

# Separation

## Summary

Separation is when a couple, or one of them, has decided their relationship is over. This could be a married couple or a common-law couple. Married couples, even though separated, are still legally married. You do not need to go to court to separate. Often spouses will have a separation agreement prepared. A lawyer should do this. A separation agreement sets out what the spouses have agreed to, for example about support, custody, access and property division. You may be able to register a separation agreement with the court and the Maintenance Enforcement Program.

Divorce is different from a separation. Divorce is a legal process that is completed when a judge gives a divorce judgment. The divorce judgment states the marriage is legally over. Only married couples get divorced, common-law partners do not.

Family Conciliation Services provides a range of conflict resolution services to families going through separation or divorce. Their staff is made up of skilled counselors. Services are offered at no cost and are provided either at the request of the court or directly to family members. For more information visit:

[http://www.gov.mb.ca/fs/childfam/family\\_conciliation.html#top](http://www.gov.mb.ca/fs/childfam/family_conciliation.html#top)

One of the ways couples can settle issues between them is to enter into a written agreement called a separation agreement. A separation agreement is a legally binding contract so it is important both parties have independent legal advice.

A separation agreement will usually deal with matters like:

- Parenting arrangements such as custody and access;
- Financial support, including child and spousal support;
- Division of family property;
- The right to live in the family home;
- Responsibility for family debts; and
- Estate rights on the death of each spouse.

If spouses or common-law partners are unable to come to an agreement they can apply for orders from the court under *The Family Maintenance Act* (FMA). The parties can seek what is called an interim order. It is an order that is granted on a temporary basis until the court makes a final order. The following are examples of these types of orders.

## 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 separation in family law. The objective of this lesson is to understand what a separation is. Students should also be able to examine and analyze some of the main issues dealt with in separation agreements and court orders of separation.

## Activities & Discussion Questions:

- 1) Provide the students with the J.L.L. v. G.A.L. case summary and discussion questions.
- 2) Provide the students with the quiz.

## Glossary

Access - the time an individual is allowed to spend with a child.

Costs – an amount ordered by the court to compensate the successful party for some, or in rare cases, all legal costs.

Custody – care of a child as well as decision-making.

Joint Custody – a custody arrangement where parents both spend time with a child and share decision-making.

## Court Orders on Separation

### Order Respecting Period of Cohabitation

For common-law partners, the court can make a finding about the length of time they cohabited in a common-law relationship and by determining the dates their cohabitation began and ended.

### Order of Custody and Access

*The Family Maintenance Act* provides for orders of custody (the right to care and control of a child) to one parent alone or to both parents (joint custody). Orders of access set out the kind of contact a parent without custody will have. Before the court hears a request for custody or access, the parties ordinarily must attend a program called For the Sake of the Children provided by Family Conciliation.

### Order of Financial Support

Either spouse can ask the court to order the other spouse to pay maintenance to support the spouse or any children in that spouse's care.

### Order of Financial Disclosure

In many situations, both spouses have the right to request and receive financial information from each other, for example, tax returns and statements of earnings, assets and debts. If a spouse who is required to provide this information fails to do so the other spouse can apply to the court for an order of financial disclosure and for an order requiring the spouse to pay a penalty of up to \$5000. The court may also order a spouse's employer to provide financial information about the spouse.

### Order of Sole Occupancy

The court can order that one spouse alone will have the right to live in the family home. This kind of order prevents the other spouse from living in the home even if she or he owns it.

### Order of Postponement of Sale

Where the court gives a sole occupancy order to one spouse and the other spouse owns all or part of the home, the court can also postpone any rights the other spouse has to divide, rent, sell or otherwise dispose of the home.

Separation – when a couple, or one of them, has decided their relationship is over.

Sole Occupancy- the right of one spouse to live in the family home.

## Relevant Law:

### Provincial Legislation:

*The Family Property Act* section 16

In any accounting under section 15, the closing date for the inclusion of assets and liabilities in the accounting, and the valuation date for each asset and liability shall be as the spouses or common-law partners may agree and, in the absence of agreement, the date when the spouses or common-law partners last cohabited with each other;

*The Family Maintenance Act* section 9

Application for order

9(1) A spouse or common-law partner, or any person on his or her behalf, may apply to a court for an order of support and maintenance where

- (a) the other spouse or common-law partner is in breach of an obligation under this Part; or
- (b) an order is desired to fix the amount of support and maintenance payable to the other spouse or common-law partner.

Effect of separation agreement

9(2) Where spouses or common-law partners have separated by mutual agreement, and one of them has agreed in writing to release the other from liability for support and

## Order of Protection

Under *The Family Maintenance Act*, the court can make orders prohibiting or restricting communication and contact between spouses or common-law partners. If, at any time, the safety of a spouse, common-law partner, or their children is threatened, the police should be contacted immediately for assistance. The court can make orders of protection (protection and prevention orders) under *The Domestic Violence and Stalking Act*.

## Order of Costs

The court usually orders the spouse who has been unsuccessful in the court proceedings to pay part or, in rare cases, all of the legal costs of the successful spouse. For example, a spouse who has been uncooperative about financial disclosure may have to pay costs. Cost orders are always in the Court's discretion.

## Common-Law Partners

One area where common-law partners are treated differently from married spouses is divorce. Only married spouses can seek a divorce. However, except for an order of separation, all the court orders on separation are also available to common-law partners. While common-law partners cannot divorce, some Manitoba laws provide for the termination of common-law relationships. If a common-law relationship is registered with the Vital Statistics Agency, it can be terminated (ended) by either or both of the partners registering a dissolution with the Vital Statistics Agency. This can only be done after the couple has lived separate and apart for at least one year. If only one of the partners registers a dissolution, the other partner must be given notice of it. Common-law partners who never registered their relationship, can terminate it by them living separate and apart, usually for at least three years. Some rights and obligations of common-law partners may continue even after the relationship has been terminated, just as some rights and obligations of spouses may continue for a period of time after divorce. It is best to get advice from a lawyer about this.

maintenance or to accept from the other specified periodic amounts for support and maintenance, no order shall be made under this Act for the support and maintenance of the spouse or common-law partner who has so agreed.

Restricted application of subsection (2)

9(3) Subsection (2) does not apply in the case of a separation agreement (a) where the spouse or common-law partner who is required by the agreement to provide support and maintenance is in default thereunder; or (b) where the support and maintenance that a spouse or common-law partner agreed therein to provide was inadequate having regard to the circumstances of both spouses or common-law partners at the date of the agreement; or (c) where the spouse or common-law partner who in the agreement released the other from liability for support and maintenance or agreed to accept from the other specified periodic amounts for support and maintenance has become a public charge or a person in need of public assistance.