Living Together or Living Apart

Common-law relationships, marriage, separation, and divorce

November 2018

Legal Services Society
British Columbia
www.legalaid.bc.ca
Acknowledgements

Published on the unceded territory of the Coast Salish peoples, including the territories of the xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish), and səl̓ílwətaʔɬ/Selilwitulh (Tsleil-Waututh) Nations.

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Thanks to those Legal Services Society (LSS) and Ministry of Justice staff and LSS contractors who participated in the group reviews of this booklet and provided suggestions. Thanks also to all those who participated in user testing of the booklet.

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Living Together or Living Apart is published by the Legal Services Society (LSS), a non-profit organization that provides legal aid to British Columbians. LSS is separate from the BC government, its primary funder. It also receives grants from the Law Foundation and the Notary Foundation (of BC).

This booklet explains the law in general. It isn’t 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 November 2018.

See the back cover for how to get free copies of this booklet.
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If you’re in immediate danger, call:

911, police if you’re in immediate danger or if you’ve been hurt. If your area doesn’t have a 911 service, call your local emergency police or RCMP. If you don’t speak English, ask 911 for an interpreter.

1-800-563-0808, VictimLinkBC (24 hours a day, 7 days a week) for support services in many languages and to find a transition house. Transition houses, sometimes called safe houses or shelters, are places where women and children can go if they’re in danger. Transition houses offer their services for free.

211 to get information from BC211 about support services in your community. BC211 is available in Metro Vancouver, the Fraser Valley, and Squamish-Lillooet.

Once you’re safe

Talk to a lawyer. You might want to get a protection order if you’re afraid for your safety or your children’s safety and want to keep your partner away. If you can’t pay for a lawyer, you might qualify to get a legal aid lawyer to take your case. When you apply to Legal Aid BC, say you’re leaving an abusive partner.

See page 82 for how to apply for legal aid.

Get free help from family duty counsel. If you don’t qualify for your own legal aid lawyer, you may get some help from family duty counsel. Duty counsel are lawyers who provide limited free help to people with low incomes who have family law problems. Duty counsel can’t take on your whole case, but can give you some help with your family law problem.

See page 81 for contact information.
Get free legal information. Legal Aid BC publishes free booklets and fact sheets on family law matters.

See the last pages of this booklet for more information.

If you need emergency financial help, see How to Apply for Welfare and Income Assistance on Reserve in British Columbia.

Read these booklets online at legalaid.bc.ca/read. See the back cover of this booklet for how to get free copies.

See the MyLawBC website at mylawbc.com. This website has three guided pathways and an online negotiation tool for people going through a separation or divorce.

• Make a separation plan pathway helps you figure out the best way for you and your spouse to work through and make a plan for your separation or divorce.

• Get a family order pathway helps you figure out which court to use and helps you with court orders.

• I’ve been served with a court document pathway helps you figure out what to do next if you’ve been served (given) court documents.

See the Family Law in BC website at familylaw.lss.bc.ca. This website has self-help guides, fact sheets, videos, and other ways to help you settle family law issues, including:

• divorce,

• guardianship,

• parenting arrangements and contact (also called custody and access), and

• child support and spousal support.

Talk to a legal information outreach worker. Legal Aid BC staff in Vancouver and Terrace can help you find legal information and support services for your family law case.

See page 82 for contact information.
About this booklet

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

- types of relationships,
- what to do if you decide to separate,
- how to work out agreements either before or after you separate,
- how to work out parenting arrangements and child support if you have children,
- how to sort out other money matters,
- what happens if you go to court,
- how to get a divorce,
- specific concerns if you’re a newcomer to Canada (immigrant), and
- where to get legal help.

The information applies to non-Aboriginal families and Aboriginal families in BC.

Family law can be complicated. But with the right information and help, you can solve many issues on your own without going to court. This booklet explains your options and where you can go for help.

Finding out your options is a positive first step. Many free and low-cost legal services are listed at the end of this booklet to help you decide what to do.
Aboriginal includes:

- status Indians (also known as First Nations),
- non-status Indians,
- Métis,
- Inuit, and
- anyone who identifies as Aboriginal (if you think of yourself as Aboriginal).
What you need to know

Living Together or Living Apart

BEFORE YOU BEGIN
- Who’s a spouse
  Page 1
- Which laws apply
  Page 4
- Which court to go to
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ISSUES TO CONSIDER
- Children
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- Support
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- Property and debt
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Agreements
Made by both spouses when you can agree
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Court orders
Made by the court
Page 53
Types of Relationships

Common-law relationship is the term many people use to describe unmarried couples who live together in a marriage-like relationship. But it’s not a term used in the Family Law Act or the Divorce Act. These laws just say spouse.

Who’s a spouse

Under BC law, you’re a spouse if you:

- marry another person, or
- live with someone in a marriage-like relationship for at least two years, or
- have lived with someone for less than two years and have a child together. In this case, you aren’t considered a spouse when it comes to property, debt, or pensions.

This means couples who lived together for more than two years have the same rights and responsibilities as married couples. Spouses can be in same-sex or opposite-sex relationships.
Married spouse

**Married means**

You had a legal marriage ceremony (religious or civil). You stay married until one spouse dies or until a divorce or annulment legally ends your marriage.

Unmarried spouse

If you lived together in a marriage-like relationship for two years or more

BC family law says you and your partner are spouses in all areas of family law, including laws about dividing property and pensions, and spousal support. Many people call this a common-law relationship.

If you lived in a marriage-like relationship for less than two years and have a child together

Laws about parenting arrangements and child support apply to parents no matter what their living arrangements have been. But BC family law says you and your partner are spouses only under the spousal support part of the Family Law Act. You aren’t spouses under the law that deals with dividing property or pensions.
More about spouses

- Unmarried spouses who live together never automatically become legally married.
- Under some federal laws, such as for Old Age Security pension and the spouse’s Allowance, you’re treated as a spouse if you live with your partner for one year or more.
- Some married people separate but don’t divorce when they decide to live with someone else. Under BC family law, if you live with your new partner in a marriage-like relationship for at least two years, you’re considered spouses with your new partner — even if you’re legally married to someone else.
Which laws apply

The two laws in BC you may need to know about are the provincial Family Law Act and the federal Divorce Act.

<table>
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<th>Family Law Act</th>
<th>Divorce Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applies if you’re married/unmarried</td>
<td>Applies if you’re married</td>
</tr>
</tbody>
</table>

Guardianship
Property
Family Law Protection Orders
Parenting
Support
Divorce

The two courts in BC that can make court orders about family law matters are the Provincial Court and BC Supreme Court.

The chart on page 59 explains which court you go to if you want a judge to make an order about a family law issue.
Making Agreements — Living Together

One way to try and prevent conflict about your property, savings, and debts if your relationship breaks up is to make a written agreement with your spouse while you live together. Sometimes people call these cohabitation, marriage, or prenup (prenuptial) agreements. An agreement is legally binding when you sign it.

When to make an agreement

You can make an agreement:

- before you start to live together or get married,
- any time while you live together or during your marriage, and
- after you separate. This agreement is usually called a separation agreement.

See page 11 for more about separation agreements.

Before you make an agreement, you and your spouse (married or unmarried) must share all the important information you need to make a fair agreement. This includes income information, tax returns, and financial statements. The law says you must give your spouse “full and true information for the purposes of resolving a family law dispute.” This applies to any agreement you make while you’re still together, and separation agreements you make after you separate. If you hold back information, a court could set aside (cancel) your agreement.
What an agreement can cover

Your cohabitation or marriage agreement can be about what happens during the time you live together and what happens if you separate. However, you can only make agreements about your children after you separate.

You can decide what to put into your agreement, as long as it’s fair under the law. Your agreement could be about:

- how you would divide your family property, assets (real estate, possessions, savings, pensions), and family debt if you separate;
- spousal support; and
- how you would solve any disagreements if you separate; for example, by going to mediation instead of court.

» Dividing family property, assets, and debts

You can decide together:

- who owns what is currently owned and brought into the relationship,
- who owns the things you buy during your relationship,
- who’s entitled to the increase in value of anything brought into the relationship,
- how much money each of you puts toward running the household,
- whether you have separate or joint household credit cards or bank accounts,
- how you use and look after the things you buy together, and
- who’s responsible for debts you take on together under both your names, and who’s responsible for debts one of you takes on under one name. You and your spouse can put into the agreement only one of you pays certain debts. You can agree together who’s responsible for what debts. But your creditors can collect the debt from the person whose name is on the debt.
Couples can make an agreement before or while they’re married or living together.

» **Before you sign an agreement**

Signed agreements are legally binding. It’s a good idea for both you and your spouse to see a lawyer to make sure your agreement is fair and legal. It’s especially important to see a lawyer if you or your spouse has a pension plan. It’s complicated to calculate the value of a pension, because even a low-paying job someone has for many years can have a large pension.

See the next page for a chart on how to make an agreement.
How to make an agreement

Applies to agreements made before, during, and after a relationship.

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<th>Find out your rights and responsibilities</th>
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<tr>
<td>See familylaw.iss.bc.ca for where to get legal advice. Also see mylawbc.com for an online tool to help you and your spouse negotiate a separation agreement.</td>
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<table>
<thead>
<tr>
<th>Make a list of your issues ¹</th>
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<tr>
<td>Consider what would be fair and in the best interests of your child. ²</td>
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<table>
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<tr>
<th>Share financial information</th>
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<tr>
<td>This includes tax returns, pension statements, bank statements, and information about debts.</td>
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<table>
<thead>
<tr>
<th>See if you can agree</th>
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<tr>
<td>Talk about the details with your spouse.</td>
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<table>
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<th>Write out the agreement</th>
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<tr>
<td>You, a lawyer, or a mediator can do this.</td>
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<th>Does the agreement deal with property or spousal support?</th>
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<tr>
<td>Yes</td>
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<tr>
<td>An adult third person must watch you both sign the agreement and then also sign it.</td>
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<tr>
<td>No</td>
</tr>
<tr>
<td>You can sign it without a witness, but it’s best to have one.</td>
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1. Need help from a mediator or lawyer? See pages 80 – 82.
2. Agreements about children can only be made after you separate.
Before you sign
Each of you should see your own lawyer to make sure the agreement is fair and legal. Don’t sign if you feel pressured.

Sign

Agreement

After you sign

If you change your mind
It’s difficult to change a financial agreement after you sign it. Changing agreements about your children is only possible if there’s been a change of circumstance, or if it would be in the best interests of your children.

To have your agreement enforced
If you take your agreement to a court registry, you can ask the court to enforce it (order you and your spouse to follow the agreement) later if necessary.
An agreement after separating

You can make an agreement after you separate if you and your spouse didn’t make an agreement while you lived together. This is called a separation agreement. If you can’t agree on all issues, you can make an agreement about some of the issues and ask the court to make a court order about the family law issues you can’t resolve.

See page 11 for making agreements after you separate.
Separation — Living Apart

There’s no such thing as a “legal separation.”

How to separate

Whether you’re married or living with someone in a marriage-like relationship, you become separated as soon as:

- you start living separate and apart, or
- one of you clearly tells the other spouse the relationship is over, and you intend to separate.

You can live in the same house and be separated. You don’t have to move out. But you do have to stop living in a spousal relationship; for example, you stop sharing the same bedroom, stop sharing meals, and so on.

- You don’t have to see a lawyer, go to court, or sign a document to be separated.
- You don’t need your spouse’s permission to separate; it’s enough for you alone to decide the relationship is over.

If you’re married, you’re legally married until you get a court order for divorce. You don’t need your spouse’s permission to apply for a divorce.

If you’re unmarried spouses, you don’t need to get a divorce. Your spousal relationship is over as soon as you separate.

See page 63 for more about divorce.
How to avoid going to court

It’s always better if you can settle your family law issues without going to court. The best way to avoid court is to come to an agreement together.

See the chart on page 8.

Many couples who separate are able to agree on the following without going to court:

- property (page 43),
- arrangements for parenting (page 21, and
- child support (page 32) and spousal support (page 39).

If you and your spouse can make an agreement, you save time, money, and emotional turmoil. You also keep control of important decisions that affect your family.

However, on issues of property division and spousal support, it’s important to talk to a lawyer, even briefly, before you sign an agreement. It can be a difficult and long process to change an agreement once you sign it.

» Parenting plans

Once you separate, it’s helpful to make a parenting plan. This says how you and the other parent will divide parenting time and parental responsibilities.

Parenting plans can be temporary or permanent, depending on what you and the other parent decide. You can start working on an agreement about children, support, and/or property right away. Or you can take your time on it.

» If you don’t have a formal agreement

After you separate, you don’t need to have a formal agreement about your parenting arrangements. But you and your spouse may develop informal routines for your children and to make parenting decisions. Even if you don’t have a formal agreement, it’s best to check with the other parent before you change the routine.
How to reach a separation agreement

You may be able to reach an agreement with your spouse by working with them directly. See the website mylawbc.com for an online tool you can use to negotiate (work out) an agreement. You can use it to communicate with each other about issues and select options to include in your agreement.

You may need help to work through the difficult issues that come up after you separate. Here are some options for where to get help to reach an agreement.

» Mediation

A mediator can help you and your spouse work together to identify and solve the problems caused by your separation or divorce. Mediators don’t take sides, make decisions, or force solutions on you. They encourage you and your spouse to listen to each other and help you find ways to solve your issues. Mediation can help you find solutions you can both accept. If you have children, the mediator helps you reach an agreement that’s in the best interests of your children.

See page 80 for where to find a mediator.

» Family justice counsellors

Family justice counsellors are government employees at Family Justice Centres across BC, sometimes in the local courthouse. They also work at the Nanaimo, Vancouver, and Victoria Justice Access Centres. They provide free services for couples and families with modest incomes, and can:

• help you explore ways to settle parenting and support issues,
• provide free mediation services, and
• give you legal information about how to get or change family agreements or orders.

See page 80 for where to find a family justice counsellor.
» **Family lawyers**

Lawyers who specialize in family law can help you reach a fair and lasting agreement. If you’re concerned about the cost of hiring a lawyer, some lawyers offer lower-cost legal services including:

- **independent legal advice on agreements.** Some lawyers give brief advice on an agreement you already drafted.
- **unbundled or limited scope services.** Instead of representing you from start to finish, you can pay some lawyers to do specific tasks and you do the rest; for example, you may hire a lawyer to deal with just your child support issues and not property division.
- **sliding scale.** Some lawyers charge hourly rates depending on what you can pay.
- **flat rate.** Some lawyers do specific tasks for a set fee.
- **legal coaching.** Some lawyers just give you advice while you negotiate and develop an agreement.

See page 81 for where to find a lawyer.

» **Collaborative family law**

Using collaborative family law means you and your spouse agree to work together with lawyers who practise collaborative family law to find solutions that work for both of you. You and your spouse each still have your own lawyer. The collaborative family law process is different from a traditional separation or divorce in a few important ways:

- **No court.** You, your spouse, and your lawyers sign a written agreement that says you’ll work together to solve your issues without going to court. If you end up going to court, you have to find different lawyers to represent you in court.
- **Honest communication.** You and your spouse agree in writing to open and honest communication. This includes openly sharing information with each another; for example, about your finances.
• **Team approach.** Specially trained lawyers, divorce coaches, child specialists, and financial advisors are brought in, as needed, to help you. You, your lawyers, and your coaches work as a team to solve your disputes, whether the issues are about support, dividing property, or parenting your children.

• **Four-way meetings.** Instead of your lawyers doing all the talking, you, your spouse, and your lawyers have a series of meetings. Sometimes your lawyers may meet alone to decide what the meetings will cover. Or they may share information about you or your spouse to help solve the issues. The number of meetings depends on how many issues you and your spouse face and how complex they are.

You and your spouse must be willing to discuss and solve your separation issues with honesty and respect and without treating each other as enemies. However, since collaborative family law involves hiring lawyers and other professionals, it can be expensive.

See page 79 for how to find a collaborative family lawyer.

**How to make your agreement final**

No matter how you make your agreement, take time to think about it before you sign it. Have a lawyer look at it before you sign it. You each need to have your own lawyer look at the agreement. Lawyers aren’t allowed to act for both parties in a family law matter.

Put your agreement in writing. Both of you must sign it. If your agreement is about property or spousal support, at least one other person must witness your signatures. The same person can witness both signatures. Don’t sign an agreement if you feel pressured.

A signed agreement is legally binding. But the court won’t enforce an agreement (order you and your spouse to follow the agreement) that isn’t in the best interests of your children.
How to enforce your agreement

If you take your signed agreement to a court registry, the court can enforce it.

You can also enroll your agreement with the Family Maintenance Enforcement Program. This program enforces the child support and spousal support parts of your agreement.

How to change or cancel an agreement

If you and your spouse agree, you can change your agreement without going to court. You just sign a new agreement.

If you and your spouse can’t agree, you can apply to the court to change all or part of an agreement and replace it with court orders. The court follows Family Law Act guidelines to decide whether to change all or part of an agreement.

Whether the court changes the agreement, and for what reasons, depends on the issue. For example, the court may change an agreement about parenting time only if the agreement isn’t in the best interests of the child.

See page 26 for best interests of the child.

It’s difficult to change agreements about financial issues. It’s a good idea to see a lawyer before agreeing to property division or spousal support.

The chart on page 60 explains when the court may set aside (cancel) or replace an agreement.
Some spouses can reach an agreement after they separate by working with each other directly.

Check out mylawbc.com
This website has guided pathways on separation, divorce, and family orders; abuse and family violence; missed mortgage payments; and wills and personal planning that include links to help services. It also links to a Dialogue Tool for separating couples to work together to create a fair and lasting separation agreement.
If you plan to leave your spouse

Here are some important things to take with you:

- financial information, such as:
  - your tax returns for at least three years
  - bank account, credit card, investment and debt statements
  - copies of recent pay stubs
- BC Services Card/CareCard (medicare card)
- marriage certificate
- passport and immigration papers
- driver’s licence and ICBC documents if you take a car with you
- Secure Certificate of Indian Status (secure status card) or Certificate of Indian Status (status card)
- clothing and personal belongings
- medications and prescriptions
- photocopies of information about income and assets you and your spouse have jointly, or your spouse has separately, such as:
  - pay stubs
  - tax returns
  - company records and ledgers
  - bank accounts
  - investments
  - RRSPs

If you take your children with you, take their:

- passports
- birth certificates and BC Services Cards/CareCards (medicare cards)
- clothing and personal belongings
- medications

Also, write down your spouse’s Social Insurance Number (SIN), BC Services Card/CareCard number, and date of birth. This can be useful later if you disagree about money and property, or if you need to find your spouse.
If You Have Children

If you and your spouse (married or unmarried) have dependent children (usually under age 19), you have to make arrangements to take care of them when you separate.

BC Family Law Act terms about parenting

The BC Family Law Act doesn’t talk about custody. Instead of custody, the act uses the following terms:

- guardianship
- parental responsibilities
- parenting time
- contact with a child

The Family Law Act emphasizes it’s in the best interests of children to continue relationships with both parents if possible.
Guardianship

Guardians are generally allowed to make decisions about a child.

- If both parents have lived together with the child, both parents are generally guardians.
- If a parent has never lived with the child, but they regularly cared for the child, they’re generally a guardian.
- If a parent isn’t a guardian, they can become a guardian under a written agreement.
- If one parent wants the other parent to stop being a guardian when they separate, they have to agree or get a court order.
- If you’re asked to give up your guardianship, talk to a lawyer. Once you give up your guardianship, it can be a long process to get it back.
- Non-parents, such as grandparents, aunts, and uncles, can’t become guardians through a written agreement. They must apply in court.

Other guardianship issues for Aboriginal parents and guardians

If anyone applies for guardianship of a Nisga’a child or a child of another treaty First Nation, they must give notice to the Nisga’a Lisims government or the child’s Nation. The Nation can then take part in the court proceedings.

If you’re a child’s guardian and you live on reserve, your child may live in the band home with you even if you and your child aren’t band members.

If you aren’t sure about something to do with guardianship, talk to a lawyer.

See page 81 for where to find a lawyer.
» **Parenting arrangements**

Parental responsibilities and parenting time together are known as **parenting arrangements**. They must be in the best interests of the children.

» **Parental responsibilities**

These are decisions guardians make about a child’s care, such as their daily care, home life, and schooling.

- Guardians can share parental responsibilities in whatever way works best for the child.
- If they can’t agree, a court can make an order.

» **Parenting time**

This is the time each guardian spends with the child.

- During parenting time, the guardian the child is with makes day-to-day decisions and supervises the child.
- Guardians can share parenting time equally, or one guardian can have the child most of the time. Or they can arrange parenting time in any way that’s in the **best interests of the child**.
- If the child is **Aboriginal**, in rare cases a person may not be allowed to come onto reserve lands. If that happens to you or someone else who’s a guardian or person with contact, it might be a good idea to include additional off-reserve places for your child’s pickup and drop-off in your agreement or order. Then you won’t have to go back to court later to change the arrangements.

» **Contact with a child**

This is the time a parent who isn’t a guardian spends with the child.

- Grandparents, step-parents, and other people who may be important to your child can apply to court to get contact with a child.
- People with contact time don’t have a right to make decisions about parental responsibilities.
Quick guide to parenting terms

» **Guardianship**

Not all guardians are parents. Not all parents are guardians.

- If both parents have lived together with the child, both parents are generally guardians.
- If a parent has never lived with the child, but they regularly care for the child, they’re generally a guardian.
- If a parent isn’t a guardian, they can become a guardian under a written agreement.
- If one parent wants the other parent to stop being a guardian when they separate, they have to agree or get a court order.

Only guardians can have parental responsibilities or parenting time.

» **Parental responsibilities**

Guardians make decisions about their child (such as daily care, home, school). Making these decisions is called parental responsibilities.

- You can share parental responsibilities in whatever way works best for your child. If you can’t agree, a court makes an order.

» **Parenting time**

This is time each guardian spends with the child.

- During parenting time, the guardian the child is with makes day-to-day decisions and supervises the child.
- You can share parenting time equally, or one guardian can have the child most of the time. Arrange parenting time in any way that’s in the best interests of your child.

» **Contact with a child**

This is time a parent who isn’t a guardian, or another non-guardian, such as a grandparent, aunt, or sibling, spends with the child.
Parents’ responsibilities and children’s rights

Parents are legally responsible to support their children until they’re at least 19.

- Even if you never lived with your child or child’s other parent, you still have a legal responsibility to contribute to your child’s support.
- If there’s any dispute or uncertainty about whether someone is a parent, the court can order a paternity test.
- Child support is the child’s legal right.

» Adoptive parents

Married couples, couples who live together in a marriage-like relationship, and single people can apply to adopt a child. You can adopt your spouse’s child from another relationship if the child’s other parent agrees.

If adoptive parents separate, they have the same responsibilities and rights as biological parents to make decisions about their child, parenting time, and child support.

» Step-parents

A step-parent doesn’t automatically become a guardian. You must apply for guardianship of your step-children.

If you have step-children and you and your spouse separate, you may have to pay child support for a step-child even if you’re not a guardian if:

- you and the child’s parent are or were married or lived together in a marriage-like relationship for at least two years, and you also lived with the child; or
- you contributed to the child’s support for at least one year during your relationship with the child’s parent; and
- the child support application is made within a year of the last time you contributed.
A step-parent’s responsibility to pay child support comes after the child’s parents’ or other guardians’ responsibility. When deciding if a step-parent should pay child support, the court looks at:

- the child’s standard of living when they lived with the step-parent, and
- how long they lived together.

**Parenting apart**

If you’re guardians of dependent children (under age 19), you and your child’s other parent need to figure out how to co-parent.

This involves working out:

- how you make decisions about the children,
- where the children are going to live, and
- how much time the children spend with each parent.

You may want to put these arrangements into a written **parenting plan**.

To help you work out arrangements if you’re parents of Aboriginal children, you could ask for help from:

- an Elder,
- a community leader,
- your band, or
- another Aboriginal family.
Child protection

When a relationship ends, spouses often have to deal with turmoil and tension.

If you’re worried about your child’s safety, you can get free legal help if you or the other parent are being investigated for a child protection matter. If a social worker from the ministry or a delegated Aboriginal agency contacts you to ask questions about your family, call Legal Aid BC immediately to see if you qualify for a free lawyer.

Depending on where you live, you can get help from a Parents Legal Centre. Legal Aid BC provides this service to help parents in select locations who are dealing with child protection issues. The service is available any time after the ministry or a delegated Aboriginal agency contacts you.

Call Legal Aid BC to find out if there’s a Parents Legal Centre near you and if you qualify.

See page 82 for Legal Aid BC.

The law in BC says Aboriginal cultural ties are very important for Aboriginal children. The child protection process recognizes an Aboriginal child’s right to their cultural identity and connection to their Aboriginal communities when planning for their care.

To find out more about child protection and Aboriginal families, see the booklets Keeping Aboriginal Kids Safe and Parents’ Rights, Kids’ Rights.

Read the booklets online at aboriginal.legalaid.bc.ca/read. See the back cover of this booklet for how to get free copies.
Best interests of the child

The Family Law Act says when making decisions about children, both parents and courts must only consider the best interests of the child.

The best interests of the child include:

- the effect of any family violence on your child’s safety, security, and well-being;
- your child’s health and emotional well-being, including:
  » Aboriginal identity, if applicable
  » culture
  » language
  » religious and spiritual upbringing
  » heritage
- what your child wants, unless it’s not appropriate to consider that;
- the love and affection between your child and other people;
- your child’s need for stability at their age and stage of development;
- the ability of parents or others who want guardianship, parenting time, or contact to look after your child; and
- whether any arrangements that require your child’s guardians to cooperate are appropriate.

Always think about the best interests of your child when making decisions about your child. If you can’t agree with another guardian about what’s best for your child, you can go to court and ask a judge to decide.
Dad said I could have my birthday with him, and I want to! He said he has to ask you if that’s okay.

Where would you like to go for your birthday? We had your party here last year.

Yes, your dad and I need to agree. Sounds like a good idea to have your party at Dad’s. I’ll call him and say that’s fine.

After you separate from your spouse, you can arrange parenting time in any way you agree that’s in the best interests of your child.
If You Have Children

Possible parenting arrangements

Primary parenting: The child lives with one parent most of the time, and this parent is responsible for most of the decisions.

Shared parenting: The child lives at least 40 percent of the time with each parent, and both parents share decision making about the child.

Or the child lives with one parent more of the time, and both parents share decision-making responsibilities.

Split parenting: One or more of the children live with each parent.
» **Moving with a child**

If you’re the guardian of a child and you plan to **relocate**, you must tell any other guardians or people who have contact with the child about the move if:

- you have a written agreement or court order that deals with parenting arrangements and contact;
- you plan to move with or without your child, or you plan to move only your child; and
- the move would have a big effect on your child’s relationship with the other guardian, a person with contact, or other important people in your child’s life.

If you have an agreement or order about parenting time, you **must** tell the other guardians or people with contact where you plan to move and when. You must give them this information **in writing 60 days before you plan to move**. This is called **giving notice**.

You can ask the court to excuse you from giving notice if doing so would put you at risk of violence. You can also ask to be excused from giving notice if another guardian or person with contact doesn’t have an ongoing relationship with the child.

If any of the other people you notified objects to your move after they get the notice, the law says you must try hard to work out your disagreement. If you can’t work it out, the person who isn’t moving can apply to court for an order. If that person has contact with your child, the court may order changes to the contact arrangements. If that person is a guardian, they can ask for an order that says you can’t move. To decide whether you can move, the court looks at:

- the reasons for your move,
- whether your move is likely to improve your child’s or your quality of life,
- whether you gave proper notice of your plan to move,
- whether you suggested reasonable arrangements to protect the child’s relationship with the person who isn’t moving, and
- whether the move is in the best interests of the child.
To avoid an urgent and difficult court hearing, try to discuss your move with the other person before you make firm plans. Also, get a lawyer’s advice about how likely it is that a court would allow the move. Use mediation to help sort out new parenting arrangements or a new contact schedule.

See page 80 for where to find a mediator.

If you don’t have an order or agreement about parenting time or moving, under the Family Law Act you don’t have to tell the other parent if you plan to move. But it’s best to tell the other parent, because they can file an application to stop your move and get a non-removal order.

**Concerns about parenting time or contact**

» **Conditions in your court order**

If you have concerns about the parent or person spending time with your child, you can ask a judge to include conditions in your court order to help protect your child. For example, the order could say the other person:

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

If you’re afraid for your safety or your child’s safety when they spend time with the parent or person with contact, see a lawyer immediately. If you can’t afford a lawyer, you may be able to get legal aid. You may also be able to get legal aid if you’ve been denied access or contact with your child.

See page 82 for more about legal aid.
» Denying parenting time

You can’t deny the other parent parenting time because the other parent doesn’t pay child support or is behind on payments.

But the Family Law Act says you can deny parenting time, even if there’s an order or agreement, if:

- you’re afraid for your child’s safety;
- you believe the other parent was drunk or high when they were with your child;
- over the past year, the other parent often missed their parenting time, or was late and didn’t give you reasonable notice; or
- your child is ill, and you have a doctor’s note.

» Disputes

If you have a court order or agreement that gives you parenting time or contact and the other parent or guardian won’t let you see your child, you can take them to court. If the court finds the other parent or guardian “wrongfully” kept you from spending time with your child, the court can make an order that:

- you and the other party must attend mediation or another form of family dispute resolution;
- you, the other parent or guardian, and/or your child must attend counselling;
- you can make up the lost time with your child over a period of time set out in the order;
- the other parent or guardian must pay you back any expenses that occurred when you were denied time with your child;
- the transfer of your child from the other parent or guardian to you must be supervised; or
- the other parent or guardian must pay a fine (up to $5,000) to you or your child for denying you time with your child.

If a person with parenting time or contact repeatedly fails to use their parenting time or contact with the child, the court can also make many of the orders listed here.
Child support

Parents, guardians, and sometimes step-parents have a legal duty to support their children, even if they don’t see or take care of them. Child support is the money paid to help provide for the child’s daily needs.

The child support laws are based on the idea that children should continue to benefit from both parents’ ability to support them. Child support is the child’s legal right, even though it’s money paid to their parent or guardian.

The parent who the child lives with most of the time is entitled to get child support from the payor (the other parent). This is to help with the costs of raising the child. If the child spends the same or almost the same amount of time with each parent, the parent with the higher income usually has to pay child support to the other parent.

A parent can’t refuse to let the other parent have parenting time, contact, or access because the payor hasn’t paid or has fallen behind on child support payments.

Also, a parent can’t “bargain away” child support. The court usually won’t accept an agreement that says one parent doesn’t have to pay child support in exchange for something else.

» Child support amount

The amount of child support that must be paid in BC is based on the Federal Child Support Guidelines (the guidelines). Courts use the tables and rules in the guidelines to set child support. You can look up the amount of support you would pay or get, based on how much the payor earns and how many children you have.

The guidelines are online at justice.gc.ca/eng. Click Family Law and then scroll to choose Child Support. On that page, click the link to the Child Support Table Look-up that can calculate the amount for you.
The support amounts are different for each province. The court uses the guideline tables for the province where the payor lives and works even if the children live in another province.

To use the child support tables, you must get the payor’s financial information. If you’re trying to make an agreement about support with your spouse, it’s important to share all the information you’d need if you went to court. If you don’t share all the information and your spouse finds out, they could go back to court to have the support amount changed.

If you apply for child support in court, the person asked to pay has to provide you with three years of tax returns and pay stubs (or Employment Insurance/EI or welfare statements) for the last three months. In some cases, you might also have to provide financial information. If you don’t provide the necessary information, a court may estimate what your income is. This is called imputing income.

» For Aboriginal families

If the payor is a status Indian who lives and works on reserve and doesn’t have to pay provincial or federal income tax, the courts adjust the Federal Child Support Guidelines income amount upward. The child gets more support because the payor’s income is untaxed. This adjustment is called grossing up income. It’s very important to know for sure whether the payor gets non-taxable income.

For Aboriginal families, the courts also look at the financial help a child gets from their First Nation for education expenses when they decide how much child support the parent or guardian must pay for the child.

If you have questions about child support, talk to a lawyer. See page 81 for where to find a lawyer.
Now that Ashley turned 19, what do we do about child support?

Yes, of course. Well, that’s a relief. I thought I might have to get another job to keep paying her tuition.

I have to keep paying because she’s in university and still depends on us. We want her to finish her degree, right?

Parents share the cost of special expenses, such as post-secondary education, for their children.
» **Special or extraordinary expenses**

The Federal Child Support Guidelines tables contain the base amounts for child support. If you get child support but also have to pay *special or extraordinary expenses* for your child, you can ask the other parent to pay an amount on top of basic child support. You can ask to have this put into an agreement or court order.

Parents share the cost of special expenses if they’re necessary and reasonable. These include:

- child care expenses;
- medical or health-related expenses for the child, including medical insurance; and
- post-secondary expenses.

Extraordinary expenses include:

- extracurricular activities, and
- educational expenses other than post-secondary expenses (such as private school).

Usually, both parents must contribute to the cost of special and extraordinary expenses in proportion to their incomes.

» **Undue hardship**

If you don’t have enough money to support yourself after you pay child support, you can claim you’ll suffer *undue hardship* if:

- the other parent asks you for child support, and
- you believe paying the minimum amount will leave you short of money to live on and make your household’s standard of living lower than the *recipient*’s.

You can also claim undue hardship if you get child support payments and you think the amount in the Federal Child Support Guidelines table isn’t enough.

In either case, you can ask the court to change the child support amount. Talk to a lawyer to find out if the court might consider your situation to be undue hardship.
» **How long child support lasts**

Child support is usually payable for children:

- under age 19, and
- 19 or older *only* if they can’t support themselves because of illness, disability, or some other reason, including going to school full-time.

» **How to change a child support agreement or order**

If you have a child support agreement, you can change it at any time if you and the other party both agree.

If the other party doesn’t agree with a change you want to make, you can apply to court to **set aside** (cancel) all or part of the agreement. The court may replace the unfair provisions with a court order. The court may set aside your agreement if it’s different from what the court would have ordered under the law.

If you have a court order, either party can apply to lower or raise child support payments if there’s a change in circumstances, such as:

- a long-term income change for the payor,
- a change to your child’s special or extraordinary expenses, or
- a change in parenting arrangements or contact.

The court can also change the order if:

- circumstances have changed so much that a court would make a different order now,
- one party didn’t provide all the necessary financial information when the order was made, or
- important new information wasn’t available when the first order was made.
» **Child support and income tax**

Money paid under child support orders made since May 1, 1997, isn’t considered taxable income for the recipient or a tax deduction for the payor. Orders made before May 1, 1997, still have tax consequences.

See the Canada Revenue Agency website for details at [cra-grc.gc.ca](http://cra-grc.gc.ca).

» **Family Maintenance Enforcement Program**

Once you have an agreement filed at the court registry or an order for child support, you can enroll with the Family Maintenance Enforcement Program (FMEP) using your agreement or order. FMEP is a free BC government program to help collect any support owed to you. You don’t have to wait to register until the payments are late. You can register the order or agreement immediately after it’s made.

See page 83 for FMEP contact information.
Settling Other Money Matters

Unless we say otherwise, the legal rights described in this section apply to people who are married or lived in a marriage-like relationship continuously for at least two years.

Spousal support

Depending on your circumstances, your spouse (married or unmarried) may have to contribute to your financial support after your relationship ends. Spousal support is partly intended to:

- **compensate** (make up) for any financial advantages or disadvantages either or both spouses might have because of the relationship or the separation, and

- help each spouse become financially independent within a reasonable period of time.

If you and your spouse can’t agree on whether one of you should pay spousal support or how much you should pay, you can go to court to ask for a court order.

See page 53 for court orders.
If you apply for spousal support, the court looks at the following:

- if you worked outside the home during the marriage or relationship,
- how long you and your spouse lived together,
- if you can support yourself,
- if you stay or stayed at home most of the time with the children,
- whether you earn a lot less than your spouse, and
- if your spouse is able to pay.

If you were married, you must apply for spousal support no later than two years after you get a divorce or annulment order. If you lived together and weren’t married, you must apply within two years of the date you separated.

» Spousal support amount

If you must pay spousal support, the Spousal Support Advisory Guidelines can help you figure out the amount of support you should pay. If your case goes to court, the judge looks at these guidelines to help make a decision. The guidelines take into account:

- how much each of you earn and the sources of your income,
- how long you were together,
- your ages, and
- whether you have children.

For Aboriginal spouses, if the spousal support payor is a status Indian who lives and works on reserve and doesn’t have to pay provincial or federal income taxes, the courts adjust their income amount upward. This adjustment is called grossing up income. It’s very important to know for sure whether the payor gets non-taxable income.

The website mysupportcalculator.ca has a calculator that can give you a good idea of how much spousal support should be paid. You have to enter information for both spouses.
If both spousal support and child support are paid, you need to calculate those amounts together. Calculations are complicated, especially if you have children. You may want to see a lawyer who has software that can give you a more accurate calculation.

How long spousal support lasts

A spousal support agreement or court order can be for a specific period, or may not have an end date. If it’s for a set period, how long support is paid depends on many things, including:

- the length of your relationship,
- your roles in the relationship,
- your and your spouse’s ability to become self-sufficient, and
- each of your standards of living.

If your agreement or order doesn’t have an end date, it can provide for circumstances when support ends; for example, retirement. Your agreement or order can say you must review the spousal support after a set period. You can look at your situation regularly and deal with any changes to your circumstances that happen while your agreement or order is in place.

You may need to extend spousal support. If your order or agreement doesn’t say it has to be reviewed after a set period, it’s a good idea to apply for an extension before the agreement or court order ends. It’s also a good idea to get a lawyer’s help.

Family Maintenance Enforcement Program

Once you have an agreement filed at the court registry or an order for spousal support, you can enroll with the Family Maintenance Enforcement Program (FMEP) using your order or agreement. FMEP is a free BC government program that helps you collect any support owed to you. You don’t have to wait to register until the payments are late. You can register the order or agreement immediately after it’s made.

See page 83 for FMEP contact information.
» **Changing the spousal support amount**

You can apply to **set aside** (cancel) a spousal support agreement if the agreement is unfair or was made unfairly. For example, if one spouse:

- provided inaccurate financial information or withheld important information,
- took advantage of the other spouse, or
- didn’t understand the agreement.

The court might also set aside an agreement and replace it with a court order if the agreement is “significantly unfair.” To figure out if the agreement is unfair, the court would look at:

- the length of time since the agreement was made,
- any changes in either of your circumstances,
- whether (and to what extent) you both intended this agreement to be final,
- how much you both rely on the current agreement, and
- whether the agreement meets the Family Law Act spousal support goals.

You can apply to change a spousal support order when a significant change happens in the “condition, means, needs, or other circumstances of either spouse.” These changes could include the following circumstances:

- One spouse gets a raise or cut in pay. A court can order an increase back to the date of the raise, if you weren’t told about the increased income.
- The payor becomes unemployed or disabled and can’t pay.
- One of the spouses remarries so their expenses decrease.
- One of the spouses gets a financial windfall, like a lottery win.
Property and debt

The Family Law Act sets out the law for how property and debt are divided after a couple separates. In most situations, the law is the same for married spouses and spouses living in a marriage-like relationship for at least two years. The information here explains if a rule is different for unmarried spouses.

» How to divide family property and debt

Unless you have a written and signed agreement that says otherwise, the law assumes all family property and family debt will be divided equally. This applies unless it would be “significantly unfair” to divide it equally.

To convince a court that an equal division would be significantly unfair isn’t easy. To decide if it would be significantly unfair, the court looks at many factors, including:

• how long the relationship lasted,
• if both spouses made any agreements other than written and signed ones,
• how much each spouse contributed to the other’s career or career potential,
• how the family got into debt,
• each spouse’s ability to pay a share of family debt if one spouse’s debt is more than the family property is worth, and
• if one spouse did something to raise or lower the family debt or property value after the separation.

If you were married, you must apply to divide family property or debt no later than two years after you got an order for divorce or annulment.

If you were unmarried spouses, you must apply within two years of the date you separated.

It’s best not to agree to get a divorce until you deal with property division issues.

In many cases the court won’t grant an order for divorce until you settle your property and parenting issues.
» **Family property**

Family property is almost everything either you or your spouse own *together or separately* on the date you separate. This includes:

- the family home;
- RRSPs;
- investments;
- bank accounts;
- insurance policies;
- pensions;
- an interest in a business; and
- if one spouse owned property before the relationship started, the amount it increased in value since the relationship started (also applies to excluded property).

It doesn’t matter whose name the property is in.

» **Excluded property (not family property)**

Not all property each of you have is family property. You and your spouse can take some things out of the marriage without having to share. These exceptions to family property are called excluded property. This could be:

- property that one spouse owned before the relationship started, or
- gifts and inheritances given to one spouse during the relationship.
Recent court decisions about dividing property have complicated this area. A married spouse might transfer usually excluded property to the other spouse. The property could be an inheritance or property they owned before the relationship started. The excluded property might become family property.

For example, say one spouse inherits $100,000. The spouses use that $100,000 to buy property, make investments, or open accounts solely in the other spouse’s name. A court would probably say the $100,000 was a gift from one spouse to the other, and would now be family property.

Depending on the circumstances, even if an inheritance is put into a property in joint names, a court might find it’s a gift to the other person. Not all of it would be excluded property.

The only way to be certain any inheritance, gift from relatives, or other excluded property (like pre-relationship savings) put into property bought during your relationship remains excluded property is to record it in a written agreement.

If excluded property increases in value during your relationship, the increase is considered family property. For example, say your spouse owned a house when you started living together. You aren’t entitled to an equal share of the house’s total value. But you’re entitled to half of the increase in the house’s value since you started living together.

The law in this area is changing. Get legal advice if you can. For the most recent law, see the Family Law in BC website at familylaw.lss.bc.ca.
I just got the revised agreement back from Sally’s lawyer.

Yes, I did. It now says the cottage my mother left me before we got married is mine. But because its value has gone up by $50,000 since we got married, I have to pay Sally $25,000.

If excluded property increases in value during a relationship, the increase is considered family property and divided equally between spouses.

» Property division for Aboriginal and non-Aboriginal spouses

Information in this section (pages 46 – 48) applies to:

- status Indians, and
- non-Aboriginal people who have children with status Indians.

For financial assets, like cash, bank accounts, stocks, and bonds, the same personal property division laws apply to Aboriginal and non-Aboriginal spouses. This is because financial assets are kept off reserve.
Homes on reserve for Aboriginal and non-Aboriginal spouses

The *Family Homes on Reserves and Matrimonial Interests or Rights Act*, in place since December 2014, means if you live on reserve, you’re protected:

- during your relationship,
- if you and your spouse or common-law partner separate, and
- if your spouse or common-law partner dies.

This act applies to married and common-law couples living on reserve, where at least one person must be a First Nation member or a status Indian. It applies to opposite-sex couples and same-sex couples. The act says common-law means living together in a marriage-like relationship for at least one year.

The act intends to give the same rights and protections about the family home that people have who live off reserve. It gives people who live on reserves protections and rights until a First Nation community makes its own matrimonial real property laws under the act or other legislation.

What matrimonial real property means

Under this act, matrimonial real property means houses, land, and structures a family uses. You may have got this real property before or during your relationship. The act doesn’t include other property you use for a family purpose, such as cars, money, and household furniture.

Matrimonial real property *doesn’t* include gifts you got in a will, or when someone died without a will, or real property you bought with money from those gifts.

When a relationship ends

Under the Indian Act, when a relationship ended and only one spouse or common-law partner had a certificate of possession, the other person may have had to leave the family home. The courts could only make orders for families on reserve to divide the value of matrimonial property (house, cash, cars, etc.).
Under the Family Homes on Reserves and Matrimonial Interests or Rights Act, the courts can make orders about the home. These include who can live in it and for how long, how matrimonial property is divided, and other protections about the home. This means the court can:

- remove violent partners from the family home, and
- apply a First Nation’s own matrimonial property laws when in place.

This means even if you aren’t a First Nation member, and even if your children aren’t First Nation members, you and your children may be able to stay in your home on reserve.

If you or your spouse or your common-law partner want to decide what to do with your family home on reserve after you separate, the act says:

- you must first get the “free and informed” consent of your spouse or common-law partner, and
- you must get their consent in writing.

**First Nations laws**

First Nations can make their own matrimonial real property laws. Or they can follow the Family Homes on Reserves and Matrimonial Interests or Rights Act until they make their own laws.

The act doesn’t cover:

- First Nations who have their own matrimonial real property laws (you can ask the Nation if they have their own laws),
- First Nations with a self-government agreement (unless they have reserve land and choose to follow the act), and
- First Nations with land codes in place under the First Nations Land Management Act.
Family debt

Family debt includes all debts that either spouse took on during the relationship. This might include:

- mortgages,
- loans from family members,
- bank lines of credit or overdrafts,
- credit card payments, and
- income tax.

Family debt also includes debts taken on after spouses separate if the money was spent to take care of family property.

It doesn’t matter whose name the debt is in.

Like family property, both spouses are equally responsible for family debt. The court orders an unequal sharing of debts only if it’s “significantly unfair” to divide it equally.

However, creditors can demand payment only from the spouse who took on the debt. If a couple has joint debts, creditors may choose to demand payment from only one spouse. You may want to do the following if you separate.

- Tell all your creditors in writing you’re no longer with your spouse. Keep copies.
- Cancel any joint and secondary credit cards.
- Talk to your bank about any joint accounts you have.
- Reduce the limits on overdrafts and credit lines to what you owe now. Or see if you can change the account to need two signatures to withdraw money.
- If you need credit, ask the bank to open a line of credit in your name only.
- Change the beneficiary of your investments, RRSPs, insurance, and will to someone else, such as your children, if your spouse is the beneficiary.

This can get complicated. You may need to get some legal advice. See page 81 for where to find a lawyer.
Benefits

If you and your spouse separate, you also have to think about what to do about the benefits you get through your work.

» Medical/dental plans

If one spouse’s medical plan provides coverage for the whole family, you need to find out the rules for separated or divorced spouses. Usually the plan continues to cover the children.

If the plan covers a separated or divorced spouse, your agreement or order should say the coverage continues. If the plan doesn’t cover a separated or divorced spouse, you have to apply for separate coverage.

Financial help

If you don’t have enough money to live on, here are some options for getting financial help.

» Welfare

Welfare is money and other benefits the BC government gives to people who don’t have an income (usually wages or a salary). There are rules about who can get these benefits.

If you’re already on welfare, tell the Ministry of Social Development and Poverty Reduction (the ministry) you separated from your spouse. This affects how much welfare you get each month.

See the booklets How to Apply for Welfare, Income Assistance on Reserve in BC, Welfare Benefits, and When You’re on Welfare.

Read the booklets online at legalaid.bc.ca/read. See the back cover of this booklet for how to get free copies.
If your children live with you, the ministry arranges for you to meet with a family maintenance worker to talk about getting child support from the other parent (if you don’t already get it because of an agreement or order). If you want, the ministry tries to arrange for a child support agreement or apply to court to get an order for child support from the other parent. If you don’t want child support from the other parent, you can tell the ministry you don’t want them to apply for support.

» **Seniors’ benefits**

Spouses who were married or lived together in a marriage-like relationship for at least one year are entitled to federal benefits such as the Old Age Security (OAS) pension, the spouse’s Allowance, and the Guaranteed Income Supplement (GIS).

The spouse’s Allowance is for couples with low incomes. It’s paid to spouses who are 60 to 64 years old if their spouse is 65 and getting OAS pension. If you’re getting the spouse’s Allowance, and you’re between 60 and 64 when you separate from your spouse, your Allowance stops three months after you separate.

GIS is based on your and your spouse’s combined income. If you separate and are living on a low income, you may qualify for GIS as a single person. Let the GIS office know right away that you separated from your spouse.

» **Canada Pension Plan credit splitting**

When a relationship ends, the Canada Pension Plan (CPP) pension contributions a couple made while they lived together can be shared equally between them. This division is called credit splitting. You must ask to have your CPP credits split. To qualify, unmarried spouses must have lived together for at least one year. You can apply for credit splitting after you live separately for one year.

If you are or were married, there’s no time limit to apply, unless your spouse dies. Then you must apply within 36 months of the date of death.
If you were living in a marriage-like relationship for one year, you can apply for credit splitting after you live apart for 12 consecutive months. You must apply within four years of the date you began living apart.

If you signed an agreement with your spouse or partner that says you won’t split CPP pension credits, you usually have to stick to that agreement.

For more information, see the online booklet *When I’m 64* at [publiclegaled.bc.ca/when-im-64-benefits](http://publiclegaled.bc.ca/when-im-64-benefits). Or contact Department of Employment and Social Development Canada:

- [esdc.gc.ca](http://esdc.gc.ca)
- 1-800-277-9914 (English)
- 1-800-277-9915 (French)

### Taking care of other details

Separation or divorce doesn’t automatically change your banking or beneficiary information. If you separate from your spouse, you may want to take the actions listed on page 49.

Also let the Canada Revenue Agency (CRA) know you’re separated after you’re apart for at least 90 days. In some cases, you might qualify for extra Canada child benefit or GST credit payments.

To change your marital status, call CRA at **1-800-387-1193** (press 1 for the Canada child benefit, then press * to speak to a representative). Or fill out a Marital Status Change form and send it to the tax centre in your area. For more information and the form, see [canada.ca](http://canada.ca). In the search bar, type marital status change. Click the link to open the page.

Get legal advice to protect your finances and credit, and to learn about your options. You especially need legal advice if you own a house, car, or other property (like joint bank accounts) with your spouse.

See page 81 for where to find a lawyer.
Going to Court — If You Can’t Agree

If you and your spouse can’t agree, either of you can ask the court to decide how to resolve some or all of your issues.

Before the court makes a final order

Here are a few things that might happen before a judge makes a final court order. All of these options are intended to help you settle as much of your case as possible without a court hearing.

» Exchange information

The law says you and your spouse must provide each other with “full and true information” so you can resolve your family law dispute. This rule applies whether or not you go to court.

The court rules also set out exactly what information you must provide before you go to court. If you refuse to provide this information, the court may make you pay a penalty.

» Meet with a child support officer

Child support officers can help you understand the child support guidelines and calculate how much child support you should pay or get. Child support officers are available at Family Justice Centres in Kelowna, Nanaimo, Surrey, and Vancouver.
If the other guardian agrees, a child support officer can work with both of you to negotiate the child support amount. Child support officers can also refer you to other services for help. You can choose — or the court might send you — to see a child support officer.

See page 75 for Family Justice Centres.

» Meet with a family justice counsellor

In some Provincial Court registries, you have to meet with a family justice counsellor before you can go to court. In most communities, family justice counsellors are also available to help all families. Family justice counsellors can:

- help you explore ways to settle your parenting and support issues, including free mediation, and
- give you legal information about how to get or change family agreements or court orders.

See page 80 for family justice counsellors.

» Go to a Parenting After Separation course

In most Provincial Court locations, you have to attend a Parenting After Separation course before you can appear in court. This is a three-hour workshop to help guardians deal with separation and make sure they think about the best interests of the child when they make decisions.

The manual for this workshop is available in English, Chinese, and Punjabi. The course is also available online. Even if you don’t have to go (for example, if your case is in Supreme Court), think about taking the course anyway. Phone your local Family Justice Centre or courthouse to see if this workshop is required or offered in your community.

See page 75 for Family Justice Centres.
Family justice counsellors can help you explore ways to settle your parenting and support issues.
» **Meet with a judge or master**

In Supreme Court, you must meet with a judge or **master** (court official who can make some legal decisions) for a **Judicial Case Conference (JCC)** before you can ask the court to make an **interim** (temporary) **order**. A JCC is a confidential meeting where you, your spouse, and the judge or master can:

- identify the issues to be decided,
- review different ways to solve these issues,
- consider what other family justice services might help you, and
- plan how your case will happen; for example, when the court hearings will happen and when you must exchange information.

Either of you may request a JCC at any time, even if a JCC has already been held.

In Provincial Court, judges can order a similar meeting, called **Family Case Conference (FCC)**, before you can have a court hearing.

You and the judge explore options to settle your case at a JCC or FCC. At the meeting, the judge can make:

- referrals to mediation or other **dispute resolution** services,
- a **consent order** you both agree to, or
- an order that helps prepare your case for a court hearing; for example, to exchange information.
» **Apply for an interim order**

If you can’t agree, you can get a final order only after a trial. A trial can take a long time and a lot of work before it happens. While you prepare for a trial, you might need an interim order. An interim order provides a temporary solution for parenting arrangements, **contact with a child**, child and **spousal support**, and some property issues, such as who’ll live in the family home. If you go to Supreme Court, you have to attend a Judicial Case Conference before you can apply for most interim orders.

It’s possible you and your spouse might decide the interim order works and should stay in place. If so, you don’t have to go back to court to make it permanent in a final order, unless the order is set for a limited time. You can keep using that interim order for as long as it works for you. Or you can ask the court for a consent order. You don’t usually have to go to court to get a consent order. You can just file your documents at the court registry.

If you can’t agree about the interim order, you can apply to the court to change the interim order or ask for a final order at a trial.

**Final order**

The court can make a final order in only three situations:

* if both parties agree (a consent order),
* if you apply for an **uncontested divorce**, where you and your spouse must agree on how to deal with your parenting, support, and property and debt issues (called an **undefended divorce** in the Supreme Court Family Rules), or
* after a trial.

You can get a consent order or an uncontested divorce without going to court.

You need to get a **divorce** only if you were married. See page 66 for how to apply for an uncontested divorce.
Family law protection order

You can ask the court for a **family law protection order** (protection order) to protect yourself, your children, or any family member whose safety and security is at risk because of a family member’s violence. Family members include:

- your spouse (married or unmarried),
- someone you live or lived with in a marriage-like relationship for any length of time,
- your child’s parent or legal guardian,
- a relative of any of the above who lives with them,
- a relative of yours who lives with you, and
- your own child.

Family violence includes physical, sexual, psychological, and emotional abuse, including:

- intimidation,
- harassment, and
- unreasonable restrictions on your independence.

When a judge makes a protection order, the order is automatically registered with the Protection Order Registry. All police forces in BC have access to registered protection orders. Any **breach** (violation) of this order is a criminal offence.

If there’s a history of violence in your family or you or your children are at risk, you may be able to get a **legal aid** lawyer to **represent** you (take your case). If you plan to go to court on your own to get a court order, you can get some help from family **duty counsel** (a lawyer who gives free advice).

See page 81 for family duty counsel and page 82 for legal aid.

For more about other kinds of protection orders, see the booklet *For Your Protection: Peace Bonds and Family Law Protection Orders*.

Read the booklet online at [legalaid.bc.ca/read](http://legalaid.bc.ca/read). See the back cover of this booklet for how to get free copies.
# Which court to go to

**Only Supreme Court**

- apply for a **divorce**
- get an order for **custody** under the Divorce Act
- get an order for **access** under the Divorce Act
- divide property or debts
- get an order to protect your property
- **set aside** (cancel) or **enforce** (put into action) an agreement dealing with property or debt

**or Supreme Court or Provincial Court**

- get an order for **child support** or **spousal support**
- get an order for **guardianship** under the Family Law Act
- get an order about **parenting arrangements** (allocation of **parental responsibilities** and **parenting time**) under the Family Law Act
- get an order for **contact with a child** under the Family Law Act
- get a **family law protection order** (including an order so the other **spouse** can’t come into the home)
- set aside or enforce an **agreement** about guardianship, parenting arrangements, contact with a child, or child support or spousal support
- get an order for only you or you and your children to stay in the home (order for exclusive occupancy)
<table>
<thead>
<tr>
<th>Agreement type</th>
<th>When it happens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting arrangements (Family Law Act (FLA) Section 44)</td>
<td>If the agreement isn’t in the best interests of the child.</td>
</tr>
<tr>
<td>Contact with a child (FLA Section 58)</td>
<td>If the agreement isn’t in the best interests of the child.</td>
</tr>
<tr>
<td>Child support (FLA Section 148)</td>
<td>If the court would make a different order based on the child support guidelines or under the Family Law Act.</td>
</tr>
<tr>
<td>Spousal support (FLA Section 164)</td>
<td>If the court is satisfied the original agreement was made unfairly; for example:</td>
</tr>
<tr>
<td></td>
<td>• one spouse didn’t disclose some or all of their income, or</td>
</tr>
<tr>
<td></td>
<td>• one spouse took unfair advantage of the other spouse’s vulnerability, or</td>
</tr>
<tr>
<td></td>
<td>• a spouse didn’t understand what they were signing, or</td>
</tr>
<tr>
<td></td>
<td>• the agreement itself is significantly unfair when the court considers certain criteria (see FLA Section 164(5) for a list).</td>
</tr>
<tr>
<td>Property (FLA Section 93)</td>
<td>If the court is satisfied the original agreement was made unfairly; for example:</td>
</tr>
<tr>
<td></td>
<td>• one spouse didn’t disclose some or all of their income, or</td>
</tr>
<tr>
<td></td>
<td>• one spouse took unfair advantage of the other spouse’s vulnerability, or</td>
</tr>
<tr>
<td></td>
<td>• a spouse didn’t understand what they were signing, or</td>
</tr>
<tr>
<td></td>
<td>• the agreement itself is significantly unfair when the court considers certain criteria (see FLA Section 93(5) for a list).</td>
</tr>
</tbody>
</table>
## When a court changes, suspends, or ends an order

<table>
<thead>
<tr>
<th>Order type</th>
<th>When it happens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting arrangements¹</td>
<td>If the child’s needs and circumstances changed since the order was made. This could include a change in the circumstances of another person involved.</td>
</tr>
<tr>
<td>(Family Law Act (FLA)²</td>
<td></td>
</tr>
<tr>
<td>Section 47)</td>
<td></td>
</tr>
<tr>
<td>Contact with a child</td>
<td>If the child’s needs and circumstances changed since the order was made. This could include a change in the circumstances of another person involved.</td>
</tr>
<tr>
<td>(FLA Section 60)</td>
<td></td>
</tr>
<tr>
<td>Child support</td>
<td>• If circumstances changed according to the child support guidelines, usually because the payor’s income has gone up or down and a different amount of child support should be paid.</td>
</tr>
<tr>
<td>(FLA Section 152)</td>
<td>• If you have important evidence that wasn’t available before.</td>
</tr>
<tr>
<td></td>
<td>• If financial information was missing and not discovered until after the order was made.</td>
</tr>
<tr>
<td>Spousal support</td>
<td>• If the conditions, finances, needs, or other circumstances of either spouse changed.</td>
</tr>
<tr>
<td>(FLA Section 167)</td>
<td>• If you have important evidence that wasn’t available before.</td>
</tr>
<tr>
<td></td>
<td>• If financial information was missing and not discovered until after the order was made.</td>
</tr>
</tbody>
</table>

¹ Includes parental responsibilities and parenting time allocation.

Divorce — Ending the Marriage

If you’re legally married, divorce is the only way to legally end your marriage.

How to get a divorce

To get a divorce, you must first separate. You can live in the same house and be separated, as long as you’re not living in a marriage-like relationship.

Only the BC Supreme Court can grant a divorce. You can apply for a divorce if you and your spouse have lived separately for one year.

The BC Supreme Court grants almost all divorces in BC on the basis that spouses have lived apart for one year. At least one spouse must live in BC and have lived here for 12 months before you can apply.

If your marriage breaks up because of adultery or physical or mental cruelty, you don’t have to wait one year before the divorce is granted. However, you have to prove your case to the court. You need to talk to a lawyer about your options. You may decide waiting one year is easier.

Some things about divorce law are changing. For the most recent law, see the Family Law in BC website at familylaw.lss.bc.ca.
The divorce process

BEFORE YOU BEGIN

Who’s a spouse  
Page 1

Which laws apply  
Page 4

Which court to go to  
Page 59

ISSUES TO CONSIDER

Children  
Page 19

Support  
Pages 32, 39

Property and debt  
Page 43

Agreements  
Made by both spouses when you can agree  
Pages 5, 11

Court orders  
Made by the court  
Page 53

See familylaw.lss.bc.ca for how to get a divorce.
Uncontested divorce

You can apply for an **uncontested divorce** if you and your spouse agree to get a divorce and know what you want to do about:

- **parenting arrangements** and **contact with a child**,  
- **child support** and **spousal support**, and  
- **division of property and debts**.

This is also called an **undefended divorce**, or a desk-order divorce.

You can make a joint application or a sole application.

- With a joint application, you apply for all the court orders together.
- With a sole application, your spouse isn’t involved in the application process, but does agree on the issues.

If the forms you file with the court are in order and you make reasonable arrangements for child support payments, the judge grants the divorce without you going to court.

Contested divorce

If you and your spouse can’t agree about parenting, support, and/or how to divide property and debt, you may have to apply for a **contested divorce** (also known as a **defended divorce**). This doesn’t mean you disagree about whether you should get divorced.

If you can’t come to an agreement about all of your issues, a judge decides at a trial. It can take a long time to get a trial scheduled and the whole process is time-consuming, expensive, and stressful. It’s also very hard on any children involved. Before you decide to do that, think about all the options to settle your differences. Because the process is complicated, it’s a good idea to talk to a lawyer.

See page 81 for where to find a lawyer.
How to apply for an uncontested divorce

You have to apply to the BC Supreme Court for a divorce. If you already settled all your other issues (either by written agreement or orders from Provincial Court), you may be able to fill out the Supreme Court forms and file them at the court registry yourself.

See the Family Law in BC website for a self-help divorce guide (in English only) at familylaw.lss.bc.ca/guides/divorce.

The BC government has a free Online Divorce Assistant at justice.gov.bc.ca/divorce that automatically fills out all the forms you need for a joint divorce. Use this tool if:

- you and your spouse live in BC,
- you don’t have dependent children together, and
- your marriage certificate or marriage registration is in English.

If you apply for an uncontested divorce (called undefended divorce in the court rules), a judge approves the divorce without you having to go to court, if:

- you correctly filled out and filed all the right documents with the court registry,
- the judge is satisfied you proved the reason for asking for the divorce (usually just that you’re separated for at least a year), and
- the judge is satisfied you made appropriate arrangements for your children’s support and care.

You can start the court process for a divorce as soon as you and your spouse separate. You have to file documents at the court registry to open a court file. But the court won’t accept your application for the divorce order and a judge won’t grant the divorce until you’ve been separated for one year.

You don’t have to apply for a divorce as soon as you separate. You may not be ready for a divorce, or you and your spouse might get back together. Or you may want some time to pass before you start trying to make final agreements about parenting arrangements, contact, support, and property and debt division.
Cathy and I split up a while ago. I want to get a divorce, but I don’t think I can pay for a lawyer.

You might not need a lawyer. Marge and I did our own divorce because we agreed on all our issues.

How does that work? Don’t we have to prove something in court?

No. If it’s been more than a year since you separated, and you agree about things, like arrangements for your kids and support, you can get a divorce now.

You can apply for a divorce if you and your spouse live separately for one year. The BC Supreme Court grants almost all divorces in BC if spouses live apart for one year.
You and your spouse can get back together for up to 90 days without affecting the one-year separation period needed for a divorce. If you stay together longer than 90 days but still end up separating, the one-year period starts over from when you separated again.

If you separated, your spouse can apply for a divorce even if you don’t want one. You can’t stop the divorce from going ahead. If you disagree with the support or parenting arrangements or the property and debt division your spouse suggests as part of the divorce, see a lawyer.

You can apply for a divorce in BC even if you were married in another country, if:

- you have a marriage certificate or other proof you were legally married there, and
- you or your spouse lived in BC for the 12 months right before you apply for a divorce.

Canada recognizes the following documents as proof of marriage from other countries:

- marriage certificates,
- marriage registrations, or
- certified copies of marriage documents.

Some cultures have their own divorce ceremonies. But you aren’t legally divorced in Canada unless you have a court order for divorce from Canada or another country.

Justice Access Centres in Nanaimo, Vancouver, and Victoria have a drop-in information service. However, you may want to get a lawyer’s help. You may be able to do some of the work and have a lawyer review it. A lawyer can also give you legal advice about your options.

See page 76 for Justice Access Centres and page 81 for where to find a lawyer.
If You’re an Immigrant

If you’re an immigrant, you may have some special concerns about a separation or getting a divorce in Canada.

If you’re a permanent resident

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

- can’t make you leave Canada,
- doesn’t have the right to keep your children or your property, and
- still has a legal responsibility to help support you and your children and other obligations they may have as a sponsor.

See page 32 for child support and page 39 for spousal support.
If you have to get welfare, your status in Canada won’t change. However, the Ministry of Social Development and Poverty Reduction (the ministry) expects you to get support from your sponsor. You usually have to give the ministry the right to collect support payments.

If your sponsor won’t support you, you can still get welfare. If you left the relationship because your sponsor abused you, tell the ministry. In such cases, you don’t need to try to get support from your sponsor before you qualify for welfare.

If you sponsored your spouse or partner to come to Canada, you need to support them for the time you agreed to, even if you’re separated or divorced. If the person you sponsored abused you, see a lawyer.

See page 50 for welfare and page 81 for where to find a lawyer.

To find out more about what could happen when a sponsorship doesn’t work, read the booklet Sponsorship Breakdown. It explains what to do if the person who sponsored you can’t or won’t support you, and you can’t support yourself. Sponsorship Breakdown is for immigrants in the family class (people sponsored by a child, grandchild, spouse, or parent) or in the spouse or common-law partner in Canada class.

Read the booklet online at legalaid.bc.ca/read. See the back cover of this booklet for how to get free copies.
If you aren’t a permanent resident

If you aren’t a permanent resident in Canada (for example, if you’re a refugee claimant, or if you’re in the process of being sponsored) and you and your spouse separate, get advice right away about your immigration status. If possible, contact an immigration lawyer. A multicultural agency may also be able to help.

See page 84 for multicultural agencies. See also page 82 for the Lawyer Referral Service. This service can refer you to a lawyer who specializes in immigration matters.

» Permanent resident status

If your spouse sponsored you for permanent resident status but you haven’t yet had a decision on your application, get legal help right away. You may be able to apply to remain in Canada on humanitarian and compassionate grounds.

Settlement workers, also called immigrant settlement workers, help newcomers to Canada find services. Call VictimLinkBC to ask where to get this help. See page 78 for contact information.

» If you’re sponsoring your abuser

Get legal advice as soon as possible if your spouse abuses you. You may also want to speak to a settlement worker.

See pages 81 – 84 for where to get legal help.
For more information about marriage and divorce inside or outside Canada, see the Family Law in British Columbia website.
Where to Get More Legal Help

Legal information

The following organizations, programs, and websites can give you more help to settle your family law issues.

Aboriginal Legal Aid in BC
aboriginal.legalaid.bc.ca

This website has information and publications about legal issues that affect Aboriginal peoples, including:

- child protection;
- fishing, hunting, and gathering rights (harvesting rights);
- matrimonial property on reserve;
- Gladue rights;
- First Nations Court; and
- legal help from Legal Aid BC and other groups.
Aboriginal community legal workers
aboriginal.legalaid.bc.ca

Aboriginal community legal workers are Legal Aid BC staff in Duncan and Nanaimo who can:

- give you legal information and summary advice about family law;
- explain the legal process and other options, such as mediation;
- go to court with you;
- help you prepare forms and letters;
- participate in negotiations;
- talk on your behalf to a Legal Aid BC lawyer or duty counsel; and
- refer you to other services.

Duncan
Khowutzun Cultural Centre
250-748-1160
1-800-578-8511

Nanaimo
Justice Access Centre
250-741-5529
1-800-578-8511

Tillicum Haus Health Centre
250-753-6578
1-800-578-8511

Clicklaw
clicklaw.bc.ca

The Clicklaw website has links to legal information, education, and help for British Columbians. Here, you can find out about your rights and options to solve legal problems, find phone numbers for law-related help, and learn about family law and the legal system.
Community workers

povnet.org
amssa.org (look under Resources)

A community worker can help you find solutions to your legal issues. To find a community worker in your area, see the above websites. Or contact your local library to find a community group that can help you.

Dial-A-Law

cbabc.org/for-the-public/dial-a-law/scripts

604-687-4680 (Greater Vancouver)
1-888-687-3404 (elsewhere in BC)

Dial-A-Law is a service of the Canadian Bar Association, BC Branch. They produce a library of audio recordings that provide information about the law in BC. You can listen to the recordings over the phone or read or listen to them on the website. Some recordings are available in Chinese, English, and Punjabi.

Family justice counsellors and Family Justice Centres

www2.gov.bc.ca
(in the search bar, type family justice counsellors)

Family justice counsellors can give you information about the law and the court process, and help you reach an agreement. They can also refer you to counselling, emergency, or other services. They work at Family Justice Centres across BC and at the Nanaimo, Vancouver, and Victoria Justice Access Centres. Call Service BC at the numbers below and ask for the centre nearest you.

604-660-2421 (Greater Vancouver)
250-387-6121 (Victoria)
1-800-663-7867 (elsewhere in BC)

TDD (if you’re hard of hearing)
604-775-0303 (Greater Vancouver)
1-800-661-8773 (elsewhere in BC)
Family Law in BC
familylaw.lss.bc.ca

This website has legal and self-help information, including:

- plain language basic information,
- frequently asked questions,
- step-by-step guides,
- definitions of legal terms,
- links to court forms,
- short online videos, and
- links to who can help you.

Justice Access Centres
www2.gov.bc.ca
(in the search bar, type family justice services)

At Justice Access Centres (JACs), you can:

- learn about the court system and court procedures,
- get legal information,
- find and fill out the right court forms,
- find out about free legal advice, and
- find alternatives to going to court.

Greater Vancouver  604-660-2084 or
Service BC          1-800-663-7867 (ask to be put through to 604-660-2084)

Nanaimo            250-741-5447 or
                    1-800-578-8511

Victoria           250-356-7012 or
Service BC         1-800-663-7867 (ask to be put through to 250-356-7012)
**Justice Education Society**

justiceeducation.ca

This website has information for couples separating, including the online course How to Separate, which helps people through separation or divorce. It includes information on how to settle out of court and how to prepare for court. The society also has an interactive guide for kids and teens about separation and divorce at familieschange.ca.

**MyLawBC**

mylawbc.com

This website has three pathways for people going through a separation or divorce:

- **Make a separation plan** helps you figure out the best way for you and your spouse to work through and make a plan for your separation or divorce. It links to a Dialogue Tool for separating couples to work together to create a fair and lasting separation agreement.

- **Get a family order** helps you figure out which court to use and helps you with court orders.

- **I’ve been served with a court document** helps you figure out what to do next if you’re served (given) court documents.

The website also has a pathway on abuse and family violence. This pathway helps you recognize signs of abuse and the effect it could have on your separation. It helps you create a safety plan and find the support you need to keep you and your family safe.
People’s Law School

publiclegaled.bc.ca

604-331-5400

This Vancouver organization has free legal information classes and publishes booklets about child support guidelines, family law, and more.

VictimLinkBC

victimlinkbc.ca

1-800-563-0808
text 604-836-6381
TTY (if you’re hard of hearing)

604-875-0885 (Greater Vancouver)
711 (Telus Relay Service for collect calls)

This confidential, multilingual, free phone service is available across BC 24 hours a day, seven days a week. It provides information, support, and referrals to services or contacts in your community. Interpretation services are available for all the major languages spoken in BC.
Help to make an agreement

You and your spouse can get help from these professionals to work out an agreement together.

Arbitrators

Arbitrators can help you resolve family law problems out of court. They work like judges and their decisions are like court orders and must be followed. The Lawyer Referral Service (page 82) may be able to refer you to a family law lawyer who’s an arbitrator.

Collaborative family lawyers

Greater Vancouver  collaborativedivorcebc.com
Greater Vancouver  nocourt.net
Greater Vancouver, Victoria  bccollaborativerostersociety.com
Okanagan Valley  collaborativefamilylaw.ca
Vancouver  northshorecollaborative.ca
Victoria  collaborativefamilylawgroup.com
West Kootenay  nocourt.ca

Collaborative family law lawyers can help you reach an agreement. To find a collaborative family law lawyer, see one of the above websites. The Lawyer Referral Service (page 82) may also be able to refer you to a lawyer who practises collaboratively.
**Family justice counsellors**

**www2.gov.bc.ca**
(in the search bar, type family justice counsellors)

Family justice counsellors provide free mediation services to families with modest incomes. They work at Family Justice Centres across BC and at the Nanaimo, Vancouver, and Victoria Justice Access Centres. Call Service BC at the numbers below and ask for the centre nearest you.

- 604-660-2421 (Greater Vancouver)
- 250-387-6121 (Victoria)
- 1-800-663-7867 (elsewhere in BC)

**Family lawyers**

A family law lawyer can help you reach an agreement. See page 81 for where to find a lawyer.

**Mediators**

**mediatebc.com/find-a-mediator.aspx**
**fmc.ca**

A mediator is a neutral third person who can help you and your spouse reach an agreement about parenting, support, and property division. To find a mediator, see the Mediate BC website (above). The Family Mediation Canada website (above) also has information about qualified family mediators. You can also contact a community organization, your local legal aid location, a family justice counsellor, or the Lawyer Referral Service (page 82) to ask if they can refer you to a mediator.

**Parenting coordinators**

**bcparentingcoordinators.com** (click Members)

A parenting coordinator is a lawyer, counsellor, social worker, or psychologist trained to mediate and arbitrate disputes between parents who already have a final order or agreement. They can help you carry out your parenting plan and settle disagreements about your existing agreement, court order, or plan.
Help from a lawyer

Lawyers can give you legal advice and **representation** (take your case and act for you on much or all of your case). To find a lawyer, see the following.

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**BC Family Law Unbundling Roster**

[unbundling.ca](http://unbundling.ca)

This website has a list of family lawyers who do select legal tasks for clients. You pay for the legal tasks you want help with, and you handle the rest of your case yourself. This arrangement usually costs less than full legal representation.

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**Family advice lawyers**

[legalaid.bc.ca](http://legalaid.bc.ca)  
(click Legal aid, then Advice, then Advice lawyers)

Legal Aid BC provides free legal advice to parents with low incomes who are working with a family justice counsellor to try and reach an agreement in a **separation** or **divorce**.

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**Family duty counsel**

[legalaid.bc.ca](http://legalaid.bc.ca)  
(click Legal aid, then Advice, and under Family law, click Duty counsel)

**Duty counsel** at both Provincial and Supreme Courts help people with their family court matters. Services may vary from court to court. These lawyers may also be able to give you legal advice about your options. To find out when family duty counsel is at your court, call your nearest legal aid location (listed on the above website) or local court registry.
Family LawLINE
legalaid.bc.ca/legal_aid/FamilyLawLINE.php

- 604-408-2172 (Greater Vancouver)
- 1-866-577-2525 (elsewhere in BC)

You can get free legal advice over the phone from a family law lawyer. Family LawLINE lawyers give brief “next-step” advice about parenting arrangements, custody, access, contact with a child, guardianship, child support, spousal support, property division, family agreements, adoption, and court procedures to callers who don’t qualify for other services. An intake worker asks you questions about your financial situation and your legal issue. If you qualify, you’re transferred to an available Family LawLINE lawyer.

Lawyer Referral Service
cbabc.org/for-the-public/lawyer-referral-service

- 604-687-3221 (Greater Vancouver)
- 1-800-663-1919 (elsewhere in BC)

This service can give you the name of a family law lawyer who can meet with you for a half-hour. At the meeting, you can briefly describe your issue. The lawyer lets you know if you have a case. The meeting costs $25 plus taxes. You may decide to hire the lawyer or call the service for another name. Ask the lawyer what they charge an hour.

Legal Aid BC
legalaid.bc.ca (for Legal Aid BC locations)

- 604-408-2172 (Greater Vancouver)
- 1-866-577-2525 (elsewhere in BC)

The Legal Services Society (Legal Aid BC) provides legal aid if you qualify. Tell Legal Aid BC if you’re leaving an abusive partner. Recorded messages are available in Cantonese, English, French, Mandarin, Punjabi, and Spanish.
Other free legal services

The following pro bono (free) programs offer brief legal help to people who can’t afford a lawyer.

Access Pro Bono Society of British Columbia
accessprobono.ca
604-878-7400 (Greater Vancouver)
1-877-762-6664 (elsewhere in BC)

Volunteer lawyers provide brief legal advice at legal clinics throughout BC.

Family Maintenance Enforcement Program
fmep.gov.bc.ca (click Enroll)
250-220-4040 (Victoria)

This program can help you collect your support payments if you already have a court order or a separation agreement filed in court. To enroll, call the above number. Or download or request the enrollment package on the website, fill it out, and mail it.

The Law Centre, Victoria
thelawcentre.ca
250-385-1221 (Victoria)

If you live in the Capital Regional District, you can get free legal advice from University of Victoria law students at The Law Centre in Victoria.
Multicultural organizations

amssa.org (click Memberships)
mosaicbc.org

Multicultural organizations may know interpreters, lawyers, or counsellors who speak your language.

QMUNITY

qmunity.ca

QMUNITY is a BC centre for the LGBTQ/2S community (lesbian, gay, bisexual, transgender, queer, and two-spirit). It provides free counselling, social and support groups, and other services.

TRU Community Legal Clinic, Kamloops

tru.ca/law/students/outreach/Legal_Clinic.html

778-471-8490

Thompson Rivers University law students give free legal help and advice at the clinic in Kamloops.

UBC Indigenous Community Legal Clinic

allard.ubc.ca/iclc/indigenous-community-legal-clinic

604-684-7334 (Greater Vancouver)

1-888-684-7874 (elsewhere in BC)

University of BC law students give free legal help to Aboriginal peoples in Vancouver’s Downtown Eastside.

UBC Law Students’ Legal Advice Program

lslap.bc.ca

604-822-5791

University of BC law students run free legal advice clinics throughout Greater Vancouver.
Glossary

**Aboriginal:** Includes status Indians, non-status Indians, Metis, and Inuit people. Status Indians are also known as First Nations.

**access:** Under the Divorce Act, access means the time children spend with the parent they don’t usually live with. Other people can apply for access to a child, including grandparents, aunts and uncles, and other relatives.

**agreement:** A written document that sets out how you and your spouse have agreed to deal with things like parenting, support, and property. You can make an agreement:

- before you move in together or before you marry,
- while you live together or after you marry, or
- after you separate.

Sometimes people call these cohabitation, marriage, or separation agreements. The provincial family law just calls them agreements. Different rules apply to different types of agreements. Some agreements, like ones about child support, guardianship, parenting arrangements, and contact, can only be made at or after separation.

**allocation of parental responsibilities:** How guardians share or divide parenting decisions. Allocation means distributing something according to a plan. You both might decide this and record it in an agreement or ask the court for a court order.
**annulment:** When a judge makes a declaration that a marriage is invalid; for example, if one spouse was already married, or if the spouses found out they were siblings.

**best interests of the child:** A legal test in the Family Law Act that parents/guardians, courts, arbitrators, and parenting coordinators must use in all family law cases. The test is used to decide what would best protect and promote your child’s physical, psychological, and emotional safety, security, and well-being. Factors are considered, such as:

- the child’s health and emotional well-being,
- the child’s views (unless it wouldn’t be appropriate to consider them),
- the child’s relationships with parents, guardians, and other important people, and
- the effect of any family violence.

When you make parenting arrangements after a separation, the law says you must only consider the best interests of your child. If you go to court, the judge can only consider the best interests of your child when making parenting orders.

**child support:** Money paid by one party to the other party as financial support for the children.

**common-law relationship:** Not a legal term, but often used to refer to unmarried couples who live together in a marriage-like relationship for some time.

**conjugal partners:** An immigration category created for couples who can’t live together or get married in their country of origin, but can still have their relationship recognized in Canada. One example would be a same-sex couple who want to immigrate together to Canada from a country where they can’t live together because of persecution. To qualify, the partners would have to prove their relationship is genuine and has lasted at least one year, and explain why they couldn’t live together or get married.
**consent order:** If you and your spouse want to get or change an order and you agree on what the order should say, you can apply for a consent order (Supreme Court Form F33; Provincial Court Form 20). You may be able to file this order with the court registry and have a judge or master sign it without you appearing in court.

**contact with a child:** Under the Family Law Act, contact is the time a person who is not a guardian spends with the child. They could be a parent who doesn’t have guardianship, or another relative, like a grandparent.

**contested divorce:** If you and your spouse want to get divorced but can’t agree about parenting, support, and/or how to divide property and debt, you may have to apply for a contested divorce, also known as a defended divorce. With a contested divorce, you ask the judge to decide about parenting, support, and/or property and debt.

**court order:** A type of court ruling a judge or master makes that sets out what you must do or not do.

**custody:** Under the Divorce Act, custody can refer to where and with whom a child lives and a parent’s rights and responsibilities for the child in their care.

**delegated Aboriginal agency:** Delegated agencies have an agreement with the Ministry of Children and Family Development to provide child welfare services, and may have the power to take your child from your home and place them in foster care.

**dispute resolution:** When both spouses work through family law issues with a trained professional like a mediator. Some people also use the help of a respected community member, such as a priest or counsellor, to help them resolve their dispute. Dispute resolution is meant to help you avoid going to court, and can include:

- mediation,
- negotiation,
- collaborative law,
- arbitration, or
- parenting coordination.
**divorce:** The end of a legal marriage. To get a divorce, you must go through a legal process and get a court order.

**duty counsel:** Lawyers who help people with low incomes to solve their family law problems. Duty counsel are available at some courts to:
- give advice,
- speak for you in court on simple matters,
- prepare for Family and Judicial Case Conferences, and
- go to case conferences with you.

They can’t take on your whole case or represent you at a trial.

**excluded property:** The assets each spouse owned before the relationship started. Examples of this include gifts and inheritances, certain kinds of court awards, and certain kinds of insurance payments one spouse got during the relationship. Excluded property usually belongs to the spouse who got it, except for any increases in value that happened during the relationship. Excluded property transferred to the other spouse during the relationship might be considered either family property or excluded property by the court, depending on the circumstances. Get legal advice before you transfer excluded property to your spouse. Once property is transferred, it’s difficult to reverse the decision.

**Family Case Conference:** A one-hour informal meeting with a judge and the other party to try and settle some family issues so you can avoid a full hearing in Provincial Court.

**family debt:** The debts you took on during a relationship or to maintain family property after separation. The law assumes you’re both equally responsible for these debts unless equal responsibility for debts would be significantly unfair.

**Family Homes on Reserves and Matrimonial Interests or Rights Act:** Laws that deal with homes on reserve and interests in them for married or common-law partners of opposite-sex or same-sex:
- who experienced a relationship breakdown,
- where at least one person is a status Indian or First Nation member, and
- where no other laws are in place from the First Nation.
family law protection order: A court order made under the Family Law Act to protect someone from violence that can:

- restrict one party from contacting another,
- stop a specific person from visiting the family home,
- control stalking and harassment, or
- prevent someone from owning a weapon.

Family Maintenance Enforcement Program (FMEP): If you enroll with the FMEP, the program monitors the child support payments and/or spousal support payments you should get according to your order or agreement. Program staff take action to get you the payments if you’re not getting them.

family property: The assets either spouse gets during the relationship, plus any increase in the value of excluded property. The law assumes you’re both entitled to an equal share of family property, unless dividing it equally would be significantly unfair. This could also include excluded property transferred to the other spouse.

guardianship: When a child’s parents live together, they’re both the child’s guardians (or have guardianship). When they separate, they both continue to be guardians unless they agree to change it or a court orders a change. Unless an agreement or order says otherwise, guardians are responsible for making all decisions about a child, including:

- daily care and supervision,
- education,
- health care, and
- cultural or religious upbringing.

joint divorce: If you apply for an uncontested divorce together with your spouse, this is called a joint divorce. You must agree on everything to get a joint divorce and you must both sign the divorce documents.
**Judicial Case Conference (JCC):** An informal and confidential meeting of all parties (usually you and your spouse) and a judge or master in a Supreme Court case. The purpose of the JCC is to:

- clearly identify the issues to be decided,
- explore settlement options,
- schedule the next steps in the court case, or
- prepare for a court hearing.

A JCC is held in most cases before either of you can apply for a court order if you don’t agree on the order. Either of you may request a JCC at any time, even if a JCC has already been held.

**legal aid:** A range of free legal services available to people with low incomes. Services include legal information, legal advice, and legal representation (a lawyer to take your case).

**marriage:** When two people agree to live together in a partnership made legally binding by a religious or legal ceremony. Only divorce, annulment, or the death of one of the spouses can end a marriage.

**mediation:** An approach to solving problems in which a third party (a mediator) helps people solve their family law issues without going to court. Mediators are specially trained to help people reach agreements and not take sides. Some mediators are lawyers.

**parental responsibilities:** The responsibility guardians have to make decisions about the child’s life. These can include decisions about daily care, health care, education, religious upbringing, extracurricular activities, etc. After separation or divorce, guardians can share parental responsibilities in whatever way works best for the child. You and the other guardian might decide this and record it in an agreement, or ask the court for a court order.

**parenting arrangements:** The arrangements made for parental responsibilities and parenting time in a court order or agreement between guardians. Parenting arrangements don’t include contact.

**parenting coordinator:** A professional who helps people put in place parenting plans set out in orders or agreements and settle day-to-day conflicts that come up about their parenting plans.
**parenting plan:** An agreement about how to parent when parents live apart.

**parenting time:** The time a guardian spends with the child. During parenting time, a guardian makes day-to-day decisions about and is responsible for the care and supervision of the child. Parenting time can be structured in many different ways. You and the other guardian can decide how to divide parenting time and record it in an agreement, or ask the court for a court order.

**party:** Participant in a court case.

**payor:** The person who pays child support or spousal support.

**primary parenting:** A parenting arrangement when one parent is with the child for more than 60 percent of the time. The child lives with one parent most of the time and this parent is responsible for most of the decisions.

**recipient:** The person who gets child support or spousal support.

**relocate/relocation:** To move to another place. The Family Law Act uses this term to describe any move that will have a significant effect on a child’s relationship with a guardian or person with contact (or another person with an important role in the child’s life) who isn’t moving. A guardian who has an order or agreement about parenting and wants to relocate must give 60 days’ notice in writing to the child’s other guardians and anyone who has contact with the child.

**safe house:** A short-term emergency shelter that provides support and a safe place for women and their children to live after they leave an abusive relationship. Usually women and their children can stay in a safe house for up to seven days. If you need a safe place to stay for more than seven days, the safe house can help you find longer-term safe housing.

**separation:** The end of a marriage or marriage-like relationship when one or both spouses decide the relationship is over.
**separation agreement:** A document that sets out how you and your spouse have agreed to deal with things like parenting, support, and property after you separate. The BC Family Law Act calls this an agreement. There’s no official form to use for drawing up a separation agreement. But these agreements must be in writing, signed by each spouse, and each spouse’s signature witnessed by another person. It’s a good idea to ask a lawyer to review your separation agreement before you sign it.

**shared parenting:** A parenting arrangement when both parents share decision making about the child, and the child spends at least 40 percent of the time with each parent. Or the child lives with one parent more of the time, and the parents share decision-making responsibilities.

**special or extraordinary expenses:** Special expenses are extra expenses for a child over and above the regular cost of living, such as childcare or post-secondary education expenses. Extraordinary expenses are expenses for education, programs, and medical or dental expenses. This also includes expenses for extracurricular activities that meet the child’s needs, such as tutoring or private school, or, possibly, for other activities the child excels at or is gifted in.

**split parenting:** A parenting arrangement when each parent has one or more of the children living with them.

**spousal support:** Money paid by one spouse to the other spouse as financial support.

**spouse:** Members of a same-sex or opposite-sex couple, who are married or have lived in a marriage-like relationship. To qualify as a spouse, an unmarried couple must have lived together for at least the following minimum periods of time:

- two years if you divide property and debts, or
- two years if you ask for spousal support and don’t have children, or
- any length of time if you ask for spousal support and have children, or
- one year if you apply for some federal (Canada) benefits.

**transition house:** A longer-term emergency shelter that provides support and a safe place for women and their children to live after they leave an abusive relationship.
**uncontested divorce**: A divorce both spouses agree to. You can file forms with the court for an uncontested divorce (also called undefended or desk-order divorce) if you and your spouse agree on how to deal with your parenting, support, and property and debt issues. If your forms are correct and you make reasonable arrangements for child support payments, the judge grants the divorce without you going to court. You can both apply for a joint divorce, or one of you can apply for a sole divorce.

**undue hardship**: Circumstances that may allow a payor to avoid paying the full amount of child support under the child support guidelines. The payor must prove payments would be “undue” or exceptional, excessive, or disproportionate. Also applies when the recipient says the amount in the child support guidelines table is too low.
Legal Aid BC family law publications

» legalaid.bc.ca/read

See the back cover of this booklet for how to order free copies.

**The Aboriginal Child Protection Process**

This poster in flow chart form gives a step-by-step overview of the Aboriginal child protection process and the rights of Aboriginal children and families. The poster includes legal options after a continuing custody order has been issued and how to find out if you qualify for legal aid.

**The Child Protection Process**

This poster describes the child protection process in flow chart form. The step-by-step overview shows the investigation, possible outcomes of the presentation and protection hearings, and legal options if your child is under a continuing custody order.

**Emily’s Choice: A Child Protection Story**

This graphic novel tells Emily’s story through engaging artwork and plain language. Emily struggles with addiction and an unhealthy relationship with her partner. She loves her son, Greg, but can’t always take care of him. When Greg goes into foster care, Emily gets legal help and her family’s support to get Greg back.

**Family Law in BC: Quick Reference Tool**

This set of postcards introduces you to the basics of family law through plain language and visuals. Each card covers one legal aspect of separation and divorce, such as which laws apply, how couples can reach agreements, and how to deal with issues involving children and money. Also available in Chinese (simplified and traditional), French (online only), Punjabi, and Spanish.
For Your Protection: Peace Bonds and Family Law Protection Orders

This publication explains how and when you can apply for peace bonds and family law protection orders, and the differences between them. Also available in Chinese (simplified and traditional), Farsi, French (online only), and Punjabi.

How to Become a Child’s Guardian

This fact sheet describes who can become a child’s guardian and how to apply. The fact sheet has information about the forms you have to complete and where to get them, background checks you must do, the Extended Family Program, and where to get legal help with your application. Also available in French (online only).

Keeping Aboriginal Kids Safe: Your Family’s Rights

This booklet describes in plain language and with illustrations what Aboriginal parents and their communities can do in Aboriginal child protection cases. The booklet has information about delegated Aboriginal agencies, mediation, court orders and hearings, and the Extended Family Program.

Leaving Abuse

This graphic novel tells the story of Maya, a young mother who’s left her abusive partner but doesn’t know what to do next or where to get help. The plain language story and illustrations show how Maya finds support and legal aid to stay safe and start a new life free from abuse for herself and her children.

Live Safe, End Abuse

These fact sheets are for anyone leaving an abusive partner. They describe what abuse is, how you can plan for your safety and protect your children, and who can help. Also available in Chinese (simplified and traditional), Farsi, French (online only), Punjabi, and Spanish.
**Mothers Leaving Abusive Partners:**

**Family Law Information**

This plain language guide describes how to protect yourself and your children from your abusive partner, what the courts can do, how to decide parenting arrangements, and where to get help and support. Also available in Chinese (simplified and traditional), French (online only), Punjabi, and Spanish.


This booklet explains the child protection process for Aboriginal and non-Aboriginal children and families. The booklet describes collaborative (shared) planning and decision-making options to stay out of court, what can be decided in court at the presentation and protection hearings, and where to get community services and legal help.

**Separation Agreements: Your Right to Fairness**

This booklet explains the law about fair division of family property or debt when spouses separate, what to do if you believe your agreement might be unfair, how to manage your case and work with a lawyer, and where to get free legal help. Also available in Chinese (simplified and traditional), French (online only), Punjabi, Spanish, and Tagalog.

**Sponsorship Breakdown**

This booklet is for permanent residents who need money and other help when the person sponsoring them in Canada will no longer support them. The booklet explains what happens when a sponsorship breaks down and how to apply for welfare, and includes a section on community groups and other help. Also available in Arabic, Chinese (simplified and traditional), Farsi, French (online only), Punjabi, and Spanish.
Legal Aid BC online

**MyLawBC**  
» [mylawbc.com](#)  
This website has guided pathways on separation, divorce and family orders, abuse and family violence, missed mortgage payments, and wills and personal planning, and includes links to help services. It also has a Dialogue Tool, an online negotiation platform that helps couples who are separating create a fair and lasting separation agreement.

**Family Law in BC**  
» [familylaw.lss.bc.ca](#)  
This website has more detailed information about the issues in this booklet. The website has basic information, step-by-step guides, and free online publications and videos. It also has definitions of legal terms, links to online court forms, updates on the law, where to go for help, and links to other useful websites.

**Legal Services Society**  
» [legalaid.bc.ca](#)  
This website describes what legal aid is and how and where to apply for services (including phone numbers for all legal aid locations in BC). It also has free, easy-to-understand publications about the law in BC.

**Aboriginal Legal Aid in BC**  
» [aboriginal.legalaid.bc.ca](#)  
This website has information and free publications about issues that are important to Aboriginal peoples — family rights, Gladue rights, First Nations Court, matrimonial property on reserve, benefits and income assistance — and help from Legal Aid BC and other groups.
How to get free Legal Aid BC publications

Read legalaid.bc.ca/read
Order crownpub.bc.ca
   (under Quick Links, click BC Public Legal Education & Information)

Living Together or Living Apart is available in simplified and traditional Chinese, English, French, Punjabi, and Spanish.

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