

Native Legal Info

DIVORCE (Cree)

Éducaloi, in collaboration with the Quebec Native Women's Association , presents Native Legal Info. This legal bulletin deals with divorce and its implications. It is intended to inform Aboriginal women of their rights and legal actions that can allow them to defend those rights.

Betty is Aboriginal and has been married to François, a non-aboriginal, for 12 years. This morning after a particularly violent fight with François, Betty finds herself on the street with her three (3) children. Entirely, helpless, she calls her friend Sylvie who is a lawyer and makes an appointment at Sylvie's office.

Sylvie : Hi Betty ! What happened ?

Betty : My husband threw me out. I was forced to go to my mother's house and I don't have any money. He's been violent for years. I've had enough and I don't want my children to put up with it anymore. I want a divorce. I would like you to tell me what could be done, what I have to do to get one.

Sylvie : Well, the law allows for divorce only if there are certain reasons. Your husband is violent towards you and that is sufficient reason to divorce.

Betty : Are we going to be able to go back to our house soon ?

Sylvie : Yes. You can go back home because you are the only one who can own it officially. Your husband does not have the right to own a residence on 1 A or 1 A-N land, under the James Bay Agreement because he is not a status Indian.

Betty : Then it's true, I can keep the house ?

Sylvie : Yes, of course.

Betty : So, what happens with the furniture and the car ?

Sylvie : In legal language, the furniture and the car are part of the family patrimony as is the case with the house and RRSP's if François has one. The net value of all of these goods must be established and eventually shared equally between you. The share can be in money or in goods. So, even if you can keep the house because it is on the reserve, we must include its value in the family patrimony.

What kind of work does François have now ?

Betty : He's been working for a forestry company for over 12 years.

Sylvie : If François has been paying into a pension fund since you were married, you have the right to half the value of the fund.

Betty : Ouf ! That's a lot of things ! I have the feeling that I'm taking everything away from him. I'm afraid of his reaction.

Sylvie : I know Betty but you are only defending your rights. If ever he threatens or intimidates you, we will go to the judge and get an order that will guarantee you peace and security until everything is settled.

Betty : Well, that's a relief.

Sylvie : Good but there are many things that have to be discussed. We must, among other things, think about support payments for you and your children. We must also talk about the possibility of granting or denying your husband visiting rights to the children. But that's enough for today. I'll get back to you this week.

Betty : Thanks you for your help, Sylvie.

If you wish to undertake divorce procedures, do not hesitate to contact the attorney or legal aid services in your area, if you are eligible.

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