

## **Note**

By the summer of 2003, the joint application for divorce on draft agreement form should be modified to respect the new provisions of the Code of Civil Procedure. Meanwhile, if you want to file an application based on the model provided in the brochure entitled Joint Application for Divorce on Draft Agreement, we suggest that you first contact the office at your court to make sure it is admissible.

# Joint application for divorce

on draft agreement

Québec   
Ministère de  
la Justice

# Joint application for divorce

on draft agreement

In this folder, the masculine form includes the feminine. In addition, the names and addresses mentioned in the models are fictional.

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## Introduction

People turn up every day at their regional court houses, wanting to learn how to prepare and submit, by themselves, a joint application for divorce on draft agreement.

This application procedure looks easy, and many will be tempted to use it, if only to save legal advisor's fees. But couples should be leery: each spouse must be able to assess carefully all the implications, both personal and financial, of the draft agreement to be signed. If you are a little vague about your rights and obligations, you should consult a legal advisor. Your marriage may have failed; at least let your divorce be a success.

This folder is not a complete guide; it does not have all the answers. Rather, it is a tool which you and your spouse can use when you apply for divorce on a draft agreement. It contains various information, and examples of proceedings.

## Rules for Determining Child Support Payments

If the joint application, as described in this folder, affects the parental obligation to provide child support, it must be accompanied by the *Child Support Determination Form*, as well as the documents required when both parents reside in Québec. In these cases, we recommend that the parties fill in only one form to be signed by both spouses and accompanied by their sworn statement.

The folder entitled "The Québec Model for the Determination of Child Support Payments", published by the ministère de la Justice, will help you understand the new rules for determining child support payments and will provide guidance for the steps to follow. It explains, in particular, the new method for calculating the amount of child support to be paid and contains a facsimile of the Child Support Determination Form, as well as an example of the Table to Determine the Basic Parental Contribution for a given year. You must be sure to have at your disposal the table in force at the moment your application is submitted, for the basic support contributions are fully indexed on January 1 of each year according to the annual pension index as established under An Act respecting the Québec Pension Plan.

Please note that you must not use the facsimile provided in this folder. To obtain a copy of the form designed to accompany your application, we invite you to contact the following service points:

- the ministère de la Justice, Direction des communications, 1200, route de l'Église, Sainte-Foy (Québec) G1V 4M1, Telephone: (418) 644-2510, Fax: (418) 646-4449, e-mail: [communications.justice@justice.gouv.qc.ca](mailto:communications.justice@justice.gouv.qc.ca);
- court houses;
- the Web site of the ministère: [www.justice.gouv.qc.ca](http://www.justice.gouv.qc.ca);
- Communication-Québec offices;
- most centres jeunesse and legal or family mediation offices (attorneys, notaries, social workers, psychologists or guidance counsellors).

As concerns a divorce file, if one of the parties is residing in a province or territory other than Québec, or outside of Canada, the Federal Child Support Guidelines apply instead of provincial regulations. Jackets containing explanatory folders as well as a users' guide for federal tables are available at all court houses. The Federal Department of Justice also offers a free information service concerning the federal guidelines at the following number: 1 888 373-2222. Those living in the Ottawa area can dial 946-2222.

## **Family Mediation**

You may call upon the services of a mediator to help you negotiate a viable agreement meeting the needs of each family member. Family mediation is a conflict resolution method whereby an impartial mediator assists the spouses in order to help them negotiate a fair agreement which is entered upon of their own free will. Couples with children are also entitled to six free sessions with a professional mediator while negotiating and settling an application for child custody and support and the partition of family patrimony. If the services are delivered in the context of a request for review of a judgement, the couples are entitled to three free sessions. The folder entitled "Family Mediation" is available: by contacting the Direction des communications of the ministère de la Justice located at 1200, route de l'Église, Sainte-Foy (Québec) G1V 4M1, telephone (418) 644-2510, fax (418) 646-4449 or by e-mail at the following address: [communications.justice@justice.gouv.qc.ca](mailto:communications.justice@justice.gouv.qc.ca), at local court houses and from the Service de médiation familiale.

## **Support Payments Made to the ministère du Revenu**

Since the coming into force of An Act to facilitate the payment of support, the spouse who is the debtor of support must make support payments to the minister

of revenue in favour of the creditor of support. However, the court may, under certain conditions, exempt a debtor from this obligation or suspend the obligation temporarily.

The Act provides for two cases where the debtor of support may be exempted from this obligation:

- 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 of the pronouncement of judgement;
- if the parties making a joint application in their declaration convince the court that they have reached an agreement of their own free will and if the debtor provides the minister of revenue, within 30 days of the pronouncement of judgement, with sufficient security to guarantee the payment of support for one month.

In the second case, the court may call upon the parties to appear together, or even separately, in order to verify the agreement.

In cases where support payments must be collected by the ministère du Revenu, a certain delay may elapse between the pronouncement of the judgement and the moment support is collected by the Ministère. The court may allow the debtor to pay support directly to his ex-spouse until the Ministère has taken over the file, if a joint application to do so has been made. The debtor must preserve proof of his payments to be presented, upon request, to the officer in charge of his file.

## **How to Prepare Your Application**

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

Married couples generally apply for divorce together

- after they have been separated for one year,  
**and**
- once they have settled all the consequences of their divorce.

### **How is such an application prepared?**

The law has laid down certain rules which applications of this sort must respect. Before you begin to study the models shown later, we would advise that you carefully read the following pieces of legislation.

## Pieces of Legislation

- **The Divorce Act, 1985**

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; [...]"

- **The 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 declaration 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; it also serves as a provisional covenant unless, to their declaration, the spouses annex such a covenant, dated and signed by them, bearing on the various points that may be the subject of provisional measures." (see model 3)

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, in the presence of their attorneys, if such is the case."

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."

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 application relating to an obligation of support may be heard unless it is accompanied by a sworn statement by the plaintiff containing the information prescribed by regulation. [...]"

Moreover, no ruling may be made on an agreement relating to an obligation of support submitted by the parties unless the sworn statement referred to in the first paragraph has been filed by each of the parties at the office of the court. [...]" (see model 7)

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 in Civil Matters**

Rule 5 "Every proceeding shall be legibly written on one side only of a good quality paper measuring 21.25 cm X 35 cm (8<sup>1</sup>/<sub>2</sub> X 14 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, as well as the name, address, postal code, telephone number and computer code of his attorney.

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 in Family Matters**

Rule 18 "Child custody and tutorship: A party who applies for custody of a child or tutorship to a child must attest that the child is not the object of a court nor a pending case before a court decision 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 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 with the inscription for proof and hearing, or, in the case of a joint application, with the declaration.
- A case may not be inscribed or a declaration 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 6)
- Rule 23 "Birth certificates: Providing children's birth certificates as evidence is not required unless their legitimacy is in dispute. Similarly, photocopies of the parties' birth certificates are sufficient."
- 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."

## How to Draw up Proceedings

A divorce is more complex a matter than one might believe. The reader who wants to become well acquainted with all aspects of divorce, and learn what is meant by expressions such as compensatory allowance, the right of usage and the partition of the family patrimony, is advised to consult one of the ministère de la Justice's folders on the matter. Other publications are available as well.

Before committing your proceedings in writing, you would be well advised to read this documentation together, then discuss all the matters you want to settle.

To help you prepare your record, this text contains models of the documents which must be part of it.

The instructions in the "explanatory notes" (page 20) must be followed to the letter; otherwise when you get to the clerk's office, you will be told your record is badly prepared, or is incomplete.

A complete record contains:

- the original of your divorce declaration (model 1), which includes statements under oath also called "affidavits" (model 2) (8 1/2" x 14" *with back*);
- the original of your draft agreement (8 1/2" x 14" *with back*) (model 3);
- the exhibits (the documents required, which may vary depending on your situation);
- the attestation relative to the registration of births (model 6).

If necessary, it must also contain:

- two detailed affidavits (8 1/2" x 14" *with back*) (model 4).
- the form under article 827.5 C.c.p. (model 7);
- the *Child Support Determination Form*.

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

See notes  
page 20

1

2

3

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT of **Montréal**  
NO.

5

4

SUPERIOR COURT  
FAMILY DIVISION  
(Divorce)

**Micheline Tremblay, technician**  
residing and domiciled  
at **6161, rue Saint-Denis**  
**Montréal (Québec) H2S 2R5**

JOINT APPLICANT

AND

**ROGER GAGNON, salesman**  
residing and domiciled  
at **255, rue Crémazie Est**  
**Montréal (Québec) H2M 1L5**

JOINT APPLICANT

DECLARATION

It is declared that:

**MATRIMONIAL AND FAMILY STATUS**

1. The wife was born on **November 17, 1962**, at **Beloeil**, and is **32 years old**. She is the daughter of **Rollande Cyr** and **Philippe Tremblay**, as appears from the copy of act of birth filed as exhibit **P-1**.
2. The husband was born on **February 24, 1959**, at **Montréal**, and is **35 years old**. He is the son of **Yvette Poirier** and **Michel Gagnon**, as appears from the copy of act of birth filed as exhibit **P-2**.
3. The parties were married in **Montréal** on **July 13, 1985**, as appears from the copy of act of marriage filed as exhibit **P-3**.
4. At the time of the marriage, the wife was **single**, the husband was **single**.
5. The matrimonial regime chosen was that of **separation as to property**, as appears from the marriage contract signed before **M<sup>e</sup> Gilles Potiron**, notary at **Montréal**, under number **306049**, and filed as exhibit **P-4**. This regime has not been changed.
6. The child's name, given name, age, sex and date of birth are as follows:

6

Name	Given name	Age	Sex	Born on
<b>TREMBLAY-GAGNON</b>	<b>Mélanie</b>	<b>11</b>	<b>F</b>	<b>1989-07-10</b>

- 16** The child's copy of act of birth is filed as exhibit **P-5** (optional). This child is not the object of a decision of a court, nor a pending case before a court, or of an agreement with the Director of Youth Protection. (If such a decision, pending case or agreement exists, give the all particulars involved and file all pertinent documents.)

RESIDENCE

7. The wife generally has been living at **6161, rue Saint-Denis, Montréal (Québec)** since **February 1, 1997**.

The husband generally has been living at **255, rue Crémazie Est, Montréal (Québec)** since **February 1, 1997**.

REASON

8. The marriage has broken down for the following reason:

The spouses lived separately for more than a year before the presentation of this application.

RECONCILIATION AND MEDIATION

9. Before this declaration was signed:

- a) The parties discussed the possibilities of reconciliation, and obtained information about consultation and guidance services.
- b) The parties obtained information about the various mediation services likely to help them negotiate points which might fall under a support or custody order and discussed the wisdom of negotiating these points.

COROLLARY RELIEF AND OTHER CLAIMS

10. The parties have agreed on corollary relief and all other claims contained in the draft agreement, a copy of which is filed as exhibit P-6.
11. **There is an agreement in effect between the parties to exempt the debtor of support in accordance with section 3 of An Act to facilitate the payment of support. (There is an agreement in effect between the parties to temporarily suspend the obligation of the debtor of support in accordance with section 3.1 of An Act to facilitate the payment of support.)**

OTHER PROCEEDINGS

12. **A judgment granting separation was rendered by the Superior Court of Montréal on January 25, 1998, No. 500-04-001111-921, as filed as exhibit P-7. (No other proceedings have been instituted with regard to the marriage of these parties).**
13. There is no collusion between the parties.

WHEREFORE, may it please the Court:

TO GRANT a divorce judgment.

TO CONFIRM the agreement made between the parties, and TO ORDER them to comply with it.

Without costs.

Signed in **Montréal** this **26<sup>th</sup> day of February, 2000**.

(signature) \_\_\_\_\_

(signature) \_\_\_\_\_

Applicants

**20 21**

AFFIDAVIT

1 2 3 4

I, the undersigned **Micheline Tremblay, technician**, residing at **6161, rue Saint-Denis in Montréal**, declare under oath that:

- 1. I am one of the joint applicants.
- 2. All the facts alleged in the above declaration of divorce are true.

AND I HAVE SIGNED AT **Montréal**, this **4<sup>th</sup> day of March, 2000**

(signature) \_\_\_\_\_  
Joint Applicant

Sworn to before me  
at **Montréal**, this **4<sup>th</sup> day of March, 2000**.

(signature) \_\_\_\_\_ **7**  
Commissioner for oaths

AFFIDAVIT

I, the undersigned **Roger Gagnon, salesman**, residing at **255, rue Crémazie Est, Montréal**, declare under oath that:

- 1. I am one of the joint applicants.
- 1. All the facts alleged in the above declaration of divorce are true.

AND I HAVE SIGNED at **Montréal**, this **4<sup>th</sup> day of March, 2000**.

(signature) \_\_\_\_\_  
Joint Applicant

Sworn to before me  
at **Montréal**, this **4<sup>th</sup> day of March, 2000**.

(signature) \_\_\_\_\_ **7**  
Commissioner for oaths

CLERK'S CERTIFICATE

I, the undersigned Deputy clerk for the district of **Montréal**, certify that the joint divorce declaration, and the affidavits of the applicants, have been received and entered at the office of the Court.

**Montréal**, the \_\_\_\_\_ 20 \_\_\_\_\_ **8**  
(signature) \_\_\_\_\_  
Deputy Clerk

1 2 3

CANADA  
PROVINCE OF QUÉBEC  
District of Montréal  
NO. 5

4 SUPERIOR COURT  
FAMILY DIVISION  
(Divorce)

Micheline Tremblay  
JOINT APPLICANT

AND  
Roger Gagnon  
JOINT APPLICANT

DRAFT AGREEMENT

Whereas (indicate the resources and situation of the parties, unless you have not completed and produced the Child Support Determination Form or have already indicated this information in your detailed affidavits).

10 11

THE PARTIES AGREE [...]

What follows is a list of subjects which may be covered in a joint agreement:

- child custody and access rights;
- exercise of parental authority;
- support; (if the rules for determining child support payments apply to you and if you have agreed to support payments which differ from those applicable in accordance with the aforementioned rules, your agreement must clearly indicate the reasons for this difference);
- settlement of the marriage contract;
- the partition of the family patrimony or renunciation of said partition as the case may be;
- right of usage;
- ownership of property;
- settlement of the matrimonial regime;
- payment of a compensatory allowance;
- exemption from or temporary suspension of the debtor's obligation to pay support to the ministère du Revenu in favour of the creditor of support;
- any others, as necessary.

9

12

The parties have signed this draft agreement at  
Montréal, this 15<sup>th</sup> day of February, 2000.

13 14 15

(signature) \_\_\_\_\_  
Joint Applicant

(signature) \_\_\_\_\_  
Joint Applicant

1 2 3

CANADA  
PROVINCE OF QUÉBEC  
District of **Montréal**  
NO.

4

SUPERIOR COURT  
FAMILY DIVISION  
(Divorce)

**Roger Gagnon**  
JOINT APPLICANT

DETAILED AFFIDAVIT

17 18 19

I, the undersigned **Roger Gagnon**, domiciled and residing at **255, rue Crémazie Est, Montréal**, district of **Montréal**, solemnly declare that:

1. I am a joint applicant in this proceeding.
2. I wish to obtain a judgment of divorce in this proceeding.
3. **Child support payments for the minor child of the parties have been established in accordance with the Regulation respecting the determination of child support payments.**
4. We have not been living together since **(date)**.
5. It is my wish that the draft agreement, which we have signed together, be ratified by the Court.
6. There is no collusion between the other applicant and myself.

ALL THE FACTS ALLEGED IN THIS AFFIDAVIT ARE TRUE.

AND I HAVE SIGNED

*(signature)* \_\_\_\_\_  
**Roger Gagnon**

Sworn to before me at **Montréal**

this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

21

\_\_\_\_\_  
Commissioner for oaths

21

NO.

SUPERIOR COURT  
DISTRICT OF MONTRÉAL

**MICHELINE TREMBLAY**

Joint Applicant

AND

**ROGER GAGNON**

Joint Applicant

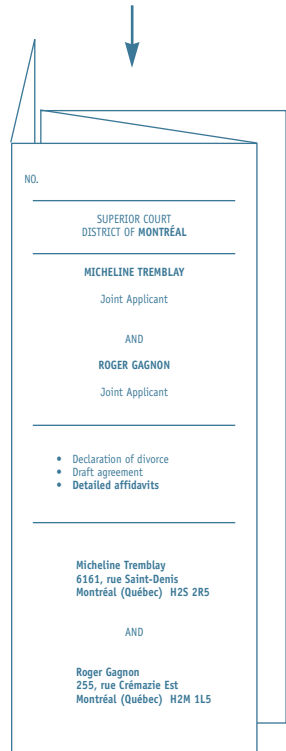
- Declaration of divorce
- Draft agreement
- **Detailed affidavits**

**Micheline Tremblay**  
6161, rue Saint-Denis  
Montréal (Québec) H2S 2R5

AND

**Roger Gagnon**  
255, rue Crémazie Est  
Montréal (Québec) H2M 1L5

Example of how  
to fold the backs



# Certificate Regarding the Registration of Births

Model 6

1 2 3

CANADA  
PROVINCE OF QUÉBEC  
District of **Montréal**  
NO.

5

4

SUPERIOR COURT  
FAMILY DIVISION  
(Divorce)

\_\_\_\_\_  
**Micheline Tremblay**

JOINT APPLICANT

AND  
**Roger Gagnon**

\_\_\_\_\_  
JOINT APPLICANT

## CERTIFICATE REGARDING THE REGISTRATION OF BIRTHS

- The birth of **neither party** has been registered in Québec. (Do not fill in sections 1 and 2; register the date and sign on page 2)
- The birth of the **wife** has not been registered in Québec. (Fill in section 2 only; register the date and sign on page 2)
- The birth of the **husband** has not been registered in Québec. (Fill in section 1 only; register the date and sign on page 2)

### It is declared that:

1. The wife was born on \_\_\_\_\_ at \_\_\_\_\_ .  
(date of birth) (place of birth)

She was baptized or registered on

\_\_\_\_\_ at \_\_\_\_\_  
(date of baptism or civil registration) (name of parish and municipality of baptism, or municipality of civil registration)

She is the daughter of \_\_\_\_\_ and of \_\_\_\_\_

OR (declaration to be used where the copy of act of birth was issued by the Registrar of Civil Status)

The wife is \_\_\_\_\_ years old and the inscription number of her act of birth in the

Registry of Civil Status is \_\_\_\_\_ ;

2. The husband was born on \_\_\_\_\_ at \_\_\_\_\_ .  
(date of birth) (place of birth)

He was baptized or registered on

\_\_\_\_\_ at \_\_\_\_\_  
(date of baptism or civil registration) (name of parish and municipality of baptism,  
or municipality of civil registration)

He is the son of \_\_\_\_\_ and of \_\_\_\_\_

OR (declaration to be used where the copy of act of birth was issued by the Registrar of Civil Status)

The husband is \_\_\_\_\_ years old and the inscription number of her act of birth in the

Registry of Civil Status is \_\_\_\_\_ .

The parties have signed (place and date)

(signature) \_\_\_\_\_  
Joint Applicant

(signature) \_\_\_\_\_  
Joint Applicant

# Sworn Statement Under Article 827.5 of the Code of Civil Procedure

Model 7

SCHEDULE 1 (s. 1)  
**SWORN STATEMENT UNDER  
ARTICLE 827.5 OF THE CODE  
OF CIVIL PROCEDURE**

CANADA  
Province de Québec  
District of \_\_\_\_\_

File No. \_\_\_\_\_

Please complete in block letters

**IDENTITY**     Applicant     Defendant

(1) Surname(s) \_\_\_\_\_ Given name(s) \_\_\_\_\_

(2) Surname at birth \_\_\_\_\_

(3) Sex     M     F    Language     French     English

(4) Residential address \_\_\_\_\_  
Postal Code \_\_\_\_\_ Province \_\_\_\_\_ Country \_\_\_\_\_  
Telephone at home \_\_\_\_\_ At work \_\_\_\_\_  
Postal address (if different) \_\_\_\_\_  
Postal Code \_\_\_\_\_ Province \_\_\_\_\_ Country \_\_\_\_\_

(5) Date of birth \_\_\_\_\_ Social Insurance Number \_\_\_\_\_

**INFORMATION ON EMPLOYMENT AND INCOME**

(7)  Employee     Self-employed writer

Name and address of employer \_\_\_\_\_  
Postal Code \_\_\_\_\_ Province \_\_\_\_\_ Country \_\_\_\_\_  
Remuneration \_\_\_\_\_ language of communication:     French     English

(8) The dependent is unemployed

(9) The dependent receives income monthly/quarterly \_\_\_\_\_  
File No. (ICP ID) \_\_\_\_\_

(10) Other income (Indicate the source and amount of each) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**OTHER INFORMATION**

(11) The names of the dependent's mother \_\_\_\_\_

(12) Other names used by the dependent \_\_\_\_\_

(13) Indicate the nature and date of the application to which this statement is attached \_\_\_\_\_

\_\_\_\_\_

(14) If this statement accompanies an application for revision of support, indicate the date of the judgment awarding support \_\_\_\_\_ and the file No., if different \_\_\_\_\_

**INFORMATION (IF IT IS KNOWN) CONCERNING THE OTHER PARTY**

(15) Residential address \_\_\_\_\_

(16) Telephone at home \_\_\_\_\_ At work \_\_\_\_\_

(17) Date of birth \_\_\_\_\_ Social Insurance Number \_\_\_\_\_

**SWORN STATEMENT**

I declare that the information given is true and complete, and I have signed

At \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_

Deponent

Sworn before me at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_

Person authorized to administer oaths

(1000-001-01)

## Explanatory Notes

- 1 All proceedings must be drafted on white legal-sized (21.25 cm x 35 cm or 8 1/2" x 14") paper.
- 2 Proceedings must be legible; as a general rule, they must be typed.
- 3 Respect the proposed layout (what is at the left should remain at the left).
- 4 Follow what is written in the models; what appears in ordinary characters should be retained.

Whatever appears in bold characters must be adapted to your own particular case (for example, replace Micheline Tremblay by your own name).

- 5 Indicate the name of the judicial district where you submit your application. The clerk will give you a number for your record when you appear at the court house.
- 6 If one of the items does not apply to your case, say so (for example, under allegation No. 6, specify "No children").
- 7 When you are sworn, this is with regard to the content of your declaration, although you sign the section "statement under oath", also called "affidavit", before the commissioner for oaths. Have yourself sworn when you sign your documents and before coming to the court house to open a record.

The following persons, in virtue of their office are authorized to administer oaths:

- court clerks and their assistants;
- lawyers;
- notaries;
- mayors and clerks or Secretary-Treasurers of any municipality;
- the Secretary General, Assistant Secretary General and Assistant Secretary to the National Assembly;
- justice of peace.

- 8 When you appear at the court office to have your record opened, the clerk will sign your certificate, but only if your record complies with the law.
- 9 You must enclose, along with the *Child Support Determination Form*, a copy of your federal and provincial tax returns, as well as your assessment notice for the last fiscal year. You must also enclose the following documents, if applicable:

- Pay extract;
- Financial statements;
- Statement of revenues and expenditures relative to investment property.

**10** As you prepare your draft agreement, keep in mind that your goal is the full settlement of your divorce. Each case is special. The draft agreement should reflect your own situation; you may add provisions to the list, or delete some.

If you run into problems as you prepare your draft agreement, or if you are wondering what effects it may have, a legal advisor can help you develop or modify it.

**11** We recommend that you use only one paragraph for each item of your settlement. Paragraphs must be numbered.

**12** If you wish to renounce the sharing of earnings registered during the marriage in the name of each spouse in accordance with *An Act respecting the Québec Pension Plan*, your intention must clearly appear in your agreement, through the use of the following terms or their equivalent: "there is no sharing of earnings registered in accordance with *An Act respecting the Québec Pension Plan*."

**13** If you, your spouse or ex-spouse are receiving payments in accordance with a financial assistance program of last resort under *An Act respecting income security* or have received such payments during the period covered by the agreement, you must, in all cases, make a declaration to this effect in any agreement relative to a support obligation that you submit to the court as part of a joint application for divorce.

**14** It is important to clearly specify in your agreement the amount of support to be provided for children and for one of the parents.

**15** If the judge notes that some of the clauses in the draft agreement do not adequately protect the interests of one of the spouses or of the children, he can ask that the draft agreement be amended and postpone his decision until such time as the amended draft agreement has been submitted.

**16** It is not necessary to produce for the record copies of the act(s) of birth for any child or children, unless their parentage is being contested.

Photocopies of the spouses' acts of birth are also admissible. It is important, on the other hand, to produce the original copy of the act of marriage<sup>1</sup>.

**17** In certain judicial districts, a judgement may be rendered based on detailed affidavits (one per spouse). You should check with your regional court house to find out whether this procedure applies.

**18** If your divorce is granted following the presentation of detailed affidavits, there will be no need to go to court. You will receive a copy of the judgment by mail.

**19** In cases other than 17 and 18, namely in districts where these declarations are not used, you and your spouse must go to court on the date fixed.

**20** Both spouses must sign the document, and date it.

**21** Prepare backs for the following documents:

- the declaration;
- the draft agreement;
- the detailed affidavits, where applicable.

Each of these documents must have a back on it. The text must appear on the second quarter of a sheet placed horizontally. This is so that when the sheet is folded in four, the back appears on the top (model 5).

If the draft agreement submitted as part of your joint application for divorce affects support obligations, your application must include a sworn statement for each of the parties in accordance with article 827.5 C.p.c. A duly completed model declaration can be found on page 19 of this folder. The form, which carries the number SJ-766A, is available at all courthouses. Explanations to help you complete this form are found on its overleaf.

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<sup>1</sup> A copy of act is the term assigned by the *Québec Civil Code* to an original and authentic document issued by the Registrar of civil status.

## Submitting Your Application

Go to the office of the Superior Court in your regional court house, bringing your complete record. If your application is incomplete or badly prepared, the clerk will not be able to open your record.

### Paying the costs

Go to the court house cash desk. You must pay the fees required according to the schedule of judicial fees in civil matters, and court fees in one of the following ways:

- in cash;
- by debit or credit card (Visa or Mastercard);
- by postal or bank money order;
- by certified check issued to the *ministère des Finances of Québec*.

An inscription will then be added to your original declaration to confirm that the fee has been paid.

You will also be asked to pay an amount of ten dollars to the Central Registry of Divorce Proceedings in Ottawa:

- in cash;
- by debit or credit card (Visa or Mastercard);
- by postal or bank money order;
- by certified check issued to the Receiver General of Canada.

If you qualify for Legal Aid, your legal costs will be covered, but you will have to provide a copy of your legal aid mandate.

### Opening the record

After you file your documents in the court office, the clerk will assign your record a number.

The clerk will also set the date for your court appearance, if applicable.

Where a record contains detailed affidavits, the spouses generally need not appear in court. In other cases, or if you receive a notice of hearing, both spouses must be present on the date set so that the judge can hear the divorce application.

If you have any questions on this point, you may ask the clerk about the practice current in your district courthouse when you submit your documents.

We hope that this folder has enlightened you on how to submit a joint application for divorce on a draft agreement. If you still have any doubts, do not hesitate to consult.

