

Getting Divorced or Remaining Separated: Do I need to get divorced?

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published May 3, 2024

In Canada, a marriage is dissolved by a court document called a “Divorce Judgment.” A Divorce Judgment is signed by a Judge and filed with the court. Thirty-one days after the Divorce Judgment has been signed, a “Certificate of Divorce” becomes available from the court, and this is the final document that confirms the divorce is official. Common-law couples do not have a marriage to terminate, so they are not eligible to be and do not need to get divorced.

When a couple separates there are several “issues” that they need to sort out post-separation. These issues may include parenting time with their child(ren), child support, spousal support, and the division of their property. The resolution of each of these issues is ultimately reflected in a separation agreement or a court order, either by the consent of the separated spouses or by order of the court.

If separated spouses can resolve the issues between them by entering into a separation agreement, they are governed by their separation agreement moving forward. The separation agreement resolves all legal issues related to the breakdown of their marriage, except for the legal issue of divorce. Whereas the court does not need to approve a separation agreement in order for it to be valid, the court is the only institution that has the power to grant a divorce.

If separated spouses enter into a separation agreement that resolves the legal issues related to their separation and all that is left to be dealt with is their marriage, they may be left wondering whether to take the “final step” and get divorced by the court, or whether to remain married (but separated).

It is ultimately a personal choice whether to get divorced, as there is no requirement to get divorced after separating. Below is a list of some points to consider when contemplating whether or not to pursue a Divorce Judgment:

1. **Remarriage:** You cannot remarry until you are divorced.
2. **Health Insurance:** Some health insurance providers will continue to provide coverage to a spouse until they are divorced (even when separated).
3. **Pension Survivor Benefits:** The survivor benefits that are payable only to a spouse are paid out upon passing. If the separated spouses have incorporated these benefits into their separation agreement or court order, a divorce may make them ineligible to receive these benefits.

4. **Canada Pension Plan:** If you get divorced and want to apply to have your and your ex-spouse's CPP credits equally divided, you must do so within 36 months of your divorce being completed, unless your ex-spouse waives that limit (which they are unlikely to do if the CPP credit split would not be to their benefit). If you remain separated but not divorced, you can apply to have the CPP credits equally divided at any time up until 36 months after your separated spouse's death.
5. **Child Support Obligations:** A Judge will only grant a Divorce Judgment if they are satisfied that the proper amount of child support is being paid for the child(ren). In some cases, separated spouses will have agreed upon financial arrangements for their child(ren) that are not necessarily "satisfactory" to a Judge but that work for them and their child(ren) in their circumstances. In those cases, the arrangements may have to be varied to arrangements not contemplated by the separated spouses in order to complete the divorce, which can have financial implications in terms of future support arrangements and legal costs to address the support arrangements with the court.
6. **Property Division:** An application for an equal division of family property cannot be made after 60 days from the date a divorce becomes effective. So, it typically makes sense to hold off on completing a divorce until the family property division has been dealt with.
7. **Religious or Personal Beliefs:** Some people may experience external pressure from family, community, or religious groups to remain married and not to finalize their divorce, so they may opt to remain separated instead.
8. **Cost:** If separated spouses have already sorted out their separation-related legal issues in a separation agreement and have not involved the court in doing so, there is an additional cost to obtaining a Divorce Judgment as legal fees and court filing fees will be incurred to complete the divorce. If separated spouses have sorted out their separation-related legal issues in a court order that they engaged the court process for to sort out, there is typically little extra cost associated with obtaining the Divorce Judgment because the paperwork to seek the divorce would have been filed earlier in the court process.

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