

Determining date of separation can be complex: Williams

By Carrie Brunet Duncan, AdvocateDaily.com Contributor



The date of separation is a frequently contested issue in divorce, and it isn't always as cut-and-dried as couples expect, says Markham family lawyer [Cheryl Suann Williams](#).

Disagreement on the issue is common, and judges will use several factors to determine which date accurately reflects the couple's separation, says Williams, principal of [Williams Family Lawyers](#).

"Many people believe that separation occurs when one person leaves the matrimonial home," she tells [AdvocateDaily.com](#). "But that isn't always the case."

Williams says in one of her cases, her client and their partner shared a bed during their entire separation up until the divorce was finalized. "No two people's lives are the same," she says.

"Sometimes they continue to share a bedroom, or move into a different part of the home," Williams says. "Sometimes, they will cease sexual relations, but not always."

Some people will publicly tell others about their separation, while others lead more private lives, only revealing their status after the divorce is finalized, she says.

One measure that is often accurate is when the couple decides to tell their children if they have any.

"Once they tell their children, they are definitely separated," says Williams. "Most people won't do that unless they are certain they aren't going to work things out."

Judges will look at other factors, such as when the couple ceases participating in social activities together, or when they sever their finances, she says.

“How they portray themselves on paper is the most important thing,” Williams says, noting that in some cases, anniversary cards where one party is professing their love to the other have been used to contest the date of separation.

“We might also look at emails or texts,” she says.

And while a judge won’t grant a divorce until the couple has been officially separated for a year, there are other reasons why the date is vital in a divorce, Williams notes.

The three main reasons are the value of communal property, spousal support payments, and pre-judgment interest, she says.

Typically, the separation date is what the court considers the “valuation date,” Williams says. Whatever the couple owns as of the valuation date, minus any inheritances or gifts, is what the court must divide equitably between the parties.

This date becomes especially crucial in divorces of couples with high net worth, as there can be an ongoing acquisition of property during the separation, she says. Or, she says there can be a shift in the value of property, such as the sharp increase followed by a dip that occurred in the Toronto market in 2017.

“For many people, a few months wouldn’t make much difference, but for others it does,” Williams says.

To a lesser degree, the separation date can also impact spousal support payments, she says.

“Some judges will consider one year of support payments for every year of cohabitation,” Williams says.

Lastly, pre-judgment interest, which is payable on all due amounts, starts to accrue on the date of separation, she says.

At the end of the day, the exact date of separation will be determined by the “intent” of both parties,” Williams says. “It can be quite complex.”

With almost 20 years’ experience, Williams has seen many different scenarios, but at the end of the day, under the law, a separation occurs “when there is no reasonable prospect of reconciliation,” she says.