

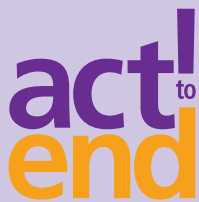
flew Family Law
Education for Women
Women's Right to Know

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Le droit de savoir

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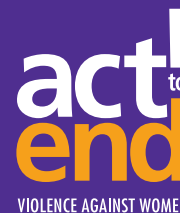


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Why do I need a JEWISH DIVORCE?

Questions & Answers about Divorce
for Jewish Women



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Why This Brochure?

If you are a Jewish woman and are in the process of or are considering a divorce, this brochure has information that you need to know. You may not realize it but obtaining a Jewish divorce (*Get*) is of great importance whether or not you are religious.

Under civil law, either you or your husband can file for divorce. Under Jewish law, only your husband can begin the process leading to the Jewish divorce (*Get*). To be valid, your husband must voluntarily give the *Get* and you must voluntarily accept it. Sometimes obtaining a *Get* can be challenging. This brochure is designed to provide you with basic information about obtaining a Jewish divorce and a civil divorce in the province of Ontario.

This brochure was developed and written by a committee of experts under the leadership of Act to End Violence Against Women. We are a volunteer organization dedicated to ending violence against women, through education, awareness and advocacy about all issues that affect women's safety and security and that of their children.

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This brochure is made possible by Family Law Education for Women (FLEW), a public legal education project funded by the government of Ontario. FLEW's goal is to provide information to women about their family law rights in Ontario. FLEW has also produced materials on the following topics: alternative dispute resolution; custody and access; child protection; child support; criminal and family law; domestic contracts; family law arbitration; family law issues for immigrant, refugee and non-status women; marriage and divorce; finding legal assistance in family law; property division and spousal support. For information about materials available in other languages and formats, please visit www.onefamilylaw.ca and www.undroitdefamille.ca.

What is a Jewish divorce?

- A Jewish divorce is called a *Get*.
- A *Get* is a document that ends a Jewish marriage.
- Under Jewish law, a man must give the *Get* and a woman may accept it. They both must do so voluntarily.

Who needs a Jewish divorce (*Get*)?

- Under Jewish law, any Jew married to another Jew needs a Jewish divorce.
- Jewish divorce is separate from civil divorce (divorce under Canadian law).

Why do I need a Jewish divorce (*Get*)?

- To officially end the Jewish marriage.
- A *Get* will allow you to date and remarry within the Jewish faith.
- Your status as a divorced person will be recognized by the State of Israel and any Jewish community.

What if I did not have a Jewish religious wedding?

- According to most Jewish authorities, you still need a Jewish divorce (*Get*).
- Consult a Rabbi.

What will happen if I don't obtain a Jewish divorce (*Get*)?

- If you only have a civil divorce, you are still married according to Jewish law.
- As Jewish law sees you as married, any new relationship is considered adultery.
- **It will affect your future children:** Under Jewish law, any child you have with a man other than your husband is a *mamzer* (plural *mamzerim*), a child born of adultery or incest.
- A *mamzer* cannot marry Jews, except for other *mamzerim*. This status continues through future generations.
- There is no remedy for this status.
- If your children are *mamzerim*, they will need to be informed about their status.

NOTE:

This information is not advice and is not a substitute for legal representation. For more information about FLEW, visit www.onefamilylaw.ca.

I'm not that religious. Why bother with a Jewish divorce (*Get*)?

- So that your future children and their descendants will not be *mamzerim* and will be able to marry whomever they wish.
- If you only have a civil divorce, most Jewish communities and the State of Israel will consider you still married under Jewish law.

If I have a Jewish divorce (*Get*), do I still need a civil divorce?

- Yes, according to Canadian law, any divorcing couple requires a civil divorce.
- If you were divorced in Israel or any country where divorce is solely a religious matter, then your *Get* should be valid. Consult a family law lawyer.
- For a civil divorce, consult a family law lawyer.
- For help in finding a family law lawyer, refer to the resource list on the last page.

What should I obtain first, the Jewish divorce (*Get*) or the civil divorce?

- It is best to obtain the Jewish divorce (*Get*) first.
- Consult a family law lawyer and a rabbi about your specific case.

Where do I obtain a Jewish divorce (*Get*)?

- Contact your local rabbi, if you have one.
- Contact a *Bet Din*, a rabbinical court.
- Refer to the resource list on the last page to find a *Bet Din*.

What are some of the differences between Canadian and Jewish divorce law?

- Under civil law, there is a one year waiting period for a divorce.
- However, if either party committed adultery or cruelty, the civil court may grant a civil divorce immediately.
- Under Jewish law, there is no waiting period for a *Get*.
- Under civil law, spouses can live under one roof and still be considered legally separated.

Speak to a lawyer before making any decision to leave the matrimonial home.

- Under Jewish law, a Jewish divorce (*Get*) will not be considered if the spouses are living under the same roof when the request is made for an appointment at the *Bet Din*.

Who Deals with Custody, Support and Property Division?

- Only Ontario courts and/or family law arbitrators can make legally binding rulings in family law.
- Do not go to arbitration with someone who has been violent or abusive, who has tried to bully you, or with someone who has more power than you.
- You and your husband can make an agreement to settle the issues between you when your relationship ends. Before you sign any agreement, make sure you have complete and accurate information about your husband's financial situation. Also, each of you should talk to your own lawyer.
- Rulings by a Jewish court about custody, access, child and spousal support and property are not legally recognized under civil law. Ontario law permits the *Bet Din* to issue a *Get*.
- For more information, see the FLEW information booklets or visit www.onefamilylaw.ca.

Jewish women need both a civil and a Jewish divorce (*Get*).

What if my husband refuses to give me the Jewish divorce (*Get*)?

- Ask your rabbi, if you have one, to discuss the matter with your husband.
- Speak to your husband's family to help convince your husband.
- Ask friends who can influence your husband to speak with him.
- If all that fails, consult a rabbi at the *Bet Din*.
- The *Bet Din* may call the husband to appear.
 - If he refuses to appear three times or refuses to comply with the decision of the *Bet Din*, the *Bet Din* may issue a *seruv* that informs the Jewish community of your husband's refusal
 - no club, institution or organization should give him honours, position or membership
 - people should cease to do business with him
 - he should not be invited to social occasions
- Many synagogues and Jewish organizations already have by-laws to respect a *seruv*.
- As soon as the *Get* is given by your husband and accepted by you, the exclusions are lifted.

How can Canadian & Ontario law help me if I am being denied my Jewish divorce (*Get*)?

- There are civil laws that can help you obtain a *Get*. It is important to consult a family law lawyer and a rabbinic expert.

What are the Canadian laws that may help my case?

- Although Canadian family law cannot grant you a *Get*, it can offer some help. For example, Canadian law does say that your husband cannot use refusal to grant you a *Get* as a negotiating tool.
- The law also says that if your husband refuses to cooperate with you in seeking a *Get*, the court may refuse to deal with his family law application or may decide that he cannot defend himself in the family court proceeding.

An example: Rachel's husband Harry refuses to give her a *Get*. Rachel has made a spousal support claim for \$1,000 per month. Harry, in reply, says that he should only have to pay \$500. The court can refuse to accept Harry's reply or to allow him to participate in the support hearing because he is putting up a barrier to Rachel's religious remarriage. If her claim is reasonable, the court can strike out Harry's claims and only listen to Rachel's claims.

What do I have to do to make these laws work for me?

- Contact the *Bet Din* and say that you are willing to agree to a *Get* without any conditions.
- Write a registered letter to your husband telling him what you have done and ask that he do the same.
- If your husband will not do this, speak to your lawyer about next steps such as filing an affidavit with the court.

I have a civil separation agreement or divorce in which my husband promised to give me a Jewish divorce (*Get*) but has never done so. Can I sue him for damages?

- As noted previously, Canadian family law cannot force your husband to give you a *Get*, though it can help you.

- You can also use these provisions if you are back in court to change a previous order.
- Recently, the Supreme Court of Canada awarded a Quebec woman damages when her ex-husband failed to give her a *Get* after promising to do so in their separation agreement.
- The Court was clear that it could not force her husband to grant her a *Get*, however it did require him to give her money to make up for his failure to honour the agreement.
- It is unclear if this Supreme Court decision can be used in an Ontario court.
- It is important to consult both a lawyer and a rabbi in these situations.

Is a *ketubah* (a Jewish marriage contract) considered a legal contract in Ontario?

- The *ketubah* sets out the obligations, including financial ones, that a husband has towards his wife in the event of separation or his death.
- It is doubtful that the *ketubah* would be enforced as a domestic contract by Ontario courts.
- While a *ketubah* is not a legally binding document in a civil divorce, it is needed for the *Get* proceedings.

Are foreign marriage agreements or contracts legally binding in Ontario?

- Under Canadian family law, terms in a foreign marriage agreement or contract about custody or access are not necessarily legally binding. A court always has the power to change these terms if it feels that they are not in the best interest of the children.
- Other terms such as property or spousal support may be binding.
- You should consult a lawyer about all parts of any foreign agreement.

My husband is an Israeli citizen or is making *aliya* (immigrating to Israel) and hasn't given me the *Get*. What should I do?

- Tell the rabbi who is helping you obtain a *Get*.
- The rabbi can have a file opened at a *Bet Din* in Israel.
- There are Israeli laws that can help you, for example, by taking away his passport or driver's license.

My husband is not an Israeli citizen nor is he making *aliya*. Can Israeli law help me?

- No.

What about travelling with my children?

- Each parent needs the custody order and a notarized letter of travel agreement from the other parent in order to travel outside of Canada.
- It is possible to travel within Canada without such a letter.
- Each child must have a separate passport.
- If your child's father refuses to sign the passport application, talk to your lawyer.
- Your lawyer can ask the court to give you permission to travel with your child.

What happens if my husband takes our child out of Canada and refuses to return?

- The main law that may be able to help you get your child back is the *Hague Convention on the Civil Aspects of International Child Abduction*.
- The *Hague Convention* is an international treaty signed by 75 countries, including Canada. The countries who signed the treaty agree that they will work together to find and return children who have been illegally moved from one country to another.
- If this is your situation, contact a lawyer as soon as possible.
- It is easier to enforce if there is a custody and access order in place.
- If you have no or limited funds, you may be eligible for legal aid.
- If your children are taken to a country that has not signed the *Hague Convention*, it is often more difficult to have them returned.
- For more information, refer to the FLEW booklet on "Child Custody and Access".

What do I do to obtain a Jewish divorce (*Get*) in Ontario?

- Call the *Bet Din*.
- They will instruct you about the process.
- You may need to meet with the rabbi before proceeding with the *Get*.

Who will be in the room?

- One to three rabbis who are *dayanim* (judges).
- Two male witnesses.
- A scribe.
- Your spouse.
- You.
- It is a good idea to ask a relative or friend to accompany you.

It is advisable to obtain a *Get* before the civil divorce is final.

What do I need to bring?

- Photo ID.
- The *ketubah*, the marriage contract (make photocopies for your archives before giving away the original).
- If you do not have a *ketubah*, inform the *Bet Din* rabbi.
- The list of names and nicknames of your father, mother and grandparents in both English and Hebrew.
- Know your own Hebrew name.
- Any documentation about previous marriages and divorces, conversions, adoptions regarding yourself, your parents, your grandparents.

How long will it take and what will happen?

- About 2 1/2 hours.
- It is a very technical process.
- At the end of the *Bet Din* procedure the *Get* is cut, symbolizing the end of the marriage.
- The original of the *Get* is kept at the *Bet Din*.
- A *pitur*, a document of release to remarry, will be given to you at the end of the ceremony (sometimes the *pitur* is mailed within 2 weeks).

What does it cost and who pays?

- A *Get* costs \$500 in Ontario (2008). This fee covers the services of the rabbis, two witnesses and a scribe and for secretarial work to ensure that the papers are prepared and arrive on time.
- Traditionally, men paid the costs for the *Get*. However, more recently, some couples have begun to share this expense.

- If your husband will not pay but will give the *Get*, you may want to pay the total fee yourself.
- If you do not have sufficient funds you should ask for help from your:
 - Family
 - Synagogue rabbi
 - Jewish Social Service Agency, if you are a client (for funds and/or guidance)
 - Local Jewish Free Loan Society for an interest-free loan
 - Local committee of the Coalition of Jewish Women for the *Get*

What if I cannot be in the same building as my spouse?

- If you and your husband cannot be in the same room (e.g. in cases of abuse and/or where there is a restraining order) an agent may be appointed for one or both of you.
- If your husband is out-of-town, an agent must be appointed to pick up and deliver the *Get* to you.
- There are added costs for this service.

Glossary

<i>Affidavit</i>	a formal sworn statement of fact
<i>Aliya</i>	immigration to Israel
<i>Bet Din</i> (plural <i>Batei Din</i>)	a rabbinical court
<i>Dayan</i> (plural <i>Dayanim</i>)	judge
Domestic Contract	a legal agreement between you and your partner that sets out certain terms for your relationship and/or your respective rights and responsibilities in the event that your relationship ends.
Family Law Arbitrator	a person who is trained to hear both sides of a problem and make a judgement
<i>Get</i>	a Jewish divorce
<i>Ketubah</i>	Jewish marriage contract prepared according to Jewish law
<i>Mamzer</i> (plural <i>Mamzerim</i>)	a child born of adultery or incest
Matrimonial home	the couple's primary residence during the time they lived together
<i>Pitur</i>	a document of release to remarry
Restraining Order	a court order that says that one person cannot have contact or communication with another
<i>Seruv</i>	a document that states that a person is unwilling to accept the decision, authority of the Bet Din

Resources

- The Bet Din of the Jewish Divorce Court in Toronto, Rabbi Mordechai Ochs 416.781.9676
(A *Get* issued by the Bet Din of the Jewish Divorce Court in Toronto is universally recognized.)
- Bet Din of the Rabbinical Assembly (Ontario Region), Rabbi Steven Saltzman 416.635.5340 x 302
- The Reform Bet Din Rabbi Michal Shekel 416.849.1004
- Coalition of Jewish Women for the *Get* (Ontario) for information and assistance 416.849.3135
- Lawyer Referral Service 1.900.565.4577
- Jewish Family and Child of Greater Toronto 416.638.7800
- Jewish Family Service London 519.673.3310
- Jewish Family Service Ottawa 613.722.2225
- Jewish Family Service Hamilton 905.627.9922
- Jewish Information Service Toronto 416.635.5600
- Jewish Free Loan Cassa 416.635.1217
- Act to End Violence Against Women 905.695.5372
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- FLEW legal information booklets
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