



## Article

### Family Law

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# What you need to know if you are considering getting a divorce in 2019

By Laurie H. Pawlitzka

A New Yorker cartoon famously pictures two young children admiring their Christmas tree. Presents are stacked so high, the tree is barely visible. The older child sagely says to her younger brother, “Cherish this moment, because clearly our parents are getting a divorce.”

Family lawyers are often inundated with new client calls in early January. For those readers who feel their marriages are beyond repair and are considering picking up the phone to make one of those calls, here are some words of advice.

### **Understand the legal implications of your decision**

The financial consequences of a separation are far-reaching and long-lasting. Look before you leap. After you have googled “what to know about divorce in Canada” – and before you’ve told your spouse you’re separating – speak to a reputable lawyer who regularly practices family law about your specific circumstances.

### **Choose your lawyer wisely**

While many lawyers practice family law, it may be difficult to find a lawyer who is right for you. A separation can be emotional, draining and expensive. The family lawyer you choose must be someone with whom you communicate well, and who can provide you with options, a plan and next steps. A family lawyer who has been referred by other professionals you know and trust is always a good bet. Don’t be unduly swayed by online rating services: many are written by unhappy opposing spouses who were never clients of the lawyer they rated!

Provincial law societies (the regulators of lawyers in Canada) will provide information about whether the lawyer has ever been subject to discipline or regulatory proceedings.

A good family lawyer will also check to ensure that there is no conflict in meeting with you before they speak with you, and will either send a detailed questionnaire or have a staff person do an initial interview in advance of the first meeting to ensure that the time spent with the lawyer is as productive as possible.

### **Don't change the status quo without understanding the implications**

Before you tell your spouse you want to separate, you should know the answers to some of the most commonly asked questions when it comes to divorce and separation. These include:

*When should I tell the kids we're separating?*

The timing usually depends on when one of the parents intends to move out. If possible, it is best for you and your spouse to tell the kids together. Even if you each have to speak to them separately, do not blame the other spouse for the separation, no matter how it arose. Remember, the kids are caught in the cross-fire of your personal decisions. No matter how self-righteous you feel about the separation, the kids should not be expected to take sides.

*Once I've decided to separate, can I move out?*

If you move out of the matrimonial home, it may affect your position with respect to shared parenting of the children.

*Once we've separated, can I force my spouse to move out?*

It depends on the circumstances. In Ontario, no matter which spouse has title to the house, neither can require the other to move out unless there is a court order or an agreement.

*If I move out, do I have to keep paying the mortgage?*

When you move out, you are likely still obliged to pay your share of the mortgage, taxes and insurance for the matrimonial home until the support arrangements have been resolved.

*Can I stop depositing to the joint account, either before or after I've moved out?*

It depends on the support arrangements made and the income of each spouse. It is usually unwise to stop depositing to the joint bank account, if your spouse has no significant independent source of income. Cutting off a dependent spouse will almost inevitably mean you will end up in court.

*What if we've separated but have decided to go to marriage counselling?*

If you go to marriage counselling after you've separated, this could change the date of separation, which, in provinces like Ontario, is the date on which your property is valued for equalization purposes. Depending on how long counselling continues, it could also change the date you are entitled to move for a divorce.

*How do I stay out of court?*

Remember, you control only half of this decision, as either you or your spouse can start litigation. Generally speaking, the more reasonable your legal position, the less likely you will end up in court. It is also worthwhile considering whether you want to go to mediation or arbitration, which are private processes where your personal details are not on the public record.

### **Use your lawyer wisely**

A lawyer can be used on a "limited retainer" basis (meaning the lawyer is used only for one specific task or for advice), or for the entirety of the process. A good working relationship with your lawyer depends on two things: the separated spouse doing the tasks required of her or him, and of course, the lawyer being similarly well-prepared.

To resolve the legal issues arising from a separation, each spouse must provide full financial disclosure within a reasonable period of time. Even if you weren't in charge of the finances for your family, there is an obligation on each spouse to fill out the forms accurately and obtain the back-up documents. Telling your lawyer that "she knows everything I have" doesn't satisfy the court's test of full financial disclosure. The less you do, the more your lawyer and his or her staff must do; your costs will go up correspondingly. And remember that agreements can be set aside by the court if there has not been full financial disclosure.

### **Have realistic expectations**

Separation begets anxiety. It is rare that both spouses are at the same emotional stage at the same time. Not all issues are time-sensitive: it is sometimes worthwhile to hit the 'pause' button when resolving some problems to let the other spouse catch up.

Recognize, too, that spouses' personalities are unlikely to change after separation. If your spouse was angry and thoughtless about your feelings before separation, those tendencies will be exacerbated after separation. Hot button topics that caused fireworks in the past will not suddenly become smooth sailing.

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