

FAMILY LAW FOR WOMEN IN ONTARIO



Marriage and Divorce

All Women. One Family Law.
Know your Rights.

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Education for Women
Women's Right to Know

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droit de la famille
Le droit de savoir



CCMW

Canadian Council of Muslim Women
Le conseil canadien des femmes musulmanes



Canadian Council of Muslim Women (CCMW) has prepared this information to provide Muslim women with basic information about family law in Ontario as it applies to Muslim communities. We hope to give answers to key questions about whether Muslim family laws can be used to resolve family law disputes in Canada.

Marriage and Divorce

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see FLEW's booklet on "Finding Help with your Family Law Problem" on FLEW's website at www.onefamilylaw.ca.

What is a legal marriage in Canada?

For your marriage to be recognized in Canada, there are two sets of rules you have to follow. One set of rules deals with who is legally eligible to marry. The second set of rules deals with how your marriage ceremony takes place.

(a) Who can marry in Ontario?

There are a number of rules about who can and cannot get married in Ontario. Here are some examples:

- You must be at least **18** years old to marry in Ontario. If you are 16 or 17 years old, you can only get married if you have **written permission** from your parents. Children under 16 cannot marry

in Ontario, even with permission from their parents.

- You can marry a man or a woman.
- If you marry someone who is already married to another person, this is called **polygamy**. It is against the law in Canada. Your marriage will not be legally valid, even if you did not know that your spouse was already married.
- If you have been married in the past, you must **prove that you are divorced** from your first spouse. If you were divorced outside Canada, you will need to prove that your divorce was legal in that country. If your spouse's foreign divorce is not recognized in Canada, he will not be legally eligible to marry you. It does not matter if you or your spouse believed in good faith that he was divorced and able to remarry – if his foreign divorce is not recognized in Canada, he can not legally marry again because Canadian law does not allow a person to have more than one spouse.

- If you and your spouse are **too closely related**, by blood or adoption, you will not be able to marry. You cannot marry your parent, grandparent, child, grandchild, brother or sister, half-brother or half-sister.
- If you or your spouse **cannot understand** what it means to get married, the marriage is not legal.
- If you are **forced** into the marriage, it is not legal in Canada.

(b) Formal Requirements

The second set of rules deals with how your marriage ceremony takes place.

If you get married in Canada, your marriage must follow the law of the province where your ceremony takes place. In Ontario, you must get a **marriage licence** from the licencing office in the town, city or municipality where you live. The licence, which costs a small fee, is valid for three months. You can use it to get married anywhere in Ontario.

A legally valid marriage ceremony must be conducted by someone licensed to do so by the province of Ontario. Some Imams are licensed to perform marriage ceremonies, but not all. An Imam has to be licensed by the province in order to perform legally valid marriage ceremonies. You can also be legally married by a judge, justice of the peace, city clerk or someone else licensed to perform marriages.

Are marriages from other countries legal in Canada?

Most of the time, legal marriages performed outside Canada will be recognized here. One exception to this general rule is polygamous marriages. As noted above, polygamy (having more than one spouse/wife) is not legal in Canada. If you were married in a country where polygamy is legal, you may have some rights to child support, spousal support and property division under Ontario family law if your relationship ends, even though your marriage is not legal here.

If you are living in Canada and you go to another country to get married, your marriage ceremony must follow the formal requirements of the country where you get married. However, to be legally valid in Canada, you must also satisfy the rules above about who is entitled to marry under Canadian law.

The general rule for Canadians who get married abroad is that the process (how to) is determined by where you get married but eligibility (who can marry) is determined by Canadian law. For example, if you are 15 years old and you get married while out of the country, Canadian law will not recognize your foreign marriage even if your marriage ceremony followed all of the rules in the country where your marriage took place. However, if you and your spouse are both eligible to marry under Canadian law and you get married in a country that permits marriage by proxy (by telephone or by the appointment of a *wakil*), your marriage will be recognized by Canadian law.

If you are unsure about the status of your marriage, get legal advice.

Getting a divorce in Canada

There is one law about divorce for everyone in Canada. It is called the *Divorce Act*. No matter where you live in Canada, the law and the process of getting a divorce are the same.

You must apply for a divorce in family court. Either you or your spouse can file the application or both of you can file a joint application. You do not need your husband's consent to apply for a divorce.

Obtaining a Muslim religious divorce in Canada does not mean that you are legally divorced. For a legal divorce, you must go through the process set out in the *Divorce Act*.

Your application can ask for just a divorce, or it can ask the court to decide about custody, support and how to divide property. These are called claims for **corollary relief**.

When you apply for a divorce, you must show that your marriage has broken down. There are three ways to do this. The most common way is when you and your spouse have been living separate and apart for at least one year before you applied for a divorce. You can live "separate and apart" in the same house if you no longer behave as though you are married.

It is also possible to get a divorce if one of you has committed adultery or your spouse has been so physically or mentally cruel that you can no longer live together.

Are divorces from other countries legal in Canada?

Ontario accepts divorces from other countries if you or your spouse lived in that country for at least one year before you applied for a divorce. If neither of you lived in the country for a year, your divorce may still be legal if the person who applied can prove that they have a "real and substantial connection" with that place. For example, if you were originally from the country that granted the divorce and had returned there when your marriage ended, the court could say that you had a "real and substantial connection" to that country. "Real and substantial connections" to the foreign country can also be shown if the person who got the divorce owns land or spends a lot of time there.

You lose the ability to claim some corollary relief in Canada if your husband divorces you in another country. If you believe the foreign divorce was improperly obtained, you must go to court in Canada. If the foreign divorce is set aside, you may then bring your own divorce proceeding and make all your claims for support and division of property.

If you were divorced in another country and you want to remarry in Canada, you will have to provide evidence of your divorce to establish that you are eligible to get married. To do this, you must have a certified copy of the divorce order. If it is not in English or French, you must also have a copy that has been translated by a certified translator. You also need a letter from an Ontario lawyer stating that your divorce should be recognized under Canadian law.

Some countries allow *bidah*, a quick divorce in which the wife does not participate. It is unlikely that a Canadian court would recognize this form of divorce.

Removing religious barriers to remarriage

Some religions do not recognize civil divorce and may say that you cannot participate in the religious community if you are divorced. They may also say that you cannot get remarried in a religious ceremony. In these cases, Canadian family law cannot help you remarry within your religion.

Canadian family law cannot force your husband to grant you a religious divorce.

Canadian law does say that spouses cannot use religious divorce to try to get their way in family law negotiations. If your ex-spouse tries to stop you from getting remarried within your faith community, the court may refuse to deal with his family law application or may decide that he cannot defend himself in the family proceeding. The court can also overrule a divorce settlement if it learns that your spouse got what he wanted in the divorce by threatening to stop you from getting remarried in your religious community. If your husband promised to give you a religious divorce as part of your settlement agreement and then he does not follow through on his promise, the court may give you some financial compensation.

Case Scenarios:

1. Sadia and Nessim marry in a Nikah ceremony in Canada, which is valid according to Pakistani law. They do not get a marriage licence. Is their marriage a 'legal' marriage for purposes of Canadian law?

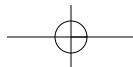
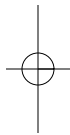
Answer: No. Because Sadia and Nessim were married in Canada, they were required to comply with the *Marriage Act* and obtain a licence.

2. Hassan and Sureya get married in Canada. Sureya later learns that Hassan is still legally married to someone else. Is her marriage legal? Does she have any rights under Canadian law?

Answer: Sureya's marriage would not be recognized under Canadian law. Canadian law does not allow people who are already married to marry again. Because her marriage took place in Canada, she is not able to make a claim to share in the family property. However, depending on their circumstances, she may still be able to make a claim for spousal support. If Hassan and Sureya had children, she can make claims for custody and support for the children.

3. Khalid and Yasmeen live in Canada. Khalid went to his home country, Jordan, to get a divorce. Yasmeen did not know he was going to get a divorce. What are Yasmeen's rights under Canadian law?

Answer: Even if the divorce was obtained in accordance with the law in Khalid's home country, a Canadian court could decide not to recognize because Yasmeen had no notice and was not able to participate in the process. The court might also decide not to recognize the divorce if Khalid did not have a real and substantial connection with Jordan. If the Canadian court does not recognize their divorce, Yasmeen can start an application for divorce here in Canada, and at the same time, make claims for support, division of property, etc.



This booklet is made possible by Family Law Education for Women (FLEW), a public legal education project funded by the government of Ontario. FLEW's goal is to provide information to women about their family law rights in Ontario. FLEW has also produced materials on the following topics: Alternative dispute resolution; custody and access; child protection; child support; criminal and family law; domestic contracts; family law arbitration; family law issues for immigrant, refugee and non-status women; marriage and divorce; finding legal assistance in family law; property division and spousal support. For information about materials available in other languages and formats, please see/visit www.onefamilylaw.ca and www.undroitdefamille.ca.

This booklet is available in multiple languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.

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The views expressed in these materials are the views of the Canadian Council of Muslim Women (CCMW) and FLEW and do not necessarily reflect those of the Province.



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