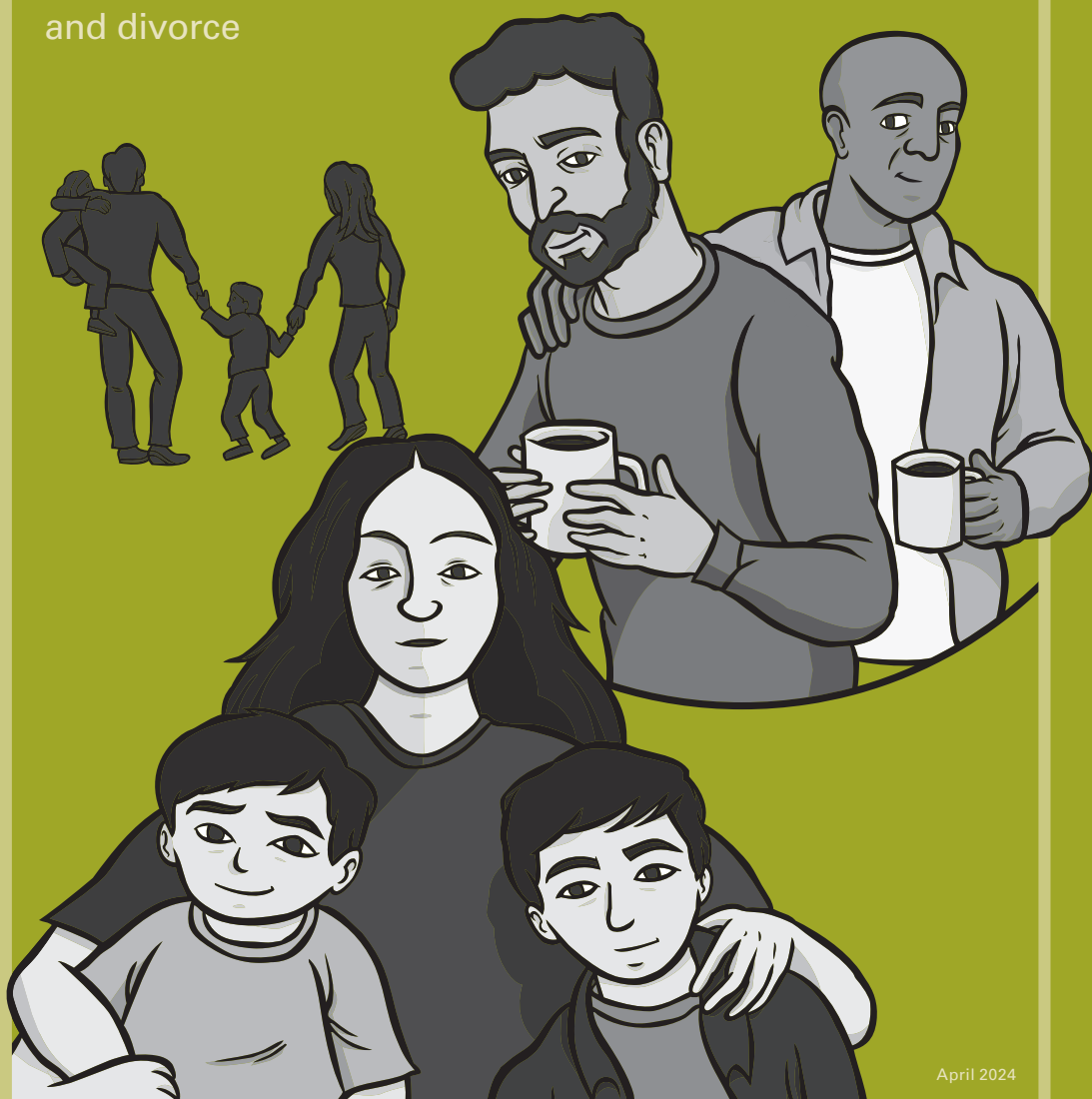


Living Together or Living Apart

Common-law relationships,
marriage, separation,
and divorce



April 2024

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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 might need to get legal help. The information in this booklet is up to date as of April 2024.

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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 police emergency number or the 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 you can go if you'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 province-wide.



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 for a legal aid lawyer to take your case. When you apply, tell Legal Aid BC you're leaving an abusive partner.

See **page 90** 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 might 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 give you legal advice or speak on your behalf in court on simple matters. But, they can't take on your whole case or represent you at a trial.

See **page 89** for contact information.

Get free legal information. Read Legal Aid BC's free online family law resources at **legalaid.bc.ca/read**.

See the Family Law in BC website at family.legalaid.bc.ca.

This website has step-by-step guides to legal processes, information pages, illustrated stories, videos, and other ways to help you learn about and settle family law issues, including:

- separation and divorce,
- guardianship,
- decision-making responsibility and parenting time,
- parenting arrangements and contact, and
- child support and spousal support.

See **page 90** for contact information.

About this resource

This resource 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 before you live together, while you live together, 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 (immigrant) to Canada, and
- where to get legal help.

The information applies to non-Indigenous families and Indigenous 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 resource 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.

Words in **bold** type are explained in the text or in the Glossary on **page 95**.



Indigenous peoples

This resource uses the word **Indigenous**, which includes Status and non-Status Indians, First Nations, Métis, and Inuit people.

What you need to know

Living Together or Living Apart

BEFORE YOU BEGIN

Who a
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Types of Relationships

Common-law relationship is the term many people use to describe unmarried couples who live together for a certain period of time in a marriage-like relationship. But it's not a term used in the BC Family Law Act or the federal Divorce Act. These laws just call them **spouses**.

Who a spouse is

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, though, you aren't considered a spouse when it comes to division of property, debt, or pensions.

This means couples who have 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

You are a married spouse if you had a legal marriage ceremony (religious or civil). You stay married until one spouse dies or applies in BC Supreme Court for a divorce or annulment to legally end the 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 spousal support and dividing property, debt, and pensions. Many people call this a common-law or unmarried spousal relationship. In this resource, we'll call this a common-law relationship or living common-law.

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

BC family law says you and your partner are spouses in the areas of parenting, child support, and spousal support, but not when it comes to dividing property, debt, or pensions.

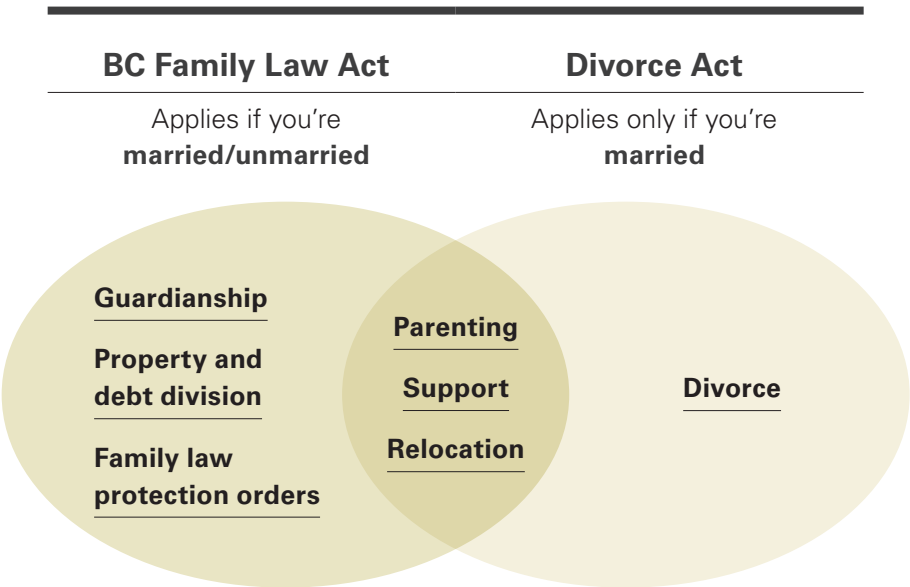
Laws about **parenting arrangements** and **child support** apply to all parents no matter what their living arrangements have been.

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 and then decide to live with someone else (even though they're not divorced). Under BC family law, if you live with your new partner in a common-law relationship for at least two years, you're considered an unmarried spouse of your new partner — even if you're still legally married to someone else.
 - Married spouses who separate must apply to BC Supreme Court for a divorce order. There is no automatic divorce, no matter how long you are separated.
-

Which laws apply

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



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

The chart on **page 67** explains which court you go to if you want a judge to make an order about a family law issue.

Living Together — Making Agreements

Sometimes you can prevent conflict about your property, savings, and debts if your relationship breaks up by making a written agreement with your spouse. These are usually called cohabitation, marriage, or prenuptial agreements. You can make them before or while you live together, just in case you break up.

When can you 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**.

An agreement is legally binding when you sign it, so it's important to consider whether you need one. It's a good idea to get legal advice about your situation if you can before you sign an agreement.

See **page 13** for more about separation agreements

Do you need an agreement while you live together?

Before deciding whether you need a written agreement while you live together, consider what the law says and whether you want to agree to something different. It's really important to get legal advice.

The Family Law Act supports the idea of an economic partnership and recognizes different roles and contributions of partners, including non-financial contributions, if people separate. Many people don't write an agreement while they live together and are comfortable with this law applying to their situation if they separate. Make sure you're clear about what property each of you brought to your relationship.

If you don't own much or don't have any large debts, you might not need an agreement.

It might be helpful to have an agreement while you live together if:

- One of you has a lot more assets or debts than the other. For example, if one of you owns property or has a large amount of savings, got an inheritance, or has a huge student loan.
- You're older and close to retirement.
- You have significantly different incomes.
- You have children from another relationship (including adult children who you want to provide for in the future).

It's important to remember that an agreement you make while living together can't restrict any future support arrangements. Also, an agreement could be **set aside** (cancelled) by the court if it's found to be unfair.

Sharing information before making an agreement

Before you make an agreement, you and your spouse must share all the important information you need to make a fair agreement. This includes financial information about your income, expenses, assets, and debts available in your income tax returns, bank statements, and other financial documents. The law says you must give your spouse “full and true information” to resolve a family law dispute. This applies to any agreement you make while you’re living together and family law agreements you make after you separate. If you hold back information, a court can take various steps, including setting aside (cancelling) your agreement, ordering you to provide the missing information and documents, or ordering you to pay a fine or the other person’s legal costs.

What an agreement can cover

Your cohabitation, prenuptial, or marriage agreement can be about what happens while you live together and what happens if you separate. However, you can only make agreements about your children *after* you separate. The courts will not accept an agreement that limits spousal support or child support.

» Dividing family property, assets, and debts

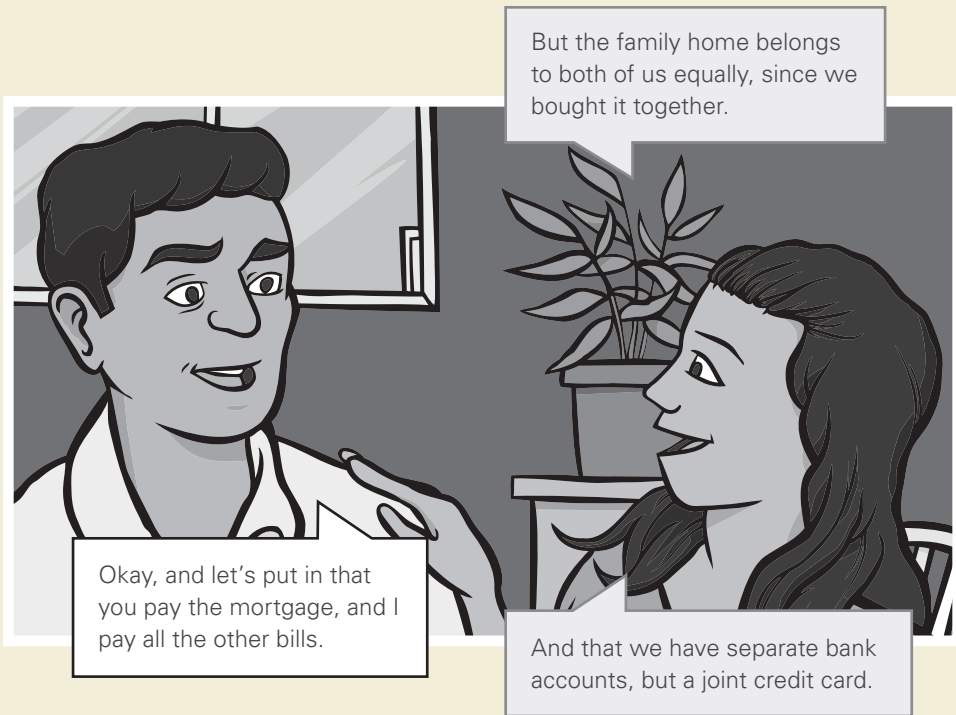
It can be hard to talk about finances, and money is often a huge source of conflict in relationships. It’s important to have conversations about your shared values.

It’s helpful to be clear about the financial value of what you each brought into the relationship, and what debt each of you had. This makes it easier to divide family property fairly if you separate.

One way to do this is to take a “snapshot” of each person’s finances when you start to live together. You can do this by taking photos of current bank statements or by making a dated record of the amounts of savings, the amount owing on loans, the value of any investments, and the value of any property, like a home or apartment that one of you might own. It’s helpful to do this whether or not you decide to make an agreement.

You can decide together:

- who brought what into the relationship.
- how you'll share household expenses.
- whether you'll have separate or joint bank accounts and credit cards.
- how you'll share any new debt you take on together under both your names.
- who's responsible for debts either of you take on under your own name before or during your relationship.



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 meets legal requirements before you sign it. 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 can have a large pension if a spouse has had the job for many years.

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

How to make an agreement before or while you live together

Find out your rights and responsibilities

See **family.legalaid.bc.ca** for where to get legal advice.

Make a list of the topics

What topics do you need to agree on? Consider things like the property and debt each of you brings to the relationship, how you'll share household expenses, and spousal support.

Share financial information

This includes tax returns, pension statements, bank statements, and information about debts.

Write out the agreement ¹

You, a lawyer, or a mediator can type it and print two copies.

Review the agreement

Each of you should have a lawyer review your agreement and give you legal advice before you sign it.

1. Need help from a mediator or lawyer? See **page 87 – 93**.

Sign the agreement

If you're sure that the agreement is fair and meets legal requirements. *Don't sign if you feel pressured.*

Sign**Agreement**

You each need to sign two agreements so you each have an original signed agreement. The witness doesn't have to be a lawyer. You and your witness can initial and sign two copies in front of each other. Send them both to the other person, who sends one signed and witnessed version back to you.

After you sign**If your situation changes**

It's difficult to change an agreement after you sign it. It's a good idea to build in a future review, because, for example, you might have children together, your children's needs and interests might change, or your financial circumstances and incomes might be different.

Living Apart — Separation

There's no such thing as a "legal separation."

How to separate

Whether you're married or living with someone in a common-law relationship, you become separated as soon as one (or both) of you:

- decides to separate,
- clearly tells the other spouse the relationship is over, and
- acts like it's over.

Typically, spouses are separated when they live apart. But, you can live in the same house and still 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, stop going out together as a couple, 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 BC Supreme Court **order** for **divorce** (or **annulment**, if applicable). You don't need your spouse's permission or agreement to apply for a divorce.

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

How to avoid going to court

It can be less expensive, less stressful, and faster to settle your family law issues without going to court, if you can. See How to reach a separation agreement on **page 18** for some options to resolve your disagreements without going to court.

Both the Family Law Act and the Divorce Act recommend that you try to resolve any disputes outside of court first, and go to court only if you can't come to an agreement another way.

You might not have to go to court if you can agree on your family law issues, including the following:

- parenting arrangements (**page 31**),
- **child support (page 39)** and **spousal support (page 47)**,
and
- property and debt division (**page 51**).

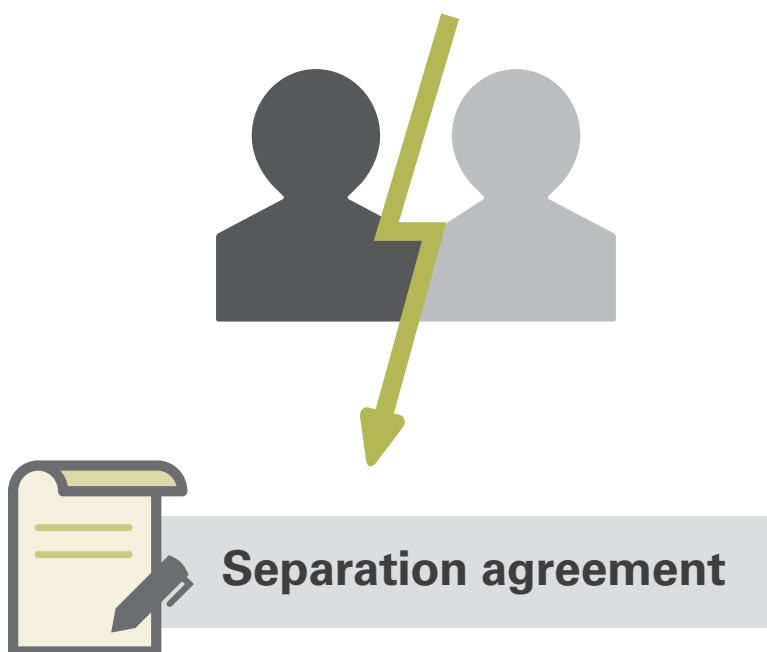
If you and your spouse can make an agreement, you'll save time, money, and emotional turmoil. The process will be private, and you'll be able to keep control of important decisions that affect your family.

It's important to talk to a lawyer *before* you sign an agreement. It can be a long and difficult process to change an agreement (especially about property division or spousal support) after you sign it.

An agreement after separating

You can make an agreement *after* you separate (called a separation agreement). If you made a prenuptial or marriage agreement, you can refer to it in the separation agreement and attach it as an exhibit. If you can't agree on all the issues, you can make an agreement about some of the issues and ask a mediator or other dispute resolution professional to help you settle the rest. You could also ask the court to make a **court order** if you're not able to reach an agreement.

See **page 18** for making agreements after you separate.



How to make an agreement when your relationship ends

Find out your rights and responsibilities

See **family.legalaids.bc.ca** for where to get legal advice.

Make a list of the topics

What topics do you need to agree on? If you have children, this would include parenting and child support arrangements. You might also need to divide property, debts, and household expenses or arrange spousal support.

Share financial information

This includes tax returns, pension statements, bank statements, and information about debts.

See if you can agree

Talk about the details with your spouse.

Write out the agreement ¹

You, a lawyer, or a mediator can type it and print two copies.

Review the agreement

Each of you should see a different lawyer, who can review the agreement and make sure it is fair and meets legal requirements.
Don't sign if you feel pressured.

1. Need help from a mediator or lawyer? See **page 88 – 90**.

Sign the agreement

If you're sure that the agreement is fair and meets legal requirements. *Don't sign it if you feel pressured.*

Sign



Agreement

You each need to sign two agreements, so you each have an original signed agreement. You must also have your agreement witnessed, especially if it deals with property. The witness doesn't have to be a lawyer. You and your witness can initial and sign two copies in front of each other. Send them both to the other person, who sends one signed and witnessed version back to you.

After you sign

If your situation changes

It's difficult to change an agreement after you sign it. Changing agreements about your children is only possible if there's been a change of circumstances, or if it would be in the best interests of your children. It's a good idea to build a review into the agreement because, for example, your children's needs and interests might change, or your financial circumstances and incomes might be different.

To have your agreement enforced after you separate

Your family law agreement might cover various family law topics, such as parenting, support, and property and debt division. As long as it *includes* parenting, support, or both, it can be filed in court at a court registry (in person or online). You can ask the court to **enforce** the filed agreement (order you and your spouse to follow the agreement) later if necessary.

» Parenting arrangements

When you separate, it's helpful to make parenting arrangements that set out how you and the other parent will divide **parenting time** and make daily decisions that affect your children. It's also helpful to decide how you and the other parent will make significant decisions, for example, about education, health care, and religion. (The BC Family Law Act calls this **parental responsibilities**. The federal Divorce Act calls it **decision-making responsibility**.)

Any agreement about children must be in their best interests. It's important to take the children's opinions and feelings into account, if they can express them. Your agreement might need to change as your children grow and develop and your circumstances change.

You can start preparing an agreement about children, support, and property right away. Or you can take your time with it.

You can only complete an agreement about children and support once you've separated.

» If you don't have a formal agreement

After you separate, you don't need to have a formal agreement about your **parenting arrangements**. You and your spouse might develop informal routines for your children and 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 might be able to reach an agreement with your spouse by working with them directly. Or, you might 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 resolve the family issues 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 communicate and 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 88** for where to find a mediator.

» Family justice counsellors

Family justice counsellors are specially trained government employees at Family Justice Centres across BC. They also work at the Justice Access Centres in Abbotsford, Nanaimo, Surrey, Vancouver, and Victoria. They can provide services in person or virtually (by phone or videoconference).

Family justice counsellors provide free services for parents and family members and can:

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

See **page 83** 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. Some lawyers offer lower-cost legal services including:

- **independent legal advice on agreements.** Brief advice on an agreement you've already drafted.

- **unbundled or limited scope services.** Instead of representing you from start to finish, they do only specific tasks and you do the rest; for example, you might hire a lawyer to deal with your property division issues, not your parenting issues (which a family justice counsellor might be able to help you with).
- **sliding scale.** Hourly rates that depend on what you can afford to pay.
- **flat rate.** Doing specific tasks for a set fee.
- **legal coaching.** Giving you legal advice while you negotiate and develop a family law agreement.

See **page 89** for where to find a lawyer.

» **Collaborative family law**

Lawyers who practise collaborative family law work together with you and your spouse 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.** You and your lawyers work as a team to solve your disputes, whether the issues are about support, dividing property, or parenting your children. The team can also include other members, such as specially trained lawyers, divorce coaches, child specialists, and financial advisors, as needed.

- **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 might meet alone to decide what the meetings will cover. Or they might 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.

Collaborative family law involves hiring lawyers and other professionals, and it can be expensive. It's important to understand what you can afford and are prepared to pay.

See **page 87** for how to find a collaborative family lawyer.

» **Arbitration**

An arbitration is an out-of-court process in which you and your spouse hire a neutral, trained person, called an arbitrator, to make a decision resolving your family law problem. The arbitrator acts like a judge, listening to both of you and then making a decision that is legally binding.

See **page 87** for how to find an arbitrator.

» **Parenting coordinators**

A parenting coordinator can try to help you and the other parent resolve disagreements about your parenting arrangements set out in a separation agreement or court order. If you cannot agree, then a parenting coordinator can make a binding decision that you must both follow.

You can agree to get a parenting coordinator yourselves, or a judge can order you to see a parenting coordinator if they feel you need one.

See **page 88** for how to find a parenting coordinator.

How to make your agreement legally binding

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

Each of you must sign the agreement. 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.

Generally, 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

You don't have to file your signed agreement at a court registry or online. As long as it *includes* parenting, support, or both, however, you can choose to file the agreement at a court registry (in person or online). Once your agreement is filed, the court can enforce it, particularly if it's in the best interests of your children.

You can also enroll your filed agreement with the **BC Family Maintenance Agency (BCFMA)**, previously known as the Family Maintenance Enforcement Program (FMEP). 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 need to write and sign a new agreement and have it witnessed. Be sure that the new agreement makes it clear what's changing and what's not. Have the new agreement reviewed by a lawyer before you sign it.

If you and your spouse can't agree, you can get help from a **dispute resolution** professional such as a mediator to help you come up with a new agreement. (See the options listed starting on **page 19**.) Or you can apply to the court to change all or part of an agreement and replace it with court orders. The court follows the Family Law Act 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 might change an agreement about parenting time only if the agreement isn't in the best interests of the child.

See **page 33** for best interests of the child.

It's sometimes 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 68** explains when the court can **set aside** (cancel) or replace an agreement.

If you plan to leave the home you share with 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
- marriage certificate
- passport and immigration documents
- driver's licence, insurance, 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 the children are coming with you, also 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, passport number, and date of birth. These 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.

There are two laws that deal with parenting after separation: the BC Family Law Act and the federal Divorce Act. They use similar terms, which can be confusing. Here's an introduction to the language each act uses.

BC Family Law Act terms about parenting

The BC Family Law Act applies to all parents. It uses the following terms:

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

The Family Law Act emphasizes that 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. Not all parents are guardians, and not all guardians are parents.

- 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 by making a written **agreement** with the other guardian or getting a court order.
- 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 Indigenous 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 can live in the band home with you even if you and your child aren't band members.

If you aren't sure about something relating to guardianship, talk to a lawyer.

See **page 89** 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

Parental responsibilities are the day-to-day decisions *and* important decisions guardians make about a child, such as their health care, daily care, home life, and schooling. Only guardians can have parental responsibilities and parenting time with a child.

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

» Parenting time

Parenting time 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. They can arrange parenting time in any way that's in the **best interests of the child**.

If the child is **Indigenous and resides on-reserve**, it's a good idea to include some pick up and drop off locations that are outside the reserve in your agreement or order. This way you won't have to go back to court later to change the arrangements if you, another guardian, or a person with contact isn't allowed to come onto reserve lands.

» **Contact with a child**

Contact is the time that a non-guardian spends with the child (including a parent who isn't a guardian).

- Grandparents, aunts and uncles, step-parents, and other people who might be important to your child can apply to court to have contact with a child. A parent or step-parent who isn't a spouse can also apply for a contact order.
- People with contact *don't* have a right to make decisions about a child.

Divorce Act terms about parenting

The federal Divorce Act applies to parents who are (or used to be) **married** to each other. The Divorce Act calls them **spouses**. (Although we still call them parents in this section, you'll likely see the term spouse used in your legal documents.)

In March 2021, the Divorce Act changed to use words similar to those in the BC Family Law Act to talk about parenting after separation, including:

- **decision-making responsibilities**
- **parenting time**
- **contact**

The Divorce Act also emphasizes that decisions must be in the best interests of the children.

» **Decision-making responsibility**

The responsibility for making important decisions and getting information about a child's:

- health care,
- education,
- culture,
- language,
- religion and spirituality, and
- significant extracurricular activities.

Parents can agree to divide or share these responsibilities in whatever way works best for the child. If they can't agree, the court can make an order.

» **Parenting time**

This is the time each parent spends with the child.

- During parenting time, the parent who the child is with makes day-to-day decisions (like bedtime and meals) and supervises the child. They can also get information from others (like teachers and health care providers) about their child's well-being.
- Parents can share parenting time equally, or one parent can have the child most of the time. They can arrange parenting time in any way that's in the **best interests of the child**.

Parents who aren't or weren't married, or any person who stands or intends to stand in the place of a parent, can apply for a parenting order under the Divorce Act. They must first apply for permission to do so, in BC Supreme Court.

» **Contact**

The time that someone who isn't a married or formerly married parent spends with the child.

- Grandparents, aunts and uncles, step-parents, and other people who might be important to your child can apply to court to get contact. They must first get the court's permission to apply.
- People with contact don't have a right to make decisions about a child. Nor can they get information about the child's well-being.

Parents' responsibilities and children's rights

Parents are legally responsible for supporting their children until they're at least 19, and after they turn 19 if they're still financially dependent.

- Even if you never lived with your child or your 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 parentage test.
- **Child support** is the *child's* legal right.

» Adoptive parents

Married couples, couples who live together in a common-law 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 the child is 12 or older, they must also agree to being adopted.

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

Under the BC Family Law Act, you're a step-parent if:

- you and the child's parent are or were married, or lived common-law for at least two years, and
- you lived with the child's parent and the child during the child's life.

Under BC family law, a step-parent doesn't automatically become a child's guardian. You must apply for guardianship of your step-child. But, even if you're not a guardian, you might have to pay child support for a step-child after you separate.

As a step-parent, you have to pay child support after separation if:

- you contributed to the child's support for at least one year; and
- a child support application is made within a year of the last time you contributed to the child's support.

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, courts look at various factors, including:

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

Parenting apart

When parents separate, they need to figure out how to co-parent their dependent children (usually those under age 19).

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.

It's a good idea to put these parenting arrangements into a written agreement (under the Family Law Act) or parenting plan (under the Divorce Act).

Child protection

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 may be able to can get help from a lawyer and advocate at a **Parents Legal Centre**. Legal Aid BC provides this service to help parents who are dealing with child protection issues. The service is available any time after the ministry or a delegated Aboriginal agency contacts you.

Call Parents Legal Centre at **1-888-522-2752** (1-888-LABC-PLC) to find out if there's a location near you and if you qualify for help.

See **page 90** for Legal Aid BC.

The law in BC says Indigenous cultural ties are very important for Indigenous children. The child protection process recognizes an Indigenous child's right to their cultural identity and connection to their Indigenous communities when planning for their care. The child protection process is evolving with the BC government's recognition and support of the rights of Indigenous communities to make laws and provide their own child and family services.

See An Act respecting First Nations, Inuit and Métis children, youth and families for the Best Interests of Indigenous Child provisions.

To find out more about child protection and Indigenous families, see *Keeping Aboriginal Kids Safe* and *Parents' Rights, Kids' Rights*.

Read these resources online at **aboriginal.legalaid.bc.ca/read**.

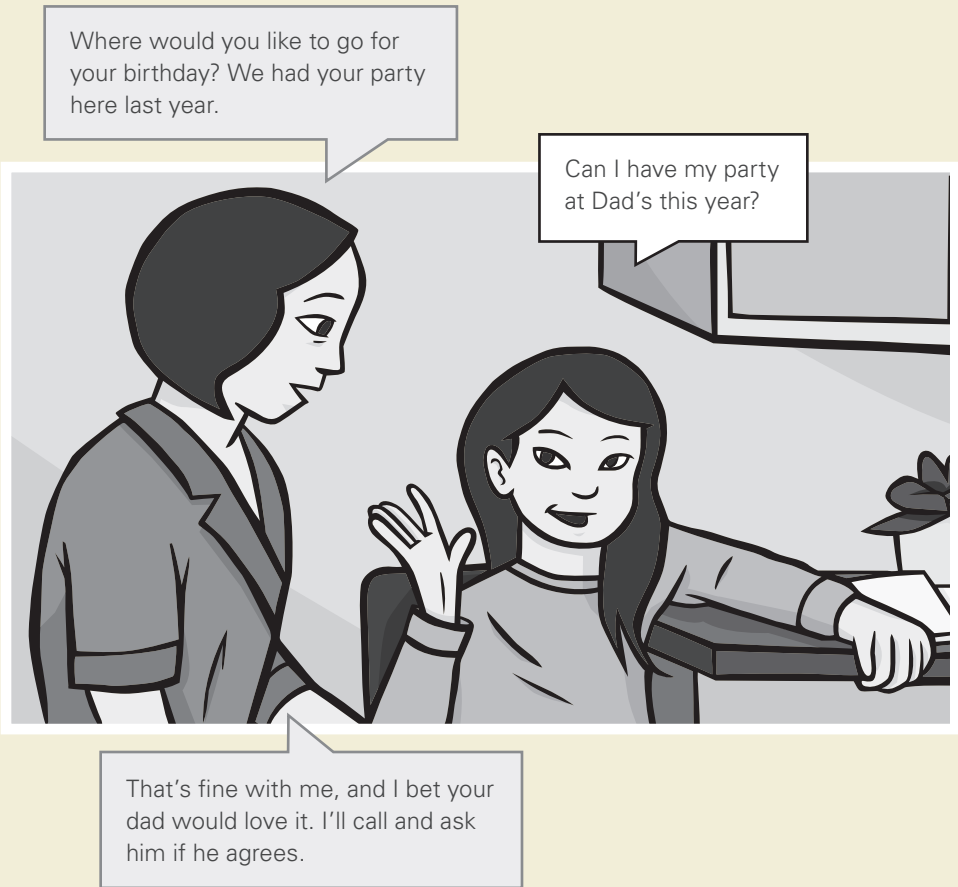
Best interests of the child

The Family Law Act and the Divorce Act say that parents and the courts must only consider the best interests of the child when making decisions about children.

The best interests of the child include:

- your child's health, safety, and emotional well-being;
- your child's cultural identity, language, and heritage;
- your child's views and preferences;
- the love and affection between your child and other important people in their life;
- your child's needs, including the need for stability at their age and stage of development;
- who looked after the child in the past and how well they looked after the child;
- the ability of parents or others who want guardianship, parenting time, parental responsibilities, decision-making responsibility, or contact to care for and meet your child's needs;
- whether any arrangements that require you and the other parent to communicate and cooperate are appropriate;
- whether there's any family violence and, if so, the effect on your child's safety, security, and well-being; and
- whether there are any court proceedings or orders relevant to the child's safety, security, or well-being.

Always think about the best interests of your child when making decisions about them. If you can't agree with the other parent about what's best for your child, you can get help from a mediator to work out your disagreement outside of court. If you still can't agree, you can go to court and ask a judge to decide.



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.

Possible parenting arrangements

After you separate, you and the other parent can plan how to continue caring for your child. You can make an agreement about parenting arrangements.

Here are some examples of possible parenting arrangements:

- The child lives with one parent most of the time, and this parent is responsible for making most decisions.
- The child lives with one parent more of the time, and the parents make decisions jointly.
- The child lives with each parent at least 40 percent of the time, and the parents make decisions jointly.
- One or more of the children live with each parent, and the parents divide decisions between them.

» Moving with a child

After separation, you might plan to move — with or without your child. A move that has a significant effect on your child's relationship with a guardian, a person who has parenting time and decision-making responsibilities, or a person with contact, is called **relocation**.

If there's a parenting or contact order or agreement in place, check to see if it talks about relocation.

If you want to relocate, you need to take certain steps. What you need to do depends on which law you use.

- **Under the Family Law Act**, generally, if you're a child's guardian and you plan to **relocate**, with or without your child, you must **give notice** of your move to any other guardians and any person who has contact with the child. This means you must tell them where you plan to move and when, in writing, at least 60 days before you plan to move.

- **Under the Divorce Act**, if you have parenting time or decision-making responsibility and plan to relocate, you must give at least 60 days' written notice to anyone else who has parenting time, decision-making responsibility, or contact under a contact order. The notice must say when and where you plan to move and must also include your contact information. It must also include a proposal for new parenting arrangements or contact if the move happens.

If you have **contact** with the child, and you are planning to move, the Divorce Act says that you must notify people who have parenting time or decision-making responsibility of your plan to move. You must give notice in writing, set out where and when you plan to move (as well as your contact information), and provide a plan for new contact arrangements. You must give notice at least 60 days before your planned move.

Under both laws, you can ask the court to excuse you from giving notice of a planned move if doing so would put you at risk of family violence.

» **Objecting to a relocation**

- **Under the Family Law Act**, only a guardian can object to your plan to move after they get the notice. They can object by filing a court application for an order to stop the move **within 30 days** of receiving notice of the move.
- **Under the Divorce Act**, only someone who has parenting time or decision-making responsibility can object to your plan to move. They must object **within 30 days** of receiving notice of the move, using a special form or filing a court application for an order to stop the move.

If a guardian or a person with parenting time or decision-making responsibility objects to your move, they can ask for an order that says you can't move. To decide whether you can move, the court looks at a number of factors, including:

- 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.

A person who only has **contact** with a child can't object. Instead, a person with contact can apply anytime for an order to change their contact time.

The Family Law Act and the Divorce Act both say you must try hard to work out your disagreements. To avoid an urgent and difficult court hearing (whether or not you have a parenting agreement or order), 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 88** for where to find a mediator.

Concerns about parenting time or contact

» **Conditions in your court order**

If you have concerns about the other parent or another 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 use 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 might be able to get legal aid. You might also be able to get legal aid if the other parent has denied your parenting time or contact.

See **page 90** for more about legal aid.

» Denying parenting time or contact

The courts want to ensure children have meaningful relationships with each parent.

To deny parenting time or contact, you must have strong reasons showing that time with the other parent would be emotionally or physically unsafe for the child. Some examples include:

- you're afraid for your child's safety because of family violence;
- you believe the other parent was drunk or high when they were to have time 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;
- your child is ill, and you have a doctor's note.

One parent can't deny the other parenting time or contact because they don't pay child support or are behind on payments. There are other ways to enforce non-payment of support.

» Disputes

If you have a Family Law Act court order or agreement that gives you parenting time or contact and the other parent or guardian won't let you see your child, try to sort things out with the other person outside of court. This can include getting help from a family justice counsellor or another mediator. If you can't work things out, you can ask a court to enforce the order or agreement.

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 parent or guardian must attend mediation or another form of family **dispute resolution**;
- you, the other parent or guardian, 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 relevant expenses you incurred when you were denied time with your child;

- the transfer of your child from the other parent or guardian to you must be supervised;
- the other parent or guardian must pay you or your child up to \$5,000 for denying you time with your child; or
- the other parent or guardian has to pay a court fine of up to \$5,000.

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 similar kinds of orders about that.

Child support

After they separate, one parent usually has to give the other parent money to help support the children. This is called **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 laws are based on the idea that children should continue to benefit from the ability of both parents to support them.

Child support is the *child's* legal right, even though it is money paid to their parent or guardian. This means that 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.

The parent who the child lives with most of the time is entitled to get child support from the parent the child doesn't live with (called the **payor**). 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 stop the other parent from having parenting time or contact because they haven't paid or have fallen behind on child support payments. Child support and time with the child are separate family law issues.

» **Child support amount**

The amount of child support that must be paid in BC is based on the Federal Child Support Guidelines (the guidelines), which are made up of a set of rules and tables. Courts use the guidelines and the tables to set child support.

To calculate the child support amount you can expect in your situation, you can look up the Child Support Tables. Go to **justice.gc.ca/eng**. Click Family Law and then scroll to choose Child Support. On that page, click the link to “Look up child support amounts.”

Support amounts are based on how much gross income the payor earns in a year and how many children you have together. The support amounts are different for each province. Like the courts, you would use 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 need the payor’s financial information. (If you have a shared or split parenting arrangement, both parents’ incomes are needed to calculate the support.) It’s important that you both honestly share all the up-to-date information you’d need if you went to court. If one of you doesn’t and the other parent finds out that what you provided to them was not true, incomplete, or inaccurate, they could go 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 a completed financial statement and attach tax returns and notices of assessment and reassessment for the past three years.

If they’re	they also need to provide
an employee	their most recent statement of earnings
receiving Employment Insurance/EI	their three most recent benefit statements
receiving social assistance	a statement confirming the amount they receive

If a person who has to provide financial information doesn't do so, a court might estimate what their income is. This is called **imputing income**. The payor would have to pay child support based on that imputed income amount.

» **For Indigenous 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 Indigenous families, the courts also look at the financial help a child gets from their 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 89** for where to find a lawyer.

Now that Ashley is 19, what do we do about child support?

The law says I have to keep paying. Even though she's 19, she's in university full-time and still depends on us for financial support. We want her to finish her degree, right?

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



We're both responsible for supporting her. We're both her parents, after all.

» **Special or extraordinary expenses**

The Federal Child Support Guidelines tables contain the basic amounts for child support (for food, shelter, and clothing). Most parents share an amount on top of basic child support for **special and extraordinary expenses**. These are extra expenses that are:

- **necessary**, because they're in the child's best interests (for example, if your child has a special talent), and
- **reasonable**, based on the family's financial situation and whether the cost is affordable

Special expenses include:

- child care expenses;
- the portion of your medical and dental insurance premiums that provides coverage for your child;
- your child's health care needs if the cost isn't covered by insurance (for example, orthodontics, counselling, speech therapy, medication, or eye care, such as glasses); and
- post-secondary education expenses.

Extraordinary expenses include:

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

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

These expenses can be set out in an agreement or court order.

» **Undue hardship**

If you think you won't have enough money to support yourself after you pay child support, you can ask to pay a different amount. You can claim you'll suffer **undue hardship** because paying the required amount of child support would make your household's standard of living lower than the **recipient's**.

If you're the payor, you have to prove that the payments would be "undue" or exceptional, excessive, or disproportionate. Some examples of situations that can cause undue hardship include having:

- an unusual or excessive amount of debt
- to make support payments for children from another family (for example, from a previous marriage)
- to support a disabled or ill person
- to spend a lot of money to visit the children (for example, airfare to another city)

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

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 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 by making a new one if you and the other person both agree.

If the other person 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 might:

- replace the unfair provisions with a court order
- set aside your agreement if it's different from what the court would have ordered under the law.

The Child Support Guidelines and court rules say that parents should exchange financial information every year. The amount of child support to be paid might increase or decrease based on that. If you and the other parent can't agree, you can try mediation. If you can't agree, you can go to court to ask for a **court order**.

If there's a court order in place, either parent can make a court application to 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 a child's special or extraordinary expenses, or
- a change in a child's living arrangements or contact (such as where the child moves to live with the other parent, or divides their time between parents differently).

The court can also change the order if:

- circumstances have changed so much that a court would make a different order now,
- one person didn't provide all the necessary financial information when the order was made, or
- important new information wasn't available when the order was made.

The **Supreme Court Family Rules**, the **Provincial Court (Family) Rules**, and the **Federal Child Support Guidelines** all say when a payor and a recipient need to give financial information to each other.

» **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 **canada.ca** and search for "support payments."

» **BC Family Maintenance Agency**

Once you have an agreement filed at the court registry or you have an order for child support, you can enroll it with **BC Family Maintenance Agency**, or **BCFMA** (formerly known as the BC Family Maintenance Enforcement Program, or FMEP). The BCFMA is a free BC government program that helps monitor and collect any support owed to you.

You don't have to wait until the payments are late to register. You can register the order or agreement immediately after it's made. Sometimes it's easier to have a third party keep track of payments, and to receive and send them.

See **page 91** for BCFMA contact information.

Settling Other Money Matters

Unless we say otherwise, the legal rights described in this section apply to people who are married or who live common-law for at least two years.

Spousal support

Depending on your circumstances, you or your **spouse** (married or unmarried) might have to contribute to the other person's 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 time after separating.

If you and your spouse can't agree on whether one of you should pay spousal support or how much you should pay or for how long, try to sort things out with the help of a mediator or another dispute resolution professional. If you can't agree, you can go to court to ask for a **court order**.

See **page 65** for court orders.

If you apply for spousal support, the court looks at the following:

- how long you and your spouse lived together,
- if you stay or stayed at home most of the time with the children,
- if you worked outside the home during the marriage or relationship,
- if you can support yourself,
- 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 under the Family Law Act no later than two years after you get a **divorce order** or **annulment**. If you lived together and weren't married, you must apply within two years of the date you separated. There is no time limit for a married spouse to apply for spousal support under the Divorce Act.

» **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. Lawyers, dispute resolution professionals, and judges all use these guidelines to help them 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 **Indigenous** 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 about both spouses.

If both spousal support and **child support** must be paid, you need to calculate each of those amounts. Calculations are complicated, especially if you have children. You can see a lawyer to get a more accurate calculation of the payment amounts.

» **How long spousal support lasts**

A spousal support agreement or court order can be for a specific period, or might 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 set out circumstances when support ends; for example, retirement. Your agreement or order can also say you must review the spousal support after a set period. It can be helpful to review your circumstances regularly.

You might need to extend spousal support. You can change support more easily while the agreement or order is in place than after it has ended. 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 help from a lawyer.

» **BC Family Maintenance Agency**

Once you have an agreement filed at the court registry or an order for spousal support, you can enroll it with the **BC Family Maintenance Agency (BCFMA)**, formerly known as the BC Family Maintenance Enforcement Program (FMEP).

The BCFMA is a free BC government program that helps you collect any support owed to you. You don't have to wait until the payments are late to register. You can register the order or agreement immediately after it's made.

See **page 91** for BCFMA 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:

- The payor becomes unemployed or disabled and can't pay.
- One of the spouses lives with someone else or 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 unmarried spouses living together for at least two years. The information here explains when the 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.

It isn’t easy to convince a court that an equal division would be significantly unfair. To decide if it would be, 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 BC Supreme Court to divide family property or debt no later than two years after you got an order for divorce or annulment.

If you were unmarried, you must apply to BC Supreme Court 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.

» **Family property**

Family property is 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,
- the amount that pre-relationship property (property owned by one spouse before the relationship started) increased in value since the relationship started, and
- companion animals.

» **Companion animals (pets)**

Family property also includes companion animals (pets). As of January 15, 2024, the Family Law Act states that separating or divorcing spouses can make their own agreement about the possession and ownership of pets. The agreement may include that the spouses:

- jointly own a pet,
- share possession of a pet, or
- give exclusive ownership or possession of a pet to one of the spouses.

For more information about reaching agreement, see **www.gov.bc.ca/ReachingAgreement**.

If you and your spouse can't agree on who gets the family pet, one of you can apply to BC Provincial Court or Supreme Court for an order. The court will consider various factors and make a decision about which spouse gets ownership and possession of the pet. (The court can't declare that spouses jointly own the pet or require spouses to share possession of the pet.)

People who are not spouses may be able to resolve a pet dispute by agreement or by going to the Civil Resolution Tribunal, BC Small Claims Court, or BC Supreme Court, depending on the value of the claim.

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

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

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

- property that one spouse owned before the relationship started, and
- gifts and inheritances given to one spouse during the relationship.

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.

Also, excluded property remains excluded property, even if you put it into joint names. For example, say one spouse inherits \$100,000 and uses it to buy property in joint names with their spouse. Under the Family Law Act, the \$100,000 stays excluded property after separation as it can be traced back to the spouse who contributed it. But a court can decide to divide excluded property in certain circumstances if a claim is made.

The law in this area changes and can be complicated. Get legal advice if you can. For information about this area of law, see the Family Law in BC website at **family.legalaid.bc.ca**.



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

» **Property division for Indigenous people with non-Indigenous spouses**

Information in this section (pages 54 – 56) applies to:

- Status Indians, and
- non-Indigenous 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 Indigenous and non-Indigenous spouses. This is because financial assets are kept off reserve.

Homes on reserve for Indigenous and non-Indigenous spouses

The **Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA)**, 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.

The FHRMIRA applies to married and common-law couples living on reserve, if at least one person is a First Nation member or a Status Indian. It applies to opposite-sex couples and same-sex couples. The Indian Act says common-law means living together in a marriage-like relationship for at least one year.

The FHRMIRA intends to give the same rights and protections to the family home that people who live off reserve have. 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 the FHRMIRA, **matrimonial real property** means houses, land, and structures a family uses. You might 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 might 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 **FHRMIRA**, 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 they exist.

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

If you or your spouse or common-law partner want to decide what to do with your family home on reserve after you separate, the law 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 **FHRMIRA** 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.

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 might choose to demand payment from only one spouse.

You might want to do the following when you separate:

- Tell all your creditors in writing you're no longer with your spouse. Keep a copy of your written notices.
- 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 so that two signatures are needed to withdraw money.
- If you need credit, ask the bank to open a line of credit in your name only.
- Think about changing 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 might need to get some legal advice. See **page 89** 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.

» **Extended medical/dental plans**

If one spouse's extended 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 *How to Apply for Welfare*, *Welfare Benefits*, and *When You're on Welfare*.

Read these resources online at legalaidthe.bc.ca/read.

If your children live with you and there isn't a child support agreement or order in place, the ministry might arrange for you to meet with a family maintenance worker to talk about getting child support from the other parent. The ministry might try to arrange for a child support agreement or court application to get an order for child support from the other parent. If you don't want the ministry's help to apply for support, you can tell them that.

» **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 an 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 might 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.

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 booklets *When I'm 64* at **peopleslawschool.ca/publications/when-im-64-benefits-older-adults**.

Or contact Department of Employment and Social Development Canada:

esdc.gc.ca

1-800-277-9914 (English)

1-800-277-9915 (French)

1-800-255-4786 (TTY)

Taking care of other details

Separation or divorce doesn't automatically change your banking or beneficiary information. If you separate from your spouse, you might want to take the actions listed on **page 57**.

Also let the Canada Revenue Agency (CRA) know you're separated after you've been 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 **1** 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 to get the form, see **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 89** for where to find a lawyer.

If You Can't Agree — Going to Court

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 family law issues in a court order.

But you might be able to settle some or all of your issues without a court hearing. The following options will help you settle as much of your case as possible without a court hearing.

Going to Provincial Court

The Provincial (Family) Court has rules about which registry you can use.

Provincial (Family) Court registries offer extra, free services to help people resolve their family law issues without going to court. Depending on your registry, you have to use the services it offers before you can file an application with the court.

For more information, see **Provincial Court Registries** (go to **family.legalaid.bc.ca** and search "Provincial Court Registries").

» **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 can make various orders, including:

- requiring you to provide the missing information and documents, and
- ordering you to pay a fine or to pay the other person’s legal costs.

» **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, Victoria, Surrey, and Vancouver.

If your spouse 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 83** for Family Justice Centres.

» **Meet with a family justice counsellor**

Family justice counsellors provide a variety of free services for families experiencing separation and divorce. They 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 83** for family justice counsellors.

» **Go to a Parenting After Separation course**

In Provincial (Family) Court, you have to complete a Parenting After Separation course before you can appear in court. This is a free online workshop to help guardians deal with separation and make sure they think about the **best interests of the child** when they make decisions.

Even if you don't have to complete this course (for example, if your case is in Supreme Court), it's a good idea to take it. For more information and to register, go to **justiceeducation.ca/pas**.

See **page 83** for Family Justice Centres.

» **Meet with a judge or master**

In Supreme Court, you must meet with a judge or **master** (a 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, your lawyers (if you have them), and the judge or master can:

- identify the issues to be decided,
- review different ways to solve these issues,
- mediate between you on any issues you can't agree on,
- 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 can request a JCC at any time, even if a JCC has already been held.

In Provincial Court, judges can order a similar meeting, called a **Family Management Conference (FMC)**, before you can have a court hearing. Please see **page 61** for the Provincial Court procedures. You and the judge explore options to settle your case at an FMC. At the meeting, the judge can also 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.



Family justice counsellors can help you explore ways to settle your parenting and support issues.

» **Apply for an interim order**

If you can't agree on your family law issues, you can get a final order from the court — but only after a trial. A trial can take a long time and a lot of work. 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 will live in the family home. If your case is in 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** (one you both agree to). You usually don't 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 keeping 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** (undefended) divorce, where you and your spouse have already agreed on how to deal with your parenting, support, and property and debt issues, 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 74** 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) or former spouse,
- 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 might 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 89** for family duty counsel, **page 90** for legal aid.

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

Read the resource online at **legalaid.bc.ca/read**.

Which court to go to

Only



Supreme Court

or



Supreme Court



Provincial Court

- apply for a **divorce** under the Divorce Act
- get an order for decision-making responsibility and parenting time under the Divorce Act
- get contact orders under the Divorce Act
- divide property or debts
- get an order for protection
- deal with your property, including **exclusive occupancy** of the family residence (where only one of you stays in the home, maybe with your children)
- **set aside** (cancel) or **enforce** (put into action) an agreement dealing with property or debt
- 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 an order about moving (called relocating)
- get a safety-related **family law protection order** for only you, or you and your children (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

When a court sets aside or replaces an agreement

Agreement type	When a court will set aside or replace it
Parenting arrangements (Family Law Act (FLA) Section 44)	<p>If the agreement isn't in the best interests of the child.</p> <p>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.</p>
Contact with a child (FLA Section 58)	<p>If the agreement isn't in the best interests of the child.</p>
(FLA Section 60)	<p>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.</p>
Child support (FLA Section 148)	<p>If the court would make a different order based on the child support guidelines or under the Family Law Act.</p>
(FLA Section 152)	<p>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.</p> <p>If you have important evidence that wasn't available before.</p> <p>If financial information was missing and not discovered until after the order was made.</p>

Agreement type	When a court will set aside or replace it
<p>Spousal support (FLA Section 164)</p>	<p>If the conditions, finances, needs, or other circumstances of either spouse changed.</p> <p>If you have important evidence that wasn't available before.</p> <p>If financial information was missing and not discovered until after the order was made.</p> <p>If the court is satisfied the original agreement is unfair; for example:</p> <ul style="list-style-type: none"> ▪ one spouse didn't disclose (reveal) some or all of their income, or ▪ one spouse took unfair advantage of the other spouse's vulnerability, or ▪ a spouse didn't understand what they were signing, or ▪ the agreement itself is significantly unfair when the court considers certain criteria (conditions; see FLA Section 164(5) for a list).
<p>Property (FLA Section 93)</p>	<p>If the court is satisfied the original agreement is unfair; for example:</p> <ul style="list-style-type: none"> ▪ one spouse didn't disclose (reveal) some or all of their income, or ▪ one spouse took unfair advantage of the other spouse's vulnerability, or ▪ a spouse didn't understand what they were signing, or ▪ the agreement itself is significantly unfair when the court considers certain criteria (conditions; see FLA Section 93(5) for a list).

Read the Family Law Act on the BC Laws website at [bclaws.ca](https://www.bclaws.ca).
(under Frequently Viewed Legislation, click Family Law Act).

Divorce — Ending the Marriage

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

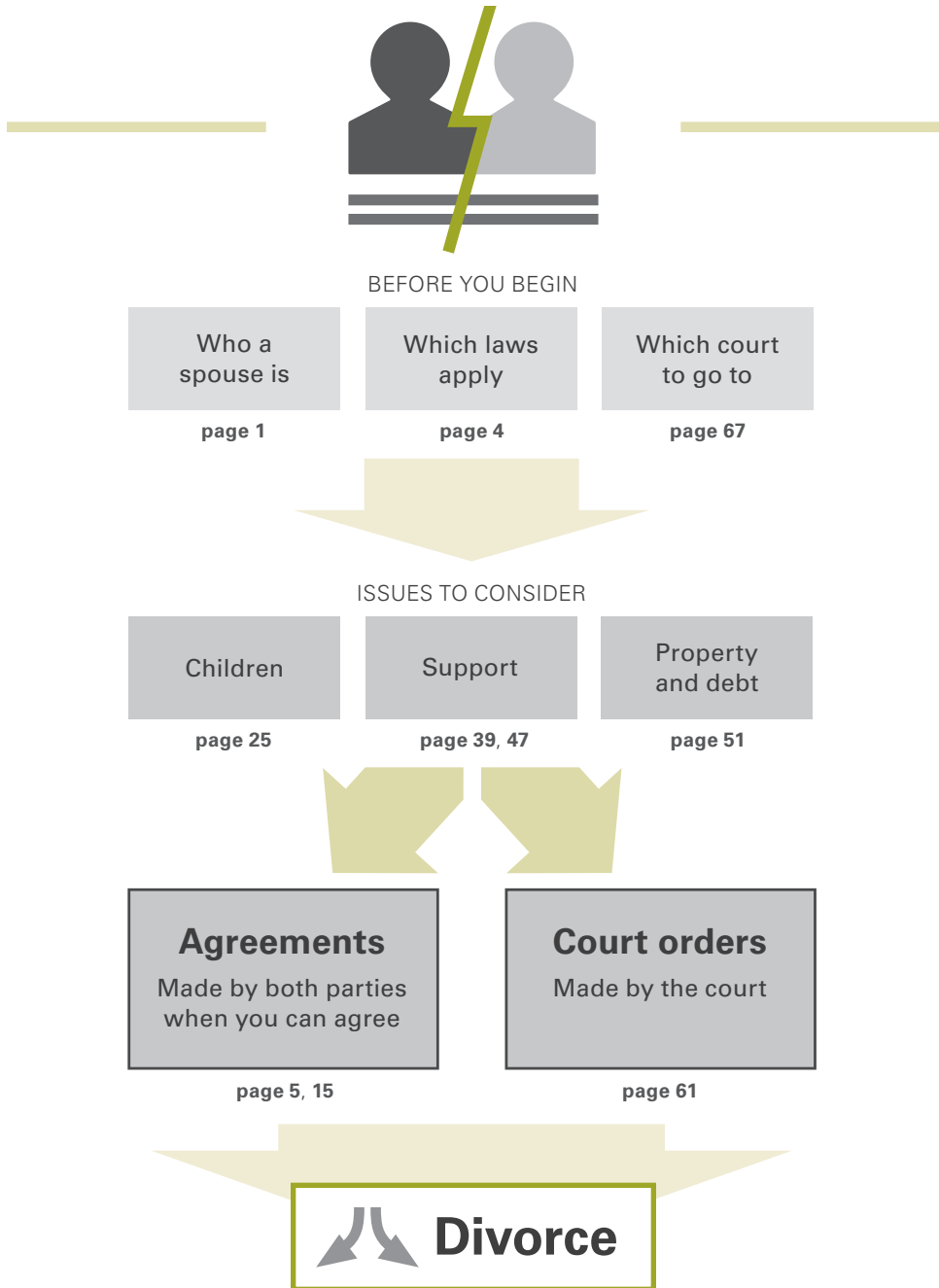
How to get a divorce

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

Once you've been separated for at least one year, you can apply for a divorce in BC Supreme Court. 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 you apply for a divorce. But you have to prove your case to the court. You need to talk to a lawyer about your options. You might decide waiting one year is easier.

The divorce process



See family.legalaid.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 you have a written agreement 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. A judge will grant this type of divorce without you having to go to court if the forms you file with the court are correct and you've made reasonable arrangements for child support payments (if you have children).

You can make a sole application or a joint divorce application.

- With a sole application, your spouse isn't involved in the application process, but does agree on the issues.
- With a joint application, you apply for the divorce order together.

Contested divorce

You might have to apply for a **contested divorce** (also known as a **defended divorce**) if you and your spouse have tried to reach an agreement outside of court, and can't agree about all your issues. For example, you might agree about parenting and support, but not about how to divide property and debt.

If you can't come to an agreement about all of your issues, a judge will make a decision about them 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 go to court, think about all the other available options to settle your differences. Because the process is complicated, it's a good idea to talk to a lawyer.

See **page 89** 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 court orders made in either Supreme Court or Provincial Court), you may be able to fill out the necessary Supreme Court forms and file them at the court registry yourself, in person, or online.

See the Family Law in BC website for a step-by-step divorce guide at **family.legalaid.bc.ca/separation-divorce/getting-a-divorce/do-your-own-uncontested-divorce** (in English only).

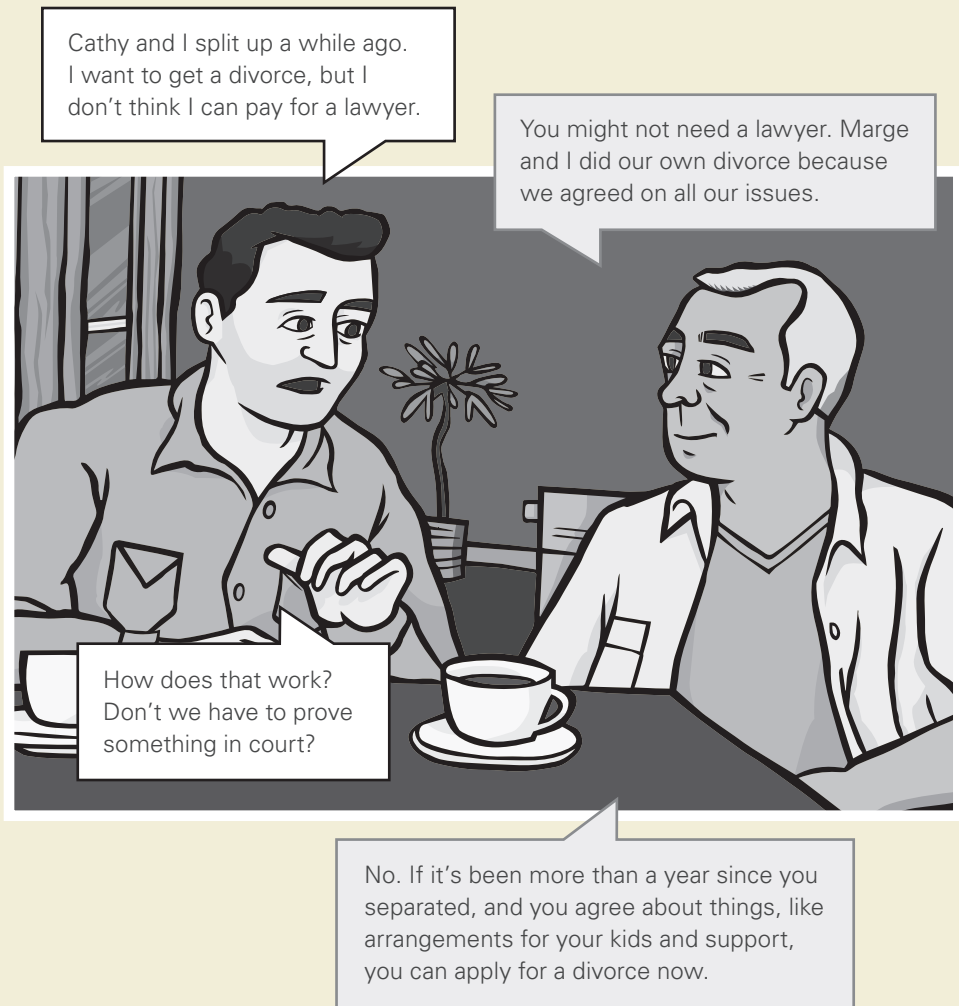
The BC government has a free Online Divorce Assistant at **justice.gov.bc.ca/divorce** that asks you questions and automatically fills out all the forms you need for a joint divorce based on your answers. Use this tool if:

- you or your spouse live in BC and agree about getting a divorce,
- your dependent children live with one or both of you, 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 that you or your spouse lived in BC for the 12 months right before you apply for a divorce,
- the judge is satisfied that you've proved the reason for asking for the divorce (usually just that you've been separated for at least a year), and
- the judge is satisfied you made reasonable arrangements for your children's care and financial support.

You can start the court process for a divorce as soon as you and your spouse separate. You can file documents at the court registry to open a court file. But, you can't file an *application* for a divorce order (and a judge won't grant the divorce) until you've been separated for at least one year, unless there's been adultery or cruelty.



You can apply for a divorce if you and your spouse have lived separately for at least one year.

You don't have to apply for a divorce as soon as you've been separated for a year. You might not be ready for a divorce, or you and your spouse might get back together. Or you might want some time to pass before you start trying to make final **agreements** about parenting arrangements, contact, support, and property and debt division.

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 the second time.

If you're 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 that 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:

- original marriage certificates,
- original marriage registrations, or
- certified true 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.

You might want to get a lawyer's help. Or, you might 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 89** for where to find a lawyer.

If You're an Immigrant

If you're an immigrant, you might 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 to keep other obligations they might have as a sponsor.

See **page 39** for child support and **page 47** 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 58** for welfare and **page 89** for where to find a lawyer.

To find out more about what could happen when a sponsorship doesn't work, read the resource *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 resource online at **legalaidsbc.ca/read**.

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 might also be able to help.

See **page 92** for multicultural agencies. See also **page 90** 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 *might* 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 86** for contact information.

» If you're sponsoring your abuser

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

See **pages 81 – 93** for where to get legal help.



family.legalaid.bc.ca

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 resources about legal issues that affect Indigenous peoples, including:

- family law and child protection;
- matrimonial property on reserve;
- fishing, hunting, and gathering rights (harvesting rights);
- First Nations/Indigenous Courts; and
- legal help from Legal Aid BC and other groups such as Gladue reports through BC First Nations Justice Council.

BC First Nations Justice Council

bcfnjc.com

BC First Nations Justice Council (BCFNJC) provides culturally-appropriate information, advice, support, and representation for Indigenous people. BCFNJC operates justice centres and provides Gladue services. Call **1-877-602-4858** for more information.

Indigenous Justice Centres

Indigenous Justice Centres, run by the BC First Nations Justice Council, offer culturally appropriate advice and representation services to people with criminal or child protection issues. The centres are located in Vancouver, Victoria, Chilliwack, Kelowna, Merritt, Nanaimo, Prince George, Prince Rupert, and Surrey. Eligible callers can also get help through the Virtual Indigenous Justice Centre (VIJC). Call **1-866-786-0081** for more information about the VIJC.

Clicklaw

clicklaw.bc.ca

The Clicklaw website has links to legal information, educational resources, and services 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 or legal advocate 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

dialalaw.peopleslawschool.ca

604-687-4680 (Greater Vancouver)

1-800-565-5297 (elsewhere in BC)

Dial-A-Law is a service of the People's Law School. It features free information about the law in British Columbia in 190 topic areas. You can listen to Dial-A-Law information over the phone or read or listen to it on the website.

Family justice counsellors and Family Justice Centres

www2.gov.bc.ca

(in the search bar, type family justice counsellors)

Family justice counsellors are trained mediators who 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 Abbotsford, Nanaimo, Surrey, 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)

711 TTY (if you're hard of hearing)

Family Law in BC

family.legalaid.bc.ca

This website has legal and step-by-step information about family law, including:

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

Justice Access Centres

www2.gov.bc.ca

(in the search bar, type justice access centre)

At Justice Access Centres, 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 resources, and
- learn about alternatives to going to court, including mediation and other dispute resolution options.

Abbotsford	604-851-7055
Surrey	604-501-3100
Vancouver	604-660-2084
Nanaimo	250-741-5447 or 1-800-578-8511
Victoria	250-356-7012
Service BC	1-800-663-7867 and ask to be put through to the local number, above.

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 parents, kids, and teens about separation and divorce at **familieschange.ca**.

Parents Legal Centres

legalaid.bc.ca/services/parents-legal-centres

1-888-522-2752 (1-888-LABC-PLC)

Legal Aid BC Call Centre:

604-408-2172 (Greater Vancouver)

1-866-577-2525 (elsewhere in BC)

Provides eligible parents with a free lawyer and an advocate to help them address a social worker's concerns about their children's safety (child protection) early on and to find solutions that work for the family. You may be eligible for PLC services if you qualify financially, and you are a parent, guardian, or a person standing in the place of a parent. Services are available any time after you're first contacted by the ministry or a delegated Aboriginal agency.

People's Law School

peopleslawschool.ca

604-331-5400

This Vancouver non-profit society provides free legal education and digital and print information to help people deal with everyday legal problems.

VictimLinkBC

victimlinkbc.ca

1-800-563-0808 (call or text)

VictimLinkBC@bc211.ca

This confidential, multilingual, free phone service is available across BC 24 hours a day, 7 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. At an arbitration hearing, they listen to both sides, review the evidence, and then make a decision. They act like judges, and their decisions are like **court orders** and must be followed. The Lawyer Referral Service (page 90) might be able to refer you to a family law lawyer who's an arbitrator.

Collaborative family lawyers

bccollaborativerostersociety.com

Collaborative family law lawyers can help you reach an agreement. To find a collaborative family law lawyer, see the above website. The Lawyer Referral Service (page 90) might 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. They work at Family Justice Centres across BC and at the Justice Access Centres in Abbotsford, Nanaimo, Surrey, Vancouver, and Victoria. 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 lawyer can help you reach an **agreement** and put it in writing. See **page 89** for where to find a lawyer.

Mediators

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

A **mediator** is a neutral person who can help you and your spouse talk to each other and reach an agreement about parenting, support, property division, and other family law problems. 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 90**) 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 and child support arrangements and settle disagreements about your existing agreement, court order, or arrangements.

Help from a lawyer

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



BC Family Law Unbundling Roster

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.

Family advice lawyers

legalaid.bc.ca

(Under Services, click Advice, and under Family law and child protection, click 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**.

Family duty counsel

legalaid.bc.ca

(Under Services, click Advice, and under Family law and child protection, click Duty counsel)

Duty counsel for both Provincial and Supreme Courts help people with their family court matters. Services might vary in different locations. These lawyers might also be able to give you legal advice about your legal options. To find out how to contact family duty counsel near you, check the Legal Aid BC website (listed above) or call your nearest legal aid location (listed on the above website) or local court registry.

Family LawLINE

legalaid.bc.ca/legal_aid/FamilyLawLINE

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, decision-making responsibility, contact with a child, guardianship**, protection orders, **child support, spousal support**, property division, child protection matters, family **agreements**, 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. Interpreters are available if required.

Lawyer Referral Service

accessprobono.ca/our-programs/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 talk with you for 15 minutes, free of charge. You can briefly describe your issue to the lawyer, and they can tell you if you have a case. You can decide to hire the lawyer or call the service for another name. Ask the lawyer what they charge per hour.

Legal Aid BC

legalaid.bc.ca

604-408-2172 (Greater Vancouver)

1-866-577-2525 (elsewhere in BC)

Legal Aid BC provides free legal help from a lawyer if you qualify. Tell Legal Aid BC if you’re leaving an abusive partner. Call Centre recorded messages are available in Cantonese, English, French, Mandarin, Punjabi, and Spanish. Interpreters are available for more than 100 languages.

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.

BC Family Maintenance Agency (BCFMA), formerly known as Family Maintenance Enforcement Program

bcfma.ca (click Enrol in BCFMA and get started)

Lower Mainland **604-678-5670** or **1-800-663-9666**

Northern & Interior **250-434-6020** or **1-800-663-3933**

Victoria **250-220-4040** or **1-800-663-3455**

Or call Enquiry BC at **1-800-663-7867** and ask to be connected to the nearest BCFMA client office.

This program can help you collect your support payments for free if you already have a support **order** or **agreement** filed in court. To enroll, call the number for your area, above. Or, you can:

- submit an online application,
- download an application, fill it out, and mail it in, or
- request that an enrolment application be mailed to you.

The Law Centre, Victoria

thelawcentre.ca

250-385-1221 (Victoria)

If you live in the Capital Regional District, you might be able to get free legal advice from University of Victoria law students at The Law Centre in Victoria.

Multicultural organizations

amssa.org (click Membership)

mosaicbc.org

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

QMUNITY

qmunity.ca

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

TRU Community Legal Clinic, Kamloops

tru.ca/law/students/outreach/Legal_Clinic

778-471-8490

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

UBC Indigenous Community Legal Clinic

**[https://allard.ubc.ca/community-clinics/
indigenous-community-legal-clinic](https://allard.ubc.ca/community-clinics/indigenous-community-legal-clinic)**

604-822-5421 (Greater Vancouver)

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

iclc@allard.ubc.ca

The clinic is located in Vancouver's Downtown Eastside on traditional, ancestral, and unceded Coast Salish territories. University of BC law students give free legal advice, assistance, and representation to eligible clients throughout BC who cannot afford a lawyer and who self-identify as Indigenous persons.

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: Refers to Status and non-Status Indians, First Nations, Métis, and Inuit people.

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. BC 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: Allocation means distributing something according to a plan. You both might decide how to share or divide parenting decisions and record your decision 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.

BC Family Maintenance Agency (BCFMA), formerly known as the Family Maintenance Enforcement Program (FMEP):

If you enroll with the BCFMA, the program monitors the child support payments 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.

best interests of the child: 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 or contact orders. Factors include:

- 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.

child support: Money paid by one parent to the other after separation as financial support for the children.

common-law relationship: Not a legal term, but in BC family law, often used to refer to unmarried couples who live together in a marriage-like relationship for at least two years.

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. You might be able to file this order with the court registry and have a judge or master sign it without either of you having to appear in court.

contact: Under the Family Law Act, contact is the time that a person who isn't a guardian spends with the child. Under the Divorce Act, contact is the time that someone who isn't one of the spouses spends with the child. Typically, grandparents, other relatives, and other people important in the child's life can have contact.

contested divorce: If you and your spouse want to get divorced but can't agree about parenting, support, how to divide property and debt, and other family law issues, you might have to apply for a contested divorce, also known as a defended divorce. With a contested divorce, you ask a judge to decide about the family law issues you don't agree on.

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

decision-making responsibility: Under the Divorce Act, this is the responsibility for making important decisions and getting information about a child's health care, education, culture, language, religion and spirituality, as well as significant extracurricular activities.

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 if there are safety concerns.

dispute resolution: When families work through family law issues with a trained professional outside of court. Dispute resolution 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 or that aren't considered family property to be shared after separation. Examples of this include gifts and inheritances, certain kinds of court awards, and certain kinds of insurance payments a 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.

family debt: The debts that one or both spouses took on during a relationship or to maintain family property after separation. The law assumes both spouses are equally responsible for these debts unless that would be significantly unfair. Debts that a spouse had before a relationship are that spouse's alone.

Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA): The law that deals with homes on reserve and interests in them for married or common-law opposite-sex or same-sex partners:

- who experienced a relationship breakdown or the Indigenous spouse who had title to the property has died,
- 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 person from contacting another,
- stop a specific person from visiting the family home,
- control stalking and harassment, or
- prevent someone from owning a weapon.

Family Management Conference (FMC): In Provincial Court registries, if you can't resolve all your issues with mediation the next step in the court process is a family management conference (FMC). An FMC is an informal meeting with a judge to discuss and possibly resolve your issues, or prepare for further steps if you're going to court.

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: Under the BC Family Law Act, 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 that 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.

Indigenous: Refers to Status and non-Status Indians, First Nations, Métis, and Inuit people.

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.

In most cases, a JCC is held before either of you can apply for a court order if you don't agree on the order. Either of you can 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 civil 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: Under the Family Law Act, the responsibility guardians have to make decisions about the child's life. These can include decisions about daily care, health care, education, religious upbringing, and extracurricular activities. After separation or divorce, guardians can share or divide parental responsibilities in whatever way works best for the child.

parenting arrangements: The arrangements made for parenting time and parental responsibilities or decision-making responsibility in a court order or agreement between guardians. Parenting arrangements don't include arrangements for contact.

parenting coordinator: A professional who helps people put in place parenting arrangements set out in orders or agreements and settle day-to-day conflicts that come up about their parenting arrangements.

parenting plan: Under the Divorce Act, a written document that describes how parents will share parenting time and responsibilities when they live apart. Parenting arrangements are to be made in the best interests of the children.

parenting time: The time a parent or guardian spends with the child and is responsible for the care and supervision of the child and for making day-to-day decisions about them.

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

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

relocate/relocation: A move to another place that would have a big effect on your child's relationship with:

- the other guardian,
- another person who has parenting time or decision-making responsibility,
- people with contact, or
- other important people in their life.

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. The safe house can also help find longer-term safe housing.

separation: The end of a marriage or marriage-like relationship when one or both spouses decide and act like 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 and signed by each spouse, and each spouse's signature must be witnessed by another person. It's a good idea to ask a lawyer to review your separation agreement before you sign it.

special or extraordinary expenses: Special expenses are extra expenses for a child over and above the regular cost of living, such as child care or post-secondary education expenses. Extraordinary expenses are expenses for education, programs, and medical or dental expenses. This can also include expenses for extracurricular activities that meet the child's needs, such as tutoring or private school.

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

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:

- two years if you want to divide property and debts, or
- two years if you want to ask for spousal support and don't have children, or
- any length of time if you want to ask for spousal support and you have children together, or
- one year if you want to 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, property and debt, and other family law issues. You can both apply for a joint divorce, or one of you can apply for a sole divorce.

undue hardship: Circumstances that might allow a payor to pay less than the full amount of child support required under the child support guidelines. Also applies when the recipient says the amount in the child support guidelines table is too low

Legal Aid BC resources

» legalaid.bc.ca/read

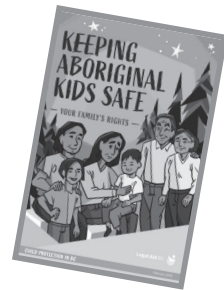
For Your Protection: Peace Bonds and Family Law Protection Orders

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.



Keeping Aboriginal Kids Safe: Your Family's Rights

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



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

This resource explains the child protection process for Aboriginal/Indigenous and non-Aboriginal/Indigenous children and families. It 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.



Legal Aid BC online

Family Law in BC



» **family.legalaid.bc.ca**

This website has more detailed information about the issues in this booklet. The website has information, step-by-step guides, illustrated stories, and online resources 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 Aid BC



Legal Aid BC

» **legalaid.bc.ca**

This website describes what legal aid is and how and where to apply for legal services (including phone numbers for all legal aid locations in BC).

Aboriginal Legal Aid in BC



» **aboriginal.legalaid.bc.ca**

This website has information and resources about issues that are important to Indigenous peoples — family law rights, First Nations/Indigenous Courts, matrimonial property on reserve, benefits and income assistance — and help from Legal Aid BC and other groups.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

