

Top 10 Ways to Minimize Legal Fees on Separation and Divorce

#1 to #5

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There is an idea that lawyers are too expensive for a normal family going through a separation. I think it is very important for both spouses to have a good understanding of their legal rights and entitlements before making decisions about their children, their finances, and the property.

Consider the following factors on how to minimize your legal fees, and maximize the benefit you receive from your lawyer.

1. Get legal advice early.

A large part of your lawyer's role is to provide information and advice regarding the law. This is important, as if you and your spouse cannot agree on something, the law will be applied as the default answer to the problem. You need to know what that default is before you start discussing the legal issues with your spouse; you need to know what you are entitled to before you can give the entitlement up.

Receiving early legal advice can save you time, money and grief down the line. I have spoken with many individuals who have already made an agreement with their spouse before receiving legal advice, and then realizing that they gave up something they should not have. You can avoid this by investing an hour or two with a lawyer. With an hour, a lawyer can give you a good idea of what the law says about your issue, in general. With two hours, a lawyer can give you a high level overview of your legal position and entitlements.

Knowledge is power, and early legal advice will lead to a separation agreement that you can live with, and that will stand up.

2. Choose your process carefully.

Court is not the only option. Here are some of the other common processes that can lead you to a separation agreement:

- a. Coffee table discussion. The law supports two separating spouses to reach their own agreement. This option is a good option for spouses who are fully informed of the family finances, are amicable and want to minimize the costs of marital breakdown, including the financial costs. This works best once both spouses have received early legal advice. Take your agreement to a lawyer, who can then work with you to draft a Separation Agreement that will make your agreement enforceable.

- b. Mediation. A neutral third party facilitates communication so that you and your spouse can reach an agreement. Mediators have different strengths, which can be matched to your particular issue; a child psychologist is good for a parenting issue, a lawyer is good for a legal issue, etc. There are independent mediators and organizations which provide this service; pick the one that suits your needs best.

Once complete, the mediator will issue a report or resolution plan; take that plan to your lawyer, who will work with you to draft a Separation Agreement that will make the agreement enforceable.

- c. Lawyer assisted negotiation. Family lawyers know of options that have worked for others; we know of issues that you may not have thought of during your discussions with your spouse; we are trained to negotiate with your best interests in mind. This option has the lawyer taking the primary role in the negotiations, working with you and at your instructions to reach an agreement. Once complete, a Separation Agreement is drafted that will make the terms of the agreement enforceable.
- d. Collaborative Law. Structured negotiations with trained lawyers. See the description of this type of process here: http://www.calgaryfamilylawyers.com/collaborative_law.html and here: <http://collaborativefamilylawgroup.com/>.
- e. Arbitration. Gives authority to a third party to make a binding decision for something you and your spouse cannot agree upon. The award is enforceable through the court system, so it is good to have the assistance of a lawyer for this process. Available in Alberta now, likely available in British Columbia soon.
- f. Court. When all else fails, Court is where a final determination will be made, after taking all appropriate steps mandated by the Rules of Court. You can find the BC Rules of Court here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/169_2009_00 and the Alberta Rules of Court here: <http://www.qp.alberta.ca/1125.cfm>.

3. Become informed.

Knowledge is power. Besides early legal advice, there are many resources you can access to get information about separation and divorce. A word of caution – the internet is also full of false information. Stay with the reliable sites. In particular, the following webpages have helped many people:

Federal:

<http://www.justice.gc.ca/eng/pi/fcy-fea/div/index.html> - on separation and divorce

<http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/pub/guide/index.html> - on child support

British Columbia:

<http://www.familylaw.lss.bc.ca/> - legal information website.

<http://www.bclaws.ca/> - Current laws of British Columbia.

http://www.courts.gov.bc.ca/supreme_court/ - Courts of British Columbia.

Alberta:

<http://www.albertacourts.ab.ca/CourtofQueensBench/Family/tabid/90/Default.aspx> - Court of Queen's Bench, family law page.

<http://www.albertacourts.ab.ca/ProvincialCourt/FamilyCourt/tabid/98/Default.aspx> - Provincial Court of Alberta, family law page.

4. Know what you can and cannot do.

The law permits and encourages you to reach an agreement with your spouse without having to face a courtroom. For most issues, the agreement you reach with your spouse will be fine and enforceable, provided that you receive legal advice and understand how your agreement is different from your legal position, if at all.

However, there are some things you simply cannot do. The primary example is child support – it is payable, whether you and your spouse agree or not. Due to the special place of a child in the law, you cannot contract out of child support. Such agreements are not enforceable, and the Federal Child Support Guidelines will be applied whether you want them to or not.

Focus your efforts where you have room to be creative. Need help? Consult a lawyer.

Also, there are certain things you can do by agreement that you are unlikely to achieve in a courtroom. Consider that in Court, you cannot:

- a. Get an Order of support that is non-variable,
- b. A termination or waiver of spousal support,
- c. Have support paid to a third party, and
- d. Have a mandated out of court form of dispute resolution.

5. Get the support you need.

Support is available from many sources. The trick is to match the support to the need; get the right support from the right source. Consider:

- a. Lawyers give legal advice. That is what we are trained to do, and we do it well. Most of us are not trained as therapists or financial advisors, and we are really expensive to talk to about non-legal matters.

- b. Friends provide comfort and moral support. Good for rants, a shoulder to cry on, and self-esteem. Not good for legal advice.
- c. Financial advisors give financial advice. This can be a tremendous help in terms of tax consequences and other financial aspects of your separation.
- d. Psychologists, business appraisers, real estate appraisers and agents, parenting coordinators, and social works may also be able to assist you with your separation.

Check in at my webpage later for the #5 to #10 ways to minimize your legal fees.

Warren is a family law lawyer who practices in Victoria, British Columbia, Calgary, Alberta, and points in between. Warren's approach to family law emphasizes effective and dignified problem solving, and empowering his clients to deal with their legal issues at separation. Read Warren's bio at <http://www.islandfamilylawyers.com/WarrenJennings.aspx>.

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