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First Edition

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Second Edition



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This edition was developed by the Justice Education Society of BC in 2013 with the financial assistance of the Department of Justice Canada.

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Statement of Limitation

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The Justice Education Society of BC

We are a non-profit organization providing educational programs and services about the justice system in British Columbia. Legal education helps the public better understand how our justice system works, and helps people working within the system to better understand the justice-related issues that people in our communities face.

With the support of our partners, funders, and volunteers, we strive to maintain an accessible justice system for everyone.

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THIS HANDBOOK

- Focuses on the financial needs of you and your children when you separate.
- Provides information on the effect of conflict on children and how to keep children out of the middle of discussions about finances and support issues.
- Explains how to communicate about financial issues with the other parent.
- Explains how to start, and where to turn for help, when you are faced with separating your finances, as well as working out support issues and the division of property.

1 Introduction

The process of ending a relationship is a challenging one for parents. In addition to dealing with your emotions, formalizing new parenting arrangements, and helping your children make a positive adjustment, you have the task of dealing with your financial situation.

Dealing realistically with your finances will reduce your worry and stress about your financial well-being.

This handbook builds on the information provided in the Parenting After Separation (PAS) course. That course focuses on the legal aspects of separating and how to make decisions that put the needs of the children first.

The Parenting After Separation Finances course provides more detailed information about:

- The financial issues that may arise when you separate;
- How these issues affect you and your children and the family's finances;
- Strategies for communicating with your children's other parent about financial matters;
- Strategies to help your children deal with financial changes; and
- What to do when safety issues are involved.

PAS Finances also looks at:

- The tools and resources that will assist you to add a financial component to your parenting plan;
- Where to get more information and help;
- Child support, including special expenses;
- Spousal support; and
- Property division, including debts.

This handbook gives you tools to personalize the information from the workshop or online course.

You may wish to use the parts of the handbook that address your specific needs right now and then read through the rest of the handbook over time. You may find yourself revisiting parts of this handbook – to review strategies, to look at other options, to answer new questions, and/or to sort out another financial part. The activities provide an opportunity for self-reflection and information as you plan your next steps.

WHO THIS HANDBOOK IS FOR

This handbook is for you if you are:

- Married, unmarried living common law, or have never lived with the other parent but have a child together;
- Thinking of leaving a relationship or have already left a relationship;
- Creating a family budget after separation;
- Separating your finances from your child's other parent;
- Formalizing child support, including special expenses;
- Needing information on spousal support; or
- Sorting out property and asset division, including debts.

This handbook is also for family, friends and other people in your support network.

SAFETY CONSIDERATIONS

While many parents can benefit from working out a parenting plan where both parents are actively involved, this is not always possible or appropriate. During separation, stress and anxiety can lead to heightened emotions, particularly around issues of finances.

When there are serious issues of abuse in a relationship, including financial abuse, contact may be restricted for reasons of safety. Some of the strategies for effective parenting that we describe in this handbook may NOT be appropriate in your situation.

The safety of all family members should be your highest priority at all times. Adults have a responsibility to protect children from abuse or from witnessing ongoing violence.

If you feel your own safety is at risk, or that the safety of your children is at risk, making sure you and your children are safe is your number one priority.

If you are afraid for your own safety and that of your children contact:

- VictimLINK (24 hours) at 1-800-563-0808
- Your local crisis line
- A Family Justice Counsellor through Service BC:
 - In the Lower Mainland at 604-660-2421
 - In Victoria at 250-387-6121
 - Elsewhere in BC at 1-800-663-7867

These agencies will refer you to services near you. You may also need to talk to a lawyer or a financial advisor. The Resources Section of the Online PAS Finances course has a list of other contact numbers that may be of help.

FAMILY LAW LEGISLATION

It is important to understand what laws govern a family break-up. The Canadian *Divorce Act* and the BC *Family Law Act (FLA)* govern what happens when a family break-up occurs.

Divorce Act

The Canadian *Divorce Act* applies to married spouses. If the parties have a court order under its provisions, the terms “custody” and “access” will normally be used. Child support orders may also include those terms.

Family Law Act

The *FLA* applies to married spouses, unmarried spouses who have lived together in a marriage-like relationship for more than two years and to people who have a child together but who have never lived together or have lived together for less than two years.

If an agreement or court order is made under the *FLA* then it will refer to guardianship, parental responsibilities, parenting arrangements, parenting time and contact. The terms “custody” and “access” are no longer used in BC law.

The *Family Relations Act (FRA)* was replaced on March 18, 2013 by the *Family Law Act*. Court orders or agreements made before that date will use the terms “custody” and “access”.

The *FLA* is a child-centered law that focuses on the best interests of the child when parents separate. Both parents are responsible for making sure there is money to raise the children after a separation. The *FLA* says parents usually have “parenting time” with their children. Other important people in the children’s lives may have “contact” with the children.

The *FLA* encourages parents to find solutions to conflicts that are outside of court - which may be easier and less expensive. It promotes negotiation, mediation, arbitration, and collaborative law to solve the issues. The court has new ways to protect the people who are a risk of family violence (protection orders) and can enforce court orders and agreements.

Notes...

2 Your Financial Picture

Each family has a unique set of circumstances and financial considerations. In this section you will examine their finances to begin the process of financial separation. You need to know what you have and what you owe so that you can determine their net worth and overall financial picture.

YOUR FAMILY IS UNIQUE

Each family is unique...

- In the number of children, and their ages;
- In the length of the relationship between the parents;
- In whether both parents work, and if full-time or part-time;
- In the family income;
- In how the family manages its money (banking, credit cards, investments);
- In whether the family owns or rents a home;
- In whether the family owns or leases a vehicle, and how many; and
- In whether there are pensions or RRSPs for retirement.

Here are descriptions of two families:

Family 1

John and Jane separated after a 17-year marriage. They have 3 children, ages 15, 12 and 9. Both work full time and earn similar salaries. Each has a bank account and they share a household account. They have separate credit cards. They own a home with a mortgage. They each have a vehicle. John has a pension. Jane has RRSPs.

Family 2

Bob and Mary separated after a 4-year common-law relationship. They have one child, age 2. Bob has recently started up a landscaping business, and works from home. Mary is a stay-at-home mom. They have a joint bank account. They pay cash for everything. They rent their 2-bedroom condo. Bob has a truck for business. Mary relies on public transportation to get around. Neither one has pensions or RRSPs.

The make-up of a family doesn't necessarily give any information about their true financial picture.

The family make-up may not answer the following questions:

- What is the family's net income?
- How much is the mortgage?
- How much is owed on the credit cards?
- What are the children's expenses?

How the parents managed their finances before separation is also unique to each family.

For example:

- Was there a family budget, and what did it look like?
- Did the parents consult each other before committing to an expense?
- Did one parent do all the spending?
- Did one parent pay all the bills?

The economics of the family and the way the parents managed their finances before they separated may:

Affect the separation itself:

- "I can't believe you bought that barbeque after I told you we couldn't afford it."
- "I thought you said you paid that bill last week."
- "What did you do with the \$100 that was in our account this morning?"
- "If you want Sally to get braces then you go out and get a job!"

Affect the relationship between the parents after they separate:

- "Where is the receipt for the food you bought this morning?"
- "I'm not giving you money for you to put up your nose!"
- "Why should I have to pay for you and the kids to live in our home while I live in a damp basement suite?"
- "You always did pay for your other kids first."

These factors affect how parents navigate the separation process.

WHAT MONEY MEANS TO YOU

Most people have powerful feelings about money that can make it hard to arrive at rational decisions about money. These feelings can also make it harder to keep relationships harmonious when dealing with money. Some people are afraid to deal with money. Others become quite obsessive about their money. It's common for people to harbour a variety of feelings about money at the same time, and even to switch from one set of feelings to another. For example, they may worry and obsess about money one day, and then completely avoid the issue of money the next day.

Just as feelings about money vary, so, too can behaviours. Some people hoard money; others spend it freely. Some are able to pay bills on time and balance their chequebook, while others avoid these tasks as much as possible. Some people take great risks in investing their money; others invest conservatively. Some people exhibit money behaviours that are contradictory, e.g. acting responsibly for some time, and then going on an all-out spending spree.



Take Stock of Your Own Attitudes and Behaviours about Money

It is important to take stock of your own attitudes and behaviours about money. Begin by coming up with two lists, one positive and the other negative. On the first list, note two or three areas of your “money life” that are a source of pride or pleasure. Here are some typical responses:

- I make enough money to live on.
- I balance my check book regularly.
- I’m a generous gift giver.
- I have more than \$15,000 in savings.

The areas of my “money life” that give me great pride or pleasure are:

1. _____
2. _____
3. _____

Now identify two or three aspects of your money life that cause you discomfort or even shame. Some typical responses might be:

- *I go on shopping binges periodically.*
- *I procrastinate about paying bills.*
- *I bounce checks from time to time.*
- *I’m in debt.*
- *I have trouble spending money on gifts for myself or loved ones.*

The areas of my “money life” that make me feel uncomfortable are:

1. _____
2. _____
3. _____

Did you find the positive list or the negative one harder to write? Your answer will determine where you need to concentrate your attention. For example, if you feel bad about your negative traits connected with money, more growth and healing will come from acknowledging your positive qualities for a change. And if you tend to deny your negative traits about money, seeing your negative list in a new light may give you the strength to focus on the aspects of your money life that are not serving you or your family well.

Understanding the Past and Looking to the Future

What role did you play in managing your family's finances before separation?

It is important to understand your role in managing your family's finances prior to separation in order to assess your strengths and weaknesses around financial matters, and to be able to identify where you may need help.

Lack of information about your household expenses or your mortgage can lead to bills remaining unpaid, loss of services, and defaulting on loan or mortgage payments. It can even put you at risk of losing your vehicle or your home.



Lack of information about your family's assets and liabilities can undermine your efforts to obtain a fair and equitable property settlement.

You may find you need to speak to your bank manager to understand your options about accounts, and separating your finances from that of your former spouse. You may need help from a credit counsellor to understand your debts and the options to resolve them.

How equipped are you to deal with your new financial situation?

- Do you have enough money to meet your basic expenses?
- Do you need help to negotiate an interim order or agreement for support?
- Does the lack of finances mean you will have to consider a move to less expensive accommodation?
- Will you need to look for a job?
- Do you need to set up a separate bank account?
- Do you need to set up a chequing account?
- Do you need to make arrangements for automatic bill payments or the direct deposit of support payments?

When you understand how the past influences the present you'll be in a much better position to make decisions for the future.

YOUR MONEY PERSONALITY

It is helpful to know your own values and beliefs about money as well as those of your former partner. The Money Personality Quiz describes five different money personalities which may affect the way you and your former partner deal with money issues after separation.

Take the Money Personality Quiz

This quiz, designed by Olivia Mellan, may help you learn which of five major money personality types best describes your tendencies. Then you could try the quiz in the role of your former partner to see how the money personalities of each of you may be very different.

Below are 20 statements. For each statement, choose the answer that you think comes closest to describing your tendencies. There is no right or wrong answer. Don't worry about the outcome. Be honest with yourself about your answers.

1. If \$20,000 came to me unexpectedly, my first impulse would be:
 - A. To spend it on things I really want, including gifts for others.
 - B. To put it in my savings account.
 - C. To feel so overwhelmed that I'd put off making decisions about it for quite a while.
 - D. To invest it in order to make the biggest profits possible.
 - E. To give most of it away and use it to make the world a better place.
2. When it comes to dealing with my money:
 - A. I make sure that it never influences my life choices.
 - B. I enjoy spending it on gifts for myself and others, and on whatever will give me immediate pleasure.
 - C. I worry about it a lot and strategize how to make more and more of it.
 - D. I hold on to it and enjoy thinking about the security it provides.
 - E. I try not to think about it and hope it will take care of itself.
3. My goals about my money are:
 - A. To save enough of it now so that I never have to worry it in my old age.
 - B. Unclear to me.
 - C. To have enough of it to ensure that I can buy whatever I want.
 - D. To have enough to satisfy my basic needs and then to give the rest away.
 - E. To make as much of it as possible, as quickly as possible.
4. When it comes to following a budget:
 - A. I rework my budget often to figure out ways to have more money to spend and save.
 - B. I enjoy following mine closely.
 - C. I take pride in living so simply that I've never needed a budget.
 - D. I hate the word budget. Just hearing the word makes me want to rebel.
 - E. I don't have a budget and never want one. My money will take care of itself.

5. When it comes to spending money:

- A. I hope I'll have enough money to take care of unexpected expenses.
- B. I enjoy spending money, as long as I keep accumulating it at the same time.
- C. I'd rather save my money than spend it. Spending money makes me nervous.
- D. I don't follow where my money goes, and I don't want to. I focus on more important aspects of my life.
- E. I love spending money, and I tend to spend more than I earn.

6. I deal with financial record keeping as follows:

- A. I keep reworking my records, to figure out ways to make more money or to make my money work better for me.
- B. I'm not even sure which records I should be keeping.
- C. I enjoy keeping careful records.
- D. I keep some records but have trouble organizing them and finding them.
- E. I don't keep records. I hate to spend my time this way.

7. When it comes to saving money:

- A. I know I ought to be saving money, but I never seem to get around to it.
- B. I enjoy saving large amounts of money and spend a lot of time and energy thinking about how to save more.
- C. I have trouble saving money, and this bothers me sometimes.
- D. I save only for absolute necessities.
- E. Saving comes naturally to me. I am regular and consistent about it.

8. This is my attitude toward borrowing money:

- A. I try not to borrow money, but when I have, I find it hard to keep track of my progress in paying it back.
- B. I try never to borrow money from others.
- C. I'm willing to borrow large amounts if it will help me make more, but I worry about amassing debt if the profits don't show up quickly.
- D. I've borrowed money quite often, and I'm pretty casual about paying it back.
- E. I borrow only for absolute necessities.

9. When it comes to lending money:

- A. I'm pretty generous and don't worry too much about when I'll get it back.
- B. People tend not to ask me for money. That suits me fine.
- C. I wouldn't mind lending money, but people hardly ever ask me.
- D. I try never to lend money, but if I do, I expect to be paid back promptly.
- E. I don't mind lending money, if I get a good interest rate. I also worry about getting it back on time.

10. As far as credit cards are concerned:

- A. I prefer not to have credit cards at all. If I have one, I use it as little as possible.
- B. I tend to use credit cards often and make the minimum payment.
- C. I don't mind running up large charges, as long as I can pay them off quickly. I think about my credit card bills a lot.
- D. I don't take much notice of the status of my credit cards. I often forget to pay even the monthly minimum until I get a warning notice.
- E. I have always tended to avoid using credit. I prefer paying by cash or check.

11. When it comes to providing for emergencies:

- A. I don't have enough saved to provide for emergencies. I just hope for the best!
- B. I have no money set aside for emergencies, and I almost never think about what I would do if something bad were to happen.
- C. I keep thinking that I'll have enough to start saving for emergencies soon, but I'm still not quite there!
- D. I've put aside a sizable amount for emergencies, but I still worry about them!
- E. I try to save regularly for an emergency fund.

12. When it comes to paying my taxes:

- A. I scramble to get together some minimal records, just to get the taxes done. I'm always surprised at how much money I owe every year.
- B. I save regularly for taxes, and most years I complete my tax return well in advance.
- C. I hate focusing on taxes and try to get them done with as little fuss as possible.
- D. I have trouble saving for taxes and doing my tax return, and I feel strapped every year before the deadline.
- E. I take pride in having more assets and paying lower taxes every year, if I can.

13. To feel totally satisfied with my income, this is what I'd need:

- A. A few thousand more than I'm making now would be largely sufficient.
- B. Increasing my earnings by a large amount every year is what satisfies me — \$50,000 a year more would be nice!
- C. I suppose I could always use more money, but I have no idea how much more.
- D. I feel satisfied with what I make now. A big increase would make me uncomfortable.
- E. At least \$10,000 to \$20,000 more than I'm making now.

14. When it comes to investing in the stock market:

- A. I enjoy investing in the stock market, and I like to diversify to maximize my profits.
- B. I don't think about investing very often, but if I did invest, I'd want someone else to make those decisions for me.
- C. I choose "safe" and conservative investments.
- D. I'm not an expert at investing, but I think it would be fun to invest in more speculative stocks that might offer a high rate of return.
- E. I don't think about investing, but if I made any investments, I'd prefer those that were socially responsible.

15. When I want a certain item but it's not within my budget:
- A. Either I'll decide I don't really want it, or I'll buy it and figure out how to pay for it later.
 - B. If I want it, I will buy it. I can always figure out a way to pay for it.
 - C. I will buy it, whether I can afford it or not.
 - D. Most of the things I want are not expensive luxury items. If I do want something outrageous, I may buy it, but the purchase will make me feel very uncomfortable.
 - E. If the item is important enough to me, I'll figure out how to adjust my budget to afford it. If it isn't that important, I'll forget about it.
16. When I'm feeling down in the dumps, spending money:
- A. Is the last thing I would do, putting some more money in savings might lift my spirits.
 - B. Always cheers me up.
 - C. Just makes me feel worse. Spending money has nothing to do with happiness.
 - D. Is not what I think about to cheer myself up.
 - E. In large amounts, and hatching plans to make more money, makes me feel better.
17. I would take (or have taken) a bank loan under these circumstances:
- A. To pay off debts, to go on vacations, or to buy something I really wanted.
 - B. To finance my education - maybe. (I've never borrowed money. I never want to.)
 - C. To set up or expand a business, or to make an investment that would yield a high return.
 - D. To make essential repairs or to increase my future security.
 - E. To deal with medical emergencies or other unforeseen circumstances but not for anything else.
18. I worry about money:
- A. Never. I worry about important things!
 - B. A little bit all the time. But I do all I can to manage it well.
 - C. Constantly. It's the main thing I worry about!
 - D. Only when financial crises strike.
 - E. Not very much. I just enjoy spending it!
19. When I think about providing for my future security:
- A. I am quite concerned that I won't have enough money in my future, since it's been so hard for me to save.
 - B. I have such a difficult time thinking about money that all I can do is hope that the future will take care of itself!
 - C. Since I make sure I have a lot of money at my disposal, the future will probably be fine.
 - D. Considering how systematic I've been about saving for the future, I feel reasonably confident about it.
 - E. I don't think about the future in financial terms. I have more important concerns, such as my quality of life in the future.

20. If I won a million dollars in the lottery, my first reaction would be:

- A. To feel guilty, thinking about the starving masses who have nothing.
- B. To feel shocked, a little overwhelmed, and very relieved that my future was now secure.
- C. To be totally overwhelmed — I would have no idea how to handle it.
- D. To be very happy and pleased, and to immediately start thinking about how I could simultaneously make my money grow and use it for my own enjoyment.
- E. To be wildly excited, realizing that from now on I could buy anything I wanted!

Now that you've completed the quiz, here's the key to determine which combination of money personality types you tend to be:

H = Hoarder; S = Spender; M = Money Monk; V = Avoider; A = Amasser

Refer to the following list as you score your answers, keeping count of how many H's, S's, M's, V's, and A's you've chosen.

- | | | | | | |
|-----|------|------|------|------|------|
| 1. | A.=S | B.=H | C.=V | D.=A | E.=M |
| 2. | A.=M | B.=S | C.=A | D.=H | E.=V |
| 3. | A.=H | B.=V | C.=S | D.=M | E.=A |
| 4. | A.=A | B.=H | C.=M | D.=S | E.=V |
| 5. | A.=V | B.=A | C.=H | D.=M | E.=S |
| 6. | A.=A | B.=V | C.=H | D.=S | E.=M |
| 7. | A.=V | B.=A | C.=S | D.=M | E.=H |
| 8. | A.=V | B.=H | C.=A | D.=S | E.=M |
| 9. | A.=S | B.=M | C.=V | D.=H | E.=A |
| 10. | A.=M | B.=S | C.=A | D.=V | E.=H |
| 11. | A.=V | B.=M | C.=S | D.=A | E.=H |
| 12. | A.=V | B.=H | C.=M | D.=S | E.=A |
| 13. | A.=H | B.=A | C.=V | D.=M | E.=S |
| 14. | A.=A | B.=V | C.=H | D.=S | E.=M |
| 15. | A.=V | B.=A | C.=S | D.=M | E.=H |
| 16. | A.=H | B.=S | C.=M | D.=V | E.=A |
| 17. | A.=S | B.=M | C.=A | D.=H | E.=V |
| 18. | A.=M | B.=A | C.=H | D.=V | E.=S |
| 19. | A.=S | B.=V | C.=A | D.=H | E.=M |
| 20. | A.=M | B.=H | C.=V | D.=A | E.=S |

MY SCORE:

H		S		M		V		A	
----------	--	----------	--	----------	--	----------	--	----------	--

Whichever letter (or letters) turns up most frequently in your answers is the one that represents your predominant money personality type (or types).

My predominant money personality type is: _____

My next predominant money personality type is: _____

Major Money Types

It is helpful to know your own values and beliefs about money. It is also helpful to understand how your former spouse feels about money, because his/her money personality will affect how he/she feels about child support and special expenses.

What follows is a brief description of the major money types, and how each money personality might affect support negotiations.

Hoarder

You enjoy holding on to your money. It may be difficult for you to spend money on luxury items or immediate pleasures for yourself and your loved ones. A “hoarder” may resent additional requests for money, e.g. to contribute to the children’s special expenses. There may be accusations that you are only interested in his/her money.

Spender

You probably love to use your money to buy whatever will bring you pleasure. You may have a hard time saving, budgeting, and delaying gratification for long-term goals.

“Spenders” may find it difficult to budget for child support payments if payday doesn’t fall on the first of the month. They may put their own wants and needs ahead of their financial responsibilities, putting them in arrears. They may spend lots of money entertaining the children when the children are in their care, leading to accusations of the “Disneyland” parent syndrome.



Money Monk

You may try to avoid having too much money. You’d feel guilty if a large amount of money came your way unexpectedly. “Money monks” might feel guilty about accepting the *Child Support Guidelines* amount of support and agree to a smaller amount that adversely affects the children’s standard of living. Or they might find themselves accepting a lesser share of the property and asset division.

Avoider

You tend to avoid performing various tasks of everyday money management. You may feel anxious or incompetent about dealing with money.

“Avoiders” may find themselves ignoring requests from the other parent to contribute towards the children’s special expenses — not because they don’t have the money, but because they don’t want to deal with the matter. Or bills may remain unpaid, leading to loss of services, an accumulation of debt, and bankruptcy.

Amasser

You’re likely to be overly concerned with keeping large amounts of money at your disposal to spend, save, and invest. This preoccupation may be having a negative effect on your ability to enjoy your life in the moment.



“Amassers” may resent having to pay child support in the absence of an order to do so. They may use delay tactics to put off paying support as long as possible. They may feel entitled to keep the money they earn, and be willing to take the risk of a judge ruling on a support order or property division rather than participate in mediation. They may pay only the Guideline amount of support, and balk at having to pay for any of the children’s special expenses.

Can you identify the personality types in the following scenarios?

1. Jeff has not paid the electric bill on the family home for three months. His former partner does not want to give him the money to pay the bill as she feels that it was already part of the support order payments made over the last three months.

2. Mary has not asked for spousal support even though she needs the extra money to look after the children. Her former partner is using delaying tactics to put off paying the support as long as possible.

3. Larry spends lots of money on his children whenever he sees them. His former partner, feels like she has to compete to please her children but she does not want to incur the extra expense.

Assessing Your Money Personality

In what way might your money personality cause you difficulty in life, either as an individual or in dealing with your child's other parent?

What are one or two things about your relationship to money that you think you might like to change or modify in some way?

Based on your experience, can you guess which money type or types best describes your child's other parent? _____

What role, if any, did finances play in your separation?

YOUR OVERALL FINANCIAL PICTURE

After separation both parents usually will have to rebuild their economic lives with reduced resources.

For many people one of the biggest sources of disagreement and aggravation is the subject of personal finances.

Do any of these statements sound familiar?

- *"The money runs out before the month does."*
- *"Too many expenses, not enough paycheck."*
- *"The harder I work, the more behind I get."*

Financial literacy is important. It means you have the knowledge and ability to understand your finances. It is helpful to understand what a balance sheet and income statement are and how they help describe your financial picture.

Your Balance Sheet

A balance sheet is a financial statement that describes your net worth at a certain point in time. It lists assets on one side (what you own) and liabilities (what you owe) on the other. The balance between what you own and what you owe is called equity.

Balance Sheet (Net Worth Statement)	
Assets: (What you own)	Liabilities: (What you owe)
Equity = Assets - Liabilities	

A balance sheet becomes important when you are dividing up family property.

Your Income Statement

An income statement describes the flow of money during a specific period of time – like a monthly budget. It lists income first (money that comes in) then expenses (money paid out) and finally, it shows the balance between the two. If you have more money coming in than being paid out, that is profit for the period but if your expenses are higher than your income that is a loss.

Income Statement	Period:
Income	\$ In
Expenses	\$ Out
Balance (Profit or Loss)	\$ Difference

An income statement is important to do when you are talking about child and spousal support.

For a lot of people the process is pretty simple:

The money comes in > The money gets spent.

The scenario rarely varies much – the income generally is fixed, and the outflow only seems to increase. If too much money gets spent, the shortfall gets added to the debt load. As the debt load increases, more of the money coming in goes to paying the debt, which leaves less for spending, which increases the debt. It is a difficult cycle.

It can be stressful deciding what to spend the money on, and when, and how much, and where, and on and on.

Getting control of your finances means a lot more than just getting control of your money. It means getting a handle on your habits – both thinking and spending – as well as your short-term and long-term goals. Not only can getting control decrease much of your stress, it can also help you prepare for the future.

So where do you start? Take some time now to do a quick income statement for this month.

List what income you have on one side and some of your expenses on the other side of the Income Statement above. This illustrates one part of your overall financial picture. The other part is your balance sheet of assets and liabilities.

Expenses are what you have to pay out each month or year. There are two types of expenses - “non-discretionary” and “discretionary”:

Non-Discretionary Expenses – e.g. taxes, statutory deductions (EI, CPP), superannuation, child support, spousal support, medical insurance

Discretionary Expenses - e.g. family expenses (food, housing, property taxes, clothing, car insurance, life insurance, summer camps, activity fees, school expenses, entertainment, eating out, car repairs, birthdays, weddings, funerals, celebrations).

Once you have completed the income statement, take some time now to do a quick balance sheet. Show your financial situation at the end of last month. List the value of what you own and what you owe.

During the separation process parents will be negotiating finances, the division of property, and support for their children and possibly themselves. It is important for parents to understand the separation process thoroughly and to recognize all the options they have available to them before they make any decisions concerning their future.

It is important that knowledge – rather than emotions or other people’s opinions – guide you. Informed decisions are more likely to produce long terms results that are beneficial to each parent and most importantly, to the children.

TAKING CHARGE OF YOUR FAMILY'S FINANCES

Getting control of your finances means a lot more than just getting control of your money, it means getting a handle on your habits — both thinking and spending — as well as your short-term and long-term goals. Not only can getting control decrease much of your stress, it can also help you efficiently prepare for the future. So where do you start? Here are seven guidelines:

1. Review your family's overall financial picture
2. Make a family budget
3. Decide if you can afford to keep the house
4. Eliminate discretionary spending
5. Decrease your debt
6. Start a program of saving
7. Do it now



1. Review your family's overall financial picture

If you want to end your relationship with equality you must know what assets and debts your partnership has.

Exercise 1: Balance Sheet

This financial statement summarizes your net worth as it is at this moment. It is a record of everything you own (assets) and everything that you owe (liabilities). Use the worksheet on page 25 to prepare a balance sheet. It will help you determine your net worth as a couple.

2. Make a family budget

A budget is a common financial plan that can help you manage income and expenses. Knowing how little or how much extra money you have each month will help you make good choices.

With a budget, family members in a household may:

- Increase their chances of making payments on time;
- Decide what they can and cannot afford;
- Increase their savings for education, retirement, large purchases, or unexpected expenses;
- Prevent or reduce impulse or over-spending; and
- Eliminate or reduce debts and loan balances.

There is no “magic” to a spending plan. It won’t change the amount of income in a month, make you save more money than you spend, or prevent a financial crisis. A budget is a tool that puts you in control of your money to meet family needs and wants, as well as to reach family goals. It will show how much money you have, where it needs to go to meet your needs and wants, and when you will be able to reach your goals. A budget puts you in control.

Setting up a budget takes some preparation, and following the plan takes determination. To be successful, all family members should be involved.

Take a hard look at what you consider necessary expenses. Typically separation causes changes in the lives of everyone — you, the other parent, your children, your pets, even your friends.

To determine your minimum financial needs, ask yourself the following:

- Will I have enough to support my current lifestyle?
- Will I be able to keep the assets from our property division without having to deplete them to pay living expenses?
- Will I be able to contribute to savings and retirement funds?

If any of the answers is “no,” you’ll have to look at your budget and adjust your standard of living.

3. Decide if you can afford to keep the house

Keeping the family home might be the preferred option, but it may not make financial sense. You may end up “asset rich” but “income poor.” You may have enough income to pay the utilities and expenses related to the day-to-day upkeep, but you may not have enough income coming in to pay the cost of the taxes, home repairs, and other expenses related to owning a home. The equity in the house won't pay the bills.

If it makes sense for one of you to keep the house, that parent may want to pre-qualify for a mortgage before your divorce is final. Sometimes a divorcing couple will decide that one spouse is going to keep the house, and they take the other parent's name off the title to the house. Later, the parent who wants to keep the house gets turned down for a mortgage because he/she doesn't make enough money to qualify to refinance the house in his/her name alone. The parent who leaves the marital home may end up being on the hook for the debt, has no reciprocal asset, and can't qualify for his/her own mortgage because he/she doesn't make enough to support both mortgages.

4. Eliminate discretionary spending

Discretionary spending involves paying for non-essential things. After separation, it takes on a new reality. Depending on your situation, you may need to consider if you should:

- Work or stay at home?
- Keep the family home?
- Continue to hire services e.g. housekeeper, gardener, babysitter?
- Buy the new season's clothes?
- Purchase luxury items?
- Eat out as often as usual?
- Vacation in exotic places?

- Have your hair, nails, and makeovers done as frequently as before?
- Golf weekly or maintain that membership in a fitness club?

It's important to evaluate your expenses and make reasonable decisions that put the interests of your children first. There isn't too much you can do about non-discretionary expenses — those things that you have no choice about paying, like income tax, CPP, EI, union dues — but it is important to acknowledge them when you calculate your cash flow.

Most family and personal expenses fall into the category of discretionary expenses because the expenses arise from choices you make about your lifestyle, and that of your children.

A mortgage is a discretionary expense, because when you take on a mortgage you make a choice to own a home rather than rent. A car payment is also a discretionary expense, representing the choice you made to purchase or lease a car rather than use alternative forms of transportation.

You do have a certain amount of control of your discretionary expenses, even though it may not seem like it at the time. You can't "play" with nondiscretionary expenses to free up money, but you can do so with discretionary expenses.

There are some obvious ways to reduce your expenses:

- Know what you spend your money on, and where you spend it.
- Stop spending that increases your debt load, for necessary items (like food and shelter) and those that are not necessities (like "toys"). This means no vacation, new clothes, or even car repairs — unless you have the cash to pay for them.
- Get rid of those items you don't need or rarely use — expensive toys that sit in the corner, things for hobbies that you never took up, a four-wheel drive SUV that you never take off-road, the boat in the driveway — and convert them into cash.
- Don't take out loans or add additional credit obligations. If you don't own it now, don't buy it. During the separation process is not the time to buy the new house or a new car. This is also not the time to invest in any product or to shift investment assets. Your property could end up being divided in a way different than you thought it could be. What you thought was yours and yours alone could end up being a family asset, subject to property division. Shifting assets could create difficulty in tracking the location and ownership of the asset, and a suspicion that someone is hiding assets. There may be taxes or penalties to pay later in shifting assets from you to the other parent.
- Don't make any financial commitments that you don't understand, are not absolutely clear about or simply cannot afford.

Exercise 2: Expense Estimator

The Expense Estimator looks at your expenses and asks you to define them as "discretionary" vs. "non-discretionary." Use the worksheet on page 26 to determine the nature of your expenses.

You may need to make more than one pass at this worksheet. Your first pass may reflect your ideal lifestyle, and that's fine for now. However, you can determine if that lifestyle is workable only after you look at your income sources. If it isn't workable you may need to look at your discretionary expenses to see how much room you have to decrease your expenses.

5. Decrease your debt

An increasing number of separated couples have large amounts of debt — especially credit card debt. It's easy to overuse credit cards. It's tempting to start living off credit cards when the other parent is no longer contributing the same amount of money.

If there is absolutely no money it may be necessary to use credit cards, but do so sparingly. It is important to get balance into your financial picture. You may need to pare down your living expenses to the bare minimum. When you have to stretch just to make the minimum payment, it is likely that you are spending beyond your means.

Consider these credit card tips:

- Do not use credit to postpone a crisis.
- Do not use credit cards or credit lines for anything but essential expenses, and only for a short period of time. Once you run into trouble making credit card payments you have damaged your credit standing. It just isn't worth it.
- Be careful to compare the rates for bank debt with bank credit card debt, store credit card debt and money mart loans. The rates of interest will be very different and much higher than the bank debt.



With the aid of your family budget, set aside a specific amount each month that you can use to reduce your debt. The next part of this chapter looks at options to decrease your debt, and identifies professionals who can help you achieve a lower debt load.

6. Start a program of saving

As you begin to gain stability with your financial picture, it is important to realize that saving is more important than spending. By reducing unnecessary expense, you will have more money and you can begin to focus on long-term goals instead of short-term spending.

Exercise 3: Setting Goals

This exercise helps you to think about where your family is today financially, and where you would like to be in five or 10 years.

- ❖ *Long-term goals:* These “dreams for the future” are usually set for more than five years.
- ❖ *Intermediate goals:* Usually these objectives would be attainable within one to five years.
- ❖ *Short-term goals:* These goals are attainable in the next three months to a year.

Use the worksheet on page 27 to identify your goals. Each goal you choose should have a specific dollar amount assigned to it in order to help make it a reality.

The first goal for many families may be to set up an emergency fund. An emergency fund is usually living expenses for three to six months, to be used in case of an interruption in income.

7. Do it now

You cost yourself a lot of your hard-earned dollars if you procrastinate. You need to be aware of the negative effect of compounding — the longer you have the debt the more interest you will pay, and the positive effect of compounding — the longer you have the savings the higher the return.

Getting control of your finances will make an amazing difference in your life. Less money will be wasted, so you may find you don't have to work as long or as hard to make ends meet. You'll have more time to spend on the important things. Your stress level most likely will decrease.

It's important to evaluate your expenses and make reasonable decisions about what you can and cannot afford.

You don't have to live in financial misery after separation if you can:

- Negotiate a reasonable support agreement;
- Negotiate a reasonable property settlement;
- Adjust your spending patterns so that you don't tap into your assets; and
- Take responsibility for some of the financial issues. This may mean getting a job, changing jobs, or getting a second job.

Worksheet 1: Balance Sheet

This statement summarizes your financial life as it is at this moment. It is a record of everything you own (assets) and everything that you owe (liabilities). Use this worksheet to help you determine your net worth as a couple.

While filling in this worksheet keep the following in mind:

- For items that may have tax consequences, fill in the original value of the item whenever possible. This is the cost of the asset when you bought it plus the cost of any renovations.
- If the asset is held in one spouse's name, put the value of the asset in that column. Do the same for any assets held in the other spouse's name. Put any items registered in joint names into the "joint" column. This may help later, when you are going to divide everything.

Worksheet 1: Balance Sheet

Assets	Original Value	Joint	Spouse 1	Spouse 2	Household Total
Personal					
Bank Accounts					
Savings					
Life insurance cash value (not death benefit)					
Residence					
Recreational property					
Collectibles/valuables					
Vehicles					
Furniture					
Investments					
Pension plans					
Registered investments					
Real estate					
Business					
Trust fund					
Other investments					
Total of Assets (A)					
Liabilities (L)					
Credit cards					
Taxes owed					
Lines of credit					
RRSP Loan					
Investment loans					
Personal mortgage					
Automobile loans					
Student loans					
Other loans					
Total Liabilities (L)					
Net Worth=(A)-(L)					

Worksheet 2: Expense Estimator

Expense	Monthly Amount	Discretionary	Non-Discretionary
Income tax			
C.P.P.			
Employment Insurance			
Life Insurance			
Health Insurance			
Child support payments			
Housing			
Rent/mortgage			
Property taxes			
Insurance			
Maintenance			
Utilities			
Cable/Phone/Internet			
Furnishings			
Pet care			
Miscellaneous			
Food			
Clothing			
Transportation			
Car loan/lease			
Insurance			
Gas			
Maintenance			
Personal care			
Child care			
Allowances			
Gifts			
Vacations			
Tuition fees			
Recreation/entertainment			
Cash			
Savings/investment			
RRSPs			
Education savings			
Donations			
Personal loan payments			
Credit card payments			
Professional fees			
TOTAL EXPENSES			

Worksheet 3: Goal-Setting Worksheet

Short-term goals: up to 12 months

- | | |
|----------|----------|
| 1. _____ | \$ _____ |
| 2. _____ | \$ _____ |
| 3. _____ | \$ _____ |
| 4. _____ | \$ _____ |
| 5. _____ | \$ _____ |

The total of short-term goals = \$ _____

Divide by number of months = \$ _____ required per month for short term goals

Medium-term goals: 1-5 years

- | | |
|----------|----------|
| 1. _____ | \$ _____ |
| 2. _____ | \$ _____ |
| 3. _____ | \$ _____ |
| 4. _____ | \$ _____ |
| 5. _____ | \$ _____ |

The total of medium-term goals = \$ _____

Divide by number of months = \$ _____ required per month for medium term goals

Long-term goals: more than 5 years

- | | |
|----------|----------|
| 1. _____ | \$ _____ |
| 2. _____ | \$ _____ |
| 3. _____ | \$ _____ |
| 4. _____ | \$ _____ |
| 5. _____ | \$ _____ |

The total of long-term goals = \$ _____

Divide by number of months = \$ _____ required per month for long term goals

Long, medium and short TOTALS = \$ _____ (into savings account)

Talking to Children about Family Finances

Let the children help, and tell them the truth within age-appropriate boundaries. Some parents continue spending on their children as if nothing has changed. Instead, they go without other necessities to avoid letting the children know they are having financial difficulties. In the long run, this is not a practical approach.

When children are part of the financial decision-making and are privy to the income and expenses of a household, within age appropriate limits, they can be incredibly understanding about wanting to help cut costs and make things work.

The alternative is to argue over every purchase a child wants to make, creating a real strain in your relationship, or to have your money woes deepen because you give in every time.

DEBT WARNING SIGNS

Use the following self-test periodically to determine whether you have too much debt.

	Yes	No
1. Are you using your credit cards or borrowing to pay for items you once paid for with cash?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are you paying more to service your debts today than previously?	<input type="checkbox"/>	<input type="checkbox"/>
3. Are you paying your bills with money you saved for another use?	<input type="checkbox"/>	<input type="checkbox"/>
4. Are you using your savings to pay bills?	<input type="checkbox"/>	<input type="checkbox"/>
5. Are you dipping into your emergency fund (3-6 months of basic living expenses) to cover monthly expenses?	<input type="checkbox"/>	<input type="checkbox"/>
6. Are you only paying the minimum balance due on your charge accounts each month?	<input type="checkbox"/>	<input type="checkbox"/>
7. Are you extending repayment schedules — paying in 60 or 90 days bills you once paid in just 30?	<input type="checkbox"/>	<input type="checkbox"/>
8. Have you maxed out or close to maxing out your credit cards and other sources of borrowing money?	<input type="checkbox"/>	<input type="checkbox"/>
9. Are you taking out new loans before old ones are paid off, or taking out loans to pay an existing one?	<input type="checkbox"/>	<input type="checkbox"/>
10. Are you unsure about how much you owe?	<input type="checkbox"/>	<input type="checkbox"/>
11. Are you usually late in paying bills?	<input type="checkbox"/>	<input type="checkbox"/>
12. Are you threatened with repossession of your vehicle, cancellation of your credit cards or other legal action?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered:	You are:	You should:
"No" to all questions	Managing credit well.	You should continue practising good money management.
"Yes" to any question 1-5	Getting out of control.	Stop using credit until current debt balances are paid.
"Yes" to any question 6-10	On the verge of trouble.	Stop using credit. Develop a budget and debt repayment plan.
"Yes" to question 11 or 12	In serious trouble.	Consult a financial planning professional now, before your financial goals become impossible to achieve.

DEBT RESOLUTION

This section outlines the options you have when it comes to resolving your debt.

- 1. Consolidate your debt into one loan.**
- 2. Use a combination of reducing and/or eliminating non-essential expenses and paying down the debt.**
- 3. Approach your creditors directly to initiate a payment plan.**
- 4. Use credit counselling**



Credit counsellors may help you negotiate with your creditors. They offer a debt management plan, which means that the credit counsellor will arrange a payment plan with your creditors in terms that you are able to afford. The Business Practices and Consumer Protection Agency must license credit counsellors to administer debt management plans.

Not all creditors co-operate with credit counsellors, the most notable being the government about debts such as income tax arrears. Be careful to determine the fees charged.

5. Arrange a lump sum cash settlement

Seek out the help of a credit counsellor or mediator to arrange a lump sum cash settlement in which a specific amount of money is offered to your creditors to eliminate the debt as an alternative to bankruptcy or a lengthy debt repayment proposal.

Usually a certain percentage of the debt is settled, e.g. a settlement of fifty cents on the dollar would mean that the creditor would accept 50% less on the debt. Lump sum cash settlements are dependent upon the circumstances of the individual or family, e.g. compassionate grounds, hardship, etc., and the willingness of creditors to accept them.

6. Make a consumer proposal

A consumer proposal is an offer made by a debtor to his or her creditors to modify his or her payments. For example, you may propose that you will pay a lower amount each month, but over a longer period of time. Or you may propose that your creditors accept being paid a percentage of what you owe.

Consumer proposals are a legal remedy under the *Bankruptcy and Insolvency Act*. The procedure begins when you seek the help of an administrator who might be a trustee in bankruptcy or a person appointed by the Superintendent of Bankruptcy. He or she will ask you about your financial situation, assess it, and give you advice about what kind of a proposal may be best for you and your creditors. The administrator will ask you to sign the required forms.

The administrator sends creditors a copy of your proposal and a copy of the report on the proposal. The administrator will ask the creditors to accept or reject the proposal.

In cases where 51% or more of the dollar value of the creditors vote in favour of accepting the proposal, the proposal is approved and is deemed to be approved by the court after a further 15-day period.

The advantages of a consumer proposal are:

- No interest is charged.
- A reduced amount is paid to creditors.
- Monthly payments are arranged on what people can afford, up to a 5-year period.
- It may include lump sum cash settlement proposals.
- It is a court approved arrangement.

The disadvantages of a consumer proposal are:

- The proposal is currently restricted to a total debt of \$75,000 excluding mortgages on the principal residence.
- Amendments to the proposal require the approval of creditors.
- There is an automatic default after 90 days of missed payments, unless amended.

7. File for bankruptcy

Bankruptcy is a legal action people choose to have their creditors (debts) discharged through a trustee in bankruptcy. One of the major purposes of bankruptcy is to provide a legal means to solve impossible debt problems and give families a fresh start.

To file for bankruptcy you must:

- Be insolvent (unable to meet your obligations as they become due and payable);
- Owe at least \$1,000; and
- Have insufficient assets to pay creditors.

If you have any questions about which property you can keep, and to what value is exempt from bankruptcy, you are encouraged to get legal advice or consult a bankruptcy trustee. Filing for bankruptcy will affect your credit for years to come. It is a decision that requires in depth consideration.

For further information on consumer proposals or bankruptcy contact:

The Office of the Superintendent of Bankruptcy
300 West Georgia Street Suite 2000
Vancouver BC V6B 6E1
Tel 1-877-376-9902 (toll free)
www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/home

Notes...

3 Dealing with Financial Separation

Separation is a process that affects your physical health, mental health, emotional health and financial health. It is a personal process and you may experience these challenges in a way that is unique to you.

These aspects are all interrelated and they impact on each other. For example: You might feel shock or disbelief. Physically you might feel nauseous, unable to eat. You might have no energy. You might have difficulty with sleeping. Mentally you may be easily distracted, easily confused, unable to focus, unable to remember things, and unable to make a decision, including financial decisions.

When a parent is emotionally in the grief cycle, their ability to take in information is reduced. Their understanding and ability to process financial separation, and to make financial decisions is affected.

Usually the parent who decides to leave the relationship will have already gone through a great deal of the emotional process before the other parent. The other parent may be highly emotional. They may be angry. They may be in denial.

The parent who initiates the separation may have done some financial housekeeping as well as emotional fine-tuning. The other parent is at a disadvantage and may require more time before making financial decisions.

You are role models for your children. They are observing you and learning from you. They are also experiencing their own reactions to what is going on. It is really important to remember to keep children from witnessing or becoming involved in any conflict.

EMOTIONS OF SEPARATION

There are many emotions that parents experience during separation.

Which of these emotions did you experience?

Emotions of Separation

ANGRY

Proud

Vengeful

GUILTY

Anxious

JEALOUS

RESENTFUL

Fearful

Frustrated

SAD

Desperate

Depressed

Excited

BITTER

HURT

WISHFUL

Happy

Shocked

Relieved

Agitated

Embarrassed

Restless

RIGHTEOUS

Honourable

Let's look at some of these emotions in more detail:

Anger

Anger is the core emotion of divorce. It's painful, it's confusing, and it turns your world upside down. But at some point it should be over. If it's not, the pain, anger, resentment, depression or emotional confusion seems to go on forever, and you are in the clutches of a divorce hangover. In a divorce hangover losses and changes are so painful that many people will do anything to avoid feeling them.

Anger not faced doesn't go away. It is redirected. A divorce hangover begins when anger becomes directed towards whatever or whomever (including yourself) you consider responsible for the divorce. Anger that is redirected can show up as revenge, blame, sabotage, and forced and inappropriate control.

Examples:

- *"I don't have enough money to pay child support, so I won't pay any. Let her try to get money out of me — it'll be like trying to get water out of a rock!"*
- *"He's got plenty of money, and after the way he's treated me and the kids, I'm going to make him pay plenty of it for my suffering."*

Anger often leads to prolonged and expensive litigation.

Depression

Depression is anger turned inward. People who are depressed tend to withdraw or run away. Depression can be used to punish the other person if he/she can't get you to talk or communicate.

Examples:

- *A person in despair over the break-up of the relationship doesn't want anything to change and refuses to have anything to do with discussions about change. The person may even refuse to "separate."*
- *A person in depression may refuse to talk to the other parent, or accept letters or emails. They just won't acknowledge the other parent.*

Without communication it is impossible to initiate discussion about finances.

Betrayal

The number one feeling that rules when divorce or separation happens is abandonment or betrayal. Too often when a parent wants to get back at their former partner they do it economically. Revenge or punishment translates into a desire for dollars and cents.

Examples:

- *"You fooled around and now I'm supposed to live in a basement suite and support you, the kids, and your boyfriend."*

- *“You left us and now you expect us to live on a few dollars a month while you drive around in a new SUV.”*

Guilt

Guilt can have a powerful effect on financial decision-making. It can cause you to fall into the trap of being overly generous when negotiating financial matters.

A parent who decides to leave the family can feel responsible for causing the other parent hurt, and for creating upheaval. This may translate into promises and assurances — to keep everything the way it was and to financially support the family in the way they are used to which is not possible if they are setting up a home for themselves.

A parent who moves away from the other parent with the children may agree to give up child support out of guilt of moving.

Financial negotiations are about dollars and cents, not anger, revenge or guilt. You will be able to make better financial decisions if you can manage your emotions and stay focused on negotiating a financial agreement.

FINANCIAL ABUSE

After parents separate different financial relationships between the parents are possible. You and your child's other parent may be spending equal time with the children and because of the similarity in your incomes there may be no exchange of support. Or one of you may be contributing to the household income of the other to offset a difference in your earning power. Or the children's primary residence may be with one of you and the other parent is making a support payment based on their Child Support Guidelines income. Or there may not yet be a support arrangement in place.

When there is a financial inequality between separated parents there may also be a financial power imbalance between the parents and/or there may be financial abuse.

Abuse changes the balance of power between individuals. Too often the victims of abuse are not aware of their rights or even aware that they are victims of abuse. Financial abuse may not be as obvious as other types of abuse, but like physical abuse, emotional abuse or the denial of rights it interferes with the safety and well-being of individuals.

In financial abuse money becomes a tool by which the abuser can further control the victim, ensuring either his/her financial dependence. Other forms of abuse very often accompany financial abuse.

Financial abuse between parents can include the following:

- Preventing a parent from getting or keeping a job, or controlling their choice of occupation;
- Forcing the parent to work to support the abuser;
- Threatening to quit one's job or flee the country if the other parent pursues support;
- Denying access to financial resources: mail, bank accounts, credit cards, cheque book;
- Taking away the other parent's cheque book or credit cards;
- Denying access to financial information such as how much money is coming in, how much is owed;
- Demanding that the other parent turn over their pay cheque or any other money they receive (Child Tax Credit, BC Family Bonus, GST Credit), including money received as a gift;
- Forcing the other parent to have all expenditures and purchases approved by the abuser before the money is spent;
- Forcing the other parent to account for every penny spent;
- Refusing to account for his/her spending of family money;
- Withholding money intended for food or medical treatment;
- Withholding child support;
- Forcing the other parent or the children to beg or commit crimes for money;
- Stealing from or defrauding the other parent;
- Manipulating or exploiting someone for financial gain;
- Forcing the other parent to have sex in exchange for money;
- Leaving the other parent destitute;
- Transferring assets out of the country; and/or
- Hiding and failing to disclose honestly all family and business assets.

Financial abuse interferes with the ability of separating families to reach fair and realistic separation agreements between the two parties. In such cases, mediation is not appropriate.

Help is available

If you feel that you are being abused you can obtain:

- Legal advice on your rights, responsibilities, and legal options;
- Assistance in developing a safety plan that protects what money is coming in and/or enforces a support order; and
- Community resources for help, advocacy and/or counselling, e.g. specialized victim assistance programs, women's centers, men's groups, multicultural and cultural programs, transition houses, Children Who Witness Abuse programs.

To locate these resources, phone VictimLINK (24 hours) at 1-800-563-0808 or visit www.VictimLinkBC.ca.

CHILDREN, MONEY AND SEPARATION

Most of us have strong feelings and opinions about money based on childhood experiences and the values and beliefs of our parents. Often these experiences, values and beliefs are different for each parent.

Trying to teach your children about money is a difficult task, particularly in families where children moving between two homes may encounter different values. This section provides some guidelines that may help.



- ❖ Children learn by observation and example.
- ❖ Children learn about money by experience. It is important for parents to communicate with children about money matters in very concrete terms. Any time money is earned, moved, spent, donated, shared, borrowed, or saved, an opportunity exists for you to teach your children about how the money world works.
- ❖ Children need to know each parent's financial picture, in age-appropriate detail, so that they can participate financially themselves. Let your child know you know you can't afford to buy everything you want, either. Explaining the bigger financial picture will help children be more aware when making financial decisions.
- ❖ Children's understanding and use of money follows developmental guidelines. Include children in family financial decisions and discussions appropriate for their age.
- ❖ Children's education about money should focus on the concepts of earning, spending, saving, borrowing, and sharing. You can begin to work with the first three concepts when children can talk in sentences. Children need to be a little older to comprehend the concepts of borrowing and sharing. These two concepts require an understanding of math and ability to see things from another's viewpoint. These skills don't fully develop until several years into elementary school.
- ❖ Children need help to keep track of their earnings and spending.
- ❖ Children should never be loaned more money than they can repay. Keep the amount realistic for their financial means. Discuss how to save money to buy something instead of borrowing to buy it.

Giving Children Money to Manage

Children may receive money by allowances, by parents doling it out upon request, as gifts on special occasions, or by earning it. There is no right or wrong way to provide children with money, and because each family is in a unique financial situation, deciding whether or not to use an allowance is a family decision.

Many parents feel pressured by their children into giving an allowance because the children's friends are receiving an allowance. There may not be enough money in the family to provide an allowance or parents may not want to provide an allowance. There are many ways besides allowances for parents to provide learning experiences about money.

If you do give an allowance it can be adjusted if your financial situation changes. When parents include children in discussions of family financial problems, they are quite often surprised at how supportive and helpful children can be during these times.

Teaching Your Children Money Habits

Here is an exercise that may help you evaluate what you are or are not doing to teach your children money habits for life. "Yes" answers indicate ways you are helping your child learn money management skills. "No" answers could mean you may need to help them more. These are general questions for all children. The stage of development of the child will dictate how involved you get with the topics presented in the questions.

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Do each of my children have some money to manage without my interference? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Have I helped my children set up a spending and saving plan? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Do I avoid using money as a reward or punishment? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Do each of my children do some regular household chores? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Do I set a good example by being truthful about money matters? |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Do I give my children more financial responsibilities as they get older? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Am I a good money manager, giving my children a good example to follow? |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Do I allow my children to make their own decisions about money when there are alternatives? |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Do I praise my children if they have made wise decisions with their money? |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Do I help my children find ways to earn extra money that is age appropriate and suits their abilities and skills? |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Do I allow my children to make mistakes related to money and help them to understand the consequences? |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. Do I sometimes verbalize my own desire to acquire more goods and services than my income can handle so that my children know that I say "no" to myself, too? |

Children's Reaction to Money Concerns

How your children adjust to your separation is directly related to how you, as their parents, are adjusting. A child's greatest fear in separation is being abandoned. Your child's basic sense of safety and security depends on confidence in his/her parents' commitment to provide support.

During separation and divorce children often witness a great deal of emotion around money, or lack of it, that can affect their sense of safety and security. Common reactions are anxiety, fear, resentment and anger.

In this section we look at children's age-appropriate reactions to tension in their family around finances, and possible remedies.

Birth to 18 Months Old

Mother: "You'd better make sure you have a car seat when you come to pick up Brian on Saturday."

Father: "Do you know how much those things cost? I can't afford to get one by Saturday. Why can't I just use yours?"

Mother: "Isn't that typical. You've got money to go out with your buddies after work but not enough to buy the necessities for your son."

Children from birth to 18 months are able to detect that there is some tension between their parents, but they cannot understand the reasoning behind the conflict. If tension continues the child may appear to be nervous, especially around new people.

Remedies:

- Don't fight in front of the child.
- Reduce the child's startle reflex caused by exposure to loud voices and expressions of anger.

18 Months to 5 Years Old

Father: "Let's go, Kelly. I have to drop you off before I go to work."

Kelly: "Do you have to go to work? I like it when you stay home."

Father: "Sorry, sweetie. I have to go to work to earn money."

Kelly: "I have some money. You can have it."

Father: "No, sweetie, I'm afraid it's not enough. Daddy has to go to work, but I'll see you on the weekend."

Kelly: "Daddy, I don't feel well. I don't think I can go. Please let me stay with you."

Father: "Kelly, you're fine. Now hurry up or I'm going to be late."

Children from 18 months to 5 years realize that they are separate entities from their parents. Often separation involves changes in residence, preschool or childcare providers, or changes in routines because of available finances, e.g. the primary care parent may have to go to work.

Children need predictability and a stable environment. At this age, change can be very difficult for children. They may react by insisting their immediate needs be met, even if there is tension at home. They may vie for a parent's attention at a time when the parent may no longer have the same amount of time to give the child because of new responsibilities, emotions, or stress.

At this age a child's world is centered on itself, but he/she is aware of tension in the environment. A child will react to emotions, and perceived threats to his/her security, e.g. a parent who is upset and crying; a parent who is yelling; a parent leaving angry without the normal goodbye routines – with physical regression, e.g. bedwetting – and emotional regression, e.g. becoming more “clingy”, unable to sleep in own bed, nightmares.

Remedies:

- Develop and keep to a routine.
- Reduce the number of changes in the child's world.
- Limit the number of transitions.
- Do not show tenseness with actions.
- Don't fight in front of the child.
- Look to friends and family to spend some time with the child.
- Read books to your child to illustrate what is happening.
- Encourage your child to talk.



6 Years – 11 Years Old

(Sandy overhears his mother arguing on the phone with his dad about child support payments)

Sandy: “Mom, are we going to be okay?”

Mother: “Of course we are. You don't need to worry.”

Sandy: “You know I don't have to play soccer this year.”

.....
Father: “How was your weekend?”

Jim: “Great! Mom bought me a new pair of runners. They cost \$160 but mom said I was worth it.”

Father: “But I just bought you a new pair of runners a few weeks ago. What's wrong with them?”

Jim: “Nothing. I just wanted new ones.”

.....
Claire: “What do you mean I can't go to camp at Spring Break with all my friends? I always go!”

Mother: “I know, sweetheart. But this year money is tight. Maybe you can go next year.”

Claire: “You're ruining my life! You obviously don't want me to have any friends! Why should I care about your money problems?”

Children from 6 years – 11 years are developing friends and understand loss when separation occurs. They are also able to recognize the changes resulting from your separation. Children may have to cope with changes to residence, school, and childcare providers, which may affect their ability to continue activities or relationships with friends.

They may have to cope with changes to routine because there isn't the same amount of money, e.g. you may not be able to register your child in the next swimming lesson, or your children may not go to the summer camp they were accustomed to going to.

Even relatively small worries like whether or not they can continue to go to Scouts or ice skating can build up to a breaking point in a child's mind, producing erratic outbursts, tears and periods of tiredness. There may be less money for snacks, school lunches, and food at home, leading to the child hoarding food.

Children may be exposed to the emotions and behaviour expressed by their parents around finances. They may witness their parent's fear, anger or distress over lack of money, and react with physical and/or emotional regression. They may hear the word "no" more often to do with money matters – toys, treats, special events – and react with attention-getting behaviour and self-centered behaviour.

They may react to competition between their parents over money by playing one parent against the other for bigger "rewards." They may experience feelings of abandonment after overhearing negative comments about the other parent's lack of financial support.

Remedies:

- Remove all conflict from the child's presence. Don't fight in front of the child.
- Don't show your anger at your child's other parent, or his/her spending habits.
- Don't make negative comments about your child's other parent and money matters, either in person or over the phone.
- Explain changes in routine simply and without drama, without laying blame.
- Allow the child time to adjust to new things.
- Develop a financial plan to deal with the children's needs.
- Establish a formal financial agreement with the other parent to address the children's expenses.
- Communicate with your child's other parent about on-going and unexpected expenses.
- Avoid getting into a competitive, over-compensating cycle with the other parent.
- Encourage your child to talk to you about their fears or worries.

11 Years – 18 Years Old

On returning from a visit with his father, Jamie confronts his mother about her trip to Bellingham in his absence:

Jamie: "Dad can barely make ends meet and you're off spending the money he gives you for us."

Mother: "I know you'd really like to have friends over for a birthday party, but the landlord upstairs wouldn't approve."

.....
Ken: "You know how much I was looking forward to a birthday party. Why did we have to sell our home? Why couldn't you and dad just try a little harder to get along?"

.....
Dad: "Katie, I've got tickets for the two of us to go to the Justin Bieber concert on your birthday."

Katie: "But mom has asked me out for my birthday dinner at my favourite restaurant that night."

Dad: "I'm sure your mom can make reservations for another night. I thought Justin Bieber was your favourite singer?"

Katie: "Justin is performing the next night, too. Maybe you could change your tickets. Mom's already made the reservation."

Dad: "I can try. But I really wanted to take you on your birthday."

Adolescents 11 years – 18 years are very aware of what is going on in their parents' lives, including separation. Not only are they aware of what surrounds them, they are also very critical about the situation. Adolescents are more conscious about not being different from their peers, and differences are accentuated. Adolescents are embarrassed by their parents' separation and are resentful of how it affects their lives. Changes in finances hit teenagers very hard. Adolescents are easily caught in the middle. Adolescents can develop serious psychological problems as a result of a poisonous, emotional atmosphere.

Remedies:

- Talk to your adolescent about changes in your financial situation.
- Be honest about your financial situation. If adolescents are constantly told "no" or there are big discussions about expenditures it adversely affects the relationship between you and your teen.
- Talk to your adolescent about budgeting and money management. Help your teen understand planning, so they can maximize their funds to select items that their budget allows.
- Don't use adolescents as messengers about money.
- Share your adolescent's financial concerns with the other parent and brainstorm solutions.
- Non-residential parents should try to introduce their adolescents to the parent's own normal living conditions rather than take them to "special" places when they visit.
- Encourage adolescents to participate in money management – earning money, saving money, comparing earnings and expenses.

Money Matters, Love Matters More

Children of divorce exposed to conflict — jealousy, bickering, betrayal, backstabbing, and vicious arguments — between their parents, and between a parent and family members, develop a fear of personal vulnerability. As a result they are constantly concerned with how much money they have. Ask children of divorce what they want to do in life, and many will respond, “make money.”



Children need to be taught that the true measure of self-worth is personal integrity, not net worth. They need a basic sense of self-esteem in order to feel confident, to use their initiative, and to try new things. Some separated parents have difficulty modelling these qualities for their children.

Here are some suggestions for helping your children understand that money matters, but love matters more:

- Assure your children about your commitment to their support;
- Expect your children to help with family finances through prudent spending and possibly part-time work;
- Encourage your children to discover their own passionate interests;
- Do not “put down” your child’s other parent for giving gifts, and don’t make your children feel guilty for accepting them;
- Demonstrate to your children that the time you spend with them is more important than the money you spend on them;
- Make it clear that you will not be ruled by fads and advertising; and
- Create an atmosphere where the children can ask about and understand family finances.

THE FINANCIAL STAGES OF SEPARATION

In this section we will look at some of the tasks and timelines that accompany the division of finances during separation or divorce. This is not intended to be a complete guide, nor is it a substitute for legal or financial advice.

Stage One: Preparing For Financial Separation

The time to begin thinking about money issues is not while in the middle of a divorce, and certainly not once the divorce has happened. Parents are in a much stronger position if they start to address their money issues at the point at which they find themselves considering separation or divorce.

Often one person in a relationship has taken primary responsibility for financial management and record keeping. In preparation for separation it is important for the other parent to bring themselves up to speed on the family's financial matters by:

- Reviewing the specifics of all financial accounts;
- Making copies of all relevant documents and computer files with financial data;
- Beginning an inventory of all separately- and jointly-owned assets;
- Making a list of all outstanding debts;
- Meeting with a financial planning professional to discuss the financial and tax implications of decisions that will need to be made as the separation goes ahead;
- Obtaining information about separation and property division laws;
- Establishing credit in your own name;
- Making an effort to pay down the balance of as many bills as possible; and
- Gathering financial information that will help keep legal bills down and provide a more realistic view of the financial situation as decisions are made.

Stage Two: During Separation

This is the time you should be moving toward separating the financial ties with the other parent. You should act promptly to:

- Close all joint credit cards or other lines of credit;
- Separate bank accounts; and
- Manage debt.

The goal is to create two financially separate households from one.

- Take your personal documents — such as your birth certificate and passport — out of a joint file and create a new file for yourself.
- Review your insurance policies.
- Negotiate agreements about guardianship, time spent with the child, child support, spousal support, and property division.
- Decide who will take the dependent tax exemptions for children, and who will claim the Child Tax Credit/BC Family Bonus so that each parent can file their tax returns without additional complications.

The date of separation can be very significant, as it may be used in determining:

- When the spouses become one-half owners of the family property and the family debt;
- If a particular debt can be considered a family debt or a particular asset can be considered family property;
- Each person's entitlement to pensions; and
- Exactly when the parents may apply for a divorce decree under the no-fault clause.

Note: The value of the family property under the *Family Law Act* is the value on the date of the agreement or court hearing dividing the property.

Stage Three: After the Separation/Divorce is Final

It's time to wrap up the details of the relationship.

- If there has been a name change this needs to be communicated to financial institutions, business service providers and others to make the change on legal, financial and business documents as needed.
- Review health, life and other insurance coverage. Replace any lost protection.
- Consider changing beneficiaries on policies unless there is an agreement otherwise.
- Each parent should contact his or her employer to make changes to benefits as needed.
- Each parent should review his or her will and other estate planning documents.

FINANCIAL STAGES OF SEPARATION CHECKLIST

Preparing for Financial Separation

- ☐ Obtain information about separation and family law, including property division laws. How will your property be divided?
- ☐ Review the specifics of all financial accounts. Make sure you have access to all information: account numbers, financial institutions, insurers, your tax accountant, important documents and contact information for each.
- ☐ Make copies of all relevant documents and computer files with financial data for yourself.
- ☐ Meet with a financial planning professional and a tax accountant to discuss the financial and tax implications of decisions you will need to make as you plan for separation.
- ☐ Make sure you have access to savings of your own in the event that you must suddenly rely on your own resources to meet household and personal expenses.
- ☐ Make sure you have a credit card in your own name. If not, apply for one.
- ☐ Begin an inventory of all separately and jointly-owned assets. Include investments, cash, vehicles, real estate and furniture.
- ☐ Obtain appraisals of assets such as art, antiques, fine jewellery and other tangible items.
- ☐ Make a list of all outstanding debts.
- ☐ Verify the contents of any joint safety deposit box.
- ☐ Pay down the balance of as many bills as possible.

During Separation

- ☐ Seek information from a Family Justice Counsellor or Child Support Officer re: child and spousal support, time with your child, and guardianship. Private family mediators can assist with all the above as well as property and asset division. Seek legal advice from a family lawyer about support, property and asset division and options to litigation.
- ☐ Each spouse generally needs to seek legal advice from a separate lawyer.
- ☐ Consider revoking any power of attorney documents that name your spouse as your agent.
- ☐ Contact banks, investment companies and brokerages where you and your spouse have joint accounts. Ask what actions, if any, you can take to protect your interest in those accounts.
- ☐ Contact creditors with whom you and your spouse have joint accounts. Pay the balance and close the accounts, if possible.
- ☐ Make copies of all legal, financial and other important documents.

- ☐ Take your personal documents — birth certificate and passport, for example — out of joint files and create your own file.
- ☐ Contact your insurance provider to review auto and homeowners or renters policies.
- ☐ Work with your spouse to negotiate a division of family property, guardianship of children, child support and time spent with the children. If you want child support or spousal support, make a monthly and annual expense budget — including food, medical care, housing, clothes, day care, school supplies and activities, and other relevant expenses — that could be used to support your case.
- ☐ Discuss and decide with your spouse who will take the dependent tax exemptions for children, and claim the Child Tax Credit/BC Family Bonus.

After the Separation/Divorce is Final

- ☐ Change names on documents, as necessary, to reflect the division of assets decreed by your Separation Agreement or divorce decree.
 - House deeds
 - Vehicle titles
 - Stocks, Bonds
 - Bank accounts
- ☐ If you changed your name contact your service providers to make the change on legal, financial, business documents. Contact Vital Statistics to identify documents where you may need to make changes.
- ☐ Review health, life and disability insurance coverage. Replace any lost protection. Consider changing beneficiaries on policies you own unless your separation agreement requires you to continue to name your former spouse.
- ☐ Review your will and other estate planning documents. If you have no will, prepare and execute one.
- ☐ Contact your employer to make changes to benefits as needed that reflect your requirements as a single person.
- ☐ Obtain advice about filing your first tax return as a single person, particularly if you were still married at the end of the previous tax year.
- ☐ Collect and organize your important legal and financial documents.

COMMUNICATION STRATEGIES

For most children, it is not the separation or divorce, but the post-separation conflict that creates the most adjustment problems. The source of most post-separation parental conflict is ineffective communication – and the topic is often money.

If you can learn to relate to your former partner in a business-like manner and avoid games that put your children in the middle, you will be able to negotiate informally to resolve financial issues in your children's best interest.

In this section you will find strategies for communicating with the other parent about financial matters.

Agreements or orders that address child support and spousal support generally refer to ongoing financial responsibilities. It is important that you have any agreement or order about support in your possession, and that you understand the details.

- Is there a Child Support Order?
- Does it include special expenses?
- Does it speak generally about special expenses, or is it specific? Is one of you responsible for medical/dental insurance plan payments for the children?
- Is there a Spousal Support Order?

If you have negotiated an agreement or order that addresses support, it is important that you respect the terms of the agreement or order because it is a legal contract and can be enforced.

If you are the payor you should make paying your support in a timely manner a priority — at the same level of importance as paying your mortgage or rent. The parent receiving the support is counting on that money to pay their mortgage or rent, and other bills in a timely manner.

Beyond a support agreement or order you may find yourself having to communicate with your child's other parent about extra expenses (those not covered in the agreement or order) and unexpected expenses (those that are not planned).

Take a look at the following situations and consider the responses.

Mom: Janice's basketball team is off to a tournament in Victoria the weekend after next. The notice from school says that we need to pay \$280 by this Friday.

Dad: Why are calling to tell me about this? I give you child support.

Do you think Dad is upset about contributing to his daughter's weekend tournament? Or could he be upset about the fact that he wasn't included in the decision that his daughter would go in the first place?

Brad: Mom, I need a cheque for \$100 for Wednesday.

Mom: What's it for?

Brad: Something about if I don't pay I don't get my cap and gown for the graduation ceremony.

Mom: You have to buy your cap and gown?

Brad: No, it's a deposit. We get the money back when we turn the cap and gown back in next week.

Mom: How long have you known about this? Payday isn't until Friday. How do you expect me to come up with \$100 on short notice?

How would Brad feel after this conversation with his mom?

Dad: Kyle has a birthday party to go to on Saturday in Ladner from 4:00 to 6:00 p.m. You will need to take him out to buy a birthday present.

Mom: But this is my weekend with Kyle. I have already made plans. You'll have to come by and pick up Kyle and deliver him to the birthday party and then bring him back afterwards. I don't have the money for gas. I pay you child support. You should be buying the birthday presents.

How does Mom feel about being told what she has to do with Kyle on her weekend, and then being asked to absorb the extra and unexpected costs of Kyle attending the birthday party?

Options for Communicating with the Other Parent

There are many options for communicating with the other parent. You can communicate in person, on the phone, by letter, by fax, by email or by text message. Each may be appropriate for the situation but be sure to consider how your former partner may view the method of communication especially if it is about a large output of financial resources. Make sure to prepare what you are going to say ahead of time.

Communicating in person

When you are negotiating in person, there are other considerations for a successful negotiation:

- Use a neutral tone of voice. Ask yourself if you would be speaking with a plumber, someone you work with, or a stranger, in that tone of voice.
- Be aware of the messages your body language is giving the other parent.

Make sure your body language and facial expressions are consistent with your words. You can use honeyed words and still send darts with your eyes.

Conversation tips:

- Avoid the other parent's known "triggers." Don't act snotty, superior, or self-righteous. Be kind. Manage your own "triggers."
- Give the other parent an opportunity to speak.
- Listen.
- Resist the urge to interrupt.
- If emotions run high, take a break. If your emotions become too overwhelming, learn to breathe slowly or ask that the conversation be continued later. Leave if you have to.
- Back off. If the other parent is emotionally closed, don't keep talking and explaining. You get angry and the other parent gets irritated. Just wait for a better time.
- Bounce it back. If you are attacked verbally, tell the other parent, "I refuse to receive that. I need to be respected in this conversation, and if you can't do that we should continue this conversation later." If the other parent continues to bait you into an argument, leave calmly and quietly.
- Don't take the outcome of the discussion personally.

Communicating on the phone

Talking on the phone is more common when you have trouble talking face-to-face, but it can be a set-up for rejection. It's easier to react to voice tone and inflection and hang-up when it appears the other parent doesn't agree with you. Your emotions can easily rise if the other parent fails to hear you, understand you, or validate you.

Stick to the facts. Reduce the emotion. If you find yourself or the other parent going off on tangents or around in circles, bring it to a close. "I want to consider everything you have to say, but right now I'm having a hard time." Use the non-violent hang-up. Tell the other parent courteously, "I'm going to hang up now. I'll talk to you tomorrow after work." And hang up. Politely.

Communicating in a letter or by e-mail

Writing notes helps prevent face-to-face confrontations. You don't have to see it as the coward's way out, just an alternate until you are healed enough to talk in person. Letters allow you to release your ugly emotions on paper and then clean up the letter before you deliver it. They give the other parent time to digest your thoughts and prepare their own response.



Tips for keeping your letters healthy include:

- Check all the “you” statements.
- Correct “always” and “never.”
- Clean it up. Delete any shaming, attacking, and cursing words. Eliminate all accusatory statements.
- Change the part where you ask them to change.
- Set your boundaries ahead of time, as well as the consequence that will follow. For example: “If you don’t pick up the children by 6 p.m., I won’t be doing it for you. The daycare will charge you for the extra time they have to watch the kids.”
- Avoid responding to negative or abusive letters.
- Keep a copy of any plans that are negotiated so that you can refer to them later.

Communicating about Expenses

Research has shown that involving the other parent in the decision-making process increases their willingness to contribute to unexpected expenses. It is also important to remember that a request for money always provokes an emotional response. When someone is approached unexpectedly about contributing money, it is easy to go on the defensive.

The parent being asked may feel they have already paid their child support and shouldn’t have to contribute anything more. The inference is that the other parent should be managing their money more effectively.

The reality is that money is personal, and the parent being asked may not want to reveal their financial resources. If there isn’t extra money to contribute, the responding parent has the choice of either turning down the request, or offering to help out at the expense of other bills.

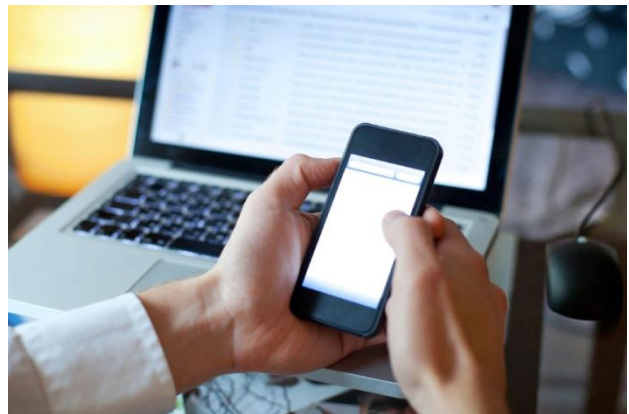
The following strategies can reduce conflict around these particular expenses:

1. Do your homework.

Before you approach the other parent, gather all the financial information and any other details about the expense that will be important to share: what the money is for, how much, and when is it due.

2. Decide HOW you want to communicate.

Decide upon the most effective way to communicate this particular financial request. For example, do you use the phone, e-mail, letter, fax, voice mail, or communication book, or do you talk in person?



3. Timing is everything.

Allow enough lead-in time to give the other parent time to digest the request and get back to you with an answer.

4. Invite consultation.

Initial communication should be to provide information and invite consultation. The goal here is to include the other parent in the decision-making process.

5. Stay child-focused.

The request should be child-focused; e.g. “Johnny is really excited about being selected for the all-star baseball team and it would be a really good experience for him to be able to go to the provincial tournament with his team.” vs. “I need \$200 to send Johnny to the provincial baseball tournament this weekend.”

6. Invite feedback within an appropriate deadline

Ask the other parent to get back to you by a specified day or time; e.g. “Could you get back to me by next Wednesday so that I can let the coach know at the next practice?” vs. “I need to know as soon as possible.” Or “What is there to think about — yes or no?”

7. Listen to each other without interrupting.

8. Offer possible solutions and be open to other solutions.

Don’t presume that your solution is the only one. There may be different ways to achieve the same goal; e.g. treat the expense as a special expense and share it proportionately, or share the expense equally, or organize a payment plan, or offer a payment in kind (offer time or services which may bring down the overall cost). Options should also include how much, when, and how.

9. Clarify the details.

Decide who will be paying for what and when, e.g. “If you pay the coach the full amount on Wednesday I can pay you back next Friday.” Or “You can pay your portion in two equal installments over your next two pay periods.” Or “I’ll pay the tournament fees now if you will handle soccer registration in the fall.”

10. Write up the plan.

Follow up the discussion with a written summary of the details that each of you agreed to so that both of you have the same information and can track expenses.

11. Discuss and decide what information will be shared with your child.

If the two of you decide you cannot afford the expense, you should discuss what information would be shared with the child and how you plan to do that. You want to present a unified decision to the child to avoid blaming.

12. Build on your successes.

As communication between the two of you improves, there will be less chance of misunderstandings and conflicts between you and a better chance of a healthy upbringing for the children.

Practise your positive communication skills by considering how to handle the following situation.

Scenario: New Instrument

Your son plays the clarinet. He is taking lessons and has already passed his Grade 5 clarinet exam. His teacher says he is very talented and could perform solos at concerts but she would suggest that he upgrade his instrument now.

The new instrument will cost \$1000. She would like him to get the new clarinet within the next month so that he can use it at the next festival coming up in two months.

The cost of the lessons has already been worked out between you and your former partner but this is an unexpected expense.

How would talk to your former partner about this expense?

What communication strategies could you use to get a favourable result when this subject is discussed?

What things would not work?

GETTING HELP

For help with your financial situation, there are many professionals to whom you can turn to for help. A Family Justice Counsellor or a Child Support Officer can help with support issues. Their services are free.

A parenting coordinator can help with conflict around special or extra expenses as defined in orders. Private mediators can help you work out agreements on support and property division. If you are a parent on income assistance, talk to your income assistance worker regarding child support arrangements.

A lawyer can provide legal advice on your rights and responsibilities, and act as your advocate in support matters. Some lawyers offer collaborative divorce.

You may be referred to credit counsellors, bankruptcy trustees, financial advisors, accountants, actuaries and other financial professionals that can assist with an aspect of your personal finances, income determination and/or property division.

The Family Maintenance Enforcement Program can help locate the other parent if you are unable to do so.

You can also attend a Parenting After Separation class to help you be more able to manage effectively through the separation process – putting the interests of your children first.

Family Justice Counsellors

Family Justice Counsellors are government employees who work at Family Justice Centres across the province (and sometimes in local courthouses). Family Justice Counsellors help people work out parenting arrangements and other separation issues. They can help with child support and special expenses. Some Family Justice Counsellors can help with spousal support. They also provide mediation services. They also can make referrals to other services and professionals. Family Justice Counsellors are not lawyers. They cannot give legal advice. They cannot accompany you to court. They cannot help you get a divorce.

To contact a Family Justice Counsellor, call Service BC and ask for one near you:

- 604-660-2421 (from Vancouver),
- 250-387-6121 (from Victoria), or
- 1-800-663-7867 (from outside Vancouver and Victoria).

For more information see the Justice BC website at www.JusticeBC.ca.

Child Support Officers

Child Support Officers are available at Family Justice Centres in Kelowna, Nanaimo, Vancouver, and Surrey. Child Support Officers will help you understand the federal child support guidelines and calculate what you should receive or what you should pay under those guidelines. They will also refer you to other professionals, such as an outreach worker from the Family Maintenance Enforcement Program or a Family Justice Counsellor, or to other services, such as Parenting After Separation, financial management, legal advice and debt counselling.

To contact a Child Support Officer, call Service BC and ask to transfer to one near you:

- 604-660-2421 (from Vancouver),
- 250-387-6121 (from Victoria), or
- 1-800-663-7867 (from outside Vancouver and Victoria).

For more information go to www.familylaw.lss.bc.ca/help/who_childSupportOfficers.php.

Private Mediators

Family mediation deals with conflicts within a family including separation, divorce, parenting arrangements, property and asset division, as well as planning tools including estate planning, cohabitation or marriage agreements.

Family mediation is a legally-binding alternative to going to court, and a practical, affordable and confidential process to prevent and resolve family disputes.

Most mediators charge either by the hour or using daily or partial daily rates. The parties decide how those costs will be shared. In general, the cost of a successful mediation will be less than the cost of going to court.

Costs vary, depending on such things as:

- How many parties are involved;
- The complexity of the issues under discussion;
- The qualifications and experience of the mediator;
- The number of sessions; and
- Whether lawyers are participating in the mediation.

Some of the things mediators are paid or reimbursed for include:

- Time spent helping parties prepare for mediation;
- Time spent in mediation;
- Travel time to and from mediation, if in another city; and
- Rental of a mediation room (if needed).

Contact Mediate BC at www.MediateBC.com or *Family Mediation Canada* at www.FMC.ca for a list of family mediators who have met the requirements of the *FLA* Regulations regarding family mediators.

Mediation

In mediation, you and the other parent will work with someone who is specially trained to help you reach an agreement. A family law mediator will:

- Provide a neutral, safe place for you and the other parent to meet;
- Help define the issues you need to resolve;
- Keep the discussions on track;
- Help you maintain a working relationship with the other parent; and
- If requested, will record all the agreements made in mediation and refer you for legal advice.

A mediator will not make decisions for you but can help you and the other parent communicate with each other about all of the issues involved in your separation. Mediation is a voluntary process. Both parents also have to agree to mediation for it to work.

Some of the benefits of mediation are:

- It gives you more control over what happens. It allows for more creative and flexible arrangements that suit your particular circumstances. If you go to court, the judge will decide for you, using the limited range of options available under a court order.
- People who use mediation are usually more satisfied with the outcome than those who don't. This means they are more likely to follow the terms of the agreement.
- It is informal and private. While a lawyer can attend mediation with you, there is usually no one else there but you, the other parent, and the mediator. No one else has to know the details of your agreement.

Parenting Coordinators

Parenting coordination is a fairly new process in BC. Its purpose is to give families in constant conflict over matters regarding the children an alternative to going to court to manage disagreements about the parenting plans in agreements and court orders.

The BC Parenting Coordinators Roster Society is a group of BC family law lawyers and mental health professionals. Its website provides information about parenting coordination, how to arrange for parenting coordination, who is best suited for parenting coordination, and contains a list of trained and qualified members.

For more information go to www.BCParentingCoordinators.com

Family Maintenance Enforcement Program (FMEP)

FMEP monitors and enforces maintenance orders and agreements (for either child support or spousal support). Many maintenance payments are paid on time and in full, but some people like having a third party (FMEP) involved to track the payments.

If a support agreement or order is enrolled with FMEP and payments aren't made, they contact the payor to try to get payment voluntarily and develop a plan for paying the arrears. If enforcement is necessary, federal and provincial laws give them the authority to use a number of measures such as:

- Notice of Attachment (garnishment for wages or bank accounts)
- Federal Interception (Notice of Attachment for federal payments such as EI benefits and income tax returns)
- Land Registration (lien against real estate)
- Maintenance Lien (against personal property)
- Reporting to the Credit Bureau
- Drivers Licence Withholding
- Federal Licence and Passport Denial

FMEP charges interest on late and unpaid maintenance. This interest goes to the recipient. They can also charge the payor a default fee if two payments are late or missed within the same calendar year. The default fee is equal to one month's maintenance, to a maximum of \$400.00 per calendar year. The fee goes to the BC government, not to the recipient.

Once a case is enrolled with them, they work with both the payor and the recipient to try and keep maintenance payments up to date. They will give you a case number and Personal Identification Number (PIN) so that you can get routine information about your case through:

- InfoLine (automated phone system)
 - the Lower Mainland at 604-775-0796
 - in Victoria at 250-356-5995
 - elsewhere in BC at 1-800-668-3637
- www.FMEP.gov.bc.ca
- Office locations
 - Lower Mainland at 604-678-5670
 - Northern/Interior (Kamloops) at 250-434-6020
 - Victoria at 350-220-4040

In addition to specialized professionals there are different processes for helping you navigate your financial separation. The *FLA* expects parents to try dispute resolution to sort out support and property division before proceeding to court.

Collaborative Processes

Lawyers who have special additional training can help people resolve a family law dispute through collaborative settlement processes. When people agree to use a collaborative process, they and their lawyers sign an agreement that they will use their best efforts to resolve the dispute outside of court, and that if the parties do have to go to court they will hire new lawyers.

Collaborative processes work like negotiation but involve other professionals when their participation will help the parties to reach a settlement:

- Clinical counsellors or psychologists can be involved as *divorce coaches*, helping the parties work through their emotions;
- Clinical counsellors or psychologists can be involved as *child specialists*, giving advice about parenting schedules and how the children are experiencing the parties' separation; and
- Accountants, appraisers, and tax specialists can be involved to help figure out complicated financial problems.

When a collaborative process is successful, the parties will usually sign a separation agreement to document their settlement. Separation agreements can be filed in court and be enforced like court orders.

More information about collaborative settlement processes is available online in the Resolving Family Law Problems out of Court chapter in the section on Collaborative Processes.

Parenting After Separation Program

Parenting After Separation is a free, three-hour information session for BC parents who are dealing with the issues of separation, including child support. The session is intended to help parents make careful and informed decisions about their separation and any conflicts that may result from it and to ensure that these decisions take into account the best interests of their children. To find out more about Parenting After Separation go to www.JusticeBC.ca.

Help in Locating a Parent

The court must sometimes settle family justice issues. If court action is required the current addresses of both you and the other parent are needed. If the other parent has moved without providing a forwarding address you may need help locating him/her. There are resources that can help when you don't know the location of the other parent.

If you are applying to Provincial Court to obtain, change, or enforce a Court Order or Agreement for spousal or child support, guardianship of a child or time spent with the child you can ask the family registry to submit a request for search on your behalf. The registry will ask you to fill out a Search Request Form. To complete the form you will need to provide information to identify your child's other parent. This information is essential to the success of the search.

If you are enrolled in either the Family Maintenance Enforcement Program or the Family Maintenance Program, the program automatically requests searches as required. You can use the MELS which is the Maintenance Enforcement Locator Service.

The results of the search are reported back to the court registry, not you personally. A search request can take up to six months. You can also:

- Use personal resources – family, friends, employer, last known address.
- Use a “people finder” program on the Internet.
- Hire a private investigator.

Notes...

4 How to Separate

In order to effect a physical financial separation, you and your former partner will have to separate your finances by deciding what to do about child support, spousal support and property division.

SEPARATION CAN BE COSTLY

Separation can be costly. One of the great myths of separating and divorcing couples is that it is cheaper to live as a single than as a couple. The error in this thinking is that before you separated you both contributed to your family's lifestyle and standard of living and yet, if you are like most couples, you struggled each month to make your income stretch to pay the bills.

When feeling the financial pinch, some parents develop a self-serving fantasy about how well the other parent is getting along:

- *"They can live comfortably on \$500 a month because she knows how to."*
- *"My money just bought her new furniture."*
- *"He obviously can afford to give me more because he just bought a new car."*
- *"She is obviously doing well because she's taking the children to Mexico for Christmas."*

The truth is often overlooked and parents lose focus, make assumptions, and develop resentments. The task still remains that both parents need to contribute towards the children's expenses based on their means. In reality probably neither parent will be particularly solvent after they separate.

After separation expenses that you didn't think about begin to surface:

- Two house payments (or rent payments)
- Two utility bills (one for each residence)
- Two telephone bills (one for each residence)
- Furniture for the second home, and kitchen staples (flour, sugar, cleaning supplies) and utensils (pots, pans, dishes)
- Car payments for two cars
- Gas for two cars
- Automotive maintenance and repairs for two cars
- Children's expenses (you may want to double up on many things so that the children have belongings at both homes)

The family money pot is suddenly being divided, and many people suffer from "sticker shock" when they realize how expensive running two households can become.

Most women and men do not consider these "extra expenses" until they're faced with them. The first thing most do is to liquidate some of their assets to pay for the extras. It's no wonder then, that everyone feels "cheated".

After separation both parents usually will have to rebuild their economic lives with reduced resources. Short-term strategies can be helpful in reducing overall costs and decreasing anxiety over money.

Interim agreements for support can take into consideration the extra costs of one parent having to set up a separate residence. Interim agreements may also be written to cover the cost of the mortgage or a car payment until support is formally put in place. Interim agreements may also provide for an amount greater than required under law to allow time for a parent who was a stay-at-home parent during the marriage to obtain extra education and training and look for employment.

Parents can make arrangements to share clothing, toys, and even supplies in the short term so that time with the child can go ahead. A parent with transportation can offer to drop-off and pick-up the children to reduce the travel time and extra cost of using public transportation.

Keeping in mind that the children and each parent all need money, and that everyone wants to live as comfortably as possible, it makes sense to exercise short-term plans to redistribute the money and try to make it work to the best of the parents' abilities.

CHILD SUPPORT

In order to effect a physical separation, you and your former partner will have to un-mesh your finances by deciding what to do about child support.

- ❖ Child support is money paid for the benefit of the child.
- ❖ The person paying the support is called the payor and the person receiving the support is called the recipient.
- ❖ The support is not paid to benefit the parent with whom the children mostly live. It is intended to defray the extra costs that a parent incurs because of the children being in their primary care.
- ❖ The parent with whom the child lives is also expected to contribute a notional amount of child support towards the children's living expenses, based on their gross income.
- ❖ In practice, however, the parent with whom the child lives usually pays more than their "share" of child support as they absorb all the expenses that aren't covered by the payor.
- ❖ With both parents contributing to the children's expenses the children's living conditions will be better than if only one parent provided support.

- ❖ The recipient of child support is free to use the money at their discretion. They are not required to account for how it is used so long as the children's needs are being met.
- ❖ Child support is averaged over the year. It is expected that the custodial parent will budget for additional expenses that occur during the year, e.g. seasonal clothing, back-to-school expenses, birthdays, registration and equipment fees for extracurricular activities.

Who Supports the Children?

Both parents have a legal duty to financially support their children. Child support is paid on the principle that both parents have a positive duty to contribute to the child's upbringing.

The simple fact of biological parenthood will trigger this obligation even if the parent never sees the child and has no role in the child's life. A guardian appointed under the *FLA*, who is not the child's parent, may have a duty to pay child support, but that duty is secondary to the parents' duty. In other words, the parents' duty to pay child support comes first.

Step-parents and persons who stand in the place of a parent can also be asked to pay child support although the rules are slightly different for these people and their obligation is often tempered by a biological parent's obligation.

Under the *Divorce Act*, a "step-parent" is someone who is married to a parent and "stands in the place of a parent." Under the *Family Law Act* a "step-parent" is the married or unmarried spouse of a parent and may be required to pay if he/she has contributed to the child's expenses for at least one year. The child support obligations of step-parents comes second to both parents and guardians.

Any application that a non-biological parent pay child support must be brought within one year of the date of that parent's last contribution to the support of the children.

What is child support and why is it paid?

Child support is money paid by one parent to the other to help distribute the expenses associated with the children being in that parent's primary care. The parent who has primary care is also expected to contribute towards the children's living expenses, based on their gross income. The parent with primary care of the children usually pays more than their "share" of child support as they absorb all the expenses that aren't covered by the other parent. With both parents contributing to the children's expenses, the children's living conditions will be better than if only one parent provided support.

Who pays child support, and how much, depends upon the children's residential arrangements. The Child Support Guidelines tables are based on the assumption that the parent who has the children for most of the time will bear most of the costs associated with the children.

When siblings live in different households or the children spend at least 40% of the time with each parent, these expenses are presumed to be shared more equally. As a result, the Child Support Guidelines make special provisions for parents with these kinds of parenting arrangements.

Economic research on family spending shows that there is no single fixed cost of raising a child. Families spend more on their children as family income increases, with the proportion of family income devoted to children remaining the same across all levels of income. So the “cost of raising a child” depends on how much income, and how many children the family has.

The support payer’s contribution is set in accordance with the average proportion of income that a parent at that income level spends on their children. In broad terms, the guidelines ask “what would a parent with this income usually spend on his or her children?” and support payments are set accordingly. The receiving parent is presumed to contribute to the children in proportion to his or her income.

Child support is tax neutral. The payor cannot claim a deduction and the recipient does not have to pay income tax on the amount received.

Can I waive child support?

There is no such thing as a “clean break.” The parent who has primary care of the children cannot make an agreement absolving the other parent from having to financially support the children. The parent with primary care and control of the children cannot agree to “give up” support in order to have no further contact with the other parent.

Do I have to pay child support if my former partner, with whom my child lives enters into a new relationship?

Child support continues even if the parent with whom the child lives enters into a new relationship. The person a parent enters into a new relationship with is, generally, not liable to pay support. Only if the new spouse adopts the children as a step-parent would the obligation to pay child support be transferred to the new spouse. Financial hardship caused by a payor having to financially support children from another relationship can affect the amount of support payable but does not cancel one’s obligation to pay.

If you are the payor do you have to pay child support when the children spend time with you?

Child support continues even when the children are spending time with the paying parent. The custodial parent must maintain the children’s living environment even when the children are spending time with either, the other parent, extended family, friends, or away from home on vacation.

Can I stop paying child support if my time with my children is cancelled or interfered with?

No. Child support is not a fee paid in exchange for time with the children. The children's standard of living should not be affected by conflict between the parents over time spent with the children.

What expenses does child support cover?

The base amount of child support a parent pays is presumed to cover a very wide scope of common day-to-day expenses associated with raising children: the child's share of the rent and utilities, groceries, clothing, school expenses, and activities.

The base amount of support is not always presumed to include certain other kinds of expenses that are truly extraordinary given the family's circumstances, e.g. daycare, tutoring, medical and dental expenses.

In addition, to the base amount of support payable, a paying parent may also be required to cover a portion of these other expenses so long as they qualify as "special and/or extraordinary expenses" under the Guidelines.

Can I ask my former partner, to whom I pay child support, to provide receipts to show me how he/she spends the money?

No. The recipient of child support is free to use the money at their discretion. They are not required to account for how it is used so long as the children's needs are being met.

If you deduct money from the child support you normally pay to cover the cost of something you bought for your child, or to pay an activity fee for your child, you will still owe money as child support unless the other parent agrees to the lower payment.

Special expenses are treated differently. If your agreement or order includes special expenses you may ask to see receipts to show that the expenses have been paid.

Is child support affected by an order for spousal support?

If there isn't enough money to pay both, child support will take precedence.

How long does child support continue?

In British Columbia, child support usually continues until a child is 19 years of age. Child support can be payable after a child turns 19 years of age if the child is unable to withdraw from the care of his or her parents.

The two main reasons why a child might not be able to “withdraw” are: the pursuit of a post-secondary education; or, a serious chronic illness that prevents the child from becoming self-supporting. As a general rule, the courts will allow an adult child to benefit from child support for one program of post-secondary study so long as the child is enrolled full-time.

Special and/or Extraordinary Expenses

In addition to basic child support a paying parent may also be required to cover a portion of other kinds of expenses so long as they qualify as “special and/or extraordinary expenses” under the *Child Support Guidelines*.

What are “special and/or extraordinary expenses”?

Special and/or extraordinary expenses are defined under section 7 of the *Child Support Guidelines* as follows:

- Child care expenses, as long as those expenses are the result of the custodial parent’s employment, illness, disability or education or training for employment;
- The child’s portion of the medical and dental insurance premiums;
- Health-related expenses that exceed insurance reimbursement by at least \$100 annually, including: orthodontic treatment; professional counselling provided by a psychologist, social worker, psychiatrist or any other person; physiotherapy; occupational therapy; speech therapy; and prescription drugs, hearing aids, glasses and contact lenses;
- Extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child’s particular needs. Tutoring costs fall under this category where the tutoring is necessary for the child’s academic performance. So, too, can special costs related to particular courses, including handbooks, instruments, equipment or materials, field trips;
- Expenses for post-secondary education; and
- Extraordinary expenses for extracurricular activities.



How are special and/or extraordinary expenses shared between the parents?

In the absence of another arrangement between the parents, these expenses are shared by the parents in proportion to their income, after deducting any contribution to those costs made by the child or the government (through things like grants or tax deductions).

The idea is to look at the total pot of money available to the child for such expenses and to figure how much each parent’s share of that pot is, and pay the expense according to that share.

What is being shared is the *net* cost of an expense — in other words, the amount actually being paid. The net cost of daycare, for example, is the cost of daycare less any daycare subsidy the provider is receiving and less any tax credits that arise from claiming the expense.

Changes to the *Child Support Guidelines* clarify when these special and/or extraordinary expenses should be paid.

First, expenses are extraordinary if they exceed what the requesting spouse can reasonably cover, in light of his or her income. In deciding what a parent can reasonably cover, the court takes into consideration the income of the requesting parent as well as any child support received.

Second, just because an expense occurs doesn't mean it will automatically be shared. The courts consider:

- The amount of the expense in relation to the receiving parent's income (including the child support amount);
- The nature and number of the educational programs and extracurricular activities;
- Any special needs and talents of the child or children;
- The overall costs of the programs and activities; and
- Any other similar factor that the court considers relevant.

The courts also consider the necessity of the expense in relation to the child's best interests and the "reasonableness of the expense." This includes considering the family's means (how much money they have) and their spending pattern before the separation.

Can we make our own agreement about how special and/or extraordinary expenses will be shared between us?

You can agree to the expenses you will share and how you will share them.

You can agree to share expenses which do not necessarily qualify as "special and/or extraordinary expenses" under the *Child Support Guidelines*, e.g. the registration fee for an activity, birthday parties, fees related to social outings, and extraordinary purchases such as a computer.

You can also agree on how you will share expenses – 50/50 vs. in proportion to your incomes. And you can include details of the payment of such expenses in your agreement, e.g. taking turns to pay for program registration fees, a lump sum payment either annually or seasonally, or paying within 30 days of production of a receipt for the expense.

Factors Affecting the Willingness to Provide Support

Why do some parents financially support their children and others don't, even when there is an agreement or order to do so? Research from the Department of Justice Canada suggests that there are factors that affect the willingness of parents to pay support.



- ❖ There is a greater willingness to pay if there is a court order or agreement that details the parenting arrangement after separation. Willingness to pay is even higher when there is an agreement rather than a court order as long as the agreement is in writing.
- ❖ There is a greater willingness to pay if there is an agreement in writing about when the paying parent will spend time with the children. Actual contact between the supporting parent and the children raises this willingness to pay even higher.
- ❖ Paying parents who reside with their children some of the time, or at least see their children regularly and often, and participate in their care and essential activities are more likely than others to pay child support.
- ❖ A parent with an order or agreement to pay a larger amount of child support is more likely to pay than if the amount is for a smaller amount. Since smaller amounts usually correspond to lower *Child Support Guideline* income, it may be that the parent required to pay under a Child Support Order just can't make ends meet.
- ❖ Parents with orders or agreements for smaller child support amounts tend to feel that their contribution isn't significant to the children's well-being, and therefore it won't be "missed."
- ❖ At the time of separation financial support usually either follows the pattern in place before the parents separated, or is left to each parent to sort out. For example: Will the person who left continue to pay the mortgage? Who will pay the children's soccer registration in the fall? In order to minimize the impact on the children it is important that parents have a discussion about sharing parenting duties and how the support of the children is to be defined.
- ❖ Paying parents with strong concerns about the child-rearing practices of the other parent are less likely to pay child support. For example, there may be disagreement as to what the children should or should not be allowed to do, or about the kind of environment in which the children are being brought up (including the presence of a new partner).
- ❖ Paying parents are more inclined to support an expense where there is an observable benefit to the children. For example, a paying parent who sees an improvement in their son/daughter's math grade after a session of tutoring is more likely to support that expense. Where there is no observable benefit the paying parent may see the expense as "frivolous" or "indulging the children."

- ❖ Parents who feel they have been consulted before the other parent has made a commitment to a particular activity are much more likely to freely contribute to the expense. When one parent commits to both parents funding an activity without first consulting with the other parent, what could have been a “request” for financial support now feels like a “demand,” and can influence the other parent’s willingness to contribute to the expense. Important financial decisions that concern the children should be discussed between the parents, taking available finances into consideration.
- ❖ Parents who are given the opportunity to discuss an expense before permission has been given for a child to attend or participate in an activity are more willing to contribute to that expense, if they have the finances to do so.
- ❖ Willingness to pay is usually higher when the request for additional money is presented in a neutral or positive manner that gives the paying parent time to attend to the request, and to make arrangements for the payment.

You can use some of the communication strategies discussed earlier to help you make requests for extra money from your former partner.

Information on Child Support Enforcement

The provinces and territories are primarily responsible for child support enforcement. Each province and territory has its own maintenance enforcement program. The British Columbia Family Maintenance Enforcement Program (FMEP) is a service established by the provincial government to help parents receive their child support payments. “Maintenance” is another term used to describe support.

To receive help from an enforcement program, a parent must register a child support order or agreement with the program in his or her province or territory. If child support is not paid, the program can use a number of methods to enforce the order.

If you enroll in the BC FMEP program, all support payments go through them. Staff will monitor your child support payments and enforce the court order if payments are late or unpaid. FMEP staff will contact the non-paying parent and arrange for payment to be made. There is no cost to enroll and there is no time limit when a parent can file their child support agreement or order.

Some parents enroll in the program because it is easier to have FMEP collect payments than it is to do it themselves. When necessary, however, FMEP has the power to take wages, make financial agreements that can’t be broken (“binding” agreements), and take other legal action to get payments on behalf of the children such as putting a lien on the payor’s house or car, holding back the payor’s driver’s licence or refusing the issuance of a passport.

It is better to pay child support when your children need it. If parents don’t pay child support and get behind in their payments (are “in arrears”), their Old Age Security and Canada Pension Plan benefits can also be taken to pay the debt (“garnished”).

SPOUSAL SUPPORT

In order to effect a physical separation, you and your former partner will have to un-mesh your finances by deciding what to do about spousal support.

What is spousal support?

Spousal support is a payment of money by one spouse to the spouse who has been financially disadvantaged as a result of the relationship ending.

Following the end of a common-law or married relationship, each spouse has a duty to become independent and self-sufficient as soon as possible. A spouse who is capable of supporting him/herself following the end of the relationship may not be entitled to receive spousal support.

Spousal support is available for married spouses under both the federal *Divorce Act* and the provincial *Family Law Act*. Spousal support is available to unmarried couples under the *Family Law Act* alone. Spousal support is also available to same-sex married and common-law couples.

Claims under the *Divorce Act*

If the claim for spousal support is being made under the federal *Divorce Act*, the parties must be or have been married, and the person making the claim must have lived in the province in which the claim is made for at least a year before the action is started.

Claims under the *Family Law Act*

The BC *Family Law Act* provides for spousal support for married spouses, and for those couples who have been in a marriage-like relationship for at least 2 years. It may also be available for common-law spouses who have a child but have been together for less than two years.

Claims for spousal support have to be made within two years of the date of the divorce or annulment of the marriage or within two years of the date that unmarried spouses separated.

Considerations

Spousal support is not mandatory and a couple may agree that spousal support will not be paid. In general, the law expects people to be able to support themselves as soon as possible after a divorce or separation.

The court may *not* take into account “spousal misconduct,” such as adultery, or drug or alcohol abuse, when making an order for spousal support under either the *Divorce Act* or the *Family Law Act*. However under Section 166 of the *Family Law Act*, the court can consider conduct that arbitrarily or unreasonably causes, prolongs or aggravates the need for spousal support or affects the ability to provide spousal support.

A receiving spouse who is dependent on social assistance and has no other source of income may still be entitled to receive support from a former spouse.

The *Family Law Act* and the *Divorce Act* require the court to give priority to child support. Where the paying spouse simply cannot pay both spousal support and child support without going broke, the order for child support takes priority.

How does a judge decide if there should be spousal support?

As a general rule each case for spousal support is decided on the means, needs, and circumstances of the particular parties, but there are some general trends:

Length of Marriage: The longer the marriage, the greater the likelihood of an order for spousal support. As well, the longer the marriage is, the stronger the presumption will be that the parties should have an equal or almost equal standard of living after separation.

Difference in Incomes: The greater the difference is in income between the parties, the greater the likelihood will be that an order for spousal support will be made.

Economic Disadvantage: The more one spouse has lost as result of the marriage, such as job skills, job opportunities or employability, the greater the likelihood of an order for spousal support.

Earning Capacity: The more one party's earning capacity is reduced because of family obligations like child care, for example, the greater the likelihood of an order for spousal support.

The Spousal Support Advisory Guidelines

Often spousal support orders came at the end of a long trial and at considerable expense to both parties. The Spousal Support Advisory Guidelines (SSAG) were introduced on January 2005 and were revised in July 2008. The SSAG are an attempt to bring more certainty and predictability to how spousal support is determined under the federal *Divorce Act*. These guidelines are not legally binding and are voluntary.

The SSAG do not deal with whether a person should receive spousal support. They deal only with the amount and how long it should be paid, once a judge has made an order for spousal support.

The SSAG are informal guidelines only. They do not give a single number for how much support should be paid, only a range of numbers. The precise number chosen with that range is still a matter for negotiation or adjudication, depending upon the particular case.

The SSAG presents two formulae: the “without child” formula, and the “with child” formula. The “with child” formula is used when there are children of the marriage and an obligation to pay child support is in place at the time spousal support is determined.

The SSAG are being used in cases before the court in British Columbia. In some cases the spousal support being ordered falls within the SSAG, and in some cases it does not. The court is not bound to consider the SSAG when it makes an order.

J.P. Boyd, a local lawyer, has detailed information on spousal support on his BC Family Law Resource website, at: wiki.clicklaw.bc.ca/index.php/Jpboyd. The blog states: “Assuming that the *Advisory Guidelines* will be used, visit *DivorceMate*'s new website, mysupportcalculator.ca, to use their free spousal support calculator.

The website performs child support calculations under the Child Support Guidelines and spousal support calculations under the Spousal Support Advisory Guidelines.” The results of the spousal support calculations may not include all factors “such as source of income, tax benefits, deductions and credits, payments to special expenses or so forth, however the results will be fine for most people most of the time.”

The Spousal Support Advisory Guidelines can be viewed at:
www.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/toc-tdm.html.

Making Agreements for Spousal Support

Couples may make an agreement about spousal support without going to court. An agreement would state the amount of the support agreed upon, and might also contain when the payments will be made. An agreement for spousal support can be filed in Provincial or Supreme Court and like child support orders can be enforced through the Family Maintenance Enforcement Program (FMEP.)

Types of spousal support orders

Interim Orders

The courts generally rely on a “means and needs” test – does the person making the application have a need for support, and does the other spouse have the ability to pay support – in making an order for interim support. The courts will not bankrupt someone to ensure that spousal support is paid. If there isn’t enough money to go around and meet both the payor’s reasonable monthly needs and the applicant’s monthly expenses, then the court will usually try to spread the economic hardship between the parties.

Definite and Indefinite Orders and Agreements

Under the *Divorce Act* and the *Family Law Act* a court may make an order for spousal support for periodic payments for a fixed period of time (a “definite” term), or for forever (an “indefinite” term), depending on the particular circumstances of each case. In general, the longer the marriage or common-law relationship lasted and the older the parties are, the more likely the court will be to make an indefinite order for spousal support.

Lump Sum Orders and Agreements

A “lump sum” order or agreement for spousal support requires the payor to make a one-time-only payment of spousal support. This kind of spousal support payment is fairly rare. Lump sum payments are not likely to be ordered where the payor has a similar need for financial independence to the recipient or where the recipient has a significant amount of debt.

Spousal Support and Division of Property

The issues of spousal support and the division of the family assets are complicated and somewhat intertwined. Usually spousal support is discussed at the same time as, or after, the family assets have been divided between the parties.



If the financial disadvantage of one spouse is taken care of by an unequal division of property, spousal support may not be considered.

If the manner in which the assets were divided goes some way towards overcoming the financial disadvantage arising from the separation, but not all the way, spousal support may be ordered as a “top up” to the division of assets such that this objective is met.

Varying or Changing Spousal Support

It is almost always possible to apply to change an order for spousal support or to renegotiate a separation agreement that requires the payment of spousal support, as long as there has been a change in circumstances since the order or agreement was made.

Recipients might want to change an order or an agreement if:

- Their spousal support payments are going to end but their financial situation hasn't improved;
- Their financial situation has worsened and they need more support than they did before; or
- Something unexpected has happened, like an illness or an accident, that causes them to need support.

Payors usually want to change things if:

- Their financial situation unexpectedly worsens;
- The recipient finds work or gets better-paying work;
- The recipient enters a new spousal relationship;
- The recipient's financial situation unexpectedly improves; or
- They have a new legal obligation to support someone else.

If the parties can't agree about if or how a support order should be changed, they will usually have to make an application in court to vary the order. Couples with an agreement often try to negotiate a change and only go to court if they can't agree on the change.

Cancelling or Replacing an Agreement

One spouse may go to court and ask that the spousal support agreement be cancelled or replaced (set aside). A judge can cancel an agreement or replace parts of the agreement with a court order. This is possible if certain circumstances existed when the spouses made the agreement, including:

- A spouse did not provide proof of their income, significant property or debts;
- A spouse took advantage of the other spouse (for example, the other's lack of understanding, needs or stress level);
- A spouse did not understand the consequences of the agreement (for example, they didn't have strong enough English-language skills and a translator wasn't available); or
- The agreement was unfair because of certain factors, including:
 - The length of time that had passed since the agreement was made or
 - The spouse's circumstances or needs have changed.

Review

Each party wants to know when spousal support should end. The *FLA* says that agreements and orders for spousal support can be reviewable. It can specify the event that will trigger the review, the dispute resolution process that will be used for the review and the factors that will be considered at the review. The *FLA* also says that a review can be triggered when someone begins to receive a pension even if the original order did not call for a review.

Income tax considerations

Spousal support payments are included in the recipient's total income reported for income tax purposes. Recipients should be reminded to put some money aside to pay their taxes. A spouse who pays support on a periodic basis is entitled to claim the whole amount of his or her payments as a deduction against his or her taxable income.

If a paying spouse wishes to ensure that he or she can claim spousal support payments as a tax deduction, the court order or written agreement which addresses spousal support must clearly state that the payments are for spousal support and the payments must be periodic rather than paid in a lump sum; otherwise the federal *Income Tax Act* requires the payment to be treated as child support payments. Also all payments for child support must be fully paid for the current or previous year.



Unexpected taxes may result if spousal support payments are made directly through a company the payor owns, either on a company cheque, or in the case of support being declared as salary payments. For further details go to: www.cra-arc.gc.ca/supportpayments/

The *Income Tax Act's* treatment of spousal support payments applies to same-sex common-law partners effective January 1st, 2001. The rules do not apply to an order or agreement made before 2001 unless the parties opt into the taxable/deductible scheme by way of a joint election for 2001 and subsequent taxation years.

Third party payments

Sometimes spouses negotiate what is called third-party payments, i.e. payments are made directly to a third party instead of the spouse. An example of this would be mortgage or car payments made on behalf of the eligible spouse.

Third-party payments may be deductible to the payor, and taxable to the recipient, in the year of payment if all of the following conditions are met:

- They are paid pursuant to a court order or written agreement;
- The order or agreement specifically states that the *Income Tax Act* applies to the payment, or contains a clear and unambiguous clause stating that it is the parties' understanding that the third-party payments will be deductible to the payor and taxable to the recipient; and
- They are paid for the financial support of the recipient.

Legal fees

Legal fees associated with the breakdown of a relationship are deductible if they are incurred in any of the following circumstances:

- To establish a right to spousal support under the *Divorce Act* or *Family Law Act*;
- To increase the amount of spousal support under the *Divorce Act* or *Family Law Act*;
- To enforce an existing court order or written agreement to collect late spousal support;
- or
- To resist the payor's attempt to reduce spousal support.

Deceased Payor

The parties can agree and the court can order that the payor's obligation to pay spousal support will continue after the payor's death and that it be paid from the estate. If the payor has a life insurance policy then the parties can agree and the court can order that it be kept up to date and that the recipient be named as the beneficiary of the policy so that support can continue if the payor dies.

Maintenance Enforcement

In BC you can register a child or spousal support order or agreement with the Family Maintenance Enforcement Program. Many maintenance payments are paid on time and in full, but some people like having a third party (FMEP) involved to track the payments.

If payments aren't made, FMEP will contact the payor to try to get payment voluntarily. If this doesn't work, FMEP may take enforcement action. The Family Maintenance Enforcement Program can use a number of methods to enforce the order, including denying a driver's licence to a payor who has not paid.

The Family Maintenance Enforcement program can use federal databanks, including those of the Canada Customs and Revenue Agency, to locate payors who are behind in their support.

For more information...

Ask a family justice counsellor or a support person at a Family Justice Centre to make a referral to the Family Maintenance Enforcement Program outreach officer or call the FMEP InfoLine:

- Greater Vancouver: (604) 775-0796
- Greater Victoria: (250) 356-5995
- Elsewhere in BC: 1-800-668-3637

You can also go to their website to [take a tour](http://www.FMEP.gov.bc.ca) to see what they offer. www.FMEP.gov.bc.ca.

PROPERTY DIVISION

In order to effect a physical separation, you and your former partner will have to un-mesh your finances by deciding what to do about family property. When a relationship is over ultimately the question becomes "who gets what?"

What law applies?

The division of property is governed by provincial law and therefore varies from one province to another. In British Columbia the *Family Relations Act (FRA)*, Parts 5 and 6, governed property division in orders prior to March 18, 2013. After March 18, 2013, the *Family Law Act (FLA)* deals with the division of property and debt in Part 5 and deals with the division of pensions in Part 6.

The *FLA* applies to both married spouses, and unmarried spouses who have lived together for 2 years in a marriage-like relationship. The division rules also apply equally to refugee claimants and permanent residents. In general, the *FLA* says:

- Property that was bought *during* the relationship is divided equally when it ends.
- Property that was bought *before* the relationship is usually not divided.
- Any increase in value of property bought before the relationship is usually divided.

If couples do not want the property division rules to apply to them, they can make an agreement and divide their property as they see fit. The court will have less ability to overturn these agreements.

When do you need to make a claim for division of property and debt?

Under the *FLA* married spouses have to start a court action within two years of the date of their divorce or the annulment of their marriage. Unmarried spouses have to start a court action within two years of the date they separated.

This two year period from the date of divorce or separation stops while the spouses are trying to resolve their dispute outside of court with the help of a mediator, an arbitrator, a family justice counsellor or a lawyer.

What is family property?

There are two categories of property under the *Family Law Act*, family property and excluded family property.

Family Property

The *Family Law Act* defines family property as the property either or both spouses got after the date they began to live together or got married, whichever was first. It does not have to be property “ordinarily used for a family purpose”.

It is property that is owned by one or both spouses at the date they separated. It includes things like the family home and car, as well as retirement savings plans, bank accounts, share in a business or corporation, debts owed to a spouse such as income tax refund, property owned in another country, investments and pensions.

Family property also includes any increase in the value of “excluded property” that happens during the relationship. Under the *FLA* everything is presumed to be family property and is divided 50-50, including family debts, unless it is on the excluded property list. The *FLA* sets up the date of separation as the point to identify the family property to be divided and the date of hearing or agreement as the valuation date.

The *FLA* also enables the court to make orders for the interim distribution of property for the purposes of funding litigation. Family property includes all real property and personal property as follows:

- On date the spouses separate, property owned by at least one spouse or in which at least one spouse has a beneficial interest;
- After separation, property acquired by at least one spouse or in which at least one spouse has a beneficial interest, that is derived from the property held on date of separation;
- Share or an interest in a corporation;
- Interest in a partnership, an association, an organization, a business or a venture;
- Property owing to a spouse as a refund (includes income tax refund) or in return for the providing a good or service;
- Money of a spouse in an account with a financial institution;

- Spouse's entitlement under an annuity, a pension, a retirement savings plan or an income plan;
- Property, other than trust property, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority alone or with another person;
- Amount by which the value of excluded property has increased since the later of the date the relationship began or the excluded property was acquired;
- Trust property in which spouse is a beneficiary and has a vested interest or the spouse has a power to transfer to himself or herself or the spouse has a power to terminate the trust and when done part of the trust property reverts to the spouse; and
- Debts owed to a spouse.

Family debt is debt incurred by either spouse after the date they began to live together or got married whichever is first and continues right up to the date of separation. However, if the debt is incurred to maintain family property after separation such as repairing the family home or paying the mortgage, then it is also included.

Excluded Family Property

Excluded property is the property each spouse had *before* the date they started living together or got married, whichever was first. The date of cohabitation is important under the *FLA*. Again, it is property like land, buildings, and bank account savings. It also includes some property a spouse got *after* the date they got married or started to live together, like gifts, inheritances, court awards, and insurance settlements.

A spouse usually does not have to divide excluded property with the other spouse after separation. However, if the excluded property increased in value while the couple were together, they usually have to share that increase in value.

The property that is excluded from family property under the *Family Law Act* includes:

- Property acquired by a spouse before the relationship between the spouses began;
- Gifts or inheritances to a spouse;
- A settlement or award of damages to a spouse as compensation for injury or loss unless for both spouses;
- Money paid or payable under an insurance policy except if it relates to both spouses or lost income;
- Property held in a discretionary trust;
- Property derived from property or the disposition of property referred to above; and
- Property acquired by one spouse after the relationship ended as long as it was not bought with family property.

The courts will have to decide how to value property bought during the spouses' relationship when they used excluded property to do so.

How is family property and debt divided?

The spouses are presumed to each be entitled to one-half of family property, regardless of how they contributed to or used it and each is responsible for one-half of the family debt. When the spouses separate they become tenants in common of the family property. The date of separation fixes the pool of family property subject to division.

The *Family Law Act* says both spouses are equally responsible for the family debt. It doesn't matter whose name the debt is in. However, creditors can only demand payment from the spouse whose name is on the debt. If both names are listed on the debt (i.e. a credit card) then the creditor may choose to demand payment from only one spouse.

Family debt includes:

- Debts that either spouse got into *during* the relationship up to the date they separated; and/or
- Debts that a spouse got into *after* separation if it is to maintain the family property. For example, to pay for a new roof or the mortgage.

If a spouse disagrees with the characterization of some or all of the property it is up to that spouse to rebut that presumption and prove that it is *not* family property.

Spouses can make agreements and the court can make orders about how the division should be made. The date of separation is key in making these decisions. Only the Supreme Court can make temporary and permanent orders about dividing property and debt.

It is important to note that agreements and orders about debt are only binding between spouses and do not affect the rights of creditors or the steps they can take to collect on a debt.

How are pensions divided?

Spouses can divide pensions in a written agreement or the Supreme Court of BC can make an order about how pensions are to be divided. In very general terms, the pension fund that the spouses will share is the amount that was built up during the term of the spousal relationship. That part of the pension funds is usually split 50/50.

Registered Retirement Saving Plans

RRSPs are family property and can be equalized between spouses without any tax being paid.

Canada Pension Credits

Can be equalized from the time the spouses began living together or got married to the date of separation. This is done by people who administer the plan in Ottawa.

Workplace Pensions

Can be equalized from the time the spouses began living together or got married to the date of separation regardless of whether the pension is being paid out or not. This is done by the people who administer the pension plan and not by the spouse who owns the pension. This may be a very complicated matter and it may be best to seek legal advice.

Can there be an unequal division of family property?

The courts can order an unequal division if it would be “significantly unfair” to have an equal division. The court may order, or the spouses may agree, that only a few specific assets, rather than all of the family property, should be reapportioned in favour of one spouse or the other. This might happen to allow one spouse to keep more of a personal disability pension or more of a personal inheritance, while dividing all the other family property equally.

The court can consider the following:

- The length of the spouses’ relationship;
- A spouse’s contribution to the other spouse’s career;
- Whether the amount of family debt is more than the value of the property;
- Whether a spouse reduced the value of family property such as real estate or got rid of the property to avoid sharing it or the full value of the property with the other spouse; and
- Any taxes owing from dividing the property.

Factors that will not be considered by the courts when dividing property:

- The conduct of the spouses during the marriage;
- A desire to “punish” a spouse;
- The lack of children of the marriage;
- Which spouse actually owns a particular asset; and
- The spending habits of a spouse during the marriage (but not following separation).

How is the value of the property determined?

To divide property after a separation, the property usually has to be given a value. The value of family property is based on its fair market value which is the price that someone would typically pay for the property or its appraised price. In other words, “what it’s worth.”



The value of the family property, if not set by agreement between the parties, is set at the date of the agreement or court hearing which divides it and will be set at “fair market value”.

When dividing property, it is the net value of the asset (the property value less any debts against it) that is used in the calculations. For example, if you own a property worth \$700,000 and there is a mortgage of \$300,000 still outstanding, the net value of the asset is \$400,000. Secured lines of credit, realtor fees, legal fees, penalties and other expenses associated with selling the family home may also be deducted to arrive at the net value of the house.

What happens if property is outside of BC?

Courts can make orders about family property outside of BC regarding the safekeeping, right to use and right to own the property. It can also make a decision to divide family property in BC differently to compensate instead of trying to divide the property outside BC.

Courts can also divide excluded property that is presumed to remain with each spouse if it cannot divide the family property or family debt located outside of BC or if it would be “significantly unfair” because of length of the relationship or because of the contributions made by the non-owning spouse.

What does property division look like?

By agreement between the spouses or by a court order, property may be divided as follows:

- Certain assets are allotted to each spouse;
- One spouse is required to make a payment to the other to compensate that spouse for his or her share of the value of a particular asset;
- An order is made that property, like a home, be sold and the proceeds divided between the parties; and/or,
- A schedule of payments for the equalization of the assets is made.

How can I protect my “share” of the family property?

If you suspect that your spouse may try to sell off, or transfer family property before it can be divided you can make an application to the Supreme Court for an order restraining the other spouse from disposing of any property at issue.

Temporary orders with respect to the family residence (a place that was rented, leased or owned by the spouses and where they both ordinarily lived) can be made by the court granting a spouse, for specified time period, exclusive occupation of a family residence or possession or use of specified personal property stored at the family residence. That spouse cannot significantly change or sell the property during that time.

There are several steps you can take to protect yourself:

- Take a careful tally of what each of you owns;
- Record the date of separation even if you are still living in the same home;
- Register an interest in real property;
- Protect your interest in those assets from claims made by creditors, third parties, and against the prospect of your spouse’s bankruptcy.
- Obtain an interim order that a share of the family assets be distributed prior to the trial. In general, this sort of interim distribution can only be done by consent or where one of the spouses needs to pay for expert help and otherwise cannot afford to pay the expert. In all cases, there must be some source of liquid property from which an interim distribution can be made.

What are the tax considerations when dividing family property?

- The transfer of RRSPs between spouses is tax-free.
- A “Special Property Transfer Tax” form allows spouses to transfer the title of property between them without having to pay tax on the transfer, as would normally be the case if the house was sold to a third party purchaser.
- Consult with an accountant for more information regarding taxes.

5 Formalizing the Separation

Once you have looked at your financial picture after separation you may want to focus on formalizing a financial agreement between you and your former partner. A written agreement drawn up by Family Justice Counsellors may only address issues regarding the children and not the total financial situation. But this is a free service that is available throughout the province and all Family Justice Counsellors are trained family mediators. It's a great place to start to create a separation agreement.

There are several other ways in which an agreement between the former partners can be formalized. The *Family Law Act (FLA)* encourages you to find solutions outside of court which may be easier and less expensive. It promotes negotiation, mediation, arbitration, and collaborative law to solve the issues. However, in some cases decisions about the finances will be made in court.

MEDIATION

In mediation, you and your child's other parent work with a person who is specially trained to help you reach an agreement. It is not a mediator's job to make decisions for you or to give you legal advice. A mediator will:

- Provide a neutral place for you and your child's other parent to meet;
- Assist you to define the issues you need to resolve;
- Keep the discussions on track; and
- Assist you to develop and /or to maintain a working relationship with the other parent — something that is particularly important if you have children. Co-parenting requires regular communication and some on-going contact between parents while your children are growing up.

Is mediation confidential?

Mediation is a private process, not open to the public. For the most part what happens in the mediation is confidential. Make sure you talk about this issue with your mediator before you begin mediation.

Is an agreement binding?

Any agreement you reach may be filed with the court and then it is enforceable. If your agreement is not filed in court the agreement is usually considered to be a contract. Remember that no agreement may be reached in mediation unless everyone involved agrees.

Do I need a lawyer if I want to use mediation?

Mediators will recommend that both you and the other parent seek legal advice before signing an agreement. However, by using mediation it is likely that you will use fewer legal services and those you use will be different than if you did not use mediation.

Why should I choose mediation instead of court?

- ❖ Mediation is generally less expensive compared to the expense of going to court.
- ❖ Mediation can result in a more timely way of resolving disputes. In an era when it may take as long as four to six months to get a court date, and more than a year if a case is appealed, mediation is a welcomed alternative. When parents want to get on with business or their lives, mediation may reduce the emotional stress of separation on both you and your family.
- ❖ Mediation can help you and your child's other parent communicate with each other about the issues surrounding your separation, including guardianship, time with the children, child and spousal support, and the division of property.
- ❖ Mediation gives you the tools to solve your own problems and allows you to keep more control over what happens to you and your family. In mediation, you and the other parent work together to identify and solve the issues that arise in your family due to the separation or divorce. The mediator listens to what is important for both of you and helps the two of you come to your own decisions about the future. If you have children, the mediator will help you focus on decisions that will be best for them. If you go to court, the judge will decide for you, using the limited range of options available under a Court Order.
- ❖ Mediation allows you to customize your agreement. It also allows for more creative and flexible arrangements that suit your particular circumstances.
- ❖ Mediation is informal and private. While you (or the other parent) may ask your lawyer to attend mediation with you, usually there is no one else there but you, the other parent and the mediator, unlike the courtroom, which is open to the public.
- ❖ Mediation results in higher satisfaction rates than the court process does. Parents who go through mediation are more often satisfied with their agreements because they have participated in the solutions.
- ❖ Mediation results in a stronger commitment to follow through and comply with the terms of their agreement than when the decisions have been imposed by a judge.

How long does mediation take?

The mediation meetings are normally about one or two hours long. There could be from two to four meetings, on average, depending on how many issues need to be resolved.

Do I have to meet with my former partner face to face?

There are circumstances where you and the other parent may not choose to be in the same room together to work out issues. The mediator will use a conciliation approach and act as the “go-between” so that solutions are still possible. The mediator may also give each of you “homework” after each session to identify and prepare for future sessions.

What happens once an agreement is reached by mediation?

A mediator will write up your agreement in a document called a Memorandum of Understanding which can be incorporated into a legal document by lawyers; family justice counsellors can write you a consent to an order or a written agreement (for matters to do with guardianship, time spent with the children and child or spousal support); or the two of you may write up your own separation agreement or written agreement with the help of a self-help package from Self Counsel Press.

If you and the other parent were common-law spouses, then your agreement also ends your relationship. If you are married and either of you seeks a divorce, the agreement can be shown to the judge who can approve it or make it part of the divorce order.

What if you need to change the agreement?

Sometimes you need to change the agreement. Typically this happens because the needs of the children change over time. You can change it by agreement with the other parent. Once again you can choose to use the assistance of a mediator or other professionals who can help you. If you and the other parent cannot agree, then you have to ask a judge to change it.

How do I find a family mediator?

The options you have in locating a mediator will depend on whether your case is filed in the BC Supreme Court or the Provincial Court.

The Ministry of Attorney General provides a variety of services to support separating families, including mediation by family justice counsellors. These services are available mainly to people of modest means with guardianship, time spent with children or child support disputes in the Provincial Court. Call the Family Justice Services Infoline toll free: 1-888-216-2211; in Vancouver: 604-660-2192.

For more information on how family justice counsellors can help, visit the Family Justice website: www.justicebc.ca/en/fam/help/fjc/index.html. To find a Family Justice Centre near you, visit www.clicklaw.bc.ca/helpmap/service/1019.

If a family justice counsellor cannot help you, you may choose a mediator from the private sector. Family mediators come from many fields, including law, social work, and education. Some good places to start looking for a family mediator are the British Columbia Mediator Roster Society, Family Mediation Canada, the Law Society of British Columbia, and other mediator/mediation organizations.

The British Columbia Mediator Roster Society manages a list of qualified civil, family and child protection mediators. The Family Roster is a list of private family mediators who can mediate guardianship, time spent with children, child support, spousal support and property division (including debts). Call toll free: 1-888-713-0433; in Vancouver 604-681-6050; or access the list of mediators on their website: www.mediatebc.com/Find-a-Mediator.aspx.

Family Mediation Canada (FMC) is an organization that assesses and certifies family mediators according to its own guidelines and standards. FMC is a mediator organization whose list of mediators includes only family mediators. Contact FMC at: www.FMC.ca

In 1984 the Law Society of British Columbia became the first in Canada to recognize the practice of family mediation and to regulate that practice. For information about family mediators contact the Law Society of British Columbia at: www.lawsociety.bc.ca



Private family mediators are also listed in the yellow pages of your local phone book.

Mediation is not always appropriate

Mediation is a very good way of resolving family issues. But it isn't for everyone.

- If you have experienced violence or emotional abuse, or you are afraid for your safety or the safety of your children, mediation may not be for you.
- Mediation is a voluntary process. If one party does not want to mediate, you will have to choose another option to resolve your dispute.
- Mediation requires that all participants share relevant information so that informed choices can be made. If one parent is withholding information, or deliberately hiding details about their finances, and it comes to the attention of the mediator, he/she will end the mediation.

AGREEMENTS AND COURT ORDERS

There are informal, formal and enforceable options for addressing finances after separation.

Informal

In the early stages of separation parents may make some informal agreements about support, property division (including debt) and financial arrangements. They may be verbal, or jotted down in writing.

You and the other parent should continue to talk about child support at least once a year. If there are any changes in either parent's income, you should discuss whether the current child support amounts you agreed to are still covering the costs of raising the children.

Formal but not enforceable

Mediation may result in a Memorandum of Understanding (MOU) which outlines the terms of an agreement. Parents are encouraged to take their MOU for legal advice and to turn it into an enforceable agreement.

Parents may also agree to change the support in a court order by drafting their own written agreement. This doesn't change the enforceability of the original court order, but does serve as a record of intention to keep to the terms of a new agreement around support.

Written Agreements

A written agreement is an agreement, in writing, between you and your child's other parent that says what both of you have agreed to. A written agreement is often called a "separation agreement" if it is drawn up by lawyers and includes a property settlement.

A written agreement can include your decisions about how the children are to be supported financially, whether one parent is going to contribute to the financial support of the other, and how you are going to divide the things you own, your property, and your debts.

Parents can draft a written agreement with or without the help of a lawyer or mediator. They may wish to negotiate, mediate, arbitrate or use collaborative law to help them make the agreement if they cannot reach an agreement on their own.

You and the other parent can put whatever you want in an agreement. For example, you can say which school your child should attend or where your child may register for soccer. In writing up a written agreement, you may refer to the *Child Support Guidelines* to see what is fair and what is in the best interests of the child (for child support), or the Spousal Support Advisory Guidelines (for spousal support) but you are free to make an agreement in any amount.

You should know, however, that if you apply for a divorce you are required to attach a copy of your written agreement to the paperwork. Unless the support amounts comply with the *Child Support Guidelines* a judge will reject your application for divorce.

Make sure you and the other parent sign the agreement. It's also a good idea to get legal advice before you sign an agreement, to make sure that you have protected your rights. You and the other parent should each see separate lawyers.

Some or all parts of your written agreement may be legally enforceable. There is no requirement to file a written agreement, but if you want to apply to make changes to your agreement or if you want to use the Family Maintenance Enforcement Program the agreement must be filed with the court first.

Cancelling or Replacing Written Agreements

A separation agreement cannot be changed or varied by the court. People can agree to make certain changes to their separation agreement, with or without the help of a mediator or Family Justice Counsellor. Or they can go to court to ask a judge to cancel all or part of their separation agreement and make a new order with different terms.

A judge can penalize (punish) a person who entered a separation agreement knowing they were not disclosing (sharing) important information about property they owned. For example, a judge may cancel an agreement about property or spousal support if it was based on incorrect information because it wasn't all provided.

In some situations, a judge may "set aside" all or part of a separation agreement and make another order with new terms. "Set aside" means to cancel or replace parts of an agreement.

Court Orders

Judges who deal with family cases do not determine who is at fault for the family break-up. They are there to solve problems that parents cannot resolve on their own. The courts encourage parents to try to make decisions for their family outside of court. In most cases, parents should only go to court when nothing else has worked.

The advantage of using the court system is that a judge can make an order when you cannot agree. There can be legal consequences for disobeying a court order. The disadvantage of using the court system is that it might make the conflict worse and drag it out longer.

Some parents go to court just to harass the other parent. Some may believe that having their "day in court" will make them look like "the good guy" (and the other parent "the bad guy") and that they will win. In reality, courts can be unpredictable, costly, slow, and not very satisfying in the end.

Provincial Court and the Supreme Court

The two levels of court that deal with family matters are the Provincial and Supreme courts. It is usually faster and less costly to bring the action in Provincial Court. However, if you need a divorce or an order dividing family property you will have to go to Supreme Court. It is possible to have an action in each of the courts at the same time if they are dealing with different issues.

Lawyers known as Duty Counsel at both Provincial and Supreme Courts can help people when they go to court. If you qualify these lawyers may also be able to provide you with legal advice about your options. To find out when family Duty Counsel will be at your court, contact your nearest Legal Aid office.

Types of Orders Made by the Court

Consent Order

A consent order is like a written agreement, but a judge usually reviews it, either in person or as a desk order. Parties can use a consent order when they agree to change an existing court order or consent order. A consent order is legally enforceable. Because a judge must review a consent order, the child support amount cannot be below the amount required by the *Child Support Guidelines*.

Court Order for Support

When parents cannot agree on the amount of support, either parent may apply to the court to make an order or to change a previous agreement or order. The judge must follow the *Child Support Guidelines*, where relevant, in setting the amount of child support. The judge has the flexibility to vary the child support to take into account such things as hardship, custodial arrangements, and/or arrears.

The judge may apply the Spousal Support Advisory Guidelines, where relevant, in looking at the range and duration of spousal support. A court order is legally enforceable and can only be varied by another order, not by an agreement.

An order made in the Provincial Court of British Columbia can be changed or cancelled by a subsequent order made in Provincial Court or an order made in Supreme Court. An order made in the Supreme Court of British Columbia can only be changed or cancelled in the Supreme Court of British Columbia.

Protection Order

Under the *FLA*, the court can make a civil order to protect one family member against another. If the order conflicts with an order for parenting time or contact with a child, those parts of the previous order are suspended until either order is changed to remove conflict or until the protection order expires. These orders are enforced under the *Criminal Code of Canada* so the abuser can be charged with a criminal offence if he/she does not obey the order. This order is in force for one year unless otherwise stated.

Conduct Order

Under the *FLA* a conduct order is made to encourage settlement. The court can require parties to participate in family dispute resolution, order counselling for parents/children, restrict communication, require party to pay for debts like the mortgage on the family home and make a case management order to move the action through the court.

Misuse of Court Process Order

The court can prohibit the party who is misusing the court process from making further applications without permission and can require this party to pay the other person's expenses and pay a fine up to \$5000.

Agreements or Court Orders Made Before March 18, 2013

If you already have an agreement or court order under the former *Family Relations Act (FRA)* it will stay in place-you will not need a new one. As well, you will not be able to go back and change your order just because there are new laws. If you are changing your written agreement for other reasons you can decide what terms you want to use in the revised agreement.

If you are changing a court order under the old FRA you will have to use the new terms (guardianship, parenting time and contact). If your order is under the *Divorce Act*, you will continue to use the terms custody and access.

Changing Court Orders

A court order may only be changed by another order, not by an agreement. An order made in the Supreme Court of BC can only be changed or cancelled in the Supreme Court of BC. An order made in the Provincial Court of BC can be changed or cancelled by a subsequent order made in Provincial Court or an order made in Supreme Court. Also Provincial Court orders can be appealed to the Supreme Court.

Enforcing Court Orders

Under the *FLA*, the court can enforce an order by requiring a party to post security to guarantee future good behaviour, to cover expenses of other party resulting from the conduct, to pay a fine or go to prison for up to 30 days. Both the Provincial Court and Supreme Court can enforce orders within their jurisdictions.

Appeals

If a person disagrees with the decision of a Provincial Court judge in a family matter, he or she can appeal the *final* order to the BC Supreme Court within 40 days after the order was made. An appeal is not a new trial or a re-hearing of the case or a way to avoid following a Provincial Court order.

The court hearing the appeal will only consider whether the trial court made a mistake in fact or law in reaching a decision and that mistake must have affected the outcome of the case. An interim (temporary) order of the Provincial Family Court cannot be appealed. The original Provincial Family Court order remains in effect until the appeal is over unless the judge who made the order agrees that it should be suspended (put on hold) until the appeal is over.

Exchanging Financial Information

Under the *FLA* both parties have a duty to disclose. They must provide to the other party full and true information for the purposes of resolving a family law dispute.

The most common financial information exchanged includes:

- Personal income tax returns for the past 3 years, including work from other countries as well as notices of assessment and reassessment;
- The most recent statements of earnings from his or her employer;
- Financial statements from the spouse's business or professional practice if spouse is self-employed; and
- Most recent statement of income from employment insurance, social assistance, workers compensation or disability payments.

THE ELEMENTS OF A CHILD SUPPORT ORDER

A standard child support order must include the following elements:

- The names of the payor (person paying support) and recipient (person receiving support);
- The Guideline income of the payor;
- The names and birthdates of each child covered in the agreement;
- The amount of support;
- The effective start date for support payments;
- The frequency of payments;
- The date of the month the payment is due; and
- The duration of the agreement.

In order to be enforceable an agreement for special expenses must also include:

- The name of the child the expense applies to;
- The nature of the expense; and
- The payor's share of the net expense, preferably in dollars and cents.

You can negotiate important details of the child support payment, such as the date(s) when payment is to be made. Sometimes orders aren't paid just because the order is for the 1st of the month, at a time when all other payments are expected to be made from a limited pay.

A monthly payment of \$600 could be paid in equal installments of \$300 on the 1st and 15th of the month. You can also choose to include details on the form of payment — whether by cheque, money order, or direct deposit. Parents also need to consider the avenue of payment – in person at the time of visitation, closest to the 1st of the month, by mail, or by direct payment to Family Maintenance Enforcement Program (FMEP).

IN SUMMARY. . .

- Money is a big part of the ongoing dynamics between parents.
- Take your time. Don't let anyone rush or pressure you into changes.
- Work to regain balance in your life — physically, emotionally, and mentally.
- Know your rights and responsibilities around support issues.
- Work towards financial independence from your former spouse.
- Live within your financial means.

Notes...