

# CONSOLIDATION OF FAMILY LAW ACT

S.N.W.T. 1997,c.18

In force November 1, 1998: SI-015-98

*(Current to: April 20, 2006)*

## **AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**

S.N.W.T. 1998,c.17

S.N.W.T. 1999,c.5

## **AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:**

S.N.W.T. 1998,c.34

In force April 1, 1999

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## FAMILY LAW ACT

### INTERPRETATION

#### Definitions

**1.** (1) In this Act,

"clerk of the court" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier du tribunal*)

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

"court" means the Nunavut Court of Justice; (*tribunal*)

"domestic contract" means a domestic contract as defined in Part I; (*contrat familial*)

"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 right under this Act, or
  - (c) have cohabited outside marriage, if they
    - (i) have cohabited for a period of at least two years, or
    - (ii) have cohabited in a relationship of some permanence and are together the natural or adoptive parents of a child.
- (*conjoint*)

#### Polygamous marriages

(2) In the definition of "spouse", a reference to marriage includes a marriage that is actually or potentially polygamous, if it was celebrated in a jurisdiction whose system of law recognizes it as valid. S.N.W.T. 1998,c.34,Sch.C,s.12(2).

### PART I

#### DOMESTIC CONTRACTS

#### Definitions

**2.** In this Part,

"cohabitation agreement" means an agreement entered into under section 4; (*accord de cohabitation*)

"domestic contract" means a cohabitation agreement, marriage contract, parental agreement, separation agreement or an agreement or contract deemed to be a domestic contract under section 13; (*contrat familial*)

"marriage contract" means an agreement entered into under section 3; (*contrat de mariage*)

"parental agreement" means an agreement entered into under section 6; (*accord parental*)

"separation agreement" means an agreement entered into under section 5. (*accord de séparation*)

#### Marriage contract

**3.** (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,

- (a) ownership in or division of property;
- (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
- (d) any other matter in the settlement of their affairs.

#### Unenforceable provision in marriage contract

(2) A provision in a marriage contract purporting to limit a spouse's right to custody of, access to and guardianship of the estates of their children is unenforceable.

#### Cohabitation agreement

**4.** (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

- (a) ownership in or division of property;
- (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
- (d) any other matter in the settlement of their affairs.

#### Effect of marriage on agreement

(2) Where the parties to a cohabitation agreement marry each other, the cohabitation agreement shall be deemed to be a marriage contract.

#### Unenforceable provision in cohabitation agreement

(3) A provision in a cohabitation agreement purporting to limit a spouse's right to custody of, access to and guardianship of the estates of their children is unenforceable.

### Separation agreements

- 5.** Persons who cohabited and are living separate and apart or persons who are cohabiting and intend to live separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including
- (a) ownership in or division of property;
  - (b) support obligations;
  - (c) the right to direct the education and moral training of their children;
  - (d) the right to custody of, access to and guardianship of the estates of their children; and
  - (e) any other matter in the settlement of their affairs.

### Parental agreements

- 6.** Persons who are not spouses may enter into an agreement in which they agree on their respective rights and obligations in respect of a child, including
- (a) the payment of the expenses of a child's prenatal care and birth;
  - (b) support for a child;
  - (c) funeral expenses of the child or mother;
  - (d) the direction of the education and moral training of a child; and
  - (e) custody of, access to and guardianship of the estate of the child.

### Form of contract

- 7.** (1) A domestic contract, including an agreement to amend or rescind a domestic contract, is unenforceable unless it is made in writing, signed by the parties and witnessed.

### 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.

### Contracts subject to best interests of child

- 8.** (1) In the determination of a matter respecting the support, education, moral training or custody of a child, access to a child 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.

### 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.

### 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.

#### Setting aside domestic contract

- (4) A court may, on application, set aside a domestic contract or a provision in it
- (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.

#### Application of subsection (4)

- (5) Subsection (4) applies notwithstanding any agreement to the contrary.

#### Incorporation of contract in order

**9.** A provision of 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.

#### Contract prevails

**10.** A domestic contract dealing with a matter that is also dealt with in this Act prevails if the contract so provides, unless this Act provides otherwise.

#### Rights of donors of gifts

**11.** Where a domestic contract provides that specific gifts made to one or both parties may not be disposed of or encumbered without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of enforcement or amendment of the provision.

#### Contracts made outside the Territories

**12.** The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that

- (a) where the proper law of the contract is that of a jurisdiction other than the Territories, the contract is also valid and enforceable in the Territories if entered into in accordance with the law of the Territories;
- (b) sections 8 and 19 apply in the Territories to a contract where the proper law of the contract is that of a jurisdiction other than the Territories; and
- (c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of, access to or guardianship of the estates of children is not enforceable in the Territories.

#### Application of Act to existing contracts

**13.** (1) An agreement or contract that is validly made and enforceable before the coming into force of this section shall be deemed to be a domestic contract for the purpose of this Act to the extent that it relates to any matter that is provided for in this Act.

#### Contracts entered into before commencement of section

(2) Where an agreement or contract that relates to any matter that is provided for in this Act is entered into before the day on which this section comes into force and,

- (a) the agreement or contract or any part of it would have been a valid domestic contract if entered into on or after the day on which this section comes into force, and
- (b) the agreement, contract or part is entered into in contemplation of the coming into force of this section,

it is not invalid for the reason only that it was entered into before that day.

#### Property transfers

(3) If property is transferred, under an agreement or understanding reached before the day this section comes into force, between spouses who are living separate and apart, the transfer is effective as if made under a domestic contract.

## PART II

### SUPPORT OBLIGATIONS

#### Definitions

**14.** (1) In this Part,

"dependent parent", in relation to a particular child, means a parent of the child to whom the child has an obligation to provide support under this Part; (*père ou mère à charge*)

"parent", in relation to a particular child, includes a person who stood in the place of a parent, except under an arrangement where the child was placed for valuable consideration in a foster home by a person having lawful custody. (*père ou mère*)

#### Breakdown of spousal relationship

(2) For the purposes of this Part, the breakdown of a spousal relationship is deemed to have occurred if the spouses are living separate and apart at the time an application is brought for an order for support under section 16 and immediately preceding the determination of the application.

### Spousal Support

#### Obligations during spousal relationship

**15.** (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.

#### Obligations on breakdown of spousal relationship

(2) On the breakdown of a spousal relationship, the economic advantages and disadvantages arising from the spousal relationship 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.

#### Order for support

**16.** (1) A court may, on application, order a person to provide support for his or her spouse and determine the amount and duration of such support.

#### 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 *Social Assistance Act*, where assistance has been requested, is being provided or has been provided under that Act for the spouse's support.

#### Obligations

- (3) An application for an order for the support of a spouse may be made
- (a) during the spousal relationship, on the basis of the obligation set out in subsection 15(1); and
  - (b) on the breakdown of the spousal relationship, on the basis of the obligation set out in subsection 15(2).

#### Objectives of order on breakdown

- (4) 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.

#### Consideration on breakdown

(5) In determining the amount and duration of support in relation to the objectives set out in subsection (4), the court shall consider all the circumstances of the parties, including

- (a) the effect of the responsibilities assumed during cohabitation by each spouse on his or her earning capacity;
- (b) any contribution made by a spouse to the earning capacity or the realization of the career potential of the other spouse, including any housekeeping, child care or other domestic function performed by the spouse for the family;
- (c) the effect on a spouse's earning capacity and career development of custody of a child of the spouses;
- (d) the current assets and means of each spouse;
- (e) the assets and means that each spouse is likely to have in the future;
- (f) the age and physical and mental health of each spouse; and

- (g) the desirability of a spouse remaining at home to care for a child of the spouses.

#### Relevance of new spousal relationship

(6) In determining the amount and duration of support in relation to the objectives set out in subsection (4), the court shall not consider the economic consequences of any new spousal relationship entered into with a third person by either spouse after they ceased to cohabit, unless the court is of the opinion that it would be unconscionable not to do so.

#### Objectives of order where economic hardship

(7) Where a spouse suffers economic hardship arising from the breakdown of the spousal relationship that is not adequately relieved by orders made under Parts III and IV and that would not be adequately relieved by an order for support made solely on the basis of the objectives referred to in subsection (4), an order for support should also

- (a) make fair provision to assist the spouse to become able to contribute to his or her own support; and
- (b) otherwise assist in relieving the economic hardship.

#### Considerations where need or economic hardship

(8) In determining the amount and duration of support in relation to the objectives set out in subsection (7), the court shall consider all the circumstances of the parties, including

- (a) the amount required by the spouse seeking support to achieve subsistence;
- (b) the current assets and means of each spouse;
- (c) the assets and means that each spouse is likely to have in the future;
- (d) the capacity of the spouse seeking support to contribute to his or her own support;
- (e) the capacity of the spouse from whom support is sought to provide support;
- (f) the measures available for the spouse seeking support to become able to provide for his or her own support and the length of time and cost involved to enable the 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 of a spouse remaining at home to care for a child of the spouses; and
- (l) any other legal right to support of the spouse seeking support, other than out of public money.

#### Duration of support for economic hardship

(9) The duration of support determined in relation to the objectives set out in subsection (7) may not be for an indefinite period, but only for such limited period as the court considers appropriate.

#### Conduct

(10) The obligations to provide support for a spouse under section 15 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.

### Dependent Parent Support

#### Obligation of child to support parent

**17.** (1) A child who has attained the age of majority has an obligation to provide support, in accordance with need, for his or her parent to the extent that the child is capable of doing so, where the parent

- (a) cared for or provided support for the child over a significant period of time, including any period during which care or support was provided by the parent after the child attained the age of majority; and
- (b) is unable to support himself or herself.

#### Exception

(2) This section does not impose an obligation on a child who has attained the age of majority to provide support for his or her parent where the child is unable to do so out of his or her own property or by means of his or her labour.

#### Order for support of dependent parent

**18.** (1) A court may, on application, order a child who has attained the age of majority to provide support for any of his or her dependent parents and determine the amount and duration of such support.

#### Applicants

(2) An application for an order for the support of a dependent parent may be made by the dependent parent.

#### Determination of amount

(3) In determining the amount and duration of support in relation to need, the court shall consider all the circumstances of the parties, including

- (a) the length of time, before and after the child attained the age of majority, that the dependent parent cared for or provided support for the child;
- (b) any other legal right to support of the dependent parent;
- (c) the current assets and means of each of the parties;

- (d) the assets and means that each of the parties is likely to have in the future;
- (e) the capacity of the dependent parent seeking support to contribute to his or her own support;
- (f) the capacity of the child to provide support;
- (g) the age and physical and mental health of each of the parties; and
- (h) any other legal obligation of the child to provide support for another person.

### General

#### Setting aside provision in domestic contract

**19.** The court may set aside a provision respecting support in a domestic contract and may determine and order support for a spouse in an application under subsection 16(1) notwithstanding that the domestic contract may contain an express provision excluding the application of this section, where

- (a) the provision results in unconscionable circumstances;
- (b) the provision is in respect of a spouse who qualifies for an allowance for support out of public money; or
- (c) there is, at the time the application is made, a default of at least three months duration in making a full payment of support under the domestic contract.

#### Application - adding third party

**20.** In an application under subsection 16(1) or 18(1), the respondent may add as a third party another person who may have an obligation to provide support to the spouse or dependent parent.

#### Powers of court

**21.** (1) In an application under subsection 16(1) or 18(1), the court may make an order

- (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;
- (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;
- (d) requiring that some of or all the money payable under the order be paid into court or to another appropriate person or agency for the benefit of the spouse or dependent parent;
- (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 *Social Assistance Act* of an amount in reimbursement for assistance provided to the spouse under that Act before the date of the order;

- (g) requiring that a spouse who has a policy of life insurance as defined in the *Insurance Act* designate the other spouse as the beneficiary irrevocably;
- (h) requiring that a spouse who has an interest in a pension plan or other benefit plan designate the other spouse as beneficiary under the plan and providing that the spouse may not change that designation;
- (i) requiring the securing of payment under the order by a charge on property or otherwise;
- (j) binding the estate of the person who has the obligation to provide support to the spouse or dependent parent; and
- (k) requiring that a person who is obliged to provide support for a dependent parent provide the dependent parent with adequate food, clothing, medical aid and lodging.

**(2) Repealed, S.N.W.T. 1998,c.34,Sch.C,s.12(3)(a).**

Assignment of support

(3) An order for support made under subsection 16(1) may be assigned to the Minister responsible for the *Social Assistance Act* where assistance is or will be provided to the spouse under that Act.

Indexing

- (4) In an order made under paragraph (1)(a), the court may
- (a) require that the amount payable be increased annually to offset inflation; and
  - (b) specify the day on which and the indexing factor by which the amount payable is to be increased.

Where day of increase or indexing factor not specified

(5) Where the court requires that an amount payable be increased annually, if the court does not otherwise specify,

- (a) the anniversary of the day on which the order was made shall be deemed to be the day on which the amount is to be increased; and
  - (b) the indexing factor for a given day shall be deemed to be the percentage change in the Consumer Price Index for Canada for prices of all items between that month preceding the month in which the day occurs and the same month in the immediately preceding year, as published by Statistics Canada.
- S.N.W.T. 1998,c.34,Sch.C,s.12(3)(a).

Effect of divorce proceeding

**22.** (1) Subject to subsections (2) and (3), where an action for divorce is commenced under the *Divorce Act*, 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.

#### Leave to continue separately

(2) The court may grant leave for the application under this Act referred to in subsection (1) to be continued separately from the action for divorce.

#### Arrears

(3) Where an order of support has been made under this Part before the commencement of an action for divorce under the *Divorce Act*, the 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 *Divorce Act*.

#### 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.

S.N.W.T. 1998,c.34,Sch.C,s.12(4)(a).

#### Application to vary order

**23.** (1) The following persons may apply to the court that made an order under this Part for variation of the order:

- (a) a spouse, dependent parent or respondent named in the order;
- (b) the Minister responsible for the *Social Assistance Act*, 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.

#### Powers of court

(2) Where the court is satisfied that evidence not available on the previous hearing has become available or that there has been a material change in the circumstances of the spouse, dependent parent or respondent or of a person who has an obligation under section 17 to provide support to the dependent parent, the court may

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
- (b) relieve the respondent from the payment of part of or all the arrears or any interest due on the arrears; and
- (c) make any other order under section 21 that the court considers appropriate after considering the circumstances referred to in subsection 16(5) or (8) or subsection 18(3), as the case may be.

#### Limitation on applications for variation

(3) No application for variation may be made within six months after the making of the order for support or the disposition of another application for variation in respect of the same order, except by leave of the court.

#### Existing orders - annual increase

**24.** (1) Where an order made under this Part does not require that the amount payable under the order be increased annually under subsection 21(4), the following persons may

apply to the court that made the order to have the amount payable increased annually in accordance with this section:

- (a) a spouse, dependant or respondent named in the order;
- (b) the Minister responsible for the *Social Assistance Act*, where assistance has been requested or is being provided under that Act for the support of a spouse named in the order.

#### Power of court

(2) The court shall, unless the respondent shows that his or her income, assets and means have not increased sufficiently to permit the increase, order that the amount payable be

- (a) increased on the day and by the indexing factor determined by the court; and
- (b) increased annually after the order is made on the anniversary of the day on which it is made and may specify the indexing factor by which the amount payable is to be increased.

#### Deemed indexing factor

(3) Where the court does not specify the indexing factor in an order under this section, the indexing factor shall be deemed to be the percentage change in the Consumer Price Index for Canada for prices of all items between that month preceding the month in which the order was made and the same month in the immediately preceding year, as published by Statistics Canada.

#### Application of sections 22 to 24 to previous orders

**25.** Sections 22 to 24 also apply to orders for maintenance made under the *Domestic Relations Act* and the *Maintenance Act* 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.

#### Financial statement

**26.** In an application under section 16, 18 or 23, each party shall serve on the other and file with the clerk of the court a financial statement.

#### Order for return by employer

**27.** (1) In an application under section 16, 18 or 23, 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.

#### 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.

#### 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 16, 18 or 23, the proposed applicant needs to determine or confirm the whereabouts of the proposed respondent, the court may order any person or public body in the Territories 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.

#### Where subsection (3) does not apply

(3.1) Subsection (3) does not apply in respect of

- (a) personal correspondence between the proposed respondent and a parent, child, spouse, brother or sister of that person; or
- (b) information that is subject to solicitor-client privilege.

#### Order respecting confidentiality

(3.2) Where a court makes an order under subsection (3), it may make any order with respect to the confidentiality to be maintained in connection with the information provided pursuant to that order that it considers appropriate.

#### Provision of information

(4) A person or public body ordered to make a written return or to provide information to the court under this section shall do so forthwith and the court may then give the return or information to such person or persons as the court considers appropriate.

#### Confidentiality

(5) The making of a written return or the giving of information in accordance with an order under this section shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.

#### Government bound

(6) This section binds the Government of the Northwest Territories.

#### Arrest of absconding debtor

**28.** Where an application is made under section 16, 18 or 23 and the court is satisfied that the respondent is about to leave the Territories and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Part, the court may issue a warrant for the respondent's arrest for the purpose of bringing him or her before the court.

#### Order restraining depletion of property

**29.** The 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.  
S.N.W.T. 1998,c.34,Sch.C,s.12(4)(b).

## Order for sale

**30.** Where the court makes an order requiring that payment under an order for support be secured by a charge on property or otherwise, the 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. S.N.W.T. 1998,c.34,Sch.C,s.12(4)(c).

## Pledging credit for necessities

**31.** (1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, unless his or her spouse has notified the third party that he or she has withdrawn the authority.

## Where persons jointly liable

(2) Where persons are jointly and severally liable under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

## Common law supplanted

(3) This section applies in place of the rules of common law by which a wife may pledge her husband's credit.

## Limitation period after separation

**32.** (1) No proceeding for an order for the support of a spouse may be brought under this Part more than two years after the day the spouses separate.

## Limitation period after default

(2) Where the spouses provided for support on separation in a domestic contract, subsection (1) does not apply, but no proceeding for an order for the support of a spouse may be brought after default under the domestic contract has subsisted for two years.

## PART III

## FAMILY PROPERTY

## Definitions

**33.** In this Part,

"commencement date" means, in respect of a spousal relationship, the earlier of the dates on which the spouses

- (a) were married, or
- (b) commenced cohabitation outside marriage for a period or in a relationship sufficient to establish their spousal relationship;  
(*date de début*)

"net family property" means an amount calculated under section 35; (*biens familiaux nets*)

"property" means any interest, present or future, vested or contingent, in real or personal property and includes

- (a) property over which a spouse has, alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself,
- (b) property disposed of by a spouse but over which the spouse has, alone or in conjunction with another person, a power to revoke the disposition or power to consume or dispose of the property in favour of himself or herself, and
- (c) in the case of a spouse's rights under a pension plan that have vested, the spouse's interest in the plan including contributions made by other persons; (*bien*)

"valuation date" means, in respect of a spousal relationship, the earliest of the following dates:

- (a) the date the spouses separate and there 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 in the circumstances described in subsection 36(3) that is subsequently granted,
- (e) the date on which one of the spouses dies leaving the other spouse surviving. (*date d'évaluation*)  
S.N.W.T. 1998,c.34,Sch.C,s.12(5).

#### Application of Part

**34.** This Part applies to property owned by spouses

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

#### Net family property calculation

**35.** (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

- (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.

#### 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:

- (a) property that is excluded from the spouse's net family property by domestic contract;
- (b) damages or a right to damages for personal injuries or other harm to the person or the part of a settlement that represents those damages;
- (c) property into which property referred to in paragraph (b) can be traced.

#### Excluded debts and other liabilities

(3) The value of a spouse's debts and other liabilities that are related to property described in subsection (2) is not included in the calculation of the spouse's net family property.

#### Onus of proving deduction or exclusion

(4) The onus of proving a deduction under subsection (1) or an exclusion under subsection (2) or (3) is on the person claiming it.

#### Time of valuation

(5) Where this section requires that a value be calculated as of a given date, it shall be calculated on that date,

- (a) if that date is the date of a spouse's death, as of the time immediately following the death of the spouse; and
- (b) in all other cases, as of the time of the close of business.

#### Equalization of net family properties

**36.** (1) When a divorce is granted or a marriage is declared a nullity, or when the spouses are separated and there is no reasonable prospect that they will resume cohabitation, the spouse whose net family property is the lesser of the two net family properties is entitled to an amount equal to one-half the difference in value between them.

#### Death of spouse

(2) Where, on the death of a spouse, the net family property of the deceased spouse exceeds the net family property of the surviving spouse, the surviving spouse is entitled to an amount equal to one-half the difference in value between them.

### Division of net family properties

(3) Where the spouses are cohabiting and there is a serious danger that one spouse may improvidently deplete his or her net family property, the other spouse may, on an application under section 38, have the difference in value between their net family properties divided and the entitlement to that amount determined by the court as if the spouses were separated and there were no reasonable prospect that they would resume cohabitation.

### 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 38 in respect of their spousal relationship.

### Effect of continued cohabitation

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

### Court may vary or award entitlement

(6) The court may, on an application under section 38, 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

- (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 to the care and upbringing of the children;
- (h) a substantial change, occurring after the valuation date, in the net family property of either spouse and the circumstances of the change;
- (i) a substantial decrease, occurring after the commencement date, in the value of property claimed in reduction of a spouse's net family property under paragraph 35(1)(b) or a substantial loss on the

- disposition of such property after the commencement date, and the circumstances of the decrease or loss; or
- (j) any other circumstance relating to the
  - (i) acquisition, disposition, preservation, maintenance, improvement or use of property, or
  - (ii) the acquisition, maintenance or disposition of debts or other liabilities.

#### Purpose

(7) The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the spousal relationship there is equal contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to the equalization of the net family properties, subject only to the variation of this entitlement, or to the award of a different entitlement, by the court under subsection (6).

#### Election where spouse dies leaving a will

**37.** (1) Where a spouse dies leaving a will, the surviving spouse shall elect to take under the will or to receive the entitlement under section 36.

#### Election on spouse's intestacy

(2) Where a spouse dies intestate, the surviving spouse shall elect to receive the entitlement under the *Intestate Succession Act* or to receive the entitlement under section 36.

#### Election on spouse's partial intestacy

(3) Where a spouse dies testate as to some property and intestate as to other property, the surviving spouse shall elect to take under the will and to receive the entitlement under the *Intestate Succession Act*, or to receive the entitlement under section 36.

#### Property outside estate

(4) A surviving spouse who elects to take under the will or to receive the entitlement under the *Intestate Succession Act*, or both in the case of a partial intestacy, shall also receive the other property to which he or she is entitled because of the deceased spouse's death.

#### Gifts in will

(5) Where a surviving spouse elects to receive the entitlement under section 36, 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 36.

#### Deemed disclaimer

(6) Where a surviving spouse elects to receive the entitlement under section 36, the spouse shall be deemed to have disclaimed the entitlement under the *Intestate Succession Act*.

#### Manner of making election

(7) 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 is, or letters of administration are, granted in respect of the deceased spouse's estate.

#### Deemed election

(8) A surviving spouse shall be deemed to have elected to take under the will or to receive the entitlement under the *Intestate Succession Act*, or both in the case of a partial intestacy, where he or she

- (a) does not file an election in accordance with subsection (7), unless the court, on application by the surviving spouse, orders otherwise; or
- (b) dies without filing an election before the expiry of the time referred to in subsection (7) or any further time allowed by the court under paragraph (a).

#### Priority of spouse's entitlement

(9) The spouse's entitlement under section 36 has priority over

- (a) the gifts made in the deceased spouse's will, if any, subject to paragraph (10)(a);
- (b) any other person's right to a share of the estate under the *Intestate Succession Act*; and
- (c) an order made against the deceased spouse's estate under the *Dependants Relief Act*, subject to subparagraph (10)(b)(ii).

#### Exceptions

(10) The spouse's entitlement under section 36

- (a) does not have priority over a gift by will made in accordance with a contract that the deceased spouse entered into in good faith and for valuable consideration, except to the extent that the value of the gift, in the court's opinion, exceeds the consideration; and
- (b) is subject to
  - (i) an order made under the *Children's Law Act* for the support of a child that binds the deceased spouse's estate, and
  - (ii) an order made under the *Dependant's Relief Act* against the deceased spouse's estate and in favour of a child of the deceased spouse.

#### Distribution within six months of death restricted

(11) No distribution shall be made in the administration of a deceased spouse's estate within six months after the day on which probate is, or letters of administration are, granted unless

- (a) the surviving spouse gives written consent to the distribution; or
- (b) the court authorizes the distribution.

#### Distribution after notice of application restricted

(12) No distribution shall be made in the administration of a deceased spouse's estate after the personal representative has received notice of an application under this Part unless

- (a) the applicant gives written consent to the distribution; or
- (b) the court authorizes the distribution.

#### Exception

(13) Subsections (11) and (12) do not prohibit reasonable advances to dependants, as defined in the *Dependants Relief Act*, of the deceased spouse for their support.

#### Extension of limitation period

(14) Where the court extends the time for a spouse's application under section 38 in respect of an entitlement under subsection 36(2), any property of the deceased spouse that is distributed before the date of the order and without notice of the application shall not be brought into the calculation of the deceased spouse's net family property.

#### Liability of personal representative

(15) Where

- (a) the personal representative makes a distribution that contravenes subsection (11) or (12),
- (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

(16) 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.

#### Court order where more than one former or surviving spouse

(17) Where a deceased person had more than one spousal relationship and more than one former or surviving spouse of the deceased person has

- (a) an entitlement under section 36,
- (b) an entitlement under the will of the deceased person,

- (c) an entitlement under the *Intestate Succession Act* in respect of the estate of the deceased person, or
- (d) both entitlements referred to in paragraphs (b) and (c), in the case of a partial intestacy,

the court may, on the application of a surviving spouse, former spouse or the personal representative of a deceased spouse, make any order or give any direction in respect of an election under section 37 that the court considers fair and equitable.

#### Application to court

**38.** (1) The court may, on the application of a spouse, surviving spouse, a former spouse or the personal representative of a deceased spouse, determine any matter respecting a spouse's entitlement under section 36.

#### Personal action and continuing by or against estate

(2) Entitlement under subsections 36(1), (2), (3) and (6) is personal as between the spouses except that

- (a) an application based on subsection 36(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 36(2) may be
  - (i) made or continued by a deceased spouse's estate, where the spouse, before his or her death, filed an election in accordance with section 37 to receive the entitlement under subsection 36(2), or
  - (ii) made against a deceased spouse's estate.

#### Limitation period

(3) An application based on subsection 36(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) two years after the day on which the spouses separate and there is no reasonable prospect that they will resume cohabitation; and
- (c) six months after the day on which probate is, or letters of administration are, granted for a deceased spouse's estate, where the application is brought against the estate.

#### Extension of limitation period

(4) The limitation period referred to in paragraph (3)(b) is deemed, in respect of married spouses, not to expire until six months after this subsection comes into force where the limitation period would otherwise expire before that day.

#### Statement of property

**39.** In an application under section 38, each party shall serve on the other and file with the clerk of the court, a statement disclosing particulars of

- (a) the party's property and debts and other liabilities

- (i) as of the commencement date,
- (ii) as of the valuation date, and
- (iii) as of the date of the statement;
- (b) the deductions that the party claims under subsection 35(1);
- (c) the exclusions that the party claims under subsection 35(2) and (3); and
- (d) all property that the party disposed of during the two years immediately preceding the date of the statement, or during the spousal relationship, whichever period is shorter.

#### Powers of court

**40.** (1) In an application under section 38, the court

- (a) may order
  - (i) that one spouse pay to the other spouse the amount to which the court finds that spouse to be entitled under this Part,
  - (ii) that security, including a charge on property, be given for the performance of an obligation imposed by the order,
  - (iii) that, if necessary to avoid hardship, an amount referred to in subparagraph (i) be paid in instalments during a period not exceeding 10 years or that payment of all or part of the amount be delayed for a period not exceeding 10 years, and
  - (iv) that, if appropriate to satisfy an obligation imposed by the order,
    - (A) property be transferred to or in trust for or vested in a spouse, whether absolutely, for life or for a term of years, or
    - (B) any property be partitioned or sold; and
- (b) in the circumstances described in subsection 37(17), may make any other order or give any direction that the court considers fair and equitable.

#### Financial information, inspections

(2) The court may, at the time of making an order under subsection (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.

#### 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.

### 10 year period

(4) Subsection (3) and section 66 do not permit the postponement of payment beyond the 10 year period mentioned in paragraph (1)(c).

### Determination of questions of title between spouses

**41.** (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 36, and the court may

- (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).

### 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.

### Operating business

**42.** (1) An order made under section 40 or 41 shall not be made so as to require or result in the sale of an operating business or so as to seriously impair its operation, unless there is no reasonable alternative method of satisfying the award.

### Share of profits or transfer of shares

(2) For the purposes of subsection (1), the court may

- (a) order that one spouse pay to the other spouse a share of the profits from the business; and
- (b) if the business is incorporated, order that one spouse transfer or have the corporation issue to the other spouse shares in the corporation.

### Orders for preservation

**43.** In an application under section 38 or 41, where the court considers it necessary for the protection of a spouse's interests under this Part, the court may make an order

- (a) restraining the depletion of the other spouse's property; and
- (b) for the possession, delivering up, safekeeping and preservation of the other spouse's property.

## Return of gift or property transferred for inadequate consideration

- 44.** (1) In an application under section 38, where the court is satisfied that
- (a) a spouse has, before or after the coming into force of this section,
    - (i) made a substantial gift of property to a third person, or
    - (ii) transferred property to a third person for less than adequate consideration,
  - (b) the spouse making the gift or transfer did so with the intention of diminishing, or defeating the enforcement of, the other spouse's entitlement under this Part,
  - (c) the donee or transferee accepted the gift or transfer when he or she knew or ought to have known that the gift or transfer was made with the intention of diminishing, or defeating the enforcement of, the other spouse's entitlement under this Part, and
  - (d) the gift or transfer was made not more than two years before the date on which either spouse commenced the application under section 38,

the court may do one or more of the following:

- (e) order the donee or transferee to transfer all or part of the property to either of the spouses;
- (f) give judgment in favour of the other spouse against the donee or transferee for an amount not exceeding
  - (i) the amount by which the gift or transfer diminishes the other spouse's entitlement under this Part, or
  - (ii) the amount by which the gift or transfer may make the other spouse's entitlement under this Part unenforceable, as the case may be;
- (g) include the value of the property given or transferred, less the value of any consideration received for that property, in the determination of the value of all property owned on valuation date by the spouse who made the gift or transfer, when calculating the net family property of that spouse under subsection 35(1);
- (h) make any order or give any direction ancillary to an order or a judgment made under paragraphs (e) and (f).

## Notice

(2) An order may not be made under subsection (1) unless the party making the application under section 38 has served the donee or transferee with a notice of the application that includes any allegation or claim that affects the donee or transferee.

## Deemed party

(3) A donee or transferee who is served with a notice under this section is deemed to be a party to the application under section 38 as a respondent with respect to any allegation or claim that affects the donee or transferee.

## Variation and realization of security

- 45.** Where the court has ordered security or charged a property with security for the performance of an obligation under this Part, the court may, on application,
- (a) vary or discharge the order; or
  - (b) on notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

## Resulting trust

- 46.** (1) Subject to subsections (2) and (3), the rule of law applying a presumption of a resulting trust shall be applied in questions of the ownership of property between spouses who are married as if they were not married.

## Property held in name of spouses as joint tenants

- (2) Where property is held in the name of married or unmarried spouses as joint tenants, it is proof, in the absence of evidence to the contrary, that the spouses are intended to own the property as joint tenants.

## Money deposited in name of both spouses

- (3) For the purposes of subsection (2), money on deposit in the name of both spouses shall be deemed to be held in the name of the spouses as joint tenants.

## Application

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

## Conflict of laws

- 47.** 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 IV

## FAMILY HOME

## Definitions

- 48.** In this Part,

"property" means real or personal property; (*bien*)

"registered" means registered under the *Land Titles Act*; (*enregistré*)

"rental premises" means a living accommodation or land for a mobile home used or intended for use as rental premises; (*logement locatif*)

"tenancy agreement" means a tenancy agreement as defined under the *Residential Tenancies Act*. (bail)  
S.N.W.T. 1998,c.34,Sch.C,s.12(5).

#### Application of Part

**49.** (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 became spouses within the meaning of this Act before, on or after the day on which this section comes into force; and
- (b) whether the family home was acquired before, on or after that day.

#### Binding provision

(3) This part binds

- (a) the Government of the Northwest Territories and its agents; and
- (b) a housing association and housing authority as defined in the *Northwest Territories Housing Corporation Act*.

#### Family home

**50.** (1) Every

- (a) property in which a person has an interest, or
- (b) rental premises that a person has a right to occupy under a tenancy agreement,

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.

#### Ownership of shares

(2) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to occupy a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection (1).

#### Residence on commercial land, etc.

(3) Where property that includes a family home is normally used for a purpose other than its use as a residence, the family home is only the part of the property that may reasonably be regarded as necessary to the use and enjoyment of the residence.

#### Right to possession

**51.** (1) Both spouses have an equal right to possession of a family home.

#### Nature and duration of right of possession

(2) Where only one of the spouses has an interest in a family home, the other spouse's right of possession is personal as against the spouse who has the interest and ends,

- (a) if the spouses are married, when they cease to be married, unless a domestic contract or a court order provides otherwise; or
- (b) if the spouses are not married and have ceased to cohabit, on the later of the following:
  - (i) such time as is provided in a domestic contract made no later than six months after the day on which the spouses ceased to cohabit;
  - (ii) such time as is provided in a court order made or applied for no later than six months after the day on which the spouses ceased to cohabit;
  - (iii) six months after the day on which the spouses ceased to cohabit.

#### Caveat on family home

##### **52.** Where

- (a) a certificate of title has been issued in respect of a family home, and
  - (b) either spouse has a registered interest in the family home,
- a right to possession of a family home under section 51 is deemed to be an interest or estate in land for the purposes of registering a caveat under the *Land Titles Act*.

#### Alienation of family home

##### **53.** (1) No spouse may dispose of or encumber an interest in a family home unless

- (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 domestic contract; or
- (c) a court order has authorized the transaction or has released the property from the application of this Part.

#### Setting aside transaction

(2) Where a spouse disposes of or encumbers an interest in a family home in contravention of subsection (1), the transaction may be set aside on an application under section 54, unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a family home.

#### Statement that property not a family home

(3) For the purpose of subsection (2), a statement by the person making the disposition or encumbrance or by a person referred to in subsection (4),

- (a) verifying that the person making the disposition or encumbrance is not, or was not, a spouse at the time of the disposition or encumbrance,
- (b) verifying that the person making the disposition or encumbrance is a spouse who is not separated from his or her spouse and that the

- property is not ordinarily occupied by the spouses as their family residence,
- (c) verifying that the person making the disposition or encumbrance is a spouse who is separated from his or her spouse and that the property was not ordinarily occupied by the spouses at the time of their separation as their family residence, or
- (d) verifying that the other spouse has released all rights under this Part by a domestic contract,

shall, unless the person to whom the disposition or encumbrance is made had notice to the contrary, be deemed to be sufficient proof that the property is not a family home.

#### Statement by attorney

(4) Where the disposition or encumbrance is made under a power of attorney, the statement referred to in subsection (3) may be made by the attorney of the person making the disposition or 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.

#### Exception

(6) This section does not apply in respect of an interest in a family home that is a right to occupy a rental premises under a tenancy agreement.

#### Powers of court

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

- (a) determine whether or not the property is a family home and if so, its extent;
- (b) authorize the disposition or encumbrance of the family home if the court finds that the spouse whose consent is required
  - (i) cannot be found or does not appear before the court,
  - (ii) is not capable of giving or withholding consent, or
  - (iii) is unreasonably withholding consent,
 subject to any conditions, including provision of other comparable accommodation or payment in place of it, that the court considers appropriate; and
- (c) set aside a transaction disposing of or encumbering an interest in the family home contrary to subsection 53(1), revert the interest or any part of it on the conditions that the court considers appropriate and give such directions as are necessary for these purposes.

#### Order for possession of family home

**55.** (1) Regardless of the ownership of a family home and its contents, and notwithstanding section 51, the court may, on application,

- (a) order the delivering up, safekeeping and preservation of the family home and its contents;
- (b) direct that one spouse be given exclusive possession of the family home or part of it for the period that the court directs and release other property that is a family home from the application of this Part;
- (c) direct a spouse to whom exclusive possession of the family home is given to make periodic payments to the other spouse;
- (d) direct that the contents of the family home, or any part of them,
  - (i) remain in the home for the use of the spouse given possession, or
  - (ii) be removed from the home for the use of a spouse or child;
- (e) order a spouse to pay for all or part of the repair and maintenance of the family home and of other liabilities arising in respect of it, or to make 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;
- (g) where a false statement is made in a statement referred to in subsection 53(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; and
- (h) set aside a provision in a domestic contract that limits a spouse's rights under this Part and may make an order or direction described in this section notwithstanding that the domestic contract may contain an express provision excluding the application of this section, where the provision that limits the spouse's rights under this Part results in unconscionable circumstances.

#### Possession of rental premises

(1.1) Where only one of the spouses has an interest in a family home and that interest is a right to occupy a rental premises under a tenancy agreement, a direction made by the court under paragraph (1)(b) giving exclusive possession of the family home to the spouse who is not a party to the tenancy agreement may not be for a period exceeding 90 days without the consent of the landlord, and during the period that the court directs, the spouse shall be deemed to be a tenant under the tenancy agreement and the landlord shall continue to have the rights granted under the *Residential Tenancies Act*.

#### Temporary order

(2) The court may, on application, make a temporary 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 all the circumstances of the parties, including

- (a) the best interests of the children affected;
- (b) any existing orders under Part III 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 not exceeding \$1,000, or to imprisonment for a term not exceeding 90 days or to both; and
- (b) in the case of a second or subsequent offence, to a fine not exceeding \$5,000, to imprisonment for a term not exceeding two years or to both.

#### Arrest without warrant

(5) A peace officer may arrest without warrant a person the peace officer believes on reasonable grounds to have contravened an order for exclusive possession.

#### Variation of possessory order

**56.** (1) On the application of a person named in an order made under paragraph 55(1)(a), (b), (c), (d) or (e) or his or her personal representative, where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

#### Variation of conditions of sale

(2) On the application of a person who is subject to an order containing conditions imposed under paragraph 54(b) or (c) or 55(1)(g) or his or her personal representative, where the court is satisfied that the conditions are no longer appropriate, the court may discharge, vary or suspend them.

#### Possession for 60 days after spouse's death

**57.** Notwithstanding subsection 51(2), a spouse who has no interest in a family home but is occupying it at the time of the other spouse's death, whether under an order for exclusive possession or otherwise, is entitled, for 60 days after the spouse's death, to retain possession, rent free, as against

- (a) the deceased spouse's estate; and
- (b) a person who, at the time of the deceased spouse's death, owns an interest in the family home as a joint tenant with the deceased spouse.

## PART V

### GENERAL

#### Mediation

##### Mediation

**58.** (1) On an application under this Act, the court may appoint a person selected by the parties to mediate any matter that the court specifies.

##### Consent to act

- (2) The court may 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.

##### 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.

##### 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.

##### 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.

##### Confidentiality of report

(5.1) On the filing of a report, the clerk of the court shall put it in a sealed packet or shall otherwise ensure that it is not available or made available to anyone other than the parties or the court for inspection, review or copying, unless otherwise ordered by the court.

##### 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.

### 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.

## Restraining Order

### Restraining order

- 59.** (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 provides; and
  - (b) require the person to enter into the recognizance that the court considers appropriate.

(2) **Repealed, S.N.W.T. 1998,c.34,Sch.C,s.12(3)(b).**

### Offence and punishment

- (3) Every person who contravenes a restraining order made under subsection (1) is guilty of an offence and is liable on summary conviction,
- (a) for a first offence, to a fine not exceeding \$1,000, to imprisonment for a term not exceeding 90 days or to both; or
  - (b) for each subsequent offence, to a fine not exceeding \$5,000, to imprisonment for a term not exceeding two years or to both.

### Arrest without warrant

(4) A peace officer may arrest without warrant a person the peace officer believes on reasonable grounds to have contravened a restraining order.  
S.N.W.T. 1998,c.34,Sch.C,s.12(3)(b).

## Contempt of Orders of the Court

### Contempt of orders of court

**60.** (1) In addition to its powers in respect of contempt, the court may punish a person for any wilful contempt of or resistance to its process or orders under this Act by imposing on the person a fine not exceeding \$5,000, a term of imprisonment not exceeding 90 days or both.

### Order for imprisonment

(2) An order for imprisonment under subsection (1) may be made conditional on default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently. S.N.W.T. 1998,c.34,Sch.C,s.12(6),(7).

## Registration of Orders

*Land Titles Act*

**61.** (1) An order made under this Act that affects real property in respect of which a certificate of title has been issued is registrable under the *Land Titles Act*.

*Personal Property Security Act*

(2) Where an order made under this Act affects personal property as defined in the *Personal Property Security Act*, a financing statement disclosing the contents of the order may be registered in the Personal Property Registry established by that Act.  
S.N.W.T. 1999,c.5,Sch.C,s.14.

## Procedure

## Application of Rules of the Supreme Court

**62.** The Rules of the Supreme Court apply to the proceedings under this Act except where they are inconsistent with this Act.

## Commencement of application

**63.** (1) An application under this Act shall be commenced by originating notice.

## Joinder of proceedings

(2) An application under this Act may be made in the same proceeding as an application under the *Children's Law Act* or in a separate proceeding.

## 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 *ad litem*.

## Adjournment of application

**64.** (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.

## Application for custody, child support

(2) The court may adjourn an application for support until an application in respect of custody or for support for a child under the *Children's Law Act* has been determined.

**65. Repealed, S.N.W.T. 1998,c.34,Sch.C,s.12(3)(c).**

## Extension of times

**66.** A court may, on application, extend the time specified in or under this Act where the court is satisfied that

- (a) there are apparent grounds for relief;

- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no person will suffer substantial prejudice by reason of the delay.

#### Interim order

**67.** (1) In a proceeding under this Act, the court may make such interim order as it considers appropriate.

#### Application for interim order

(2) An application for an interim order shall be made to the court in which the original proceeding was commenced.

#### Application to vary

**68.** An application to vary an order made under this Act shall be made to the court that made the order.

### Regulations

#### Regulations

**69.** The Commissioner, on the recommendation of the Minister, may make regulations

- (a) respecting the form of financial statement referred to in section 26, the form of warrant referred to in section 28 and the form of statement referred to in section 39;
- (b) prescribing the form of election referred to in subsection 37(7);
- (c) respecting orders for exclusive possession;
- (d) respecting restraining orders; and
- (e) respecting the procedure to be used in applications under this Act.

### TRANSITIONAL

#### Application of sections 36 to 38 and 57

**70.** (1) Sections 36 to 38 and section 57 do not apply where a spouse dies, leaving a surviving spouse, before the day this subsection comes into force.

#### Interpretation of existing agreements

(2) A written agreement validly made before the day this subsection comes into force that excludes a spouse's property from the application of section 27 of the *Matrimonial Property Act*,

- (a) shall be deemed to exclude that property from the application of section 36 of this Act; and
- (b) shall be read with such modifications as the circumstances require.

**REPEAL**

*Matrimonial Property Act*

**71. The *Matrimonial Property Act* is repealed.**

**COMING INTO FORCE**

**Coming into force**

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