

# UNIT **5** **Family Law**



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## WORD PRACTICE

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Key one line of each of the following words. Concentrate on accuracy and rhythmic keying.

child

matrimonial

marriage

support

affinity

defended

reconciliation

consanguinity

access

undefended

collusion

connivance

custody

null

divorce

adultery

condonation

cohabitation

spouse

separation

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## PHRASE PRACTICE

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Key each of the following phrases six times. Concentrate on accuracy. Say each phrase to yourself as you key it. Remember to key rhythmically.

*null and void*

*defended divorce*

*Pre-Nuptial Agreement*

*matrimonial home*

*family assets*

*resumption of cohabitation*

*common law relationship*

*custody and access*

*Separation Agreement*

*child support*

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## 1-MINUTE TIMINGS

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Read the following passages carefully. Set your speed and accuracy goals, and then take a one-minute timing on each.

### ***TIMING 1***

Family law covers a wide range of topics, including marriage; 12  
Pre-Nuptial Agreements (Marriage Contracts); matrimonial pro- 24  
perty; Domestic Contracts (Cohabitation Agreements); separa- 35  
tion; Separation Agreements; divorce mediation; undefended 46  
and defended divorces; name changes; child support, access, 57  
custody, and guardianship; childnapping; child abuse; and 68  
adoption. 69  
.....1.....2.....3.....4.....5.....6.....7.....8.....9.....10.....11.....12

### ***TIMING 2***

Most family matters are governed by provincial laws. The 11  
exception to this is divorce, which is governed by a federal 22  
law called the Divorce Act. The names of the provincial acts 33  
dealing with family matters vary from province to province; 44  
.....1.....2.....3.....4.....5.....6.....7.....8.....9.....10.....11.....12

however, the name of the act usually indicates its content 55  
(e.g., Marriage Act, Family Relations Act, Change of Name 66  
Act). 67

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### ***TIMING 3 (1 MIN)***

Under the Divorce Act, R.S.C. 1985, c.3, marriage breakdown 11  
is the only ground for divorce. Marriage breakdown in legal 22  
terms is defined as one-year separation, adultery, or 32  
mental/physical cruelty. Either spouse (or both) may apply 43  
to (petition) the court for a divorce. "Spouse" means either 54  
of two persons who are married to each other. 62

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### ***TIMING 4 (1 MIN)***

Either spouse may apply for a divorce based on separation 11  
before the one-year separation period has expired; however, 22  
the couple must have lived separate and apart for one year by 34  
the time the divorce hearing takes place. If a couple recon- 45  
ciles for more than ninety days during a one-year separation, 57  
they cannot apply for a divorce until one year from the 67  
separation date following reconciliation. 75

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### ***TIMING 5 (1 MIN)***

*While provincial laws govern the division of property,* 10  
*the Divorce Act has jurisdiction over which spouse should* 21

<i>pay the other financial support following a divorce.</i>	31
<i>When a judge decides whether to award support, economic considerations are taken into account. Support is for the relief of economic hardship: it is not a form of court-ordered punishment.</i>	41
	51
	62
	67

Did you achieve your speed and accuracy goals on at least one of the timings? If not, repeat the timings.

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## COMPREHENSION 1

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Key the following sentences once, filling in each blank with the appropriate legal term or phrase.

- \_\_\_\_\_ is for the relief of economic hardship following divorce.
- Either \_\_\_\_\_ may apply for a divorce.
- If a couple \_\_\_\_\_ for more than ninety days during a one-year separation, they cannot apply for a divorce.
- Under \_\_\_\_\_ Act, \_\_\_\_\_ is the only ground for divorce.
- Most family matters, with the exception of \_\_\_\_\_, are governed by provincial laws.
- Family law covers \_\_\_\_\_ divorces and \_\_\_\_\_ divorces.

Check your answers with your instructor.

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## SENTENCE PRACTICE

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Read the following sentences carefully. Key each sentence once.

Concentrate on accuracy and rhythmic keying.

1. A Pre-Nuptial Agreement (or Marriage Contract) is an agreement (usually regarding property) made between a couple prior to their marriage.
2. A Marriage Licence or special permit must be obtained before a marriage ceremony takes place.
3. If a marriage is not consummated (the couple does not have sexual intercourse), the marriage may be declared null.
4. Annulment is a legal term that means that a marriage is no longer valid and never was valid in the eyes of the law.
5. A Cohabitation Agreement is a domestic agreement between two or more people who live together.
6. A common law relationship exists when a man and woman (or same-sex couple) live together but they are not married or their marriage is not recognized under Canadian law.
7. A Separation Agreement may be drawn up between a couple when they have separated.
8. A Separation Agreement may include clauses relating to custody of children, access rights, spousal or child support, and division of family assets - even who gets to keep the family dog!

9. The parent who is granted custody of the children of the marriage is responsible for the care and upbringing of the children.
10. Access refers to the right of the non-custodial parent to visit the children of the marriage.
11. The term "family assets" (or "family property") refers to property owned by one or both spouses that is used by the family (e.g., cars, boats, summer cottages, furniture, etc.).
12. The party suing for divorce is called the Petitioner, Plaintiff, Applicant, or Claimant; the party being sued is called the Respondent or Defendant.

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## 2-MINUTE TIMINGS

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Read the following passages carefully. Set your speed and accuracy goals, and then take a two-minute timing on each.

### ***TIMING 1***

While the federal government enacts laws relating to 10  
marriage, the provincial governments enact laws concerning 21  
the administration of a marriage. For example, the federal 32  
government can enact laws relating to a valid marriage, such 43  
as requiring that both parties be of sound mind, whereas a 54  
provincial government can enact laws relating to how, when, 65  
and where Marriage Licences can be obtained. 73

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Occasionally the federal government has not enacted  
specific marriage laws and the provincial governments have  
stepped in and made their own statutes, although they are  
not officially entitled to do so. One example is that the  
federal Marriage Act does not include a list of persons who  
may not marry because they are too closely related. Most  
provincial governments have, therefore, composed this list  
and included it in their Marriage Acts.

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### ***TIMING 2 (2 MIN)***

*Several conditions should exist for a marriage to be  
considered lawful. These conditions include that the  
parties to the marriage be free to marry (not already  
married), of marriageable age, mentally competent  
(of sound mind), and free from duress or threats.  
The parties must also understand that they are part-  
icipating in a marriage ceremony. Failure to meet  
any of these requirements does NOT mean that the  
marriage is invalid; however, grounds for divorce or  
annulment of the marriage may exist.*

*Each province has its own minimum age requirements  
for marriage, both with and without parental consent.*



Most provinces allow marriage at age 18 without parental consent, except British Columbia, Newfoundland, and Nova Scotia, where the age is 19. In most provinces individuals aged between 16 and 18 may marry, provided that they have parental consent. Under 16s normally require court consent.

### **TIMING 3 (2 MIN)**

Since the June 10, 2003 decision of the Ontario Court of Appeal in Halpern et al. v. Attorney General of Canada et al., there has been lively debate in Canada about the definition of marriage and what it means.

In the above-mentioned appeal, Halpern held that the common law definition of marriage as "the voluntary union for life of one man and one woman to the exclusion of all others" violated s. 15(1) of the *Canadian Charter of Rights and Freedoms*. Accordingly, s. 2 of the *Civil Marriage Act* now reads: "Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others."

Sections 91 and 92 of the *Constitution Act, 1867* divide the powers regarding marriage, the solemnization of marriage, and divorce between the federal and provincial governments.

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The federal government has legislative powers over marriage and divorce, and the provinces have legislative powers over the solemnization of marriage and property and civil rights in their province. As a result, the federal government enacted various laws, the most recent being the *Marriage (Prohibited Degrees) Act*, 1990. Under s.2(1) of this Act, "Subject to subsection (2), persons related by consanguinity, affinity, or adoption are not prohibited from marrying each other by reason only of their relationship." Consanguinity means relationship by blood (genetic relationship).

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#### ***TIMING 4 (2 MIN)***

Currently the accepted common law definition of marriage is "the voluntary union for life of two persons to the exclusion of all others." *Voluntary* is the important word. Marriage cannot be imposed on someone.

Each party to a marriage must freely consent to the marriage. This means that neither party must marry under duress. Duress refers to someone exercising force (not necessarily physical) to compel another person to do something. The element of fear is important in duress. For example, for duress to be proven, a person must have frightened one of the parties to the marriage sufficiently that

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she or he is unable to make a voluntary choice to marry. 124

For a court to annul a marriage on the grounds of 133

duress, the party's emotional stability, age, and intelli- 144

gence will be taken into account. In addition, the time the 155

duress was exercised will be examined. For example, if the 166

time between the alleged duress and the marriage ceremony 177

is substantial, the court may not consider a claim of 187

duress to be valid. 190

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## COMPREHENSION 2

Indicate your knowledge of the following terms by using each one in a separate sentence. If you are uncertain of any words, use your dictionary.

annulment

parental consent

access

consanguinity

duress

Separation Agreement

family assets

common law relationship

Respondent

custody

## PARAGRAPH PRACTICE

Read the following Family Law Agreement clauses and then key an accurate copy of each. If you make any errors, drill each word correctly for one minute.

### CLAUSE 1

6. *THAT the Husband will pay to the Wife for the support of the infant child of the marriage, namely LILY*

MAN-UNG CHAU, the sum of NINE HUNDRED AND FIFTY (\$950.00) DOLLARS per month and the payment shall continue so long as the said child is in the care and control of the Wife, or until the said child attains the age of eighteen years, dies, marries, or otherwise becomes self-supporting.

## **CLAUSE 2**

19. Brock and Eleanor each acknowledge that he or she:
- (a) has received independent legal advice, and
  - (b) has read this Agreement carefully, knows and understands its contents, and has executed it voluntarily, without any due influence or coercion by the other.

## **CLAUSE 3**

11.5 Janine shall:

- 11.5.1 keep THE FEDERATED LIFE INSURANCE COMPANY ("Federated") life policy in full force and effect;
- 11.5.2 pay all premiums, dues, and assessments payable under the Federated life policy; and
- 11.5.3 annually, within 14 days of the date any premium, dues, or assessment is payable under the Federated life policy, provide to Wilhelm a copy of the

receipt for payment of such premium, dues, or assessment.

#### **CLAUSE 4**

7.1 On June 15, 20--, Tamsin shall deliver to PRAIRIE MOVING AND STORAGE CO. LTD. at her residence those chattels set out in Schedule B for delivery to Nathan at his residence.

7.2 Nathan shall be responsible for the costs of the transfer of chattels pursuant to clause 7.1.

#### **CLAUSE 5**

3. *THAT the Husband shall have custody of the infant child of the marriage, namely, SANDRO PAPILE, and the Wife shall have reasonable access to the said child. In particular, and without restricting the generality of the foregoing, the Wife shall have access to the said child for a period of one week during the Christmas or Easter vacation and for a period of four weeks during the summer vacation.*

#### **CLAUSE 6**

15. The Wife shall have exclusive possession of the matrimonial home until

(a) she remarries;

- (b) she cohabits in the matrimonial home with a person, as though they were married, for a period greater than 90 days;
- (c) no child of the marriage under the age of 16 years is ordinarily resident with her in the matrimonial home; or
- (d) she ceases to reside in the matrimonial home for a period in excess of 90 days.

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## 3-MINUTE TIMINGS

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Read the following passages carefully. Set your speed and accuracy goals, and then take a three-minute timing on each.

### ***TIMING 1 (3 MIN)***

When a client approaches a law firm to handle a divorce, 11  
the divorce lawyer will try to ascertain whether the client 22  
has grounds for divorce. Under s.8 of the Divorce Act, 1985, 33  
the only ground for divorce is marriage breakdown, estab- 44  
lished by means of a one-year separation, adultery, or 54  
mental or physical cruelty. 59

If a client wants to apply for a divorce because of a 69  
one-year separation, the divorce lawyer must determine how 80  
long the spouses have been separated and whether any recon- 91  
ciliations longer than ninety days have occurred. If there 102  
have been any reconciliations with a duration in excess of 113

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ninety days, then the separation period will have to be 123  
calculated from the date of the cessation of the last 133  
reconciliation. 136

If adultery (where one spouse has had sexual inter- 146  
course with another person other than her or his spouse) 157  
has taken place, the lawyer must ask the client whether she 168  
or he has any names, dates, or places of any suspected adul- 179  
tery or whether the adulterous spouse has admitted to 189  
committing adultery. 193

If mental or physical cruelty has taken place, the 203  
lawyer will want to obtain details of the alleged cruelty, 214  
often in the form of medical reports from hospital emergency 225  
room physicians, family doctors, psychologists, or 234  
psychiatrists. 236

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## ***TIMING 2 (3 MIN)***

*There are three major bars to obtaining a divorce: 11  
collusion, condonation, and connivance. 18*

*Collusion occurs when a couple agrees to fabricate 29  
or suppress evidence or to deceive the court in order to 40  
obtain a divorce. An example of this would be if a 50  
couple agreed to lie about their separation date in 60  
order to obtain an earlier divorce. 67*

Condonation refers to one spouse forgiving the other for a particular act; for example, a husband forgiving his wife for having committed adultery. There are three essential elements of condonation: (1) the innocent spouse must have full knowledge of the circumstances of the offence; (2) the innocent spouse must intend to forgive the offence; and (3) the innocent spouse must reinstate the guilty spouse to his or her former marital position.

Connivance refers to one spouse causing or knowingly, willfully, or recklessly permitting the guilty spouse to commit adultery. The key element of connivance is that it must precede the adulterous event.

While collusion is an absolute bar to the granting of a divorce by the court, condonation and connivance are not. This means that if condonation or connivance have taken place, the court may grant the divorce if it feels the divorce would best serve the public interest.

### **TIMING 3 (3 MIN)**

Under s.9(1) of the Divorce Act, 1985, it is the duty of every barrister, solicitor, lawyer, or advocate acting on

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behalf of a party who wants to commence divorce proceedings, 32  
to discuss the possibilities of reconciliation and to provide 44  
information on available marriage counselling or guidance 55  
services. This duty does not have to be fulfilled if the 66  
circumstances are such that it would not be appropriate to 77  
do so. 78

The document to commence a divorce proceeding and the 88  
names of the parties varies. Currently Manitoba and New 98  
Brunswick use a Petition for Divorce ["Petitioner" and 108  
"Respondent"]; Alberta a Statement of Claim for Divorce 118  
["Plaintiff" and "Defendant"]; Ontario an Application 128  
(Divorce) ["Applicant" and "Respondent"]; and BC a Notice 139  
of Family Claim ["Claimant" and "Respondent"]. Depending 150  
upon your family court rules, if adultery has occurred, the 161  
third party may be called the "Person Named." If the third 172  
party is being sued for damages, then he/she is usually 182  
called the "Co-Respondent." 187

As provinces continually simplify documentation and 197  
electronic court filing procedures, you must keep up to 207  
date with any changes to your provincial family court rules 218  
and adapt accordingly. 222

Despite the variances in document and party names, the 232  
divorce proceeding document provides personal details of the 243  
parties, marriage, and children; grounds for the divorce; 254  
relief sought (support for the spouse and/or the children); 265  
child custody and access arrangements; and financial 275  
statements. 277

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## COMPREHENSION 3

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Read the following sentences carefully. Key each sentence once, correcting all errors in fact, terminology, spelling, grammar, and punctuation. Use your dictionary and office handbook.

1. The Husband and Wife each acknowledge that he or she has recieved independent legal advise.
2. Under The Divorce Act, 1987, the only ground for separation is marriage breakdown.
3. The adulterous spouse has admitted to committing adultery.
4. The Agreement was executed without any undue influence or coercion.
5. Three major bars to obtain a divorce are: colusion, condonation, and connivence.
6. The infant child of the marriage will be in the care and control of the Wife until the said child attains the age of nineteen years, dies, marries, or otherwise becomes self-supporting.
7. A third party being sued for damages in a divorce proceeding is known as a Co-Respondant.
8. Custody and assess arrangement are outlined in a Notice of Family Clam or Petiton for Divorce.
9. If mental or pyhsical cruelty has taken place, the the lawyer will want to obtain the details of the alledged cruelty.

10. The person suing for divorce is known as the Respondant.

11. The Wife will pay to the Husband for the support of the infant child of the marriage the sum of EIGHT HUNDRE AND FIFTY (\$855.00) DOLLARS.

12. If there has been any reconciliations with a duration in excess of sixty days, then the separation period must be calculated from the date of the cessation of the last reconciliation.

Check your accuracy with your instructor. If you made any errors, drill the words for one minute.

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## 5- OR 10-MINUTE TIMINGS

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Read the following passages carefully. Set your speed and accuracy goals, and then take either a five- or ten-minute timing on each.

### ***TIMING 1***

*While the Divorce Act, 1985, outlines the law regarding divorce, each province has its own procedural rules. However some procedures are virtually standard in each province. For example, before a Notice of Family Claim or Petition for Divorce is filed in the court, the Claimant or Petitioner must provide proof of marriage. A Claimant or Petitioner cannot divorce someone to whom he or she is*

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not married. Usually the Claimant or Petitioner has a 84  
copy of the Certificate of Marriage; however, if he or 94  
she does not, a certified copy of the Registration of 104  
Marriage can be obtained from the provincial govern- 114  
ment (usually the Department of Vital Statistics) 123  
provided the marriage took place in the province. If the 134  
marriage was solemnized outside the province or 143  
country, then application will have to be made to the 153  
local authorities in the location of marriage. 162

Another standard procedure is that any Petition 171  
for Divorce should be accompanied by a Registration 181  
of Divorce form. This form is filed in a provincial 191  
court; however, it is transmitted to the Central 200  
Registry of Divorce Proceedings in Ottawa, where a 210  
check is made to ensure that duplicate divorce 219  
actions have not been commenced in different 227  
provinces. 229

Once the Notice, Application, or Petition has been 239  
signed by the Claimant/Petitioner\*, the Registration of 250  
Divorce form has been completed, and a Certificate of 260  
Marriage or certified copy of the Registration of 269  
Marriage has been obtained, the documentation is filed 280  
in the provincial Supreme Court or Superior Court or 290

Court of Queen's Bench, together with the appropriate 300  
filing fee. The court then stamps the Notice or Petition 311  
and the Claimant/Petitioner's lawyer arranges for ser- 321  
vice on the Respondent and, in the case of adultery, 331  
sometimes on the Person Named or Co-Respondent, 340  
depending on the family court rules. 347

Because divorce matters come under the umbrella 356  
of civil litigation (one individual suing another), the 367  
procedures for service are the same as for any other 377  
civil litigation case. With divorce matters it is more 387  
common for the Respondent to try to evade service. It 397  
is not unusual, therefore, for a lawyer to have to make 408  
application to court for an Order for Substituted 417  
Service. Substituted service may be effected by means 427  
of serving a close family member, posting a copy of 437  
the Notice or Petition in the court registry, or placing 448  
a Notice in a local newspaper in the area in which the 458  
Respondent is believed to be residing. The rules and 468  
procedures relating to substituted service are set out 478  
in each province's rules of court or civil procedure. 488

\* In provinces where a Joint Notice of Family Claim is 498  
permitted, both spouses sign. 503

## ***TIMING 2 (5 OR 10 MIN)***

When the Claimant's or Petitioner's lawyer receives an 10  
Affidavit of Service from the person who served the Notice/ 21  
Petition on the Respondent, a record will be made of the 32  
limitation date. The Notice/Petition stipulates the length 43  
of time the Respondent has (from the time the Notice/Petition 55  
was served on her or him) to prepare either a Response to 66  
Family Claim/Answer or a Counterclaim/Counter-Petition. 76

If the Respondent replies with a Response to Family 86  
Claim or an Answer, it means that she or he wants to contest 97  
the divorce or requires some clarification or minor change 108  
to, perhaps, access or custody provisions. 116

If the Respondent replies with a Counterclaim or 125  
Counter-Petition, it means that the Respondent is suing the 136  
Claimant/Petitioner and, unless a settlement can be 146  
negotiated, there is every possibility that the divorce 156  
will be a defended one. This means that the parties will 167  
have to appear in court. 171

If the Respondent ignores the Notice or Petition, the 181  
divorce is regarded as undefended and, therefore, there is 192  
little likelihood that a court appearance will be required. 203

If the divorce is undefended, the Claimant's or 212  
Petitioner's lawyer will prepare the necessary documentation 223  
required by the court. This documentation will vary from 234  
province to province; however, it usually consists of the 245  
original Affidavit of Service, showing that the Notice or 256  
Petition was served; an Affidavit of the Lawyer to the effect 268

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that no Response to Family Claim/Answer or Counterclaim/ 279  
Counter-Petition was filed, served, or delivered; and, if 290  
there are children of the marriage, either an Affidavit or a 301  
Statement outlining the details of access, custody, and 311  
support, as well as details of the financial situations of 322  
both spouses. 324

The objective behind having these Affidavits (or the 334  
information in the Notice of Family Claim) is to provide the 345  
court with sufficient data to make a decision. Since the 356  
parties to an undefended divorce do not necessarily have to 367  
appear in court, the information that would have been elic- 378  
ited in court must be provided in written form. If the court 389  
decides that there is insufficient information, or wants to 400  
question either party, then a hearing will be arranged. 410

The Divorce Act also places the burden on the court to 420  
ensure that the best interests of the children of the marri- 431  
age are always considered. The court requires specific 441  
information relating to the children in order to make 451  
decisions that are in the children's best interests. 461

For the purposes of divorce, a child of a marriage 471  
refers to a child under the age of majority or a child of 482  
any age who is unable to look after him- or herself because 493  
of illness or disability (s.2 of the *Divorce Act*, 1985). It 504  
is essential, therefore, that references to children in both 515  
the Notice or Petition for Divorce and any supporting 525  
Affidavits must relate to children under the age of majority. 537  
The *Divorce Act* defines "age of majority" as "the age of 548

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majority as determined by the laws of the province where 559  
the child ordinarily resides, or, if the child ordinarily 570  
resides outside of Canada, eighteen years of age." 579

If the documentation presented to the court in an 588  
undefended divorce action is in order, the court will grant 599  
a divorce and issue a Divorce Order. Under s.12(1) of the 610  
*Divorce Act*, the divorce will take effect on the thirty- 621  
first day after the day on which the judgment granting the 632  
divorce is rendered (unless special circumstances exist). 643

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### ***TIMING 3 (5 OR 10 MIN)***

When the Respondent in a divorce action is served with 10  
a Notice or Petition for Divorce, she/he has a time limit in 21  
which to decide what to do. The time limit is stated on the 32  
front of the Notice or Petition and varies from 20-60 days 43  
depending on the circumstances. Consult your family court 54  
rules for details. 57

Usually a Respondent seeks legal advice when served 67  
with a Notice/Petition; however, this is not mandatory. If 78  
the Respondent agrees to the claims in the Notice/Petition, 89  
then she/he does nothing. This means that the divorce is 100  
undefended and no court appearance will be necessary. 110

In most provinces, the court in which the divorce is 120  
processed requires the Respondent to produce some form of 131  
financial statement if child support or custody is involved. 142  
The provinces and territories share responsibility with the 153

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federal government for matters relating to child support. 164  
Generally speaking, the Divorce Act sets out the rules for 175  
establishing child support amounts if the parties are plan- 186  
ning to divorce or are already divorced. Provincial family 197  
laws apply where the parties have never been married or are 208  
separated (or planning to separate), but are not divorcing 219  
each other. **Note:** The regulations under the Divorce Act 229  
that help set child support amounts are called the Federal 240  
Child Support Guidelines. These guidelines contain rules and 251  
tables for calculating child support payment amounts. There 262  
are separate Federal Child Support Tables relating to each 273  
province (because of the differences in provincial income 284  
tax rates). For more information, check the Department of 295  
Justice Canada website ([www.justice.gc.ca](http://www.justice.gc.ca)). 303

If the Respondent wants to dispute some relief outlined 314  
in the Notice/Petition, she/he arranges for a Response to 325  
Family Claim or an Answer to be filed and delivered to the 336  
Claimant/Petitioner or Claimant's/Petitioner's lawyer. If the 348  
Respondent wants to sue the Claimant/Petitioner for divorce, 359  
a Counterclaim/Counter-Petition is filed in the court 369  
registry and served on the Claimant/Petitioner. 378

In some jurisdictions, an Answer and Counter-Petition 388  
is used when the Respondent wants to dispute some relief 399  
sought by the Petitioner and to sue the Petitioner for 409  
divorce. In certain circumstances, a Respondent may prepare 420  
a Notice of Intent to Defend. 425

A defended divorce action follows the same procedure 435

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as any civil litigation case. A trial date is obtained, 445  
examinations for discovery are held, and a Trial Record (or 456  
similar document) is prepared and filed in court. Through- 467  
out this process, efforts may be made to settle out of 477  
court to prevent a trial; however, if a settlement is not 488  
forthcoming, the case goes to trial. 495

The Claimant/Petitioner and the Respondent appear in 505  
court. Evidence is submitted by Affidavit or by witnesses 516  
present at trial. At the conclusion of the trial, the judge 527  
presents either an oral or a written judgment. The Claimant's 539  
or Petitioner's lawyer normally prepares the appropriate 550  
defended Divorce Order, submits it to the Respondent's lawyer 562  
for approval, and then files it in court. The court then 573  
issues the Order. Once the Divorce Order has been issued by 584  
the court, the Claimant/Petitioner and Respondent usually 595  
have to wait for thirty-one days until the Order becomes 606  
effective. This allows time for appeal. 613

Under some circumstances, a court issues a Divorce 623  
Order that is effective immediately or on a specified date 634  
prior to the usual thirty-one-day waiting period; however, 645  
under s.12(2)(b) of the Divorce Act, 1985, the spouses must 656  
agree and undertake that they will not appeal the judgment. 667

As soon as the effective date of the divorce is 676  
reached, the marriage is officially dissolved and a Certifi- 687  
cate of Divorce can be obtained from the court registry. 698  
This Certificate, or a certified copy of it, is conclusive 709  
proof that the divorce is effective. At this time, the 719

.....1.....2.....3.....4.....5.....6.....7.....8.....9.....10.....11.....12

Claimant/Petitioner and Respondent are free to remarry if 730  
they so desire. 733

It is important to keep in mind that family law 742  
matters without a divorce component are handled under the 753  
provincial family laws; e.g., The Ontario Family Law Act. 764

.....1.....2.....3.....4.....5.....6.....7.....8.....9.....10.....11.....12

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## PRODUCTION EXERCISES

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### **EXERCISE 1**

Prepare the following Affidavit of Personal Service precedent for electronic filing. Use your precedent to prepare Ajai Dhinjal's Affidavit. He is a process server, with offices at 2145 Howe St., Vancouver, V6E 3N6, who served a Notice of Family Claim on Jennifer Ellen Lander, Robert William Lander's wife, at 8.00 a.m. on October 13, 20--. Ajai identified her when she produced her BC driver's licence #888096. The Notice was filed in the Vancouver Registry on October 9, 20-- and given the action number 238174.

No. {Action No.}

{Name of Registry} Registry

In the Supreme Court of British Columbia

Claimant/Petitioner: {Name of Claimant/Petitioner}

Respondent: {Name of Respondent}

I, { Name of Server } of { {Address} }

{ Occupation }

SWEAR (OR AFFIRM) THAT:

1. On {Date (dd mmm yyyy)} at {Time}, I served {Name of person served}  
with the {Type of document}  
in this family law case, a copy of which is attached to  
this Affidavit and marked as Exhibit A, by handing it to  
and leaving it with that person.

*[In the case of service of a Notice of Family Claim or Counterclaim in which a divorce is claimed, check whichever one of the following boxes is correct and complete the required information.]*

- ☐ 2. I know the person served because  
{Set out the means of knowledge}

OR

- ☐ 2. I know the person served because  
{Set out the means of knowledge}  
and attached to this Affidavit and marked as Exhibit B is a  
photograph that is a true likeness of the person I served.

OR

- ☐ 2. I do not know the person served and *[State the means by which the person who was served was identified by checking one or both of the following boxes and providing the required information.]*

- ☐ the person I served produced the following identification  
containing a photograph that was a true likeness of the  
person I served:

{Specify form of identification produced}

☐ attached to this Affidavit and marked as Exhibit B is a photograph that is a true likeness of the person I served and I am informed by {Name} that Exhibit B is a photograph of {Name of Person Served}

*[If this box is checked, the person who provided the information on the identity of the person served must file an Affidavit to confirm that information.]*

SWORN (OR AFFIRMED) BEFORE ME  
at {Name of town/city},  
British Columbia,  
on {date (dd mmm yyyy)}

\_\_\_\_\_  
A Commissioner for taking  
Affidavits for British Columbia

\_\_\_\_\_  
[Print name or affix stamp of  
Commissioner]

\_\_\_\_\_  
{Name of Server}

## **EXERCISE 2**

Read the following portion of a Memorandum of Judgment, watching for errors. Set yourself a production time limit and then key the Memorandum quickly and accurately. Format the style of proceeding in the correct manner. Use single spacing for the body of the document. Notes: The sums of money need not be spelled out in full in this particular document; and the term "Applicant" is correct.

Date: 20- 05 09

Docket: S-0003-4-CV-2011000102

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES  
BETWEEN ANDREENA RAVIC (Applicant)  
AND BRENT HAMILTON RAVNIC, Respondent

MEMORANDUM OF JUDGMENT

[1] The parties seek final orders respecting custody and support. They are each self-represented so I will set out my decision in this written form so there is no misunderstanding.

1. Custody:

[2] The parties are the parents of one child born on April 11, 2008. The child has always resided with the applicant. The respondent now wishes to play a greater role in the child's life. Certainly it would be beneficial to the child if the father were to play a larger and more consistent role. There is, however, no evidence that the parties are able to work together at this time in a cooperative fashion. Such cooperation is a pre-requisite to any consideration of a joint custodial arrangement.

[3] The applicant will therefore have sole custody of the child.

2. Assess:

{4} All governing principals of child custody and assess emphasize the importance, to the child, of maximizing contact with both parents. In the absence of evidence of risk to the child, it is presumed that generous assess for the non-custodial parent is in the child's best interests.

[5] In this case there are allegations of bad conduct by both parties toward each other but no evidence of potential harm to the child. To the contrary, the Respondent has raised other children and there seems to be no good reason to deny assess. Due, however, to the lack of significant contact to date, assess should be gradually developed.

[6] I encourage both parties to work with a family counsellor to develop a workable arrangement for assess, one that will enable assess to increase over time. For the time being, I direct that the Respondent is to have assess every Sunday from 1 p.m. to 5 p.m. In addition, the Respondent will have assess for a continuous period of 5 days over the Christmas period (including Christmas Day) every alternate year starting in 20-- as well as a continuous period of 21 days in July of each year starting in 20--.

3. Support:

[8] The question of child support has to be considered in separate categories; (a) on-going support; (b) retroactive

support; and (c) special expenses. The parties are not married so support is governed by the Child Support Guidelines enacted pursuant to the Children's Law Act, S.N.W.T. (Nu.) 1997, c.14. Those guidelines mirror the Federal Child Support Guidelines enacted pursuant to the *Divorce Act*, R.S.C. 1988, c.3, so the same principals apply.

[9] Child support is calculated on the basis of gross annual earnings. The Respondent's current income is \$78,323 (based on pay stubs from her employer). The monthly child support payable based on that income is \$721.00 per month. That will be the amount of basic support payable starting on April 1, 20--.

{10} The Applicant also claims retroactive support back to the birth of the child.

[11] As a matter of principal, the obligation to pay child support arises as soon as a child is born and continues whether or not an action is brought to enforce it. As a matter of practice, however, Child Support orders usually take effect on the date they are made or, sometimes, at the date the application is first made by the person seeking support. A court may, nonetheless, make an order retroactive to an earlier date, even pre-dating the commencement of proceedings. Some of the factors to consider are whether there was a demonstrated "need" on behalf of the child, an ability to pay on the part of the non-custodial parent, and whether the custodial parent has borne a disproportionate share of child-related expenses. There are also two distinct questions: (1) Should retroactive support be ordered? and (2) If so, in what amount?

### **EXERCISE 3**

Read the following portion of a divorce proceeding Petition, watching for errors. Set yourself a production time limit and then key the Petition quickly and accurately.

#### **CLAIMS AND GROUNDS**

1. *The Petitioner claims:*

(a) *a divorce from the Respondent spouse;*

(b) custody of the infant children of the marriage, namely, KYLE KAVON KACZUR and MITRA KACZUR;

(c) support for each of the infant children of the marriage, namely, KYLE KAVON KACZUR and MITRA KACZUR, in the amount of FOUR HUNDRED AND FIFTY (\$450.00) dollars each per month; and

(d) costs against the Respondent, WAYNE ROY KACZUR.

2. The Petitioner alleges that there has been a breakdown of the marriage under The Divorce Act, 1985, section 10(2)(b)(i), the particulars of which are as follows:

THAT since the celebration of the marriage the Respondent has committed adultery with HELEN OLIVER on various and diverse occasions, at various and diverse places, and in particular the said Respondent and HELEN OLIVER have committed adultery at 4598 Elm Street, in the City of Saskatoon, in the Province of Saskatchewan, and did so commit adultery at that address on or about the 4<sup>th</sup> day of January, 20---, and on other occasions better known to the Respondent and the said HELEN OLIVER than to the Petitioner.

[Insert Reconciliation and Particulars of Marriage sections here – see next page]



### RECONCILIATION

3. All previous attempts to effect reconciliation have failed. There is on possibility of reconciliation or resumption of cohabitation.

### PARTICULARS OF MARRIAGE

4. Date of marriage: June 5, 1992
5. Place of Marriage: Sydney, New Zealand
6. Surname of Wife before marriage: DIEWOLD
7. Maiden surname of Wife: RICARD
8. Martial status of Husband at time of marriage:  
Bachelor
8. Marital status of Wife at time of marriage: Divorced
9. A Certificate of Marriage is filled with this  
Petition.

[Put the following after the Reconciliation section]

### **COLLUSION, CONDONATION, AND CONNIVANCE**

4. (a) I have truthfully set out the facts establishing the breakdown of my marriage and I have not entered into any agreement, understanding, or arrangement to make up or hide evidence or to decieve the court.
- (b) I have not encouraged my spouse to act in the manner I have outlined, nor to commit or continue the alledged acts. I am unable to to forgive my spouse and resume martial cohabitation as a result of his acts and conduct toward me.