



## Legal Guide Through Divorce



Your step-by-step practical guide to the divorce process, providing straight answers to frequently asked questions about separation and divorce.

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# Step 1: Separation

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The first step involved in any divorce is often the most difficult – to separate from your spouse. If you have children, they should remain at the forefront of your concerns. It is prudent to remain as cooperative as possible with your spouse. Not only will this benefit your children, but judges recognize and commend parents who put their children's interests ahead of their own, should your matter proceed to court.

There is an implicit obligation to negotiate fairly and in good faith that permeates the entire legal proceeding, but it should be particularly salient when dealing with the immediate concerns of accommodations, child care and finances. At this juncture, you may wish to consider retaining a lawyer. Family law is incredibly complex which can be particularly confusing to someone already in distress.

Your approach to conflict-resolution at this early stage could set the tone for the entire divorce process. Taking a stubborn or uncompromising approach from the outset could irrevocably impair future negotiations that would have otherwise saved time and significant legal fees.

## Step 2: Legal Advice

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Choosing the right lawyer is one of the most important decisions you will make in your divorce proceeding. Finding a competent lawyer who you trust is important when navigating a most difficult time of your life. Consult your friends and family for recommendations and do your own research.

Drawn-out, messy litigation is tough, but sometimes necessary. Despite common stereotypes, litigation does not have to be fraught with conflict and adversary. Many couples are able to complete separation agreements after negotiating with their respective lawyers only a handful of times. While divorces necessarily change families, we understand that they must still be successful post-separation, albeit in a different form.

***At Nussbaum Law, we actively encourage settlement at all stages of the proceeding.***

# Step 3: Litigation

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If it becomes clear that you and your ex-partner are unable to resolve any or all remaining issues after the initial negotiations, it will be necessary to formally commence the litigation process.

## Application

The Application is a formal court document in which one seeks “relief” from the Court. Custody, access, property division, child and spousal support are common examples of relief sought. In the Application, you set out the basic facts that support your claims. This is your first opportunity to present your story to the Court in a meaningful way. The party who files the Application is referred to as the “Applicant” while the other party is referred to as the “Respondent”. In order for the Application to be legally effective, it must be served on your spouse according to the *Family Law Rules*.

## Answer

Once service of the Application is effective, the “Respondent” will have 30 days to file an Answer (or 60 days if he or she resides outside of Canada). This document allows the “Respondent” to formally respond to the claims made in the Application, or to formally agree with any of the claimed facts. It is also an opportunity for the “Respondent” to bring forward any claims of his or her own.

## Reply

After the Answer is served, the Applicant is afforded 10 days to submit a Reply, which is a chance to respond to any new claims set out in the Answer.

The Application, Answer, and Reply are together referred to as the parties’ “pleadings”. It is critical to seek legal advice before filing any documents with the Court. The Filing deficient pleadings negatively impacts the entire proceeding and the relief you are seeking.

## Step 4: First Appearance

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The First Appearance court date is an informal meeting with a court clerk who ensures that both parties have served and filed the requisite documents to move the matter forward. Once this is satisfied, the court clerk can then schedule a Case Conference before a judge. Lawyers are generally permitted to attend First Appearances on their clients' behalves.





# Step 5: Mandatory Information Program

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Once the formal court process has started, both parties must attend a “Mandatory Information Program” (MIP) before they can proceed any further. The MIP is a two-hour session that provides parties with general information about the court process, including resources for separating couples, alternatives to litigation, and the effects of separation and divorce on children. It is designed to promote settlement early on.

The MIP can be bypassed when the parties are proceeding entirely on consent (meaning that both parties agree on all issues), or where the only claim is for divorce or related costs.

## How do I schedule my MIP Session?

The MIP sessions for both parties are scheduled by the court clerk when the Application is filed, who provides the Applicant with two MIP Notices – one for the Applicant and one for the Respondent. The Applicant must provide the Respondent with his or her Notice.

The MIP can be rescheduled by calling the courthouse, and completed online in some circumstances. After completion of the MIP, you will receive a certificate of attendance, which should be filed with the Court as soon as possible.

# Step 6: Case Conference

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## What is It?

A Case Conference is a mandatory court appearance prescribed by the Rules. The Case Conference is not a hearing, trial, or a motion by any means. It is designed to promote settlement early in the proceedings.

Litigants and their lawyers are encouraged to negotiate with one another prior to and during the case conference, with the hope to find common ground on issues. Where there is an agreement, parties and their lawyers then present themselves before the judge to seek an Order on consent, (often with a draft executed consent). Judges rarely make orders where no such consent exists between the parties.

Where consent cannot be reached, the parties and their lawyers enter the courtroom to “conference” the outstanding issues with the judge. Conferences are typically more informal than the stereotypical court appearance. The Case Conference judge will often comment on the strengths and weaknesses of the parties’ positions and explore ways to settle the issues. Often, stubborn litigants are given a realistic perspective on their position when a judge suggests his or her position is unsustainable.

*The Case Conference presents an opportunity to determine any outstanding disclosure that needs to be provided by either party, and to schedule the next steps in the proceedings.*



# Step 7: Motions

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## What is a Motion?

Unlike a Case Conference, a Motion allows the judge to side with any one party on a particular issue. Once a decision is rendered by the judge, it acts as a temporary resolution of the issue until it is heard at trial later on - a temporary order.

## When Can I Bring a Motion?

Motions can only be brought after a Case Conference has been held, or in rare circumstances of urgency and hardship prior to the first Case Conference. However, there is a strict test for urgency and it is strongly advised to seek legal advice before bringing a motion on such grounds.

## What Can I Ask for During a Motion?

Motions can be brought for various reasons. Motions are often brought on issues that effect the day-to-day lives of the parties – such as temporary child or spousal support, access to the children, and sometimes restraining orders. Motions are commonly brought to compel one party to provide full financial disclosure, which is often required to assess a party's financial position.

Another type of motion, known as a “14B Motion” is used to obtain procedural, uncomplicated or unopposed matters. These are “over-the-counter” motions that are heard “in chambers” (in the judge's office). These proceed entirely by preparing written documents and filing that same in court. There is no need for either party or lawyer to be present before a judge to obtain orders on these motions. These Motions can also be addressed prior to a Case Conference.

# Step 8: Settlement Conference

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## What is a Settlement Conference?

The Settlement Conference is a mandatory court appearance which follows a Case Conference. Like the Case Conference, a neutral judge will assist to the parties with negotiating and narrowing the issues, and provide input on the merits of the parties' respective positions.

*If settlement is still not forthcoming, the judge will make the appropriate orders to ensure parties are prepared for trial, including disclosure and setting timelines.*



# Step 9: Trial

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If issues remain unsettled after the Settlement Conference, a judge will likely order the case to trial. Procedurally, trials are complex and rigidly structured. Extensive knowledge of the relevant statutes, case law, and appropriate courtroom manners are imperative. If you have yet to retain a lawyer at this point, you are strongly urged to do so immediately.

## What Happens During Trial?

Both parties are given the opportunity to present their side of the case, and to convince a judge to side with them based on the law and the evidence provided.

Evidence may be entered as “documentary evidence” to be filed with the court, or “oral evidence” in the form of witness testimony. Complex rules of evidence and case law govern the testimony and cross-examination of witnesses. It is critical to have a strong grasp of these principles to ensure you present the strongest and most relevant evidence at trial, and to recognize when the opposing party leads inappropriate evidence.

At the conclusion of trial and on the evidence, the judge will make a binding decision based on law, and on the evidence provided. Once a decision has been rendered, the only recourse to change or reverse the relief ordered is by way of an appeal.

***Trials are costly, emotionally charged, and stressful.  
At Nussbaum Law, we will make every possible effort to  
settle your matter before it reaches this point.***

***But when trials are imminent, we take the utmost care in making  
sure you are prepared and your interests, and your children's  
interests, are safeguarded.***