

Family Law and Immigrants

A HANDBOOK ON FAMILY LAW ISSUES
IN NEW BRUNSWICK



Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit charitable organization. Our mission is to provide plain language law information to people in New Brunswick. PLEIS-NB receives funding and in-kind support from Department of Justice Canada, the New Brunswick Law Foundation and the New Brunswick Office of the Attorney General. Project funding for the development of this booklet was provided by the Supporting Families Fund, Justice Canada.

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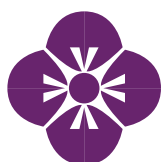
A special thanks as well to the individuals who participated in the professional review of the content, both from the perspective of legal accuracy, as well as relevance and cultural sensitivity.

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- **Community Legal Education Ontario (CLEO)**
- **Family Law Education for Women (FLEW)**
- **METRAC – Action on Violence**
- **Government of Canada, Global Affairs Canada**
- **Government of Canada, Immigration, Refugees and Citizenship**
- **Justice Education Society of BC**
- **Legal Services Society British Columbia**
- **Luke's Place**
- **Springtide Resources**

We have flagged this assistance throughout and the full list of agencies cited can be found on our Resources Cited section.

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Introduction

Public Legal Education and Information Service of New Brunswick (PLEIS-NB) offers a broad range of law information on many topics. The most popular is family law. Over 70% of requests from the public are for family law resources, particularly on separation and divorce. With New Brunswick's growing newcomer population, there is a need to provide accurate and accessible family law information that is relevant to unique family law issues that might arise in particular social and cultural contexts. We must also offer information that is accessible for individuals whose first language is neither English nor French.

This handbook explains family law issues and sets out individual's rights and responsibilities under New Brunswick law. It also explains how the legal and court procedures for acting on one's rights in Canada could be affected by barriers unique to immigrants and newcomers to Canada.

This handbook is available online in French and English. An accompanying booklet "**Family Law Matters for Immigrants in New Brunswick**," has been published in six languages, namely, **English, French, Arabic, Korean, Mandarin** and **Spanish**. We hope to be able to translate the booklet into more languages over time.

Intended Audience

This handbook is for immigrants, newcomers to New Brunswick, international students, refugees, and temporary residents living in New Brunswick. It is intended to offer information and options for dealing with family law issues experienced by both immigrant men and women. It is also intended as a resource for agencies that work with immigrant communities in New Brunswick.

We recognize that immigrants come from hundreds of different ethnic, cultural, and religious backgrounds and belief systems. We could not possibly include examples from all of them in this handbook. We have tried to generalize by suggesting how some socio-cultural beliefs could impact family law situations. This is not intended to stereotype the richness and diversity of immigrant cultures.

Using this Guide

There are eight chapters in the handbook. Each chapter deals with a particular subject. The subjects range from marriage and divorce, to custody and support, to division of property, to family violence.

Each chapter covers several sub-topics. They will help you understand the legal rights and responsibilities that may relate to your situation. Some subjects or topics may not apply to you. Most chapters end with a discussion of "Special Issues" on that topic. These special issues may or may not be relevant depending on your particular cultural or ethnic backgrounds. For example, the discussion about bridewealth and dowry will not be applicable to everyone who uses this guide.

There is a glossary at the back of the handbook. Throughout the handbook the terms in **purple and underlined** are linked to their definition in the glossary. All you have to do is click on the word.

As you explore the handbook on the Public Legal Education and Information Service of New Brunswick websites, www.legal-info-legale.nb.ca or www.familylawnb.ca you will be able to click on any "hot links" and they will take you immediately to additional material or resources on the subject matter.

Information that was reprinted or adapted with permission from other sources is referenced throughout. The full citation is set out in the Resources Cited section.

This handbook does not contain a complete statement of the law and changes in the law may occur from time to time. Anyone needing specific advice on his or her own legal position should consult a lawyer.



Marriage in Canada

Marriage is considered a basic part of society in Canada. ^(R22) It is the foundation of family life for many Canadians.

The federal and provincial governments share legal authority for marriage. The federal government makes broad laws on marriage, like who is allowed to be married (called “capacity to marry”) and who can legally marry each other. The provinces make laws on rules about the ceremony and on who has the authority to conduct the ceremony. This is called the “solemnization” of marriage.

What is required to legally marry in New Brunswick, Canada?

To get married in Canada, you will first need to have a marriage licence. You can apply for a marriage licence in New Brunswick at any **Service New Brunswick Centre**. Before they give you the licence, they will confirm you are legally entitled to marry each other under Canadian law.

To apply for a marriage licence, you will need:

- The date you are planning to marry
- The name and address of the person who will perform your marriage
- Proof of your age and identity (you can use a provincial or territorial driver’s licence, birth certificate, current passport, Canadian citizenship card, or record of landing/Canadian permanent resident card)
- Proof of your present marital status (If you were previously married, you will need a Certificate of Divorce, Decree Absolute, Final Decree, Final Judgment or Order granting divorce, or a Death Certificate issued by the Vital Statistics Office or Statement of Death issued by a Funeral Director)
- The marriage licence fee
- Additional information as required^(R27)

Note: If any of the documents above are in a language other than French or English, you will need to get them translated by a qualified, impartial translator.

You and your future spouse must meet with the **Issuer of Marriage Licences** who will interview each of you separately. You will complete and sign an “Affidavit on Application for a Marriage Licence.” All information you share will be kept strictly confidential. ^(R42)

Once you have your marriage licence, a legal marriage may be performed as a religious or civil ceremony. The ceremony may be held anywhere in New Brunswick.

The person performing the marriage (called the **Marriage Officiant**) **must** have the authority to do so. Many religious leaders have authority from the government to perform a religious marriage ceremony. To find someone who has legal authority to perform a civil marriage ceremony, contact the **Court of Queen’s Bench** in your region, or see the list of registered officials at <http://www.snb.ca/e/1000/1000-01/pdf/List-e.pdf>.

At what age can you get married in Canada?

In Canada, it is a criminal offence to marry someone under the age of 16. It is also illegal to celebrate, aid or participate in a marriage ceremony if you know that one of the persons being married is under the age of 16. Both offences are punishable with a prison term up to 5 years. ^(R7)

Provinces may set other limits on marriage age. To get married in New Brunswick before you are 18, you must have been married before, or your parents or guardians must agree by signing an affidavit of **consent**. ^(R42)

Is there anyone that I’m not allowed to marry?

In Canada, you cannot marry your:

- Mother
- Daughter
- Sister (including adopted or half-sister)
- Grandmother
- Granddaughter
- Father
- Son
- Brother (including adopted or half-brother)
- Grandfather
- Grandson ^(R42 & R39)

Is same-sex marriage legal in Canada? What rights do same-sex couples have?

Same-sex couples are legally allowed to marry in Canada and they have the same rights as married opposite-sex couples.

Same-sex common-law couples are also recognized in Canada and have the same rights as opposite-sex common-law couples. (“**Common-law**” refers to certain rights and obligations couples gain by living together in a marriage-like relationship, even if they did not have a marriage ceremony.)

Is a man allowed to have multiple wives in Canada?

In Canada, it is illegal to be married to more than one person at a time. This is called **bigamy** (having two spouses) or **polygamy** (having more than two spouses). It may be referred to as “**plural marriage**”. Anyone taking part in this kind of relationship (both husbands and wives) could be imprisoned for up to five years. ^(R5)

Canadian law does not allow you to get married if you or the other person is already married. It does not matter where or when your first marriage took place. In Canada, you can only remarry if you are legally divorced or if your spouse has died. ^(R22) You cannot sponsor someone to come to Canada as your spouse if the marriage would not be legally recognized in Canada.

Despite this law, plural marriages sometimes occur. People may come to Canada from a country that allows polygamy. A second or subsequent marriage may take place as a religious ceremony that does not meet the requirements in Canada for a legal civil marriage. The second religious marriage is illegal.



This means the women in those marriages are very vulnerable – they may believe they are legally married and would have the protection of Canadian family laws. But if the marriage ends, this may not be the case.

This can be a confusing area of law. Some provinces have family laws on property division and spousal support that recognize polygamous marriages if they were performed in a country where polygamy is legal. This means that, in some circumstances, women in a polygamous marriage may have some rights to a share of the family property and/or spousal support.^(R47) However, a woman in this position should consult a lawyer before taking any legal action. She may be opening herself to a risk of criminal charges for **bigamy** or **polygamy** under the *Criminal Code*.



What surname may I use after I'm married? Who should I notify if I change my surname?

After you have been married, you and/or your spouse may choose a marital **surname**. You have several options, including:

- Keeping your registered birth surname, which is the name listed on your birth certificate.
- Keeping the surname you have from a previous marriage, if it was used immediately before your present marriage.
- Taking the surname of your spouse.
- Taking a combination surname made up of both your surnames, with or without a hyphen.^(R42)



If you take a new surname, you will have to change your name on many identifying documents such as your provincial driver's licence, vehicle registration and Medicare card.

When you get married, your Marriage Officiant will give you a "**Statement of Marriage**." When you go to change your surname on your documentation, you show the "Statement of Marriage" as proof that you can change your surname because of marriage. (Note: you do not change your surname on your birth certificate.)

For most documents, you will go to your nearest Service New Brunswick office to change your name. For documents that must be changed at other offices, you should contact the office beforehand to see if they need you to bring other documentation in addition to your **Statement of Marriage** for them to process your change of name.^(R42)

Special Issues - Marriage:

If I was married in another country, is my marriage valid in Canada?

Generally, your foreign marriage is valid in Canada if the marriage:

- Is legal under the laws of the place where it took place; and
- **Conforms** to Canada's federal laws on marriage.

Do I have to register my marriage in Canada or New Brunswick?

No. Each province/territory is responsible for registering marriages that take place there. In New Brunswick, the Vital Statistics Office registers all marriages that take place in New Brunswick, even if you are not a New Brunswick resident. You should register your marriage according to the laws in the province, territory, or country where you were married.

You should get proof of marriage from the province, territory, or country where your marriage occurred.^(R42) If you were married in New Brunswick, you can get proof of marriage by ordering a **Marriage Certificate** from any **Service New Brunswick Centre**.



What are the laws in Canada regarding dowry or bridewealth?

Dowry is the property and/or chattels (items) brought into the marriage by the wife through her family, or, the property given to a wife and/or her family by her husband in return for her marriage to him. In some countries, like India, it has been banned, although it is still widely practiced.^(R28)

Bridewealth is the transfer of goods from the groom or his relatives to the family of the bride. This is the most frequent type of marriage transaction across cultures.^(R1)

Neither of these practices is widespread in Canada and there is no legal entitlement to them under Canadian law. The **legitimacy** of the marriage in Canada is not connected to the payment of any dowry or bridewealth. The failure of one partner to pay a dowry or bridewealth does not invalidate the marriage. To have a legal marriage, you only need to meet the requirements described above.

Courts in Canada will not normally be able to **enforce** claims for dowry or bridewealth.^(R28) However, Canadian courts have tried to honour these obligations if they are part of a marriage contract (sometimes called a **prenuptial agreement**) and do not **contradict** Canadian family law.^(R13) To decide if the terms of a marriage contract (or prenuptial agreement) are **binding**, the court will consider it the same way it would any other type of contract under Canadian law. For more information, see the PLEIS-NB pamphlet, "**Domestic Contracts**."

What is the law in Canada on marriages of convenience?

A marriage or **common-law** relationship that is entered into for the sole purpose of sponsoring a person to immigrate to Canada is called a **marriage of convenience**. Canadian citizens or permanent residents may be charged with a crime if they are found to have arranged a marriage of convenience for immigration purposes.^(R22 & R6)

What is the difference between forced marriage and arranged marriage?

Longstanding principles in Canadian law make it illegal to force anyone into marriage in Canada. ^(R22) Both people must give their free and enlightened **consent** to marry each other. ^(R1.2) Both people involved should feel that they have a choice.

Forced marriage: This is when someone is pressured, or threatened with harm to marry someone they do not want to. Often the pressure or harm comes from a family member or their



religious community. Forced marriage can happen to individuals of any culture, class, religion, and in any area of the world, even within Canada or travelling abroad. It can happen to both men and women at any age, including minors. ^(R14) If an individual agrees to a marriage because they are pressured or fear being harmed this is not considered to be a marriage that was freely consented to.

Types of threats or abuse that are often used in cases of forced marriage are:

- Emotional pressure
- Threats
- Abduction (kidnapping)
- Forcible confinement
- Extortion
- Physical violence ^(R14)

In some cases of forced marriage, family may take the person to another country for the actual marriage to take place. The person being forced into the marriage may not be aware of the purpose of the trip until they arrive.

It is illegal in Canada to do anything for the purpose of removing a person who is under eighteen from Canada for the purpose of a forced marriage or underage marriage, and the punishment could be up to 5 years in prison. ^(R7.1)

Arranged Marriage: This is when both parties agree to marry the partner suggested by their parents or religious community. The couple are not pressured or threatened to marry. ^(R14)

What should I do if I am in a forced marriage and I want to get out? What if I am being forced to marry someone?

If you were forced to get married and you want to get out, you should contact a family law lawyer to talk about your options for leaving the marriage. You can also reach out for help from other resources such as health care providers, counsellors, community organizations, trusted friends and legal information services. If you feel you are in immediate danger, call the police for help.

If you are afraid that you are going to be forced into a marriage contact the police. Consider telling the police if you know someone who is being forced to marry against his or her will.



If you are in Canada and you believe that you are being forced to travel to another country to marry, look for help. Try contacting provincial social welfare authorities, local police, a student guidance counselor, or a community legal clinic. You could also contact the Kids Help Phone, a women's shelter or a victim services office. ^(R14)

Consider making a safety plan if you think you may be forced into a marriage either here in Canada or abroad. A safety plan should include local emergency numbers, a place to stay if you have to leave quickly and photocopies of all your important documents including your passport.



If family is forcing you to travel to another country to get married, let someone in Canada know. Give this person the following important information:

- A number where you can be reached in the other country
- A photocopy of your passport and birth certificate
- A recent photo of yourself
- Your travel itinerary

It may also be a good idea to:

- Keep some emergency cash on hand (keep it hidden if possible)
- Try to stay in contact with family and friends at home
- Try to bring a cellphone with you
- Sign up with the Registration of Canadians Abroad service
- Know how to contact the nearest Canadian government office abroad and carry their contact information with you ^(R14)

Does my spouse (or common-law partner) have to be a certain age before I can sponsor him or her to immigrate to Canada?

On June 10, 2015, the minimum age required for a spouse or common-law partner to be sponsored was changed from 16 to 18 years. All applicants must be at least **18 years old** at the time the application is received by Citizenship and Immigration Canada. Anyone applying to sponsor their spouse or common-law partner under the age of 18 after June 10, 2015 will be refused. ^(R20)





Common-law Relationships

In a **common-law** relationship a couple lives together as intimate partners, but are not legally married to each other. Same-sex common-law couples are recognized and have the same rights as opposite sex common-law couples in New Brunswick. Common-law couples do not have the same rights as married couples, but they are often granted certain rights and obligations under different provincial and federal laws.

How long must we live together to become a common-law couple?

The amount of time you must live together before you are entitled to particular rights differs depending on the law that grants the right. Some provincial laws recognize a common-law relationship after one year of living together. In other situations, you must live together for two years, or even three years.

Employers, federal laws, and insurance plans set out different criteria for recognizing **common-law** relationships. You should look at the different laws and policies to determine how they define a common-law relationship. ^(R36)

For more information on common-law relationships, see the PLEIS-NB booklet, *“Living Common Law: Rights and Responsibilities.”*

How do we end a common-law relationship?

Unlike a marriage, which requires legal measures to end it, in New Brunswick, you do not have to take any special legal steps to end your relationship with your common-law partner. You just need to stop living together as a couple to end your relationship.

Do I have the right to have custody or access of the children?

Parents in common-law relationships, as well as parents who have never lived together, have the same rights and obligations to their children as married parents. In New Brunswick both parents are assumed to have joint custody of the children in the absence of a court order or an agreement, even if they are not married. If parents cannot agree, the court will only look at what is in the **"best interests of the child."**

For more information on the types of custody and how courts make decisions about custody, see **Section 4** of this handbook and read the booklet *"Custody and Access in New Brunswick."*



Do I have an obligation to support the children if we were never married?

In Canada, it is the **right of the child** to have the financial assistance of both parents.

Child support is the money paid by one parent to the other parent for the support of their children. The support is usually paid to the parent who has the primary care of the children. It is used to help cover the costs of raising a child such as feeding, clothing, housing, and otherwise providing for everyday needs.

In some countries children whose parents are not legally married may not have rights to support and inheritance. Some people think that they do not have to pay child support if the couple never lived together.



In New Brunswick, both parents have a legal obligation to support their child financially until the child turns 19 years old (possibly longer in certain situations), **even if the parents have**

never been married or lived together.

For information on child support, see **Section 5** of this handbook, and read the booklets *"Child Support,"* and the *Federal Child Support Guidelines: Step by Step.*

Do I have the right to ask for spousal support?

To be eligible for spousal support under the *Family Services Act*, you must have been dependent on your partner and have lived together for more than 3 years. Or, you may be eligible for spousal support after only one year if you had a child together. You must file for support **within a year of separation.** (These restrictions are not placed on married spouses.)

For more information on spousal support, see section 5 of this handbook, and read the booklet: *Spousal Support.*

How will the property be divided if we end our common-law relationship?

Unlike legally married couples, there is no automatic entitlement to half of the property for a common-law partner. Many people have heard that if they live together for 3 years as a common-law couple they get all the same rights as legally married couples. This is not true. The rights and entitlements of common-law couples vary depending upon particular legislation related to the type of property.

Generally, any property you brought into or bought during the relationship is yours. When you break up, the person who has paid for the item or whose name is on the deed may be the only person entitled to it. If you bought something together (such as furniture), you both own it. If you separate, you must decide how to divide the items you bought together.

If you are not able to come to an agreement with your partner on how to divide your property, you can hire a lawyer to assist. The lawyer will make an argument to the court on why you should get a share of the property and what amount that share should be.

If you are arguing for an equal division of property in court, you must prove that you were a joint family venture regarding finances.

Factors that indicate a **joint venture** are:

- having children
- joint bank accounts

Factors that indicate **no joint venture** are:

- keeping money separate
- acting as if you are two separate financial entities

The more factors you have in favour of a joint family venture, the more likely your property will be shared between you. For more information on common-law relationships, see the PLEIS-NB booklet, *"Living Common Law: Rights and Responsibilities."*

How can we decide these family law issues? Do we have to see a lawyer?

Immigrants have similar rights as Canadians to use the courts to settle their family law matters. However, it is less stressful and less expensive if you can work them out for yourselves. If you do, you can ask a lawyer to write these issues up in a separation agreement. If you can't agree, you will have to go to court. It is a good idea for each of you to talk to different lawyers before signing the separation agreement, because otherwise the agreement could later be declared invalid.

For more information on settling your differences, getting legal assistance, and making parenting plans you should review the other Sections of this Handbook. You can also check out the booklet *"When Couples Separate: Rights and Responsibilities,"* and *"Making Plans: A guide to parenting arrangements after separation or divorce."*



Special Issues: Common-Law Relationships

How does Immigration, Refugees and Citizenship Canada define a Common-Law Partner?

Immigration, Refugees and Citizenship Canada defines a common-law partner as a person who has been living with another person in a conjugal relationship (a relationship like a marriage) for **at least one year**. That means living together for one year without any long periods where you did not see each other. Either partner may have left the home for work or business travel, family obligations, and so on. However, the separation must have been temporary and short. ^(R24)

Can my common-law sponsor make me leave Canada?

No, your **common-law** partner cannot force you to leave Canada. If you have permanent resident status or conditional permanent resident status, only Immigration, Refugees and Citizenship Canada can make you leave Canada. This will only happen after an immigration hearing takes place. Immigration, Refugees and Citizenship Canada will not make you leave Canada just because your sponsor wants you to. ^(R2)



Separation and Divorce

Separation means that a person has left a relationship or a marriage because they wish to end the relationship. If you are living apart because you or your partner is attending school, working away, or in an institution, it does not mean that you are separated. You must be living apart with the intent of ending your relationship. ^(R38)

Do I have to get a “legal separation”?

As soon as you are no longer living together, you are considered separated. You don’t need to take any further action to make it “legal”. Many people think they must get a court order to be “legally” separated. This is not the case. The law does not require you to have an agreement or a court order to be legally separated. Eventually you will need to work out family law matters such as child custody and access (if you have children), child and spousal support, division of property and rights to pensions. This usually means you will need a written agreement or court order for these family law matters. If you were legally married and want to end all your rights and obligations as a married person, you will have to apply to the court for a **divorce**. ^(R38)

Do we both have to agree to get divorced?

Either spouse can apply to the court asking a judge for a divorce. In some provinces, there is an option for the spouses to apply together.

You can get a divorce in Canada, even if your spouse does not agree to the divorce. However, your spouse must have the chance to see the divorce paperwork you filed and make a response.

How do I apply for a divorce?

In Canada, the law that governs divorce is called the **Divorce Act**. The procedure for how to file for divorce is different in each province. To file for divorce in New Brunswick, either you or your spouse must have lived here for at least one year before filing.

The forms you need to apply for a divorce can be downloaded from the PLEIS-NB website at www.familylawnb.ca.

Is there a way for us to divorce without going to court?

All divorces must be approved by a judge to be valid. A long period of separation does not automatically mean you are divorced. Religious ceremonies or religious annulments do not change your legal marital status.

However, if you and your spouse have settled all your family law issues, you can apply for an “**uncontested divorce**”. If that is the case, your application would include a sworn “Affidavit of Evidence” that sets out the facts. The judge would review it and you would not have to go to court. If all your paperwork is in order, the judge could go ahead and grant your divorce.

For information on how to get an uncontested divorce in New Brunswick, see the PLEIS-NB guide *Doing Your Own Divorce in New Brunswick*.

PLEIS-NB offers workshops to show people how to file for an uncontested divorce in New Brunswick. The **workshop schedules** are published at www.familylawnb.ca, or you can call **1-888-236-2444** to register.

However, if you and your spouse have disagreements over property, finances, support, or custody, the court will give you a date to go to court. A judge will listen to both of your legal arguments and make a decision for you.

The judge will issue you a “divorce judgment”. After a thirty day appeal period, your divorce will become final. You will be able to request a divorce certificate. If you cannot get a divorce certificate that means your divorce is not finalized. You



cannot legally remarry until you have the divorce certificate to prove you are no longer married.

In New Brunswick, you can request a copy of your divorce certificate at the Office of the Registrar in Fredericton, or any **Service New Brunswick Centre**.

Will I get a bigger share of the property or more support if my spouse was at fault for the breakup (for example, committing adultery)?

No, your partner’s bad behaviour does not mean that you will get more support or property. In Canada, we have “**no fault divorce**”.

What is **no-fault divorce**?

This means that when couples get divorced, they do not have to show in court that someone caused the marriage to end. There is no advantage in placing blame on the other spouse for causing the marriage to end.

What grounds does the court recognize to grant a divorce?

For the court to give you a divorce you have to show that your marriage has broken down and cannot be fixed.

How do I show the court that my marriage has broken down?

You must show one of the following three things has happened in your marriage:

- You have **lived separate and apart** for at least one year
- One of the partners committed **adultery**
- One of the partners **abused** the other

Nearly 95% of couples in Canada show that their marriage has ended by **living separate and apart for at least one year**. The easiest way to show this is to live in separate homes. If you cannot live in different homes, you can continue to live in the same house or apartment but you must live independent of each other. You cannot do things normally expected of a married couple such as sharing a bedroom, having sexual relations and eating regular family meals together.

NOTE: Even if the reason for the breakdown of the marriage is adultery or abuse, this does not change the way the court decides child custody, child support or spousal support.



Settling Your Family Law Matters - Domestic Contracts

You must deal with all the issues related to the breakdown of your relationship before the judge will give you a divorce. If you wait until after the divorce to ask the court for something, it might be too late. For example, after you divorce, you only have **60 days** to divide your property.

These common issues often come up at separation: child support, custody, access, spousal support and division of property. Couples who reach an agreement on dealing with these issues, often put them in a **domestic contract**.

A **domestic contract** is an agreement reached between two people living together in a family relationship, which outlines their particular rights and responsibilities. A domestic contract can be made before a marriage (prenuptial agreement), during a relationship (cohabitation agreement), or after the relationship breaks down (separation agreement).

Domestic contracts are legally binding agreements. To be valid, the contract must be in writing and must be signed by you, your partner and a witness. If you would like more information you can refer to the PLEIS-NB publication **Domestic Contracts**.

How can we get help on coming to an agreement?

There are many options for how to come to an agreement:

- **Legal Information:** Before you make an agreement, you should learn as much as you can about your rights and responsibilities under Canadian family law. The website, www.familylawnb.ca has many pamphlets and self-help guides you may find helpful. The **Family Law Information Line** is a toll-free telephone service you can call and ask for more information about family law at 1-888-236-2444.
- **Negotiating an Agreement Face to Face:** After you have taken time to learn about your rights and responsibilities under Canadian family law, you and your ex-partner can have a discussion to decide how you will deal with important issues like custody, support, and property moving forward. Being prepared for this meeting can help things go more smoothly. Check out the Department of Justice Canada website at <http://www.justice.gc.ca/eng/fl-df/parent/plan.html> for a list of suggested issues to discuss with your partner when making a parenting plan. There may be other issues that are important to you and you should add these to your list as well.

To be legal, your agreement must be in writing, signed by both parties and witnessed. You should each have your own lawyer review the agreement before you sign it. After the agreement has been signed you can choose to file it with the court for the purposes of **support enforcement**. For more information on support enforcement, see our four pamphlets on www.familylawnb.ca.
- **Mediation:** When you use mediation, a mediator will work with both of you together to help you decide on an agreement that is reasonable for both of you. If there is a lot of hostility between you and the other person, mediation may not be the right option for you.
- **Legal Advice:** Ex-partners who cannot agree on certain issues should get legal help. Each person hires a separate lawyer. The lawyers will do their best to negotiate terms that

are acceptable to you both. If you wish to participate in a non-confrontational approach to deal with family law matters, try to find lawyers who practice **collaborative law**.

- **Going to Court:** If you and your ex-partner cannot come to an agreement you will have to apply to the court and a judge will make the decision for you. You can hire a family law lawyer to help you make the application to the court. The judge will then decide for you and make an order.

Can I get a lawyer to help me for free in New Brunswick?

You may be able to get a lawyer to represent you for free for certain family legal issues such as custody, access and support. In New Brunswick you would apply to the New Brunswick Legal Aid Services Commission (called “Legal Aid” for short). They can help people with limited financial means. If you need a lawyer for a family law matter that falls under Legal Aid’s scope of service and you meet their requirements, they will appoint a lawyer for you. Depending on your situation you may be required to pay for a portion of your legal fees.

As a newcomer to New Brunswick you can apply for legal aid as long as you ordinarily live in New Brunswick. There are no requirements that you hold any sort of Canadian citizenship in order to qualify for legal aid in New Brunswick.

Legal Aid does not cover any immigration or refugee claims nor can they help with landlord tenant issues, social welfare issues, or other civil matters. For more information on how to apply for legal aid and what types of family law issues they cover you can visit their website at <http://legalaid.nb.ca/en/index.php> and see our pamphlet, *Legal Aid in New Brunswick*.

The Family Advice Lawyer Service is a province wide service of the Department of Justice and Public Safety and Legal Aid. Through this service, lawyers provide free general legal information for up to two hours on family law matters. They can explain what to expect from the court process and help you understand court forms. You can access this service, even if you do not qualify for regular Legal Aid. To make an appointment, call **1-855-266-0266**.

Special Issues - Separation and Divorce:

How do I serve court documents on my spouse who is outside the province or country?

You do not need special permission from the court to serve your spouse outside the province or country. You can hire a professional (called a **process server**) in the same location as your spouse to serve the documents on him or her. Or, your server can use registered mail to serve your spouse.

You must have the same proof of service you would use if the documents had been served in New Brunswick.

To prove service was done properly, the person who served the documents (called the server) must fill out an **Affidavit of Service (Personal Service or Service by Registered Mail)**. An **affidavit** must be sworn or affirmed to be true in front of someone who is authorized by law to witness an oath or affirmation. In New Brunswick, your server can swear/affirm the affidavit is true in front of a **Commissioner of Oaths** or a **Notary Public**. If the server is outside the province, it is important they swear/affirm their affidavit in front of a Notary Public in that province or country.

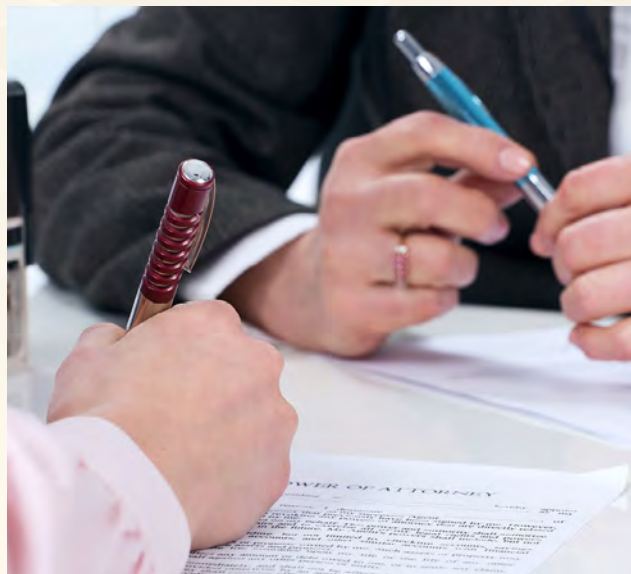
If your server used registered mail to serve the documents, they should attach to their affidavit a signed **Acknowledgment of Receipt Card** from your spouse or provide a copy of your spouse's signature received by Canada Post. (You can find this by entering the tracking number on the Canada Post [website](#)).

If you think your spouse will refuse to sign for the documents, you should hire a server who is able to serve them in person.

If I was divorced in another country will it be recognized in Canada?

Usually Canada will recognize a divorce from another country as long as:

- The divorce was valid under the laws of that country
- One or both of the spouses lived in that country for at least one year immediately before filing for divorce. ^(R22)



If you are unsure if the foreign divorce will be recognized in Canada you should talk to a lawyer.

If I was married in another country, can I get divorced in New Brunswick?

If your marriage is valid to begin with, and you meet New Brunswick's other requirements for getting a divorce, then you can divorce here. You will need a copy of your marriage certificate to attach to your petition or application for divorce. The **marriage certificate** must be translated into English or French.

If you cannot obtain your marriage certificate, you will have to tell the court what efforts have been made to obtain a certificate and why it is impossible to obtain one, the date and place of marriage, and enough facts to prove the marriage.

What can I do if my spouse refuses to grant me a religious divorce?

Even if your spouse must grant you a religious divorce for you to be permitted to re-marry within your religion, the court cannot force him or her to grant you the religious divorce. But, the court can take steps to encourage your spouse to grant the religious divorce, such as:

- The court can dismiss any application your spouse files with the court under the **Divorce Act**
- The court can strike out (refuse to look at or consider) any other **pleadings** or **affidavits** filed by the spouse under the **Divorce Act** ^(R9)

What are the rules for translation of legal documents?

English and French are the official languages of the courts in Canada. Every person has the right to use the official language of his or her choice in any matter before the courts.

The court must use your chosen official language when communicating with you. This includes both written documents and official spoken language.

What language can I speak in court?

All court documents you file must be in an official language of the court, or must have a certified translation attached to them at the time of filing. If you swear an **affidavit** that is written in an official language, but you don't understand that language, you must include on the affidavit that the information was interpreted to you by a named interpreter who has sworn to interpret the affidavit correctly. ^(R44)

If you intend to use an official language (English or French) different than what the other party used in their documents, you must let the clerk of the court know at least 7 days before a hearing. The clerk will arrange to have an interpreter present. ^(R45)

Witnesses also have the right to use English or French when testifying in court and the right to interpretation services (between English and French) when required.

If you plan on testifying and you cannot speak English or French, or if you have a witness who is testifying in a language other than English or French, you must arrange for an interpreter. The interpreter should be competent and independent. He or she will be asked to swear an oath to interpret accurately. ^(R46)

If you wish, you can have your own interpreter present for all of the hearing for your benefit.

Once we separate or divorce, do my responsibilities as a sponsor to my ex end?

When you sponsor someone to come to Canada

you sign a sponsorship **undertaking**. An undertaking is a very serious promise. If you change your mind about sponsoring your spouse or **common-law** partner, you must contact the Case Processing Centre in Mississauga (CPC-M) at CPCM-EXTCOM@cic.gc.ca to tell them your decision. A sponsor can only do this before the visa office has issued permanent resident visas.

Once permanent resident visas are issued, the promise you made to support your spouse or partner is in effect for three years after the person becomes a permanent resident. This means that even if you and your partner separate or divorce before the end of the three year period, you (if you are the sponsor) must still support your spouse or partner financially until the three year period is over. ^(R19)

What if I need money to live?

If you need money to live, you may be able to get **social assistance** (sometimes called welfare) if you meet the eligibility criteria set by the Province of New Brunswick's Department of Social Development. Canadian citizens and permanent residents may apply for social assistance.



If you are not a permanent resident or Canadian citizen, an application for social assistance may put your status at risk. One of the federal conditions of acceptance into Canada is financial independence. You should consult an immigration lawyer before contacting the government about assistance. ^(R43)

Sponsored immigrants are not entitled to assistance while their sponsor has an obligation to support them. In cases where a sponsored immigrant claims that his or her sponsor is not honouring the sponsorship agreement, Social Development must contact the sponsor to clarify the situation. If this becomes a problem for you, contact your regional **Social Development office**.


Although the federal government is in charge of sponsorships, Immigration, Refugees and Citizenship Canada are not responsible for helping you if your sponsorship breaks down. They do not take any steps to help you get money from your sponsor. ^(R29)

You can apply to Family Court to order your ex-partner to pay you child support and/or spousal support. You can also ask the Court to give you a share in the family property.

You can go to Family Court no matter what your immigration status is. Keep in mind; you will have to identify yourself if you participate in the Court process. If you do not have legal status in Canada, you may come to the attention of immigration officials. You should consult with a lawyer familiar with immigration law **before starting** a court proceeding. ^(R10)

Can my sponsor make me leave Canada?

No, your sponsor, spouse or **common-law** partner cannot force you to leave Canada. If you have permanent resident status or conditional permanent resident status, only Immigration, Refugees and Citizenship Canada can make you leave Canada. This will only happen after an immigration hearing takes place. Immigration, Refugees and Citizenship Canada will not make you leave Canada just because your sponsor wants you to. ^(R2) For more information about how a divorce or separation could affect your immigration status, see **Section 8** of this handbook.



You can apply to Family Court to order your ex-partner to pay you child support and/or spousal support. You can also ask the Court to give you a share in the family property.



Custody and Access of Children

What is custody?

When a parent has custody of their child it means they have the authority to make major decisions concerning their child. There are a few different types of custody arrangements in Canada:

Sole Custody: One parent has the legal right and responsibility to care for the child. The parent makes all the major decisions about the child's education, religion, health care, and general upbringing. The child lives with the parent with sole custody the majority of the time.

Joint Legal Custody: Both parents share the responsibility to care for the child. The child may spend an equal amount of time living with each parent or may spend most of their time living with one parent. Both parents work together to make all major decisions about the child's upbringing.

Shared Custody: The children spend equal or nearly equal amount of time living with each parent. This is typically referred to as joint or shared physical custody.

Split Custody: Each parent has custody of one or more of the children. This means that each parent has one or more children living with them more than 60% of the time in the year. ^(R33)

Who will get custody of the children if we separate?

In New Brunswick, when parents separate (whether or not they were married) children are automatically in the custody of both parents unless the parents decide on a different arrangement in a **domestic contract**, or the court makes an order that custody should be different.

If parents cannot come to a custody agreement together then they may apply to the court for a custody order from a judge.



The judge will base the custody decision solely on what is in the **best interest of the child**. They will not favour a parent because they are the mother or father. They will not consider adultery or the reason for the breakup (unless it involved a harmful situation for the child). The judge may look at the following:

- the needs of the child (mental, emotional and physical health).
- the effect a disruption would have on the child.
- the love, affection, and ties between the child and the parent.
- the plans you have to care for the child.
- the stability of your home.
- the child's culture or religion.
- the views and preferences of the child.

The court may consider your willingness to provide access when deciding custody of the child. If you refuse to cooperate, you might not get custody.^(R33)

How can I see my child if I don't have custody?

In most cases, the parent without custody has the right to spend time with their child. This is called **access** or **visiting rights**. The court considers it to be in the **best interest of the child** to have a relationship with both parents, unless there is a strong reason against it. If you are being denied access to your children, you can apply to the court for an access schedule.^(R33)

What is a parenting plan?

A **parenting plan** is a document where parents outline how they will parent their children after separation.

Your parenting plan can be quite short, or very detailed, depending on your particular circumstances. When there is a lot of conflict between the two parents, it is a good idea to include a lot of detail in the plan. That way, both parents know what is supposed to happen in different situations. This can help to avoid conflict.

The plan can be an "informal" agreement or it can be included in a "formal" **separation agreement**. It can also be included in a court order that is filed



with the court. This is a good idea if you have a lot of conflict. Parenting plans are a good way to make sure children have similar routines in both households, and reduce conflict between parents. However, not all items in your plan are legally **enforceable** by the court.

Keep in mind the following issues that may arise when making your plan:

- Attempting to control what happens in the other parent's home will not usually be enforced by a court.
- The court will not attempt to **enforce** parenting styles.
- If there is a dispute, the court does not usually make a decision on the issue. Instead, the court will decide which parent is more capable of making major decisions on that issue and give them the power to decide.

Parents can develop their parenting plan themselves or they may get the help of a professional. They may wish to use the following two tools developed by the Department of Justice Canada to help with parenting plans:

- **Making Plans** gives parents information about what issues they need to address when coming up with a parenting arrangement after divorce (ex. schedule for time with children), as well as the processes that they can use to come up with this arrangement (ex. mediation, negotiation). This product promotes agreements between parents by emphasizing the importance of good communication, reducing conflict, and building a co-parenting relationship that focuses on the best interests of children.
- **The Parenting Plan Tool** has sample clauses that parents can use as a starting point in developing their parenting plan.

Special Issues: Custody and Access

If I have a custody order from a court in another province or country, will a court in New Brunswick enforce or vary it?

The court will typically recognize a custody or access order made outside of the province as long as there is no proof that in the original court the other party was not given reasonable notice of the proceeding or given a chance to be heard before the order was made, that the law of the place where the order was made did not require a consideration of the best interest of the child, that the law of the place the order was made is contrary to public policy in New Brunswick, or that the original court did not have proper jurisdiction to make the order.

To ask the New Brunswick courts to enforce or vary a custody order made outside the province, you will first need to file a certified copy of the order with the court.

The court where you file must have jurisdiction to deal with custody matters related to that particular child. Custody orders are typically dealt with by the court in the jurisdiction that has the most substantial connection to the child. This means that the child normally lives in that jurisdiction, or that they are physically present there and most of the good evidence about their situation would be found there. The court can also decide to hear your case even when the child does not normally live there, if they believe not doing so could cause serious harm to the child. If after you apply, the court decides that a court in another location would be more suitable for hearing the case, you will have to make your application at that court instead. ^(R8 & R12)

What is required for a child to travel outside the country with only one parent?

When you separate or divorce and you have children, it is a good idea to include in the separation agreement details about what is permitted when it comes to travelling with the children. This can help to avoid complications or conflict in the future.

If your child is travelling with just one of their parents, even if you are not separated, it is a good

idea for the parent travelling with the child to gather documentation to prove they have authority over the child. These could include:

- The child's passport
- The child's birth certificate (make sure you have a version of the birth certificate that has the child's parent's name listed on it)
- A consent letter to travel from the child's other parent
- A copy of any court order granting you sole custody or a right to travel with the child
- A consent letter to travel from anyone who has been given access, visitation, or joint custody rights with the child by a court order
- Anything else required by the country you are visiting ^(R16)

A consent letter says the other parent of the child agrees to you traveling with the child on specific dates to a specific location. A consent letter is not required in Canada but it can make travelling with children much easier. It may be requested by immigration authorities when entering or leaving a foreign country or by Canadian officials when re-entering Canada. ^(R15)

A consent letter should be signed in front of a commissioner of oaths or notary public. This will make border officials less likely to question the authenticity of the letter. ^(R15)

If it is not possible to obtain a consent letter from a parent who lives abroad, you should carry a copy of a court order granting you sole custody. If there is no court order you should talk to a lawyer before travelling with your child.

If the other parent refuses to sign a consent letter for you to travel with your child you can apply to a judge for an order that states you are permitted to travel with the child without the other parent's consent. In granting this order the judge will consider if the travel is in the best interest of the child.



The Government of Canada website has published a **sample consent letter**. You can make changes to it as necessary.

Carrying a consent letter does not guarantee that children will be allowed to enter or leave a country, because every country has its own entry and exit requirements. You should always check with that country's embassy or consulate in Canada for their rules on travelling with children before you travel. If your child is a dual citizen, you should find out what rules will apply to them when entering their other country. Some countries will apply different rules to their own citizens. ^(R17)

What should I do if I do not approve of my child travelling outside the country with their other parent?

If you have concerns about your child travelling outside the country without you, you should seek legal advice before signing a consent letter.

If your child is travelling with the other parent to another country and you are concerned the other parent may not bring the child back or that your child might be in danger, you should talk to a lawyer right away. They will be able to advise you on what you should do.

You may be able to make an application to the court to prevent the other parent from taking your child out of the country.

What if I think my ex-partner has or is going to **abduct** my child to another country?

Most **abducted** children are taken by someone the child knows. The person who takes them is most often a parent. Parental child **abduction** happens when one parent takes a child without either the legal right or the permission of the other parent. Parental child **abduction** is a crime in Canada. An exception may apply when a parent takes the child to protect them from immediate harm. ^(R26)

What to do if you are afraid the other parent may **abduct** your child:

- Tell a lawyer if you think the other parent or someone else will try and take your children out of the country.



- If your children are Canadian citizens, call Passport Canada toll-free at 1-800-567-6868 or TTY services 1-866-255-7655 and tell them you do not **consent** to your child being issued a passport.
- Ask them to put your child's name on the **Passport Control List** so you can be called if anyone tries to get a passport for them.
- If your children are citizens of another country, contact that embassy or consulate to ask them to refuse passports for your children.
- If you ask, the judge may order that the child's passport be kept by the court.
- Contact your local police.
- Keep records of all important information about your child and store it in a safe place.
- Keep a copy of your custody or parenting order or agreement with you.
- Talk to your child about using the phone and explain how your custody situation works.
- If it is safe to do so, try to maintain good relations with the other parent and any extended family.
- Keep photos, recordings or other proof of the family violence. ^(R25)

If your child is abducted:

- Contact your local police immediately. Give them a detailed description of your child and the abducting parent. If you have photos of your child and the other parent give these to police.
- If you are out of the country, make sure to report the disappearance to the federal government's Consular Services at 613-996-8885. You may call collect, where available.
- If you are inside Canada and you think your child is outside Canada, call the federal government's Consular Services at 1-800-387-3124.
- Contact a child search organization in your province or territory and register your child as missing. (Do this after talking to the police or your lawyer about it)
- Let your family, friends and the child's school know the child is missing in case they hear from the other parent or your child. ^(R25)

If the country where your child has been taken to has signed the *Hague Convention on the Civil Aspects of International Child Abduction* you can apply to have your child returned. For the Convention to apply to your child they must:

- Have been habitually resident in Canada before they were removed from the country
- Be under 16 years old
- The country where the child has been abducted to must have signed the Convention at the time of the abduction
- You had and were actually exercising custody or access rights ^(R18)

If your child has been taken to a country that has not signed the Hague Convention on the *Civil Aspects of International Child Abduction*, you may be able to take other legal steps in the Canadian courts or abroad.

For more information on steps to take if your child has been abducted or you are concerned your child may be abducted, see the booklet "*International Child Abductions: A Guidebook for Left-Behind Parents.*"

Can a parent be deported without their child?

A parent can be deported without their child in some circumstances. Where the child is a Canadian citizen, Immigration leaves it up to the parent to decide whether or not to take your child if ordered to leave Canada.

But, you can take the child with you **only if there is no family court order preventing this**. If there is a court order for joint or sole custody with the other parent or another individual, you cannot take the child with you.

The Canadian child has a right to remain in Canada, but the child does not have a right to have their parent remain in Canada if the parent does not have status in Canada and has been ordered deported.

In most cases, even if the child is a Canadian citizen, the parent will choose to bring the child with them, as they do not want to be separated from the child and, often, there are not satisfactory arrangements that can be made for the child's care in Canada. Occasionally, a parent will leave the child with a trusted relative if they feel the child will be better off in Canada and they hope to be able to return in the future.

If you choose to bring your Canadian child with you when leaving, Immigration will facilitate your removal at the same time.



Can I request a **deferral** of **deportation** while I work out family law matters and arrangements for my children?

Immigration will also delay your removal from Canada if you have to obtain a passport or travel document for the child, but Immigration will not **postpone** removal **indefinitely** for this reason.

If you have been to family court, and there is a final or interim order granting **joint custody**, access (visitation) to another parent or relative, or a supervision order, it is possible to request a **deferral** of your **deportation** from Canada. The request is made in writing to the Canada Border Services Agency (CBSA), the agency responsible for arranging **deportations** from Canada). The request would include details of the family court proceedings and would state that removal of the mother from Canada would be in **breach** of the family court order.

For example, if the mother and other parent are separated but they share joint custody or the other parent has regular access (visitation) with the child, it is possible to request a deferral of the woman's removal by stating that removal of the woman and child from Canada (and from the other person with joint custody) would be in breach of the family court order.

Removal officers have limited discretion and can only **defer** in exceptional circumstances, including situations involving safety, risk to life, health concerns or a pending humanitarian and compassionate grounds application. Officers can also consider the immediate **best interests of children**, such as the need to complete the school year before removal from Canada.

Generally speaking, the longer the family court order has been the **status quo**, the greater the chance of success for a request to the CBSA to **defer** removal. As well, the parent usually has to have an application for permanent residence pending to succeed with a **deferral** request, most likely an H & C or spousal sponsorship application, since the existence of a family court order or proceedings will not **defer** removal **indefinitely**.



It is very important that a parent with no status in Canada who has a family court order about a Canadian child or is in the process of making an application to court speak to an *immigration lawyer* who understands family law as soon as possible.

Making an application to family court without having made an application for permanent resident status (most often an H & C application) can be seen with skepticism by both Immigration and the family court. It makes sense that in order to make an application to family court for custody of a Canadian child; you also have to demonstrate that you are taking steps to obtain your own status so that you can remain in Canada. ^(R31)



Child and Spousal Support

What if I can't support my children financially?

Divorce does not end either parent's responsibility to financially support their children. In New Brunswick, both parents have a legal obligation to support their child financially until the child turns 19 years old (possibly longer in certain situations), even if the parents have never been married or lived together.

If the parents of a child do not live together they have to make arrangements to financially support their child. This is called **child support**. It is used to help cover the costs of raising a child such as feeding, clothing, housing, and otherwise providing for everyday needs. It is the right of the child to have the financial assistance of both parents.

The **Federal Child Support Guidelines** indicate how much **child support** should be paid. The guidelines apply in the same way to divorcing, separated and unmarried parents. The calculation is based on the payer's income, the number of children and the province where payer lives.

In New Brunswick, the court will only order a lower amount of child support in very limited circumstances. However, there are often situations when they will order an additional amount of support payment to cover **special expenses**, such as child care, medical care, educational costs, post-secondary education or extracurricular activities.

To learn more about **child support**, see our pamphlet "**Child Support**." You may also find the following resources from the Department of Justice Canada website, www.justice.gc.ca, helpful: "**The Federal Child Support Guidelines: Step-by-Step**," and the "**Child Support Table Look-Up**."

What is spousal support?

Spousal support is money that is paid by one spouse to the other spouse after the relationship has ended. It is sometimes called alimony or maintenance. A person may request **spousal support** after the relationship has ended if he or she is unable to support themselves or was financially dependent on the former spouse/partner.

Married couples who are divorcing may request **spousal support** under the *Divorce Act*. The judge will consider how long you lived together, how dependent you are on your partner, your education, your income, and other relevant factors when deciding whether you qualify for spousal support, and for how much and how long.

Married couples who separate but do not divorce, and individuals leaving a common-law relationship, may request support under the *Family Services Act*. However, to be eligible, a common-law couple must have lived in a family situation for three years and one person must have been substantially dependant on the other person for support. Or, they must have lived together for one year and had a child during that time. A judge will decide about support for a common-law partner by considering the same factors used when married couples divorce.

To simplify the process of calculating **spousal support** amounts, Justice Canada has released a set of guidelines entitled the **Spousal Support Advisory Guidelines (SSAG)**. They were developed to assist lawyers, judges and individuals wanting to **estimate spousal support**. They include formulas for estimating **spousal support** – the formulas involve calculations that take into account these different factors, including whether there are children of the marriage, both parties' income, the length of the relationship, etc. However, there are no "tables" for you to use to calculate **spousal support**.

You can view the SSAG at <http://www.justice.gc.ca/eng/fl-df/spousal-epoux/ssag-ldfpae.html>.

For more information, see our pamphlet, "*Spousal Support*."

How do I **enforce** a support order or agreement?

The Office of Support Enforcement (OSE) **enforces** child and spousal support payments in New Brunswick. If a court makes an order that includes a support payment, it will automatically be filed with OSE.

If you come to a support agreement on your own, you can also file the agreement with the court and ask that it be **enforced** by OSE.

OSE has the authority under federal and provincial laws to use various methods, when necessary, to collect overdue support payments. Some of these methods include:

- **Initiate a Payment Order.** This is commonly known as garnishment. Some examples of monies that can be garnished include: wages, pensions, income tax refunds, GST credits, workers compensation benefits, and bank accounts, including jointly held bank accounts. OSE may issue a payment order to a person who is outside the Province;
- **Demand information** about a payer's location, contact information, salary, employment, assets, or any other information that is considered necessary to **enforce** the order. The information demands can be made to anyone, and may be done through direct searches of designated information banks. Information demanded must be provided within 14 days;
- **Report a payer to a credit bureau** where the payer owes an amount greater than 3 months of support payments;
- **Suspend or revoke a payer's drivers licence** if the payer owes an amount greater than 4 months of support payments;
- **Make corporations liable for support** owed by a payer where the payer or the payer's family owns the corporation;
- **Ask the federal government to suspend, refuse to issue, or refuse to renew the payer's passport** and/or federal aviation or marine licence if the payer owes an amount greater than 3 months of support payments;
- **Bring the case to court** for a decision on additional **enforcement** action. This is called an enforcement hearing.

For more information on OSE you can refer to our publication, *Office of Support Enforcement (OSE)*.

Special Issues: Child and Spousal Support

Can I enforce a support order from a different court here in New Brunswick?

If you live in New Brunswick and have a court order from another Canadian province, you can request to be assisted by OSE by filing a **Notice to File a Support Order Form** (downloadable at www.familylawnb.ca), along with a certified copy of the order.

This is also possible for orders from American states or some other countries. All required documents must be accompanied by a sworn or certified translation in English or French.

If a support payment is made in foreign currency, OSE will convert the amount into Canadian money using the rate of exchange on the day of the conversion.

Can I request child support if the payer does not live in New Brunswick?

New Brunswick has agreements with all Canadian provinces and territories and with several foreign countries to recognize each other's family support laws. This is called reciprocity.

The New Brunswick law about reciprocity is called the *Interjurisdictional Support Orders Act*, which is called 'ISO' for short. To see a list of all reciprocating states, see the *Reciprocating Jurisdictions Regulation* on the Office of the Attorney General of New Brunswick's website.

Through these agreements, you can use special ISO forms to ask the court here in New Brunswick to decide about the financial part of your family relationship (child and spousal support), even though the other person is in a "reciprocating jurisdiction." The other person will file their reply with a court near where they live.

You will not be able to use the ISO process if you have a divorce order made under Canada's *Divorce Act*. The *Divorce Act* is a federal law. It has its own rules about making and changing its orders. You



may wish to talk to a lawyer if you want to change your *Divorce Act* order. ^(R40)

There are other ways to determine support when you live in different places.

If both of you agree, you can choose to apply to one court, or another. It's as though you both lived in one province, territory, or country. The order could then be 'registered' in the other place. When registered, the order has the same effect as if it is made in both places. This is another thing that 'reciprocating jurisdictions' have agreed to do.

Or, if you both agree, you can write a formal agreement. That, too, can be 'registered' in both places, and will be legal. It's another part of 'reciprocity'.

Or, you can hire a lawyer or have a lawyer in the other person's jurisdiction go to court for you.





Division of Marital Property

How is property divided on divorce?

In New Brunswick, the **Marital Property Act** is the law on how property is divided when a marriage ends. (Note: the *Marital Property Act* only applies to couples who were legally married. See Section 2 of this Handbook for information on dividing property when you are ending a **common-law** relationship.) The Act recognizes each spouse's **contribution** to the marriage and in most cases permits an equal division of the marital property.

Spouses do not have to share property that is not considered marital property. For example, they are not required to share certain business property, inheritances, gifts and property obtained after the separation that have not been mixed in with the marital property, as well as certain proceeds of the sale of such property. Only in special circumstances would you have to share this property.

A lawyer can advise you about your rights to particular property.

For more information on marital property in New Brunswick see our pamphlet "**Marital Property in New Brunswick.**"

Marital property is anything that either spouse brought into the marriage or purchased during the marriage. This includes property that is owned by one or both spouses and is ordinarily used by them and their children while they are living together for shelter, transportation, household, educational, recreational or social purposes.



Special Issues: Division of Marital Property

Is the Mahr considered part of the marital property?

Mahr (also spelled Maher, Mohr and Mehr) is a Muslim tradition in which an agreement is entered into prior to marriage concerning a sum of money that a groom promises to pay his bride in the event of a marriage breakdown or death. ^(R32)

A husband is obliged to pay this sum to his wife herself (not her family). It provides some financial security for the wife. There is often a prompt mahr (muajjal), which is paid at the time of the marriage, and deferred mahr (muwajjal), to be paid only if the couple divorces or husband predeceases the wife. ^(R32)

Canadian courts have given mixed decisions as to whether the mahr will be **enforced** at the end of a marriage or not. Some courts have taken the view that a mahr is a religious practice that should not be interfered with by the courts. Other courts have decided to treat the mahr as a type of **domestic contract**.

Therefore, if the **mahr** is properly set down according to contract law, and does not contradict Canadian public policy or family law, it might be **enforced** by the courts. The court would consider its enforceability in the same way it would other **domestic contracts**.

The standard requirements for a **domestic contract** in Canada are that:

- the contract be in writing
- the contract be signed by both partners (a family member may not contract on behalf of their relative)
- the contract be signed by a witness
- there was full financial **disclosure** before signing
- neither spouse was pressured into signing

For more information on **domestic contracts**, see our pamphlet "**Domestic Contracts**."

Under some Muslim schools of thought, if a wife seeks the divorce, she typically **forfeits** her right to the **mahr**, unless she does so with cause, by proving her husband is at fault. This is complicated in no-fault divorce jurisdictions, such as Canada. Canadian courts may **enforce mahr** agreements without considering who filed for the divorce, or why. ^(R32)

How is property that is outside of Canada divided?

The **Marital Property Act** applies to all marital property, whether it is situated inside or outside the province. All property will be taken into account.

However, there are general limitations of the Court's authority to deal with land located outside the province. Instead, you would have to show that the circumstances are right so the court can create a personal obligation between you and your ex-partner. If you are dealing with a property dispute over property located outside the province, you should talk to a lawyer for an opinion on your best options.





Family Violence

What is Family Violence?

Family violence refers to situations where someone in the family is using **abuse** and violence to control others in the family, such as their spouse or children. You may hear this referred to by many different names like intimate partner violence, spousal abuse, wife beating, child abuse, senior abuse and so on.

You have been **abused** when another person hurts you or treats you badly.

Abuse can take many forms including physical, sexual, emotional/psychological, spiritual or financial. You may experience more than one type of abuse. Usually the abuser is a spouse, former spouse, partner or former partner. Sometimes a member of your family or your spouse's or partner's family is the abuser. The abuser may be either male or female.

Physical abuse could include:

- hitting
- pinching
- slapping
- pushing
- punching
- kicking
- burning
- shooting
- stabbing or cutting

These examples of physical abuse are crimes in Canada.

Sexual abuse is sexual touching or sexual activity when you do not consent to it. This is also a crime in Canada.

Emotional or psychological abuse might include:

- making threats to harm you or someone you know
- breaking your things or hurting your pets or threatening to do so
- **stalking** you (criminal **harassment**)

These are crimes in Canada.

Financial abuse may involve:

- taking your pay cheque without your consent
- holding back money from you so that you cannot pay for things you or your children need, such as food, shelter or medical treatment

These are crimes in Canada.

Spiritual abuse may involve:

- making fun of your religion or spiritual beliefs
- not letting you practice your religion

Although spiritual abuse and some other forms of **abuse** may not be crimes, they are still wrong, and no one has the right to do these things to you.

Some other examples are:

- humiliating you
- insulting you
- ignoring you
- screaming at you
- calling you names
- isolating you from your friends and family
- telling you what you can and can't do where you can go and who you can be with
- refusing to let you have any money ^(R26)

What should I do if I am being **abused** by my partner?

If you decide to leave an abusive relationship there are a few things you can do to make the process a little easier for you, if you have time. Gather all of your important documents, this includes your permanent resident papers or any other documents you may have about your application. If your partner has your permanent resident papers and will not give them to you, you can call Citizenship and Immigration Canada at 1-888-242-2100 and request a certified copy of your documents or a replacement of your permanent resident card. ^(R30)

If the police have reason to believe that your partner has **assaulted** you, they may lay a criminal charge against him or her. They can lay the charge even if you do not want them to. If the police believe that you **assaulted** your partner, you may also be charged. Even if you are not charged, the police, the Crown Counsel (lawyer for the government), or another Court official could find out if you do not have legal status in Canada and tell immigration officials. If this happens, you could be detained and **deported**. ^(R10)



In an emergency

Assault and **harassment** are against the law in Canada. If your partner is physically abusive or you are afraid they may become abusive you can call the police (911). They will protect you and your children.

Call a friend if you can. Run outside so other people can see you (unless you think you will be safer inside). Scream – let the neighbours hear so that they will call the police.

Getting Help

There are many people who can help you. Call a multicultural association or a group that serves immigrants or refugees. Find out what help they can offer. Ask them where else you should call or go for help. Transition houses can provide shelter, information and referrals for women who are victims of spousal abuse.

You may be able to get:

- advice and counselling
- a safe place to stay
- financial help
- legal help, which may be free of charge
- help to leave
- a domestic outreach worker
- a court order for custody of your children, financial support, or a divorce
- a peace bond from a criminal court
- an order from a civil or family court

You can also get help if you decide to stay. ^(R25)

For more resources and contact information on where to get help, see www.gnb.ca/violence and the [New Brunswick Directory of Services for Victims of Abuse](#).

For more information, see the booklet, “*Abuse is wrong in any language.*”

Is hitting children legal in Canada?

Using physical force as a form of discipline (spanking) is known as corporal punishment. Parents and experts alike often hold different

opinions on whether spanking is an appropriate way to control a child who is misbehaving.

The law assumes that spanking a child to ‘correct’ behavior is not against the law if **the force used is reasonable**. The *Criminal Code of Canada* provides a defence for parents, parent substitutes and teachers who used corporal punishment to discipline a child in their care and who have been charged with physically **assaulting** that child. This section of the *Criminal Code* is often referred to as “the spanking provision”.

The Court determined that the following are **not reasonable**:

- **Hitting a child under two years of age.** It is wrong and harmful because spanking has no value with very young children and can destroy a child’s sense of security and self-esteem. Children under two do not have the mental ability to understand why someone is spanking them.
- **Corporal punishment of teenagers.** It is not helpful and is potentially harmful to use force on teenagers because it achieves only short-term obedience and may **alienate** the youth and promote aggressive or other anti-social behaviour.
- **Using objects to discipline a child such as belts, rulers, etc.** This is potentially harmful both physically and emotionally.
- Slaps or blows to the head.
- **Degrading** or inhumane treatment.
- **Corporal punishment** which causes injury – (causing harm is child **abuse**). ^(R37)

Physically assaulting a child is **illegal**. Since it is possible that spanking a child will cross the line from reasonable force to **assault**, parents are encouraged to learn of other methods of controlling and disciplining their children. Remember, if someone suspects a child is being harmed, they must report this to Child Protection.

For more information, see our pamphlet, “*Spanking and Disciplining Children*,” and the Government of Canada pamphlet, “*What’s Wrong with Spanking? Tips to Guide Your Child’s Behaviour in a Positive Way.*”



Special Issues: Family Violence

Is female genital mutilation legal in Canada?

In some cultures, families practice **female genital mutilation** (FGM). This custom is often called *female circumcision, clitorrectomy, excision* or *infibulation* by those practicing it. When this custom continues in Canada it comes into direct conflict with provisions of the *Criminal Code* and with Canadian cultural values which label it as a form of child **abuse**. Families that might attempt to get around Canadian law by taking their daughters outside of Canada for circumcision may still face criminal charges when they return.

Will my spouse/partner be **deported** if found guilty of **assault**?

If your spouse or partner is a Canadian citizen they cannot be **deported**. For other classes of people in Canada, including permanent residents and refugees, deportation could result from an **assault** conviction. However, each case is dealt with on an individual basis and generally permanent residents would only be deported for very serious crimes. ^(R35)



Immigration Status

It is important to be aware of your legal status in Canada because each immigration status brings different rights to stay in Canada, get a job, access services and so on. In this chapter, we discuss the effect a separation or divorce could have on your legal status if you are a:

- Permanent Resident
- Conditional Permanent Resident
- Applicant whose status is still being processed; or a
- Refugee Claimant

If you think that you could be at risk of deportation, you should consult with an immigration lawyer right away to see what steps you should take.

How will separation or divorce affect my legal status in Canada?

If you have Permanent Resident Status

In most cases, if you have permanent resident status, you cannot lose that status or be forced to leave Canada only because you leave a relationship. This is true even if your partner sponsored your application for permanent residence.

But immigration authorities may investigate if a sponsor tells them that:

- the relationship was not genuine, or
- the sponsored person left out required information or included information that was not true in the application to Immigration, Refugees and Citizenship Canada.

This could lead to the loss of your permanent resident status. If you are concerned about this possibility, you should get legal advice. ^(R2)

If you have Conditional Permanent Resident Status

On 3 May 2017, the Canadian government (Department of Immigration, Refugees and Citizenship) amended the Immigration and Refugee Protection Regulations eliminating the conditional permanent residence requirement. Spouses or partners are not required to live with their sponsors for two years in order to maintain their permanent residence status.

Visit **Immigration, Refugees, and Citizenship Canada** to learn more about the elimination of the conditional permanent residence requirement and its impact.

If your application for status is still being processed

You may be in Canada and have an application in process under a category known as the **“Spouse or Common-law Partner in Canada class”**. You and your sponsor make the application together and it is processed in Canada. It is sometimes called an **“inland spousal sponsorship”**. Applications for permanent residence take time to process. **If a spouse or partner withdraws the sponsorship or you separate while the application is being processed, you will no longer be eligible for permanent resident status under the Spouse or Common-law Partner in Canada class and you may be forced to leave Canada.**

Common-Law Partner: Citizenship and Immigration Canada defines **Common-Law Partner** as a person who has been living with another person in a conjugal relationship for at least one year. The term refers to opposite-sex and same-sex relationships.

If you are being sponsored in this category and you leave a relationship, or are thinking about leaving, you must get legal advice right away. You may still be able to pursue an application to remain in Canada on humanitarian and compassionate (H&C) grounds. ^(R2) *(See more information on making a humanitarian and compassionate (H&C) application below).*

If you are a refugee claimant

If you are in Canada and you have been found to be a Convention Refugee or a person in need of protection, you cannot be removed from Canada just because your relationship has ended.

If you made your refugee claim with your partner and you want to end the relationship, you may be able to separate your claim from your partner before the refugee hearing. To do this you should get your own lawyer. You should tell your lawyer if you were **abused** by your partner, if you were forced to sign any documents, or if you fear your partner or other family members in your home country.

If your refugee claim fails, you may be able to appeal the decision to the Refugee Appeal Division (RAD). There are very short timelines to file an appeal and submit all of your documents. Not all refugee claimants have access to the RAD. You should talk to an immigration lawyer about this as quickly as possible. ^(R10)



You might be considering leaving your partner and not making an application for an [exception](#). It is important to remember that during your 2-year conditional period, if immigration officials think the condition is not being met, they may request proof that you are following the rules. The government can also do random checks to make sure that a sponsored partner is still living in a genuine relationship with her sponsor.

Even after your 2-year period is finished, if the government finds out that you did not comply with the condition, they can investigate. If they find that you did not comply with the condition, you could be at risk of losing your permanent residence. If this happens, you will have a chance to talk to an immigration official and go to a hearing before your permanent residence status is taken away. ^(R10)

What if my children or I are being abused?

If you are a victim of [abuse](#) or neglect, you do not have to remain in an abusive situation. In Canada, abuse is not tolerated. All physical and sexual abuse is a crime. All child abuse must be reported. ^(R21)

Depending on what type of legal status you have in Canada, you may need to take different steps when leaving a violent relationship.

- **Permanent Resident Status:** If you have permanent resident status and you are separating or divorcing your partner you will not lose your status. You will not be deported, even if you are still sponsored by your spouse or partner. You are not expected to stay in an abusive relationship in Canada, and you have the right to leave your partner because of [abuse](#). ^(R34)



- **Conditional Permanent Resident Status:** If you have [conditional permanent resident](#) status and you are being abused or neglected by your partner you are not expected to stay with your partner.

You can request an [exception](#) to the conditions on your status if your relationship breaks down because your sponsor abuses or neglects you, your children or a relative who lives in the home with you, or if your sponsor fails to protect you, your children or a relative living with you from abuse or neglect by another person related to the sponsor.

You can request an [exception](#) to the conditions on your status at any time during the two year conditional period by calling the Citizenship and Immigration Call Centre at **1-888-242-2100**. Any information you provide will be kept confidential. ^(R21)

To apply for the exception, you first have to leave the relationship. When you contact an immigration officer, you will have to give as much information as you can to prove the [abuse](#) or neglect.

Some examples of different types of evidence include:

- Police reports
- Medical reports
- Letters from a women's shelter worker or other social support person
- Court documents
- Photographs, emails, voicemails
- Letters or sworn statements from witnesses

You will also have to prove that you lived in a genuine relationship with your sponsor until the relationship ended because of the abuse or neglect. Some ways to prove this are:

- Important documents that show your address was the same as your sponsor (driver's license, health card, utility bills)
- Shared financial statements (bank accounts, credit cards, lease or ownership of property)
- Letters from people who knew you as a couple (R10)

For more information on applying for an **exception** to your conditional permanent resident status you can visit the Government of Canada website: **Information for Sponsored Spouses and Partners.**

If you are going to request an **exception** to the two year period of **conditional permanent residence** you should contact a lawyer to help you.

- **You have no status or your application for status is still being processed:** If your permanent resident status application has not been approved yet, you have no status, or your immigration status is at risk, you should contact a lawyer as soon as you can so that they can advise you on your options.

A **local women's shelter or transition house** may be able to help you and put you in contact with resources in your area.

You may be able to make an application for permanent residence based on **humanitarian and compassionate grounds** in this situation.

How are Humanitarian and Compassionate applications different from Refugee claims?

Humanitarian and Compassionate Applications

A **humanitarian and compassionate application (H&C application)** is an application for permanent residence in Canada. In general, people must apply for permanent residence from outside Canada. In some cases, it is possible to ask Immigration, Refugees and Citizenship Canada to make an



You cannot make a **Humanitarian and Compassionate Application** and a **Refugee Claim** at the same time. If your refugee claim fails, it may be 1-5 years before you will be allowed to make an H&C application. It is important you get legal advice about the best option for you.

exception to this rule and to allow the applicant to apply for permanent residence in Canada for humanitarian and compassionate reasons. (R4) Making an H&C application does not protect you from being deported or give you temporary resident status. You should start your application and request any **exemptions** as soon as you need it, and before deportation proceedings have been started against you if possible.

There are two stages of approval. A successful applicant will be:

1. Allowed to apply from within Canada for permanent residence based on humanitarian and compassionate reasons; *and*
2. Approved for permanent resident status in Canada. (R4)

As an applicant, you can give any reasons you believe will support your application. In deciding whether the reasons are strong enough, Immigration, Refugees and Citizenship Canada considers the following:

- If you had to leave Canada, would you face hardship that would be “**unusual, undeserved or disproportionate**”? For example, would you face hardship that would be unfair or extreme in your situation?
- Is there a child who would be directly affected if you had to return to your home country? What is in the child’s best interests?
- Have you established yourself successfully in Canada?

An H&C applicant must meet all the requirements for permanent residence. Or you must ask for **exceptions** to any requirements you do not meet. These requirements include health standards, a clean criminal record check and the ability to support yourself financially. If you do not meet all the requirements, or if you have a family member who does not meet the requirements, you may not be able to get permanent resident status.

A successful H&C applicant becomes a permanent resident. Unlike a protected person, you do not risk losing your permanent resident status only because you travel to or get a passport from your country of nationality.^(R3)

When making an H&C application, be sure to take your time and include all of the best evidence. Immigration, Refugees and Citizenship Canada usually make their decision based on your written application alone without granting you an interview.^(R3) You should consult with an immigration lawyer to help you before filing.

For more information on applying for permanent residence on humanitarian and compassionate grounds visit Immigration, Refugees and Citizenship Canada’s website: **How to make an application for permanent residence based on humanitarian and compassionate grounds**. You can also find more resources on Community Legal Education Ontario’s website under “**Immigration and Refugees**.”

Refugee Claims

A **refugee claim** made in Canada is decided by the Immigration and Refugee Board (IRB). As a claimant, you must prove to the IRB that you are either a **Convention refugee** or a **person in need of protection**. If your claim is successful, you are found to be a **protected person** and can apply for permanent residence.

A **Convention refugee** must show a well-founded fear of being persecuted based on at least one of these things:

- race
- religion
- nationality
- political opinion
- membership in a particular social group (For example, you might belong to a social group based on your gender, sexual orientation, or relationship to a family member who is politically active.)

A **Convention** refugee may be afraid of being persecuted either by government authorities or others. A claimant who fears persecution by others must show that your government cannot or will not protect you.



You are a **person in need of protection** if you are someone who would likely face at least one of these things if forced to return to your home country:

- torture
- a risk to your life
- a risk of cruel and unusual treatment
- a risk of cruel and unusual punishment

If the claim is based on one of the last three situations of risk, you must show **all of the following**:

- Your own government will not adequately protect you.
- The risk affects you personally. It is not a general risk faced by others in your country. For example, the risk is not the result of a famine or civil war.
- The risk is not the result of laws, such as being punished for committing a crime, unless these laws do not meet international standards.
- The risk is not caused by your country being unable to give you the medical care you need, unless this is because of persecution or discrimination.

You must also show that there is no place in your country that you could get to safely, where you would be free from the risk that you face, and where it would be reasonable to expect you to live. This is called the “**internal flight alternative**.”

As a successful refugee claimant, you can apply for permanent residence and will not have to meet all of the usual requirements. For example, you do not have to show the ability to support yourself financially and you do not have to meet all the usual health standards. It does not matter if you have a family member who does not meet all the requirements.

As a successful refugee claimant, you get the status of a protected person and will, in most cases, also become a permanent resident. But even if you lose your status as a permanent resident, you can only

be forced to leave Canada in limited circumstances. This is because you still have the status of a protected person. In most cases the law does not allow a **protected person** to be sent back to a country where you would be at risk.

You could lose your status as a **protected person** and permanent resident if you voluntarily go back under the protection of your country of nationality. This could happen if you travel to or get a passport from that country. You could then be forced to leave Canada. ^(R3)



For more information on making a refugee claim from inside Canada, see Immigration, Refugees and Citizenship Canada's website: <http://www.cic.gc.ca/english/refugees/inside/index.asp>. There is more information on refugee claims at <http://refugee.cleo.on.ca/en/refugee-rights-ontario>.

Special Issues: Immigration Status

Can a parent be deported without their child?

A parent can be deported without their child in some circumstances. Where the child is a Canadian citizen, Immigration leaves it up to the parent to decide whether or not to take your child if ordered to leave Canada.

But, you can take the child with you **only if there is no family court order preventing this**. If there is a court order for joint or sole custody with the other parent or another individual, you cannot take the child with you.

The Canadian child has a right to remain in Canada, but the child does not have a right to have their parent remain in Canada if the parent does not have status in Canada and has been ordered deported.

In most cases, even if the child is a Canadian citizen, the parent will choose to take the child with them, as they do not want to be separated from the child and, often, there are not satisfactory arrangements that can be made for the child's care in Canada. Occasionally, a parent will leave the child with a trusted relative if they feel the child will be better off in Canada and they hope to be able to return in the future.

If you choose to take your Canadian child with you when leaving, Immigration will facilitate your removal at the same time.

Can I request a deferral of deportation while I work out family law matters and arrangements for my children?

Immigration will also delay your removal from Canada if you have to obtain a passport or travel document for the child, but Immigration will not postpone removal indefinitely for this reason.

If you have been to family court, and there is a final or interim order granting joint custody, access (visitation) to another parent or relative, or a supervision order, it is possible to request a deferral of your deportation from Canada. The request is made in writing to the Canada Border Services Agency (CBSA), the agency responsible for arranging deportations from Canada). The request would

include details of the family court proceedings and would state that removal of the mother from Canada would be in breach of the family court order.

For example, if the mother and other parent are separated but they share joint custody or the other parent has regular access (visitation) with the child, it is possible to request a deferral of the woman's removal by stating that removal of the woman and child from Canada (and from the other person with joint custody) would be in breach of the family court order.

Removal officers have limited discretion and can only defer in exceptional circumstances, including situations involving safety, risk to life, health concerns or a pending H & C application. Officers can also consider the immediate best interests of children, such as the need to complete the school year before removal from Canada.

Generally speaking, the longer the family court order has been the status quo, the greater the chance of success for a request to the CBSA to defer removal. As well, the parent usually has to have an application for permanent residence pending to succeed with a deferral request, most likely an H & C or spousal sponsorship application, since the existence of a family court order or proceedings will not defer removal indefinitely.

It is very important that a parent with no status in Canada who has a family court order about a Canadian child or is in the process of making an application to court speak to an *immigration lawyer who understands family law as soon as possible*.

Making an application to family court without having made an application for permanent resident status (most often an H & C application) can be seen with skepticism by both Immigration and the family court. It makes sense that in order to make an application to family court for custody of a Canadian child, you also have to demonstrate that you are taking steps to obtain your own status so that you can remain in Canada. ^(R31)

9

Finding Help and Information

Police or RCMP	Can help you assess your safety and take action against someone committing a crime.	(911 in an emergency)
Directory of Services for Victims of Abuse	Can help victims of intimate partner violence find helpful services and programs in a crisis, and over the long term.	Online: www.legal-info-legale.nb.ca/en/Directory_of_Services_for_Victims_of_Abuse
Public Legal Education and Information Service of New Brunswick (PLEIS-NB)	Can provide general information about the law, the legal system, and your rights.	Website: www.legal-info-legale.nb.ca/ Toll-Free Telephone: (506) 453-5369 E-mail: pleisnb@web.ca
Family Law NB	Can offer general information and resources about family law in New Brunswick.	Website: Family Law NB www.familylawnb.ca/ Telephone: 1-888-236-2444 Email: info@familylawnb.ca
Victim services	Can refer you to counselling and tell you about programs and services for victims of crime.	Website: http://www2.gnb.ca/content/gnb/en/departments/jps/public_safety/content/safety_protection/content/victim_services.html Bathurst.....547-2924 Burton.....357-4035 Campbellton.....789-2388 Edmundston.....735-2543 Fredericton.....453-2768 Grand Falls.....473-7706 Miramichi.....627-4065 Moncton.....856-2875 Richibucto.....523-7150 Saint John.....658-3742 Shediac.....533-9100 Shippagan.....726-2417 St. Stephen.....466-7414 Tracadie-Sheila.....394-3690 Woodstock325-4422
Crisis lines	May be able to help with crisis intervention, suicide prevention and refer you to helpful services.	Chimo Helpline... Toll Free 1-800-667-5005

Transition houses	Operate 24 hours a day, 7 days a week and can provide shelter, information and referrals for women who are victims of spousal abuse.	Bathurst.....546-9540 Campbellton.....753-4703 Edmundston.....739-6265 Fredericton.....459-2300 Gignoo (Fredericton).....458-12361-800-565-6878 Miramichi.....622-8865 Moncton.....853-0811 Saint John.....634-7570 Kent County.....743-1530 Sussex.....432-6999 Tracadie.....395-1500 St. Stephen.....466-4485 Woodstock.....325-9542
Family Violence Websites	Can explain the types of abuse victims might face and refer you to services	PLEIS-NB Abuse and Violence publications Love Shouldn't Hurt – www.gnb.ca/violence
Mental health offices	Can offer information or counselling on depression, stress, and mental health issues.	Search the Yellow Pages .
Multicultural and immigrant-serving organizations	May be able to provide information and refer you to helpful services	See the New Brunswick Multicultural Council website for a listing of multicultural and immigrant serving groups in your area.
Cultural Groups	Can offer support, friendship, access to resources and services for newcomers	Ethno-specific organizations: Fredericton area Ethno-cultural organizations: Moncton area Ethno-cultural associations: Saint John area
Immigration, Refugees and Citizenship Canada	Can answer questions on immigration status and process, and provide information on the <i>Immigration and Refugee Protection Act</i> .	Website: www.cic.gc.ca/english/ Telephone: 1-888-242-2100
New Brunswick Legal Aid Services Commission	You may qualify under the legal aid program for free or discounted assistance with certain family or criminal matters.	Website: legalaids.nb.ca/en/index.php Bathurst.....546-5010 Campbellton.....753-6453 Edmundston.....735-4213 Fredericton.....444-2777 Miramichi.....622-1061 Moncton.....853-7300 Saint John.....633-6030 Tracadie-Sheila.....395-1507 Woodstock.....328-8127

New Brunswick Private Lawyers	Can offer legal advice and representation.	Search the Yellow Pages or New Brunswick Law Society Member Directory for immigration or family law lawyers in your area.
People you trust	Family, friends, doctor, or religious advisor may be able to offer emotional and practical support.	
Hospitals	Can offer emergency medical assistance and specialized medical testing and procedures.	Find a hospital or clinic
Family doctor or public health nurse	Can provide basic healthcare, prescriptions, vaccinations and referrals to specialists.	Find a family doctor Find an After-hours or Walk-in Clinic
Family counsellors	Can provide supportive services to individuals in times of crisis such as specialized information and counselling to children, adults, couples, and/or victims of family violence.	
Religious Organizations		
Support groups		

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R8) Source: the *Divorce Act*, sections 6 and 20.

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Glossary

Abduct – to take someone by force or deception; to kidnap. Parental child abduction is a crime in Canada. (Ch. 4, pg. 22, 23, Ch. 1, pg. 7)

Abuse – when another person hurts you or treats you badly. Abuse can take many forms, including:

- **Physical abuse** - hitting, pinching, slapping, pushing, punching, kicking, burning, stabbing or shooting you. It may also include threats to cause you harm.
- **Sexual abuse** - unwanted or forced sexual touching or activity.
- **Psychological or emotional abuse** - insulting you, threatening to take your children or have you deported, damaging your belongings, and controlling what you do and who you see.
- **Spiritual Abuse** – not letting you practice your religion or ridiculing your beliefs.
- **Financial abuse** – control over all the money, taking your pay cheque.

(Ch. 1, pg. 7; Ch. 3, pg. 14; Ch. 7, pg. 30, 31, 32, 33, Ch. 8, pg. 35, 36, 37)

Affidavit – a signed written statement that is sworn or affirmed to be true by the person who made the statement in front of someone who is authorized by law to hear oaths and affirmations (Ch. 1, pg. 4; Ch. 3, pg. 13, 16, 17)

Affidavit of service – a signed written statement that is sworn or affirmed to be true by the person who made the statement; it is used to prove that another document was served (delivered) properly (Ch. 3, pg. 16)

Alienate – to make indifferent or hostile, to cause to be withdrawn or isolated (Ch. 7, pg. 32)

Arranged Marriage - when both parties agree to marry the partner suggested by their parents or religious community. The couple are not pressured or threatened to marry. (Ch.1, pg. 6, 7)

Assault – harmful, unwanted, physical contact with another person (Ch. 7, pg. 31, 32, 33)

Authenticity – not copied or fake; genuine; real (Ch. 4, pg. 21)

Best interest of the child – a legal consideration the judge must have when making decisions that affect children. In determining custody, the judge may look at the needs of the child (mental, emotional and physical health), the effect a disruption would have on the child, the love, affection, and ties between the child and the parent, the plans you have to care for the child, the stability of your home, the child's culture or religion, the views and preferences of the child. (Ch. 2, pg. 10; Ch. 4, pg. 20, 21, 29; Ch. 8, pg. 38, 40)

Bigamy - having two spouses (see also “plural marriage”) (Ch. 1, pg. 4, 5)

Binding – can be enforced by a court of law (Ch.1, pg. 6; Ch. 3 pg. 14)

Breach - an act of breaking or failing to observe a law, order or agreement (Ch. 4, pg. 24, Ch. 8, pg. 40)

Bridewealth - the transfer of goods from the groom or his relatives to the family of the bride. (Ch.1, pg. 6)

Capacity to marry – being legally permitted to be married (Ch.1, pg. 3)

Child support – payment of money made by a parent of a child to the person the child is living with to contribute to the financial costs of raising the child (such as feeding, clothing, housing, and otherwise providing for everyday needs). The New Brunswick government has guidelines for the appropriate amount of child support based on income earned by the payer, where the payer lives, and the number of children. (Ch. 2, pg. 10; Ch. 3, pg. 14, 18; Ch. 5, pg. 25, 27)

Collaborative Law – a process of negotiating an agreement where both you and your ex-partner hire your own lawyer with collaborative training, and all work as a team to understand each other's needs and come up with the best solution for both you and your children. As part of this process, you both contract that you will not go to court and will work together to achieve an agreement on all issues. (Ch. 3, pg. 15)

Commissioner of Oaths – a person who has legal authority to witness you make an oath or affirmation (Ch. 3, pg. 16; Ch. 4, pg. 21)

Common-law – a couple lives together as intimate partners, but are not legally married to each other. Same-sex common-law couples are recognized and have the same rights as opposite sex common-law couples in New Brunswick. Common-law couples do not have the same rights as married couples, but they are often granted certain rights and obligations under different provincial and federal laws. For immigration purposes, Immigration, Refugees and Citizenship Canada defines a Common Law Partner as a person who has been living with another person in a conjugal relationship for at least one year. The term refers to opposite-sex and same-sex relationships. (Ch. 1, pg. 4, 6, 8; Ch. 2, pg. 9, 10, 11; Ch. 3, pg. 17, 18; Ch. 5, pg. 26; Ch. 6, pg. 28)

Conditional permanent residence status – a status that applies to spouses, common-law or conjugal partners who are in a relationship with their sponsor for two years or less and have no children in common with their sponsor at the time of the sponsorship application. The condition requires the sponsored spouse or partner to live together in a conjugal (marriage-like) relationship with their sponsor for a period of two years after the day on which they became a permanent resident. Spouses who are being abused or neglected may request an exemption from this condition. (Ch. 2, pg. 11; Ch. 3, pg. 18, Ch. 8, pg. 34, 35, 36, 37)

Conforms – complies with rules, standards or laws (Ch.1, pg. 6)

Conjugal relationship - marriage-like relationship, that includes a physical relationship where you depend on each other, there is permanence to the relationship, and there is a level of commitment the same as a marriage or common-law partnership. For immigration purposes, Immigration, Refugees and Citizenship Canada has specific requirements to be considered a conjugal partner. It is only for partners in situations beyond their control that keep them from living together so they would count as common-law partners or spouses, such as sexual orientation where same-sex marriage is not permitted, marital status where divorce is not permitted, or an immigration barrier. (Ch. 2, pg. 11, Ch. 8, pg. 34, 35)

Consent – giving permission or agreement for something to happen (Ch. 1, pg. 4, 7; Ch. 4, pg. 21, 22; Ch. 7, pg. 30, 31)

Contradict – to be in conflict with (Ch.1, pg. 6, Ch. 6, pg. 29)

Contribution – what you gave to a common supply or purpose (Ch. 6, pg. 28)

Deferral – see postpone (Ch. 4, pg. 22, 24; Ch. 8, pg. 40)

Degrading – humiliating, lowering a person's dignity (Ch. 7, pg. 32)

Deportation – to be removed from the country by legal authority (Ch. 4, pg. 24; Ch. 7, pg. 33, Ch. 8, pg. 34, 37, 40)

Disclosure – the action of making new or secret information known (Ch. 6, pg. 29)

Divorce – an order given by a court that ends all your rights and obligations as a married person (Ch. 1, pg. 3, 4; Ch. 3, Pg. 12, 13, 14, 16, 17; Ch. 4, pg. 20, 21; Ch. 5, pg. 25, 26, 27; Ch. 8, pg. 34)

Divorce, no fault - when couples get divorced, they do not have to show in court that someone caused the marriage to end. There is no advantage in placing blame on the other spouse for causing the marriage to end. (Ch. 3, pg. 13)

Divorce, uncontested –if you and your spouse have settled all your family law issues, you can request an uncontested divorce be granted by paperwork alone, without making an appearance in court (Ch. 3, pg. 13)

Domestic Contract – a legally binding agreement reached between two people living together in a family relationship, which outlines their particular rights and responsibilities. A domestic contract can be made before a marriage (prenuptial agreement, marriage contract), during a relationship (cohabitation agreement), or after the relationship breaks down (separation agreement). (Ch. 1, pg. 6; Ch. 3, pg. 14, Ch. 4, pg. 19; Ch. 6, pg. 29)

Dowry - the property and/or chattels (items) brought into the marriage by the wife through her family, or, the property given to a wife and/or her family by her husband in return for her marriage to him. (Ch.1, pg. 6)

Enforce – compel (or force) obedience, to make someone obey (Ch. 1, pg. 6, Ch. 3, pg. 15; Ch. 4, pg. 20, 21, Ch. 5, pg. 26, 27; Ch. 6, pg. 29)

Estimate – to form an approximate or rough judgment or opinion regarding the worth, amount, size, weight, etc., of something; to calculate approximately (Ch. 5, pg. 26)

Exception (see exemption)

Exemption (or exception) – being free from an obligation, condition or liability imposed on other people (Ch. 3, pg. 22, 23; Ch. 8, pg. 36, 37, 38)

Facilitate – to make an action or process easy, or easier (Ch. 4, pg. 23; Ch. 8, pg. 40)

Female genital mutilation - all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons (Ch. 7, pg. 33)

Forced marriage - when someone is pressured, or threatened with harm to marry someone they do not want to. Often the pressure or harm comes from a family member or their religious community. (Ch.1, pg. 7, 8)

Forfeit – to lose or be deprived of (property or a right or privilege) as a penalty for wrongdoing. (Ch. 6, pg. 29)

Harassment – unwanted physical or verbal behaviour that offends you that generally persists over time. (Ch. 7, pg. 31, 32)

Indefinitely – for an unlimited or unspecified period of time (Ch. 4, pg. 24)

Inland spousal sponsorship - You and your sponsor make the application for permanent residency together and it is processed in Canada under the Spouse or Common-law Partner in Canada class. If you separate from your spouse during this process,

you are no longer eligible for permanent residency on this ground. (Ch. 8, pg. 35)

Joint Legal Custody - Both parents share the responsibility to care for the child. The child may spend an equal amount of time living with each parent or may spend the majority of the time living with one parent. Both parents work together to make all major decisions about the child's upbringing. (Ch. 2, pg. 10; Ch.4, pg. 19, 21, 23, 24; Ch. 8. pg. 40)

Jurisdiction -the right, power, or authority to administer justice by hearing and determining controversies; the territory over which that authority is exercised. (Ch. 4, pg. 21; Ch. 5, pg. 27; Ch. 6, pg. 28, 29)

Legitimacy – the lawfulness, something that is permitted (Ch.1, pg. 6)

Liabile – legally responsible (Ch. 5, pg. 26)

Mahr (also spelled Maher, Mohr and Mehr) - a Muslim tradition in which an agreement is entered into prior to marriage concerning a sum of money that a groom promises to pay his bride in the event of a marriage breakdown or death. (Ch. 6, pg. 29)

Marriage certificate – a document that proves you are married. A marriage certificate is typically signed on the day you were married, or provided by government administration. If you were married in New Brunswick, it can be ordered from any Service New Brunswick Centre. (Ch. 1, pg. 6; Ch. 3, pg. 16)

Marriage contract – also called a “prenuptial agreement;” an agreement that a couple may enter into before their marriage or during their marriage while living together. In the contract, they define their rights and obligations during marriage, and upon death, divorce or separation. (Ch.1, pg. 6)

Marriage of convenience - A marriage or common-law relationship that is entered into for the sole purpose of sponsoring a person to immigrate to Canada (Ch.1, pg. 6)

Marriage licence – document from Service New Brunswick permitting you to marry (Ch. 1, pg. 3, 4)

Marriage Official – person with legal authority to solemnize a marriage (conduct a marriage ceremony) (Ch. 1, pg. 4, 5)

Mediation – a trained neutral person will work with you and your ex-partner together to help you decide on an agreement that is reasonable for both of you. (Ch. 3, pg. 15; Ch. 4, pg. 20)

Notary Public – all lawyers in good standing with the New Brunswick Law Society are also Notary Publics. They can witness your signature on important documents that require a Notary Public and can witness your oath or affirmation (Ch. 3, pg. 16; Ch. 4, pg. 21)

Parenting plan - a document where parents outline how they will parent and make decisions about their children after separation. (Ch. 2, pg. 11; Ch. 3, pg. 15; Ch. 4, pg. 20;)

Pleadings – formal statements in legal documents that inform the judge of a person's position in the case, and what that person would like the court to do for them (Ch. 3, pg. 16)

Plural marriage – having more than one spouse (see also: bigamy and polygamy). (Ch. 1, pg. 4)

Polygamy - having more than two spouses (Ch. 1, pg. 4, 5)

Postpone/Defer – arrange for something to take place at a later time than originally scheduled (Ch. 4, pg. 24; Ch. 6, pg. 29; Ch. 8, pg. 40)

Prenuptial agreement – also called “a marriage contract;” an agreement that a couple may enter into before their marriage or during their marriage while living together. In the contract, they define their rights and obligations during marriage, and upon death, divorce or separation. (Ch.1, pg. 6; Ch. 3, pg. 14)

Process server – someone who professionally serves (delivers) documents to the other party in a legal dispute, and will provide you with proof that they followed all of the court rules on service (delivery of legal documents). (Ch. 3, pg. 16)

Protected person – someone who has made a successful application for refugee status as a Convention refugee or a person in need of

protection. A protected person can apply for permanent residence status without meeting the usual requirements. (Ch. 8, pg. 38, 39)

Reciprocity – a mutual exchange. New Brunswick has agreements with all Canadian provinces and territories and with several foreign countries to recognize each other's family support laws. (Ch. 5, pg. 27)

Revoke - to take back or withdraw; annul, cancel, or reverse; rescind or repeal (Ch. 5, pg. 26)

Separation - when a person has left a relationship or a marriage because they wish to end the relationship. You do not need an agreement or court document to be separated. (Ch. 3, pg. 12, 13, 14, 20, 21; Ch. 6, pg. 28)

Separation Agreement – see domestic contract (Ch. 3, pg. 20, 21; Ch. 4, pg. 32, 34)

Shared Custody - The children spend equal or nearly equal amount of time living with each parent. This is typically referred to as joint or shared physical custody. (Ch.4, pg. 19)

Social assistance (sometimes called welfare) - Financial assistance is given to people who have no other income to meet their basic needs of food, clothing and shelter. By law social assistance is the payer of last resort. This means that all other income must be considered when determining how many dollars will be provided (Ch. 3, pg. 17, 18; Ch. 8, pg. 40)

Sole Custody - One parent has the legal right and responsibility to care for the child. The parent makes all the major decisions about the child's education, religion, health care, and general upbringing. The child lives with the parent with sole custody the majority of the time. (Ch. 4, pg. 19, 21, 23)

Solemnization of marriage – conducting a legal marriage ceremony, religious or civil (Ch.1, pg. 3)

Split Custody - Each parent has custody of one or more of the children. This means that each parent has one or more children living with them more than 60% of the time in the year. (Ch.4, pg. 19)

Spousal support - money that is paid by one spouse to the other spouse after the relationship has ended. A person may request spousal support after the relationship has ended if he or she is unable to support themselves or was financially dependent on the former spouse/partner. (Ch. 1, pg. 5; Ch. 2, pg. 10; Ch. 3, pg. 12, 14, 18; Ch. 5, pg. 25, 26, 27)

Stalking – pursuing or harassing someone in an aggressive, threatening, and unwanted way (Ch. 7, pg. 31)

Statement of Marriage – document given to you by your wedding officiant as proof of marriage (Ch. 1, pg. 5)

Status quo – the existing state of affairs (ch. 4, pg. 24)

Support Enforcement – the Family Support Order Services Office (OSE) will collect child and/or spousal support payments for you. If you are having problems collecting payment, you should speak to an Enforcement Officer. They have authority to take certain actions to help get your money, such as getting money directly from the payer's employer or bank account, or suspending the payer's passport or licences. (Ch. 3, pg. 15)

Surname – a name common to all family members, typically passed down to children of the family; often called the "last name" (Ch. 1, pg. 5)

Undertaking – a serious promise or oath to do a certain act (Ch. 3, pg. 17)

Undue hardship - hardship that is "unusual, undeserved or disproportionate," or unfair and extreme in your situation. Factors that might contribute to hardship include: how established you are in Canada, your ties to Canada, including family ties, what would happen if your family members were separated, physical or mental health concerns, family violence, the hardship you would face in your own country, such as lack of health care, poverty, discrimination based on religion, gender, or other grounds, laws, practices or customs in your country that might put you at risk of abuse or social stigma. (Ch. 8, pg. 38)

Notes

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