Official Language Rights under the *Divorce Act*

Proceedings under the Divorce Act: new official language rights

In June 2019, the Government of Canada made changes to the *Divorce Act*. These changes included a new official language rights provision for proceedings under the *Divorce Act*. The majority of the changes applied as of March 1, 2021. However, the language rights provision will apply at different dates in different provinces and territories. The provision currently applies in Manitoba, Nunavut, Yukon, Ontario, Saskatchewan and in British Columbia.

Do the official language rights under the *Divorce Act* apply in my province or territory?

The language rights are in force in the following provinces and territories:

- Manitoba (as of March 1, 2021)
- Nunavut (as of March 1, 2021)
- Yukon (as of March 1, 2021)
- Ontario (as of February 1, 2022)
- Saskatchewan (as of February 1, 2022)
- British Columbia (as of December 1, 2024)

The language rights under the *Divorce Act* apply in my province or territory. What does this mean?

If the language rights apply in your province or territory, any case under the *Divorce Act* can be heard in English or French, or both. This includes all steps in divorce cases, like motions for temporary orders and settlement conferences with a judge. It does not apply to appeal cases. For example, the *Divorce Act* provides that:

- Court forms must be available in either French or English, or in a bilingual version.
- A party to a divorce case (usually the spouses or former spouses), a witness or a legal adviser can file court forms and make submissions in either English or French. You can file expert reports in either language.

- A party to a divorce case, a witness or a legal adviser can ask for interpretation services for a court hearing, from one official language into the other. Witnesses can testify in either French or English.
- As a party to a divorce case, you can:
    - have your case heard by a judge who speaks the official language you have chosen.
    - have your divorce judgment or order in the official language you have chosen.
    - request a transcript of what was said during the proceeding in the official language it was said.

If family justice services are a mandatory step for my divorce court case, can I participate in the service in the official language of my choice?

Yes. If family justice services are a required step for your divorce case, they must be available in both official languages, but only if they are mandatory where you live. Family justice services include services like mediation and parent information sessions.

If I don't understand the official language my spouse (former spouse) chooses, can I have interpretation services during the court hearing?

Yes. As a party to a divorce case, you can ask for interpretation services to understand what is said in the other official language at the court hearing. You will be able to choose between different types of interpretation: simultaneous interpretation or consecutive interpretation.

- **Simultaneous interpretation** means that the interpreter will translate what is being said at the same time as you are speaking. The Supreme Court of Canada says that this type of interpretation is quicker, but it is generally considered to be less accurate than consecutive interpretation.
- **Consecutive interpretation** means that the interpreter will translate after the person speaking is done a part of what they have to say. The person and the interpreter take turns speaking. The Supreme Court of Canada says this type of interpretation allows parties, witnesses and legal advisers to better ensure the accuracy of the interpretation. This is because they hear both what the person and the interpreter are saying. But, it does take more time than simultaneous interpretation.

Can legal advisers and witnesses request interpretation services for a court hearing?

Yes. Besides the parties to a divorce case, legal advisers and witnesses can ask for interpretation services to understand what is said in the other official language at a court hearing. A person present in the court room, but not involved in the court case, cannot request interpretation.

If I request interpretation services for a court hearing, will I have to pay for it?

No. If you ask for interpretation services from one official language to the other, the court will provide them for free. But, in some situations, there may be related administrative fees. For example, in some provinces or territories, you might have to pay cancellation fees if you change your mind about interpretation or ask to change the court date at the last minute.

If I want a translation of documents the other party has filed, who will pay for the translation?

The *Divorce Act* does not require that documents be translated for free. You should check with the court in your province or territory to see if they provide this service free of charge.

If I request a transcript or recording of the court hearing, will I have to pay?

If your court charges a fee for a transcript or a recording of court proceedings, they can also charge a fee for a transcript or recording of the interpretation. Please check with your local court office for more information.

How can I find a legal adviser who speaks my official language of choice?

To find a family law legal adviser who speaks your official language, you can consult your provincial or territorial law society or bar association. You will find links to lawyer referral services here.

To find legal advisers who speak French, you can also consult the associations for French-speaking jurists here.

Definition: A legal adviser is a person who is qualified in a province to give legal advice to someone or represent them in court.