An Introduction to Family Law in Ontario

July 2019
If you speak French

In many cases you have the right to government services and legal proceedings in French, including hearings before French-speaking decision-makers.

If you have a legal problem, you can ask a lawyer or a community legal clinic about your French language rights.

Si vous parlez français

Il existe de nombreuses situations où vous avez droit à des services gouvernementaux et à des procédures juridiques en français. Ainsi, vous pouvez avoir droit à ce qu’une audience à laquelle vous êtes partie soit tenue devant un décideur qui parle français.

Si vous avez un problème juridique, vous pouvez demander à un avocat ou à un intervenant d’une clinique juridique communautaire de vous informer des droits linguistiques liés au fait de parler français.
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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 is important if you are in any of these situations:

- living with someone as a couple
- getting married
- having or adopting a child
- separating
- getting divorced
- 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. Rights are what the law says you can get. Responsibilities are what the law says you have to do.

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

### What are the most common family law issues?

The most common issues in family law are:

**Child custody, access, and parenting plans**

Parents who are separating have to decide where their children will live and how much time they will spend with each parent. This is called **access**.

They also have to decide who will make major decisions about how to care for and raise their children. This is called **custody**. All together, these arrangements are called **parenting plans**.

**Child support**

All parents are responsible for financially supporting their children as long as the children are dependent. **Dependent** usually means until the child turns 18 and sometimes longer.
In most cases, child support is paid by the parent who spends the least amount of time with the children to the parent who takes care of the children most of the time. It is used to help cover the costs of caring for the children.

The amount of child support usually depends on the income of the parent who is paying support and the number of children they have to support.

**Spousal support**

Spouses may be responsible for financially supporting each other. A spouse is someone you are married to or live with in a common-law relationship. The words partner, wife, and husband are sometimes used to refer to spouses.

Spousal support may be paid by the spouse with the higher income to the spouse who earns less.

The amount of support and how long it is paid depends on things like the length of the marriage or relationship and whether one spouse stayed at home to care for the children.

**Property division**

When a married couple separates, they must usually share any increase in their money or property that happened during the marriage. They also have an
equal right to continue to live in the home they were living in together. It does not matter which spouse owns or rents the home.

These rules do not apply to common-law couples. If a common-law couple separates, each spouse usually keeps their own money and property. Common-law couples only divide things that they own together.

A common-law spouse may sometimes be able to claim a share of the other spouse’s money or property, 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. To view or order these publications, visit www.family.cleo.on.ca.

III 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 are not affected by whether their parents were married, living together, or not in a relationship at all.

Ontario’s family laws do not require any formal or legal step for people to become common-law spouses. You are considered common-law spouses if:

- you live together and have a child together, or
- you have been living together for at least 3 years whether or not you have a child together.

Other Ontario laws and federal laws may define common-law **spouse** differently.

There is also no formal or legal step to end a common-law relationship. You are no longer common-law spouses if you stop living together as a couple. But if this happens, you may want 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 done by someone who has the legal power to marry people, such as a judge, justice of the peace, or religious official.

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

The main legal reason to get divorced is so that you can marry again. You can get a divorce if you show a breakdown in your marriage by proving any one of the following:

- you have been separated for at least one year with no chance of getting back together
- your partner cheated on you with someone
- your partner treated you cruelly

You must also show the court that you have made reasonable plans to take care of your children if you have any.

You do not need to apply for a divorce to deal with issues such as support, property, and parenting plans. You can deal with them in a separation agreement or court order. 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 your relationship.

A written 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.

Marriage contracts and cohabitation agreements can deal with how you divide property and pay spousal support if your relationship ends. But they cannot deal with issues about children. For example, they cannot say what your parenting plan will be or who will pay child support.

Issues about children can only be decided when you separate.

A separation agreement is another kind of domestic contract. It can deal with plans for your children, as well as property division and spousal support. See the section Separation agreement on page 9.

You can make a domestic contract at any time, for example, before or after you get married or start to live together. Or before or after you separate.
Before signing a domestic contract, you and your spouse should each:

- understand the agreement
- review the agreement with your own lawyer
- make a complete and detailed statement of your financial situation

You do not need a lawyer to make a domestic contract. But it is a good idea to get your own legal advice before signing one. You and your spouse cannot get advice from the same lawyer.

### What you need to do when separating or divorcing

If you and your spouse are separating, you 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
- dividing property and money

It is usually best if the two of you can agree on as many of these things as possible. You can talk to your spouse on your own or with the help of someone you trust, a lawyer, or a mediator.
Separation agreement

Anything you and your spouse agree on can be written in a separation agreement. You do not have to wait until you agree on everything before making a separation agreement. You can make an agreement on the things you agree on, while working on your other issues.

You do not need a lawyer to make a separation agreement. But it is a good idea to get your own legal advice before signing one. You and your spouse cannot get advice from the same lawyer.

Once you sign a separation agreement, you and your spouse 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 you cannot reach an agreement on your own, you and your spouse may want to use a mediator.

A mediator is a person trained to help you and your spouse discuss your issues, understand each other’s position, and try to reach an agreement.
Mediators do not:

- give legal advice
- make decisions
- take sides

Family mediators are usually professionals such as social workers, lawyers, or psychologists.

You do not need a lawyer to go to mediation with you. But it is a good idea to have your own lawyer review any agreement you make and give you legal advice before signing it.

Sometimes mediation may not be a good idea. For example, if there has been violence or abuse, or if there are serious mental health or drug abuse issues.

The Ministry of the Attorney General offers free and sliding-scale mediation services in family courthouses. Sliding-scale means the amount you pay depends on your income and the number of children you have to support.

To find out more about these services, search for “Family Mediation Services” on the Ministry’s website at www.attorneygeneral.jus.gov.on.ca.

You can also hire a private mediator.
If you and your spouse still cannot agree, you may decide to go to arbitration or to court to get a decision.

**Arbitration**

An arbitrator, like a mediator, is a person trained to help you and your spouse discuss your issues and try to reach an agreement. But unlike mediation, if you cannot agree, the arbitrator makes a decision.

Arbitrators are usually retired judges, mental health professionals, or lawyers experienced in family law. Usually, you both must pay for the arbitrator.

In Ontario, arbitrators can make legally binding decisions. This means that you and your spouse must follow the arbitrator’s decision as if it is a court order.

But this is true only if the arbitrator follows certain rules. The 2 most important rules are:

- Usually each spouse must get their own legal advice before agreeing to arbitration.
- The arbitrator makes a decision based only on Canadian family law. This means the arbitrator cannot base their decision on any religious, cultural, or other rules. The arbitrator must apply the same laws that a judge would apply in a Canadian court.
People sometimes choose to discuss their family law issues with a religious or community leader or another person they trust. But this person does not have any legal power to make decisions unless they followed all the rules to make a legal family law arbitration and you and your spouse agreed to give them this power.

You do not need a lawyer to go to arbitration with you. But it is a good idea to have your own lawyer review any agreement you make and give you legal advice before signing it.

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

**Court**

Going to court can be a complicated process and take a lot of time. It can be stressful and expensive, but it is sometimes necessary to decide your issues.

If you need the court to decide a specific issue before a trial, you can ask for a temporary order. For example, a court may make a temporary order if:
● you and your spouse cannot agree on where your children will live immediately after you separate
● you need support right away
● your spouse has been, or threatened to be, violent or abusive
● there is a danger your spouse may abduct your children
● your spouse is not allowing you to see your children
● there is a danger your spouse may hide or give away property or money

Even after the court process has started, you and your spouse can stop it to try and make an agreement. Many steps in the court process encourage you to resolve your issues on your own.

The flowcharts in CLEO’s Steps in a Family Law Case can help you understand and follow the court process. Visit www.familycourt.cleo.on.ca.

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 need help from a lawyer to get through the court process.
Finding a lawyer

Law Society of Ontario

The Law Society of Ontario (LSO) has a directory of all lawyers who can practise 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.

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

- Toll-free .......................... 1-800-668-7380
- Toronto area ......................... 416-947-3300

The Law Society Referral Service is an online service that gives you the name of a lawyer in your area who can give you a free consultation for up to 30 minutes. You can ask for a lawyer who speaks your language, or a lawyer who accepts Legal Aid certificates. For more information on Legal Aid certificates, see What if I cannot afford a lawyer? on page 16.

You can also call them on their crisis line if you cannot use the online service, for example, if you are in custody, in a shelter, or in a remote community without access to the Internet. This line is available from Monday to Friday, 9 a.m. to 5 p.m.
Visit [www.findlegalhelp.ca](http://www.findlegalhelp.ca) or call:

Toll-free Crisis Line .................. **1-855-947-5255**
Toronto area Crisis Line ............... **416-947-5255**

**Legal Aid Ontario**

Legal Aid Ontario also offers a searchable directory of lawyers. You can search for family law lawyers by location and language. Visit [www.legalaid.on.ca/en/](http://www.legalaid.on.ca/en/) and click on “Finding a lawyer”.

### Getting more information

**Family Law Information Centres (FLICs)**

The Ministry of the Attorney General has a Family Law Information Centre (FLIC) in every courthouse that deals with family law. All FLICs have free pamphlets. Many FLICs have staff who can give information and refer you to community agencies and legal services. To find a FLIC in your area visit the Ministry of the Attorney General website at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca).

**Advice Lawyers**

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

### What if I cannot afford a lawyer?

You may be able to get help from Legal Aid Ontario (LAO). LAO helps people with a **low income** get legal assistance through a range of services. Your income must be low enough to get most of these services. Call LAO to find out if you are eligible.

Visit [www.legalaid.on.ca](http://www.legalaid.on.ca) or call them at:

- Toll-free ......................... 1-800-668-8258
- Bell Relay Service ................. 1-800-855-0511
- Toronto area ....................... 416-979-1446 (accepts collect calls)

Some of the services LAO offers are:

**Family Law Service Centres**

At Family Law Service Centres you can get help with court documents, and get referrals to other types of services. These centres are located in several places in Ontario.
Family Law Offices

There are Family Law Offices in Kenora, Ottawa, and Thunder Bay that can help with issues like custody, access, support, child protection, and restraining orders.

Family duty counsel

Family duty counsel may be able to give you advice about family law issues and basic court process, help negotiate a settlement, and help you in court. But they cannot represent you at trial. Most courts in Ontario have these services.

General 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 given over the phone.

Certificate program

You can apply to LAO for a certificate to cover the cost of a lawyer to represent you for a certain number of hours.

You may be able to get a certificate if your situation involves family violence, child protection, or complex family law issues.
Faster certificates for victims of family violence

If you are a victim of family violence and let LAO know this when you call them, you are placed in a priority line for help with applying for a certificate. In urgent cases, you may be able to apply in person and get a certificate, possibly on the same day you apply.

Law school clinics

Each law school in Ontario has a legal aid clinic staffed by law students who are supervised by lawyers. These clinics are located in Kingston, London, Ottawa, Thunder Bay, Toronto, and Windsor.

Law school clinics can help with child custody, access, and child support issues. Some of them can also help with other family law issues such as property division and spousal support.

Other information and resources

Community Legal Education Ontario (CLEO)

CLEO has a series of family law information resources available online and in print. Other topics in the series include child support, child custody, spousal support, and property division. To order these publications or
view them online, visit www.family.cleo.on.ca or call 416-408-4420.

CLEO’s **Steps in a Family Law Case** has 3 interactive flowcharts that help people understand and work through the family law court process. Visit www.familycourt.cleo.on.ca.

CLEO’s **Steps to Justice** is a website that gives step-by-step information about common legal problems, including family law issues. Steps to Justice has practical tools like forms and checklists, and referral information for legal and social services. Visit www.stepstoj ustice.ca.

CLEO’s **Family Law Guided Pathways** are a series of online interviews that help you fill out the court forms you need for family law matters. The pathways ask you questions and then put your answers into the required court forms. The pathways are free to use. Visit www.stepstoj ustice.ca/guided-pathways.

**Ontario government family law website**

The Ministry of the Attorney General has information on many family law issues at www.attorneygeneral.jus.gov.on.ca/english/family. The site also has information about the family court process and a publication in 9 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.

Family Law Information Program

The Family Law Information Program is an online resource for those about to enter the family court system. It is available on the Legal Aid Ontario website at www.legalaid.on.ca.

Ontario court websites

Two of Ontario’s family courts have information about their court process. Go to the Ontario Court of Justice website at www.ontariocourts.ca/ocj and search for Representing Yourself at Your Family Law Trial – A Guide. Go to the Superior Court of Justice website at www.ontariocourts.ca/scj and search for A Guide to Process for Cases at the Superior Court of Justice.
This booklet gives only general information. You should get legal advice about your own situation.

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CLEO has more free publications on family law and other legal topics. 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.

To view our publications, order form, or Discard List, please visit www.cleo.on.ca. You can reach us by phone at 416-408-4420.