



DIVORCE: SEPARATING FROM YOUR MONEY, AS WELL AS YOUR SPOUSE (PART 1)

The Vanier Institute estimates that almost 40% of Canadian marriages will end in divorce before their 30th anniversaryⁱ. Although repeat divorcees drive that number up slightly, it is still a harrowing prospect that the odds of a marriage ending in divorce are unfortunately high.

Having been both married and then subsequently divorced before turning 25, I hope to offer some first-hand experience on the financial impacts that divorce can have. In Part 1, I will discuss the initial financial impacts that a divorce can have, and then in Part 2 follow up with some of the lasting financial obligations and effects.

The first obvious one is that a division of household assets occurs. While it may seem simple to say, half goes to one spouse and half goes to the other, in reality it is a bit more complex than that depending on your financial situation. The matrimonial home is usually the biggest asset in most divorces, and its division is therefore usually the most complex. Since you cannot simply divide a house into two equal parts like you can with a bank account, the division can often involve selling the home, or one side re-financing to buy the other side out. This can be a very difficult choice, because it could mean selling the home at a point of weakness in the housing market, or it could mean one party attempting to take on a large amount of debt, neither of which are ideal.

The division of investment assets can also be a hard pill to swallow, especially if one spouse had accumulated more than the other. The legal process does not take into account the idea that one spouse may have been a “saver” and the other a “spender,” nor does it consider if spouses kept their finances separate. This means when it comes time for division, all marital assets and debts are lumped together and divided as such, unless special agreements can be made and accepted by the court. This can often mean one spouse gives up a sizable portion of their savings, or maybe even takes on a sizable portion of debt from their former spouse. This can have a serious effect on the savings that have been accumulated by one spouse, and be a major setback in achieving your financial goals.

One thing I'd like to quickly point out is that, assets received through an inheritance are considered exempt from the division of assets as long as they have been held completely separate by the receiving spouse. This means if you were to receive inheritance money, it should always be held in a separate single named bank or investment account, separate from anything with a spouse, as the moment it gets mixed with anything jointly held, it loses all of the special legal protection that it had. Keep this in mind with using inheritance to buy a home as well, as many people often do, as the money used (often for a down payment) then loses that legal protection, and the house is fully considered a joint asset, regardless of where the money came from. Even those happily married should always consider this when receiving an inheritance.

Lastly, legal fees are of course unavoidable during a divorce process, but the amount can vary greatly. In an uncontested divorce, with few assets to divide or children to accommodate, the legal fees are largely just the amounts the lawyers will charge to sign the paperwork and file it with the courts. Contested divorces, or divorces that require complex division of assets or spousal/child support arrangements can be much more expensive. The ideal situation is to work together with your former spouse to bring as much into agreement as possible without having to rely on lawyers, and it is even possible to use D.I.Y. kits to draft the agreements. Of course, given that emotions can run hot during the process, this is not always possible, and I would still recommend retaining a lawyer in most situations. It is important that you find the right lawyer for your situation, as legal fees can add up quickly, and each lawyer has differing skillsets and fee structures that may not be needed in your circumstance.

Join me again in our next newsletter for continuation of this topic in part two. Also feel free to reach out to me to discuss any of the material I have covered here, but please consult a lawyer for any specific legal advice.

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ⁱ Facts and Stats, *Divorce, Separation and Uncoupling in Canada*. Vanier Institute, 2018.