

Everything (Some things) You Must Know About Divorce – the Legal Perspective

Warren S. Jennings

Division of Matrimonial Property

Matrimonial Property Act of Alberta

- Equal division is the rule, with exceptions
 - Pre-marital assets
 - Inheritances
 - Insurance
 - Damages
 - Gifts
 - You must trace the value

- Current values, not at the date of separation
 - You cannot be forced to accept a historical date
 - Agree upon value, appraise it, or sell it

- Agree to anything you want
 - Legal advice required
 - Informed decision – full disclosure
 - If done properly, your agreement is binding and enforceable

- If you cannot agree, the law applies
 - A judge will add up assets, subtract debts, equalize net worth
 - Can order assets sold
 - Can order assets transferred
 - Can order assets held in trust
 - Can order payments over time

- The law is cold – look at the numbers

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Spousal Support

Divorce Act of Canada, Section 15.2

- Spousal Support Advisory Guidelines
 - Helpful – uses % of income, starting point
 - Hindrance – not the sole determinant, not 100% appropriate
 - Does not replace legal advice

- You need entitlement – a difference in income is not enough
 - Compensatory support – decisions and roles
 - Non-compensatory support – need and hardship

- The risk of litigating – you never know what your going to get
 - Discretion – it is up to the judge
 - You do not get to pick your judge
 - A simple court application is not simple
 - A simple court application is not cheap

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Child Support

Federal Child Support Guidelines

- Child support is paid per the FCSG
 - The Guidelines are the law – no exceptions
 - Two payments – monthly, section 7 expenses

- Child support is a right of the child
 - The payor cannot refuse to pay
 - The recipient cannot refuse to take it
 - The amount is the payor's contribution to the child's living expenses in the other parent's home
 - It is presumed that a child of a wealthier home has greater living expenses

- Child support begins at separation
 - If it is not paid, it will be awarded retroactively

- Child support comes after the parenting plan
 - Not the other way around
 - Shared parenting is awarded when right for the child, not to avoid child support

Custody and Parenting

Custody

- Joint custody is the presumption.

- Custody is about decisions

Parenting Plan

- No presumption of equal parenting

- Best interests only

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Practically speaking

- Pick your lawyer carefully
 - We all have our strengths and weaknesses
 - There are many different sub-areas of family law
 - We all have our philosophies
- Keep your costs down
 - Put your disclosure together yourself
 - Make good use of the time
 - Other resources – financial, counselling, parenting
- The lawyer as legal consultant
 - Educate
 - Advise
 - Advocate



**"Do you promise to pay the bill,
the whole bill and nothing but the bill?"**