

Top Ten Family Law Questions for Public Librarians

BC Library Conference · Victoria · 8 April 2011

*Janet Freeman · Courthouse Libraries BC
John-Paul Boyd · Aaron Gordon Daykin Nordlinger*

Objectives of this session

By the end of this session you will be able to :

- Have a basic understanding of family law and the scope of issues it covers*
- respond to questions from the public about family law matters by using a number of online and print resources*

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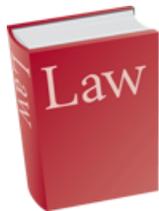
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A **search tool** to find someone in your community who can help with legal problems.

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At your local public library

A program that helps **public libraries** in BC in provide current legal information.


**COURTHOUSE
LIBRARIES | BC**

A non-profit that works to enhance **access to legal information & assistance** for the legal community and the public in BC.

LawMatters at your local public library

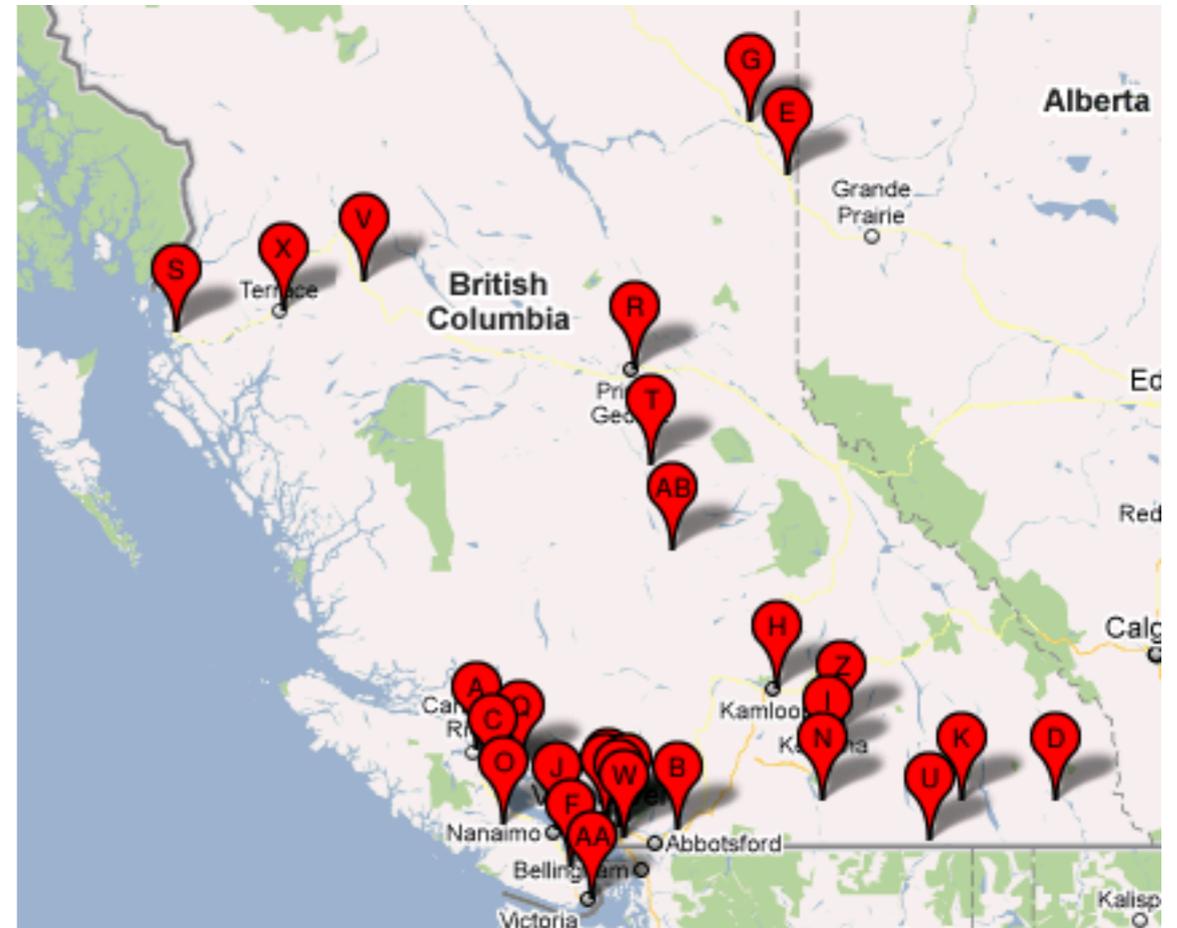
- *All public libraries in BC have increased **their legal information collections** through grants from LawMatters*
- *Our **Legal Information Reading Guides** highlight the titles available bclawmatters.ca*
- *Public librarians have been receiving **training on handling legal questions** from the public*



LawMatters collection at Chilliwack Public Library

Courthouse Libraries BC

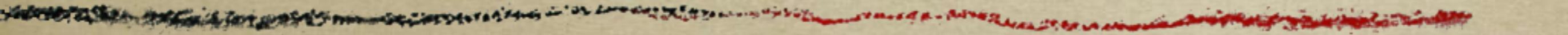
- *libraries in 30 courthouses across BC*
- *in-depth law books & free use of legal databases on public access computers*
- *assistance from law librarians (in Vancouver and 6 regional libraries or **1.800.665.2570**)*
- *website courthouselibrary.ca features legal information aimed at legal community*



your choices for this session

1. Cohabitation Agreements
2. Common-Law Relationships
3. Sex and New Relationships
4. The “Legal Separation”
5. Separation
6. The D.I.Y. Divorce
7. The Care and Control of Children
8. The Legislation on Family Law
9. Spousal Support
10. The White Paper

Cohabitation Agreements



cohabitation agreements

- *agreement between a couple who are living together, or planning on it*
- *usually intended to deal with dissolution of relationship but may deal with conduct of relationship*
- *enforceable as a contract; if filed in court, enforceable as a court order*

potential subject matter

- *during a relationship: responsibility for children brought into relationship, debts and assets brought into relationship*
- *after a relationship: spousal support, care of children born of relationship, ownership of property bought during relationship*

but wait a minute ...

- *married couples are presumed to have a half interest in family assets*
- *unmarried couples are only presumed to have an interest in things they jointly own*
- *unmarried couples rarely get anything close to what married couples get*

... you don't want one!

- *under s. 120.1 of the Family Relations Act, cohabitation agreements that deal with property can be assessed for fairness using the test that applies to married couples*
- *for married couples a “fair” split of property is an equal split*

CD-ROM included

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Alison Sawyer, Lawyer

Write your own prenuptial agreement and plan for the future to avoid disputes

Forms legal in all provinces except Quebec

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LEGAL SERIES

MICHAEL G. COCHRANE AUTHOR OF THE BESTSELLER
SURVIVING YOUR DIVORCE: A GUIDE TO CANADIAN FAMILY LAW

DO WE NEED A COHABITATION AGREEMENT?

UNDERSTANDING HOW A LEGAL CONTRACT CAN STRENGTHEN YOUR LIFE TOGETHER



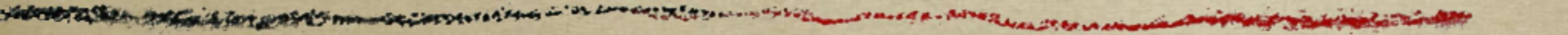
MICHAEL G. COCHRANE AUTHOR OF THE BESTSELLER
SURVIVING YOUR DIVORCE: A GUIDE TO CANADIAN FAMILY LAW

DO WE NEED A MARRIAGE CONTRACT?

UNDERSTANDING HOW A LEGAL AGREEMENT CAN STRENGTHEN YOUR LIFE TOGETHER



Common-Law Relationships



common-law relationships

- *whether a couple is common-law or not depends on whether they qualify as a “spouse” under the legislation*
- *qualifying as a spouse may give you rights and obligations under that law*
- *the definition of spouse changes depending on the law you’re referring to*

being a “spouse”

- *most provincial laws define a spouse as someone who is married or who has lived in a “marriage-like relationship” for at least two years*
- *most federal laws define a spouse as someone who is married or has lived together for at least one year*

common rights and obligations

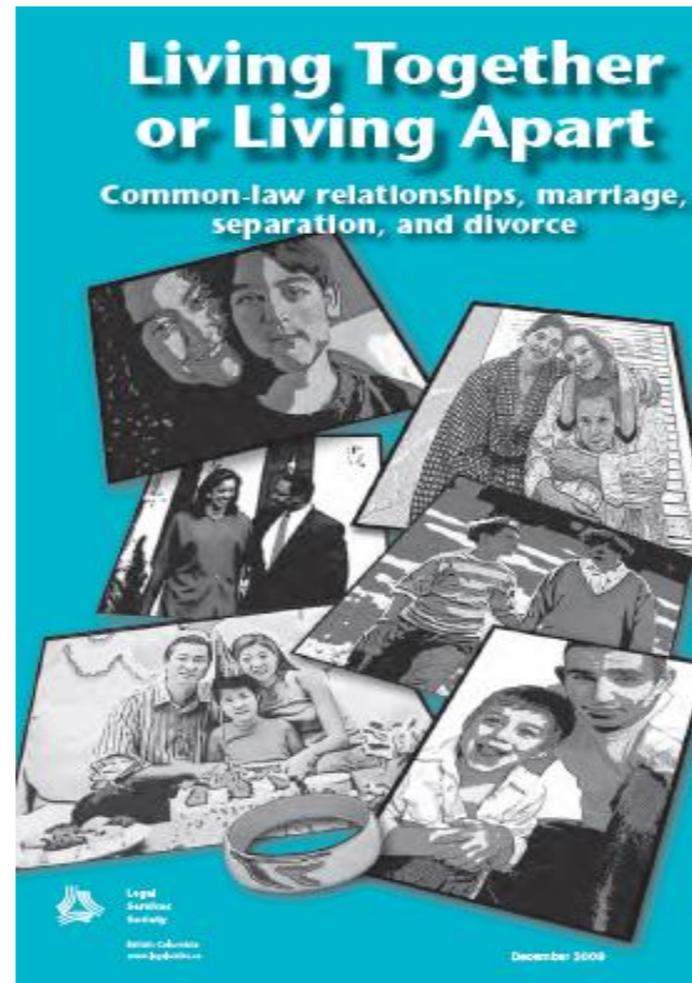
- *a spouse can apply for spousal support or be obliged to pay it*
- *a spouse can challenge the will of a deceased spouse*
- *a spouse can inherit when the deceased spouse doesn't leave a will*
- *a spouse can direct medical care*

popular myths

- *common-law couples aren't married, no matter how long they've lived together*
- *you don't "apply" for common-law status, it's a question of whether you qualify as a spouse under a particular law*

popular myths

- *common-law couples aren't entitled to share in each other's property the way married couples are presumed to share property*
- *common-law couples don't need to get a divorce to end their relationships*



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Property issues and common-law relationships

The laws about property are complicated. The part of the BC Family Relations Act that says who gets what when a marriage ends doesn't apply to common-law relationships. If you want to be clear about how your property will be divided if your relationship ends, you can make a written agreement that says what both partners have agreed to about property. It's important to get legal advice if you're considering making a written agreement. Depending on your individual circumstances, having a written agreement may create additional unexpected issues later on. Only an experienced family lawyer can help you decide what is best for you.

Property includes everything you own, such as the car, furniture, appliances, home, bank accounts, insurance policies, pension benefits, annuities, RRSPs, stocks and bonds, and investments. It also includes any business that you and your partner each contributed to.

If your common-law relationship ends and you have to make decisions about property, even if you have a written agreement, talk to a lawyer as soon as possible.

There are important time limits. If you need to, you can go to court and ask a judge to order that the property be divided between you as you agreed.

Who gets what?

For common-law couples, the division of property comes under what is called the law of trust. It means you may have a right to a part of the property if you contributed to it.

To understand how the law treats property when it comes to common-law partners, here are two fictional examples.

When they retired, Maria and Joe moved in together. Joe, whose wife had died several years before, already owned his condominium. Maria contributed all the furniture.

Together, they bought a new camper van. Maria, an amateur photographer, is buying some expensive new camera equipment with her own money.

If Maria and Joe break up three years from now, who will get what?

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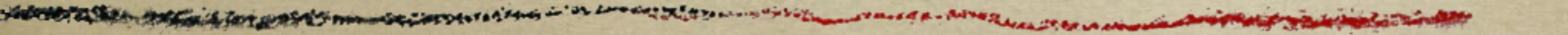
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Sex and New Relationships



sex and new relationships

- *common questions involve sex with spouses after separation and after divorce, sex with new partners after separation from a spouse, and new relationships after separation*
- *in general, sex is good*

sex with a spouse

- *it's alright to have sex with your spouse after you've separated; it may complicate things emotionally, but that's your call*
- *it's alright to have sex with your ex-spouse after you're divorced, it won't cancel the divorce*

new partners

- *there's nothing that separated spouse can't do that a single person can... except marry*
- *it's alright to get into a new relationship after separation but before divorce*
- *technically this is adultery, but so what?*

lots of new partners

- *where spouses have children, they must exercise some common sense about introducing the children to new partners*
- *new partners should be discouraged from adopting parental role*
- *new partners shouldn't be referred to as a new daddy or mommy*

common-law status

- *if a cohabiting relationship goes on for more than two years, the spouse can be a common-law spouse with a new partner while remaining married to the ex*
- *this can cause complications*

Surviving
your
DIVORCE

A Guide to Canadian Family Law



Michael G. Cochrane, LL.B.

FOURTH EDITION

www.bcfamilylawresource.com

JP Boyd's BC Family Law Resource

The Legal System
Alternatives to Court

Children
Child Support
Spousal Support
Family Assets

Family Agreements

Marriage & Divorce

Marriage
Separation
Separating Emotionally
Divorce

Same-Sex Couples
Unmarried Couples

Other Family Law Issues

read
the Blog

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Marriage & Divorce > Separation

Separation usually signals the breakdown of a married relationship. It can be one of the most traumatic stages in the conclusion of a relationship, but it can also lead to reconciliation and the resumption of married life. Separation occurs when one or both spouses decide that their marriage is over and say so; there's no need for a "legal separation," to hire a lawyer or to seek the approval of a judge.



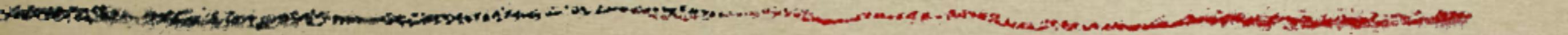
This chapter will briefly discuss the legal aspects of [separation](#), the rules relating to [reconciliation](#), and some of the [other issues](#) you may want to consider once you have separated or have decided to separate. It will also address some common questions about [sex and new relationships](#) after separation.

This chapter talks about the legal issues involved in separation. The next chapter, [Marriage & Divorce > Separating Emotionally](#), talks about the emotional dimensions of separation and how those issues can influence the resolution of the legal issues.

I. Separation

Although many people move out when they separate, others separate and remain living under the same roof. A physical separation is not necessary to separate, there must simply be an intention to end married life and the intimacies that marriage usually involves. Often the decision to separate is made by both [spouses](#), but it only takes one spouse decide to end a relationship, and one spouse's decision to separate doesn't require the [consent](#) of the other spouse.

The Legal Separation



the legal separation

- *doesn't exist*
- *a couple do not need to see a judge, lawyer, priest, shaman or auto mechanic to separate; one of them must simply reach the conclusion that the relationship is over and communicate that conclusion*

a little bit of legal history

- *Divorce and Matrimonial Causes Act*
- *divorces a mensa et thoro: a divorce from bed and board; more recently known as a “judicial separation”*
- *divorces a vinculo matrimonii: a divorce from the bonds of marriage*

separation agreements

- *people might mean “separation agreement” when they ask about legal separation*
- *contract resolving all of the matters arising from the end of the relationship*
- *enforceable as a contract; if filed in court, enforceable as a court order*

separation agreements

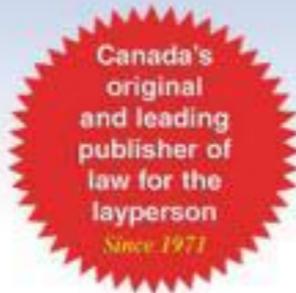
- *it's best to have a lawyer draft a separation agreement*
- *Self-Counsel Press publishes a D.I.Y. kit*
- *parties to agreements should always have independent legal advice about meaning and effect of agreement*



Separation Agreement

David R. Greig, **LAWYER**

- Do it yourself — no lawyer required
- Save time, stress, and expense
- Clarify your responsibilities
- Now includes a separation agreement for same-sex couples



Self-Counsel Press
LEGAL SERIES



Common questions

Our marriage is over; do we have to go to court?

Going to court to settle separation and divorce issues is necessary for some couples, but not for most. Most separating and divorcing couples prefer to work together - sometimes with the help of a **mediator** or a lawyer trained in **collaborative law** - to settle things without going to court.

Good starting points include:

- [Staying Out of Court](#), on the Family Law in BC website from Legal Services Society, describes options to solve issues without going to court. This fact sheet introduces family mediation and the collaborative family law process. The site also features the self-help guide [Do Your Own Uncontested Divorce in Supreme Court](#).
- The provincial government's Family Justice website includes a section on [Mediation and Collaborative Law](#). The site provides answers to such questions as why choose mediation or collaborative law instead of court?
- [Undefended and Joint Divorces](#), from the Canadian Bar Association BC Branch, provides an overview of divorce procedure where the couples agree to the divorce.

tags [divorce & separation](#), [staying out of court](#), [mediation](#),
[collaborative law](#)

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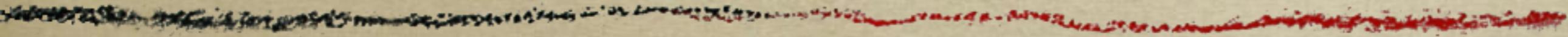
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Separation



separation

- *separation occurs when one person forms the conclusion that the relationship is at an end and says so*
- *the parties don't need to agree to separate, it just takes one person's decision to end a relationship*

the legal test

- *people rarely fight about when they separated*
- *if they have to fight about it, the question is when the marriage-like quality of the relationship ended; very subjective*
- *can be when someone moved out*

separation at home

- *a couple can separate and remain living under the same roof ... it's cheaper*
- *separate beds, bank accounts, chores; stopping having sex, going out as a couple; family and friends no longer think of as a couple*

divorce

- *separation ends unmarried relationships*
- *only divorce ends married relationships*
- *separation is one ground to prove “marriage breakdown” in order to qualify for divorce order*

Dial-a-Law Transcript Binder (in English, Punjabi or Chinese)

Separation: Deciding Who Will Move Out



Script 116 gives information only, not legal advice. If you have a legal problem or need legal advice, you should speak to a lawyer. For the name of a lawyer to consult, call Lawyer Referral Service at 604.687.3221 in the lower mainland or 1.800.663.1919 elsewhere in British Columbia.

This script discusses moving out when you separate, including:

- who should move out
- whether you can lock your spouse or partner out of the home
- getting a court order to make your spouse move out
- what to do if your spouse harasses you after you separate

Should someone move out?

Many couples stay together after they separate, usually because it's cheaper to live in one place with one set of bills than in two places with two sets of bills. This isn't possible for everyone, particularly if there is a high level of conflict in your relationship after separation, and especially if there is a high level of conflict and you have children.

Who should move out?

If you have children, and you and your spouse can talk about this issue, several factors will influence your decision about who will stay in the house and who will move out:

- Where are the kids likely to stay after the separation, and who will be mostly responsible for looking after them?
- Where do the children go to school or daycare? Where are their extracurricular activities?
- Can you afford to get a second home big enough for the children?
- Will either one of you be keeping the home? Can either of you afford to keep the home?
- If you're not married, who owns the home?

It usually makes sense that the person who will be caring for the children or keeping the home should stay in the house, and that the other person should leave.

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How can you prove you're separated if you and your spouse still live together?

You and your spouse might have decided to end your relationship, but for financial or other reasons, you can't live separately. You might have to prove to a court that you and your spouse have actually separated so that you can get a divorce and/or divide up the assets you have as a couple.

In the past, BC courts have recognized the separate status of other couples in your situation. In a case called *Oswell v. Oswell*, the court used a list of factors to see whether the Oswells were actually separated. You can use the same list.

The court will look at whether you:

- file your taxes together
- sleep in the same bed
- continue to have sex
- take vacations together
- visit each other's relatives
- follow the same rituals as before (such as celebrating holidays, attending religious services, etc.)
- prepare meals together
- eat meals together
- divide household tasks in the same way
- attend social events together
- support each other in times of crisis
- attend counselling to try to improve your relationship

If you've stopped doing all or most of these things, the court will be much more likely to decide that you're separated. To put it another way, the court will look at how you present yourselves to the world: as a married couple or as two single people.

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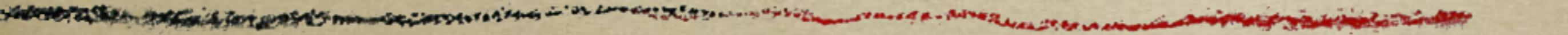
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The D.I.Y. Divorce



the D.I.Y. divorce

- *to get a divorce, the court must make a divorce order*
- *in order to get a court order, someone must start a law suit*
- *the only relief sought can be a divorce order, but the suit can include other claims ... as long as the parties agree*

starting a law suit

- *spouses who can cooperate will file a Notice of Joint Family Claim in form F1*
- *a spouse doing it alone will file a Notice of Family Claim in form F3, and personally serve the filed notice on the other spouse*

service

- *service must be accomplished by someone other than the spouse; process server must then swear an affidavit in form F15 to prove that service happened*
- *service can be accomplished in another way but this will require a court order*

time for defence

- *the other spouse has 30 days from the date of service to file a Response to Family Claim or, worse, a Counterclaim*
- *once this deadline has passed, with nothing being filed, apply for the divorce order*

application materials

- *Requisition for divorce order, form F35*
- *Requisition to search for Response or Counterclaim, form F17*
- *Affidavit, form F38*
- *Child Support Affidavit, form F37*
- *draft order, form F52*
- *Registrar's Certificate, form F36*

file everything and wait

- *the court staff will check the paperwork and may ask for changes*
- *if alright, the paperwork will be given to a judge*
- *the judge may ask for changes or make the divorce order*
- *process takes 4 to 8 weeks to complete*

the divorce

- *the divorce will take effect 31 days after judge makes the order; can't remarry until then*
- *party can also apply for Certificate of Divorce, but this costs money and the certificate is largely pointless*

CHAPTER THREE: FAMILY LAW
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Supreme Court
[How to do your own undefended \(uncontested\) divorce](#)

Choose the correct guide
Both of these guides include:

- step-by-step instructions of how to apply for a divorce,
- links to blank forms you will need, and
- information about where to file or send the documents to get a divorce.

First, select the correct guide from the links below. Then read the step-by-step instructions. Once you're familiar with the instructions, you can open the forms and fill them out.

▶ [Sole application](#)
If you're filing for divorce from your spouse by yourself.

▶ [Joint application](#)
If you're filing for divorce together with your spouse.

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Supreme Court – Sole application
How to do your own undefended (uncontested) divorce

List of steps

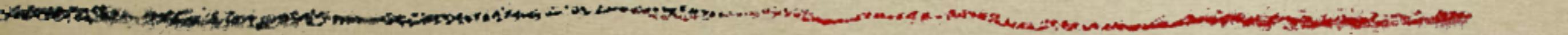
Click on the steps below to see the detailed instructions for each step.

Intro	Before you begin
Step 1	Gather your documents
Step 2	Prepare the Notice of Family Claim (Form F3) and Financial Statement (Form F8), if required
Step 3	File the Notice of Family Claim (Form F3) and Financial Statement (Form F8), if required
Step 4	Give the Notice of Family Claim (Form F3) to the other party
Step 5	Prepare the Affidavit – Desk Order Divorce (Form F38) and Child Support Affidavit (Form F37), if applicable
Step 6	Swear or affirm the Affidavit – Desk Order Divorce (Form F38) and Child Support Affidavit (Form F37), if applicable
Step 7	Prepare the Requisition (Form F35), Certificate (Form F36), and draft Final Order (Form F52)
Step 8	Make the final application
Step 9	Serve the divorce order on the other party
Step 10	Order a Certificate of Divorce (Form F56), if you want one

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The Care and Control of Children



the care and control of children

- *custody, guardianship and access*
- *Divorce Act: custody and access*
- *Family Relations Act: custody, guardianship and access*
- *married parents: DA and FRA*
- *unmarried parents: FRA*

custody

- *custody used to mean the right to have the day-to-day care of a child*
- *can be held by one person (sole custody) or by both (joint custody)*
- *“shared custody” means that the child’s time is split equally or near-equally between the parents*

guardianship

- *guardianship is the right to make parenting decisions and the direct the care and upbringing of the child*
- *can be held by one person (sole guardianship) or by both (joint guardianship)*

a little bit of legal history

- *Divorce and Matrimonial Causes Act, UK 1857*
- *Apprentices and Minors Act, 1888*
- *Family Relations Act, 1972*

unwritten presumptions

- *joint custody: no link between time with the child and whether custody will be joint or sole*
- *joint guardianship: usually defined on Joyce or Horn models; “parallel parenting” means incidents of guardianship are split between parents*

access

- *no “standard” schedule of access; depends on parents’ schedules, child’s schedule, demands of employers, geographic realities*
- *general principle that the child should have as much time with both parents as practicable*
- *developmental concerns very important*

access

- *access is a right of the child, not a parental right*
- *access will be determined on child's best interests*
- *can be supervised or on conditions*
- *there is no relationship between access and child support*

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Checklist of information to include in an affidavit or present in court

We've prepared a checklist of information / facts that you need to include in your affidavit(s) or present in court when you go to court to apply for an initial order or a change to an order or to reply to either type of application. The checklist is for cases involving applications for child or spousal **support / maintenance**, **custody**, **guardianship**, or **access**.

The information that you need to put into your affidavit (in Supreme Court) or present verbally (in Family Court) depends on your particular case. The following suggestions aren't complete and must be tailored to fit your circumstances, but they may serve as a starting point. This checklist provides a general overview of the kind of information that needs to be given to a judge/master who is hearing a family case. Refer only to those sections that relate to your kind of application.

[Background of both parties](#)

[Role of each party during the relationship](#)

[The children](#)

[Parental responsibilities](#)

[Extended family](#)

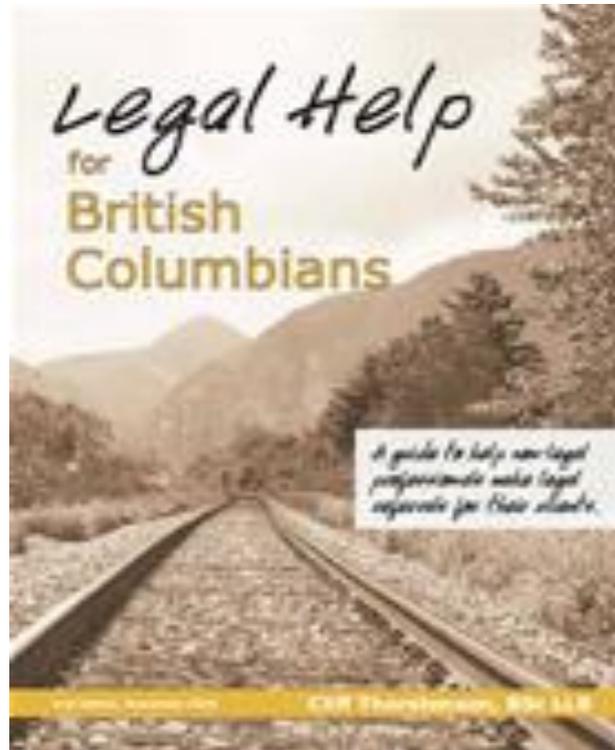
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[Family dynamics](#)

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OCTOBER 2005 3rd edition

CARING FOR CHILDREN

Parents' Rights & Responsibilities



Who this booklet is for
Are you a parent or a guardian of a child?
Do you ever wonder about what kind of discipline is okay to use with your children?
Have you ever been angry and frustrated with your children, and not known where to turn?
Have you wondered what to do if a social worker thinks your child is being abused?
If you answered yes to some of these questions, this booklet is for you. It was written for parents and legal guardians of children, who have questions about what the law says in B.C. about the rights and responsibilities of parents and children.

Who this booklet is about
This booklet tells you what the law says about children and parents in BC. It answers questions like:

- What are your rights and responsibilities as a parent?
- What are the rights of children?
- What does the law say about abuse and neglect?
- What can you do if you need help as a parent?
- What happens if someone reports that you are abusing your child, and what can you do?

You should not rely on this booklet for legal advice. It provides general information only.

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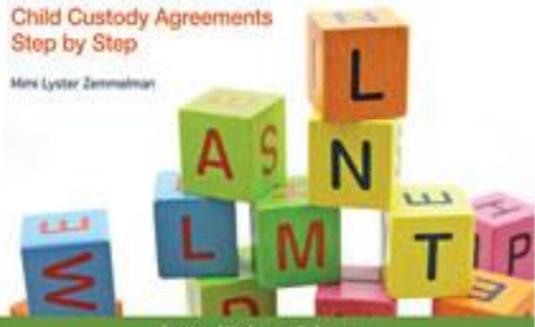
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NEW YORK DAILY NEWS

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Building a Parenting Agreement That Works

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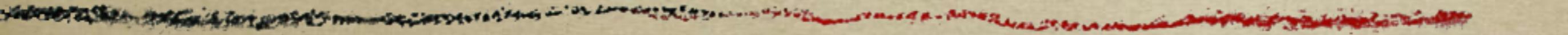
{ Canadian Family Law }

THIRD EDITION

{ by } JULIEN D. PAYNE
{ and } MARILYN A. PAYNE

Caring for Children available in English, Punjabi, Spanish and Chinese

The Legislation on Family Law



the Divorce Act

- *federal law, applies only to spouses who are or used to be married to each other*
- *deals with: divorce and recognition of foreign divorces; custody and access; child support; spousal support*
- *in effect throughout Canada*

the Family Relations Act

- *provincial law, applies to everyone in BC*
- *deals with: custody, guardianship and access; child support, spousal support and parental support; division of assets; personal restraining orders and financial restraining orders*

the Family Relations Act

- *married spouses: care of children, child support, spousal support and division of property*
- *common-law spouses: care of children, child support and spousal support*
- *parents: care of children and child support*

the Child Support Guidelines

- *federal regulation adopted by all provinces and territories (except Quebec)*
- *contains rules about payment of child support and calculation of income; child support tables and exceptions to table amounts*

the S.S.A.G.

- *Spousal Support Advisory Guidelines*
- *academic paper prescribing formulas for the calculation of spousal support based on income, length of relationship and age of children*
- *frequently used by judges and lawyers and endorsed by BC Court of Appeal*

the I.S.O.A.

- *Interjurisdictional Support Orders Act*
- *provincial law on obtaining and varying support orders from reciprocating jurisdictions*
- *similar legislation in force in other provinces and territories*
- *see list of reciprocating jurisdictions*

the F.M.E.A.

- *Family Maintenance Enforcement Act*
- *provincial act empowering the Family Maintenance Enforcement Program, an agency that monitors and enforces support orders*
- *program is free for recipient of support; largely funded by fines against payors*

the C.F.C.S.A.

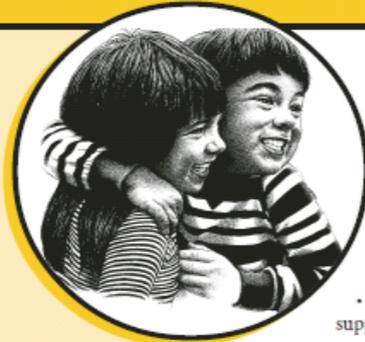
- *Child Family & Community Services Act*
- *provincial law about when Ministry for Children and Family Development can support a family's parenting, when supervision conditions can be imposed on a family and when children can be taken into care*

the Criminal Code

- *basic federal criminal statute*
- *makes it an offence to fail to provide the necessities of life for a child or spouse*
- *makes parental child abduction an offence, including by parent with custody*
- *can be used to punish breach of family law orders*

MARCH 2004

CHILD SUPPORT IN BC: INFORMATION FOR PARENTS



What is this booklet about?

This booklet contains basic information about child support in British Columbia. It explains:

- your duty as a parent to support your child or children, whether you live together or not;
- what child support is and who has to pay it;
- who makes decisions about child support, and how they decide;
- how the amount of child support is determined;
- how child support payments affect your income tax;
- what you can do to help make sure child support is paid; and
- where you can get more help.

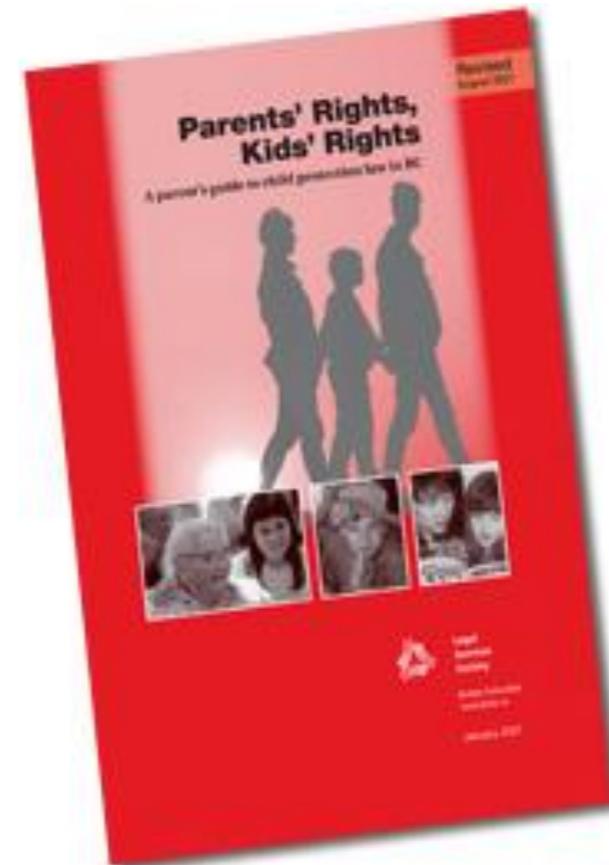
This booklet contains many important legal terms and phrases that you will need to know in order to understand the booklet. The first time we use one of these terms and phrases, we have put it in **bold letters**. If you need to learn what a term or phrase in bold letters means, please see the definitions under "Important words and phrases," beginning on page 10.

You should not rely on this booklet for legal advice. It provides general information only.



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Legislation / court rules

Here are links to the acts or regulations (laws) that you might need to look at if you're dealing with a family law issue.

- [Aboriginal people](#)
- [Abuse](#)
- [Adoption](#)
- [Child protection/removal](#)
- [Common-law relationships](#)
- [Custody & access](#)
- [Divorce & separation](#)
- [Grandparents/relatives](#)
- [Immigrants](#)
- [Support – child](#)
- [Support – spousal](#)
- [Youth](#)

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JP Boyd's BC Family Law Resource

- [The Legal System](#)
- [Alternatives to Court](#)
- [Children](#)
- [Child Support](#)
- [Spousal Support](#)
- [Family Assets](#)
- [Family Agreements](#)
- [Marriage & Divorce](#)
- [Same-Sex Couples](#)
- [Unmarried Couples](#)
- [Other Family Law Issues](#)

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Legislation

The most important pieces of legislation in family and divorce law are the provincial *Family Relations Act* and the federal *Divorce Act*. There is also a very important federal regulation, the *Child Support Guidelines*, and an important academic paper, the *Spousal Support Advisory Guidelines*. You may also run into other laws, like the *Name Act* or the *Partition of Property Act*, which weren't written just for family law disputes but still relate to your situation.



This chapter will describe the [basic legislation](#) on family and divorce law, and briefly review some of the important [secondary legislation](#) touching on family law issues. Links to all of the important laws are provided in the [Resources & Links](#) section.

I. The Basic Legislation

The *Divorce Act*, the *Family Relations Act* and the *Child Support Guidelines* are central to family law. While some of the subjects covered by the *Divorce Act* and the *Family Relations Act* overlap, there are significant distinctions between the two laws that you need to be aware of. The chapter [The Legal System > The Law](#) has a detailed discussion of the federal and provincial authority to make laws.

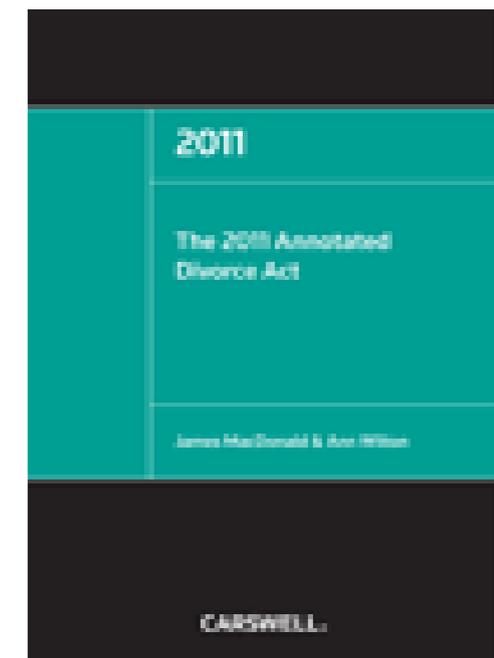
Only the *Divorce Act* deals with divorce. Only the *Family Relations Act* deals with the guardianship of children and the division of assets. Both acts deal with custody of and access to children, child support and spousal support.

One of the most important distinctions between these two statutes, as will be seen below, lies in how they define key words like "spouse" and "child." Depending on the particular piece of legislation you're dealing with, you may fall inside these definitions or outside of them.



CHILD SUPPORT GUIDELINES IN CANADA, 2009

Julien D. Payne
Marilyn A. Payne



Spousal Support

spousal support

- *married spouses and formerly married spouses may apply under Divorce Act and Family Relations Act*
- *unmarried couples may apply under Family Relations Act, as long as they lived together for at least two years and apply within one year of separation*

entitlement to spousal support

- *marriage is not an insurance policy or pension scheme; the fact of marriage or common-law status does not give rise to entitlement to spousal support*
- *entitlement based on: compensatory basis, non-compensatory basis or contractual basis*

compensatory support

- *financial or economic sacrifices made for or during marriage may give rise to entitlement*
- *common examples: foregone career options; time spent out of workforce as homemaker; abandonment of education opportunities*

non-compensatory support

- *entitlement based on a party's financial needs, where the other party has the means to meet them*
- *based on recipient's reasonable living expenses and payor's surplus income after the payor's reasonable living expenses are met*

contractual support

- *support payable when the payor is under a contractual obligation to provide support as a result of a marriage agreement, cohabitation agreement or separation agreement*

tax issues

- *spousal support is taxable income, like employment income, for recipient*
- *spousal support is a tax deduction, like the RRSP deduction, for payors*
- *no tax consequences if paid in lump-sum, to third party, or if not distinguished from amount paid as child support*

the S.S.A.G.

- *Spousal Support Advisory Guidelines*
- *academic paper prescribing formulas for the calculation of ranges of spousal support based on income, length of relationship and age of children*
- *frequently used by judges and lawyers and endorsed by BC Court of Appeal*

the S.S.A.G.

- *without children: support is calculated as 1.5 to 2.0% of difference between parties' incomes per year of cohabitation*
- *support is payable for period equal to the length of cohabitation to half the length of cohabitation*

the S.S.A.G.

- *with children: support is calculated as the amount which would leave the recipient with 40 to 46% of their combined disposable incomes, after accounting for taxes and benefits*
- *duration of support relates to length of cohabitation and age of youngest child*

Includes the
**Family Law Act, Child Support Guidelines,
Divorce Act, Arbitration Act, and
Arbitration Act Regulations**


10th
EDITION

CANADIAN *FAMILY LAW*

An indispensable, clearly written guide to Canadian law on
• marriage • separation • divorce • spousal and child support • child custody
and access • property rights • estate rights • domestic contracts
• enforcement • same-sex relationships • alternate dispute resolution

MALCOLM C. KRONBY

www.bcfamilylawresource.com

JP Boyd's BC Family Law Resource

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Alternatives to Court

Children
Child Support

Spousal Support
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The Advisory Guidelines

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Spousal Support

Spousal support is a payment made by one spouse to the other, to help defray the recipient's day-to-day living expenses. Although anyone who was in a common-law or married relationship may apply for spousal support, it's important to know that there is no automatic entitlement to receive support. Whether spousal support will be paid, and, if so, how much will be paid, always depends on the particular circumstances of each couple.



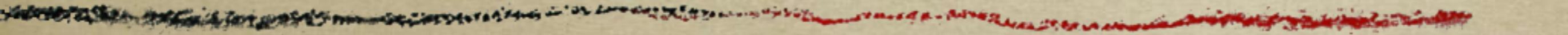
This chapter will provide a brief [introduction](#) to the law on spousal support; the chapters which follow will explore spousal support in more detail, including a discussion of the *Spousal Support Advisory Guidelines*. This chapter will also look at what happens when a person who might be entitled to receive support goes on [social assistance](#) and review the [income tax](#) consequences of spousal support payments.

I. An Overview of Spousal Support

[Spousal support](#) is the payment of money by one [spouse](#), the payor, to the other spouse, the recipient. Spousal support is paid to help cover the recipient's living expenses and help the recipient get by as a single person who no longer has the benefit of the payor's income and other household contributions.

No matter if one spouse was working during the relationship or both worked, the fact is that during the relationship there was only one mortgage payment to make, only one hydro bill and only one cable bill. After the relationship ends, there are two rent cheques, two hydro bills and two sets of groceries to buy, all of which must be paid out of the same amount of income which supported the family before separation.

The White Paper



the White Paper

- *released by provincial Attorney General in July 2010*
- *contains proposals for law reform and a new Family Law Act to replace the Family Relations Act*
- *expected to pass through the Legislature this year*

children

- *old terms custody and guardianship will be replaced with new concepts*
- *persons who are guardians will exercise “parenting responsibilities”*
- *guardians will have “parenting time” with a child, non-guardians will have “contact”*

family violence

- *family violence will have a very broad definition; will include emotional, verbal and financial abuse along with physical and sexual abuse*
- *court will be required to take family violence into account in determining best interests of children*

assisted reproduction

- *rules about paternity/maternity of children conceived with help of donor/surrogate clarified where parties have agreement prior to conception*
- *parties can agree donor/surrogate will also be “parent” by agreement; a child can have more than two legal parents*

spousal support

- *“spouse” will be defined to include people who are married and in a marriage-like relationship for at least two years*
- *will also include unmarried people in a shorter relationship “of some permanence” if they have a child together*

property division

- *all “spouses” will be entitled to share in family property*
- *property brought into relationship will be excluded from division; increase in value during relationship will be shareable*

overlooked issues

- *White Paper does not talk about how Divorce Act and laws of other jurisdictions will interact with new language about children*
- *paper does not talk about how it will come into force; reasonable to expect significant time lag*

www.ag.gov.bc.ca/legislation

The screenshot shows the website header with the British Columbia logo and tagline 'The Best Place on Earth'. A search bar is present with a 'Go' button and links for 'Advanced Search', 'Help', and 'Contact Us'. Below the search bar are navigation links for 'All B.C. Government' and 'Ministry of Attorney General'. A secondary navigation bar includes 'News', 'The Premier Online', 'Ministries & Organizations', 'Job Opportunities', and 'Main Index'. A breadcrumb trail shows 'B.C. Home' and 'Attorney General'. A 'Printer Version' link is also visible. The main content area features a blue banner with the text 'Ministry of Attorney General' and a background image of the British Columbia flag. Below the banner is the section title 'Consultations on Legislation and Policy'. The introductory text states: 'Welcome to the Legislation and Policy page of the Ministry of Attorney General website. This page contains information on consultations that may lead to future legislation or changes in policy.' It then provides instructions on how to find the status of bills and where to find information on ended consultations.

Family Law Act White Paper

The Ministry of Attorney General began a review of the Family Relations Act in 2006. Its goals were to modernize the law, support co-operative approaches to resolving family law disputes and create a statute that is easy to understand. The review began with research into family law reform underway in other jurisdictions, as well as recommendations for reform made by family law experts. In 2007, 14 [papers](#) on family law topics were published to this site for public consultation. A sample of representative responses to the consultation documents were collected and made [available](#) to the public in 2009.

The [Civil Policy and Legislation Office](#) of the Ministry of Attorney General has issued this [white paper](#) to provide the public opportunity to comment on the proposed new family law. Feedback from the white paper will be considered and used to finalize the new family law, which will be prepared as a bill for introduction.

Comments may be mailed, faxed or emailed to:

FAMILY LAW WHITE PAPER
Civil Policy and Legislation Office
Justice Services Branch
British Columbia Ministry of Attorney General
PO Box 9222 Stn Prov Govt
Victoria, British Columbia V8W 9J1
Facsimile: (250) 387-4525
Email: CPLOFamilyLaw@gov.bc.ca

www.bcfamilylawresource.blogspot.com

JP Boyd's BC Family Law Resource *the Blog*

Showing newest posts for query **white paper**. [Show older posts](#)

08 October 2010

Okay, so there's (probably) a new law coming. Now what?

Readers of this blog, or any local newspaper really, will know that the provincial government is planning on introducing a brand new *Family Law Act* sometime in 2011 that will revolutionize family law in British Columbia. I've summarized the proposed new *Family Law Act* in a previous [post](#).

In September, I published another [post](#) which talked about how bill becomes a law and how a law comes into force. One of the points I was trying to make was that the *Family Law Act* described in the government's [White Paper](#) (PDF) doesn't have any legal effect at present and may not look anything like the *Family Law Act* that comes into force, and a result you shouldn't make any decisions on assumptions drawn from the White Paper.

That being said, I was recently consulted by a fellow who wanted a cohabitation agreement. (I have written at length about why cohabitation agreements are a really bad idea under the current law if the point of the agreement is supposed to be about protecting property; read my post on the subject, "[Why you DON'T want a cohabitation agreement](#)," before continuing.)

Website Resources

- www.familylaw.lss.bc.ca
- bcfamilylawresource.com
- clicklaw.bc.ca and
clicklaw.bc.ca/helpmap
- ag/gov.bc.ca/legislation

Print Resources

The *LawMatters Reading Guide on Family Law* is available from bclawmatters.ca or contact Janet Freeman at jfreeman@courthouselibrary.ca

Additional titles:

- *Dial-a-Law Transcript Binder* (in English, Punjabi or Chinese)
- *UBC Law Students Legal Advice Program Manual*

Both of these resources are also available online; go to clicklaw.bc.ca

Bonus slide: Clicklaw HelpMap



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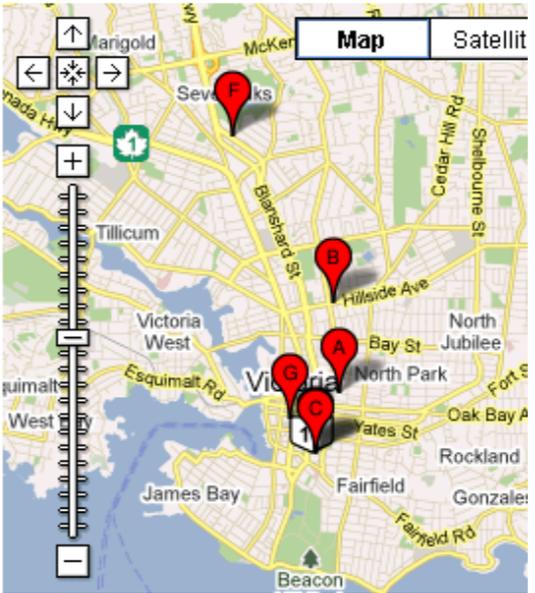
[From Access Pro Bono Society of British Columbia](#)

Topics: Abuse & family violence; Accidents & injuries; Alternatives to court; Business & non-profits; [+ all topics](#)

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930 Balmoral Road, Victoria, BC, V8T 1A8

B [Salvation Army Family Services](#)
2695 Quadra Street, Victoria, BC, V8T 4E3

[West Shore Society](#)



Map Satellite