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Family law in Canada: child custody

If you and your spouse are going through a separation or divorce, it can be a tough time for everyone involved, including your children. However, an important consideration in your separation includes child custody.

When deciding on custody, courts generally assess the situation on what is in the best interest of the child. An order may therefore be made for sole, joint or shared custody of children including provisions for visitation rights. In determining the best interests of the child, the judge considers the importance of the child's contact with both parents, so long as it's to the child's benefit. The judge also looks at how the child was cared for prior to separation (i.e., who looked after the child the most; who took the child to doctor's appointments, hockey games or piano lessons; and who went to parent-teacher interviews, etc.)

The judge also considers the amount of time each parent will be able to spend with the child given his/her work schedule; parenting skills; and mental, physical and emotional health; and also takes the child's wishes into account (such as keeping siblings together). Where it's determined to be in the child's best interest, the judge will order the child to spend as much time as possible with both parents. In doing so, the judge may grant custody to one parent with liberal visitation rights for the other parent.

If custody is agreed upon prior to trial, the issues concerning visitation—such as birthdays, holidays, times of visitation, who drops the child off and picks the child up, etc.—should be addressed in the separation agreement.

If circumstances, means or needs of either parent changes, provisions relating to custody and support may be altered by the court.

Child Support

The end of a relationship doesn't mean the end of supporting a spouse or children. Once custody and visitation arrangements are determined, both parents must address child support.

Child support guidelines have been established in order to help determine the minimum amount of child support payable in the circumstance of divorce or separation. The amount is determined by the paying parent's income level, the number of children requiring financial support, and the province or territory of residence for the paying parent.

The table amount derived from the child support guidelines may be adjusted depending on a number of factors including extraordinary expenses created by extracurricular activities or child care. The table amount may also be adjusted to prevent financial hardship of a parent.

It's advised that you contact the Canada Revenue Agency for guides and forms concerning child and spousal support payments, and tax implications. For more information on federal child support guidelines, visit the website of the Department of Justice Canada. For provincial and territorial child support information, visit your province's website.

Spousal Support

Where two people are married, the Divorce Act and relevant provincial family law legislation determines whether and how much spousal support is to be paid by one spouse to the other. Where two people are in a common-law relationship, family law legislation also imposes spousal support obligations, so long as the couple has lived together for a defined period of time.

A determination will be made as to how long the couple was living together, what their respective roles and obligations were throughout the relationship, and who has custody of the children. The amount of spousal support paid depends on the needs of each person and their respective income levels.

Spousal support may be paid for a defined period of time, or it may be indefinite. Just because a receiving spouse remarries does not necessarily mean that spousal support will stop. The law attempts to ensure that one spouse does not suffer financially as a result of the breakdown of the relationship, and that spousal support enables the receiving spouse to regain financial independence. Spousal misconduct does not determine a party's right to maintenance and support.

Family law has very important implications for spouses and their children before, during and after the marital relationship. There is no substitute for sound legal advice concerning legal matters with respect to the marital relationship, and they should not be dealt with without the advice of a lawyer with specific knowledge of family law.

There are numerous sources of information in each province both in terms of counselling and information concerning legal matters. Gather as much information as possible about the process and issues so that you can avoid disagreements and expense.

Before seeking a legal remedy, particularly in the case of a relationship, you may wish to consider other avenues and discuss the issue with a family counsellor, social worker, doctor or health professional.

Please note, this article is a general guide to certain laws applicable to family law in Canada. The information contained in this publication is given by way of general reference only, is not intended to provide legal advice, and is not to be relied upon in any factual situation as it does not cover all laws or regulations that may be applicable in all circumstances. No responsibility will be accepted by the authors or publishers for any inaccuracy, omission or statement which might prove to be misleading. You are advised to seek your own professional advice before proceeding to consider issues of family law in Canada.

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