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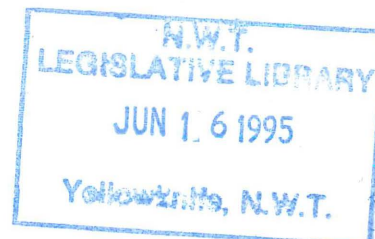
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**PROPOSED
FAMILY LAW ACT**

General description

This proposed *Family Law Act* is one of four proposed statutes that would reform family law legislation in the Northwest Territories. This statute would cover the division of family property, the rights of spouses in a family home, support for spouses and other dependants and domestic contracts.

IMPORTANT: This proposed *Family Law Act* is being released for information purposes only.



PROPOSED

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FAMILY LAW ACT

Whereas it is desirable to encourage and strengthen the role of the family;

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And whereas it is necessary for that purpose to recognize the equal position of spouses as individuals within a family and to recognize the spousal relationship as a form of partnership;

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And whereas in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses on the breakdown of the spousal relationship, and to provide for other mutual obligations of spouses, including the equitable sharing by parents of responsibility for their children;

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Now therefore, the following is proposed:

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INTERPRETATION AND APPLICATION

Definitions

1. (1) In this Act,

"clerk of the court" means,

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(a) in relation to the Territorial Court, the Clerk of the Territorial Court appointed under the *Territorial Court Act*, and

(b) in relation to the Supreme Court, the Clerk of the Supreme Court appointed under the *Judicature Act*;

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"cohabit" means to live together in a conjugal relationship, whether within or outside marriage;

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"court" means the Supreme Court or the Territorial Court;

"domestic contract" means a domestic contract as defined in Part IV;

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"spouse" means either of a man and a woman who

(a) are married to each other,

(b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a

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is no reasonable prospect that they will resume cohabitation,

- (b) the date a divorce is granted,
- (c) the date the marriage is declared a nullity,
- (d) the date one of the spouses commences an application based on subsection 5(3) that is subsequently granted,
- (e) the date on which one of the spouses dies leaving the other spouse surviving.

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Application of Part

3. This Part applies to property owned by spouses

- (a) whether they were married or became spouses within the meaning of this Act before or after the day on which this section comes into force; and
- (b) whether the property was acquired before or after that day.

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Net family property calculation

4. (1) Subject to subsections (2) and (3), the net family property of a spouse is calculated by valuing all property that the spouse owns on the valuation date and deducting from that amount

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- (a) the spouse's debts and other liabilities on valuation date;
- (b) the value, calculated as of the commencement date, of property that the spouse owned on that date after deducting the spouse's debts and other liabilities on that date;
- (c) the lesser of the values of property on the date of acquisition and the valuation date in the following categories that the spouse acquired after the commencement date and that the spouse owns on the valuation date:
 - (i) property that was acquired by gift or inheritance from a third person,
 - (ii) proceeds or a right to proceeds of a policy of life insurance that are payable on the death of the life insured, and
 - (iii) property into which property referred to in subparagraphs (i) and (ii) can be traced.

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Excluded property

(2) Where a spouse owns property in the following categories on the valuation date, the value of the property on that date and on the commencement date, if it was owned by the spouse on the commencement date, is not included in the calculation of the spouse's net family property:

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separated and there were no reasonable prospect that they would resume cohabitation, where the spouses are cohabiting and

- (a) there is a serious danger that one spouse may improvidently deplete his or her net family property; or
- (b) a trusteeship order is made in respect of one of the spouses under the *Guardianship and Trusteeship Act*.

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No further division

(4) After the court has made an order for division based on subsection (3) neither spouse may make a further application under section 7 in respect of their spousal relationship.

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Effect of continued cohabitation

(5) Subsection (4) applies even though the spouses continue to cohabit, unless a domestic contract between the spouses provides otherwise.

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Court may vary or award entitlement

(6) The court may, on an application under section 7, vary the amount of a spouse's entitlement under this section or, in the circumstances described in subsections (1) and (3), award an amount as an entitlement to a spouse whose net family property is equal to or greater than the net family property of the other spouse, where the court is of the opinion that it would be unconscionable not to do so, having regard to

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- (a) a spouse's failure to disclose to the other spouse debts or other liabilities existing at the commencement date;
- (b) the fact that debts or other liabilities claimed in reduction of a spouse's net family property were incurred recklessly or in bad faith;
- (c) a spouse's intentional or reckless depletion of his or her net family property;
- (d) the fact that the amount a spouse would otherwise receive under subsection (1), (2) or (3) is disproportionately large in relation to the duration of the spousal relationship;
- (e) the fact that one spouse has incurred a disproportionately larger amount of debts or other liabilities for the support of the family than the other spouse;
- (f) a written agreement between the spouses that is not a domestic contract;
- (g) the needs of the children of a spouse and the financial responsibility related

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partial intestacy, shall also receive the other property to which he or she is entitled because of the deceased spouse's death.

Gifts by will	(5) The surviving spouse shall receive the gifts made to him or her in the deceased spouse's will in addition to the entitlement under section 5 if the will expressly provides for that result.	5
Revoking gifts in will	(6) Where a surviving spouse elects to receive the entitlement under section 5, the gifts made to him or her in the deceased spouse's will are revoked and the will shall be interpreted as if the surviving spouse had died before the other, unless the will expressly provides that the gifts are in addition to the entitlement under section 5.	10
Deemed disclaimer	(7) Where a surviving spouse elects to receive the entitlement under section 5, the spouse shall be deemed to have disclaimed the entitlement under the <i>Intestate Succession Act</i> .	15
Manner of making election	(8) The surviving spouse's election shall be in the prescribed form and shall be filed with the clerk of the court within six months after the day on which probate or letters of administration are granted in respect of the deceased spouse's estate.	20
Deemed election	(9) A surviving spouse shall be deemed to have elected to take under the will or to receive the entitlement under the <i>Intestate Succession Act</i> , or both in the case of a partial intestacy, where he or she	25
	(a) does not file an election in accordance with subsection (8), unless the court, on application by the surviving spouse, orders otherwise; or	30
	(b) dies without filing an election before the expiry of the time referred to in subsection (8) or any further time allowed by the court under paragraph (a).	35
Priority of spouse's entitlement	(10) The spouse's entitlement under section 5 has priority over	40
	(a) the gifts made in the deceased spouse's will, if any, subject to subsection (11);	45
	(b) any other person's right to a share of the estate under the <i>Intestate Succession Act</i> ; and	50
	(c) subject to subparagraph 11(b)(ii), an	55

Liability of
personal
representative

(16) Where

- (a) the personal representative makes a distribution that contravenes subsection (12) or (13),
- (b) the court makes an order against the deceased spouse's estate under this Part, and
- (c) the undistributed portion of the estate is not sufficient to satisfy the order,

the personal representative is personally liable to the applicant for the amount that was distributed or the amount that is required to satisfy the order, whichever is less.

Order
suspending
administration

(17) On application by the surviving spouse, the court may make an order suspending the administration of the deceased spouse's estate for the time and to the extent that the court decides.

Application to
court

7. (1) The court may, on the application of a spouse, a former spouse or the personal representative of a deceased spouse, determine any matter respecting a spouse's entitlement under section 5.

Personal
action and
continuing by
or against
estate

(2) Entitlement under subsections 5(1), (2), (3) and (6) is personal as between the spouses except that

- (a) an application based on subsection 5(1), (3) or (6) that is commenced before a spouse's death may be continued by or against the deceased spouse's estate; and
- (b) an application based on subsection 5(2) may be made
 - (i) by a deceased spouse's estate, where the spouse, before his or her death, filed an election in accordance with section 6 to receive the entitlement under subsection 5(2), or
 - (ii) against a deceased spouse's estate.

Limitation

(3) An application based on subsection 5(1), (2) or (6) may not be brought after the earliest of

- (a) two years after the day on which the marriage is terminated by divorce or judgment of nullity;
- (b) six years after the day on which the spouses separate and there is no reasonable prospect that they will resume cohabitation, where the spouses

Financial information, inspections

(2) The court may, at the time of making an order under subsection 9(1) or on application at a later time, order that the spouse who has the obligation to make payments shall

- (a) furnish the other spouse with specified financial information which may include periodic financial statements; and
- (b) permit inspections of specified property of the spouse by or on behalf of the other spouse, as the court directs.

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Variation

(3) Where the court is satisfied that there has been a material change in the circumstances of the spouse who has the obligation to make instalment or delayed payments, the court may, on application, vary the order, but shall not vary the amount to which the court found the spouse to be entitled under this Part.

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Ten year period

(4) Subsection (3) and section 68 do not permit the postponement of payment beyond the 10 year period mentioned in paragraph (1)(c).

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Determination of questions of title between spouses

10. (1) A person may apply to the court for the determination of a question between that person and his or her spouse or former spouse as to the ownership or right to possession of particular property, other than a question arising out of an equalization of net family properties under section 5, and the court may

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- (a) declare the ownership or right to possession;
- (b) if the property has been disposed of, order payment in compensation for the interest of either party;
- (c) order that the property be partitioned or sold for the purpose of realizing the interests in it;
- (d) order that either or both spouses give security, including a charge on property, for the performance of an obligation imposed by the order; and
- (e) make any order or give any direction ancillary to an order made under paragraphs (a) to (d).

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Estates

(2) An application under subsection (1) may be made by or against or may be continued by or against the estate of a deceased spouse.

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Application (4) Subsections (1) to (3) apply whether the event giving rise to their application occurred before or after the day on which this section comes into force.

Conflict of laws 15. The property rights of spouses arising out of the spousal relationship are governed by the internal law of the place where both spouses had their last common habitual residence or, if there is no place where the spouses had a common habitual residence, by the law of the Territories.

PART II

FAMILY HOME

Definitions 16. In this Part,
"court" means the Supreme Court;
"designated" means designated by an instrument under section 21;
"property" means real or personal property;
"registered" means registered under the *Land Titles Act*;
"Registrar" means a Registrar as defined under the *Land Titles Act*;
"separation agreement" means a separation agreement as defined in Part IV.

Application of Part 17. (1) This Part applies to family homes that are situated in the Territories.

Circumstances not affecting application (2) This Part applies
(a) whether the spouses were married or became spouses within the meaning of this Act before or after the day on which this section comes into force; and
(b) whether the family home was acquired before or after that day.

Family home 18. (1) Subject to section 21, every property in which a person has an interest that is, or if the spouses have separated, was at the time of separation, ordinarily occupied by the person and his or her spouse as their family residence is their family home.

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Contiguous property	(2) The designation may include property that is described in the designation and is contiguous to the family home.	5
Registration	(3) The designation may be registered in the proper land titles office, but no designation shall be registered unless <ul style="list-style-type: none"> (a) it is executed by both spouses; (b) it contains the legal description of the designated property; (c) one of the spouses has a registered interest in the designated property; and (d) a certificate of title has been issued in respect of the designated property. 	10 15
Effect of registration	(4) On the registration of a designation, any property, other than the designated property, that is a family home under section 18, ceases to be a family home.	20
Cancellation of designation	(5) The designation of a family home is cancelled and the designated property ceases to be a family home, subject to subsection (6), on the registration of <ul style="list-style-type: none"> (a) a cancellation in the prescribed form executed by both spouses; (b) a cancellation in the prescribed form executed by one spouse and accompanied by a certified copy of a certificate of divorce or judgment of nullity; (c) a certified copy of an order under paragraph 24(e) cancelling the designation; or (d) a cancellation in the prescribed form executed by one spouse and accompanied by proof satisfactory to the Registrar of the death of the other spouse. 	25 30 35 40
Effect of cancellation	(6) When a designation of a family home made by both spouses is cancelled, section 18 applies again to the property of the spouses.	40
Alienation of family home	22. (1) No spouse may dispose of or encumber an interest in a family home unless <ul style="list-style-type: none"> (a) the other spouse joins in the instrument or consents to the transaction; (b) the other spouse has released all rights under this Part by a separation agreement; or (c) a court order has authorized the 	5 5

encumbrance, on the basis of the attorney's personal knowledge.

Interests arising by operation of law

(5) This section does not apply to the acquisition of an interest in property by operation of law.

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Right of redemption and to notice

23. (1) Where a person proceeds to realize on a lien, encumbrance or execution or exercises a forfeiture against property that is a family home, the spouse who has a right of possession under section 19 has the same right of redemption or relief against forfeiture as the other spouse and is entitled to the same notice respecting the claim and its enforcement or realization.

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Service of notice

(2) A notice to which a spouse is entitled under subsection (1) shall be deemed to be sufficiently given if served personally or by registered mail addressed to the spouse at his or her usual or last known address or, if none, at the address of the family home.

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Deemed date of service by mail

(3) Where notice is served by mail the service shall be deemed, in the absence of evidence to the contrary, to have been made on the 10th day after the day of mailing.

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Payments by spouse

(4) Where a spouse makes a payment in exercise of the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

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Realization may continue in spouse's absence

(5) Notwithstanding any other Act, where a person who proceeds to realize on a lien, encumbrance or execution or who exercises a forfeiture does not have sufficient particulars about a spouse to do so and there is no response to a notice served in accordance with subsection (2), the realization or exercise of forfeiture may continue in the absence and without regard to the interest of the spouse and the spouse's rights under this section end on the completion of the realization or forfeiture.

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Powers of court

24. The court may, on the application of a spouse or person having an interest in property, by order,

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- (a) determine whether or not the property is a family home and if so, its extent;
- (b) authorize the disposition or

periodic payments to the other spouse for those purposes;

(f) authorize the disposition or encumbrance of a spouse's interest in the family home, subject to the other spouse's right of exclusive possession as ordered; and

(g) where a false statement is made in a statement referred to in subsection 22(3), direct

(i) the person who made the false statement, or

(ii) a person who knew at the time he or she acquired an interest in the property that the statement was false and afterwards conveyed the interest,

to substitute other real property for the family home, or direct the person to set aside money or security to stand in place of it, subject to any conditions that the court considers appropriate.

Temporary or interim order

(2) The court may, on application, make a temporary or interim order under paragraph (1)(a), (b), (c), (d) or (e).

Order for exclusive possession: criteria

(3) In determining whether to make an order for exclusive possession, the court shall consider

(a) the best interests of the children affected;

(b) any existing orders under Part I and any existing support orders;

(c) the financial position of both spouses;

(d) any written agreement between the parties;

(e) the availability of other suitable and affordable accommodation; and

(f) any violence committed by a spouse against the other spouse or the children.

Offence

(4) A person who contravenes an order for exclusive possession is guilty of an offence and liable on summary conviction

(a) in the case of a first offence, to a fine of not more than \$1,000 or to imprisonment for a term of not more than three months, or to both; and

(b) in the case of a second or subsequent offence, to a fine of not more than \$5,000 or to imprisonment for a term of

Spousal Support

Obligations during spousal relationship	30. (1) During a spousal relationship, a spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.	5
Obligations on breakdown of spousal relationship	(2) On the breakdown of a spousal relationship, the economic advantages or disadvantages arising from the spousal relationship and its breakdown should be equitably shared between the spouses and a spouse has an obligation to provide support for himself or herself and for the other spouse in accordance with this principle, to the extent that he or she is capable of doing so.	10 15
Order for support	31. (1) A court may, on application, order a person to provide support for his or her spouse and determine the amount of support.	20
Applicants	(2) An application for an order for the support of a spouse may be made by (a) the spouse; or (b) the Minister responsible for the <i>Social Assistance Act</i> , where assistance has been requested, is being provided or has been provided under that Act for the spouse's support.	25 30
Objectives of order on breakdown	(3) An order for support on the breakdown of the spousal relationship should (a) equitably share the economic advantages and disadvantages to the spouses arising from the spousal relationship; (b) recognize the spouses' contributions to the spousal relationship; and (c) recognize the effect that having custody of a child of the spouses has on a spouse's earning capacity and career development.	35 40 45
Economic hardship	(4) Where a spouse suffers economic hardship arising from the breakdown of the spousal relationship that is not adequately relieved by orders made under Parts I and II and that would not be adequately relieved by an order for support made solely on the basis of the considerations referred to in subsection (3), an order for support should also (a) make fair provision to assist the spouse to become able to contribute to his or	50 55

- (e) the respondent spouse's capacity to provide support;
- (f) the measures available for the applicant spouse to become able to provide for his or her own support and the length of time and cost involved to enable the applicant spouse to take those measures;
- (g) the age and physical and mental health of each spouse;
- (h) the length of time that the spouses cohabited;
- (i) the functions performed by each spouse during cohabitation;
- (j) any legal obligation of either spouse to provide support for another person;
- (k) the desirability and reasonableness of a spouse remaining at home to care for a child of the spouses; and
- (l) any other legal right of the applicant spouse to support, other than out of public money.

Definition of "applicant spouse" (8) In subsection (7), "applicant spouse" includes a spouse in respect of whom an application for support is made under this section.

Conduct (9) The obligations to provide support for a spouse under this section exist without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

Dependant Support

Obligation of child to support parent 32. (1) A child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.

Obligation of parent to support child (2) A parent has an obligation to provide support, in accordance with need, for his or her child who is not a minor and who is unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents.

Obligation of grandchild to support grandparent (3) A grandchild who is not a minor has an obligation to provide support, in accordance with need, for his or her grandparent, to the extent that the grandchild is capable of doing so, where

set aside or varied by a court or agreement.

Effect of filing	(3) A provision for support contained in a domestic contract that is filed in accordance with subsection (2) may be	5
	(a) enforced as if it were an order of the court in which it is filed;	
	(b) varied under section 38 or increased under section 39, as if it were an order of the court in which it is filed; or	10
	(c) set aside under subsection (1).	
Effect of waiver	(4) Subsection (2) and paragraphs (3)(a) and (c) apply notwithstanding an agreement to the contrary.	15
Application to existing domestic contracts	(5) Subsections (2), (3) and (4) apply to a domestic contract made before the day on which this section comes into force.	20
Application to existing arrears	(6) Paragraph (3)(a) applies to arrears accrued before the day on which this section comes into force.	25
Application - adding third party	35. In an application under subsection 31(1) or 33(1), the respondent may add as a third party another person who may have an obligation to provide support to the spouse or dependant.	30
Powers of court	36. (1) In an application under subsection 31(1) or 33(1), the court may make an order	35
	(a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;	40
	(b) requiring that a lump sum be paid or be held in trust;	
	(c) requiring that property be transferred to or in trust for or vested in the spouse, whether absolutely, for life or for a term of years;	45
	(d) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the benefit of the spouse or dependant;	50
	(e) requiring that support be paid in respect of any period before the date of the order;	
	(f) requiring payment to the Minister responsible for the <i>Social Assistance Act</i>	55

previous year, as published by Statistics Canada.

Effect of divorce proceeding	37. (1) Subject to subsections (2) and (3), where an action for divorce is commenced under the <i>Divorce Act</i> , any application for support under this Part that is brought by or on behalf of a party to the action and that has not been adjudicated is stayed.	5
Leave to continue separately	(2) The Supreme Court may grant leave for the application under this Act referred to in subsection (1) to be continued separately from the action for divorce.	10 15
Arrears	(3) Where an order of support has been made under this Part before the commencement of an action for divorce under the <i>Divorce Act</i> , the Supreme Court may determine the amount of arrears owing under the order and make an order respecting that amount at the same time as it makes an order under the <i>Divorce Act</i> .	20
Where question of support not adjudicated	(4) Where a marriage is terminated by divorce or judgment of nullity and the question of support is not adjudicated in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms.	25 30
Application to vary order	38. (1) The following persons may apply to the court that made an order under this Part for variation of the order: (a) a spouse, dependant or respondent named in the order; (b) a parent of a dependant named in the order, where a parent is required to provide support for the dependant under the order; (c) a personal representative of a respondent referred to in paragraph (a); (d) the Minister responsible for the <i>Social Assistance Act</i> , where assistance has been requested, is being provided or has been provided under that Act for the support of a spouse named in the order.	35 40 45
Powers of court	(2) Where the court is satisfied that there has been a material change in the circumstances of the spouse, dependant or respondent or of a person who has an obligation under section 32 to provide support to the dependant, or that evidence not available on the previous hearing has become available, the court	50 55

Application of sections 37 to 39 to previous orders	40. Sections 37 to 39 also apply to orders for maintenance made under the <i>Domestic Relations Act</i> or the <i>Maintenance Act</i> before the day on which this section comes into force and to orders made in proceedings commenced under either of those Acts before the day on which this section comes into force.	10
Order restraining depletion of property	41. The Supreme Court may, on application, make an order restraining the depletion of a respondent's property that would impair or defeat a claim under this Part.	1
Order for sale	42. Where the Supreme Court makes an order requiring that payment under an order for support be secured by a charge on property or otherwise, the Supreme Court may, on application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the charge or other security.	2
Financial statement	43. In an application under section 31, 33 or 38, each party shall, in accordance with the regulations, serve on the other and file with the court a financial statement.	3
Order for return by employer	44. (1) In an application under section 31, 33 or 38, the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding 12 months.	3
Return as evidence	(2) A return purporting to be signed by an employer is admissible in evidence without proof of the signature of the employer and, in the absence of evidence to the contrary, is proof of its contents.	4
Order for access to information	(3) Where, on application brought by notice of motion, it appears to the court that, for the purpose of bringing an application under section 31, 33 or 38, the proposed applicant needs to determine or confirm the whereabouts of the proposed respondent, the court may order any person or public body to provide the court with any information shown on a record in the possession or control of the person or public body that indicates the proposed respondent's place of employment, address or location.	4

PART IV

DOMESTIC CONTRACTS

Definitions	48. In this Part,	5
	"cohabitation agreement" means an agreement entered into under section 50;	
	"domestic contract" means a cohabitation agreement, marriage contract, parental agreement or separation agreement;	10
	"marriage contract" means an agreement entered into under section 49;	15
	"parental agreement" means an agreement entered into under section 52;	
	"separation agreement" means an agreement entered into under section 51.	20
Marriage contract	49. (1) Persons who are married to each other or intend to marry may enter into an agreement in which they agree on their respective rights and obligations under the marriage or on separation, on the annulment or dissolution of the marriage or on death, including,	25
	(a) ownership in or division of property;	30
	(b) support obligations;	
	(c) the right to direct the education and moral training of their children, but not the right to custody of, access to and guardianship of the estates of their children; and	35
	(d) any other matter in the settlement of their affairs.	
Unenforceable provisions in marriage contract	(2) A provision in a marriage contract purporting to limit	40
	(a) a spouse's rights under Part II, or	
	(b) a spouse's right to custody of, access to and guardianship of the estates of their children,	45
	is unenforceable.	
Cohabitation agreement	50. (1) Persons who are cohabiting or intend to cohabit may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or on ceasing to cohabit or on death, including	50
	(a) ownership in or division of property;	55

Capacity of minor,	(2) A minor has capacity to enter into a domestic contract, subject to the approval of a court, which may be given before or after the minor enters into the contract.	5
Contracts subject to best interests of child	54. (1) In the determination of a matter respecting the support for, education of, moral training of, custody of, access to or guardianship of the estate of a child, the court may disregard any provision in a domestic contract pertaining to the matter where, in the opinion of the court, it is in the best interests of the child to do so.	10
Chastity provisions unenforceable	(2) A provision in a domestic contract to take effect on separation providing that any right of a party is dependent on remaining chaste is unenforceable, but this subsection shall not be construed to affect a contingency on marriage or cohabitation with another.	15 20
Effect of chastity provisions	(3) A provision in a domestic contract made before the coming into force of this section providing that any right of a party is dependent on remaining chaste shall be given effect as a contingency on marriage or cohabitation with another.	25
Setting aside domestic contract	(4) A court may, on application, set aside a domestic contract or a provision in it <ul style="list-style-type: none"> (a) where a party failed to disclose to the other party significant assets, or significant debts or other liabilities, existing when the domestic contract or provision was made; (b) where a party did not understand the nature or consequences of the domestic contract or provision; or (c) otherwise in accordance with the law of contract. 	30 35 40
Application of subsection (4)	(5) Subsection (4), applies notwithstanding any agreement to the contrary.	45
Incorporation of contract in order	55. A provision in a domestic contract in respect of a matter that is dealt with in this Act may be incorporated in an order made under this Act.	50
Contract prevails	56. Where there is a conflict or inconsistency between a provision of a domestic contract and a provision of this Act, the domestic contract shall prevail to the extent of the conflict or inconsistency unless this Act provides otherwise.	55

Consent to act	(2) The court shall only appoint a person who (a) has consented to act as mediator; and (b) has agreed to file a report with the court within the period of time specified by the court.	5
Duty of mediator	(3) The mediator shall confer with the parties, and with the children if the mediator considers it appropriate to do so, and shall endeavour to obtain an agreement between the parties.	10
Full or limited report	(4) Before entering into mediation, the parties shall decide whether (a) the mediator is to file a full report on the mediation, including anything that he or she considers relevant to the matter specified for mediation; or (b) the mediator is to file a limited report that sets out only the agreement reached by the parties or states only that the parties did not reach agreement.	15 20
Filing and copies of report	(5) The mediator shall file with the clerk of the court a full or limited report, as the parties have decided, and shall give a copy to each of the parties.	25
Admissions, etc., in the course of mediation	(6) Where the parties have decided that the mediator is to file a limited report, no evidence of anything said or of any admission or communication made in the course of the mediation is admissible in any proceeding, except with the consent of all parties to the proceeding in which the mediator was appointed.	30 35
Payment of fees and expenses	(7) The court shall require the parties to pay the mediator's fees and expenses and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay.	40

Restraining Order 45

Restraining order	61. (1) On application, a court may (a) make an order restraining a person who is the applicant's spouse or former spouse or the parent, or a person who claims to be the parent, of children in the applicant's lawful custody from (i) molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or (ii) communicating with the applicant or children, except as the order	50 55
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Procedure

Application of Rules of the Supreme Court	64. The Rules of the Supreme Court apply to the proceedings under this Act except where they are inconsistent with this Act.	5
Commencement of application	65. (1) An application under this Act shall be commenced by originating notice.	10
Joinder of proceedings	(2) An application under this Act may be made in the same proceeding as an application under the <i>Children's Law Act</i> or in a separate proceeding.	15
Application or response by minor	(3) A minor who is a spouse may make an application under this Act without a next friend and may respond without a guardian <i>ad litem</i> .	20
Adjournment of application	66. (1) Where, in an application under this Act, it appears to the court that it is necessary or desirable for the appropriate determination of the matters in issue to have other matters determined first or simultaneously, the court may adjourn the application until such other application is brought or determined as the court considers appropriate.	25
Application for custody	(2) The court may adjourn an application for support until an application for custody or child support under the <i>Children's Law Act</i> has been determined.	30
Proceedings in one court	67. (1) Where an application has been made to a court under this Act, a party to the application may not make another application under this Act in respect of a matter in issue in the proceeding to another court having jurisdiction under this Act.	35
Exception	(2) Subsection (1) does not apply in respect of an application to the Supreme Court for an order under subsection 37(2) or (3) or section 41.	40
Transfer of proceeding	(3) A court may order that a proceeding be transferred to another court having jurisdiction under this Act where, in the opinion of the court, the other court is more appropriate to determine the matters in issue that should be determined at the same time.	45
Where transfer to Supreme Court required	(4) Where a party to an application made under this Act to the Territorial Court advises the Territorial Court that he or she wishes to apply for an order referred to in paragraph 36(1)(b), (c), (g), (h) or (i) the Territorial Court shall order that the	50
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property from the application of section 5 of this Act; and
(b) shall be read with such modifications as the circumstances require.

Extension of limitation period (3) The limitation period set out in paragraph 7(3)(b) does not expire until six months after this subsection comes into force.

Application of section 23 (4) Section 23 does not apply in respect of a proceeding to realize on a lien, encumbrance or execution, or to exercise a forfeiture, against property that is a family home, where the proceeding was commenced before the day on which this subsection comes into force.

Coming Into Force

Coming into force 73. This Act or any portion of this Act comes into force on a day or days to be fixed by order of the Commissioner.

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