

Hazel Lamarre

“A KIND ALTERNATIVE TO THE CONFLICT AND COST OF DIVORCE”



www.PartnersPartPeacefully.com

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Does separation and divorce have to be combative?

NO

Does separation and divorce need to be fought out in the legal system over months or years, costing thousands of dollars?

NO

Is there a way for the children of a marriage to be sheltered from unnecessary conflict through separation and divorce?

YES

Partners Part Peacefully was created out of necessity to provide an alternative to couples, who up until now, felt trapped. Most couples facing the challenges of separation and divorce felt that they had no alternative but to enter the legal arena. They really didn't want to do that, but saw no other option. Most couples know, as I discovered through my work, personal experience and observation, that the legal system creates and escalates tension and stress between the couple. It is costly, unaffordable and they are afraid of the impact on their children and the relationships going forward. Partners would say to me, "we know what we want and we don't want to fight, or to use lawyers". What is needed and wanted is a system that helps couples achieve their desire for an amicable separation so they can quickly and peacefully start the next chapter of their lives. I knew what the couples were saying, I listened and I created Partners Part Peacefully, a service that educates clients on the key areas of divorce, gets resolution on areas not settled, provides financial counseling and ultimately helps the couple to finalize a fair divorce in a non-confrontational way.

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PART 1

The Process

1. Introduction to the non-confrontational and fair process for marital separation that minimizes the impact on the children.
2. Go through a book, legislation, tables and worksheets to educate the partners on the areas of separation -- Child custody and access, property, support (spousal and child support) and the matrimonial home.
3. Review the areas where agreement has already been reached.
4. Resolve anything that has not been agreed to.
5. Financial counseling and planning for both parties.
6. A mutual agreement is reached.
7. Separation agreement is completed.
8. Agreement is then finalized and sent for typing.
9. If the partners wish, they can take the agreement for Independent Legal Advice (ILA) (approx. \$300 - \$500)
10. The separation agreement is signed by both partners with 2 witnesses making it a legally enforceable agreement.
11. Each partner gets their fully executed copy and you're done.
12. At this time or during the next year, the divorce documents (Ontario) are completed at an additional reasonable cost, and the couple files them together with the government filing fee \$447.00.
13. The support provision through FRO is explained and we help to decide the best course action.
14. Information to clients on our other services including financial planning, estate planning and wills (Ontario).



PART 2

Separation Agreement

Two persons who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs.

Source: Family Law Act - Part IV (54)

Areas of Separation/Divorce

This section of the booklet includes information relating to custody, support, division of property and the family home. Reviewing this with your partner will be helpful in arriving at a fair and equitable settlement that respects both spouses and shelters the children from unneeded conflict.

Child Custody

Sole custody means that one parent makes all the major decisions about the children. Joint custody means that both parents make these major decisions together. Some of the major decisions would be education, religion, healthcare, recreational activities, legal name, where the child will live.

Source: CLEO⁵



Living Arrangements/Access:

The living arrangements are about how much time each parent spends with the child/ren and with which parent the child/ren lives.



1. Children's living arrangements can vary greatly. In some cases children maintain a primary residence with one parent and visit regularly with the other. In others the children divide their time equally or approximately equally between the parents' homes.
2. Shared custody exists when children live with each parent at least 40 per cent of the time. In these circumstances, special provisions apply to the calculation of child support, depending on the amount of time children spend with each parent.

Source: Family Law - Ministry of Attorney General

Child Support

How Much

Child support is determined by the Federal Child Support Guidelines which were made under the *Divorce Act*.

The objectives of these Guidelines are to establish fair standards of support, to reduce conflict and tension between spouses and encourage settlement between them.

Source: Divorce Act, Federal Child Support Guidelines

An On-line calculator for child support is located at The Department of Justice website www.justice.gc.ca. A calculator by DivorceMate, software for legal professionals, has made its calculator available to the public. This calculator calculates child support based on custody arrangements as well as percentages of special expenses. It also provides a starting point for the calculation and duration of spousal support based on the Spousal Support Advisory Guidelines (SSAG). mysupportcalculator.ca.

How Long

Child support must be paid as long as the child under 18 remains dependent or is over 18 and is still in school (This usually continues until the child turns 22 years old or gets one post-secondary degree or diploma).

Child support will continue to be paid even if the receiving parent co-habitates with a new partner or gets married. *Source: CLEO⁵*

Spousal Support

‘Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so’.

Source: Family Law Act Part III s30

While spouses are expected to provide support for themselves, it might be that one partner has more income and assets and may have to pay support to the other. The question becomes one of entitlement. When is someone entitled to receive support?

The *Divorce Act* sets out certain factors and objectives that a judge must consider when deciding whether a spouse is entitled to support when they divorce. Some factors include the financial needs and means, length of marriage, self-sufficiency and time to become self-sufficient.

Source: Dept. of Justice⁶

The “Spousal Support Advisory Guidelines” are used to help parties discuss the spousal support amounts and duration. (**Note:** *Spousal Support Guidelines* are different from *Child Support Guidelines*, which the court is **required** to follow.)

This on-line spousal support calculator provides a starting point for the calculation and duration of spousal support based on the Spousal Support Advisory Guidelines (SSAG).: mysupportcalculator.ca

Source: Ministry of Attorney General³



PART 3

Matrimonial Home

1(1) "spouse" means either of two persons who, are married to each other.

18(1) Every property in which a person has an interest and that is or, if the spouses have separated, was at the time of separation ordinarily occupied by the person and his or her spouse as their family residence, is their matrimonial home.

19(1) Both spouses have an equal right to possession of a matrimonial home.

Both spouses who occupied the family residence at the time of separation are considered to have an interest in the matrimonial home.

Source: Family Law Act Part II

Married couples

Your "matrimonial home" is a home where you were living together when you separated.

Both spouses have an equal right to stay in the house until you have an agreement that deals with it or until it is sold. You cannot sell or mortgage the property without the other spouse's written consent even if the property is registered in your name only.

Common-law couples

It is different for common-law spouses. The spouse who is the registered owner of the property can sell or mortgage the home without the consent of the other spouse. Also, the spouse who is not a registered owner of the property does not have an equal right to stay in the home.

Source: CLEO⁴



PART 4



Property

Net Family Property means the value of all the property (some exclusions being: inheritance that was not used towards the matrimonial home, personal injury damages, life insurance proceeds) the spouse owns on the separation date minus debts and liabilities and minus value of property owned on the date of marriage minus debts and liabilities owned at date of marriage.

$$\text{NFP} = (\text{Value of property owned at separation} - \text{debts and liabilities}) \text{ minus } (\text{Value of property owned at date of marriage} - \text{debts and liabilities})$$

If a spouse has an NFP less than zero, it is deemed to be zero.

The value of a matrimonial home owned at date of marriage is not included in the value of property owned at date of marriage.

Net Family Property Equalization

The spouse whose net family property is the lesser of the two net family properties is entitled to one-half the difference between them.

You cannot make a claim for an equalization payment after the earlier of two years after your divorce or 6 years after the separation date.

Source: Family Law Act Part I, 4(1), (2), (5), 5.(1), 7(3)

Common-Law Spouses

In a common-law marriage the property each spouse brought into the relationship and any increase in value remains the property of that spouse. The spouse who purchased an item during the relationship remains the owner of that item. Upon separation you will need to decide how to divide the things that you purchased jointly.

You might be able to make a claim to be awarded a share of your common-law spouse's property based on the size of your contributions and how much it increased in value.

Source: CLEO⁴



**BOOK A FREE
INITIAL 30 MINUTE MEETING:**

Resources:

1. *Family Law Act* R.S.O. 1990, c.F3
2. *Divorce Act* R.S.C. 1985, c3 (2nd Supp.).
3. Ministry of the Attorney General – Family Justice
www.ministryofattorneygeneral.jus.gov.on.ca
4. Community Legal Education Ontario (CLEO)
Separation and Divorce or Death of a Spouse:
Property Division,
Publication (Rev. Feb. 2012)
5. Community Legal Education Ontario (CLEO)
Separation and Divorce: Child Custody, Access,
and Parenting Plans,
Publication (Rev.Feb. 2012)
6. Department of Justice/Programs and Initiatives/
Supporting Families
www.justice.gc.ca

DISCLAIMER: In accordance with Bill 14 S(10) Access to Justice Act 2006, Partners Part Peacefully does not provide legal advice (the application of legal principles to an individual's specific circumstances). If you require legal advice please contact a lawyer.

Partners Part Peacefully is a Registered Trademark of Hazel Lamarre.

BOOK A FREE INITIAL 30 MINUTE MEETING:

In this free initial meeting we will provide, in detail, the non-confrontational and fair process offered at Partners Part Peacefully and we will answer any questions you may have about the process. You will have an opportunity to provide information regarding your situation, where you are in the process and what steps you may have already taken, if any. You will assess if you feel that Partners Part Peacefully provides the service you were looking for and determine if you would like to work together with us. At the same time we will assess our process as a fit for your needs. Together we will make a joint decision to move forward and begin the process.

Notes:

1. _____

2. _____

3. _____

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