

GLOSSARY OF FAMILY LAW TERMS

ACCESS

The opportunity to visit with a child. Under the terms of the *Divorce Act, 2000*, a spouse exercising access rights is also entitled to the information about the child's health, education and general welfare, unless a court orders otherwise. Also referred to as parenting time.

ADULTERY

Sexual intercourse by a husband or wife with someone who is not his or her spouse. Adultery is one of the ways marital breakdown can be established.

AFFIDAVIT

A sworn statement, signed by a person involved in a family law matter. It is witnessed by someone, usually a lawyer, and filed in support of an application.

ALIMONY

An old expression used to describe spousal support.

APPEAL

When a person affected by a judge's decision believes that the judge has made a mistake, that person can ask a higher level of court to review the decision. The court reviewing the decision can uphold it, change it or send the matter back to the original court or reconsideration. There are strict time limits on this type of review.

APPLICATION

A request to the Court for a particular order pending trial, such as interim custody or support, filed with an Affidavit.

ARBITRATION

Legal process by which the parties avoid court and have their dispute heard by an independent person (or panel) who has expertise in the field. The Arbitrator's decision is as binding on the parties as a decision of the court.

BEST INTERESTS TEST

This is the overriding consideration in custody and access matters. The court searches for a solution that will serve the best interests of the specific child (or children) involved in the matter.

CHILD

The *Divorce Act* defines a “child of the marriage” as 1) a child of both spouses, 2) a child of one spouse towards whom the other spouse acts as a parent or 3) a child towards whom both spouses act as parents. Biological children, adopted children and children looked after by the spouses may all be considered children of the marriage. The custody and support provisions of family law apply to a child of the marriage who is under 18 years of age. The support provisions also apply to a child who is over 18 but remains dependent on his or her parents because of illness, disability or other reasons. A child enrolled in a recognized post-secondary program and unable to support themselves may still be classified as a dependent.

COHABITATION AGREEMENT

A contract signed by a man and a woman who are living together or intend to live together but not marry. In it, they may provide for ownership and division of property, support and any other matter affecting their relationship.

COMMON-LAW SPOUSE

Almost all the provinces recognize that individuals live together without getting married. While the precise definition varies from province to province, it means achieving the status of a spouse for some legal purposes. In Alberta, common law spouses are known as Adult Interdependent Partners. In Alberta, a couple will be considered common-law spouses after cohabiting for 3 years or if they have a child and are in a relationship of some permanence. In Saskatchewan, a couple will be considered common-law spouses after cohabiting for 2 years or if they have a child and are in a relationship of some permanence.

CONFIDENTIALITY

People in certain relationships are protected by law from having to give any evidence in court regarding communications between them. Communication between a lawyer and a client have this special protection.

CONTESTED DIVORCE

If either the husband or the wife disputes the ground for divorce, or if the spouses are unable to agree on division of property, child-care or support arrangements, a court will have to resolve these matters. A hearing will be held and both sides of the dispute will be entitled to present evidence supporting their view. The Judge will consider the evidence presented and impose a solution.

COROLLARY RELIEF

Under the terms of the *Divorce Act*, people involved in divorce proceedings can ask the court to make supplementary orders pertaining to the financial support of a spouse or child, the custody of a child and/or access to a child.

COSTS

When matters are contested in court, a Judge has the discretion to order that the losing party pay a portion of the successful party's legal costs as set out in the schedules of the Rules of Court. Costs will not cover the full costs of your private lawyer.

CUSTODY

Control over a child given to an adult by the Court. This control generally includes the responsibility to make decisions regarding education, religion and health care, and to provide food, clothing and shelter.

DEPENDENT

A person who relies on someone else for financial support. In the context of divorce law, this may include a spouse or a child.

DISBURSEMENTS

Out-of-Pocket expenses incurred in a family law matter, such as the cost of paying for the Statement of Claim to be issued at the court office or the cost of paying someone to deliver it to your spouse. It could also be the cost of a family law assessment, transcripts or fees of other professionals.

DIVORCE

The actual piece of paper that officially describes the termination of the marriage. It is needed as proof of the divorce in order to get a marriage license.

FEES AND DISBURSEMENTS

The bill. This is a statement you will receive monthly. Disbursements are out-of-pocket expenses.

FINAL ORDER

An order that is not interim. Interim Orders are effective until the end of the trial. The final Order is intended to last indefinitely or until changed by the Court. A Final Order may be changed where there is a change in the condition, means, needs or other circumstances of the child since the making of the order.

GARNISHEE

A legal procedure which allows for the seizure of money owing to a person who has not paid a court ordered debt. A Court may order the debtor, to pay the money into court to help pay the debt. An individual may be garnished if he or she does not pay the child support order required of him or her.

INTERIM ORDERS

There may be a considerable period of time between the initial filing of a divorce application and the date on which a court is able to grant a divorce and related support, custody or access orders. On request, a court can make a temporary order for the interim period to stabilize custody or access arrangements or to provide financial support for a spouse or a child.

JOINT CUSTODY

A mother and father can continue to share responsibility for making major decisions which affect their children regardless of which parent the children live with on a day-to-day basis. Such arrangements require a commitment on the part of both former spouses to co-operate and communicate for the benefit of the children.

JUDGMENT

The final decision by the court on any issues put to it during the trial.

JUDICIAL DISPUTE RESOLUTION HEARING

The Alberta Rules of Court require parties to a dispute to engage in at least one method of alternative dispute resolution. One methods of alternative dispute resolution is judicial dispute resolution (JDR). You will be required to attend the JDR hearing with your lawyer and a judge who will attempt to help settle the matter without going to trial.

LITIGATION

Resolving a dispute by using the courts and the adversarial process.

MARRIAGE BREAKDOWN

The sole ground for legally ending a marriage under the terms of the *Divorce Act*. Marriage breakdown can be established in three ways: 1) through evidence that one spouse committed adultery; 2) physical or mental cruelty or 3) that the spouses intentionally lived separate and part for at least one year.

MARRIAGE CONTRACT

An arrangement between a husband and wife outlining the spouses' respective responsibilities and obligations. Some contracts also include agreements as to how property and ongoing obligations will be shared if the marriage breaks down.

MATRIMONIAL HOME

Where the family or legally married couple resided.

MEDIATION

A process by which people in situations of potential conflict attempt to resolve their differences and reach a mutually acceptable agreement in the presence of a neutral third party mediator.

MINUTES OF SETTLEMENT

Also known as a Divorce & Property Contract or a Settlement Agreement. A contract which sets out the parties agreement in the areas of custody, access, child support, spousal support and property.

ORDER

The court's decision on a matter that it was asked to resolve.

PARTIES

The Husband and Wife, or anybody else who is named in the case before the court and asking for an order of any kind.

PENSION

A fixed sum paid regularly to a person or surviving dependent following his or her retirement. There are both public (Canada Pension Plan) and private (from one's own employer) pensions. A pension that is not yet being paid at the time of marriage breakdown is property to be divided

PETITION

In Saskatchewan, this is the formal document by which one person asks the court to dissolve his or her marriage to another and for the corollary relief.

PLEADINGS

The description of each person's claims in the family law matter which must be prepared in accordance with the province's Rules of Court.

PRE-TRIAL CONFERENCE

Before a case goes to trial in Saskatchewan, the court will require at least one pre-trial hearing before a Judge to determine if any of the issues can be settled and whether the case is fully ready for trial. You will be required to attend with your lawyer and the judge will attempt to help settle the matter without going to trial.

QUESTIONING

After gathering the facts, either we or your spouse's lawyer may arrange Questioning. At Questioning we question your spouse under oath about the issues. We also ask your spouse to show us what relevant documents he or she has and to tell us about all relevant documents he or she has ever owned or had access to. Your spouse's lawyer may do the same to you.

RESTRAINING ORDERS

An order that prohibits contact between two spouses and in some cases their children. It can be a blanket prohibition or it can provide for specific contact at specific times and under specific circumstances.

RETAINER

The contract by which you hire a lawyer to take your case. It can also mean the sum of money you give the lawyer to be applied to fees and disbursements.

SEPARATE

To cease living together as man and wife, possibly under the same roof, though not usually. Separation is done with the intention to end your marriage.

SEPARATION AGREEMENT

A contract signed by the parties to settle their differences. It can deal with the property, custody, access or any other issues. It does not provide the right to remarry.

SHARED PARENTING

Another term used instead of custody and access. It describes a sharing of the decision making and the sharing of the residential care of the child. This often refers to a parenting schedule whereby the children reside on a 50-50 basis with both parents.

SOLICITOR/CLIENT PRIVILEGE

Everything you tell your lawyer must be kept confidential.

SPOUSAL SUPPORT

An order that one spouse pay the other a sum of money. This payment may either be a lump sum or a periodic payment for either a set period of time or indefinitely.

SPOUSE

The person you married.

STATEMENT OF CLAIM FOR DIVORCE

In Alberta, this is the formal document by which one person asks the court to dissolve his or her marriage to another and for any corollary relief.

TRIAL

We act for you at the trial and present your case to the Judge. Your spouse's lawyer also has the opportunity to present his or her case. Witnesses, including expert witnesses, may be called to support both parties' positions. Once the Judge has heard all of the evidence he or she will come to a decision. This could take days or weeks after the trial. Once we have the Judge's decision, we prepare the Court Order (Judgment) for the Judge to sign.

UNCONTESTED DIVORCE

If neither the husband nor the wife disputes the grounds for divorce, and if they are able to reach an agreement regarding child care and financial arrangements, it may be possible to ask a Judge to grant a divorce without a lengthy court hearing. A divorce is usually granted without having to appear in court.

VARIATION

If the circumstances which justified a particular support, custody or access order change, a person affected by the Order can ask a Judge to alter the Order to make it fit the new circumstances.