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**flew** Family Law  
Education for Women  
Women's Right to Know

**fodf** Femmes ontariennes et  
droit de la famille  
Le droit de savoir

# 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, it is recommended that you get legal advice as soon as possible to understand your options and to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem". You may also want to view our webinars on "Looking for a Family Law Lawyer", "Property Rights and Obligations of Married and Co-habiting Partners", and on other family law topics. All of these resources are on our website at [www.onefamilylaw.ca](http://www.onefamilylaw.ca).*

## **What is a legal marriage in Canada?**

For a marriage ceremony in Canada to be legal, there are two sets of rules that both partners have to follow. The first set of rules deals with who is legally allowed to marry. The second set of rules deals with how your marriage ceremony takes place.

### **1) Who can marry in Ontario?**

There are laws about who can and cannot legally marry. Here are the main rules about who is legally allowed to get married:

a) In Ontario, you must be at least **18 years old** to marry.

· There is an exception if you are 16 or 17 years old. You can get married if you have written permission from both of your parents, a legal guardian, or the Court. There are different age rules in other provinces and territories.

b) Across Canada, children **under 16** cannot marry, even with permission from their parents. It is against

the criminal law to celebrate, help with or participate in a marriage ceremony if you know that one of the people getting married is under 16 years old.

c) You can marry any person who is the legal age to marry. It does not matter what sex or gender the partners are.

d) If you and your partner are too closely related, by blood or adoption, you will not be able to marry. It is against the law to marry your parent, grandparent, child, grandchild, brother or sister, half-brother or half-sister.

e) If you are already married, you cannot marry another person. It is against the law in Canada to have more than one spouse. This is called **polygamy**.

- If you have been married in the past, you must prove that you are no longer married to that person, because of divorce or death, before you can marry someone else. If you were divorced outside Canada, you will need to prove that your divorce was legal in that country. (There is more information about divorce below).

f) Both you and your partner must understand what it means to get married. You must both voluntarily agree to be married. The law calls this “**enlightened and informed consent**”.

- If you are forced to marry, it is not a legal marriage. It is against the criminal law to celebrate, help with or participate in a marriage ceremony, if you know that one of the partners does not want to and is being forced to marry.

## 2) Requirements of Your Marriage Ceremony

The second set of rules about getting married deals with how your marriage ceremony is performed. If you get married in Canada, your marriage must follow the law of the province where your ceremony takes place.

Both partners must attend the ceremony in person. It is not possible to be married over the phone or internet. Both partners must stand in front of a person who is legally allowed to perform the ceremony.

In Ontario, before you get married, you must get a **marriage licence** from a government office in the town, city or municipality where you live. The licence, which costs a small fee, is valid for three (3) months. You must bring the licence to be signed by the person who performs the marriage ceremony, anywhere in Ontario.

For a marriage to be legal in Ontario, the person who performs your marriage ceremony has to be licenced or approved by the government. You can be married in a religious ceremony or a civil (non-religious) ceremony in Ontario.

- Religious ceremony: A religious official who is registered to marry people in Ontario can legally marry you, such as a Pastor, Priest, Rabbi or Imam.
- Civil ceremony: A judge, Justice of the Peace, city clerk or someone else licenced to perform marriages in Ontario can legally marry you.

A **marriage certificate** is an official paper that proves that you are legally married. You can get a marriage certificate if two people who watch your marriage ceremony sign the marriage licence, and the person who performs your ceremony sends the signed

and filled in marriage licence to a government records office. In Ontario, the office is called Service Ontario.

## **Are marriages from other countries legal in Canada?**

Most of the time, legal marriages performed outside Canada will be recognized as legal here. If you are living in Canada and you go to another country to get married, your ceremony must follow the marriage requirements of the country where you get married. To be a legally valid marriage in Canada, you must also follow the rules about who is allowed to marry under Canadian law (explained above).

## **Polygamy**

You should know that having more than one spouse (called “practicing polygamy”) is against the law in Canada. If you were married in a country where polygamy is legal, only one marriage to one other person will be recognized as legal here.

There can be both criminal consequences, and immigration consequences if you immigrated to Canada, related to practicing polygamy here. If you are concerned about how polygamy could affect you, a criminal law lawyer and an immigration law lawyer can help you.

If you are unsure if your marriage is legal in Canada, or if you have questions about your rights and your children’s rights, it is important to get legal advice from a family law lawyer.

## **Do I automatically become a Canadian citizen if I marry someone who is a Canadian citizen?**

Marriage to a Canadian citizen does not give you citizenship in Canada automatically. There are specific procedures you have to follow to become a Canadian citizen and requirements that you must meet to apply for citizenship. There is no special process for people who are married to Canadian citizens, but a Canadian citizen or permanent resident may sponsor a spouse to live in Canada as a permanent resident.

For more information about permanent residence, sponsorship or citizenship, see the **Citizenship and Immigration Canada** website at [www.cic.gc.ca](http://www.cic.gc.ca). You can also read our booklet on “Family Law Issues for Immigrant, Refugee and Non-status Women”.

## **Divorce and Separation in Canada**

**Divorce** is when you legally end your marriage.

**Separation** is when two partners who are married or who have been in a relationship without getting married decide to end their relationship and live separate lives.

If you are married you can be separated even if you do not get a legal divorce. But, if you or your partner wants to marry someone else, you must get a divorce first.

Family breakdown is a difficult, stressful time. If you and your partner divorce or separate, you will have to sort out many legal issues. You will likely have to decide about financial support, make arrangements about your children, and divide your family property.

Not every situation needs a lawyer, but for many family law problems, it is important to get legal advice.

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For more information about how to find and pay for a family law lawyer, see our booklet on "*Finding Help with your Family Law Problem*".

Married spouses have to get a Divorce Order from the Court if they want to legally end their marriage. If you get a divorce, you can ask the Court at the same time to decide other family law issues such as dividing your family property, support payments for you and your child, and parenting plans that decide whether a parent gets custody or access to visit children.

If you separate but do not get a divorce, you can still ask the Court to decide any of these issues.

You and your partner can also make your own arrangements about property, support payments and raising children, without going to Court. It is a good idea to write down your agreement in a Separation Agreement. You can find more information about Separation Agreements on the FLEW website.

## **How do I get a divorce?**

To apply for a divorce in Canada, you or your spouse must have lived in Canada for at least one year, immediately before applying for the divorce. You must apply for a divorce in a Court that deals with family law issues, by putting together documents called an Application. An **Application for Divorce** starts the Court process and explains what you want the Court to decide and order.

You do not need your spouse's permission to apply for a divorce. Either you or your spouse can file an Application for Divorce or both of you can file the documents together. This is called a **Joint**

**Application.** Your application can ask for only a divorce, or it can ask the Court to decide about child custody, child and spousal support, and how to divide family property at the same time. You can file your Application with or without the help of a lawyer.

To get a divorce, you must show that your marriage has broken down and there is no chance that you will get back together. There are three ways to do this:

**1. Living “Separate and Apart”:** The most common way to show that your marriage has broken down is by living “separate and apart” from your spouse for at least **one year**. You can be living “separate and apart” even if you continue to live in the same house as your spouse, as long as you are no longer behaving as a married couple. If you try to work on your marriage during the year you are separated, as long as you were back together in the relationship for less than 90 days, you will still be considered separated.

You can apply for a divorce as soon as you separate from your spouse, but the Court will not grant the divorce until you and your spouse have been separated for one full year.

**2. Adultery:** It is also possible to get a divorce if one of you has committed adultery. Adultery is when a married spouse has an intimate relationship with someone they are not married to.

**3. Abuse/Cruelty:** You can apply for a divorce if your spouse has been so physically or mentally cruel (abusive) that you can no longer live together.



In the case of adultery or cruelty, you do not have to wait a year before the divorce is granted. But you have to show proof of the adultery or cruelty/abuse for these types of cases, and this makes the case more complicated and costly. Sometimes, the Court system can be slow and using these reasons to get a divorce might not be any faster than showing you have been living "separate and apart" for at least one year. It is important to get legal advice from a family law lawyer to help you understand the best option for your situation.

### **Are divorces from other countries legal in Canada?**

There are different ways to have a divorce in another country accepted as legal in Canada.

1. If you or your spouse lived in another country for at least one year before you applied for a divorce, then if the divorce is granted, it will be accepted as legal in Canada.
2. If the person who applies for a divorce in another country can prove that they have a "real and substantial connection" with that country, then if the divorce is granted, it will be accepted as legal in Canada, even if neither of the spouses lived in the country for a year before applying for the divorce.

Some ways of showing a "real and substantial connection" with a country are if you are originally from the country and returned there when your relationship ended, or if the person who applied for the divorce owns land or spends a lot of time in the country that granted the divorce.

If your divorce is from another country, it may affect your family law rights to spousal support and division of family property in Canada. If you have concerns about a divorce that was granted in another country, it is a good idea to talk to a family law lawyer here.

If your divorce is from another country, and you want to marry someone else in Canada, you will have to show proof of your divorce so that you are able to get married here.

To do this, you must have an official copy of the Divorce Order. You will need a letter from a lawyer in Canada in the province or territory where you want to get married, that says that your divorce should be recognized under Canadian law.

If the Divorce Order is not in English or French, you will also need to get it translated into English or French by an approved translator. The lawyer can also help you with this.

### **Religious barriers to divorce and re-marriage**

A Court can grant a legal divorce to couples who were married in a civil or religious ceremony. But some religions do not recognize divorce and may say that if you get a civil (non-religious) divorce, you cannot participate in the religious community or get married again in a religious ceremony. Canadian family law does not give you rights to marry within your religion. But everyone who meets the legal requirements (explained above) has the right to get married in a civil ceremony in Canada.

Canadian family law cannot force your spouse to give you a religious divorce. But Canadian law does say that spouses cannot use the promise or refusal of a religious divorce to try to get their way in settling family law matters.

If your former spouse tries to stop you from getting married again within your faith community, the Court may refuse to decide on your former spouse's family law application for child custody, support payments or division of family property.

### **Separation for Common-law partners**

Couples who live together in a relationship but choose not to get legally married are sometimes called "**common-law**" partners. Common-law partners can end their relationship by separating from each other. You do not need to get a divorce if you were not legally married.

Each province has different rules about who is considered to be a common-law partner, and what family law rights common-law partners have when they separate. In Ontario, common-law partners have certain family law rights if:

- they have been living together for 3 years or more, or
- if they have a child together and have been in a steady relationship.

Common-law partners in Ontario have the right to apply for child custody or access, child support, and spousal support when they separate.

Even though the law recognizes common-law relationships in many ways, the rules about dividing

family property when married couples separate do not apply to common-law couples living in Ontario. In some cases, if you are ending a common-law relationship, the Court may order that you have rights to share in family property that you do not own yourself.

## **Deciding family matters at the end of your relationship**

Whether you are getting separated or divorced, you and your partner can make arrangements about money and your family with or without the help of lawyers and the Court.

If you and your partner can talk easily and honestly, you can make your own agreement about how to settle your family law issues, such as child custody and access, child support, spousal support and division of family property. It is a good idea to put your agreement in writing, with the date, and have both partners sign it. It is best if each partner gets a lawyer to look at the agreement, and to file it with the Court. You can find more information about Alternate Dispute Resolution (agreements out of Court) and Separation Agreements on the FLEW website.

If you and your partner cannot agree, or if the relationship is or was abusive, it is safer for you to get a lawyer and consider going to Court to settle issues about parenting arrangements, financial support and how to divide family property.

*For more information about family law rights after divorce or separation, see our booklets on: "Child Custody and Access", "Child Support", "Spousal Support", "Domestic Contracts," and "How Property is Divided in Family Law".*

The views expressed in these materials are the views of FLEW and do not necessarily reflect those of the Province.

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**There is a greater risk of violence when an intimate relationship is ending. If you are in immediate danger, call 911. If you or someone you know is at risk, visit the FLEW website for information on getting support.**

If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at [www.onefamilylaw.ca](http://www.onefamilylaw.ca) or [www.undroitdefamille.ca](http://www.undroitdefamille.ca).

## Family Law topics available in English\*

1. Alternative Dispute Resolution and Family Law (ENG 001)
2. Child Protection and Family Law (ENG 002)
3. Child Support (ENG 003)
4. Criminal and Family Law (ENG 004)
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
- 11. Marriage and Divorce (ENG 011)**
12. Spousal Support (ENG 012)

*\* This booklet is available in multiple formats and languages. Please see [www.onefamilylaw.ca](http://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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