

Did you know?

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GROUNDS FOR DIVORCE

If you're married, you can get a divorce order to legally end your marriage only on marriage breakdown. There is no such thing as "divorce by consent."

What does marriage breakdown mean?

The federal *Divorce Act* says that a marriage breakdown has taken place when any of the following have occurred:

- 1) the spouses have lived separate and apart from one another for one year,
- 2) either spouse commits adultery,
- 3) either spouse subjects the other to physical or mental cruelty.

Most divorces are finalized by a judge after a year of the spouses living separate and apart, because this is far less costly and difficult than proving either of the other two causes of marriage breakdown.

Can you live in the same house and still be considered separated?

It depends. Sometimes a couple whose marriage has broken down remain in the same house simply for economic reasons. If you are living independently of one another you may satisfy the "separate and apart" requirement but check with a lawyer for an opinion on your particular circumstances.

What happens if we separate and get back together again for a short while?

The *Divorce Act* encourages attempts at reconciliation. As long as the time you spend back together is not greater than 90 days, the one year time period will start from the first time you separated.

What is a marital offense?

It is either adultery or cruelty. Adultery occurs when a spouse willingly has sexual intercourse with someone other than their spouse. Adultery can occur even after the spouses separate. It is usually proven by admission, when one party admits it before trial in an examination for discovery, or in a sworn statement called an affidavit. If there is no admission, you will have to prove it by witnesses who have personal knowledge of the adultery. Cruelty is defined as mental or physical behaviour that makes living together unbearable. Mental cruelty is harder to prove and you will need a lawyer's opinion to find out if you have enough evidence for mental cruelty.

In some situations the court will not grant a divorce even if there is evidence of marriage breakdown.

Collusion: When a couple lies to a court just to get a divorce. For example, saying that adultery has occurred when it hasn't.

Connivance: When either one of the spouses encourages the other to commit a marital offence so they can get a divorce.

Condonation: When one spouse wants to get a divorce based on a marital offense that they have already forgiven the other spouse for.

For More Information

Dial-a-Law has telephone scripts about divorce that you can listen to by calling 604-687-3221 in the Lower Mainland or 1-800-565-LAWS, elsewhere. The website is www.dialalaw.org.

The BC Family Law website is www.familylaw.lss.bc.ca