

Living Together or Living Apart

Common-law relationships, marriage,
separation, and divorce



Legal
Services
Society

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This booklet explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. The information in this booklet is up to date as of December 2009.

See the back cover to find out how to order copies of this booklet.

This booklet is coming soon in PDF in Arabic, Chinese, English, Farsi, Korean, Spanish, and Vietnamese on the LSS Family Law in British Columbia website at www.familylaw.lss.bc.ca, and on MOSAIC's website at www.multilingolegal.ca.

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Where to find what you need in this booklet

- **What can I do to protect myself?**
(page 4)
- **What do I take if I decide to leave?**
(page 17)
- **How can I protect my children's rights?**
(pages 19–29)
- **What should I do about money and property?**
(pages 31–41)
- **Do I have to get a court order?**
(pages 15–17 & 43–44)
- **What if I got married in another country?**
(page 45)
- **Who can I talk to about my rights?**
(pages 49–55)

Physical safety

If you are afraid that your spouse or common-law partner will physically hurt you or your children, or if he or she has done so in the past, here are some things you can do:

- Call the police at 9-1-1 if you are in immediate danger of being hurt, or if you have been hurt. Some areas do not have 911 service; check the inside front cover of your phone book to find the emergency number for your area.
- Phone a transition house. Transition houses (sometimes called safe houses or shelters) are places where women and children can go if they are in danger.

To find a transition house, call VictimLINK (no charge) at 1-800-563-0808 (24 hours a day, 7 days a week). VictimLINK provides interpretation services for all the major languages spoken in BC.

Once you are safe

- Talk to a lawyer to get a restraining order if you need to keep your spouse or partner away from you and your children. If you cannot afford a lawyer and you meet the financial guidelines, you can apply for legal aid to pay a lawyer for you. See page 49 for how to apply for legal aid.
- If you apply and are not eligible for your own legal aid lawyer, you may still be able to get some help from family duty counsel. Duty counsel are lawyers paid by the Legal Services

Society to provide limited assistance to lower income people who have family law problems. Duty counsel do not take on your whole case but can help you deal with the family law system.

- Get legal information. The Legal Services Society publishes several free booklets on family law matters, including *Surviving Relationship Violence and Abuse* (available in English; coming March 2010), *Speaking of Abuse: Violence Against Women in Relationships* (available in several languages), and *For Your Protection: Peace Bonds and Restraining Orders* (available in Chinese, English, and Punjabi), which contain useful information about court orders. If you need emergency financial help, see *Your Welfare Rights: A Guide to BC Employment and Assistance* (available in English only). The back cover of this booklet explains how to order these booklets.
- Visit the Family Law in BC website at www.familylaw.lss.bc.ca. This site contains self-help guides, fact sheets, videos, and other resources to help you solve family law problems, including divorce, custody, access, or support.
- Talk to a legal information outreach worker (only in Vancouver). These are Legal Services Society staff who can help you find legal information, resources, and other professionals to help you with your family case. See “Legal aid” on page 49 for contact information.

Introduction

This booklet explains the basics of family law in BC. It includes information about:

- living common-law or being married;
- the process for separation and divorce;
- how to work out custody, support, and access issues if you have children; and
- how to sort out money matters.

Family law can be complicated, but with the right information and help, you can resolve many issues on your own. This booklet explains in plain language what your legal options are and where you can get help.

Finding out what choices you have is a positive first step, and there are many free and low-cost resources listed at the back of this booklet to help you decide what to do about your legal issues.

Types of relationships

Marriage

To be legally married, you must have a legal marriage ceremony (religious or civil). If you were married outside of BC, then a legal marriage certificate from another province or country will prove that you are legally married. Both same sex and opposite-sex couples can be legally married. After the legal ceremony, you stay married until one spouse dies or until the marriage is legally ended by a divorce.

In this booklet we refer to people in married relationships as spouses.

Living common-law

If you are living as a couple but you are not married, you are in a common-law or “marriage-like” relationship. You can be a same-sex couple or an opposite-sex couple. If you are dating but do not live together, you are not in a common-law relationship and the law does not apply to your situation unless you have children.

Under federal laws, you are in a common-law relationship if you and your partner have lived together for one year or more. Under British Columbia law, you are in a common-law relationship if you and your partner have lived together for two years or more. It is not true that if common-law partners stay together a certain number of years they become legally married.

Some married people have separated but are not divorced when they decided to live common-law with someone else. There is nothing illegal about living in

a common-law relationship while you are still legally married to another person.

In this booklet we refer to people in common-law relationships as partners.

The laws that may affect you

The two laws in BC that you may need to know about are the provincial Family Relations Act, which applies to common-law and married relationships, and the federal Divorce Act, which only applies to married couples.

The two trial courts in BC that can make family court orders are the Provincial Court and BC Supreme Court. Only the BC Supreme Court can make an order for divorce or to divide property. But both the Provincial Court and BC Supreme Court can make orders regarding child custody, guardianship, access, and child and spousal support.

For more about how marriage and common-law relationships are different under the law, see the chart on page 59. To find out more about the differences between Provincial Court and BC Supreme Court, see the chart on page 58.

Cohabitation, pre-nuptial, and marriage agreements

One way to try to protect your property or savings in case your relationship ever breaks up is to make a written agreement with the other person:

- at the start of or during your common-law relationship (co-habitation agreement),
- before your marriage (pre-nuptial agreement), or
- during your marriage (marriage agreement).

These agreements can be about:

- who would have custody of any children, or access to them,
- how you would arrange child and/or spousal support, and
- how your property and belongings would be divided if you separate.

Any agreement you make should be written and signed by both of you. It is also a good idea to have legal advice about what should go into your agreement and how it should be written. For your protection, you each need to see a different lawyer. You should also see a lawyer if you have already signed an agreement and have questions about it. See pages 49–51 for how to find a lawyer.

Agreements also cover what goes on during the time you live together. You can write down:

- who owns what;
- how much money each of you will put in to run the household;

- whether you will have a joint household credit card, and separate individual credit cards;
- who will pay the debts; and
- how you will use and look after the things you buy together.

See “Settling other money matters” on pages 31–41 to see what might happen to some of your debts and property if you separate and did not sign an agreement.

You can include in your agreement what will happen if you separate. That way, if you need to, you can take your agreement to court to show what you had agreed to do. You can write down what you agreed to about child support, spousal support, custody, access, and property. Many other things could go into your agreement. What goes in it is up to you and your spouse or common-law partner.

Your agreement should not conflict with the law. For example, the law states that both parents have to support their children. So, if you break up, you cannot agree that you or the other parent will not have to pay child support. If you use your agreement in court, the court will decide whether the agreement is fair, and may change provisions about both property and support.

I'd like to write into the agreement that I get the children's trophies ...

... and I want the jewellery.

The car was mine, but we bought the living room furniture together.

What if I trade you my half of the furniture for the china we bought?



Separation

If you are married

If you are married, you become legally separated as soon as you and your spouse start living apart from each other with the intention of separating. You do not have to see a lawyer or go to court to be legally separated. You might even still be living in the same house to save expenses, but you are usually still considered separated if you are not sharing things like meals, a bedroom, or social activities. You do not need your spouse's consent to start living separately. You will be legally married until you get a court order for divorce. You do not need your spouse's consent to apply for a divorce. See page 44 for more about divorce.

If you are living common-law

If you are in a common-law relationship, the relationship ends as soon as you stop living together. You do not have to get a divorce. But if you want to get "spousal" support, you have one year after the date of separation to start a legal action in court. See page 31 for more on spousal support.

Options other than court

Separation agreements

If you and your spouse or common-law partner can agree about the issues resulting from your separation, you can put it all into a written separation agreement and save time and money that would have been spent on going to court. You can start working on an agreement about children, support, or property as soon as you separate.

Separation agreements can be temporary or permanent, depending on what you and your ex-spouse or ex-partner want. If you have a previous agreement (see page 11), you can use it as a basis for a separation agreement.

Before you agree to the terms of your separation, take some time to think about it. If you do come to an agreement, you should have a lawyer look at it before you sign it. Find a lawyer who will give legal advice to you only, because one lawyer cannot act for both people in a separation or divorce.

You may also choose to put your agreement into a consent court order. A consent order is a court order made by a judge, usually without a court hearing, stating that you both agree to the terms of your separation.

You should not sign any agreement if you feel any pressure to do so. If one of you does not sign it, you do not have an agreement.

Mediation and family justice counsellors, described below, are two options that may help you and your ex-spouse or ex-partner work out a separation agreement without going to court. If court is your only option, see page 43.

Mediation

Mediation provides you with someone called a mediator whose job is to help you and your ex-spouse or ex-partner work out agreements about issues such as custody, access, support, and property. For mediation to work, it is important that the mediator seems fair and helps both you and your spouse or partner say what you want in an agreement. Mediation may not be a good option if you are afraid of your ex-spouse or ex-partner. Mediators cannot act as lawyers for either side, so you still need to get legal advice.

Family justice counsellors

Family justice counsellors provide free services for families and couples with low incomes. They can help you with mediation and give you information about the legal process, and getting consent orders and separation agreements concerning support, guardianship, custody, access, or property division (limited) issues.

See “Where to get legal help and information” on page 49 for how to find a lawyer, mediator, or family justice counsellor.

What to take with you if you leave

If you plan to leave your marriage or common-law relationship, and you want your children to live with you, you need to take them with you when you go.

Here are some of the important documents and belongings you should take with you:

- Financial information, such as your tax returns for at least three years, bank account and credit card statements, investments, debts, and copies of recent pay stubs
- Your CareCard (medicare card)
- Your marriage certificate
- Your passport, your children’s passports, and any other immigration papers you may have
- Your status card and identification
- Your children’s birth certificates and CareCards (medicare cards)

(continued on next page)

- Your clothing and personal belongings and those of your children
- Photocopies of information about income and assets in your spouse's name alone, such as pay stubs, tax returns, company records and ledgers, bank accounts, investments, and RRSPs. Also write down your spouse's Social Insurance Number, CareCard number, and date of birth (this can be useful later if you have a dispute about money and property, or if you need to find your spouse or common-law partner)
- Medications and prescriptions for you and your children

If you have children

If you and your ex-spouse or ex-partner have dependent children (usually under the age of 19), you will need to decide about the legal issues of custody, guardianship, and access, as well as who is responsible for child support. Even if the children are not biologically yours, you could be responsible for them.

Being a parent: Your legal obligations

Biological parent

The legal system refers to the biological mother and father as the natural parents. The biological mother and father of a child each have a legal responsibility to help support that child, at least until the child is 19. Even if you have never lived with the other parent, you can be ordered to pay child support. If an alleged father denies being the parent of the child, the court can order him to take a paternity test. See page 25 for how to get child support.

Step-parent

The terms step-parent and legal parent mean the same thing. You become a step-parent if you and the biological parent of the child:

- are or were married, or
- lived in a common-law relationship for at least two years,

AND

- you have contributed to the support and maintenance of your spouse's or partner's child for at least one year.

A step-parent can have a legal obligation to help support the child, just as the biological mother and father do.

Adoptive parent

Both married and common-law couples can apply to adopt a child. If you want to adopt your partner's child from another relationship, you must obtain the consent of the other natural parent. Adoptive parents have the same obligations as natural parents for child support, and the same rights to apply for custody or access orders if the couple separates. After a child is adopted, the other natural parent no longer has a legal duty to pay child support.

Caring for the children

Custody

If you have separated from your spouse or partner and your children live with you, you are said to have "de facto" custody ("de facto" means "in fact"). That means you have the right and responsibility to care for the children on a daily basis. There are different kinds of custody arrangements:

- **Sole custody** means the child lives primarily with one parent only.
- **Joint custody** means both parents equally share the rights and responsibilities relating to the children. The children may live with both parents equally or primarily with one parent.
- **Shared custody** means each parent has the children for at least 40 percent of the time.
- **Split custody** means each parent has custody of one or more of the children.

If you and the other parent can agree on a custody arrangement, it is a good idea to put it in writing. You can get free legal help to do this from a family justice counsellor. See page 53 for contact information.

Or you could get help from a mediator to reach an agreement. See page 54 for more about mediators.

If you and the other parent still cannot agree about custody, you can go to court and ask a judge to decide. It is important to get legal advice about custody arrangements. If you cannot afford a lawyer, legal aid or family duty counsel may be able to help you. See “Where to get legal help and information” on page 49 for how to find these services.

When custody is decided in court, the judge will consider what arrangement is in “the best interests of the child.” The judge will consider, for example:

- the health and emotional well-being of the child,
- any special needs the child may have,
- what the child wants (if the judge feels the child is old enough),
- the love and affection between the child and other people,
- education and training for the child,
- how well a parent can look after the child, and
- the willingness of one parent to provide access to the other parent.

Unless a child is directly affected, the judge will not consider a parent’s behaviour. For example, one parent’s affair or adultery is not a deciding factor in who should raise the child.

Being a guardian

There are two ways of being a guardian. You can be the guardian of a child or the guardian of what a child owns. Like custody, guardianship can be sole or joint.

The guardian of a child decides things like education, health care, or religious training. The guardian of what a child owns manages things like the child's money or property.

If there is no court order or agreement, parents who lived together (married or common-law) are considered to be joint guardians of the child's money and property. After you separate, you become a guardian in the same way you get custody: either by agreeing in writing or by going to court.

It is a good idea to name a guardian for your children in your will. That way, if there is no joint guardian surviving you, this person will have a legal right to look after your children if you die before they turn 19 (the age at which children become adults in BC). If the parent with a court order for sole custody dies, the surviving parent will have to go to court to get custody.

Access

When a child lives with one parent, the other parent usually has the right to visit the child. The legal word for this is "access." Even if you and the other parent no longer get along, the law of access recognizes a child's right to continue to have a relationship with both parents after they separate.

To arrange access, you and the other parent can simply agree and do nothing more, or you can put your agreement in writing and file a copy at the court registry. Either one of you can also go to court and let the judge

decide the terms of access in a court order. Grandparents, stepparents, and other people who may be important to your child can also apply to court for access.

An access order can be “reasonable and generous” or “specified” (which means the specific times of visits are spelled out). Access can also be supervised when there are safety concerns about the other parent visiting the child. If you and the other parent cannot talk to each other, ask the court to specify a schedule for visits in the court order.

Keep in mind that if the other parent has access, you may not be able to move to a different town or city with the children. You should see a lawyer before you decide to move. See “Where to get legal help and information” on page 49 for how to find a lawyer.

Sid took no interest in Jason when he was a baby and didn't apply for access until three years after our divorce. Now he's asking for access every weekend. I'm worried Sid will have his friends over when Jason's around, doing drugs and partying all night long.

Sounds like you need a lawyer. A lawyer can argue in court that Sid shouldn't get this kind of access because it's not in Jason's best interests.



Both you and the other parent may have to take a “Parenting After Separation” course before a court will let you apply for child custody and/or access. This is a free three-hour workshop about ways to solve problems with the other parent, and is open to any parent who is going through a separation. The manual for this workshop is available in English, French, Chinese, and Punjabi. Phone your local Family Justice Centre (see page 53) or your local courthouse to see if a workshop is offered in your community.

Limits on access

If you have concerns about the other parent, you can ask a judge to make conditions in a court order to help protect the child. For example, an access order could say that the other parent:

- cannot take the child out of the province,
- cannot take alcohol or drugs immediately before and during visits, and/or
- can only visit the child when a supervisor (a neutral person) is present.

If you fear for your safety or your child’s safety during access visits, see a lawyer immediately. If you cannot afford a lawyer, you may be able to get legal aid. You may also be able to get legal aid if you have been denied access to your child. See page 49 for more about legal aid.

Even if the other parent is not paying child support or is behind in their payments, you cannot refuse his or her right to access. As far as the law is concerned, access is not tied to payment of child support but is the right of a child to visit the other parent.

Getting custody and access orders

Biological parents, as well as step-parents, adoptive parents, grandparents, and other relatives of the child can apply to court for custody or access orders.

Child support

Biological parents, step-parents, and adoptive parents have a legal duty to support their children, even if one parent does not see or take care of the children. When parents separate, the law may require one parent to pay money to the parent who has custody to help provide for the daily needs of the children. This money is called support or maintenance.

Child support is the right of the child and not the right of the parent who has custody of the child. A parent cannot deny access to the other parent if they fail to pay or fall behind on child support payments. Likewise, child support does not depend on how much access a parent has to the child.

A parent also cannot “bargain away” child support. The court will not accept an agreement saying that the other parent does not have to pay child support.

Getting child support

Like custody and access, you and the other parent may come to a written agreement about child support outside of the court, or if you cannot agree, you can apply to the court and let a judge decide. If you separate from the other parent and your child lives with you, you can apply to the court for support from the other biological parent at any time (until your child is 19). The court will not order child support payments unless you file an application. See page 43 for more about court orders.

Getting child support from a common-law step-parent

To get child support from a common-law step-parent, you must apply to the court within one year following the last time he or she helped financially support your child. It is a good idea to talk to a lawyer about this important time limit. See pages 49–51 for how to find a lawyer.

To figure out the amount of support a parent should pay, the courts use the Federal Child Support Guidelines, which are based on the number of children involved and primarily the income of the parent who must pay child support. The guidelines are online at www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/legis/fcsg-lfpae/index.html. The Child Support Online Lookup will calculate the amount for you.

The support amounts are different for each province. The court will use the guidelines for the province where the paying parent lives and works even if the children live in another province.

The court will ask you to provide each other and the court with financial statements, three years of tax returns, and pay stubs (or income assistance/employment insurance statements) for the last three months. If you do not have the financial statements when required, a court may simply estimate how much a parent has to pay. If you have a new spouse or common-law partner, his or her income may also have to be reported. You should talk to a lawyer about this requirement.

If you need help to collect child support payments ordered by a judge, register with the Family Maintenance

Enforcement Program. See page 32 for more information about the program.

Extra expenses

The amounts set out in the child support guidelines are the minimum amounts for child support. If you have custody of the child and also have “special or extraordinary expenses,” for the child, the court may order that the other parent pay a higher amount of child support.

Depending on how necessary an expense is, how much it is, and whether the other parent can afford it, you can ask for help to pay for things like childcare and medical costs, dental expenses like braces, counselling, prescriptions, and tutors.

Undue hardship

If the other parent is applying for child support from you and you think that you cannot afford the minimum amount, you can ask the court to reduce the amount. You should talk to a lawyer to find out if your situation might be considered undue hardship by the court.

Changing a child support order

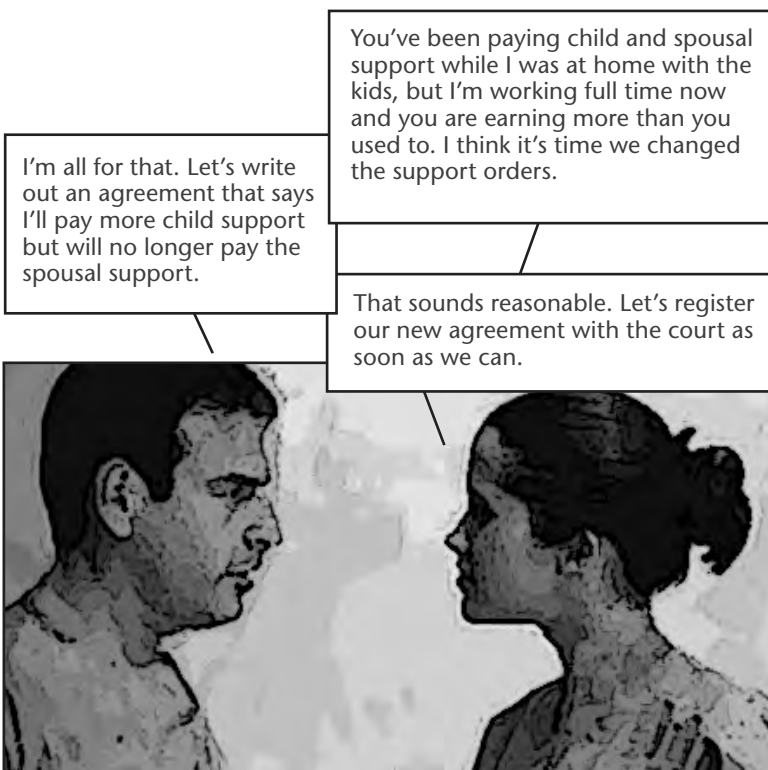
Either parent can apply to lower or raise child support payments if there is a change in circumstances, such as a long-term change of income for the parent who is paying, a change to the child’s special or extraordinary expenses, or a change in custodial arrangements.

If responsibility for the daily care of a child changes from the other parent to you, you may apply to change the child support order or any agreement you have so that the other parent now pays child support to you.

For more information on when you can change a child support order, see the box on page 33.

How long child support will last

Child support orders usually say the paying parent has to pay child support for children under 19 years old, and for children 19 or older only if the child is going to school or is unable to support themselves due to illness, disability, or some other reason.



Money paid under child support orders made since May 1, 1997, is not considered taxable income for the receiving parent or a tax deduction for the paying parent. Orders made before May 1, 1997, still have tax consequences. For details, contact the Canada Revenue Agency (CRA), listed in the blue pages of your telephone book under Government of Canada — Taxes — Canada Revenue Agency.

Settling other money matters

This section will give you some basic guidance about some other issues that you will need to settle if your marriage or common-law relationship ends, such as:

- spousal support
- debts
- property
- benefits

Unless otherwise stated, the legal rights described below apply to people who were married or lived common-law. Important time limits are in bold text.

Spousal support

Depending on your circumstances, you may be able to ask your ex-spouse or ex-partner for help with your living expenses. This used to be called alimony, but is now called spousal support. If you and your ex-spouse or ex-partner cannot agree on whether one of you should pay spousal support, you can go to court to ask for an order (see page 43 for more on court orders).

If you were married, you must apply for spousal support **within two years** of an order for divorce or separation under the Family Relations Act. There is no time limit under the Divorce Act.

If you were in a common-law relationship, you must have lived together for at least two years to get a court order for spousal support. You have **one year** from the time you stopped living in a marriage-like relationship to apply for spousal support.

If you apply for spousal support, some of the things the court will consider are whether:

- you worked outside the home during the marriage or relationship,
- you lived with your ex-spouse or ex-partner for a long time,
- you are able to be self-supporting,
- you are at home with the children,
- you earn a lot less than your ex-spouse or ex-partner, and
- your ex-spouse or ex-partner has the ability to pay.

How long spousal support will last

Spousal support orders are often made for a certain period of time, possibly a few years. Longer relationships can lead to orders for longer periods of support. But the law still expects people to support themselves as soon as possible after a divorce or separation. If you need to extend spousal support, however, apply before the end of the time limit stated in the court order. It is a good idea to get a lawyer's help. See pages 49–51 for how to find a lawyer.

Family Maintenance Enforcement Program

Once you have a written agreement or an order for child or spousal support that is filed at the court registry, you can

register your court order or agreement with the Family Maintenance Enforcement Program (FMEP). FMEP is a free program of the BC government that will help you collect any support owed to you. You can apply to register with FMEP as soon as you get a support order, or your separation agreement is filed with the court. You do not have to wait until the payments are late. See page 54 for contact information.

When you can change the amount of child or spousal support

You can apply to change (vary) a child support or spousal support court order, or a child support agreement, when there is a “significant change in circumstances” such as:

- One parent gets a raise in pay (a court can order an increase back to the date of the raise, if you were not told about the increased income).
- The paying parent becomes unemployed or disabled and unable to pay.
- A child has moved out of your home.
- A child is more than 19 years old and working.
- A child has gone to live with the other parent.
- If the child support order was made before May 1, 1997 (when the child support guidelines came into effect) or before May 1, 2006 (when the guidelines were updated), and you want to change the payment to match the new guidelines.

(continued on next page)

- Either parent gets remarried and has additional household income from their new spouse, or new family responsibilities.
- Either parent gets a financial windfall.

You can also apply to change a spousal support agreement, even if it is an agreement that no support be paid. This can be complicated, and usually requires the assistance of a lawyer.

Debts

Whether you are married or living common-law, you are responsible for any debts in your name. If you sign a loan, it is your loan and your responsibility. If your ex-spouse or ex-partner signs a loan, it is their responsibility. But if you co-sign or guarantee a loan for your ex-spouse or ex-partner, you could be responsible for the entire debt.

If you have a joint credit card with your ex-spouse or ex-partner, both of you are responsible for all the debts owing on the card when you separate.

Legal responsibility for joint debts can sometimes seem unfair, especially if they are the family debts of a couple who lived together for a long time. Family debts can include mortgages, loans from family members, bank lines of credit or overdrafts, credit cards, income tax, and repair costs. Creditors can choose to seek payment from only one person where a couple has joint debts. To be fair to both parties in a divorce, a judge may take family debts into account when deciding how to divide family assets or make an order for spousal support.

Sort out your debts as soon as possible. For example, you can insist that the debts be paid off from the proceeds of the sale of the family house before any money goes to either you or your ex-spouse or ex-partner.

If you have separated, advise all your creditors in writing that you are no longer with your spouse or partner. Ask banks to remove your name from any joint credit cards and to freeze any overdrafts and lines of credit so your ex-spouse or ex-partner cannot run them up to their limits. This can get complicated, however, so you may need to get some legal advice.

Taking care of the details

If you separate from your spouse or partner, you may want to consider taking the following actions:

- Put bank accounts and credit cards in your name alone. Separation or divorce does not automatically change joint accounts or credit cards.
- Change the beneficiary of your insurance, RRSPs, or other investments. Separation or divorce does not automatically change beneficiaries.
- Write a will, or change the terms of your current will if it includes your partner, spouse, or step-children. A divorce order will cancel any gift to a spouse in a will you wrote previously. Find out which parts of your will you may have to change. It is a good idea to get legal advice about this. See pages 50–51 for how to find legal advice.

Benefits

Income assistance (welfare)

If you would like to know how to apply for income assistance, see page 52 for how to find an advocate to help you. You may also want to read *Your Welfare Rights: A Guide to BC Employment and Assistance*, available online (in English only) at www.legalaid.bc.ca (look under “Our publications”) or see the back of this booklet for order information.

If you are already on income assistance, be sure to tell the employment and assistance office that you have separated, because this will affect how much you are paid each month.

If your children live with you, the Ministry of Housing and Social Development will arrange for you to meet with a family maintenance worker to talk about getting child support from the other parent. The worker will try to arrange for a child support agreement or apply to court to get an order for child support from the other parent. **If you were in an abusive relationship and do not want child support from your ex-spouse or ex-partner, tell the worker.** The ministry may decide not to try to get child support for you.

Seniors' benefits

Married spouses and common-law partners who have lived together at least one year are entitled to federal benefits such as the Old Age Security pension, the spouse's Allowance, and the Guaranteed Income Supplement.

The spouse's Allowance is for couples with low incomes. It is paid to the spouse or partner who is 60 to 64 years old when the other spouse or partner is 65 and receiving the

Old Age Security pension. If you are receiving this benefit, and you are 60 to 64 when you separate from your spouse or partner, your allowance will be stopped three months after your separation.

The Guaranteed Income Supplement (GIS) is based on the combined income of you and your spouse or partner. If you separate and are living on a low income, you will still be eligible for the GIS as a single person. Advise the GIS office of the separation right away.

Canada Pension Plan credit splitting

When a relationship ends, the Canada Pension Plan (CPP) pension contributions that a couple made while they lived together can be shared equally between them. This division is called credit splitting. You must ask to have CPP credits split. To qualify, you must have lived together for at least one year (either common-law or married).

If you are divorced or have had your marriage annulled, you can apply for credit splitting at any time (there is no deadline).

If you are married and separated, but not divorced, you can apply to divide CPP credits any time after a 12-month separation period up to the death of your spouse. If your separated spouse dies before a claim for credit splitting has been made, and you want to claim your share of these benefits, you must apply **within three years** of the date of his or her death.

If you were living common-law, you can apply for credit splitting after you have been separated for one year. You must apply **within four years** of the date of separation.

If you signed an agreement with your spouse or partner that says you will not split CPP pension credits, you are usually bound by the agreement.

For more information about seniors' benefits and CPP, read *Benefits and Services for Seniors* (online only at www.legalaid.bc.ca; look under "Our publications"). Or contact the Department of Human Resources and Social Development (HRSD) at one of the following toll-free numbers:

English: 1-800-277-9914

French: 1-800-277-9915

Or visit the HRSD website at www.sdc.gc.ca.

Some important legal differences

The following legal rights are different depending on whether you were married or living common-law before a separation.

If you were married

Property

Family property is everything you and your spouse owned and used for a family purpose, such as the family home, RRSPs, investments, bank accounts, insurance policies, and pensions. This property is referred to as "family assets." If you were legally married, you are usually entitled to one half of all the property acquired and used by the family during the marriage without proving any contribution or ownership. There are exceptions to this rule if the court considers an equal division of property to be unfair. The exceptions might depend on the length of the marriage and separation, economic independence, who bought the property, and whether it was an inheritance or gift.

If you owned the house or had savings before the relationship, were married only a short time, or your

property was not used by the family, you may be able to apply to the court to divide the property unequally. It is a good idea to talk to a lawyer. See pages 49–51 for how to find a lawyer.

Work pensions

Work pensions can be divided between you and your spouse after a separation or divorce. You must apply to divide a work pension **within two years** of a court order granting a divorce, annulment, or judicial separation. A pension can be worth a lot of money, so it is important to get detailed information about what it is really worth before you consider signing away your right to part of it. Many people apply to divide family property, including pensions, at the time they start their divorce proceedings.

Medical/dental plans

Married spouses and children under 19 can still be covered by a working ex-spouse's provincial medical coverage (medicare) after separation. If you divorce, however, you are no longer a spouse and therefore no longer covered (you will have to apply for separate coverage).

If your ex-spouse has a work benefits plan that covers other medical and dental expenses, you and your children may still be covered even after a separation. To make sure you and your children are still covered, regularly contact the people who administer the plan.

If you get a divorce, many work plans will end your coverage, but not your children's. Check with the people who administer the plan to find out what it provides. You may want to take this into account when discussing spousal support.

If your ex-spouse cancels medical and dental coverage for you or your children even though their work benefits plan makes coverage available to children and separated spouses, the court can order that the plan continue. However, the court cannot order the plan to provide coverage if its terms allow it to end coverage upon a divorce.

If you were living common-law

Property

Property is everything you and your partner owned or used for a family purpose, such as the family home, RRSPs, investments, bank accounts, insurance policies, and pensions. The law about how property is divided when a marriage ends does not apply to you if you were in a common-law relationship.

If your name is not on the property, and you do not have a written agreement stating what both partners have agreed to, you will have to prove you have a right to a part of it. This involves showing that you contributed to looking after the property or to the household expenses, for example, or that you maintained the home and looked after the children, giving the partner the opportunity to work and acquire the property. This is called the law of “constructive trust.”

You can apply to the court to divide property with your common-law partner within one year of separating even if you lived together less than two years. The laws about property are complicated, however, and there are important time limits. It is a good idea to talk with a lawyer as soon as possible. See pages 49–51 for how to find a lawyer.

Work pensions

If you lived common-law, you will have to prove you contributed directly to your ex-partner's pension to successfully claim a share of it. A lawyer can help you to do this. See pages 49–51 for how to find a lawyer.

Medical/dental plans

If you were covered by your working partner's provincial medical coverage (medicare), you should apply for separate coverage for yourself as soon as you separate, but any children may still be covered on the other parent's plan.

If your ex-partner has a work benefits plan that covers other medical and dental expenses, you and your children may still be covered even after a separation. To make sure you and your children are still covered, regularly contact the people who administer the plan.

If your ex-partner cancels medical and dental coverage for you or your children even though their work benefits plan makes coverage available to children and separated common-law partners, the court can order that the plan continue. However, the court cannot order the plan to provide coverage if its terms allow it to end coverage when the relationship ends.

Your other legal options

When you cannot agree: Going to court

If you and your ex-spouse or ex-common-law partner cannot agree about the legal issues of separating, one of you can apply to the court to decide. In most cases, the court will want to meet with you and your ex-spouse or ex-partner to see if some agreement can be reached before you go to a trial.

If you plan to go to court on your own to get a court order, you may want to get some help from family duty counsel. See page 50 for how to find one. If you have access to the Internet, there are self-help guides (in English only) on how to apply for or change a support, guardianship, custody, or access court order. See the Family Law in BC website at www.familylaw.lss.bc.ca.

“Interim” court orders provide a temporary solution to immediate situations such as custody, access, child and spousal support, and some property issues such as who will live in the family home.

Sometimes interim orders are agreeable to you and your ex-spouse or ex-partner and you will not need to go back to court to make them permanent. But if you want to change an interim order, you can apply to the court for a final order. The court can make a final order after all matters are settled either by consent or after a trial. Final orders for custody, access, and child and spousal support can still be changed (varied) if circumstances change significantly.

If you and your children are leaving an abusive relationship, you may need to get a court order to protect yourself and your children. A court order can also help you to protect family property from being sold. If there is a history of family violence or you or your children are at risk, you may be able to get the help of a legal aid lawyer. See page 49 for more about legal aid.

Ending the marriage: Divorce

For couples who have been legally married, divorce is the only way to legally end the marriage. You can apply for a divorce if:

- you and your spouse have lived separately for one year,
- you or your spouse has committed adultery, or
- you were treated by your spouse with physical or mental cruelty.

You can apply for a divorce as soon as you and your spouse are living apart, but the judge will not grant the divorce until you have been separated for one year. If your marriage breaks up because of adultery, or physical or mental cruelty, you do not have to wait for one year before the divorce is granted. However, you will have to prove your case to the court, and you should talk to a lawyer about your options. You may decide that waiting one year is easier to do.

You do not have to apply for a divorce as soon as you separate. You may not be ready for a divorce, or there might still be some chance of getting back together. You and your spouse can get back together for up to 90 days without affecting the one-year time period of separation required for a divorce. If you stay together longer than 90

days but end up separating, the one-year time period starts over from when you separated again.

If you have separated, your ex-spouse can apply for a divorce even if you do not want one. You cannot stop the divorce from being granted. If you disagree with the terms of the divorce, you should see a lawyer.

You can apply for a divorce in BC even if you were married in another country, as long as you have proof that you were legally married, and you or your spouse have lived in BC for the 12 months before you apply for divorce. Canada recognizes the following as proof of marriage from other countries:

- marriage certificate,
- marriage registration, or
- certified copies of marriage documents.

Some cultures have their own divorce ceremony, but you are not legally divorced in Canada unless you have a court order for divorce from Canada or another country.

You have to apply in the Supreme Court of British Columbia for a divorce. If you have already resolved the other issues arising from your separation (either by written agreement or orders from Provincial Court), then you may be able to fill out the Supreme Court forms and file them in court yourself. There is an online self-help divorce guide (in English only) on the Family Law in BC website at www.familylaw.lss.bc.ca/guides/divorce. In Vancouver, the BC Supreme Court Self-Help Information Centre provides a drop-in information service (see page 52 for contact information). However, it can be a good idea to get the help of a lawyer. You may be able to do some of the work, and have a lawyer review what you have done. A lawyer can also give you legal advice on your options. See pages 49–51 for how to find a lawyer.

Special concerns for immigrants

If you are an immigrant, you may have some special concerns about separating or getting a divorce in Canada.

If you are a permanent resident (landed immigrant)

If your spouse or common-law partner sponsored you to come to Canada and you are now a permanent resident (landed immigrant), you can stay in Canada even if you leave the marriage or common-law relationship. Your ex-spouse or ex-partner:

- cannot make you leave Canada,
- does not have the right to keep your children or your property, and
- still has a legal responsibility to help support you and your children (see page 25 for information about child support, and page 31 for information about spousal support).

If you have to get income assistance (welfare), your status in Canada will not be affected. However, the Ministry of Housing and Social Development will expect you to get support from your sponsor. If your sponsor will not support you, you can still get income assistance. **If you left the relationship because of abuse by your sponsor, tell the ministry.** In such cases, you do not have to try to get support from your sponsor before you can be eligible for welfare.

If you sponsored your spouse or partner to come to Canada, you still have to support him or her for the time you agreed to even if you are separated or divorced. If you were abused by the person you sponsored, see a lawyer.

If you are not a permanent resident or were sponsored by your spouse

If you are not a permanent resident in Canada (for example, if you are a refugee claimant) and you and your spouse or partner separate, you will need to get immediate advice about your immigration status. If possible, contact an immigration lawyer. A multicultural agency may also be able to help you.

See pages 50–55 for how to contact multicultural agencies or the Lawyer Referral Service (which can refer you to a lawyer who specializes in immigration matters).

To find out more about what could happen when a sponsorship does not work, read *Sponsorship Breakdown*, published by the Legal Services Society. It explains what to do if the person who sponsored you is unwilling or unable to support you, and you are unable to support yourself. *Sponsorship Breakdown* is written for family class immigrants (people sponsored by a child, grandchild, husband, wife, same-sex partner, or parent) or immigrants in the “spouse or common-law partner in Canada class.” Read it online at www.legalaid.bc.ca (look under “Our publications”) or see the back cover of this booklet for order information.

Where to get legal help and information

This chapter lists some places to get legal help and information.

To get help from a lawyer

To find a lawyer, try one of the following options:

Legal aid

The Legal Services Society (LSS) provides legal aid to people who have serious legal problems and cannot afford to pay a lawyer. To find a legal aid office, look in the business listings section of the white pages of your phone book under “Legal Aid — Legal Services Society.” You can also call the LSS Call Centre at:

Lower Mainland: 604-408-2172

Elsewhere in BC: 1-866-577-2525 (call no charge)

Recorded messages are in Cantonese, English, French, Mandarin, Punjabi, and Spanish.

Or visit the LSS website at www.legalaid.bc.ca. Go to “Legal aid” then click “Legal aid offices.”

Lawyer Referral Service

The Lawyer Referral Service can give you the name of a family law or immigration lawyer who can meet with you for a half-hour appointment that costs \$25 plus taxes. You may decide to hire the lawyer or call the service back and ask for another name. Be sure to ask the lawyer what he or she charges per hour.

Lower Mainland: 604-687-3221

Elsewhere in BC: 1-800-663-1919 (call no charge)

Lawyer advice services

For more information about the following legal advice services from the Legal Services Society, visit the society's website at www.legalaid.bc.ca. Click "Legal advice" under "Legal aid" or call one of the numbers listed on page 49 under "Legal aid."

Family advice lawyers

The Legal Services Society and the Ministry of Attorney General provide free legal advice to parents with low incomes who are trying to reach an agreement in a separation or divorce. See the LSS website at www.legalaid.bc.ca for how to find a family advice lawyer (click on "Legal advice" under "Legal aid," then "Family advice lawyers").

Family duty counsel

The Legal Services Society provides lawyers (known as duty counsel) at both Provincial and Supreme Courts to help people with their family court appearances. These lawyers may also be able to provide you with legal advice about your options. To find out when family duty counsel will be at your court, call your nearest legal aid office (for contact information, see "Legal aid" on page 49) or your local court registry.

Other lawyer services

The following pro bono (free) programs offer brief help to people who cannot afford a lawyer.

Pro Bono Law of British Columbia

Website: www.probononet.bc.ca

Salvation Army British Columbia Pro Bono Lawyer Consultation Program

Lower Mainland: 604-694-6647

Website: www.probono.ca (to find clinics throughout BC)

Western Canada Society to Access Justice

Lower Mainland: 604-878-7400

Elsewhere in BC: 1-877-762-6664 (call no charge)

Website: www.accessjustice.ca

To get legal information

To get legal information, contact or see one of the following programs, organizations, or websites:

Community workers

A community worker is someone who can help you defend your rights. To find a community worker in your area, visit www.povnet.org or www.amssa.org (click on “Members”), or contact your local library to find a community group that can help you.

BC Supreme Court Self-Help Information Centre

The BC Supreme Court Self-Help Information Centre is a drop-in service for anyone who has to go to Supreme Court but cannot afford a lawyer.

274 – 800 Hornby Street

Vancouver, BC V6Z 2C5

Website: www.supremecourtselfhelp.bc.ca

Clicklaw

www.clicklaw.bc.ca

For more information about family law, see the Clicklaw website for links to legal information, education, and help for British Columbians. You can find out about your rights and options to solve legal problems, find toll-free numbers for law-related help, and learn about family law and the legal system.

Dial-A-Law

Dial-A-Law is a library of tapes that give you information about the law in BC. Some of these tapes are available in Chinese and Punjabi as well as English.

Lower Mainland: 604-687-4680

Elsewhere in BC: 1-800-565-5297 (call no charge)

You can also read or listen to transcripts of the Dial-A-Law tapes on the Internet at www.dialalaw.org.

Family justice counsellors and Family Justice Centres

Family justice counsellors can give you information about the law and the court process and help you work on agreements. They work at Family Justice Centres across the province. Call Service BC and ask the operator to transfer you to the centre nearest you.

Victoria: 250-387-6121

Lower Mainland: 604-660-2421

Elsewhere in BC : 1-800-663-7867 (call no charge)

Family Justice Services Information Line

The Family Justice Services Information Line is a 24-hour automated phone service that provides information about family law and BC government services.

Lower Mainland: 604-660-2192

Elsewhere in BC: 1-888-216-2211 (call no charge)

Family Law in BC website

www.familylaw.lss.bc.ca

The Family Law in British Columbia website provides legal information and self-help materials to help people solve family law problems. The site contains plain language fact sheets, frequently asked questions, self-help guides, and definitions of legal terms, as well as court forms, online videos, and audio-visual multimedia presentations.

Family Maintenance Enforcement Program

This program can help you collect your support payments if you already have a court order or a separation agreement that is filed in court. Call the enrollment office at:

Victoria: 250-220-4040

Elsewhere in BC: 1-800-663-3455 (call no charge)

Website: www.fmep.gov.bc.ca

Mediators

A mediator is a neutral third person who can help you and your former spouse or common-law partner negotiate an agreement. To find a mediator, contact a community organization, family justice counsellor, or Lawyer Referral Service. Private mediation services are listed in the yellow pages under “Mediators.” See the BC Mediator Roster Society website at www.mediator-roster.bc.ca for more information and a list of available mediators.

Multicultural organizations

Multicultural organizations may know interpreters, lawyers, or counsellors who speak your language. To find an organization near you, visit the website of the Affiliation of Multicultural Societies and Service Agencies of BC at www.amssa.org (look under “Members”). See also the MultiLingoLegal website at www.multilingolegal.ca for publications about family law in languages other than English.

People’s Law School

The People’s Law School provides free classes and produces booklets about the child support guidelines, family law, and making a will.

Lower Mainland: 604-331-5400

Website: www.publiclegaled.bc.ca

Prideline (for gay, lesbian, bisexual, and transgendered people)

Prideline provides referrals to various gay, lesbian, bisexual, and transgendered groups, as well as the names and numbers of lawyers.

Lower Mainland: 604-684-6869 (7 p.m. to 10 p.m.)

Elsewhere in BC: 1-800-566-1170 (call no charge)

VictimLINK

VictimLINK staff provide information, support, and referrals to services or contacts in your community 24 hours a day. Interpretation services are available for all the major languages spoken in BC.

Throughout BC: 1-800-563-0808 (call no charge)

Also available from the Legal Services Society

Many of the Legal Services Society's (LSS) legal information publications and videos, including those below, are available on the LSS website at www.legalaid.bc.ca and/or on the LSS Family Law in BC website at www.familylaw.lss.bc.ca.

To order copies of the following LSS publications, see the back of this booklet. They are free within BC. They may also be available at your public library.

Benefits and Services for Seniors

Available in Chinese (traditional and simplified), Farsi, French, Japanese, Korean, Punjabi, Spanish, Tagalog, and Vietnamese

For Your Protection: Peace Bonds and Restraining Orders

Available in Chinese (traditional), English, and Punjabi

Parents' Rights, Kids' Rights: A Parent's Guide to Child Protection Law in BC

Available in English only

Speaking of Abuse: Violence Against Women in Relationships

Available in Chinese (traditional), English (online only), Farsi, Russian, Spanish, and Vietnamese

Sponsorship Breakdown

Available in Chinese (traditional), English (coming in March 2010), Korean, Punjabi, Spanish, and Vietnamese

Surviving Relationship Violence and Abuse

Available in English only (coming in March 2010)

*When I'm 64: A Guide to Benefits and Services for
People Aged 60 and Over*
Available in English only

*Your Welfare Rights: A User's Guide to BC
Employment and Assistance*
Available in English only

Appendix A: Which court do I go to?

This chart explains which court you go to for family law issues under the Divorce Act and Family Relations Act.

	Divorce Act	Family Relations Act
BC Supreme Court	<ul style="list-style-type: none"> • Divorce • Child support • Spousal support • Custody and access <p>2007 fees to start a family law proceeding: \$208</p> <p>There are also fees for applications (\$62) and trials.*</p>	<ul style="list-style-type: none"> • Child support (applies to all parents) • Spousal support (applies to legal marriages and common-law relationships of 2 or more years) • Guardianship (applies to all parents) • Custody and access (applies to all parents) • Occupancy of family residence and use of its contents (applies to all parents) • Judicial separation (applies to legal marriages only) • Division of family assets and pensions (applies to legal marriages only) • For division of property between common-law partners, see Appendix B • Written agreements dividing family assets and pensions made between common-law spouses • Orders restraining contact with spouse or common-law partner and children or entry into the residence • Orders restraining disposal of assets (applies to legal marriages only; for common-law relationships, apply for a civil injunction restraining disposal of assets)
Provincial Court of BC	No authority under the Divorce Act	<ul style="list-style-type: none"> • Child support (applies to all parents) • Spousal support (applies to legal marriages and common-law relationships of 2 or more years) • Guardianship (applies to all parents) • Custody and access (applies to all parents) • Orders restraining contact with spouse or common-law partner and children or entry into the residence where children are involved <p>There are no fees for applications and orders in Provincial Court.</p>

* If you do not have any money to pay Supreme Court fees, you can apply for “indigent” status to file your divorce or other application. Or, if you are not claiming for property division or divorce, you can apply to Provincial Family Court where there are no application fees.

Appendix B: How are common-law and marriage different when we separate?

This chart explains some of the differences between common-law relationships and marriages if there is a separation or divorce. It is a simplified guideline only. For more information, read the sections of this booklet that discuss the issues in more detail. It is best to check your situation with a legal advocate or lawyer.

	Child support	Spousal support	Division of property	Canada Pension Plan (CPP) contributions
Married spouses	Biological parents: as soon as child is born Step-parents: starts as soon as parents separate	Must apply within 2 years of divorce under the Family Relations Act. No time limit under the Divorce Act.	Family assets are divided 50/50 unless a court says otherwise. Must apply within 2 years of divorce for division of property and non-CPP pensions.	Apply any time after 1 year of separation up to death of spouse. Must apply within 3 years of the date of death.
Biological parents	As soon as child is born Do not need to have lived together	N/A unless married or common-law at least 2 years	N/A unless married or common-law (see below)	N/A unless married or common-law at least 1 year
Common-law partners; together 1 year (federal laws apply)	Biological parents: see above Step-parents: if you supported child for at least 1 year Must apply within 1 year of date the step-parent last helped support child financially	N/A unless common-law at least 2 years (see below)	See below	Can apply after 1 year of separation, but must be within 4 years of date of separation
Common-law partners; together 2 years (most provincial laws apply)	Biological parents: see above Step-parents: if you supported child for at least 1 year Must apply within 1 year of date the step-parent last helped support child financially	Must apply within 1 year from time of separation	Family assets are divided according to signed cohabitation agreements, or the law of “constructive trust” in Supreme Court.	Can apply after 1 year of separation, but must be within 4 years of date of separation

N/A = not applicable



Helping Families Use the Law

The Family Law in British Columbia website has more information about the issues discussed in this booklet. Visit www.familylaw.lss.bc.ca to find fact sheets, self-help guides, and online publications and videos.

The site also contains definitions of legal terms, links to online court forms, updates on the law, information about where to go for help, and links to other useful websites.

Legal Aid Can Help You

Legal Aid Can Help You outlines in plain language what legal aid is, where you can find help, and which services require an income test.

The brochure contains phone numbers for all legal aid offices across the province, and extra space for writing notes. It is available in Arabic, Chinese (traditional and simplified), English, Farsi, French, Japanese, Korean, Punjabi, Russian, Spanish, Tagalog, and Vietnamese. See below for how to order, or look for it at www.legalaid.bc.ca. (under “Our publications”).



Order online: www.crownpub.bc.ca
(click the Legal Services Society image)

Phone: 1-800-663-6105 (call no charge)
250-387-6409 (Victoria)
Fax: 250-387-1120
Mail: Crown Publications
PO Box 9452 Stn Prov Govt
Victoria, BC V8W 9V7

Living Together or Living Apart is coming soon in Arabic, Chinese, English, Farsi, Korean, Spanish, and Vietnamese. You can find it in PDF on the LSS Family Law website at www.familylaw.lss.bc.ca, and on MOSAIC's website at www.multilingolegal.ca.