

LEGAL GLOSSARY

Act: a law that has been passed by the federal or provincial legislature.

Adjournment: the rescheduling of a hearing to another time and/or place.

Affidavit: a written statement of facts that is sworn to be true. An affidavit must be sworn, or affirmed, before a person with the authority to administer oaths (ie. a lawyer, notary public or court clerk). It is a criminal offence to knowingly swear a false affidavit.

Affidavit of Service: an affidavit indicating how service of a particular document was affected upon another party.

Adoption: the act or process of taking another person's natural child as one's own. The child then becomes the adopting parent's legal child as if the child were the adopting parent's natural child, while the natural parent loses all rights and obligations with respect to the child.

Adultery: the act of a married person voluntarily engaging in sexual intercourse with a person other than his or her spouse. (Infidelity/Cheating). Proof of adultery is grounds for an immediate divorce, providing that the other spouse has not consented to nor forgiven the adulterous act.

Agent: a person who represents another person and can act in their place. (An agent who is not a lawyer can represent a party at a court appearance. A lawyer representing a party is called a counsel.)

Alternative Dispute Resolution (ADR): is the use of arbitration, negotiation, mediation and out-of-court settlements as opposed to litigation in the resolution of legal disputes, especially those under civil law. The purpose of ADR is to offer a less conflict-oriented and/or less expensive way to resolve a dispute than litigation. See also Arbitration and Mediation.

Annulment: a proceeding one can take to end an invalid marriage (For example, if one spouse was already married, or if the husband and wife found out they were brother and sister).

Applicant: a party who makes an application.

Appeal: an application to a higher court for a judicial review of a lower court's decision.

Arrears: spousal and/or child support that has not been paid (the payor - the person paying maintenance - has fallen behind in making his or her support payments).

Bad faith: acting dishonestly, tricking a person, deliberately not doing what should be done, committing fraud, deliberately discriminating against a person, abusing power given by the government or the law, being unfair or unreasonable.

Balance of Probabilities: the standard of proof is on a balance of probabilities, which means the Judge must believe that one person's story is more likely than not to be true as compared to the other person's story.

Best interests of the child: this is the test used to determine appropriate parenting arrangements for children after the parents separate. Judges must consider such criteria as which parent can offer the child the greatest stability, which parent will maintain contact with the child's extended family, which parent has the greater ability to meet the child's needs, the presence of family violence and so on. The wishes of the child will be considered if the child is old enough to communicate them.

Case law: the law based on past decisions by judges. Case law reflects how the courts interpret laws. In common law legal systems, judges are required to follow decisions of other judges from higher courts in their own province as well as the Supreme Court of Canada.

Certified true copy: a document guaranteed to be an exact copy of an original document.

Certificate of Divorce: a document that proves the date of your divorce.

Case Conference: the first meeting with a Judge where both parties and their respective counsel (if any) to try to identify the issues that the parties agree and disagree on.

Child/Children of the Marriage: Someone who is less than 18 years old (the age of majority in Ontario), or a child who is 18 and older if the child cannot support him/her/themself.

Claim: a demand for something somebody has a right to or owns.

Closing Argument: an argument made by a party to a Judge at a hearing after the parties have presented their evidence. In its closing argument, a party argues how the law and the evidence show that it is right and the other party is wrong. The party also states the decision it would like the Judge to make.

Child support: the money that is paid by the parent with whom the children spend less time to the other parent to help with the financial support of the children. It is determined by examining the income of the person who will be paying the support.

Child support guidelines (CSG): a table used to calculate child support for children. The amount of child support is determined by a payor's income and the number of children in the family.

Contact order: a contact order sets out the time a child is to spend with someone other than their parents; most commonly grandparents.

Collaborative Law: a person, their lawyer, and their former spouse and their lawyer, make a formal commitment to resolve disagreements outside the court process in an atmosphere of trust and collaboration. The goal of a collaborative lawyer is to settle the case fairly, without going to court. The lawyers are hired to reach a settlement, not to go to court. If the process breaks down, the lawyers must withdraw from the case.

Common Law: this phrase has a number of different meanings: 1) a legal principle under which courts are bound to follow the principles established by previous courts in similar cases dealing with similar facts; or 2) the system of justice used in all provinces except Quebec.

Common-law Relationship: a same-sex or opposite-sex unmarried couple who live together in a marriage-like relationship for at least one year.

Conflict: a disagreement between two parties.

Conflict of interest: when a person has a personal connection to the dispute, or the people involved in the dispute and may not be able to make a neutral and fair decision.

Consent Order: a court order made by a judge when both parties or (former) partners agree to the terms of the order.

Contempt of Court: the crime of deliberately failing to obey or respect the authority of a court of law or legislative body.

Costs: an order that the losing party in a legal proceeding pay the legal expenses (which may include court fees, disbursements, and legal fees) of the successful party. These orders may be made after an interim hearing but are usually made at the end of a motion, trial or appeal.

Court Clerk: the assistant to the judge who swears in witnesses and supervises the exhibits during the trial.

Court Order: a legally binding decision made by a court of law. A Court Order will usually be written down in a document and include directions given by a judge in court. There are legal consequences for disobeying a court order.

Cross Examination: when a witness who is called by one party is asked questions by another party, after the witness has been questioned by the party who called him or her, to test if the witness is telling the truth.

Contempt (motion): any hearing where a party is called before the court to account for their failure to follow a previously issued order. If an individual does not attend as required, or otherwise fails to comply with an order of the court, a warrant may be issued for the individual's arrest.

Decision-making responsibility (DMR): formerly called "custody"; the parent with decision making responsibility makes the significant decisions about the child's life and well-being, including decisions related to health, education, culture, language, religion and spirituality and significant extra-curricular activities. Decision making responsibility can be given to one parent or shared between the two parents.

Disclosure: the process of exchanging necessary information, such as financial statements, with the other party.

Division of property: when married people separate, they must divide up all of their belongings. The law requires that any property they accumulated while they were married be shared equally between them, regardless of who paid for it. If the two people cannot agree on this, they can go to court to get an equalization of net family property. Property includes physical things like houses, cottages, trailers, cars, boats and furniture but also includes pensions, RRSPs and other financial investments. It also includes debts, for which both people are responsible.

{Common-law relationships do NOT provide an automatic right to an equal sharing of the property. People leave with the property they brought with them, plus whatever they can prove

they bought during the relationship. To receive a share of property accumulated over the course of the relationship, the common-law spouse would have to prove to the court that she has made contributions, direct or indirect, to its value }

Divorce: the ending of a marriage by an official decision in a court of law. Only married couples can divorce.

Documents: a formal piece of writing that provides information or acts as a record of events or arrangements. They can be used as evidence in trials.

Domestic Violence (Family Violence): the term includes violence or the threat of violence by an intimate partner and by other family members, wherever this violence takes place and in whatever form. It may occur during, at the end, or following a relationship. Domestic violence includes violence against children.

Docket: the list of cases being heard by the court on a given day.

Duty counsel: lawyers that provide immediate legal assistance to low-income people who do not have a lawyer. They can give advice about legal rights, obligations, and the court process as well as help negotiate and settle issues and review or prepare court documents to be filed. For those who qualify, they may be able to provide same-day representation in the courtroom. They cannot assist with property claims or trial preparation or represent someone at trial.

Duress: forcing someone to do something by psychological or emotional pressure; a defence to the enforcement of a contract. If, for example, a separation agreement was entered into under duress, that may be a ground to dispute or set aside that agreement.

Endorsement: a signed written order by a Judge

Examination for Discovery: the cross-examination of a party under oath about the matters at issue in the action conducted, prior to trial. An examination for discovery is held outside court, with no one in attendance except for the parties, the parties' lawyers, and a court reporter. The court reporter produces a transcript of the examination, which may, under certain circumstances, be used at trial.

Exhibit: a document referred to in an affidavit, which may be attached to the affidavit.

Evidence: involves documents and witnesses. Examples of some documents that may be included as evidence include bank account records, report cards, real estate records, and medical reports, etc.

Expert Evidence: opinion or information given by an expert witness about something proven to have happened in a case, based on the expert's special knowledge or skill.

Expert Witness: someone with special knowledge, training, skill, or experience who can help a decision-maker understand the evidence in an area in which they are expert.

Facts: something that can be shown to be true, to exist, or to have happened. In a legal case it is based on or concerned with the evidence presented. Matters of fact are issues for a Judge to decide.

Final Order: an order or judgment of the court that finally disposes of the rights of the parties. A final order can only be overturned by a higher court. However, in family cases, if the circumstances significantly change, then parties can apply for a new order.

Filing: once a party has filled out a form, it must be filed with the family court. To file a form, you must go to the family courthouse and give the form to the clerk in the court.

Joint/shared decision-making responsibility: the parents both have the rights and responsibilities to make decisions about the child(ren), which are in the best interests of the child. Even though both parents may have joint/shared decision-making responsibility, the child(ren) may still live primarily with one parent.

Judge: a person appointed by either the federal or provincial government with the authority to hear and decide legal actions in an impartial manner, independent of influence by the government or agents of the government, whose decisions are binding upon the parties to an action.

Jurisdiction: power of a court to deal with a dispute based on the type of dispute and the geographical area where the dispute happens.

Order: a directive from a Judge, or other enabled individual within the court, which commands a party to do something.

Garnishment: the seizing of a person's property, credit or salary, on the basis of a law which allows it, and for the purposes of paying off a debt. The person who possesses the assets of the debtor and is the subject of the seizure is called a garnishee. This is frequently used in the enforcement of child support where delinquent debtors will be subjected to salary garnishment.

Grounds for Divorce: the justification for a divorce. The sole ground for divorce is the breakdown of the marriage. The marriage may have broken down due to separation for not less than one year; adultery, or mental or physical cruelty.

Impartial: being fair and neutral and not biased or prejudiced; tribunals must have no opinion before they hear the evidence and arguments of both parties to make a decision.

Imputed Income: is the income attributed to a person rather than the income actually earned or claimed. If a Judge feels that the amount of income a parent claims is not a fair reflection of his or her income, he or she can attribute (impute) income to that person.

In Loco Parentis: a person, usually a step-parent, who acts in place of the parent towards a child of the other spouse.

Interim (Temporary) Order: an order made by a Judge that serves as a temporary measure until something more complete and permanent can be decided.

Intimate Partner Violence (IPV): is a pattern of abusive behaviours of one or more partners in an intimate relationship such as marriage, dating or cohabitation and is a form of domestic violence. Intimate partner violence includes acts of physical aggression, psychological abuse, forced intercourse and other forms of sexual coercion, as well as various controlling behaviours

such as isolating a person from family and friends or restricting access to information and assistance.

Law: the rules made by the government or courts that govern society and give rights and obligations to people

Leading question: type of question asked to a witness by a party that suggests or contains the answer that the party wants the witness to give and can usually be answered with a “yes” or a “no.”

Leave of the Court: the court's permission to proceed with certain types of applications or to proceed in a certain way.

Legislation: type of law made by the government; statutes and regulations.

Matrimonial home: this is the home where the family lived, whether it was owned or rented by them. It can be a house, an apartment, a trailer, a boat – anywhere they lived as a couple. It is possible to apply to the family court for an order for exclusive possession of the matrimonial home. Whichever person is successful in this can then change the locks on the home, and the other person is not allowed on the property. This does not affect the ownership of the home – just who can live there.

Mediation: is a process in which the separating couple can meet with a third party to try to come to a compromise on issues of disagreement. The mediator cannot force the people to agree to something but can make suggestions and help them work toward a common position.

Motion: are court proceedings brought on interim matters, while the case is moving toward a final trial. They are commonly used to establish interim decision-making responsibility, parenting, child support, restraining orders or any other issue that needs immediate relief.

Motion to Change: is a court proceeding when you want to change the terms of a final order or support in an agreement that has been filed with the court.

Negotiation: when both parties talk and compromise to settle a dispute or solve a problem.

No Contact Order: an order in which a Judge orders one person to stay away from another person. The judge will usually prohibit both direct and indirect contact (such as getting another person to pass a message) between the two people as well.

Notarize: to certify something such as a signature on a legal document as authentic or legitimate by affixing a Notary Public’s stamp and signature.

Notary Public (Notary): a professional legal or public officer (includes all lawyers) with the authority to administer or commission oaths and affirmations; certify affidavits, declarations, or other documents; take acknowledgements, etc. They also officially authenticate/witness signatures; certify documents as true copies; provide affidavits of lost documents, name changes, and notarial certificates; and duplicate original notarizations.

Oath: a formal or legally binding pledge to do something such as tell the truth in a court of law, made formally and often naming God or a loved one as witness.

Onus: the burden of proof or responsibility for acting in a legal proceeding.

Open question: style of question asked to a witness, one that does not suggest or contain the answer that the party wants the witness to give.

Opening statement: what a party says at the beginning of a hearing, before giving their evidence, to explain the issues in dispute and the evidence that they will have.

Oral decision: a decision that is spoken aloud by a Judge at the end of a hearing, instead of being written out later.

Oral evidence: answers given by a witness in testimony at a hearing.

Order Without Notice (Ex Parte): is an emergency order that is provided by the Judge without the other party having been notified in advance of the application or the hearing. There must be compelling reasons why a hearing is urgent and why the other party should not be notified.

Overtturn: to reverse a previous decision, ruling, or law by using legal or legislative procedures.

Offer to Settle: an offer by one party to the other party to settle some or all of the claims in a case.

Office of the Children's Lawyer (OCL): part of the Ministry of the Attorney General, the OCL determines if their involvement is necessary based on the information provided in the intake forms from each party. The age and needs of the child will affect whether the OCL appoints a clinician or a lawyer (or both) to a file. The OCL does not determine the outcomes in parenting cases, but makes recommendations based on their work with the parties, child and others who have regular contact with the family. When making court orders, the Judge will consider the position presented by the OCL lawyer or the report filed by the clinician along with other evidence that has been submitted by the parties.

Parenting plan: sets out parenting time and decision making responsibility between the parents and the plan made by each parent describing how they intend to parent post-separation. It could include information about proposed access arrangements and proposed communications systems with the other parent as well as more direct parenting ideas.

Payor: the party who pays support or maintenance.

Pleading(s): initiating documents filed in an Application or Motion to Change. A legal document setting out either a claim or a defence to a claim.

Precedent: the requirement of a court to follow earlier decisions of a superior or previous court. For example, following a decision that can be used subsequently for a similar type of case.

Proceeding: the whole of the conduct of a legal action, from beginning to end, and all steps in between; may also be used to refer to a specific hearing or trial.

Proof of service: An affidavit or receipt that confirms that another document was served to a witness or a party and tells when and how the document was served.

Primary residence: the home (parent) where the child spends most of their time.

Restraining order: an order from the family court that keeps one person away from another.

Protection Order: an order (either a Peace Bond or a Restraining Order) made by a Judge to protect one person from another. The order lists certain conditions the person named in it must follow – usually that he or she can have no direct or indirect contact with the other person.

Quasi-Criminal Offences: quasi-criminal means a proceeding that has some, but not all, of the qualities of a criminal prosecution.

Reasons for Judgment: when a judge explains why they made a certain ruling. They will explain what they based their decision on, their reasons for making that decision, and the decision itself. Reasons for Judgment may be written or oral. If they are oral, the parties may order a transcript of them from the Court.

Re-Examination: questioning a witness again, after cross-examination of that witness, about new things talked about during cross-examination.

Recipient: the party who receives child support or spousal support/maintenance.

Reconciliation: a period of separation does not mean the end of the relationship. In family law, reconciliation means that a couple who have been separated resume their relationship. Under the Divorce Act it is the duty of the court, before considering the evidence, to satisfy itself that there is no possibility of the reconciliation of the spouses. Spouses have up to 90 days of attempted reconciliation without affecting the provision of a year of separation as a ground for the breakdown of the marriage.

Respondent: the party in a legal proceeding that defends or responds to a claim, application, or appeal.

Separation: when two people who have been living together in a marriage, or marriage-like relationship, decide not to live together any more with the intention of living separate and apart. There is no such thing as a “legal” separation. If a couple is living apart, they are separated. Sometimes a couple may be separated but living under the same roof.

Separation Agreement: a document that separating or separated spouses can draw up to put in writing those matters that are settled between them. Some of the matters the spouses might deal with in this document include decision-making responsibility, parenting time, guardianship, child support or spousal support, or division of assets or debts. There is no official form to use for drawing up a separation agreement.

Serving: the act of delivering a document to a party. Proof of service is generally established by providing the court with an affidavit of service stating in writing how and when the document was served. Depending on the document, service can be affected by personal delivery, e-mail, mail, fax, etc.

Settle: to come to a decision or agreement about something in order to solve a problem or a dispute.

Special or Extraordinary Expenses (Section 7 Expenses): special expenses are extra expenses for a child over and above the regular cost of living, such as childcare expenses while the recipient works or goes to school or is ill or disabled, medical and dental insurance premiums specifically for the child, health-related expenses that exceed insurance reimbursement by at least \$100 annually, and expenses for post-secondary education. Extraordinary expenses are expenses for education, programs, or extracurricular activities that meet the child's needs, such as tutoring or private school, or, possibly, for other activities in which the child excels and is shown to be particularly gifted.

Settlement conference: when the parties, their lawyers and a Judge meet outside the courtroom to try to resolve the case or at least some of the issues.

Spousal support: support paid by the spouse with the higher income to the other spouse in order to address any financial differences that are the result of the marriage (for example, one party who stays home for 20 years to raise the children is likely to receive spousal support from their former spouse if he/she/they continued working through those years).

Supervised parenting time: the arrangement made for parenting time when it is not appropriate for a parent to be alone with the child. This can be informal (for example, with a family member) or formal (at a supervised access centre).

Supervised exchanges: the arrangement made when it is not safe for the parents to be together to exchange the children. It can be informal (for example, exchanging the children in a public place, through relatives or at a school or daycare) or formal (at a supervised access centre).

Peremptory: meaning final or absolute. Usually used to refer to a hearing date. A peremptory hearing date is generally a date that cannot be changed. A hearing date may be made peremptory on a specific party if the court feels that the party has been unduly delaying a proceeding.

Post-Judgment Interest: interest that accrues on an award of money from the date of judgment. The rate of interest that a creditor is entitled to may depend on a contract, the discretion of a judge or the *Courts of Justice Act*.

Pre-Judgment Interest: interest that accrued on an award of money usually from the date of the cause of action to the date of judgment. The rate of interest that a creditor is entitled to may depend on a contract, the discretion of a judge or the *Courts of Justice Act*.

Process server: a person for hire who serves and/or files court documents.

Stay (of proceedings): a stoppage or suspension of the proceedings pursuant to a court order.

Style of cause: the name of an action. For example, if Jane Doe sues Adam Smith then the title of the proceeding is Doe v. Smith.

Summons to Witness: also known as a subpoena; A court document compelling the attendance of a witness to a trial. Service of a summons must be done in person. If a witness fails to appear at court as required by a summons then a warrant may be issued for their arrest.

Swear/Affirm: these words are used when any party or witness swears on a holy book (like the Bible) to tell the truth, or makes a solemn affirmation (a promise) that he or she will tell the truth to the court.

Testify: to declare or say something that can be taken as evidence under oath in a court of law.

Testimony: is the evidence given by a witness who is under oath or affirmation.

Tort: a civil wrong, other than breach of contract, for which a remedy may be obtained, usually in the form of damages.

Transcript: is the written record of a court proceeding.

Undue Hardship: circumstances that allow a payor to avoid paying the full amount of child support under the Child Support Guidelines. The payor must prove that the payments would be "undue" or exceptional, excessive, or disproportionate.

Voir Dire: is a trial within a trial. It is a hearing held, without the presence of a Judge, to determine whether an issue of fact or law would be admissible. For example, a voir dire may be used in order to decide whether certain aspects of an expert witness' testimony will be allowed.

Trial: a hearing before a Judge where a determination is made with respect to the factual and legal issues raised in a claim. At the conclusion of a trial a Judge will issue a judgment/final order.

Trial Management/Scheduling Conference: is a meeting between a judge, the parties, and the party's lawyers to prepare the parties for trial. During said conference, the Judge will talk to the parties about their witnesses, the evidence at trial and the time needed for trial.

Witness: are persons who testify in court because they have some information about the case. A witness may volunteer to testify or may receive a Summons to Witness (a legal document which orders him/her to come to court at a certain time to testify). Usually, a witness is only permitted to be in the courtroom to hear the testimony of other witnesses once his or her own testimony has been completed. This is to ensure that one witness is not influenced (affected) by what another witness says in court.