

Family Law Matters

For Immigrants in New Brunswick

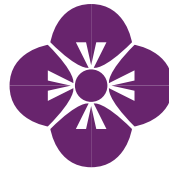


separation | divorce | marital property | custody | access | support | family violence | immigration status

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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www.familylawnb.ca
www.youthjusticenb.ca

This booklet 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.



Also available in French, Korean, Mandarin and Arabic.
Aussi disponible en français, coréen, mandarin et arabe.

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1 Introduction

Most immigrants arriving in New Brunswick are married and have children. In Canada, about 40% of marriages end in divorce. Over time, it is likely that some immigrant families will also experience the breakdown of their marriage or common-law relationship.

Separation and divorce is a stressful time for anyone. Many people are unsure what steps they must take, if any, to end the relationship. Barriers like poverty, unemployment, and illiteracy can stop people from finding out about their rights, knowing their options, and taking action. Immigrants may face additional barriers as set out in the orange text boxes at the start of each topic.

The purpose of this booklet is to help immigrants in New Brunswick understand the family justice system.

The booklet explains common family law issues. It also touches on family violence and immigration status.

Finally, the booklet makes referrals to our detailed handbook on *“Family Law and Immigrants”* and various sources of accurate legal information. It provides links to many family law services and support services offered by immigrant-serving groups or community agencies.

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 short booklet. We have tried to generalize by suggesting some ways that socio-cultural beliefs could impact family law situations. This is not intended to stereotype the richness and diversity of immigrant cultures.



2 Separation from a Common-Law Partner

Unmarried couples may not have a recognized status in some cultures.

Family and friends may offer advice about legal rights in relation to children, support and property in Canada that are wrong.

Separation from a Common-Law Partner

Unlike a marriage, which requires legal measures to end it, a common-law couple just has to stop living together.

If you live together, but are not married, then you are in a **common-law** relationship.

If both partners agree, they can write down each person's rights and

obligations in a domestic contract (also called a separation agreement).

Common-law couples have the same obligation to support their children as legally married couples.

Generally, common-law couples do not have automatic rights to property division like married couples. If they can not agree, they can ask the court to decide on a division of property. If they have lived together long enough, they can also ask for a share of their partner's

provincial pensions, Canada Pension, and Old Age Security.

In New Brunswick dependant common-law partners can ask for spousal support if they lived together for three years, or one year if they had a baby. They must apply to the court within one year of separation.


Immigration, Refugees and Citizenship Canada recognizes you as a common-law partner if you have lived together for one year.


Helpful Resources

Check out these resources on common-law relationships on the Family Law NB website, www.familylawnb.ca:


 *Living Common-Law: Rights and Responsibilities*

 *When Couples Separate – Rights and Responsibilities*

 *Domestic Contracts*


 *Custody and Access*

 *Child Support*

 *Spousal Support*



To speak to someone about the law in New Brunswick call the toll-free **Family Law Information Line:**

 **1-888-236-2444**

3 Separation from a Spouse



Sometimes, leaving a spouse can mean leaving your ethnic community.

It can be hard if you have nowhere to go.

Newcomers may feel isolated. They may not speak English or French.

Immigrant families may be reluctant to split up because of cultural beliefs that value forgiveness and sacrifice to keep the family together.

They may place more value on **collective rights** than the **individual rights** found in Canadian law.

Separation from a Spouse

Before getting divorced, you must live separate and apart from your spouse for at least one year. This period is called “separation.”

You do not have to take any further action to make your separation “legal”.

It’s a good idea to get a “separation agreement” or “court order” that formally sets out each person’s rights and obligations.

If you remain separated from your spouse for a long time without applying for a divorce, it is also a good idea to make or update a will. If you don’t, your property will be distributed in the same way it would if you were still together.


You can file an agreement with the court so a judge can enforce it if one person is not following the conditions.




Separation agreements typically deal with custody and access of the children, support and division of property.

Helpful Resources

To find out about your **rights and responsibilities** to each other and to the children, check out the Family Law NB website at www.familylawnb.ca:

 *Custody and Access*

 *Child Support*

 *Spousal Support*

 *Marital Property*

 *When Couples Separate*

 *Domestic Contracts*

New Brunswick Multicultural Council (NBMC)
www.nb-mc.ca/members 506-453-1091

The NBMC website lists contact information for all the multicultural associations, immigrant serving agencies, and newcomer agencies across the province. You can often turn to these agencies for information and emotional support.

A close-up photograph of a woman with long, wavy dark hair and a green shirt, looking towards a man whose profile is visible on the right side of the frame. The background is softly blurred.

4 Divorce

Fear of divorce may be rooted in religious and cultural values.

In some cultures only men can initiate divorce proceedings. If a woman divorces, she may never again be able to visit her family.

Divorced women may have a lower status. They may be financially dependent and leaving could place a burden on their own families.

A Canadian divorce may not be recognized in the couple's country of origin.

Wives, especially if they are still in the sponsorship process, may be controlled with threats of divorce.

A person who divorces by "traditional" means may think they are free to remarry.

Divorce

The rules for divorce in Canada are in the ***Divorce Act***. Either spouse can ask for the divorce.

You do not have to show who is at fault. There is no advantage to showing fault.

Most couples in Canada show their marriage has broken down by living separate and apart for one year.

To file your divorce in New Brunswick, you or your spouse must have lived there for **one year** before you apply.

It doesn't matter if you were married in another province or another country – you can divorce in New Brunswick.

Even if your spouse does not agree to the divorce, you can ask the judge to give you a divorce.

Before you can get divorced, you must settle your family law issues such as financial support of the children according to the *Child Support Guidelines*.

You cannot get divorced behind your

spouse's back. Your spouse must have the chance to see the divorce paperwork you file and make a response.

A long period of separation does not automatically give you a divorce.

A religious ceremony or annulment does not change your "legal" marital status.

It is illegal in Canada to get married to another person if you have not "legally" ended the previous marriage. You may enter into a common-law relationship while still married.

Helpful Resources

For information on divorcing in New Brunswick, see ***Doing Your Own Divorce in New Brunswick***. This guide walks you through the process of doing your own uncontested divorce, (which means you have settled all your family law matters).

You can also find this guide at **www.familylawnb.ca** or you can buy it at the courthouse or from any Service New Brunswick Office.


You can get the forms to apply for a divorce in New Brunswick:

- at the **courthouse**
- **Service New Brunswick (SNB)**
- download at **www.familylawnb.ca**

If you cannot settle your family law issues and have to go to court, you should get legal advice.

Family Legal Aid in New Brunswick does not handle divorce or property division. However, they can handle custody, access and support matters for people with low-income. For more information go to **www.legalaid.nb.ca**.

You can also get up to two hours of free legal advice by arranging to meet with a **Family Advice Lawyer**.

 Call toll-free **1-855-266-0266**.



5 Marital Property and Debt

There are many cultural beliefs about spouse's rights to property both during and after the marriage.

For example, cultures that practice bridewealth may believe that if a wife seeks the divorce, she loses her right to the bridewealth unless she can show her husband is at fault.

Such practices may not be consistent with the "no-fault divorce" regime in Canada.

Marital Property and Debt

In New Brunswick, the **Marital Property Act** says how property is to be divided when a marriage ends. This Act does not apply to common-law couples.

This Act recognizes that legally married spouses contribute equally to the marriage. A spouse deserves an equal division of marital property upon separation or divorce. Spouses also have an equal responsibility for marital debt.

Marital property is anything either spouse

brought into the marriage or purchased during the marriage.

Marital property includes property owned by one or both spouses if it is used to pay for family expenses such as shelter, transportation, household, educational, recreational or social purposes.

Pensions are also seen as marital property and can be divided at separation.

Spouses do not have to share property that is not considered marital property.

Spouses can agree to divide their property according to cultural practices if they both agree. This should be written in a domestic contract signed by a lawyer.





Once a divorce is final, there is only 60 days to divide the marital property.

If the marital property is in another country, it is important to get legal advice on how the Canadian legal system might apply.



Helpful Resources

For more information on **marital property and debt in New Brunswick** see the following booklets at www.familylawnb.ca:

-  *Marital Property in New Brunswick*
-  *When Couples Separate – Rights and Responsibilities*
-  *Family Law and Immigrants*
-  *Domestic Contracts*



6 Spousal Support

In some cultures, a spouse's entitlement to support may be linked to "blame". For example, if the wife had an affair she may not be able to ask for support.

If a marriage breaks down before the three year sponsorship period is over, the sponsor may feel he does not have to pay spousal or child support.

Spousal Support

Spousal support is money paid by one spouse to the other spouse after the relationship has ended.

Spousal support is not automatic. A spouse asking for support must prove he or she is “entitled” to it.

An ex-spouse or partner is expected to work and earn money if they are able to.

A common-law partner can ask for support, but the couple must have lived together for 3 years or have had a child together.

Common-law couples, unlike a married couple, must file for support within a year of separation.

Spousal support payments are based on Justice Canada’s *Spousal Support Advisory Guidelines*. Lawyers and judges must consider many factors to figure out the appropriate range of support and how long it will last.



Helpful Resources

For more information on finding a lawyer, how lawyers or courts determine entitlement to spousal support, and the factors they look at, see these resources at www.familylawnb.ca:



Spousal Support



You and Your Lawyer



Family Law and Immigrants

You can view Justice Canada’s ***Spousal Support Advisory Guidelines (SSAG)*** by going to www.justice.gc.ca and clicking on family law, then spousal support.

7 Child Custody and Access



In some cultures, when a family breaks up, by tradition, the children may stay with the father.

In other cases, the children are expected to stay with the mother.

Immigrants may not realize that in Canada both partners have equal rights to custody. A woman might worry she could lose custody because her husband makes more money.

When an immigrant family breaks up, there may be concerns that one parent will take the children back to their country of origin without permission of the other parent (parental abduction).


Child Custody and Access

When parents split up in New Brunswick, they have equal right to the children. Until a court order or agreement says otherwise, the law presumes they have joint custody.

Parents will have to decide where the children live (custody), when the other parent will have the children (access), how decisions about the kids will be made, and child support and so on.


Helpful Resources


For tools to help separating couples make a parenting plan, check out the Justice Canada website at www.justice.gc.ca

 *Making Plans*

 *Parenting Plan Tool*

For more information call the Family Law Information Line at 1-888-236-2444 or see www.familylawnb.ca:

 *Custody and Access in New Brunswick*

 *Family Law and Immigrants*

There are several options for custody. Two of the most common types are:

Sole custody: One parent has the legal right to care for the child and make major decisions. The other parent has access.

Joint custody: Both parents have the legal right to make major decisions about the child together. The amount of time the children spends with each parent can vary.

You can come to an agreement, or you can

get help from **mediators** or **lawyers**.

If you can't agree, you can go to court and ask a judge to decide.

If you are afraid the other parent or family members will take the child out of Canada or hide them, there are steps you can take. Tell Passport Canada you do not consent to your child being issued a passport (if they are Canadian citizens.) Ask them to put your child's name on the Passport Control List.

If you cannot afford a lawyer, contact **Family Legal Aid** at www.legalaid.nb.ca

Legal Aid in New Brunswick does not handle divorce or property division. However, they can handle custody, access and support matters for people with low-income.

For the Sake of the Children


Consider taking this **FREE** program that helps parents understand the legal and emotional aspects of separation and how to cope with them.

 To register call toll-free **1-888-236-2444**.

Preventing parental abduction:

 Call Passport Canada toll-free at **1-800-567-6868** or TTY services **1-866-255-7655**

 **International Child Abduction: A Guide for Left-Behind Parents** at www.travel.gc.ca

 Vulnerable Children's Consular Unit, Foreign Affairs, toll-free in Canada **1-800-387-3129**

8 Child Support



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.

Child Support

Both parents must contribute to the cost of raising their children even if they were not married to each other, or never lived together. In Canada, there is no such thing as illegitimate children.

Across Canada, parents can use the **Child Support Guidelines** to figure out how much the parent without custody must pay.

In New Brunswick child support continues until the child turns 19 (the age of majority). It can last longer if the child is over 19 and is disabled, ill, or in post-secondary education.

The Guidelines set out the basic amount of child support payable. However, the parent with custody may also claim more money for “special expenses”, like braces, day care and so on.

In New Brunswick all orders for child

support are filed with the enforcement service called **Family Support Orders Service** (FSOS).




Parents can file a **separation agreement** with the court to be enforced by FSOS if the payor stops making payments.

If circumstances change, either parent can ask the court to change the support order.



Bankruptcy does not affect the amount of child support to be paid.

Helpful Resources


Federal government resources at www.justice.gc.ca:

-  *Child Support Guidelines: Step by Step*
-  *Child Support Calculator*
(based on the province in which the payor lives)
-  *Child Support Tables (NB)*


Provincial resources from PLEIS-NB at www.familylawnb.ca:

-  *Child Support*
-  *Family Support Orders Service*

Need legal advice or information?

Family Law Information Line:
 **1-888-236-2444**

Make an appointment for 2 hours of **free** advice:

Family Law Advice Lawyer:
 **1-555-266-0266**

As a newcomer you can apply for legal aid for certain family law matters if you live in New Brunswick. You do not have to have Canadian citizenship to qualify.

Family Legal Aid www.legalaid.nb.ca

(Note: Legal aid does not cover any immigration or refugee claims. They cannot help with landlord tenant or social welfare issues, or other civil matters.)



9 Family Violence

Immigrants may be reluctant to report abuse because of cultural values such as forbearance and shame.

Family violence may take on different forms. It could be a mother-in-law or other family members who are abusing her.

Depending on the family's immigration status, a victim may believe that she or her husband, or maybe the entire family, would be deported if the sponsor (husband) were charged with assault.

Speaking to strangers about abuse could bring dishonour to the family.

Leaving a relationship in a foreign country may be a terrifying choice for many immigrants, especially women.

Turning to a social service agency or community professional for help with family problems may seem hard.

Family Violence

There are various terms that may apply to family violence. It might be called wife abuse, spousal abuse, wife battering, or intimate partner violence. Generally it relates to violent and abusive tactics that are used by one person to control their spouse or partner.

Family violence includes physical, sexual, emotional, financial and spiritual abuse.

Abuse can affect anyone, but the majority of victims of family violence are women.


If you need to flee an abusive relationship, you can go to a **transition house**. It is a safe place where you can stay free for a month or more. You can find out about your options. You can bring your children with you.


You will not be deported just because you leave an abusive relationship, however, you may need to take further steps to keep your immigration status up to date. If you are not sure how the separation will affect your status in Canada, you should consult an immigration lawyer.





Helpful Resources

Here are some resources for abused women in New Brunswick at www.legal-info-legale.nb.ca:


 *Information for Abused Women – Dealing with the Police* To find a transition house in New Brunswick, check out **Support Services for Abused Women**.


 *Leaving Abuse– Tips for your Safety* You can also find transition houses in other Canadian provinces at www.sheltersafe.ca.

 *Services for Victims of Crime* **Here are some federal resources about family violence at www.justice.gc.ca:**

 *Am I a Victim of Family Violence?*

 *Am I at Risk?*


 *Spanking and Disciplining Children*

 *Abuse is Wrong in Any Language*

Available in multiple languages.

To find out about services, programs and supports in New Brunswick for women who are victims of family violence visit the PLEIS-NB website at www.legal-info-legale.nb.ca:

 *Directory of Services for Victims of Abuse*

 *Information for Abused Women – Survival Strategies*

To check out the New Brunswick website on family violence go to: www.gnb.ca/violence

10 Immigration Status

Immigrants who were married outside Canada may think they cannot go to court in Canada to resolve family law matters.

A sponsored spouse or partner may be afraid their sponsor will have them deported if they separate or divorce their spouse.

Immigrants may be fearful of the challenges they might face when navigating the family justice system in Canada.



Immigration Status

Immigrants have similar rights to anyone else to use the courts in Canada to deal with their family law issues.

Your spouse, partner or sponsor cannot make you leave Canada once you have permanent resident status.

If a sponsor changes his or her mind about sponsoring you, they must tell the Case Processing Centre in Mississauga (*CPCM-EXTCOM@cic.gc.ca*) before the visa office issues you permanent resident visas.

The person who sponsors someone to come to Canada must sign a sponsorship undertaking. Once you are a permanent resident, your sponsor must continue to support you for three years, even if you separate or divorce.

Immigration, Refugees and Citizenship Canada will not make you leave Canada just because your sponsor wants you to.


If you are an immigrant or refugee with permanent resident status, you cannot be forced to leave Canada simply because you leave your spouse.

If you are not a permanent resident, or if you are a conditional permanent resident, an immigration lawyer can explain how a change in your marital status could affect your right to stay in Canada.




Helpful Resources

For a wealth of information for newcomers to Canada, check out the Immigration, Refugees and Citizenship Canada website at: www.cic.gc.ca/english

 **Telephone: 1-888-242-2100**

For more information on how immigration status can affect issues related to separation or divorce in New Brunswick, see the PLEIS-NB guide on the Family Law NB website (www.familylawnb.ca)

 *Family Law and Immigrants*

Notes

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