



# 7 CRUCIAL STEPS TO TAKE BEFORE UTTERING THE WORDS:

"I want a divorce"

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If you plan on asking your spouse for a divorce in the near future, it's essential to understand that there's a right and a wrong way to have this conversation. The last thing you want to do is to blurt out the words, "I want a divorce," in the heat of an argument, and then realize that you have no idea what to do next. The reality is that ending a marriage the right way requires care, planning, preparation and yes, compassion. Here are seven steps you should take to prepare for a separation before you initiate "the talk" with your spouse:

## **1. Assess whether you can have the talk safely.**

If your spouse has ever been violent with you, threatened you, or if there's a good chance your spouse will react violently to the news that you want a divorce, your number one priority is to ensure that you can end your marriage safely. This will likely mean not having this conversation with your spouse directly at all. If you are in danger or think you may be, you need to protect yourself and your children first and foremost. If this is the case, you need to speak with a lawyer who can help you figure out the safest way to leave. As well, you should familiarize yourself with the following resources:

[Domesticshelters.org](http://Domesticshelters.org)

[Legal Aid Ontario](http://LegalAidOntario.org)

[Ontario Ministry of the Attorney General/family violence](http://OntarioMinistryoftheAttorneyGeneral/familyviolence)

## **2. Connect with a good therapist.**

As a divorce mediator, I recommend that my clients seek out a qualified therapist to help them get through the divorce process. Most find this relationship to be an absolute life-saver.

Those who don't believe they need a therapist often underestimate just how emotionally taxing a divorce can be. Other times, they are too crippled by feelings of shame, failure, or self-blame to prioritize getting the support they need. And some people, particularly men, believe that "admitting" they need help reflects some sort of weakness.

But declining to get professional help can increase the odds of falling into dangerous and self-destructive patterns, including some or all of the following:

- **Using the legal process as a platform for airing relationship grievances.** This is all too common, but seeking vindication through the court only guarantees that the focus will remain on attacking each other's character and rehashing the past, rather than on achieving a legal settlement and moving towards the future.
- **Seeking support from anyone who will listen.** Confiding in a close friend is one thing; venting about your spouse to neighbours, extended family members and the other moms at your kids' school is quite another. While bad-mouthing your spouse in the community may feel like a legitimate method of eliciting support, the reality is that there is usually little to be gained by doing so (and much to be lost - including your children's trust).
- **Feeling overwhelmed by guilt.** If your spouse blames you for "ruining the family," and if his or her emotional outbursts are particularly raw and/or relentless, you may in turn start to blame yourself when in fact the accusations may not be entirely fair or accurate. Even though the end of a marriage is rarely just one person's "fault," it is easy to get sucked into one's spouse's narrative and become overwhelmed by guilt.
- **Feeling depressed.** Depression often goes with the territory, and without professional help, it is far easier to spiral out of control, feel paralyzed with indecision, cry all the time, descend into substance abuse, or all of the above.

Almost everyone who goes through a separation or divorce experiences intense emotions which are most constructively dealt with in a qualified therapist's office. It's best to get a referral from your doctor or a trusted friend, but if that's not possible, you may be able to connect with the right therapist [here](#).

### **3. Understand the differences between the available legal processes, and give some thought to which one might work best for you.**

Your initial instinct might be to hire the most aggressive lawyer in town. But before you do, you should carefully consider whether this actually makes sense in your situation. There are many process options available to you, and it's crucial to understand each one before deciding which path to take:

- **Hiring a traditional lawyer and going to court.** If you believe that your case is likely to be high in conflict, and/or that putting the issues before a judge is your best or only path to a fair resolution, then hiring a "traditional lawyer" could be your option. You are more likely to fall into this category if:
  - there has been abuse and/or a significant power imbalance in the relationship;
  - you don't trust your spouse to make full and complete financial disclosure;
  - you and your spouse are simply incapable of having a constructive discussion, even with the help of a third party like a mediator;
  - you have already attempted mediation and failed to resolve the case.

Traditional lawyers can be very expensive, but they will fight for you and try to get you the best deal. Embarking on an aggressive negotiation process (which may or may not include going to court) will usually shut down any possibility of continuing a decent working relationship with your spouse in the future - but sometimes that's just not possible anyway.

If you need a referral to a lawyer, personal recommendations from friends or family members are generally best. If this isn't possible, do your research online, and/or consider using the [Ontario Law Society's Lawyer Referral Service](#) to connect with a lawyer near you who will give you a free half-hour consultation.

- **Mediation.** In mediation, a neutral third party - the mediator - guides the parties through all of the parenting and financial negotiations. The goal is for the parties to reach their own agreement, which fairly balances the needs and interests of both parties and the children, and which can then be checked over by separate lawyers to ensure it protects the parties' legal entitlements.

Contrary to popular belief, mediation is not just for separating couples who get along. In order for mediation to succeed, however, both spouses need to be motivated to settle, both need to be prepared to compromise, and full financial disclosure is an absolute must. In summary, mediation is ideal for separating couples who:

- are willing and able to make a fair financial settlement;
- are able to put their anger aside to focus on the issues;



- care about creating and preserving a fair, respectful, and collaborative co-parenting relationship, agree that both parents have an important role to play in the children's upbringing, and are committed to keeping the children out of the conflict;
- are motivated to avoid paying massive legal fees.

For more information about mediation in Ontario, and to browse a list of accredited family mediators, click [here](#).

- **Collaborative family law.** Collaborative family law is a hybrid of mediation and traditional representation. Participants in a collaborative process have their own lawyers who advocate on their behalf, but instead of going to court, the process unfolds by way of negotiation, which usually includes a series of four-way meetings in which the lawyers work together to find interest-based solutions. In a collaborative process, as with mediation, other neutral professionals, such as accountants and appraisers, may also be brought on board to provide additional information and support without taking sides.

A collaborative process is often a good choice for those who appreciate the interest-based philosophy of mediation, but feel that they need or prefer to have their own advocate representing them through every step of the negotiations.

A point to consider: Participation in a formal collaborative process generally requires agreeing in writing that if either party starts a court action, both parties are required to start over with new lawyers. This requirement is meant to keep people invested in the process and deter them from making threats to go to court, but it can also make people feel trapped in the process if it is no longer working for them, since the thought of starting over with a new lawyer can be daunting.

An alternative to both the collaborative process and the traditional advocacy model is to find a lawyer who will take a "collaborative-style" (rather than a litigious) approach to negotiations, but without formally entering into a collaborative family law process, so that they can take your case to court if that becomes necessary.

For more information about collaborative family law in [Toronto](#), [York Region](#) and [Peel-Halton](#).

- **Arbitration.** Arbitration is similar to going to court. As with a judge, the arbitrator is an objective third party (usually a senior lawyer or retired judge) who makes binding decisions about the case, based on the submissions and evidence presented by both spouses. Generally, people who go to arbitration both have to agree to participate in the process, and the choice of arbitrator is a joint one. Spouses who participate in arbitration tend to be represented by lawyers. Arbitration can be effective if:
  - You and your spouse both anticipate significant conflict and both feel that you need a third party to act as decision-maker, but you both want a quick resolution;
  - You have tried and failed to resolve your issues using lawyers, or in mediation;
  - You have resolved *some* - perhaps even the majority of your issues using lawyers, or in mediation, but there are one or two remaining "impasse" issues that you're stuck on, that you need a third party to decide;
  - Both spouses prefer the private setting of arbitration to the public setting of court;
  - Both spouses agree to be bound by the decision of the arbitrator.

For more information on arbitration:

[The Canadian Arbitration Association](#)

[Ontario Ministry of the Attorney General](#)

- **Self-representation.** A majority of litigants in family court these days are self-represented. Usually, this is because they can't afford a lawyer, or have run out of money to pay their former lawyer. While there are lawyers available in most courts to provide free advice to litigants, the help they can provide is limited. However, the information and referral coordinators in the Ontario family courts can point you to resources such as on-site family mediation services, which can be helpful. Self-representation is usually a last resort, although it can be a good choice in very simple cases, such as uncontested divorces where there are no children, no assets or liabilities to be divided, and no entitlement to support payments.

For more information about [self-representation](#) and [court mediation services](#) in Ontario.

- **Hybrid process.** It's important to know that the processes described above are not necessarily mutually exclusive. Some people work with a lawyer behind the scenes, while representing themselves in court. Others choose to attend mediation with lawyers present, after trying their luck in court and realizing that mediation might be a better path forward. And arbitration can often be used to break an impasse when parties have tried and failed to resolve their issues using other processes.

In summary, doing your homework is key to ensuring that you choose the right process. Learn as much as you can about the different options available to you and consider whether, following your initial conversation about the separation, you and your spouse may be able to agree on how you want to proceed. As much as possible, it's desirable to retain as much control as you can over how your legal negotiation process unfolds.

#### **4. Know your legal rights.**

Regardless of which process you choose, before you initiate a separation it's important to first have a general idea of what your post-separation life is going to look like. What kind of financial settlement might you receive? Are you going to be entitled to keep the house? Receive support? Protect your parenting rights? Do you have a marriage contract (prenup) and, if so, what impact might that contract have on your ultimate entitlement? There are many, often interrelated issues to work through, and they can feel overwhelming. A preliminary consultation with a lawyer can be extremely helpful in giving you a sense of what the “big picture” might look like following a separation, and in preparing you for some of the challenges you may encounter along the way.

Some lawyers give free initial consultations, and others charge a fee. Some people choose to speak to more than one lawyer to get a sense of the different strategies that could be pursued. However, it's important to understand that lawyers' opinions are only as good as the information they are given by the client. In order to truly understand your legal rights, make sure that before you broach the topic of separation with a lawyer, you are armed with as much information as possible.

So, before you pick up the phone, it pays to generally familiarize yourself with Ontario Family Law.

## **5. Get a clear financial picture.**

This is where many people get bogged down or overwhelmed - particularly if they aren't good with numbers or financial concepts, if their spouse is the one who has handled the finances during their marriage, and/or if their spouse is secretive about their finances. It can also take time for the financial picture to come into focus - for example, if certain asset values are unclear or if someone's income is challenging to figure out - in which case a professional valuation, appraisal, or income analysis may be necessary.

Not to worry - you are not expected to have every financial detail at your fingertips before you get started. However, if you can provide your lawyer with a summary of the following information, this will not only save you time and money during the initial interview, but more importantly, it will give your lawyer the ability to provide a high-level sense of where you may stand - to be fine-tuned as more information comes to light:

- Your income for the last three years;
- Your spouse's income for the last three years, if this is available to you;
- A list of your children's current "special/extraordinary expenses" as defined by section 7 of the Ontario Child Support Guidelines;
- The values of any assets and liabilities you and your spouse owned or owed on the date of separation (both jointly and separately). Ideally, you should be gathering copies of account statements for eventual use, if these are available to you;
- The values of any assets and liabilities either of you brought into the marriage;
- The values of any gifts or inheritances either of you received from third parties (such as parents) during the marriage.

Here is some additional information on preparing your financial documents.

Eventually, married people who are separating or divorcing in Ontario, and who have assets and liabilities to be divided up, will need to fill in a Form 13.1 Financial Statement and provide a copy to their spouse. The form provides a



summary of all of the information listed above, as well as a summary of expenses. Don't worry if this form looks overwhelming - the truth is that it is overwhelming to most people, but your divorce professional will provide assistance in completing it.

It's important to note that the laws on property division in Ontario differ depending on whether you and your spouse are in a common-law relationship, or are legally married. If you are in a common-law relationship, make sure to share this information with your lawyer at the outset of your consultation.

## **6. Consider your current and future budgets**

Unless you're independently wealthy, it's likely that both you and your spouse will need to cut back on your spending following the separation. Not only must your assets be divided according to law, but the available family income must also be split between two households, meaning that there will be far less to go around in each household. While this may seem obvious in theory, the reality for most people is that the adjustment to a post-separation budget is a huge shock. Here are some specific things to think about:

- **The big picture.** Prepare yourself by creating a realistic budget. While your lawyers, mediator, and neutral divorce financial professional can help you with this, you should give some preliminary thought to whether it may be affordable for one of you to buy out the other person's interest in the matrimonial home, or whether it will likely need to be sold (a buyout usually entails qualifying to take on a significant mortgage on your own, and/or having wealthy parents with the means and desire to help fund a buyout and/or guarantee a mortgage).
- **Your future home.** If you think your home will need to be sold, you should give some preliminary thought to your budget for a new home, and start researching housing options. Will you rent? Buy? What areas are affordable? What's the monthly budget for all housing expenses? Don't forget that if you and your spouse will be sharing parenting responsibilities, you will need to ensure that your new homes are relatively close to each other, so that the parenting plan runs as smoothly as possible. Sometimes, this entails both spouses renting, even if they owned prior to the separation; other times, both spouses agree to relocate to a less expensive neighbourhood following the sale of the house.

- **Covering transitional costs.** In addition to the cost of housing, it is ideal if you can set a fund aside for legal fees, moving costs, and first and last month's rent, if you plan to rent. If funds are tight, lines of credit or loans from parents or extended family members may help here.
- **Getting professional financial advice.** Finally, give some thought to where you can cut back in your budget post-separation, and how you might ultimately invest your settlement funds in order to maximize your returns, avoid incurring debt, and save for retirement. Working with a Certified Divorce Financial Analyst and/or an Investment Advisor is one of the best decisions you can make at this time, particularly if you haven't had much experience managing money before.

## **7. Last but not least ... prepare for the talk.**

If you've done your best to follow all of the steps above, you're probably ready to have the talk with your spouse. Before you do, prepare for the talk by keeping the following in mind:

- **Timing is everything.** Try to find a time when the children aren't around, when distractions such as your phones and the TV can be minimized, and when neither of you is under time pressure. Don't initiate the conversation, for example, right after your spouse gets home from work, when the kids are hungry, when the big game is just about to start, or at bedtime.
- **Be attuned to your spouse's reaction.** Often, hearing the words "I want a divorce" won't come as a surprise, but it's also very common for people to report feeling shocked and blindsided by the news. It's important to be attuned to your spouse's reaction, and not to overwhelm them with too much information or too many demands until they've had time to process the news.

Remember, divorce is a grief process. They may cry, they may scream, they may beg you to reconsider, or they may hurl accusations (for example, that you must be having an affair or that you're destroying the family). If you demand that your spouse get a lawyer and begin negotiations while they're

still trying to process the shock of being told that the marriage is over, you will come across as insensitive and cruel, and they will probably resist the idea. So unless there are immediate safety concerns (in which case you need to make a safety plan) or objectively urgent steps that need to be taken, it's a good idea to give your spouse some time and space to process the news and accept the reality of the separation. The legal process will go much more smoothly once both spouses are ready to proceed.

### **Some other tips to keep in mind as you prepare to have "the talk":**

- **Separate the person from the problem.** The problem (or, put another way, the challenge you are facing) is that you are unhappy enough to need to end the marriage and finalize a fair legal settlement. The problem *should not* be framed in terms of your spouse being a horrible person who is totally at fault for everything that went wrong with the marriage. While you may in fact feel that way, your spouse will likely have a very different point of view. Blame and fault-finding are not only hurtful, they're counterproductive, and your spouse will likely react defensively, by turning things around and pointing out all of *your* shortcomings. Try to take joint responsibility for the breakdown of the marriage while emphasizing the need to focus on moving forward rather than backward. Acknowledge that while this will be a painful process no matter what, you would prefer to keep things as respectful as possible.
- **Remember the big picture and keep your expectations realistic.** It takes significant time, effort, and energy to get from Point A (breaking the news) to Point B (signing a final separation agreement). Remember that this will be an ongoing process, not a one-time transaction - and it will be a difficult one. You and your soon-to-be-ex will have good days and bad days, but no matter what, it's important to keep the big picture goals in mind, whatever they are for you. Hopefully, they will include fairness, civility, respect, healing, and finding peace in your new and separate lives and households.
- **Read and learn as much as you can.** There are many helpful books out there, both for adults and for children. Two of my favourites are *Tug of War*, by Justice Harvey Brownstone (a good primer on how not to behave during your divorce), and *For Better or For Worse* by E. Mavis Heatherington and

John Kelley, a highly readable and encouraging summary of three decades' worth of research on children's adjustments following divorce.

Here are some more [great suggestions](#) for adults. And here is a list of [resources for kids](#).

- **Align on a process if possible.** If you and your spouse are able to come to an agreement on using a legal process such as mediation or collaborative family law, it would make sense to explore the options together at this time. However, neither spouse should pressure the other into using a process, or a specific professional, that doesn't feel right.

Divorce can be overwhelming, particularly when you have no idea where to begin. We hope that this book has helped equip you to feel as prepared as possible as you begin to take your first steps down the difficult road of divorce. If there is anything more we can do to help, please feel free to reach out - my contact details can be found [here](#).

*This e-book contains general information only, and is not meant to be construed as legal advice. Each situation is unique, and readers considering separation or divorce are urged to obtain independent legal advice in order to gain a full understanding of the specific legal rights and obligations applicable to their specific situations. Please note as well that some information and most of the links in this article are geared specifically to readers in the Province of Ontario, Canada, and that some of the information contained in this e-book will not be applicable to other jurisdictions.*

*In addition, please note that while the majority of the practical information in this e-book may be applicable to both married couples and common-law couples who are ending their relationships, the property laws on Ontario and many other jurisdictions differ depending on whether a couple is legally married or in a common-law relationship. Your lawyer can explain more about this.*

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