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Breaking Up is Hard to Do: Tips for Separating Spouses

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BREAKING UP IS HARD TO DO: TIPS FOR SEPARATING SPOUSES

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INTRODUCTION

This document provides some general information for Alberta spouses who have recently separated or are considering separating. This guidance is subject to advice that your lawyer has given you, directions from parenting professionals, court orders, agreements made between you and your spouse, and any laws that might apply in another province, territory, or country. This document is not “legal advice”; you should speak to your lawyer prior to making any decisions which could significantly affect your situation. For convenience, this article uses the term “spouse” to refer to both married and unmarried (“common law”) partners.

YOUR CHILDREN

Parenting After Separation Seminar. Most separating parents will be required to complete the Alberta Government’s free Parenting After Separation Seminar. We recommend taking this course as soon as possible as it may help to minimize the impact of the separation upon your children and might assist you to resolve some parenting or child support issues with your spouse without needing lawyers. The course also provides information about methods to resolve disputes outside of court. The course can either be taken online, or in person in Edmonton or Calgary.

Visit pas.albertacourts.ab.ca to complete the course online. In Edmonton the course is offered by The Family Centre and you can register by visiting www.the-family-centre.com or phoning (780) 413-9805. In Calgary the course is offered by Andrea Larochelle and you can register by visiting www.andrealarochelle.com or phoning (587) 999-9242. We recommend taking the course in person, as you will be able to speak to a psychologist and a family law lawyer for free, although we understand that it can be difficult to allocate time to a course when you’re a single parent. There is also a free High Conflict PAS course, and a free course that will teach you how to communicate effectively with the other parent which is called Focus on Communication in Separation (FOCIS).

While FOCIS is not mandatory, it is highly recommended. You can register for it here:

www.alberta.ca/focis.aspx

Practical Suggestions in Parenting Disputes for Separated Parents. As post-separation parenting is an important and complex topic, we recommend reading the publication “*Practical Suggestions in Parenting Disputes for Separated Parents*” by Ken Proudman. The most recent version can be found at www.kenproudman.com/Parenting-Dispute-Tips.pdf

YOUR LAWYER

Do you need a lawyer? To enter into a valid agreement settling a distribution of matrimonial property (as well as the property of unmarried partners who separated on or after January 1, 2020), each

spouse must receive independent legal advice from a lawyer, who will sign an independent legal advice certificate. If a spouse does not receive independent legal advice when signing an agreement, a Court may not consider itself bound by its terms. Where all matters are already agreed upon, some lawyers are willing to provide this for a fixed fee. We also recommend obtaining independent legal advice prior to entering into a final settlement of spousal support or partner support so that a lawyer can help protect against the settlement being challenged. Although independent legal advice is not necessary to resolve parenting or child support issues, or even the divorce itself, we recommend consulting a lawyer in any event so that you are aware of the fairness and potential impact of the arrangement.

Your lawyer's role. In family law, the lawyer's role is generally to help you distribute your family property, establish a new parenting regime, address child and sometimes spousal/partner support. Ideally, a mutually acceptable agreement will be negotiated which often ends up being a better result than what a court would have ordered. Sometimes your lawyer will help you engage in alternative dispute resolution such as mediation, arbitration, judicial dispute resolution (JDR), or parenting coordination. In negotiation, lawyers trained in interest-based negotiation will usually aim to keep communication on track and, if necessary, curb negative behaviour or incorrect views in order to come up with creative alternatives that may address each spouse's concerns. It can be uncomfortable for your lawyer to attempt to limit your negative behaviour or incorrect views, but know that they are doing so to help you resolve your legal dispute in a more efficient manner. Although always agreeing with clients would probably result in better reviews and more referrals, we would just be enabling conflict, and not helping you to resolve your dispute in an efficient manner.

Sometimes court may be necessary. Regardless of the process, your lawyer's role is not only to know the law and safeguard you from injustice, but may also include addressing legal deadlines, negotiating on your behalf, obtaining information or documentation necessary to perform calculations, and drafting final separation agreements or court documents.

Should you want your lawyer to focus on a specific issue, for example investigating potential fraud, you need to tell them that it's important to you and you want them to do so. Just know that doing so might increase the cost of legal representation, especially if it means hiring an expert such as a forensic accountant, actuary, valuator, or psychologist. It's important to consult your lawyer before making significant decisions.

Choosing a Lawyer. It's important that you choose a lawyer with whom you're comfortable. There are different styles of lawyers. For example, some might be known to be very aggressive, whereas others