

Marriage and Divorce

Booklet for Indigenous Women
FAMILY LAW FOR WOMEN IN ONTARIO

All Women.
One Family Law.
Know your Rights.

2018



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”, “When Charges are Laid in a Domestic Dispute – What to Expect”, and on other family law topics. You may also want to review other resources on family law topics on our website at 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**.

Who can marry?

- You must be at least 18 years old to get married in Ontario. 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.
- 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.
- You can get married to a person of any gender identity, including a woman, man, Two-spirit, Trans or Non-binary person.
- 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.
- If you are already married, you cannot marry another person. Having more than one spouse is called **polygamy**. It is a crime in Canada.
- If you have been married in the past, you must prove that you are not married to that person any more, 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.)
- 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.

What are the rules for your marriage ceremony?

There are also rules about 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.

You can be married in a religious ceremony, or a civil (non-religious) ceremony, which includes **Indigenous traditional or customary ceremonies**. Civil ceremonies can

be performed by a community Elder, Indigenous Chief, a judge, Justice of the Peace, city clerk or someone else licenced to perform marriages in Ontario.

For a religious or civil marriage to be legal in Ontario, the person who performs your marriage ceremony has to be licenced or approved by the government. Customary marriages must also follow the rules of the First Nation or Band government.

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 near where you live. The licence costs a small fee. You must bring the licence to be signed by the person who performs the marriage ceremony, anywhere in Ontario.

A **marriage certificate** is an official paper that proves that you are legally married. After the marriage ceremony, 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).

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.

“You have noticed that everything an Indian does is in a circle, and that is because the Power of the World always works in circles, and everything tries to be round.... The sky is round, and I have heard that the earth is round like a ball, and so are all the stars. The wind, in its greatest power, whirls. Birds make their nests in circles, for theirs is the same religion as ours.... Even the seasons form a great circle in their changing, and always come back again to where they were. The life of a man is a circle from childhood to childhood, and so it is in everything where power moves.”

Black Elk (1863-1950)
Oglala Sioux holy man

Did you know? Canadian geese are loyal lovers. They enjoy long walks in the park with their favourite goose that can last a lifetime.



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 and **talk to a lawyer** before you sign it. 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 you can 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 that you are separated, as long as you were only 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. A Customary Divorce is not a legal divorce, but it could help prove the date that you separated from your spouse.

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.

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.

Ontario law recognizes Indigenous customary marriages as legal civil marriages, as long as they follow the law for a legal marriage. Some Indigenous communities recognize customary divorce ceremonies. A **Customary Divorce is not a legal divorce in Canada**. If you are married and you want a legal divorce, you have to get a Divorce Order from the Court.

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.

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?

Canada accepts that divorces from other countries are legal 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 you returned there when your relationship ended, the court could say that you have a “real and substantial connection” to that country.

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 also 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 must also have a copy that has been translated by a certified translator.

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.

Case Scenario:

Claudia is 16 years old and is 4 months pregnant. Her boyfriend Darryl is 19, and they live in Ontario. Claudia and Darryl want to get married, but Claudia’s mom is against the marriage because she feels her daughter is too young. She wants Claudia to have the baby and finish her education. Because Claudia is only 16, she has to get written permission from both of her parents to legally marry. (If they didn’t agree, she was ready to talk to a lawyer about her other options.) Claudia’s parents reluctantly agreed to give their permission for her to get married after the baby is born. But the relationship between Darryl and Claudia falls apart after being married for 6 months. Darryl started drinking heavily and was getting violent with Claudia. Despite counseling, Darryl

continued to drink and spent less and less time at home with his family. Fed up, Claudia moved back home with her mom and dad. She applied for a divorce right away. The Court granted the divorce only after she and Darryl had been separated for a year. As part of the Divorce Order, Claudia was also granted the right to make all the major decisions for her child (sole custody).

“The beauty of the trees, the softness of the air, the fragrance of the grass, speaks to me. And my heart soars.” - Chief Dan George

Removing religious or community barriers to remarriage

A Court can grant a legal divorce to couples who were married in a civil or religious ceremony. But some religions and communities do not recognize divorce and may say that if you get a divorce in Court, you cannot participate in the community or get married again in a religious or cultural ceremony.

Canadian family law does not give you rights to marry within your religion or customs. But everyone who meets the legal requirements (explained above) has the right to get married in a non-religious, civil ceremony in Canada.

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 or cultural 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 continuously for 3 years or more, or
- 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. You don't have the automatic right to equally share family property with your ex-partner. But the Court might still order that you have rights to share in family property that you helped maintain or build, even if you do not own it yourself.

Separation for Common-law partners living on a Reserve

There are different rules if you have family property (such as a family home, land or buildings) on a Reserve. You may have rights to share in the value of that property if:

- either you or your partner is a member of a First Nation or a “status Indian” under the Indian Act, and
- you are married or in a common-law relationship living together as a couple, for at least one year.

For more information about your rights to share the value of family property on and off Reserve, see the FLEW booklet about “How Property is Divided in Family Law”.

Deciding family matters at the end of your relationship

Family breakdown is a difficult, stressful time. If you and your partner divorce or separate, you will have to sort out many legal issues.

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 issues about parenting, child support, spousal support and division of family property.

If you and your partner are making your own agreement, it is a good idea to write down the things you have agreed, with the date. It is best if each partner gets a lawyer to look at the agreement. **You should not sign an agreement before talking to a lawyer.**

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.

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

Legal Aid Ontario may provide free legal advice on family law issues for people who meet income requirements and who self-identify as First Nation, Metis or Inuit. Go to www.legalaid.on.ca (search: family law) or call 1-800-668-8258.

For more information about how to find and pay for a family law lawyer, see the FLEW booklet on “Finding Help with your Family Law Problem”.

We call upon the mountains, the Cascades, and the Olympics, the high green valleys and meadows filled with wild flowers, the snows that never melt, the summits of intense silence, and we ask that they – Teach us and show us the way.

We call upon the forests, the great trees reaching strongly to the sky with earth in their roots and the heavens in their branches, the fir and the pine and the cedar, and we ask them to – Teach us, and show us the way.

We call upon the creatures of the fields and forests and the seas, our brothers and sisters the wolves and deer, the eagle and dove, the great whales and the dolphin, the beautiful Orca and salmon who share the Northwest home, and we ask them to – Teach us, and show us the way.

We all upon all those who have lived on this earth, our ancestors and our friends, who dreamed the best for future generations, and upon whose lives our lives are built, and with thanksgiving, we call upon them to – Teach us, and show us the way.

And lastly, we call upon all that we hold most sacred, the presence and power of the Great Spirit of love and truth which flows through all the universe, to be with us to – Teach us, and show us the way.

-Chinook prayer Ceremony

You may also view our other FLEW booklets for Indigenous women on our website at www.onefamilylaw.ca:

1. Alternative Dispute Resolution
2. Child Protection
3. Child and Spousal Support
4. Custody and Access
5. Marriage and Divorce
6. How Property is Divided in Family Law
7. Criminal and Family Law

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 or 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)

*these booklets are available in multiple formats and 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.

Project Advisory Committee:

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