

Family Law Guide For Ontario



Courtesy of Clarity Law Group
Contact Clarity Law Group

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About Us

Sabha Sajjad Hazai is the founder of Clarity Law Group and a professional family law lawyer with extensive experience in handling complex family law matters. Her practice areas include divorce, child custody, spousal support, and estate litigation. Sabha is known for her compassionate approach, ensuring her clients receive personalized legal solutions and support throughout their legal journey.



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We look forward to assisting you with your legal needs.

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Introduction to Family Law in Ontario

Family law in Ontario governs various legal issues related to family relationships, including marriage, divorce, child custody, support, and property division. Key legislation such as the Family Law Act, the Children's Law Reform Act, and the Divorce Act govern this area of law, aiming to resolve disputes fairly while protecting everyone's rights and interests.

One of the main goals of a family lawyer is to help minimize the adversarial nature of family disputes by encouraging alternative resolutions through negotiation, mediation and collaborative practices. This is particularly important in divorce cases, where thoughtful consideration of property division, child custody, and support is essential to ensure all family members' well-being, especially the children's best interests.

Estate litigation is another important interconnected aspect of family law, dealing with conflicts over managing and distributing a deceased person's estate. Effective estate planning can help prevent disputes and ensure a smooth transfer of assets to beneficiaries. Estate litigation can also arise to address the deceased's financial obligations to their dependents.

Real estate issues also arise in family law, especially during divorce or separation. The division of jointly owned properties, such as the family home or investment properties, requires careful legal handling to ensure fair distribution.

This guide provides an overview of these crucial aspects of family law in Ontario, helping individuals understand their rights and obligations. For personalized advice and legal support, it is recommended that individuals consult with a qualified family lawyer and other professionals.

Divorce in Ontario

Legal Grounds For Divorce

Divorce in Ontario is governed by the Divorce Act. The primary ground for divorce is the breakdown of the marriage, which can be established through:

Living Separate and Apart for One Year: The most common ground, requiring spouses to live apart continuously for at least one year.

Adultery: One spouse has committed adultery, which must be proven in court.

Cruelty: One spouse has treated the other with physical or mental cruelty, making continued cohabitation intolerable.

Divorce Process

The divorce process in Ontario involves several steps:

Filing an Application for Divorce: The process begins with filing an application in the Superior Court of Justice. This application can be joint (filed by both spouses) or individual.

Serving the Application: The applicant must serve the divorce application to the respondent spouse, who has 30 days (60 days if outside Canada or the US) to respond.

Responding to the Application: The respondent can file an answer agreeing to or contesting the divorce and related issues such as custody, support, and property division.

Negotiation and Mediation: Spouses are encouraged to resolve disputes through negotiation or mediation before proceeding to court.

Court Proceedings: If disputes remain unresolved, the case goes to court, where a judge will make decisions on outstanding issues.

Divorce Order: Once all matters are settled, the court issues a divorce order, which becomes final 31 days after being granted.

Division Of Property

The division of property upon divorce is governed by Ontario's Family Law Act. The law aims to ensure an equitable distribution of assets and liabilities accumulated during the marriage. Key concepts include:

Net Family Property (NFP): The value of a spouse's property, minus debts and liabilities, at the time of separation. Each spouse calculates their NFP to determine the equalization payment.

Equalization Payment: The spouse with the higher NFP pays the other spouse half the difference to ensure an equitable division of marital assets.

Exclusions: Certain properties, such as gifts and inheritances received during the marriage, may be excluded from the NFP calculation.

Child Custody and Support

Child custody and support are determined based on the best interests of the child. Key concepts include:

Custody: Refers to the legal right to make decisions about the child's upbringing. Custody arrangements can be sole or joint.

Access: Refers to the time the non-custodial parent spends with the child. Access can include regular visits, holidays, and special occasions.

Child Support: Calculated using the Federal Child Support Guidelines, which consider the paying parent's income and the number of children. Child support ensures that the child's financial needs are met.

Spousal Support

Spousal support addresses economic disparities arising from the marriage or its breakdown. Factors influencing spousal support include:

Length of the Marriage: Longer marriages may result in longer or more substantial support payments.

Roles During the Marriage: Consideration of each spouse's role, such as primary caregiver or primary earner.

Needs and Means: The recipient's financial needs and the payer's ability to pay.

Estate Litigation

Understanding Estate Litigation

Estate litigation involves legal disputes over the management and distribution of a deceased person's estate. Common issues include contested wills, executor disputes, and claims for dependents' relief. These disputes are often complex and emotionally charged, requiring careful legal handling.

Common Issues in Estate Litigation

Contested Wills: Challenges to the validity of a will based on allegations of undue influence, lack of testamentary capacity, or improper execution.

Executor Disputes: Conflicts between executors and beneficiaries or among co-executors regarding the administration of the estate.

Dependents' Relief Claims: Claims made by dependents who were not adequately provided for under the will, seeking financial support from the estate.

Estate Planning to Avoid Litigation

Effective estate planning can minimize the risk of litigation. Key strategies include:

Creating Clear and Comprehensive Wills: Ensure wills are detailed, clear, and regularly updated to reflect current wishes and circumstances.

Appointing Trustworthy Executors: Choose executors who are capable, trustworthy, and impartial.

Communication with Beneficiaries: Discuss estate plans with potential beneficiaries to prevent misunderstandings and manage expectations.

Real Estate and Family Law

Real Estate Considerations in Divorce

Real estate is often one of the most significant assets in a divorce. Key considerations include:

Family Home: Decisions about the family home can include selling the property and dividing the proceeds, one spouse buying out the other's share, or retaining joint ownership temporarily.

Investment Properties: Division of rental or commercial properties involves determining their value and deciding on their sale or transfer of ownership.

Joint Property Ownership

Jointly owned properties present unique challenges in divorce proceedings. Options for handling joint property include:

Sale and Division: Selling the property and dividing the proceeds equitably between the spouses.

Buyout: One spouse buys out the other's interest in the property, allowing them to retain ownership.

Co-Ownership Agreements: In some cases, spouses may choose to retain joint ownership temporarily, with clear agreements on management and responsibilities.

Division of Real Estate Assets

The division process involves several key steps:

Valuation: Accurate appraisal of all real estate assets is essential to ensure a fair division.

Net Family Property Calculation: Identifying Real estate assets to include in each spouse's NFP calculation.

Settlement Negotiation: Negotiation or mediation can help spouses reach an agreement on property division, potentially avoiding court intervention.

Spousal Support and Child Support Guidelines

Spousal Support

Spousal support is a payment from one spouse to another following a separation or divorce. It aims to address economic disparities arising from the marriage or its breakdown. Key factors influencing spousal support include:

Length of the Marriage: Longer marriages typically result in longer or more substantial support payments.

Roles During the Marriage: Consideration of each spouse's role, such as primary caregiver or primary earner.

Needs and Means: The recipient's financial needs and the payer's ability to pay.

Calculating Spousal Support

Spousal support calculations in Ontario follow the Spousal Support Advisory Guidelines (SSAG). These guidelines provide a range of amounts and duration based on the spouses' incomes and the length of the marriage. Although not legally binding, the SSAGs are widely used by courts and lawyers to determine fair support arrangements.

Child Support

Child support ensures that a child's financial needs are met following their parents' separation or divorce. The support amount is calculated using the Federal Child Support Guidelines, which consider:

Paying Parent's Income: The primary factor in determining the amount.

Number of Children: More children generally result in higher support payments

Calculating Child Support

The Federal Child Support Guidelines provide detailed tables for calculating support payments based on the paying parent's income and the number of children. Special or extraordinary expenses, such as medical costs or educational expenses, may also be considered.

Parenting and How Ontario Law Governs Parenting

Parenting in Family Law

Family law in Ontario governs various aspects of parenting, particularly during and after separation or divorce. The key focus is the best interests of the child, ensuring their emotional, physical, and psychological well-being.

Custody and Access

Custody: Refers to the legal right to make significant decisions about the child's upbringing. Custody can be sole (one parent) or joint (both parents).

Access: Refers to the time the non-custodial parent spends with the child, which can include regular visits, holidays, and special occasions.

Best Interests of the Child

When determining custody and access arrangements, courts consider factors such as:

- The child's physical, emotional, and psychological needs.
- The stability of each parent's home environment.
- Each parent's ability to provide for the child's needs.
- The child's relationship with each parent and other family members.

Parenting Plans

Parents are encouraged to create a parenting plan that outlines custody and access arrangements, decision-making responsibilities, and methods for resolving disputes. A well-crafted plan helps minimize conflicts and provides a stable environment for the child.

Recent Changes in Family Law and Estates as of 2022

Family Law

Recent changes in Ontario's family law aim to better address the needs and rights of families, particularly children. Key updates include:

Revisions to the Divorce Act: Emphasizing the best interests of the child and promoting alternative dispute resolution methods. The terminology has shifted from "custody" and "access" to "parenting orders" and "parenting time" to focus on the child's needs and reduce conflict

Estates

In estate law, recent changes focus on enhancing the clarity and fairness of estate planning and administration:

Electronic Wills and Remote Witnessing: Legal recognition of electronic wills and remote witnessing, which became permanent under Bill 245. This change allows Ontarians to execute their wills and powers of attorney either in-person or virtually, providing greater flexibility.

Changes to the Treatment of Separated Spouses: Under Bill 245, separated spouses who are not formally divorced are now treated similarly to divorced spouses in estate matters. This means they no longer have automatic property rights upon death if they have been living separate and apart for three years or more, have a valid separation agreement, a court order, or a family arbitration award.

Ontario as a "Substantive Compliance" Province: This shift means that courts now have the authority to validate wills that do not strictly meet all legal formalities, provided the document clearly reflects the deceased's intentions.

Marriage No Longer Revokes Wills: As of January 1, 2022, marriage does not automatically revoke an existing will, reducing the risk of unintended will invalidation and predatory marriages.

Separated Spouses and Intestacy: Bill 245 ensures that separated spouses do not inherit on intestacy. If a deceased person did not leave a will, their separated spouse is no longer entitled to a preferential share of the estate.

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Other Services

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Real Estate Law and Litigation

- Transactional real estate law
- Commercial and residential real estate

Breach of Contract

- Purchase agreements
- Lease agreements
- Construction contracts

Wills & Estates and Litigation

- Will disputes
- Elder law
- Estate litigation
- Guardianship
- Estate planning
- Administration

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