because they do not like how the receiving parent spends it.



DIY Tools

[Child Support Calculator](#)



Learn More

[Child support](#), Legal Aid BC

Spousal Support

Often in relationships, one spouse will make sacrifices or give up opportunities to support the other's career. This could look like a spouse leaving a job to take care of children or moving so the other can pursue career opportunities. Spousal support is meant to share the financial consequences of raising children and address the economic disadvantages that might result from the family breakdown.

You may be entitled to spousal support depending on your situation, but it is not a right. You must make an agreement with the other party on the amount and duration of the support or make an application to the court to determine it for you.



Learn More

[Spousal support](#), Legal Aid BC

Family Violence & Protection Orders

If you or someone else is in immediate danger, **call 911**.

Family violence or abuse can be physical, sexual, emotional, financial or psychological. It can involve threats, intimidation, use of force, and manipulation. It is never the victim's fault and there are organizations out there to help. There are steps you can take to protect yourself.

Protection orders can be made in Provincial or Supreme Court under the *Family Law Act*. A protection order is designed to protect a family member, such as you or your child, from family violence by another family member. Another option is to apply for a Peace Bond under the *Criminal Code*. A Peace Bond can be made against anyone, even if they are not a family member.



Learn More

bond.

Go to [Legal Aid BC's Abuse & Family Violence](#) page to learn more about abuse, family violence, and how to get a protection order or peace

Get Help



[VictimLink BC](#) is a province-wide telephone help line for victims of family and sexual violence, and all other crimes. VictimLink BC is available free to people across BC and Yukon 24 hours a day, seven days a week.

Time Alert

There are time limits to apply for a court order about spousal support under the *Family Law Act*. You must apply within 2 years after your divorce order if you were married, and within 2 years of your date of separation if you were not married.

Dividing Property and Debt



Read the Rules

Part 5 – Property Division, *Family Law Act*

Under the *Family Law Act*, there are two categories of property:

- Family property
- Excluded property

Family property is everything that you or your spouse acquired, separately or together, from the day your spousal relationship began to the date you separate. It does not matter whose name the family property is in. Examples of family property include: the family home, RRSPs and pensions, insurance and investments, and all forms of debt. When spouses separate, all family property is shared equally, unless the couple has an agreement or court order that says something else.

Some things are not considered family property. They are excluded from the rule that the property must be divided equally. Excluded property includes:

- Property one spouse owned before the relationship started
- Gifts and inheritances given to one spouse during the relationship
- Some kinds of damage awards, insurance proceeds and trust property

If the value of excluded property increased during the relationship, that increase in value is considered family property and is divided equally.

Time Alert

There is a time limit for applying for a court order for property division. If you were married, you must apply within 2 years of your divorce order. If you were not married, you must apply within 2 years of your separation date.



Learn More

Property Division, [HowToSeparate.ca](https://www.howtoseparate.ca)

Property & debt, Legal Aid BC

Dealing with Property and Debt, Government of BC.

It is important to get legal advice when dividing property. There are a range of free services and resources to help separating individuals reach agreements on key issues. See the **Family Law Guidebook - Family Law Legal Help**.