

Immigration and Refugee Board of Canada

[Home](#) > [Research Program](#) > [Responses to Information Requests](#)

Responses to Information Requests

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30 January 2006

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Colombia: Information on divorce, including grounds, procedures, length of process, support payments and child custody (2005 - January 2006)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

According to Manuel Cuello, superintendent of the National Registrar in Colombia, there is a backlog of more than one million divorce cases in Colombia's courts (AP 27 Sept. 2005).

A law adopted in June 2005 simplifies administrative steps for some legal processes, including divorce (Colombia 10 June 2005). Following the adoption of this law, the government implemented regulations on mutual consent divorce in front of a notary through Decree 4436 of November 2005 (ibid. 2 Dec. 2005; *Portafolio* 3 Dec. 2005a; ibid. 1 Dec. 2005).

If there is no consent on getting a divorce, the case will go to the courts and a judge will assess the validity of the request which has to be based on the following motives: extramarital affairs, non-respect of the obligations set by law (fidelity, children care, non-providing of health assistance, etc.), alcohol or drug addiction, a conduct which seeks to corrupt the other or a dependant, or judicial or de facto separation for more than two years (ibid. 3 Dec. 2005b).

Under the new law, if spouses agree on seeking a divorce, they can do so in front of a notary instead of having to face a family court judge (ibid.; ibid. N.d.; AP 27 Sept. 2005), a process which in 2005 could take up to six weeks (Colombia 10 June 2005), or between eight and ten weeks according to another source (*Portafolio* 3 Dec. 2005a).

The new legislation addresses the fact that couples who married religiously can terminate the marriage in front of a notary, and then have the opportunity to remarry in a civil service (Colombia n.d.; ibid. 2 Dec. 2005). However, a separate divorce process before Church authorities would still be required for a subsequent religious marriage (ibid.).

The new process does not require the involvement of lawyers (ibid. 10 June 2005). A joint declaration is presented to a registry office by the couple and stamped within an hour (AP 27 Sept. 2005). The couple must produce a separate document in which it explains how the assets will be divided (ibid.; see also *Portafolio* 3 Dec. 2005b).

Sources indicated that if the couple has children, "the agreement must specify the way that the two parents will contribute to raising, educating, and establishing them" (Colombia 2 Dec. 2005; *Portafolio* 1 Dec. 2005). In such an eventuality, the family ombudsman (Defensor de Familia) [translation] "will have to intervene" (Colombia n.d.) to decide to produce the divorce certificate or to send the case to court (AP 27 Sept. 2005).

It is the "family court judge" and not the parents who decide which parent will get custody of the children (*Portafolio* 3 Dec. 2005b). A support payment [translation] "is not automatic"; the amount of which is set in consideration of the economic situation of both parents (ibid.).

The divorce request presented to a notary must contain names, identification documents, age and addresses of the requesters (ibid. 1 Dec. 2005); the cost of the divorce procedure is 35,060 pesos [approximately 17,75 \$CAN (XE.com 26 Jan. 2006)] (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the

merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

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Additional Sources Consulted

Oral sources: The consular section of the Colombian Embassy in Ottawa did not provide information within the time constraints of this Response.

Internet sites, including: *Country Reports on Human Rights Practices for 2004*, Embassy of Colombia in Ottawa, Factiva, *Semana*, United Nations Development Fund for Women (UNIFEM).

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Date modified: 2013-07-17 [Top of Page](#)