



Family Law 101
613-722-1500

Family Law 101

General orientation for separating spouses

When two people cohabit in a committed relationship, either pursuant to their co-parenting of a child, or for a significant length of time (3 years or more), there arises a set of rights and obligations that together make up what is called "Family Law".

Those rights and obligations are defined by the law, and address a set of important issues relating to your property, financial and cash-flow matters, and if applicable, the parenting of your children.

This article is intended to provide you with an overview of some of the terms and concepts surrounding Family Law, and give you some links to more information. It describes the important issues dealt with in Family Law, and gives details about what we mean when we talk about the law, or about the court, or about negotiation. We hope to also provide a bit of perspective on what other needs are common for separating spouses.

All of this can make a difference to how you experience your separation or divorce.

IMPORTANT ISSUES IN FAMILY LAW

Family law issues fall into five categories. They are:

PARENTING

Also called "Custody and Access", is focused on two main questions: "How will decisions relating to the child be made?", and "Where will the child be spending their time - minute to minute and day to day?"

CHILD SUPPORT

The answer to the Parenting questions above will usually result in obligations for some child support to flow from one parent to the other. This issue is primarily governed by the [Child Support Guidelines](#).

SPOUSAL SUPPORT

After cohabiting as spouses for three years or more, married or unmarried spouses in Ontario are entitled to advance a legal claim for support from the other spouse.

The number of factors considered by the courts, and the wide range of possible outcomes make this, in our opinion, one of the hardest issues to understand.

PROPERTY DIVISION

Property Division is the process of dividing the assets and debts you acquired during your time together. There is a statutory division scheme for married persons, which is complicated enough, but there is no mechanism for unmarried folks.

The question of "who gets what?" in that situation must be determined by reference to "legal title" (ie. who legally owns the property, which is often the person who paid for the asset) and a set of complicated common law concepts known as constructive trusts (where a legal owner can be deemed to actually hold part of an asset in trust for another).

DIVORCE

Only relevant to married spouses, this issue is the one issue the parties cannot settle via a written agreement. This requires a court order. How, when and upon what grounds a divorce order is obtainable from the court is a question that varies from case to case.



THE LAW

The law exists in two ways: Statutory law and Common Law. Statutes are laws and regulations passed by Parliament and Legislatures. These are rules with broad guidance on their application.

Common Law is the collected written decisions of courts wherein each judge/court has applied Statutory Law (and reason and interpretation and analysis) to the particular people and circumstances before it.

To determine the answer to any legal issue, a lawyer must know both the statutory law that applies, and be able to determine what common law cases are relevant to the set of circumstances of the matter at hand.

In addition to the general difficulty of knowing what the law is, family law presents a special challenge. Unlike most areas of the law, family law has recently had the habit of dramatically changing in a very short period of time.

Major shifts in what society expects with respect to traditional gender roles, family responsibilities and the complexities of our lives all impact on family law. In fact one could say that family law in the space of twenty years (a blink of an eye in "legal time") has undergone such dramatic changes as to be barely recognizable.

The family law statutes applicable to most Ontario situations are as follows:

[Family Law Act](#)
[Children's Law Reform Act](#)
[Family Law Rules](#)

The Common Law applicable to Ontario residents is generally Ontario-based, but there is nothing stopping a judge in an Ontario case from citing some relevant legal precedent from some court in Alberta, or British Columbia or Nova Scotia. The Common Law is enormously vast, and the thousands of relevant cases are not stored in one place. To get a sense of the stunning complexity of it all, you can view a small fraction of the common law at this free site: www.canlii.org.

HELPFUL SITES ABOUT FAMILY LAW

The [Ontario Attorney General](#) has a good general resource page.

The [CRA](#) has a detailed discussion of many financial and tax matters concerning separated and divorced spouses.

["Parenting After Divorce"](#), from the Canadian Department of Justice.

[Child Support Guidelines](#) from the Department of Justice.

[Family Violence Initiative](#), also from the Department of Justice.



THE COURTS

We are lawyers. They are the Court. We are their officers - duty bound to present our clients' facts and argue the law with honesty, integrity and zeal. Without them, we are just verbose posers in funny robes. Without us, they are seriously hamstrung in their duty to do justice to the citizens of Ontario before them in accordance with the law.

More information is available on the website for the [Ontario Courts](#).

NEGOTIATION

Of the cases that go to court, something between 3% and 5% actually get all the way to be heard at a trial. Therefore, 95% to 97% of cases settle before trial, and they only settle because the parties have reached a negotiated agreement.

Negotiation is a skill. We have that skill and a great deal of experience. We can do it while the litigation is on-going, but our strong preference is to negotiate with your spouse and their lawyer (although we will bargain with the rare hard-headed spouse who refuses to get their own lawyer). We can also support you if you and your spouse are conducting a mediation. We also provide the mediation services, or we can represent you through a special structured negotiation called Collaborative Family Law.

OTHER NEEDS

We can connect you to support that will make this time easier. We have a number of professionals with whom we have built a trust relationship, that we know deliver the kind of dignified service and attention to detail that we ourselves expect. We assess each client individually, and provide them with choices and options customized to them.

As stated, we can access and connect you with a range of locally-provided services in support of your individual needs.

Whether it's counselling, focussed health care, real estate advice and guidance, financial assistance, or other help that you require, we can connect you to our trusted colleagues in the field.

Finally, here is a link to a large archive of articles from an Ontario social worker, Gary Dirnfeld, that you may find helpful, about [parenting](#) and about [separation and divorce](#).



[HOME](#) | [PERMISSION TO REPRINT](#) | [FAMILY LAW](#) | [COLLABORATIVE FAMILY LAW](#) | [FAMILY LAW MEDIATION](#) | [REFERRALS TO OTHER PROFESSIONALS](#) | [FAQs](#) | [CONTACT US](#) | [LINKS](#)

MANN & PARTNERS, LLP | Suite 612, 1600 Scott St. Ottawa ON K1Y 4N7 | 613-722-1500