

## FAMILY LAW SASKATCHEWAN

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Anyone who has gone through a divorce will likely tell you it was a difficult time for them mentally, emotionally, and financially. Understandably, clients often seek advice at the first signs of trouble in their marital relationships. One question I've heard repeatedly in my short time practicing family law is "how do I get a divorce?"

Divorce in Saskatchewan is governed by federal legislation called the *Divorce Act*. Although this blog entry refers to Saskatchewan, the *Divorce Act* applies to all of Canada. In Saskatchewan, only the Court of Queen's Bench has jurisdiction to deal with a Petition for Divorce, and in order to get a divorce, one must make an application to the Court. There are many common misconceptions about what a couple and/or spouse must prove in order to get a divorce, but the truth is there is only one ground for divorce in Canada: marital breakdown.

What is "marital breakdown" and how does one go about establishing that a marital breakdown has occurred? The *Divorce Act* sets out three ways to establish marital breakdown:

### 1. Living separate and apart for one year

This is, by far, the most common ground for divorce, and is the easiest to prove. Spouses are considered to have been separated for one year when they have lived separate and apart for a period of 12 months. Although the period of separation must be uninterrupted, a brief reconciliation during the year (up to 90 days) will not interfere with the calculation of time, as long as the reconciliation is unsuccessful.

### 2. Adultery

If you choose to seek a divorce on the basis of adultery, you must establish that adultery occurred. You must also swear that the adultery was not condoned by you, and that it was not permitted or invented simply as a means to obtaining a quick divorce. Note that adultery can be difficult to prove if your spouse is unwilling to simply admit to it in an affidavit.

### 3. Cruelty

Finally, a divorce may be granted in circumstances in which your spouse has treated you with intolerable physical or mental cruelty. If your spouse has treated you in such a way that it would be unreasonable or intolerable for you to continue to live with them, the Court may order a divorce. On a petition for divorce on the basis of cruelty, the Court will consider the effect of the conduct in question on you, the victim, in order to determine whether the behaviour in question constitutes cruelty.

Please note that the divorce itself is only one issue a couple faces when their marriage breaks down. Other issues that arise when a couple separates include the division of family property, custody and access regarding children, child support, and spousal support. If you choose to seek a divorce, on any of these grounds, it is best to consult a lawyer who can guide you through the procedure of obtaining a divorce and settling the corollary issues that arise when a couple separates.

#### About Family Law Saskatchewan:

Samantha, Kate and Zina are active members of the larger McKercher LLP Family Law Group. This group is dedicated to the delivery of honest, focused and experienced legal solutions for families in Saskatchewan who are transitioning to a next chapter in their lives together, or apart.

#### About McKercher LLP:

McKercher LLP is one of Saskatchewan's largest, most established law firms, with offices in Saskatoon and Regina. Our deep roots and client-first philosophy have helped our firm to rank in the top 5 in Saskatchewan by Canadian Lawyer magazine (2019/20). Integrity, experience, and capacity provide innovative solutions for our clients' diverse legal issues and complex business transactions.



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