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CANADIAN DIVORCE LAW AND PRACTICE

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Canadian Divorce Law and Practice includes digests of thousands of divorce cases organized under 300 specific subjects. In addition, this product features the full text of the *Divorce Act* and other related statutes, sample pleadings and the most commonly used divorce precedents, all relevant provincial rules of practice and all prescribed forms, and extensive commentary on the Spousal Support Advisory Guidelines.

In this release cases which fall under s. 8 – separate and apart, adultery and cruelty – have been updated. Most significant is the Ontario Court of Appeal case *Kassabian v. Marcarian*, 2025 CarswellOnt 4365, 2025 ONCA 239 (Ont. C.A.), affirming 2024 CarswellOnt 7495, 2024 ONSC 2719 (Ont. S.C.J.). In determining the parties’ separation date, the Court of Appeal emphasized that “when it comes to the timing of spousal separation, the element of change should be emphasized (emphasis in original)”. It went on to explain that “it is the differences or changes in the characteristics of a conjugal relationship at the alleged separation date - changes in shared shelter, sexual and personal behaviour, services, social activities, economic support, children and societal perception of the couple - that best serve to guide the court in fixing the date of separation or valuation date.”

Highlights

- There was no useful purpose in pursuing the ground of cruelty where a divorce on the ground of separation for one year was available. See *Fernando v. Fernando*, 2025 CarswellAlta 349, 2025 ABKB 88 (Alta. K.B.).
- The husband’s unopposed application for a divorce was granted, based on mental cruelty that caused the husband to leave the marital home and separate from the wife less than four months after marrying. See *P.S.X. v. A.B.*, 2024 CarswellOnt 3522, 2024 ONSC 1260 (Ont. S.C.J.).
- Separation of the parties occurred when the husband expressed his desire to separate with a subjective intention not to reconcile, and the parties’ conduct was no longer like that of a couple, despite agreeing that the husband would remain in the marital home until their youngest child left for university four years later. See *Savoie v. Lambert*, 2024 CarswellAlta 1862, 2024 ABKB 422 (A.B.K.B.), additional reasons 2024 ABKB 744, 2024 CarswellAlta 3326 (Alta. K.B.).
- The parties were separated after the husband communicated a permanent intention to separate, despite agreeing to a nesting arrangement for the best interest of the children for an additional four years. Although the parties had sexual relations on occasion after 2018, it was not in the nature of their sexual relationship during the course of their marriage before separation, and did not amount to reconciliation or support the wife’s claims that they were not separated. See *M.A.V. v. J.V.*, 2023 CarswellBC 3250, 2023 BCSC 1904 (B.C. S.C.).

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