

Ontario Divorce Law

What are the grounds for divorce in the Ontario?

The Divorce Act is a federal law made by the Parliament of Canada, administered equally across all provinces and territories. Only the superior court of each province has jurisdiction to deal with a Petition for Divorce, in Ontario divorce law.

The Act stipulates the sole grounds for divorce as marital breakdown, and provides for three basic ways for proving it in Ontario divorce law:

1. ***You and your spouse have been separated for one year.*** This is certainly the easiest to prove, and is by far the most commonly used ground for divorce. You can initiate divorce proceedings at any time after you've separated, according to Ontario divorce law; the Divorce Judgment will be granted some time after the 12 months of separation are complete. The period of separation must be uninterrupted, except that the Act allows for periods of attempted reconciliation lasting for 90 days or less; such periods don't "reset the clock" on your separation. However, if you live together for 91 days or more and then re-separate, the 12-month cycle starts again.

The reason for your separation doesn't matter; all that matters is that you are in fact separated. Note that it's possible to deem yourselves as "living separate and apart" while within the same dwelling, although this is more difficult to prove. You must be living entirely independent lives -- each doing your own cooking, laundry, and home maintenance for example -- and, of course, not sharing the same bed.

2. ***Your spouse has committed adultery.*** You don't have to name the person with whom your spouse committed adultery unless you're making some coincident claim against that party, as per Ontario divorce law. And you needn't actually find your spouse in bed with the other party; you need only establish a high probability that adultery occurred, for example by their spending a night together in a motel -- especially if not denied by the adulterous spouse. The simplest way to prove the adultery is if your spouse is willing to admit it (in an affidavit).

In the Petition for Divorce, you must swear that there has been no collusion or connivance between you and your spouse, according to Ontario divorce law. Therefore, you can't invent the adultery simply as a means of obtaining a divorce.

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The act must have truly occurred, and it must not have been condoned by you. For example, extramarital sex within an "open marriage" doesn't count. There are two other ways to prove adultery: by examination for discovery, and by court appearance. However, these are not reliable ways to prove adultery, since the court cannot compel your spouse to answer questions about it (he or she is protected against self-incrimination under the Evidence Act and Ontario divorce law). The detail of these procedures is beyond the scope of this short article; talk to an Ontario divorce lawyer for additional information.

3. ***Your spouse has treated you with intolerable mental or physical cruelty.*** Cruelty as grounds for divorce has produced the greatest volume of controversy and court precedent in Ontario divorce law -- but please don't let that dissuade you from divorce if repeated abuse has occurred in your marriage. The courts have interpreted cruelty as conduct that would render intolerable your continued cohabitation. So, if your spouse causes unnecessary pain to you, either physically or emotionally, you may have grounds for a divorce. If you decide to proceed on these grounds, you must be able to show that the cruelty was of a "grave and weighty" nature, and not due to trivial incompatibilities or temperament between you and your spouse. The test of cruelty is quite subjective, and may vary substantially by circumstance and the parties involved.

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