An Introduction to Family Law in Ontario

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Who is this booklet for?

This booklet has basic information about family law in Ontario, where to get more information, and how to get legal help.

Family law information might be important to you if you are, or might be, in any of these situations:

- living with someone as a couple,
- getting married,
- having or adopting a child,
- separating,
- getting divorced, or
- experiencing violence or abuse within your family.
What family law is about

Family law is mostly about the rights and responsibilities of spouses, parents, and children.

If you marry someone or live together as a couple, the law gives you certain rights and responsibilities towards each other, both while you are together and if your relationship ends. In Canada, same-sex couples and opposite-sex couples have the same rights to marry, live together common-law, and have or adopt children.

If you have children, you also have legal responsibilities and rights towards them, whether or not they live with you, and whether or not you live with or are married to their other parent.

Usually family law issues come up when people decide to separate or divorce. But even if you never expect to separate or divorce, knowing this information now could help you avoid problems later.

What are the most common family law issues?

The most common concerns in family law include the following:

Child custody, access, and parenting plans

Parents who are separating have to arrange where their children will live and how much time they will
spend with each parent (access), and who will make major decisions about the children’s upbringing (custody). All together, these arrangements are called parenting plans.

When the parents cannot agree about these things, a judge may have to decide what arrangement would be in the child’s best interests.

**Child support**

All parents are responsible for supporting their children as long as the children are dependent. Dependent usually means at least until the child turns 18 and sometimes longer. In most cases, if a child lives most of the time with one parent, the other parent has to help with the expenses by paying child support. The amount of the child support usually depends on the income of the parent who is paying support.

**Spousal support**

A spouse is someone you are married to or live with in a marriage-like relationship (common-law). The words partner, wife, and husband are sometimes used to refer to spouses. Spouses may have a responsibility to support each other financially. If they separate, the spouse with the higher income may have to continue supporting the other. How long support must be paid depends on the situation; it may be for just a few months or for many years.
Property division

When a married couple separates, they must share any increase in their money or property that happened during the marriage. They also each have an equal right to continue to live in the home they were living in together. It does not matter which spouse’s name is on the deed or the lease.

These rules do not apply to common-law (unmarried) couples. If a common-law couple separates, each spouse usually keeps his or her own money and property and they divide things that they own together. A common-law spouse may sometimes be able to claim a share of the other spouse’s property or money, but this is not an automatic right as it is with legally married spouses.

CLEO has other publications with more details on each of the above topics. See page 17 for more information about our Family Law Series.

Living together

Living together in a marriage-like relationship, but without getting married, is often called “cohabitation” or “living common-law”.

The law mostly treats common-law couples the same as married couples, except when it comes to property division and inheritance.
In Canada, a child’s legal rights and status are not affected by whether their parents were married, living together, or not in a relationship at all.

In Ontario there is no formal or legal step to become common-law spouses. In Ontario family law you are considered common-law spouses if:

- you live together and have a child together, or
- you have been living together for at least three years whether or not you have a child together.

Other Ontario laws may use different definitions of “spouse”. And most federal laws and programs consider you common-law spouses after you have lived together for one year, whether or not you have a child together. (Note that federal laws use the term “partner” instead.)

There is also no formal or legal step needed to end a common-law relationship. If you stop living together as a couple, you are no longer common-law spouses. But if this happens, you may want to have a separation agreement or court order to deal with issues like support, property, and parenting plans. See the section, “What you need to do when separating or divorcing” on page 8.

**Marriage and divorce**

To be legally married, you must go through a marriage ceremony with another person. The ceremony must be led by someone who has the legal
power to marry people, such as a judge, justice of the peace, or religious official.

Married couples are considered spouses for all legal purposes including property division and inheritance.

If you separate from your married spouse, one or both of you may want to get a divorce. A divorce is a special kind of court order that ends the marriage.

The main legal reason to get divorced is so that either of you can marry again. You can get a divorce if you have been separated for at least a year with no chance of getting back together. You must also show the court that you have made reasonable arrangements to take care of your children if you have any.

You do not need to apply for a divorce in order to deal with issues such as property, support and parenting plans. You can do this in a separation agreement or court order without getting divorced. See the section “What you need to do when separating or divorcing” on page 8.
**Domestic contracts**

You and your spouse can make a written agreement about how you want to arrange your finances and other parts of your life together, as well as how your property will be divided and what spousal support will be paid if you separate. You can make this agreement at any time — before or after you get married or start to live together.

An agreement between common-law spouses is called a *cohabitation agreement*, and one between married spouses is called a *marriage contract*. Both are examples of what is called a *domestic contract*.

In a marriage contract or cohabitation agreement, you can agree to arrangements that are different from the usual family law rules about property and spousal support. But the contract or agreement cannot say what the parenting plan will be if the relationship ends, who will have custody of your children, or who will pay child support and how much. These issues about children can only be decided if and when you decide to separate.

*A separation agreement* is a domestic contract that you and your spouse can make when you are thinking of separating or after you have separated. In a separation agreement you can deal with the arrangements for the children, as well as property and spousal support. See the next section, “What you need to do when separating or divorcing”.

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Before signing any kind of domestic contract, you should each consult your own lawyer. You will each have to make a detailed and complete statement of your financial situation.

For any type of domestic contract to be legally enforceable, both of you must sign it in front of a witness, and the witness must also sign it.

What you need to do when separating or divorcing

Separation agreement

If you and your spouse are separating, you will have to make decisions together about things like:

- who will stay in your home,
- how your children will be cared for and where they will live,
- financial support, and
- dividing up property and money.

It is usually best if the two of you can agree on as many of these things as possible. Sometimes it can be helpful to have a lawyer represent you in working out the details with your spouse.

Anything you decide can be written in a separation agreement. Before signing a separation agreement, you should make sure that:
• you know your rights,
• you understand what you are agreeing to, and
• the agreement covers everything that needs to be decided.

The best way to make sure of these things is to have your lawyer read the agreement and give you advice. You and your spouse cannot both get advice from the same lawyer.

Once you sign a separation agreement, you will both have to follow it unless you both agree to change it, or a judge decides that there is a good reason to change it.

**Mediation**

If reaching an agreement is too difficult, you and your spouse may want to use a mediator. Family mediators are usually professionals such as social workers, lawyers, or psychologists, who are specially trained in family law mediation.

Family law mediators can help you and your spouse talk about the problems that need to be solved and suggest solutions you can both accept. They can help spouses come to a fair agreement and they can help parents figure out an arrangement that is best for the child.

Mediators do **not** give legal advice and they do **not** make the decisions.
Even if mediation does not resolve all the issues, it often brings people closer to agreement. This can make things easier if you have to go to court.

Usually mediation is “closed”, which means that no one can repeat in court what anyone else said in mediation.

If possible, each spouse should meet with their own lawyer before the mediation starts. They can also have their lawyers help them through the whole process. You should not agree to any arrangement or sign anything before you each discuss it with your lawyers.

Sometimes mediation may not be a good idea; for example, if there has been violence or abuse, or if there is a big power imbalance between the spouses.

Free and “sliding-scale” mediation services are available at family courthouses. There may also be private mediators in your community that you can hire. For more information about mediation, search for “Family Mediation Services” on the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca.

Court

If there are some issues you and your spouse cannot agree on, you may have to go to court and ask a judge to make some of the decisions.

The court process usually has many steps. It can be quite complicated to start a court case or even to figure
out which court you must use. It often takes a long time before a trial happens.

But if the situation is urgent, courts can sometimes make temporary orders quickly. Examples of urgent situations are:

- the parents cannot agree on where the children will live immediately after the separation,
- one spouse or parent needs support right away,
- one spouse or parent has committed violence or abuse, or threatened to do so,
- there is a danger that a parent may abduct a child,
- one parent is not allowing the child to see the other parent, or
- there is a danger of a spouse hiding or giving away property or money.

Even after the court process has started, it is not too late for you and your spouse to settle things by making an agreement. Many of the steps in the court process are designed to encourage settlement.

You can find more information about the court process in the Family Law Information Program. More information about this program can be found on page 19. You can also search “Understanding the family court system in Ontario” on the Ministry of the Attorney General’s website at www.attorneygeneral.jus.gov.on.ca.
Most people will need help from a lawyer to get through the court process. See the section “Finding a lawyer” on page 14.

**Arbitration**

Instead of going to court, you and your spouse can choose an arbitrator to hear your case and make the decisions. Usually, you both must pay for the arbitrator. The arbitrator is often a retired judge, a mental health professional, or a lawyer experienced in family law.

You can each have your own lawyer to represent you throughout the process.

Arbitration is not the same as mediation. In Ontario, arbitrators **can** make legally binding decisions. This means that you and your spouse must obey the decision of the arbitrator, just as if it was a court order. But this is true only if the arbitrator follows certain rules. Here are two of the most important rules:
• Each spouse must get their own legal advice before agreeing to have arbitration.

• The arbitrator must base their decision only on Canadian family law, not on any religious rules, cultural traditions, or other principles. For example, this means that any decisions about parenting plans must be based only on the best interests of the child.

People sometimes choose to discuss their family law dispute with a religious or community leader or another person they trust. They might choose to follow this person’s advice, or they might feel they must follow it. But it is important to know that this person does not have any legal power to make the decision unless they followed all the rules to make it a legal family law arbitration and the parents agreed to give them this power.

Once you both agree to go to arbitration, you cannot go to court, except to appeal the arbitrator’s decision.

For general information about arbitration, search for “Family Arbitration” on the Ministry of the Attorney General’s website at www.attorneygeneral.jus.gov.on.ca.
Finding a lawyer

The Law Society of Upper Canada has a directory of all lawyers who are licensed to practice law in Ontario. Make sure the lawyer you hire has experience with family law. The Law Society also has a Directory of Certified Specialists who focus on family law.

The Law Society Referral Service can give you the name of a lawyer in your area who can give you a free consultation for up to 30 minutes. There is no charge for this referral service.

Visit the Law Society website at www.lsuc.on.ca and click on “Find a Lawyer or Paralegal”, or call them at:

- Toll-free: 1-800-268-8326
- Toronto area: 416-947-3330

Getting more information

Family Law Information Centres (FLICs)

The Ministry of the Attorney General has established a Family Law Information Centre (FLIC) in every courthouse that deals with family law. All FLICs have free pamphlets on topics such as separation and divorce, court procedures, and family mediation. Many of the FLICs have staff who can give information and make referrals to community agencies and legal services. To find a Family Law Information Centre in your area, call Legal Aid Ontario at one of the numbers listed on page 16 or visit
the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca.

Advice Lawyers

At FLICs, advice lawyers from Legal Aid Ontario are available at certain times to answer questions, provide summary legal advice, and review legal documents on family law issues. Contact your local FLIC to find out when the advice lawyer is available.

If you want legal advice on your family matter before your court date, you can speak to an advice lawyer a few days before your scheduled appearance. If you are seeing an advice lawyer, remember to bring all documents regarding your case. This will allow the lawyer to provide more specific advice about your case. If you do not have any documents, the advice lawyer can still give general advice and information about the court processes.

What if I cannot afford a lawyer?

You may be able to get help from Legal Aid Ontario. Legal Aid Ontario helps low-income people get legal assistance through a broad range of services. You must be financially eligible to receive most of these services. Call Legal Aid Ontario to find out if you are eligible.

Visit their website at www.legalaid.on.ca or call them at:
Legal Aid Ontario offers the following family law services:

- **Family Law Service Centres**
  At Family Law Service Centres, if you are financially eligible, you can receive help with documents, legal representation, and referrals to other types of services. These centres are located in Toronto, North York, Newmarket, Brampton, Chatham, and Sarnia. It is important to use the centre in the region where your court case is located.

- **Family Law Offices**
  There are two Family Law Offices in Ontario: one in Ottawa and one in Thunder Bay. If you are financially eligible, the lawyers and paralegals at these offices can help with issues including custody, access, support, child protection, and restraining orders.

- **Family duty counsel**
  If you do not have a lawyer, family duty counsel may be able to give you advice about family law issues and basic court procedures, and assist you in court. Services are available in many court
locations in Ontario. You must be financially eligible for some types of duty counsel assistance. Duty counsel can give advice, speak to the court on your behalf, or help you negotiate a settlement.

- **Summary legal advice**
  You may be able to get free advice about your family law issue from a lawyer for up to 20 minutes. This service is only provided over the phone. You do not meet the lawyer in person. You must be financially eligible to receive summary legal advice. Call Legal Aid Ontario to find out if you are eligible.

- **Certificate program**
  If you are financially eligible, you can apply to Legal Aid Ontario for a certificate to cover the cost of a lawyer to represent you for a certain number of hours. Certificates are reserved for the most serious legal matters, such as domestic violence, child protection, or complex family law cases. Your case must qualify to receive representation.

**Other information and resources**

**Community Legal Education Ontario (CLEO)**

CLEO has a series of family law information resources available online and in print. Together with this Introduction to Family Law in Ontario, topics in the series include:
• Family Law Resources in Ontario
• Separation and Divorce or Death of a Spouse: Property Division
• Separation and Divorce: Child Custody, Access, and Parenting Plans
• Separation and Divorce: Child Support
• Separation and Divorce: Spousal Support

To order these publications or view them online, visit www.cleo.on.ca or call 416-408-4420.

CLEO has an extensive online collection of family law resources from other legal and community organizations. Visit www.yourlegalrights.on.ca to view these resources.

Ontario government family law website
The Ministry of the Attorney General provides information on many family law issues at www.attorneygeneral.jus.gov.on.ca/english/family. The site also features information about the family court process and a booklet in nine different languages called What You Should Know about Family Law in Ontario.

Family Law Education for Women website
This website provides online resources on women’s rights under Ontario family law. These are available in 14 languages and in multiple formats. Visit www.onefamilylaw.ca to view these resources.
Law Society of Upper Canada website

The Law Society of Upper Canada has a website entitled Your Law: Family Law in Ontario which has information about family law and court procedures. Visit www.yourontariolaw.com to view this resource.

Family Law Information Program

The Family Law Information Program is an online resource for those about to enter the family court system available on the Legal Aid Ontario website at www.legalaid.on.ca.
This booklet gives only general information. You should get legal advice about your own situation.

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This booklet is part of a free series on family law. CLEO has free publications on other legal topics as well. We revise our publications regularly to reflect changes in the law. Our Discard List tells you which publications are out of date and should be thrown away.

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