

CHILD
STUDY
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CANADIAN
DIVORCE
LAW
AND
PRACTICE

Yukon Department of Justice



Guide to Family Law

Revised edition: 2012



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This guide provides general legal information to people involved in separation or divorce proceedings. It is also a useful reference on child custody and access, and on child support or spousal support.

This guide is not a substitute for legal advice from a lawyer and it does not provide advice on specific situations. The Yukon Department of Justice suggests that people with legal problems contact a lawyer for advice.

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Please note: Words in **bold type** are listed, with their definitions, in the glossary at the end of the book, along with other terms used in family law.

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Section 1

Understanding the issues when your relationship breaks down

The courts that deal with family law

The Supreme Court and the Territorial Court deal with family law matters in the Yukon. The Supreme Court has the authority to hear applications for child custody and access, child support and spousal support. The Territorial Court deals with child protection matters under the *Child and Family Services Act*. This court also has limited authority over family matters, including some maintenance (support) matters. Only the Supreme Court has the authority to deal with divorce and the division of property. The Territorial Court does not deal with divorce, **custody** or adoption.



Practical matters

If you were married or living common-law

When two people who were married or living **common-law** can no longer live together they need to consider many legal issues. These issues include where children will live, how they will make decisions about the children and support them financially, whether one spouse will need financial support from the other spouse, and how property and debt accumulated during the relationship will be divided. Lawyers refer to these issues as custody/access (parental responsibility), child support, spousal support and division of property.

There are different legal rules for married spouses and common-law spouses. For example, common-law spouses who want spousal support must make the request within three months of separating. Division of property rules are also different for married and common-law couples.

If you were not married or living common-law, but you have children together

When two people who were not married or did not live in a common-law relationship have a child together, the possible legal issues are often where the child will reside, how decisions regarding the child will be made and how the child will be supported financially. Lawyers refer to these issues as custody/access (parental responsibility) and **child support**.

Information to gather

Before you can make decisions about child support, spousal support and how you will divide property and debt, you must collect and organize your financial information. Financial information can include income tax returns, financial statements, pay stubs and statements of property. If child support or **spousal support** is an issue, you also need to provide the other partner with copies of your income tax returns and notices of assessment for the last three taxation years. If you don't have these documents or if you can't find them, phone the Canada Revenue Agency toll-free at 1-800-959-8281.

Before you start to resolve legal issues, make sure that you have the information you need to proceed. This includes financial information and legal information. You may want to contact a lawyer to get the legal information that applies to you.

Section 2

Resolving family law matters

Not everyone goes to court to work out the details of a divorce or separation. Direct negotiation and mediation are good alternatives for many couples.

Direct negotiation

Direct negotiation involves talking directly with your spouse or ex-spouse to find solutions to various legal issues. This could take place at your kitchen table or wherever you and the other person are comfortable talking.

If you use direct negotiation and you reach an agreement, the next step is to make sure that your agreement is properly recorded in a separation agreement. Although some people try to write **separation agreements** themselves, it can be a difficult task. Lawyers can help in this process. Your separation agreement must be signed and dated by both parties so that it is legal and binding.

Mediation

In family law matters mediation involves a neutral third party (mediator) who assists you and the other person in a family dispute (the parties) to come to an agreement. Mediators help the parties identify their needs and interests. They also clarify issues and help the parties reach an agreement, if at all possible.

Lawyers can help you understand your rights before, during and after the mediation process. They are also often involved in drafting the separation agreement or the court order that results from a mediated settlement.

You don't need to be friends with your spouse or ex-spouse to use mediation. What is important is that you both have a common goal, such as finding the best way to parent your children after separation.



Mediation is based on equality. It is not counseling and it is not appropriate where violence or another form of power imbalance is a factor.

Lawyers and the court

Formal dispute resolution with the help of lawyers and going to court may be the best option for some people.



Direct negotiation or mediation may not be appropriate if either of the partners in a relationship is unable to speak about their personal views or is afraid for themselves or their children. A more formal approach to resolving issues may be better.

Lawyers and the court may also be the best way for people to choose to work out the issues they face if they are stuck in their emotions or their own position, if they have untreated drug or alcohol problems, or if they have a mental illness.

If a matter has to go to court, the judge listens to all of the **evidence** and makes a decision. When parents need to work out matters about their children, judges encourage them to try to reach

a settlement outside of the court process. This is because in most families the parents are the people who know their children and what arrangements will work best for them.

Lawyers usually try to negotiate a settlement on behalf of their clients. They give advice, provide options and act on the instructions of the client. They go to court as a final resort.

A combined approach

You can use a combination of methods to resolve family issues. Some people, for example, use mediation to come to an agreement for custody and access but they go to a lawyer to reach a settlement on how to divide the **matrimonial property**. Other people ask a lawyer for advice at the beginning of the separation and to draft a separation agreement at the end of the process, but they do all the negotiation in the middle of the process themselves.



Separation agreements

It is possible to resolve the legal issues of custody, access, child support, spousal support and division of property and debt without ever going to court or even making an application to court. This can be done through the negotiation and drafting of a separation agreement. A separation agreement is a contract between two spouses to live apart on certain terms and conditions. A signed separation agreement has the same force and effect as a **court order**.

If you and your former spouse want a legal separation agreement, each of you should have a lawyer. The lawyers will negotiate on behalf of their clients and draft the separation agreement for them to approve and sign.

If you do not use lawyers to negotiate or draft a legal separation agreement, the court may find problems with it and it's possible that the agreement may not be honoured.

Section 3

Getting a divorce

Divorce is the legal termination of a marriage. If you, or your spouse, or both of you decide to end your marriage permanently, this is the procedure that you must use.

Divorce ends the relationship but it does not release you or your spouse from your obligations to provide financial support for your children and, in some cases, for each other.

Divorce does not deny either of you the right to have a relationship with your children.



The grounds for divorce

The *Divorce Act* allows you to get a divorce where there has been a “permanent marriage breakdown.” There are three ways

to prove this to the court. (The court accepts any one of these as proof of permanent marriage breakdown.)

1. You and your spouse have not lived together for at least one year. If you have reconciled with your spouse for longer than 90 days and then decide to continue with the divorce, you have to begin the one-year period all over again from the new separation date.

If you are living separate and apart from your spouse you can file for divorce immediately, but a divorce is not granted until the year has passed.

2. Your spouse has committed **adultery**.
3. Your spouse has treated you with physical or mental cruelty and has made it impossible for you to continue to live together.

Who can apply for a divorce

If you want to file for divorce in the Yukon you must be a resident of Canada. Either you or your spouse must have lived in Yukon for the 12 months immediately before the **statement of claim** is filed with the court.

How to apply for a divorce

To file for divorce you need to complete two documents:

- a Statement of Claim; and
- other documents that the Rules of Court may require, depending on your circumstances.



In a Statement of Claim (Family Law) you ask for the divorce, along with claims for child custody, access, child support and/or spousal support.

Once the Statement of Claim (and other documents, if applicable) have been filed, the documents must be given to your spouse personally (this is called “being served”), by someone other than you. The person who serves your spouse must then complete an Affidavit of **Service**. This proves to the court that your spouse has been properly notified of the divorce proceeding. This affidavit must also be filed with the court.

If your spouse is served in the Yukon, he or she has 7 days to respond to your Statement of Claim by filing an **Appearance** form, and an additional 14 days to file a **Statement of Defence**. The Appearance and Statement of Defence are served on you or your lawyer. If your spouse was served outside the Yukon, there is more time to respond. Your spouse may or may not challenge the claims that you made in your Statement of Claim.

If your spouse disputes your Statement of Claim by challenging your support or custody claim or arguing against your grounds for divorce, your divorce will be “contested” and the process becomes more complex and time-consuming.

Be aware that fees are required for filing for divorce, obtaining court orders and the **Certificate of Divorce**.

The Yukon Department of Justice has produced a brochure called *Applying for a Divorce* that is available at the Family Law Information Centre (FLIC) located in Whitehorse at the Law Centre at 2134 Second Avenue. It is also available on the FLIC website: www.yukonflic.ca. Call FLIC at 867-456-6721 or toll free at 1-800-661-0408, extension 6721.



The Department of Justice Canada has produced a booklet called *Divorce Laws: Questions and Answers* that may help you. You can also get a copy of this booklet at the Family Law Information Centre in Whitehorse at the Law Centre on Second Avenue or by calling 667-456-6721 (toll free 1-800-661-0408, extension 6721).

Working with a lawyer to get a divorce

It's always best to have a lawyer if you want to get a divorce. This is especially true if your divorce is contested (disputed). You may qualify for legal aid if your income is below a certain amount.

Section 4

Child custody and access

Custody and **access** are legal terms that describe when children will spend time with each parent and how decisions about the children will be made. (*Custody and access are defined in the list of terms at the end of this guide.*)



The law about custody and access to children is covered by the Yukon *Children's Law Act* and the federal *Divorce Act*. Both provide that the father and the mother are equally entitled to custody of their children.

A parent (or a third party) can challenge the other parent's right to custody. The third party could be a person such as a grandparent or a child protection agency. In all cases, the focus of the judge is on the best interests of the child. Unless there is serious risk of harm to a child, the courts usually find that it is best for children to have both parents involved in their lives.

When they separate, spouses can decide together what custody and access arrangements will work best for their children and for them.

Think about custody and access as the right of children to have a meaningful relationship with both parents, not as the right of parents to have custody of children or to see them.

Parenting plan

This plan describes the way parents will raise their children in the future. Some parents don't feel comfortable with the terms "custody" and "access." A parenting plan may be the best way to address residential and decision-making arrangements for their children.



If the parents cannot decide on custody and access arrangements, either on their own or with the help of a mediator or lawyers, the court can make the decision.

What the court considers

The main concern of the court is the **best interests** of the child or children. What the best interests are depends on the entire family situation. A judge considers all the needs and circumstances of the child which are set out by law, including:

1. the bonding, love, affection and emotional ties between the child and
 - each person entitled to or claiming custody or access to the child;
 - other members of the child's family who live with the child; and
 - the persons, including grandparents, involved in the care and upbringing of the child;
2. the views and preferences of the child (when the child's views and preferences can reasonably be determined);
3. the length of time the child has lived in a stable home environment;
4. the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
5. any plans proposed for the care and upbringing of the child;

The legal terms "custody" and "access" are important. Each parent's rights and obligations need to be crystal clear, especially if there is a risk of one parent fleeing with the children or if one parent is hostile towards the other.

6. the permanence and stability of the family unit with which it is proposed that the child will live; and
7. the effect that awarding custody or care of the child to one party would have on the ability of the other party to have reasonable access to the child.

If you go to court, you are giving the decision-making ability to the judge. You need to understand that the judge may not be able to hear everything that you want to say because the court is subject to rules of **evidence**.



Children and the legal system

The first thing to remember is that family law issues are adult problems. Do not involve your children in drafting affidavits or reviewing court documents. Do not take them to court or involve them as witnesses unless the judge asks you to.

Keep the best interests of your children in mind every step of the way. It's okay to tell your children that you and their other parent are trying to work things out — on your own, with a mediator, lawyer or judge — but make sure that you tell them that the break-up of the relationship with your partner is not their problem. Then be prepared to support them as they work through their feelings about the new shape of their family.

“For the Sake of the Children” workshops can help parents deal with separation and divorce. For more information call the Family Law Information Centre at 456-6721 or toll free at 1-800-661-0408, extension 6721.

Section 5

Child support

All parents must support their children. Stepparents can also be required to support their stepchildren.

Generally, parents must support their children until they reach the **age of majority** (19 years in the Yukon). Parents are often required to support their children beyond the age of majority if the children continue to be dependent on their parents for a good reason (e.g., when children attend university or college full time or when children are unable to support themselves because they have a disability).



The amount of child support parents must pay is calculated according to a set of rules called the **Child Support Guidelines**. Although these rules are called guidelines they are really written law. The guidelines contain tables that show the amount of child support a parent should pay based on the province or territory where the paying parent (**payor**) lives, the payor's income and the number of children. Sometimes

a court may award an amount of support different from the amount contained in the tables. This may happen due to special expenses (such as child care or medical expenses), undue hardship, the type of custody arrangement, or because the children are over the age of majority.

For all orders of child support made on or after May 1, 1997, the parent who receives child support cannot be taxed for it and the parent who pays child support cannot use it as a tax deduction.

Questions about child support

The children live with me most or all of the time. How do I get an order for child support payments from the other parent?

You may need to apply to the court for your order. There are three ways to do this:

- The first way is to get the help of a family law lawyer who will look after the application for you. If you qualify for Legal Aid, you won't have to pay for the lawyer. If you receive social assistance benefits a government lawyer will assist you in the application.
- The second way is to complete the application on your own. Call the Law Line at 668-5297 (toll free 1-866-667-4305) or the



Family Law Information Centre at 456-6721 (toll free 1-800-661-0408, ext. 6721) and ask for Family Law Self-Help Guides and forms to help you.

- The third way is to agree with the other parent on the amount of support payments and to write a consent order that you both sign. You can get information on the preparation of this order from the Law Line (see also *Separation Agreements*, page 5).

The Yukon Department of Justice has information about the federal and territorial Child Support Guidelines in the Family Law Information Centre (FLIC) in the Law Centre on Second Avenue in Whitehorse. FLIC can also provide other sources of information about court applications for child support or variation of child support. Contact FLIC at 456-6721 (toll free 1-800-661-0408, extension 6721).

How is the amount of child support calculated?

The law says that child support should be determined according to the best interests of the child. The Yukon and federal Child Support Guidelines explain how the monthly amounts should be calculated.

The amount depends mostly on the number of children and the paying parent's income and where the paying parent lives. The guidelines include tables of standardized support amounts. These tables apply to most situations, but there are some exceptions.

What's the difference between the federal and the Yukon Child Support Guidelines? How do I know which applies to me?

The federal and the Yukon Child Support Guidelines are similar. Both use the same Yukon Tables to determine the amount of **child support** that must be paid when the paying parent lives in the Yukon.

If you and the other parent are divorced, Canada's *Divorce Act* and federal guidelines apply to you.

If you and the other parent were never married, or are separated but not yet planning to divorce, the Yukon *Family Property and Support*

Act and Yukon Guidelines apply to you.

Some of the forms and procedures for the

Family Property and Support Act are differ-

ent than those that apply to the *Divorce Act*.



How is the paying parent's income calculated?

The guidelines contain very specific information about this. If the paying

parent's income is from employment only, then the current gross income (before deductions) is used. If the paying parent is self-employed, has investment income or has a complicated income situation for some other reason, then other rules apply.

What happens if the paying parent doesn't pay the support ordered?

Either the parent who receives the money or the parent who pays the money can register the child support order with the Yukon Maintenance Enforcement Program (MEP). If the paying parent doesn't obey the order, MEP staff will try to enforce it. For more information, call MEP at 667-5437 (toll-free 1-800-661-0408, extension 5437).

What if the paying parent doesn't live in the Yukon?

The responsibility of parents to support their children financially does not end if they live somewhere else. The amount of monthly child support payments is based on the table amounts for the province or territory where the paying parent lives. The Yukon MEP can enforce child support orders in other provinces, territories, and some countries if your support order is registered with the program.



What if I already have a child support order, but need to change the amount of the payments?

You will need to make a court application to change the order. This is called a **variation**. If this is an easy recalculation (e.g., to make the order match the new table amounts) you might be able to complete the application on your own with the help of self-help guides from the Family Law Information Centre. Sometimes, however, it's a complicated legal issue to change an order. If this is the case, you will need a lawyer's help. If you qualify for Legal Aid or if you are receiving social assistance benefits you might not have to pay for the lawyer.

The other parent and I agree about the amount of child support. Do we need to get lawyers?

You and the other parent can write up an order that is legally enforceable. You can get some information on how to prepare this agreement from the Law Line at 668-5297 (toll-free 1-866-667-4305).

Some parents choose to use mediation to help them with the details of an agreement. You can obtain information about the mediation process from the Mediation Yukon Society at 667-7910.

What if the other parent is pressuring me into an agreement that I'm not comfortable with?

If you feel pressured into an agreement by any physical, mental or emotional abuse by the other parent, or even the threat of abuse,

you should not proceed on your own. Ask for help from Legal Aid or consult a lawyer. They can represent your interests without threat from the other party.

Who pays child support if the other parent and I share custody equally?

To qualify as **shared custody**, each parent must have physical custody of the children or access to them at least 40 per cent of the time.

The amount of child support in the Child Support Guidelines does not automatically apply. The parents may agree on a child support amount, or a court might award an amount that is higher or lower than the table amount. For example, if you earn more than the other

parent, you might pay a monthly amount to the other parent. The amount will also depend on any special expenses, and which parent pays most of these.



Who pays child support if we each have sole custody of one or more of our children (split custody)?

Child support will depend on the incomes of both parents, and how much you would pay (according to the tables in the Child Support Guidelines) for each child in the other's sole custody. The parent required to pay the higher amount will pay any difference between these amounts to the other parent. The amount may also depend on special expenses and needs.

Section 6

Spousal support

Spouses who were married to one another can apply for spousal support. This can be done as part of a Divorce Petition or as an application for support under the authority of the *Family Property and Support Act*.

Under the current **legislation**, the *Family Property and Support Act*, a man and woman who were not married can apply for spousal support if they have lived together in a relationship of some permanence. They must apply either while they are living together or within three months of splitting up.

Unlike child support, there are no guidelines for spousal support. The courts look at the applicant's need for support and the other spouse's ability to pay support to determine the issue of spousal support. The *Family Property and Support Act* and the *Divorce Act* provide objectives, factors and circumstances that the court should consider when addressing the issue of spousal support.



Section 7

Enforcing support orders

The Yukon and the other provinces and territories of Canada have agencies that work to enforce child and spousal support orders and agreements.



In Yukon the agency that does this is called the Yukon Maintenance Enforcement Program (MEP). This program is in the Yukon Department of Justice. Its offices are on the ground floor of the Law Centre on Second Avenue in Whitehorse. You can register your support agreement with the MEP and program staff will help you with the process to either pay or receive the support called

for in your agreement. Either the person paying the support or the person receiving it can register the support agreement with the MEP.

For information and a registration package, call the Maintenance Enforcement Program at 667-5437 (toll free 1-800-661-0408, extension 5437).

When orders or agreements are registered with the MEP all support payments are made directly to the MEP office, which then forwards the payments to the recipient. The MEP keeps records of all payments. If a person fails to make a payment, the MEP attempts to enforce the order. They can do this in several ways, such as **garnishing** wages, garnishing federal payments (such as Employment Insurance), suspending driver's licences, putting liens on property and taking court action.

You must have a signed agreement or a child or spousal support order that provides details such as payor, recipient, payment amounts, etc., before you can register with the Maintenance Enforcement Program. The MEP can enforce existing signed agreements or court support orders only.

Section 8

Finding a lawyer

Ask friends for recommendations. Ask if the lawyer returned phone calls, listened carefully, answered questions and explained legal issues clearly.

Contact the Yukon Law Society's Lawyer Referral Service (668-4231) to ask for the name of a lawyer who practices family law. You can find out if you need the help of a lawyer by getting a 30-minute consultation with a lawyer for \$30 (plus GST). This does not guarantee that you will be

Can you work well with the lawyer you have selected? Do you feel comfortable discussing your case and relying on the lawyer's help in making decisions?

able to work with this particular lawyer but it will give you some idea of the lawyer's approach and the legal issues you face.

If your income is low you may qualify for free legal help from the Yukon

Legal Services Society (Legal Aid). If you need a lawyer's help to get a child support order or to change an existing order, you can find out if you qualify by calling 667-5210 (toll-free 1-800-661-0408, extension 5210).

What it costs to hire a lawyer

From the very first visit, make sure that you understand what the lawyer's fees will be. Most lawyers charge by the hour. You should also understand that the time that lawyers will charge you for includes meetings, writing letters, phone calls, court time, travel time and any other work that they do for you. The more time they spend working on your file, the higher your bill will be. Most lawyers ask for a retainer (deposit) before they agree to work on your behalf.



You can reduce your legal fees by being prepared and by providing all of the information that your lawyer needs. For example, if your lawyer asks for your marriage certificate or income tax information, you can save money by getting the information yourself rather than by having your lawyer spend time getting it for you.

Before you visit your lawyer, write down the questions you want answered. This way you will avoid having to make a phone call later.

Section 9

Family violence

Violence or abuse directed towards a spouse or child is wrong and is against the law. Violence or abuse directed towards a spouse also affects the children in a family.

If you are in a situation where you are experiencing violence, the first thing to do is to get help. If you are a woman, there are transition (safe) homes where you can go. Transition homes are open 24 hours a day, seven days a week.



Transition homes

Kaushee's Place (Whitehorse)	668-5733
Dawson City Women's Shelter	993-5086
Help and Hope for Families (Watson Lake)	536-2711
Carmacks Safe Home	863-5918; after hours 863-5385
Magedi Safe Home (Ross River)	969-2722

Family Violence Prevention Unit

If you are a woman or a man in a situation of family violence, you can also get help and advice from your lawyer or from the Victim Services/Family Violence Prevention Unit (FVPU) in the Yukon Department of Justice. Victim Services/FVPU can provide you with information about the court process and the legal options to address family violence. To contact Victim Services/FVPU, call 667-8500 (toll-free 1-800-661-0408, extension 8500 or 3581).

First Nation court workers

First Nation court workers can also offer information and referrals.

Whitehorse, Carcross, Teslin, Haines Junction, Burwash Landing, Beaver Creek	667-3781
Dawson City or Old Crow: Tr'ondëk Hwëch'in Court worker	993-5385
Watson Lake: Liard First Nation Court worker	536-2131
Ross River: Ross River Dena Council Court worker	969-2279
Carmacks, Mayo, Pelly Crossing: Northern Tutchone Council Court worker	996-2265

Royal Canadian Mounted Police (RCMP)

Beaver Creek	862-5555	
Burwash Landing	1-867-634-5555	call collect
Carcross	821-5555	
Carmacks	863-5555	
Dawson	993-5555	
Destruction Bay	1-867-634-5555	call collect
Elsa	1-867-996-5555	call collect
Faro	994-5555	
Golden Horn	911	
Haines Junction	634-5555	
Hootalinqua	911	
Ibex Valley	911	
Marsh Lake	911	
Mayo	996-5555	
Mount Lorne	911	
Old Crow	966-5555	
Pelly Crossing	537-5555	
Ross River	969-5555	
Swift River	1-867-390-5555	call collect
Tagish	1-867-821-5555	call collect
Teslin	390-5555	
Watson Lake	536-5555	
Whitehorse	911	
If no answer call toll-free	1-867-667-5555	

Section 10

Terms used in family law

- access** The right of parents who do not live with their children, to visit or spend time with them, is called access. Access usually includes the right to be told health and education information about the children and their general welfare. The court order or separation agreement describes the access allowed. There are three types of access: reasonable access, specified access, and supervised access.
1. **reasonable access:** Allows parents who do not live with their children to visit them at times arranged with the parent who does live with the children. Visiting times must be reasonable and appropriate for the situation of the resident parent and the children. Reasonable access gives parents the flexibility to make their own arrangements about access to their children (*see custodial parent*).
 2. **specified access:** Sets out certain times for parents who do not live with their children to spend time with their children.
 3. **supervised access:** Says that parents who do not live with their children may spend time with them only when another adult is present. A court may order this kind of access if the judge feels that it is necessary for the welfare of the children or if it is in their best interests.
- adultery** When people who are married have sexual relations with someone other than their husband or wife, they commit adultery.
- affidavit** If a written statement of facts is sworn under oath as being the truth, it is called an affidavit. A person may file an affidavit as a way of giving evidence to the court.
- age of majority** When children reach the full legal age of adulthood, this is the age of majority. The age of majority in Yukon is 19 years.

alternative dispute resolution	This term refers to ways of settling disputes or differences without going to court. Alternative dispute resolution can include mediation, collaborative law and negotiation. The process is also known as ADR.
appeal	When a higher court reviews a decision made in a lower court, it is called an appeal.
appearance	This form is filed by the defendant or his or her lawyer and advises the plaintiff and the court who (defendant or lawyer) will be defending this action. It provides an address where documents can be delivered to the defendant.
applicant	The person who starts an application in court.
application	You file an application to ask the court to make an order. An application states what type of order you want.
best interests	The test that the court uses to make custody and access decisions about children is called best interests. The needs and well-being of the children are the most important factors. The judge must decide what is best for the children, not what is best for the parents.
Certificate of Divorce	The final document issued by the court at the end of the divorce process (proceeding) is called a Certificate of Divorce. This document says that the divorce is final and means that the parties are free to marry other people if they want to.
child support	Money paid by one parent to the other parent for the support of their children is called child support (<i>see maintenance</i>).
Child Support Guidelines	The guidelines are the rules used for calculating how much child support a parent will have to pay. They are really laws that include support amount tables for each province and territory. The guidelines also include rules for calculating special or extraordinary expenses, claims of undue hardship and child support amounts when the custody of children is split or shared (<i>see custody</i>).

common-law relationship	When a man and woman live together but have not married each other they are said to be in a common-law relationship.
contract	A written or oral agreement that is legally binding is called a contract.
court order	A court order is a decision by a judge that the people being divorced or separated must follow.
creditor	<i>See recipient</i>
custodial parent	The parent that the children live with most of the time is known as the custodial (or residential) parent.
custody	<p>This is a legal term that says where the children live and the person who is responsible for making decisions involving the children. The four types of custody are sole custody, joint custody, shared custody and split custody.</p> <ol style="list-style-type: none">1. sole custody: Sole custody means that the children live with one parent (the custodial parent) and the other parent usually has the right to visit with the children. The custodial parent is responsible for making decisions about the children, but the other parent may be allowed to contribute to these decisions.2. joint custody: Joint custody is the term used when both parents make day-to-day decisions about the children when the children are in their care. Parents make major decisions about the children together. In some cases, the children may live with one parent most of the time, but they see the other parent regularly. In other cases, the children may spend equal amounts of time living with each parent.3. shared custody: This is a legal term used in the Child Support Guidelines. Shared custody occurs when either parent exercises the right of access to the children or has physical custody of the children at least 40 per cent of the time.

4. split custody: Split custody is the term used when the parents have more than one child and each parent has custody of one or more of those children.

defendant	The spouse who is served with the statement of claim is called the defendant.
divorce	The legal ending of marriage.
divorce order	A divorce order is an order from the court that says that two people are divorced. This is an official order and unless the husband or wife appeals, the divorce comes into effect 31 days after the date of the order. At that time the court may issue the Certificate of Divorce.
evidence	Evidence is the information given by parties or by witnesses. They can give evidence either orally or in writing (in an affidavit). Judges use this information to help them make decisions.
financial statement	A document that sets out all sources of income and includes an estimate of monthly expenses is called a financial statement. A financial statement also shows a person's assets and debts (what a person owns and what a person owes).
fees	To file or obtain certain legal documents a person must pay a fee to the court.
garnish	A legal stoppage of a specified sum to satisfy a debt.
grounds	Reasons for a divorce (set out in the <i>Divorce Act</i>) are called grounds for a divorce.
interim order	This is a temporary order that deals with some matters (e.g., custody, access, child support). The interim order is in place until the final decision of the court.
legislation	Laws made and enacted by the Parliament of Canada or the Yukon legislature.

maintenance	Maintenance is another word for the financial support paid as spousal support or child support.
matrimonial property	This is property of a marriage that can be divided between divorced spouses.
mediation	Mediation is a type of alternative dispute resolution (ADR). In mediation, a trained, impartial mediator helps people reach agreements to resolve a dispute.
payor	The payor is the person, sometimes called the debtor, who pays child or spousal support (<i>see recipient</i>).
plaintiff	The person who files the statement of claim.
property	Everything owned, including real estate and personal property (i.e., furniture, cars, bank accounts and investments) is called property.
recipient	The person who receives child or spousal support is the recipient. The recipient is sometimes called the creditor (<i>see payor</i>).
reasonable access	<i>See access</i>
separation	When a couple no longer lives together as husband and wife, they are said to be separated. There is no official document for a legal separation.
separation agreement	This is a contract between two spouses. The contract says that they will live apart and states certain terms and conditions of the separation. A separation agreement usually deals with child custody and access, child support and spousal support. It will also deal with how people divide matrimonial property and debt (<i>see matrimonial property</i>).
service	When court documents are delivered to a person, that person is said to have been served. Some documents must be placed directly into the hands of the person served. Other documents may be served by mail or in other ways.

specified access	See access
spousal support	Spousal support is money paid by one spouse to the other spouse. This money contributes to the living expenses of the person receiving the support. Support can be paid in different ways such as a set amount every month or one lump sum.
statement of claim (family law) form 91	This is an application to the court to start a divorce. Either spouse may file the statement of claim.
statement of defence (family law) form 92	This is the formal response to a statement of claim. The spouse who makes this response (statement of defence) is called the defendant. The response to the statement of claim is a document that states the defendant's position. It is filed with the court.
supervised access	See access
swear/affirm	When any party or any witness swears on a holy book, such as the Bible, to tell the truth, or makes a solemn affirmation (a promise) that he or she will tell the court the truth.
variation	A change to an existing court order. You must apply to the court to vary a court order.
witness	A witness is a person who gives information and evidence to the court so that the judge can make a decision.



This guide provides general legal information to people involved in separation or divorce proceedings. It is also a useful reference on child custody and access, and on child support and spousal support.

