

# Divorce

## Summary

If you are married and want to end your marriage, you must apply to court for a divorce. In Manitoba, the Court that deals with divorce is the Court of Queen's Bench.

Before the Court of Queen's Bench in Manitoba will grant a divorce, you must prove certain things – that one of the spouses has been resident in Manitoba for the past year and that there has been a break-down of the marriage. You can prove marriage break-down in one of three ways:

- 1) by proving the other spouse committed adultery,
- 2) by proving that your spouse treated you with serious physical or mental cruelty, that would make living together impossible,
- 3) by proving that the spouses have been separated (have been living separate and apart) for at least a year.

To be considered being separated, the spouses must be physically separated and one or both of the spouses must intend to be physically separated. If only one of the spouses intends to be physically separated, the other spouse must be told that is the case. You can be separated and living under the same roof if both spouses are living their lives separately and have stopped describing themselves as spouses.

If the spouses try to reconcile and the total time that they have reconciled is not longer than 90 days, that time does not interrupt the year living separate and apart.

The court may not grant the divorce if the judge finds that there has been condonation. This is where either adultery or cruelty is used as the grounds for the divorce and the spouse who is filing for the divorce condoned (forgave) the other spouse.

The court will also not grant a divorce if there has been connivance. In other words, where the spouse who is filing for the divorce caused the adultery or cruelty.

The court must also be satisfied that there has been no collusion. Collusion is when the spouse applying for the divorce makes an agreement, understanding or arrangement to make up evidence or to

## Lesson Plan Overview

Family law is an area of law that deals with family relationships, and the rights and responsibilities associated with the creation, transformation, or discontinuation of those relationships.

This lesson plan introduces students to the concept of divorce in family law. The objectives of this lesson are to understand the requirements for obtaining a divorce as well as the difference between divorce and annulment. Students should gain an understanding of marriage and common law relationships.

## Activities & Discussion Questions:

- 1) Take a look at Stats Canada statistics for divorce over the past 20 years. Has the number of divorces increased or decreased in that period? Why do you think that might be?
- 2) How do Canada's divorce laws differ from divorce laws in other countries? Find out what the divorce laws are like in two other countries.
- 3) Do you think it should be easier or more difficult to get a divorce? Why?
- 4) What are some of the effects of divorce on the family, on society as a whole? Find 2 media articles dealing with the effects of divorce.
- 5) How much does a marriage licence cost? What other costs are associated with a marriage?

suppress evidence or to deceive the court.

If there are children of the marriage, the court also must be satisfied that reasonable arrangements have been made for their support. A child of the marriage is a child under 18 or a child over 18 who is unable to support him or herself because of illness, disability or some other reason, for example going to school full-time.

A divorce takes effect on the 31<sup>st</sup> day after it is granted. The spouses cannot remarry until the divorce takes effect.

Since only married couples can get a divorce, a discussion about divorce would not be complete without a discussion about marriage. The following can get married in Manitoba – a man and a woman, two men, or two women. To get married, a person must be at least 18 years old. There are exceptions, for example, if someone was married before and is now widowed or divorced. A 16 or 17 year old can get married but must have parental consent, the consent of a guardian or of a judge. The person getting married must have mental capacity. Certain people cannot get married, for example brothers and sisters, parents and their children, grandparents and their grandchildren.

Some people confuse a divorce with an annulment. An annulment is a declaration by the court that the marriage never existed. Annulments are very rare. You must have very specific grounds before the court will grant an annulment. Just because a marriage is of short duration does not mean that you can get an annulment. Grounds for annulment include:

- one or both of the spouses were under 18 and did not have the consent of their parents or guardians or an order from a judge;
- one or both of the spouses was already married. (Not only is this grounds for an annulment, but can result in a charge of bigamy);
- lack of consent (mistaken identity, lack of mental capacity, drunk at the time, or being forced into the marriage);
- the spouses were too closely related (brothers and sisters, parents and children, grandparents and grandchildren are prohibited from marrying); and
- lack of sexual capacity (physical inability or mental condition) so that the marriage could not be consummated.

Some marriages are void because they are prohibited (for example

6) What is the penalty for bigamy?  
Should bigamy be a criminal offence?

7) Since bigamy is a criminal offence, what about polygamy? Find the relevant Criminal Code section.

8) Provide the students with the Melnyk case summary and discussion questions.

9) Provide the students with the quiz.

## Glossary

Adultery – when a spouse consents to and has sexual relations with someone other than his or her spouse.

Annulment – a court order that declares that a marriage was void and never existed.

Bigamy – criminal offence – marrying someone when you are already married.

Collusion – when spouses have acted together to deceive the court.

Common Law – two people living together in a conjugal relationship

Condonation – when a spouse forgives the other spouse for adultery or cruelty and does not separate from the other spouse soon afterwards. Spouses can resume living together for not more than 90 days to try to reconcile, without it being deemed condonation.

Connivance – where one spouse causes the grounds for divorce.

Cruelty – physical or mental cruelty that makes it impossible to continue living with the other spouse.

Divorce – a court order that ends a marriage.

Grounds – legally acceptable reasons.

Reconciliation – spouses can reconcile for a period or periods totaling not more than 90 days without having the one year

where one or both spouses are already married, marrying someone too closely related, under age or lack of mental capacity). Others are voidable, for example not being able to consummate the marriage, lack of consent because of mistaken identity, being drunk at the time or being forced into the marriage.

A religious annulment and an annulment granted by the court are two very different things. The courts do not recognize religious annulments. If the spouses only get a religious annulment, they will still be legally married.

Couples who live common-law do not have to apply for a divorce since they are not married. The rights of common-law partners are not exactly the same as the rights of married partners. Common-law partners may have to share their property if they register their relationship with the Common Law Registry at the Vital Statistics Agency. Even if they have not registered their relationship, they may also have to share their property under provincial law called *The Family Property Act*, if they have lived together for three years. Some pensions may be shareable, after living together for one year. Common law partners who live together after their child is born have joint custody, just like married partners and have the same obligation to support their children as married partners do. Spousal support may be payable when a common law couple separates in one of two situations, if the couple has lived together for three years, or if the couple has lived together for one year and has a child together.

separate and apart period of time disrupted.

## **Relevant Law:**

### **Federal Legislation:**

*Divorce Act* - sections 2(1), 3(1), 8, 11, 12

*Civil Marriage Act* - section 2, 2.1, 2.2, 2.3, 4

*Criminal Code of Canada* - sections 290 and 291

### **Provincial Legislation:**

*The Marriage Act* - section 18, Schedule A

*The Vital Statistics Act* - section 13.1

*The Family Property Act* - section 1