



## HOW DO JUDGES DECIDE THE DATE OF SEPARATION?

The exact day that you and your spouse separate is called the 'date of separation'.

This date is important because it affects your legal rights such as:

- When you can get a divorce
- The values of your assets and debts for division and sharing
- The start date for child support and spousal support
- Insurance benefits and designations

Canada's *Divorce Act* and Ontario's *Family Law Act* do not specify HOW to determine your date of separation.

Canada's *Divorce Act* refers to the date of separation as the date when the spouses "*lived apart and either of them had the intention to live separate and apart from the other.*"

Ontario's *Family Law Act* refers to the date of separation as the "*date on which they separate and there is no reasonable prospect that they will resume cohabitation.*"

But the case-law (judge-made law) has provided a more detailed method to determine a date of separation. You can find this at [www.canlii.org](http://www.canlii.org) by reading the case-law listed at the end of this guide\*.

Therefore, based on the case-law, you can understand what judges look for to determine a date of separation.

In this guide Benmor Family Law Group provides you with an easy-to-read summary of the factors that determine your date of separation.

This guide breaks it down to 6 categories including:

- Spousal Relationship
- Family Life
- Family Finances
- Public Activities
- Residences
- Additional Factors

## **Category #1: Spousal Relationship**

1. When did the spouses stop having sexual relations
2. When did the spouses stop sharing a bedroom together
3. When did the spouses stop socializing with each other
4. When did the spouses stop celebrating birthdays and anniversaries
5. When did the spouses stop exchanging gifts
6. When did the spouses stop celebrating holidays together
7. When did the spouses stop marriage counselling
8. When did the spouses start using dating Apps and dating other people

## **Category #2: Family Life**

1. When did the spouses stop discussing family issues and problems
2. When did the spouses stop performing household chores for each other
3. When did the spouses stop relying on each other for daily activities
4. When did the spouses stop caring for each other's health
5. When did the spouses stop informing each other of their personal and health appointments
6. When did the spouses stop helping each other during difficult times
7. When did the spouses stop travelling together
8. When did the spouses stop attending family functions together
9. When did the spouses stop socializing with friends together
10. When did the spouses stop attending public events together

### **Category #3: Family Finances**

1. When did the spouses stop combining their incomes in a joint bank account
2. When did the spouses stop sharing home, family and personal expenses
3. When did a spouse stop using the other spouse's credit cards
4. When did the spouses stop acquiring property together
5. When did each spouse stop participating in the other spouse's career and business
6. When did a spouse change the beneficiary designation on the other's healthcare plan, RRSP, life insurance and will
7. When did the spouses begin checking off the box for  'Separated' under 'Marital Status' on their Income Tax Returns
8. When did the spouses change the designation of their marital status on other official documents

### **Category #4: Public Activities**

1. When did the spouses stop presenting themselves publicly as a couple in their community, neighbourhood, at work or at functions
2. When did the spouses stop attending joint social or religious activities together
3. When did the spouses stop attending special events together such as weddings, funerals and graduations
4. When did the spouses stop sharing emails, social media accounts, passwords
5. When did the spouses change their marital status on social media

## **Category #5: Residences**

1. When did the spouses begin living in separate bedrooms or homes
2. When did the spouses change the locks to their bedroom or home
3. When did the spouses change their home alarm codes
4. When did the spouses stop leaving personal items in the other's home
5. When did the spouses stop returning to the other spouse's home
6. When did the spouses stop sharing home keys

## **Category #6: Additional Factors**

1. When did a spouse consult a family law lawyer
2. When did a spouse tell/text/email/DM the other spouse that the "relationship was over"
3. When did a spouse notify the children of their parents' separation
4. When did a spouse inform family and friends that they separated

Note: This list is not exhaustive

*\*Mayberry v. Mayberry, [1971] 2 O.R. 378; Cooper v. Cooper (1972), 10 R.F.L. 184; Dupere v. Dupere (1974), 19 R.F.L. 270; McKenna v. McKenna (1974), N.S.J. No. 58; Oswell v. Oswell (1990), 74 O.R. (2d) 15; F. v. V., [2002] O.J. No. 3900; Sturgess v. Shaw, [2002] O.J. No. 2250*