

# **DIVORCE APPLICATIONS**

April, 2009

## **WHEN CAN A DIVORCE APPLICATION BE MADE?**

The Family Law Act is based on a no fault principle. The only requirement for a Court to grant a Divorce Order is an irretrievable breakdown of the marriage, this can only be evidenced by the parties having lived separately and apart for at least 12 months.

## **WHAT IF SEPARATION EXISTS UNDER THE SAME ROOF?**

If the two spouses live under the same roof, but not as Husband and Wife, during the 12 month period since separation, then they will need to file additional affidavits (i.e. an Affidavit by the Applicant confirming the situation and also an Affidavit by an independent person who was aware of the circumstances) to satisfy the Court that the spouses were living separately and apart during that period. We are able to assist with the information required to be addressed in the Affidavits.

## **WHAT IF THERE ARE CHILDREN OF THE MARRIAGE?**

If there are children under 18 years of age, the Court must be satisfied that their welfare arrangements are appropriate prior to granting a Divorce Order. Accordingly, there needs to be detailed information in the Application as to the current arrangements regarding the children.

## **DO I NEED TO ATTEND THE HEARING?**

If there are children under 18 years of age, even if the Application has been filed jointly, it is best that one of the spouses attends the Hearing so that if the Registrar hearing the matter has any questions which have not been addressed in the Application, the spouse in attendance can assist the Court by answering those questions. For an Application filed by one spouse, the Applicant is required by the Court to attend for the hearing.

If there are no children under 18 years of age, regardless of whether the application was filed jointly or otherwise, the parties' attendance is generally not required.

However, if parties have separated but continue to reside under the same roof, even if additional Affidavits have been filed, then at least one of the spouses should attend the hearing, so that if the Registrar hearing the matter has any questions which have not been addressed in the Application or Affidavits, those queries can be answered.

If the Court is not satisfied:

1. as to the welfare arrangements of any children under 18 years of age; or
2. that the spouses have been separated (i.e. living separately and apart) for at least 12 months;

the Court may either: refuse to grant the Divorce Order; adjourn the matter to another date; or dismiss the Application.

Either of the spouses can attend the Hearing if they wish to, even if an appearance is not required.

### **WHEN CAN YOU REMARRY?**

A Divorce Order becomes final one month and one day after the Court grants the Order. If this time needs to be shortened, special rules apply. Each of the divorced parties is only free to remarry after the Order becomes final.

### **ARE PROPERTY SETTLEMENT MATTERS AFFECTED BY A DIVORCE?**

A Divorce Application is a specific Application in itself, and is separate from property or children's matters.

However, it is important to note that there is only 12 months after the Divorce Order becomes final in which to start property proceedings. If Court proceedings are not commenced within this 12 month period, an Application must be made to the Court for permission to do so.