

from ***Every Canadian's Guide to the Law*** (HarperCollins 2005)

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## ***Preparing for Separation***

It is wise for spouses to think through the consequences of marital separation and plan for it beforehand. The first issues to deal with are custody of the children and possession of the family home. If the parties can reach an understanding on who will raise the children and where, the remaining issues often become simpler.

If the spouses agree that the wife will have custody of the children and remain with them in the matrimonial home, the next issue is obviously what this arrangement will cost and how it will be paid for. Who will cover the rent, the mortgage, taxes and other housing costs? Furthermore, how long will this arrangement last: until the completion of the school year, until the children have adjusted to the separation, until the children have reached 18 years of age or will it take longer?

If the parties cannot agree on the children and the home, both parents should remain in the home with the children until the decision has been made and financial arrangements concluded. This course of action is best because most jurisdictions expect that neither parent will wrest custody from the other without an agreement or court order. However, if one spouse is abusing the other, different considerations apply and a lawyer should be consulted.

Anyone who is having marital troubles and is considering separation should put money aside in advance to provide a financial cushion. They should also be wary of signing without legal advice anything presented by their spouse. This is not the time to co-sign a loan or re-mortgage the house to raise money for a spouse's business or pay off the other spouse's debts.

The need for financial support should be considered realistically. Spouses who are not employed should investigate employment prospects and evaluate likely earnings. Then, they should discuss with a lawyer the likely obligation of the other spouse to contribute to their support (and in what amount), and the likely obligation of the unemployed spouse to contribute to his or her own support and that of the children. If skills need updating, the unemployed spouse may have to canvass the training costs and the availability of courses, and may wish to commence a program while the marriage is still intact.

If a spouse is employed, he or she will have to consider whether the available income will be enough to meet post-separation needs, taking support obligations into consideration. An employed spouse who unreasonably reduces his or her income despite support obligations may be expected to pay based on his or her income before the reduction.

The parties should review the Child Support Guidelines to determine how much child support must be paid, and whether any of the children's extra expenses qualify as additional expenses for which an amount over and above the chart amount under the Guidelines would be payable, and by whom.

Information on the nature and specific value of the family's assets and debts should be gathered. A married person should not assume that he or she is entitled to a particular asset just because he or she used it or lives in it, or because one partner has said, "It's ours."

The parties should try to locate and put aside in a safe place copies of financial documents, such as income tax returns, annual statements of RRSPs, share certificates, bonds, deeds, mortgages, savings account passbooks, credit card statements, pension data, business financial statements and written spousal agreements.

If a spouse has received gifts and inheritances, he will need documents to prove ownership, in the event that his province or territory of residence does not require one spouse to share gifts or inheritances with the other.

If the couple have joint credit cards and want to ensure that they are not liable for both spouse's purchases, they should advise the companies to cancel the cards. If one spouse makes this decision independently, she should notify the other spouse first; taking this action unilaterally can hamper negotiations because cancellation of

credit cards is often seen as an aggressive act. Joint bank accounts are also a problem; if a spouse decides to close or empty a joint account, the other spouse may view this decision as an act of war. On the other hand, either spouse is legally entitled to remove all the funds from a joint account without the specific consent of the other party. Some people choose to take half of the contents of the account in order to avoid animosity. In any event, anyone who removes funds from a joint account may be legally required to account for the funds.

It is important to remember that there are time limits on the right to claim property and support payments in some provinces. Accordingly, a person should not wait too long after separating to resolve any outstanding issues, or at least to register a claim.

Spouses who have not yet separated should seek independent legal advice on whether the actual date of separation may affect their rights and obligations. In some provinces, the settlement depends on what the assets are worth on the actual date of separation; for example, a stock portfolio varies in value from day to day, but the value of a house is less likely to fluctuate so frequently.

Spouses who are contemplating separation should each consult a family law lawyer for advice on how provincial or territorial laws will affect their situation.

*C Linda Silver Dranoff 2005*