Family Law - Glossary of Terms

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A

Access
The right of a non-custodial parent to spend time with the child(ren).

Affidavit
A written statement of facts that are sworn or affirmed to be true.

Alternative Dispute Resolution
Resolving conflict through means other than going to court. Examples of alternative dispute resolution include: arbitration, mediation, and collaborative family law.

Answer
A response to an Application that may also include a claim against the Applicant. An Answer must be served within 30 days of receiving the Application.

Application
A document that commences a divorce proceeding in court. An Application contains claims against the other spouse. Either spouse may commence proceedings by serving and filing an Application.

Arbitration
A process where a neutral third party is selected by the disputing parties to make a decision on the issue(s) in dispute. Arbitration is one form of alternative dispute resolution.

Assessment
An analysis by a qualified professional who investigates, assesses and reports on the needs of the child(ren) and the ability of the parties to meet those needs.

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Best Interests of the Child

Circumstances that must be taken into account by the court when making orders concerning custody and access. The factors the court will consider include the child's needs, interests, views and preferences, and cultural and family connections.

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Case Conference

A meeting between a judge, the parties' lawyers, and the parties, in which disputed issues are identified and methods of resolving those issues are explored. A Case Conference must generally be held before either party can bring a motion.

Child Support

The amount a non-custodial parent pays for the financial support of the child(ren) under a court order or agreement.

Child Support Guidelines

Rules and tables calculating the amount of child support owing to the custodial parent, based on the payor's income; number of children; and the province or territory of residence. While there is a presumption in favour of the Child Support Guidelines, there are specific cases where exceptions to the Guidelines may be found.

Children's Aid Society (CAS)

An agency that investigates allegations of abuse and neglect, and cares for children in need of protection.

Cohabitation Agreement

Agreement by two people who are or will be cohabiting (and who are not married to each other) about their respective rights and obligations during cohabitation, or when they separate or die.

Collaborative Family Law

A cooperative, out-of-court process wherein separated spouses negotiate and settle the issues between them, as they define them, in a controlled, safe, and respectful setting with the assistance of specially trained family law lawyers. Collaborative family law is one form of alternative dispute resolution.

Common Law Spouse

Two persons who are not married to each other and have cohabited: (a) continuously for a period of not less than three years; or (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

Constructive Trust

A type of trust that may arise where one person contributes to the worth of another person's property (often, the matrimonial home). The court may find a constructive trust if the property owner is unjustly enriched and the contributor receives no benefit. The effect of a constructive trust is that the owner of the property may have to hold the property in trust for the contributor.

Contempt of Court

If the court finds a person in contempt of the court (e.g. disobeying an order, even a costs order), the court may order that the person be imprisoned; pay a fine; pay an amount to a party as a penalty; do anything else that the court decides is appropriate; not do what the court forbids; pay costs; or obey any other order.

Costs

An order for money awarded for one spouse and against the other spouse by the court. A costs order may be awarded to help a spouse cover the expenses in bringing or defending a step in the proceeding. A costs order may also be awarded against a party if that party fails to follow the court's instructions.

Custody

Arrangements made for the decision making and physical care of the children when parents separate. The various arrangements include sole custody (one parent has the decision-making authority), joint custody (both parents share the decision-making authority), shared custody (the children reside with both parents at least 40% of the time), and split custody (each child resides primarily with a different parent).

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Disclosure

The obligation to provide relevant financial information and documentation to the other party in a proceeding. Disclosure requirements include providing the other party with documentation like Income Tax Returns, Notices of Assessment, a current pay stub, etc.

Division of Property

The division of assets and liabilities between parties after separation or death. For married spouses, property is divided by equalizing the net family property of the parties. Common-law spouses are afforded no protection under the law for division of property after separation; they must enter into cohabitation or separation agreements to protect their rights.

Divorce Order

A divorce order legally ends a marriage. A divorce takes effect exactly 31 days after the date of the divorce order.

Domestic Contract

A contract between 2 people setting out their obligations towards and expectations of each other. Domestic contracts can deal with all issues with respect to divorce, including support, custody, and the division of property. Different types of domestic contracts include cohabitation agreements, marriage contracts, and separation agreements.

Domestic Violence

Any or all of the many different forms of abuse that people may experience in their domestic relationships. Domestic violence may include verbal/emotional, sexual, and physical abuse. Domestic violence is one of the factors to be considered in the determining custody and exclusive possession.

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Equalization Payment

A payment from one married spouse to the other, which divides the spouses' net family properties that was accumulated during the marriage. It ensures that both parties receive an equal share.

Ex Parte

A latin term, meaning made in the absence of the opposing party. In certain circumstances, applications or motions brought by a party may be heard without notice to the other party.

Exclusive Possession of the Matrimonial Home

A court order that gives one spouse the right to live in or use the family home (to the exclusion of the other) despite ownership. In doing so, the court must consider the best interests of the children affected; any existing orders regarding property or support; the financial position of both spouses; any written agreements between the parties; the availability of other suitable and affordable accommodation; and any violence committed by a spouse against the other spouse or the children.

Extraordinary Expenses

Expenses for children beyond the guidelinetable amount. Extraordinary expenses, otherwise known as special expenses, are listed in section 7 of the *Child Support Guidelines*, and include child care expenses; the portion of the medical and dental insurance premiums attributable to the child; health-related expenses that exceed insurance reimbursement by at least $100 annually (e.g. orthodontic treatment, professional counselling); extraordinary expenses for

primary or secondary school education, or for other educational programs as needed; expenses for post-secondary education; and extraordinary expenses for extracurricular activities. Both parents generally contribute to these expenses in proportion to their respective incomes, beyond the guideline amount.

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Family Responsibility Office (FRO)

The Family Responsibility Office (FRO) has the authority to take enforcement action against those who do not pay child support or spousal support as ordered. In the event that a payor spouse does not comply with a support order or agreement, the FRO has the authority to garnish wages, suspend a license, etc.

Financial Statement

A form that sets out a spouse's income, expenses, property, debts and liabilities. There are two different Financial Statements: Form 13, which is used for support claims, and Form 13.1, which is used for property and support claims.

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Imputed income

When a judge finds that the amount of income a parent discloses is not accurate, the judge may attribute additional income to that person for the purposes of calculating child or spousal support. Income may be imputed in circumstances where a spouse is found to be intentionally underemployed; earning significant unreported cash income; enjoying a lifestyle that is not consistent with his/her Line 150 income, etc.

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JOINT CUSTODY

See “custody”.

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Marriage Contract

A domestic contract where two people who are married to each other, or who intend to marry, agree on their respective rights and obligations under the marriage, or on separation, annulment, dissolution of the marriage, or on death. The rights and obligations agreed up may concern the ownership or division of property; support obligations; the right to direct the education and moral training of children; and any other matter in the settlement of their affairs. A marriage contract cannot include, however, the right to custody of or access to the children. A marriage contract also cannot purport to limit a spouse's rights under Part II of the *Family Law Act* (i.e. the equal right of both spouses to possession of the matrimonial home).

Matrimonial Home

The property that was ordinarily occupied by the spouses as their family residence at the time of separation. There may be more than one matrimonial home, and a matrimonial home may include a family's cottage.

Mediation

A process where a neutral third party assists the spouses to reach an agreement on the issues in dispute. Lawyers often accompany the spouses to mediation sessions. Mediation is one form of alternative dispute resolution.

Motion

An interlocutory process where a party seeks an order from a judge. Motions may deal with issues like custody, support, or restraining orders. Motions generally cannot be brought before a Case Conference unless there is a situation of urgency or hardship.

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Net Family Property

The value of all assets that a married spouse owns on the valuation (separation) date, less (a) the spouse's debts on the valuation date, (b) the value of property (other than a matrimonial home) owned by the spouse at the date of marriage, less any debts owing at that time, and (c) any excluded property.

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Offer to Settle

A document that contains the terms for which one party is willing to settle all of part of the case. An Offer to Settle may be served at any point in the proceeding.

Office of the Children's Lawyer (OCL)

Lawyers working for the government who represent children under the age of 18 with respect to their rights. The OCL represents children's rights in cases involving custody and access, child protection, estate and civil litigation. Clinical investigators working for the OCL prepare reports for the court in custody and access proceedings and may assist the lawyers who are representing children in such matters.

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Parenting Plan

A plan that sets out parents' arrangements for the care of their child(ren) after separation. Specifically, a parenting plan may outline how parents will spend time with their child(ren); how they will share information; and how they will make decisions regarding their child(ren). A parenting plan can be informal or can be contained in a separation agreement or court order.

Payor

The spouse who is obligated to pay support under an order or agreement.

Pre-Trial Conference

A meeting between a judge, the parties' lawyers, and the parties, to consider the possibility of settling or narrowing the issues, and to determine the estimated time required for the trial.

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Questioning

A process where the parties in a proceeding question one another (or sometimes another person) under oath or affirmation on the facts and issues. A transcript is produced at the end of a questioning.

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Recipient

The spouse who is entitled to receive support under an order or agreement.

Relief
The remedy a party seeks from the court in a proceeding.

Reply
A response to the claims made in an Answer. Drafting a Reply is not mandatory, but if a party chooses to respond, the Reply must be served within 10 days of receiving the Answer.

Restraining Order
An order prohibiting a person from molesting, annoying, or communicating with their spouse, their children, or someone else. It is also an order preventing one spouse from selling or depleting his/her property before the parties' net family property is equalized.

Resulting Trust
An action where one spouse transfers title of a property to the other spouse. According to the *Family Law Act*, the spouse who transfers title is presumed to retain a beneficial interest in the property. Only if there is evidence that this transfer was meant to be a "gift" may this presumption be rebutted.

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Separation
The period of time when spouses have separated with the intention of ending the relationship.

Separation Agreement
An agreement setting out the respective rights and obligations between two people who cohabited and subsequently separated.

Settlement Conference
A meeting between a judge, the parties, and the parties' lawyers, where issues that can be settled or facts that can be agreed upon are identified.

Shared Custody
See "custody".

Sole Custody
See "custody".

Split Custody
See "custody".

Spousal Support
Money paid by one spouse to the other spouse after separation. Spousal support is supposed to compensate the spouse in need by recognizing the spouse's contribution to the relationship and

the economic consequences of the relationship; distributing the economic burden of child support equitably; assisting the spouse to become able to contribute to his/her own support; and relieving financial hardship.

Summary Judgment

A motion for a final order without a trial. This motion is brought on the basis that there is no genuine issue for trial.

Supervised Access

When one parent's access must take place in the presence of a third party or at a supervised access center. Supervised access is meant to ensure the safety of the child(ren) in question.

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Trial Management Conference

A meeting between the judge, the parties' lawyers, and the parties, where the amount of time needed for trial and the specific witnesses who will be called to give evidence are determined.

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Valuation Date

The date at which a married spouse's property is valued (for the purpose of calculating net family property). This is also the parties' date of separation.

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