



## Joint Application for Divorce on Draft Agreement


- » Not a day goes by without people contacting their local courthouse to obtain information on how to prepare and file, on their own, a joint application for divorce after making a draft agreement.



The procedure does appear simple at first glance and many persons will be tempted to use it, if only to avoid the fees of a legal advisor. We would therefore urge caution: each spouse must be in a position to fully assess all the implications, both personal and financial, that will arise once a draft agreement has been signed. If you do not have a good understanding of your rights and obligations, you should consult a legal advisor. Even though your marriage may have failed, a successful divorce is possible.

This document is only a guide and as such it will not answer all your questions. It is intended to be a tool to be used to assist you and your spouse in the filing of a joint application for divorce on a draft agreement. It covers a variety of divorce-related subjects and contains models of the forms of proceedings.

The forms are not to be filled out but are to be reproduced, except for the *Sworn Statement under article 827.5 of the Code of Civil Procedure (Model 6)*. Refer to [explanatory note 23](#) for instructions on how to obtain an original you may then fill out.

A brochure containing the **forms to be completed** (paper and **on-line**) is available at the Publications du Québec. To purchase, [click here](#) .

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## » Glossary of terms

### *Adjourn (to)*

Postpone to a later date.

### *Allegation*

Affirmation, claim.

### *Approve (to) (Also homologate (to))*

To approve or validate an agreement and give it legal value equivalent to the value of a court judgment.

### *Collusion*

A secret agreement between two or more persons, who seem to be in a conflict of interest, for the purpose of circumventing the law or legal system, misleading the court or harming another party. For example: two married persons agree to lie about how long they have been separated so that they can file a joint application for divorce on a draft agreement.

### *Compensatory allowance*

A sum of money, or property, granted to an ex-spouse to compensate for that spouse's contribution to the enrichment of the other spouse resulting from the provision of goods or services during the union (marriage or civil union).

### *Corollary relief*

Measures set out in the judgment which settle various matters that do not pertain to the basic issue (which in this case is the divorce). Also referred to as accessory measures.

In a judgment granting divorce, separation or dissolution of a civil union, accessory measures may concern such matters as support, custody, visiting rights, etc.

### *Order*

A decision of the court.

### *Proceeding*

A written document required by law to be drawn up by the parties, namely the petitioner and the respondent. The purpose of the document is to commence a suit before the court, govern the proper conduct of the proceedings or hearing, suspend or terminate the proceedings or have a judicial decision enforced.

### *Proceedings (also Hearing)*

The term means both the dispute before a court and every proceeding from the introductory application to the rendering of the judgment.

### *Ratify (to)*

To render an instrument final or valid through court approval.

### *Support*

In general, "support" is the term used to describe all the elements enabling the ordinary needs of a person to be provided for, or in other words, all that is needed to feed and care for a person.

### *Support obligation*

A reciprocal obligation arising in law between certain persons (an ascendant and a descendant, two married spouses or two persons in a civil union) which, when one of those persons is in need, allows that person to claim support from the other person in the form of money necessary to procure food, shelter, clothing and care.

### *Trust*

A provision or clause by which a person entrusts property to another person, the latter person being required to hand over the property to a third person after a specified

length of time has elapsed and on pre-determined conditions.

#### *Trust deed*

A legal instrument creating a trust.

### » **Family mediation**


Should you need assistance negotiating a viable agreement suited to the particular needs of each family member, you may wish to seek out the services of a [family mediator](#). [Family mediation](#) is a dispute resolution mechanism whereby an impartial mediator assists the spouses in the negotiation of a fair agreement they enter into of their own free will. Where children are involved, the spouses are entitled to six free sessions with a professional mediator during the negotiation and settlement of a child custody and support application and of partition of the family patrimony. The number of free sessions is limited to three if the mediation relates to an application to have a judgment varied.

### » **Rules for determining child support payments**

If the joint application described affects the parental obligation to provide child support, it must be filed with the [Child Support Determination Form](#) and the prescribed documents if both parents reside in Québec. It is recommended in this case that you produce one form, signed by both spouses and accompanied by their sworn statements.


The document entitled [The Québec Model for the Determination of Child Support Payments](#) will help you understand the rules for determining the amount of child support and will provide guidance for the steps to be followed. It describes the method used to arrive at the amount of child support payable.

You may also consult the [Table to Determine the Basic Parental Contribution](#) which is necessary to calculate child support amounts.

Where one of the parties in a divorce proceeding resides in a province or territory other than Québec, or outside Canada, the [Federal Child Support Guidelines](#)  apply instead of the Québec child support determination rules. Information kits containing explanatory booklets and a user's guide for the federal tables are available in all [courthouses](#).

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### » **Support payments made to the Minister of Revenue**

Since the coming into force of the [Act to facilitate the payment of support](#) , amounts payable as support by a former spouse (support debtor) must be remitted to the Minister of Revenue for the benefit of the other former spouse (support creditor). The court may, however, under certain conditions, exempt a support debtor from that requirement or suspend it temporarily.

Under the Act, the support debtor may be exempted from remitting the support to the Minister in the following two cases:

- if the debtor establishes a trust guaranteeing payment of support and transmits to the Minister of Revenue a copy of the deed of trust within 30 days after the judgment;
- if the parties request an exemption in a joint application for divorce and satisfy the court that they have given free and enlightened consent, and the debtor within 30 days after the judgment furnishes to the Minister of Revenue sufficient security to guarantee support payments for one month.

In the second case, the court may summon and hear the parties, together or separately, to satisfy itself that the consent requirement has been met.

In cases where support payments are to be collected by the Minister of Revenue, a certain period of time may elapse between the date of the judgment and the date on which the Minister begins to collect the support. After a joint request made to the court, the court may authorize the support debtor to pay the support directly to the support creditor for a period of four months after the judgment or until the Minister takes over the file. It is up to the support debtor to keep proof of payment which may have to be shown, on request, to the officer in charge of the file.

## » **Circumstances in which an agreement must be sent to the Minister of Employment, Social Solidarity and Family Welfare**

If the draft agreement ([Model 2](#)) contains child support provisions and one of the parties is a recipient under a last resort financial assistance program, that party must inform the Minister of Employment, Social Solidarity and Family Welfare of the content of the agreement you wish to have approved. This must be done at least 10 days before the date on which the agreement is to be presented to the court. A copy of the draft agreement must be sent to the Minister at the following address: Ministère de l'Emploi, de la Solidarité sociale et de la Famille, Centre de recouvrement, 425, rue du Pont, 2<sup>e</sup> étage, Québec (Québec) G1K 9K5.

## » **How to prepare your application**

### ***Who can make a joint application for divorce on a draft agreement?***

Married couples may file a joint application for divorce if

- they have been living separate and apart on the date on which the proceeding is filed (but note that the divorce cannot be granted unless the spouses have been living separate and apart for at least one year);
- and
- they have settled all the consequences of their divorce.

### ***How is the joint application for divorce on a draft agreement prepared?***

A joint application for divorce on a draft agreement must be prepared in keeping with a certain number of rules set out in the law. Before studying the models found further on in this booklet, we suggest you carefully read the following extracts taken from the relevant legislation.

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## » **Extracts from the relevant legislation**

### [Divorce Act](#)

Sec. 8(2) (Marriage breakdown): Breakdown of a marriage is established only if:

(a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding; [...]

### [Code of Civil Procedure](#)

Art. 822 Spouses who apply jointly [...] for divorce [...], settling the consequences

thereof in a draft agreement which they submit to the court for approval, must file at the office of the court a motion to institute proceedings signed by each of them [...]. (see [Model 1](#))

Art. 822.1 The draft agreement is dated and signed by the spouses. It contains a full settlement of the consequences [...] of their divorce and indicates, if such is the case, the person entrusted with the liquidation of the matrimonial [...] regime.

The draft agreement also settles the situation of the spouses and that of the children, if any, during the proceedings; [...] (see [Model 2](#))

Art. 822.2 The judge presiding at court may, before examining the final draft agreement and after ascertaining the admissibility of the application, direct that the clauses of the provisional covenant which appear to him to be contrary to the interests of the children be deleted or amended.

The judge may also, if he considers it necessary to verify that the spouses truly consent, convene and hear them, even separately, [...]

Art. 822.3 If the judge presiding at court finds that the draft agreement presented to him does not sufficiently preserve the interests of the children or of either spouse, he may dismiss the application for [...] divorce [...] or adjourn his decision until an amended draft agreement is presented.

Art. 822.4 The application [...] for divorce [...] lapses if the spouses omit to present an amended draft agreement within three months from the order of adjournment, unless the court extends the time prescribed, on the joint motion of the parties.

The application also lapses if either of the spouses discontinues the application.

Art. 822.5 When granting [...] divorce [...] following a joint application accompanied with a draft agreement, the court, by its judgment, confirms the agreement.

Art. 825.8 The Government, by regulation, shall establish standards for the determination of the child support payments to be made by a parent, on the basis of the basic parental contribution determined in respect of the child, of the child care expenses, post-secondary education expenses and special expenses relating to the child and of the parents' custodial arrangement in respect of the child. The Government shall prescribe the use of a form and of a related table determining, on the basis of the parents' disposable income and the number of children, the basic parental contribution, as well as the production of evidentiary documents.

Art. 825.9 No application relating to child support may be heard unless it is accompanied by the form prescribed for the determination of child support payments, duly completed by the plaintiff, and by the prescribed documents.

Likewise, no contestation of the application may be heard unless the prescribed form has been produced with the prescribed documents by the defendant. [...]

Art. 825.11 The parents may produce the prescribed form and prescribed documents jointly. If they do, they are exempted from service requirements.

Art. 825.13 The support to be provided to a child is determined without regard to support claimed by a parent of the child for himself.

A judgment granting support to a child and to a parent of the child must state separately the amount of support to be provided to each.

Art. 825.14 Parents who make a private agreement stipulating a level of child support

that departs from the level of support which would be required to be provided under the rules for the determination of child support payments must state precisely, in their agreement, the reasons for such departure. [...]

Art. 827.5 [...] no ruling may be made on an agreement relating to an obligation of support submitted by the parties unless the sworn statement [...] has been filed by each of the parties at the office of the court. [...] (see [Model 6](#))

Art. 827.7 Any party to an agreement relating to an obligation of support submitted in connection with an application governed by this Title must, where applicable, declare the fact that the party is a recipient under a last resort financial assistance program or received benefits under such a program during the period covered by the agreement.

#### [Rules of Practice of the Superior Court of Québec in Civil Matters](#)

Rule 5 Proceedings shall be legibly written on one side of a good quality paper measuring 21.25 cm x 28 cm (8½ x 11 inches); the nature and object of the proceeding shall be indicated on the back, with the record number and the names of the parties, the party filing it, [...].

Agreements to be attached to a judgment shall be drafted on one side only of a good quality paper measuring 21.25 cm by 28 cm (8.5 inches by 11 inches).

Every proceeding introductive of suit shall indicate the name, address and postal code of the parties.

[...] If a party is not represented by an attorney, [...] the party shall sign the proceeding personally. [...]

#### [Rules of Practice of the Superior Court of Québec in Family Matters](#)

Rule 18 Child custody [...]: A party who applies for custody of a child [...] must attest that the child is not the object of a court decision, nor a pending case before a court or of an agreement with the Director of Youth Protection, or, if such is the case, must give the particulars of such decision or pending case or agreement.

Rule 20.1 Birth certificates: Providing children's birth certificates as evidence is not required unless their filiation is in dispute. Similarly, photocopies of the parties' birth certificates are sufficient.

Rule 22 Attestation of birth: In every application for divorce, an attestation of birth for each spouse, drawn up in accordance with Form II, must be enclosed [...] in the case of a joint application, with the application.

A case may not be inscribed or an application filed without such attestations.

The attestation shall be attached to the copy of the judgment that is sent to the Registrar of Civil Status. (see [Model 5](#))

Rule 25 Joint application: All exhibits shall be filed with the Court Office at the same time as the joint application.

Rule 29 Consent or draft agreement: The consent or draft agreement of the parties or their affidavits for judgment shall describe each party's financial resources and situation, unless they have completed and submitted a sworn financial statement in accordance with Form III or, as the case may be, with the form for fixing child support.

Rule 31.1 Renunciation: A party who renounces the partition of benefits accrued during

the marriage or the civil union under a retirement plan or the partition of earnings registered in the name of a spouse pursuant to the Act respecting the Québec Pension Plan or a similar plan shall confirm that he or she knows the extent of the value which may be partitioned and the possibility of being informed of its exact amount.

[Act respecting income support, employment assistance and social solidarity](#) 

Sec. 43 [...] The recipient must, [...] inform the Minister of the content of an agreement in respect of the obligation of support at least 10 days before its presentation to the court. [...]

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## » How to prepare proceedings

A divorce is more complex a matter than one might think. If you would like to become better acquainted with all aspects of divorce and learn what is meant by expressions such as compensatory allowance and partition of family patrimony, we suggest you read the [booklets](#) dealing with the subject put out the Department.

It is to your advantage to talk over together all the matters you wish to settle after reading the complementary information in the booklets, before beginning to write up your proceedings.


Consult the [models](#) of the documents you need for your application. Each model has a number which refers to a related [Explanatory Note](#).

Be very careful to strictly follow the instructions in the *Explanatory Notes* to avoid being told when you present your file to the Clerk of the Court that it has not been prepared properly or is incomplete.

To be complete, a file must contain:

- the original of the application for divorce ([Model 1](#)), [21.25 cm x 28 cm or 8½ x 11 inches], with the backing;
- the original of your draft agreement ([Model 2](#)), [21.25 cm x 28 cm or 8½ x 11 inches], with the backing ([Model 4](#));
- the exhibits required, which may vary depending on your situation;
- the attestation in respect of the registration of births ([Model 5](#)).

Where required, it must also contain:

- two detailed affidavits ([Model 3](#)), [21.25 cm x 28 cm or 8½ x 11 inches], with the backings;
- the *Sworn Statement under article 827.5 of the Code of Civil Procedure* ([Model 6](#));
- the [Child Support Determination Form](#);
- a sworn statement setting out the financial situation of the parties, in *Form III (Statement of Income and Expenditures and Balance Sheet)* [21.25 cm x 28 cm or 8½ x 11 inches] in the [Rules of Practice of the Superior Court of Québec in Family Matters](#) .

**Make a copy of each of your documents for your own records.**


## » How to file your application

Present your application in person at the office of the Superior Court in the [courthouse](#) in your [area](#). Remember that if your application is incomplete or not filled out properly, the clerk will not be able to open a file for you.


### **Payment of fees**

The fees applicable under the [Tariff of court fees](#) in civil matters and of court office fees are payable to the courthouse cashier and may be paid by

- cash;
- debit or credit card (Visa or Mastercard)
- postal or bank money order; or
- certified cheque made out to the Minister of Finance of Québec.

An amount of ten dollars is also payable for the [Central Registry of Divorce Proceedings](#)  maintained by the Department of Justice of Canada. That amount may be paid by

- cash;
- debit or credit card (Visa or Mastercard)
- postal or bank money order; or
- certified cheque made out to the Receiver General for Canada.

Court fees are covered if you are entitled to [legal aid](#) , but you must provide a copy of your legal aid certificate.

### **Opening of your file**

When you file your documents at the office of the court, the clerk will give you a file number.

Where applicable, the clerk will set the date on which you are to appear before the court.

In files with detailed sworn affidavits, the spouses are usually not summoned to court. In all other cases, both spouses must be present on the date set for the judge to hear the divorce application.

If you have any questions concerning court appearances, check with the clerk of the court on the practice of the courthouse in your judicial district at the time you file your documents.

We hope this booklet has been helpful in answering questions you may have on how to file a joint application for divorce on a draft agreement.

**Should any doubts remain, do not hesitate to consult a legal advisor.**

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### **Related document**

[Models of the forms of proceedings](#)

[Explanatory Notes](#)



## » For more information

Ways to end a conjugal union:

- [Separation, Divorce and Dissolving a Civil Union](#)

What constitutes family patrimony and the rules of partition of family patrimony:

- [Family Patrimony](#)

The advantages of and steps in the mediation process:

- [Family Mediation](#)

The calculation of child support:

- [The Québec Model for the Determination of Child Support Payments](#)
- [Table to Determine the Basic Parental Contribution](#)

Federal Child Support Guidelines:

- [Department of Justice Canada](#) 

Tariff of court fees in divorce and separation matters:

- [Tariff of court fees](#)

Eligibility rules for legal aid:

- [Commission des services juridiques](#) 

The addresses and telephone numbers of Québec courthouses:

- [Courthouses](#)

Which judicial district a municipality is located in:

- [Search for a judicial district](#)

Family mediators certified in Québec:

- [Search for a family mediator](#)

How to avoid duplicate proceedings for divorce in different courts across Canada:

- [Central Registry of Divorce Proceedings](#)  (Department of Justice Canada)

Laws and regulations relating to divorce:

- [Code of Civil Procedure](#) 
- [Act to facilitate the payment of support](#) 
- [Act respecting income support, employment assistance and social solidarity](#) 
- [Divorce Act](#) 
- [Rules of Practice of the Superior Court of Québec in Civil Matters](#) 
- [Rules of Practice of the Superior Court of Québec in Family Matters](#) 
- [Tariff of court fees in civil matters and of court office fees](#) 

Forms that relate to Joint Application for Divorce on Draft Agreement:

- [Child Support Determination Form](#)
- [Sworn Statement under Article 827.5 of the Code of Civil Procedure](#) (SJ-766A)

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**The content of this document is strictly informative and has no legal value.**

If you find some of the information difficult to understand, do not hesitate to [contact us](#).

**Please note, however, that we cannot interpret the information to apply it to a specific situation.**

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**Please note:** The personnel at the Service de renseignements of the Ministère de la Justice can help you understand the general rules for applying Québec legislation. They cannot, however, interpret these rules to respond to a specific case or situation.

When contacting us by mail or e-mail, please indicate your address and telephone number so that we can contact you when necessary.

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