

## ALIMONY AND CHILD SUPPORT

The goal of child support is to compensate for the financial difficulties that can arise during a separation or divorce and to ensure that the child's basic needs are met. Under the obligation that binds people of a same family (parents and children, married couples or civil union), **one of the spouses can file a claim to receive the amounts necessary for their subsistence and that of their dependent children (food, housing, clothing, health care, etc.).** Alimony and child support payments are determined based on income.

## THE RIGHTS OF CHILDREN AND PARENTAL AUTHORITY

In Canada, children enjoy the same protections as adults, in addition to the right to special care and assistance, due to their dependency and greater vulnerability.

**The responsibility for the care, maintenance, education and supervision of the child falls onto the child's parents or legal guardians.** (*Loi sur la protection de la jeunesse, Ch. II, article 2.2*).

## Parental authority

Parental authority refers to the obligations and rights that both parents have towards their children from the day of their birth through to adulthood (18 years).

### Parents have the obligation and the right:

- To have custody of their children;
- To watch over them;
- To protect them physically and psychologically;
- To ensure their security and health;
- To educate them;
- To provide them with food; and
- To ensure their upkeep and care.

**Parental authority must be exercised with respect for the physical and psychological integrity of the child. Decisions regarding the child must be made in his/her best interests and with respect to his/her rights** (Civil Code, Art. 32-34).

**Significant deficiencies** with regard to the care, maintenance and protection of children on the part of the child's parents or legal guardians **can result in the intervention of child welfare services.** Actions that could justify such an intervention include: **abandonment, neglect, emotional abuse, sexual abuse, physical abuse and denial of care** when the child has health problems or serious behavioural problems. The safety of the child is also considered endangered if s/he is of school age and **does not attend school** or if s/he leaves his/her place of residence for an extended period without permission (**runs away from home**).

## Parental authority in the case of separation or divorce

In case of separation or divorce, both parents retain parental authority, regardless of the terms of the agreement regarding child custody. If parents do not agree on an important decision about their children, either of the parents may apply to submit their disagreement to a judge, who will decide in the best interests of children.

## LAWS PERTAINING TO CONJUGAL AND FAMILIAL VIOLENCE

Quebec and Canadian laws protect people against all forms of abuse and violence. This also applies to marital and family relationships, and even to actions within the family residence. **Conjugal and family violence are crimes that may be prosecuted under the Canadian criminal code.** For example:

### Offences related to the use of physical and sexual abuse:

- Assault (using force to hit or injure someone) (ss. 265-268)
- Kidnapping & forcible confinement (s. 279)
- Trafficking in persons (ss. 279.01)
- Abduction of a young person (ss. 280-283)
- Homicide - murder, attempted murder, infanticide (ss. 229-231 and 235)
- Sexual assault (sexual relations which are forced or non consensual) (ss. 271-273)
- Sexual offences against children and youth (ss. 151, 152, 153, 155 and 170-172)
- Child pornography (s.163.1)

**Offences related to psychological or emotional abuse** (using words or actions to control, isolate, intimidate or dehumanize someone):

- Criminal harassment ("stalking") (s. 264)
- Making threats (s. 264.1)
- Making indecent and harassing phone calls (s. 372)
- Trespassing at night (s. 177)
- Mischief (s. 430)

### Offences related to neglect within the family:

- Failure to provide the necessities of life (s. 215)
- Abandoning a child (ss. 218)
- Criminal negligence (that threatens the health or well-being of a person, or that may cause injury or death) (s. 219-221)

### Offences related to financial abuse within the family:

- Theft (ss. 322, 328-330, 334)
- Misappropriation of money (s. 332)
- Theft of, forgery of credit card (s. 342)
- Extortion (s. 346)
- Forgery (s. 366)
- Fraud (s.380(1))



table de concertation  
des organismes au service  
des personnes réfugiées et immigrantes

TCRI



# Protection At The Heart Of Family

This leaflet presents an overview of federal and Québec provincial laws pertaining to family, marriage, divorce, sponsorship, parental authority and conjugal and familial violence. The information it contains is not exhaustive and does not constitute legal council. For more information please refer to the following resources or seek the council of a legal advisor.

[www.educaloi.qc.ca](http://www.educaloi.qc.ca)  
[www.justice.gouv.qc.ca](http://www.justice.gouv.qc.ca)  
[www4.gouv.qc.ca](http://www4.gouv.qc.ca)



Ministère de la Justice  
Canada

Department of Justice  
Canada

## HUMAN RIGHTS AND GENDER EQUALITY

The Canadian legal system is based on the principles of universal human rights and freedoms and of equality between men and women (*Art. 1, Civil Code*). **In Canada and Québec, men and women have the same rights and obligations under the law.** Moreover, the elimination of all forms of gender-based discrimination, along with the full political, civil, economic and social participation of women within Canadian society, are a national priority.

## MARRIAGE

Married persons are **legally equal** within the marital relationship. Spouses have the right to participate equally in the organization of their household and all other important decisions concerning the family. They share parental authority over the children and owe each other a **mutual obligation** of fidelity, support and assistance.

### 5 conditions must be met in order to legally marry in Québec:

1. Be of at least **18 years of age** (or at least 16 years with the legal consent of parents or guardians). *Marriage before the age of 16 is illegal.*
2. The marriage is of **two persons**. *Bigamy and polygamy are illegal in Canada.*
3. The future spouses are **not legally married** to someone else.
4. The future spouses are **not closely related** (father, mother, brother, sister, daughter, son, grandparents).
5. The future spouses give their **free and informed consent**. *Forced marriage is illegal.*

In order to be legally valid, the **consent to marry must be given publicly**, in front of **two witnesses** and **officiated by a legally authority**. The marriage must then be registered with the Registrar of civil status. Civil unions and common law (also known as “de facto”) unions do not require the same conditions as legal marriage. For more information please consult the references provided.

### Foreign marriages and marriage of non-residents

Regardless of where they were married, spouses that live in Québec are subject to Québec provincial laws. In order for their marriage to be legally recognized in Québec, persons who married abroad must have a legally valid marriage that fulfills the requirements of the foreign country where they were wed. In addition, the marriage must respect the conditions of the Quebec Civil Code, namely with respect to free and informed consent, legal age of marriage and family relatedness. **It is recommended that marriage certificates obtained in a foreign country be registered with the provincial Registrar of civil status.**

## SPONSORSHIP

Under certain conditions, Canadian citizens and permanent residents have the right to sponsor a member of their family: their spouse, their common law partner, their parent, or a child under a certain age. The duration of the sponsorship is of at least 3 years, depending on the age of the sponsored person and their relationship to the sponsor. The sponsor's obligations remain in effect for the full duration of the sponsorship period, even in the case of a separation or divorce.

**In sponsoring a member of their family, the sponsor commits to providing for their basic needs (food, clothes, housing and personal necessities) for the duration of the sponsorship period.** They also commit to providing the necessary information and guidance to facilitate their integration into Québec society.

**While sponsors are responsible for their sponsored relatives, under Quebec law, they are also under the obligation to respect the sponsored person's physical and psychological well-being.** If the relationship between the sponsored person and the sponsor deteriorates, the sponsor cannot have them deported from Canada, nor can they threaten to do so. **Only immigration officials have the authority to deport someone from Canada.**

Most sponsored spouses are subject to the rule concerning « conditional permanent residence ». This means that s/he must live with his/her sponsor for at least two years. However, **if the sponsored spouse separates from their sponsor due to conjugal or family violence, or neglect suffered at the hands of their sponsor, the sponsored spouse can ask to be exempted from this condition.** The violence may have been directed at the sponsored spouse personally, at their children, or at another relative within the household.

## DIVORCE AND SEPARATION

A legal marriage is terminated either by divorce or by the death of one of the spouses. A marriage can also be annulled if it did not meet all the legal requirements of Quebec law (i.e.: legal age, informed consent, etc.). In order to divorce, a spouse does not require the other spouse's consent. If a person has a low income s/he may be entitled to receive legal aid to cover the costs of a lawyer. The grounds for divorce are the same for both spouses. Even if the couple agrees to divorce and file a joint application (which can make things simpler and less expensive) one the following three grounds must be demonstrated:

- The spouses have not lived as a married couple for at least a year (although they may still cohabitate)
- One of the spouses committed adultery (marital infidelity)
- One of the spouses is a victim of physical or mental cruelty at the hands of the other (conjugal violence)

### Child custody following a separation or divorce

Following a separation or divorce, both parents retain the right to have custody of their child. In Quebec, it is recognized that children need both parents and with regard to custody, the law does not favour one parent over the other. If parents do not agree on child custody a judge will have to decide, based on parental and familial circumstances and the child's best interests.

### The separation of property at the time of divorce

Anyone who is legally married (husband or wife) and a Quebec resident, is entitled to a share of the **family patrimony** after a divorce, regardless of whether or not the couple has children. This involves dividing the **value of key assets that are located in Quebec and that were accumulated during the marriage**. It may include : the value of the family home; furniture; cars; the amounts accumulated in a pension fund or equivalent programs, etc.

The division of property that is not covered by the family patrimony (i.e. Inheritance, individual assets owned prior to the marriage, a business owned by one of the spouses, etc.) will be subject to the rules of the **matrimonial regime** that applies to the couple. Even if a couple divorces in Quebec, it is possible that a **foreign matrimonial regime** may apply if the couple was married outside of Canada. It will be up to the courts of either country to decide which laws apply in which context. In short, the rules regarding matrimonial regimes can be very complex and it is strongly advised to seek legal counsel for further information.

### Laws that apply to divorce in Québec and elsewhere

A divorce granted in a foreign country will not necessarily be recognized in Quebec just as similarly, a divorce pronounced in Quebec will not necessarily be recognized abroad. It is important to seek legal counsel to ensure that the interests of both spouses are protected, especially if the divorce is conflictual.

It is important thought to emphasize that the jurisdiction of foreign courts **only concerns matrimonial regimes** and does not affect the custody of children and the separation of assets found in Quebec. **Even if the divorce is finalised in a foreign country, Québec laws concerning the family patrimony and child custody will apply if the spouses and children reside in Québec.**

However, parents should be cautioned: if one of the spouses were to travel with the child to a foreign country with the hidden intent to deprive the other parent of custody or access to the child, Canadian law would not apply in the foreign setting and it could be very difficult to have the child returned to Canada.