**FAMILY LAW LITIGATION PROCESS**

**Application filed**

File **Continuing Records**: (1) Endorsements Volume and (2) Documents Volume

**Respondent Answer**

Must serve on every party and file within 30 days of being served (or 60 days if outside Canada/US)

**Applicant Reply**

May file 10 days after being served with an answer; often have extension on consent or from court

*While all that* ⇧ *is going on… have this* ⇩*going on too…*

**Family Court / SCJ (if no family branch)**

**Fast Track Standard Track**

* Custody and access – Property
* Support – Divorce

wait until respondent files answer before booking a case conference.

If want conference date now, most courts will allow serving and filing a **conference notice**, conference not held until at least 6 weeks

Court Date Automatically Set

**Ontario Court of Justice**

* Custody and access
* Support
* Child protection
* Adoption

**First Appearance Court with clerk**

**Dispute Resolution Officer Hearing (only in GTA) – may occur after FIS**

* where a party seeks to change a final order on parenting or financial issues

**Family Information Session (FIS)**

* If there are claims other than a divorce (and costs) or the incorporation of the terms of an agreement or prior court order, litigants must attend FIS
* Party must provide a certificate that they have attended an FIS, to take any further step in the case
* Separate dates are given for applicants and respondents

**Case Conference**

* Must complete where an answer is filed, for a motion to change an order or agreement, in child protection case, may be requested by a party or court.
* No motion may be heard and no notice of motion may be served until case conference is complete
* Applicant, or party requesting conference, must file brief no later than 7 days before conference. Other party must file no later than 4 days before case conference – not part of continuing record
* If temporary settlement is reached at the case conference, the parties often agree to move directly to a settlement conference (Without motions) , which takes place 4-8 weeks later

**Motion**

* Requires notice, affidavit and evidence relied on. Moving party must serve material no later than 4 days before motion date and file documents in court no later than 2 days before with confirmation
* In rare situations may have without notice motions – 3.7.1
* Form 14B Motions for procedural, uncomplicated or unopposed matters

**Settlement Conference**

* Usually held a month after motion. Presided over by case management judge (not trial judge)

**Trial Management Conference**

* Conducted month before trial . Presided over by case management judge, trial judge, or a random
* Part or all of the settlement conference may be combined with the trial management conference
* Briefs – same as case conference, but there form part of continuing records

**Trial**

* Applicant trial record 30 days before the start of the trial

**APPEALS**

**FROM OCJ**: no leave heard by one judge of the SCJ

* Final order: must serve notice of appeal within 30 days of the order and file in SCJ within 20 days
* Temporary order: must serve and file notice within 7 days from order. Unless order is under the Child and Family Services Act, notice of appeal can be served within 30 days of order.

**FROM SCJ**

* Final and amount in issue is more than $50,000 = appeal to OCA, no leave required, notice of appeal must be filed within 30 days of making the order
* Final and amount in issue is less than $50,000 = appeal to Div Crt, no leave required, notice of appeal must be filed within 30 days of making the order
* Temporary order = appeal to Div Crt, must seek leave, notice of appeal must be filed within 7 days

**Filing Materials**

* Appellant must perfect the appeal by filing appeal record and factum within 30 days
  + If transcript is required, appellant appeal record and factum must be served within 60 days from date of receiving notice that evidence has been transcribed
  + If no transcript is required, appellant appeal record and factum must be served within 30 days from filing of notice of appeal
* Respondent’s appeal record and factum served on the appellant and any other person entitled to be heard on the appeal and filed within 60 days from being served with the appellant’s materials

**Court of Appeal**

* May have Voluntary Pre-Hearing Conference
* Appeal should be heard within 3 months usually

***DIVORCE ACT* PROCEEDINGS –**

**Divorce proceeding** either or both spouses seek a divorce alone or together with a child support order, spousal support order, or custody order.

* Court has jurisdiction if either spouse has been ordinarily resident in the province for at least one year immediately preceding the commencement

**Corollary relief proceeding** either or both former spouses seek a child support order, spousal support order, or a custody order. Allows parties to divorce at an earlier stage and deal with corollary issues later

* Court has jurisdiction If either former spouse is ordinarily resident in the province at the commencement of the proceeding or both former spouses accept the jurisdiction of the court
* No jurisdiction following a valid divorce in a foreign jurisdiction

**Variation proceeding** either or both former spouses seek a variation order that varies, rescinds, or suspends, prospectively or retroactively, a support order or a custody order or any provision thereof

* Court has jurisdiction If either former spouse is ordinarily resident in the province at the commencement of the proceeding or both former spouses accept the jurisdiction of the court

**Custody and Access Proceedings –**

|  |  |
| --- | --- |
| Act | *Who Can Apply* |
| *Divorce Act* | Married and seeking divorce or divorced & third party with leave |
| *Children’s Law Reform Act* | Unmarried or those not seeking a divorce & third party as of right |

**Child Support –**

|  |  |
| --- | --- |
| Act | *Who Can Apply* |
| *Divorce Act* | Parents are divorcing or have divorced |
| Family Law Act | Parents not divorcing or not married & Gov agency paying benefits |

**Spousal Support –**

|  |  |
| --- | --- |
| Act | *Who Can Apply* |
| *Divorce Act* | Married or divorced spouse may apply. |
| Family Law Act | Married or have entre into a marriage that is voidable or void  Unmarried who have cohabitated for three years  Unmarried in relation of some permanence with child (natural or adoptive) & government agency if spouse is receiving social assistance |

**Equalization Claim –**

* Only married or formerly married spouses are granted rights under Family Law Act (Part I & II)

**Equalization Payment**: ½ (spouse with greater net family property – spouse with lesser net property property)

**Individual Spouses Net Family Property** = Net Worth on Valuation Date – Net Worth on Date of Marriage\*

\* *Matrimonial home*: if spouse comes into marriage with a home that is also the matrimonial home at valuation date, neither the home nor any debts related to the acquisition of or significant improvement to the home owing at the date of marriage are included in the calculation of the date of marriage value.

**Exclusions**: property is included in assets but then subtracted from net family property only if it can be traced on valuation date

* Property received as a gift or inheritance from a third person AFTER marriage (does not apply to spousal gifts) unless it becomes or traced into matrimonial home. Value deducted is on date of valuation
* Property received as gift or inheritance BEFORE marriage, value deducted is on date of marriage (so any increase in value not sheltered)

**WHAT IS “PROPERTY”/LIABILITY**

* Pensions (except WSIB). Pro rata method (years of marriage during membership divided by years of membership)
* Stock options earned before break down. Valuated using Black-Scholes out of money method unless everyone agrees on intrinsic value
* Trust interests
* Costs of disposition of capital assets that will be incurred eventually
* Contingent liabilities (i.e. guarantees of loans or mortgages, or outstanding lawsuits)

**Ownership**

* Property is determined by legal ownerships (so if joint, each gets half the value – even if one largely paid for it)
* Can argue constructive and resulting trusts (unless did it to assert another purpose such as defeat creditors)

**Time Frame to bring claim**

* Absent an order for an extension of time, a claim for equalization cannot be brought after the earliest of six years after separation, two years after a divorce is granted, or six months after the first spouse’s death.

**Unconsionability**

* Extremely rare but court can award more or less than the difference, which includes up to the full net property or nothing
* Rare but may decrease equalization owed for decrease in value after v-day when it’s not destructive conduct and not just a market decline