

## MINUTES OF SETTLEMENT: TEN PRACTICE TIPS

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Courtesy of

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*With additional comments from  
ILA Presentation Team*



# Spot the problems (1)

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- “Since the parties share custody of the children, it is agreed that the mother will pay periodic “set-off” child support of \$1,129 starting next month.”



# A better approach:

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## Whereas:

- a. *The Applicant and Respondent share parenting time, within the meaning of s.9 of the Child Support Guidelines, of the children, **Sophia Bleu-Gray, born May 5 Year-7** and **James Bleu-Gray, born May 5, Year-7**;*
- b. *In determining the appropriate child support to be paid, **the parties have considered** the Table amounts for each parent, the increased costs of their shared custody arrangement (including appropriate housing, transportation, and the duplication of toys, equipment and clothes), and the condition, means, needs and other circumstances of each parent;*

# A better approach cont'd:

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c. The **Applicant's income is \$26,000** per year based on his/her 20-- income tax return; the corresponding Table Amount for two (2) children is \$391; and

d. The Respondent's income is **\$104,000 per year which is his/her 20-- projected income**; the corresponding Table Amount for two (2) children is \$1,520;

therefore:

(i) The **Applicant shall pay to the Respondent** table support in the amount of **\$391, starting May 1, 20--**, and on the first day of each following month thereafter;

(ii) The **Respondent shall pay to the Applicant** table support in the amount of **\$1,520 starting May 1, 20--**, and on the first day of each month following thereafter.



# Practice Points:

## Basics in any child support clause:

- Child's date of birth
- Child's full name
- Income level of parent and what it is based on (year? imputed?)
- Section under which support is being paid
- Where support is under section 9, consider how to phrase support amount where section 9 support so both can access CCB



# Practice Points:

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- Separate the narrative from what is being ordered
- Don't use the passive voice
- Can be done with preambles, such as what we just saw
- Or, with a separate section at the beginning setting out the assumptions on which the agreement is based
- Counsel should consider whether a separation agreement or companion document is required

# Practice Points:

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- **Additional Considerations:**

- Include a paragraph at the end of the Minutes that tells the reader and the Court which paragraphs will form part of the Order:
- "Paragraphs 1 – 10, 12,13, and 15 shall be incorporated into an Order of the Court. All paragraphs shall constitute a domestic contract between the parties under the *Family Law Act*.

# Spot the problems (2)

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“ The parties will share the Section 7 expenses pro rata, 62.5 : 37.5% in favour of the Applicant. Section 7 expenses include but are not limited to Sophia’s hockey, James’s soccer and reasonable dental checkups. Any other Section 7 expenses may be discussed at the relevant time with both parties acting reasonably.”





# A Better Approach:

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Based on their respective incomes for child support as set out in paragraph 8 of this Order, the Applicant shall pay 20 percent and the Respondent shall pay 80 percent of the following special of extraordinary expenses under section 7 of the *Child Support Guidelines*, which contributions shall be paid directly to the following third parties within thirty (30) days of receipt by the other party of the corresponding invoice(s):

# A Better Approach:

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- (a) North Toronto Hockey Association, for Sophia's registration and tournament fees, estimated to be \$1,600 in total for the 20--/20-- season;
- (b) Etobicoke Gymnastics Club, for James's registration, tournament fees and extra coaching, estimated to be \$2,200 for the 20--/20-- season; and
- (c) Dr. Jane Smith, for the uninsured portion of both children's regular dental check-ups, estimated to be \$400 per year.

The parties shall only contribute to any additional special or extraordinary expenses if the parties have consented to the expense in advance, in writing.

# Practice Points:

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- When setting out section 7 contributions, state what the percentages are based on
- Set out the mechanism by which the contribution will be paid
  - Upon presentation of invoice? Receipt?
  - To the other party?
  - To a third party service provider?



# Practice Points:

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- How will future s 7's be determined?
  - Consent mechanism?
- Avoid “agreements to agree” – ie “we’ll talk about it later” –
  - If there is provision for later discussion, what is the dispute resolution mechanism?

# Spot the problems (3)

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- “There will be spousal support paid forthwith to the Respondent of \$950 per month starting last January for approximately 132 months but with credit for all amounts paid to the date of these Minutes of Settlement and fully deductible/taxable to the payor.”





# A Better Approach:

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The Applicant-Mother shall pay to the Respondent-Father periodic spousal support of \$950 per month starting March 1, 2020, and on the first day of each following month, and ending forever on February 1, 2029. This term cannot be changed in any circumstances whatsoever. Further:

# A Better Approach:

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- a. Periodic payments made by the Applicant-Mother to the Respondent-Father between January 1, 2019 and February 28, 2020 totalling \$13,000 shall be deemed to have been paid and received under these Minutes of Settlement and subsections 56.1(3) and 60.1(3) of the *Income Tax Act*; and
- b. The Applicant-Mother shall deduct the payments in paragraphs 3.1 and 3.2 from her taxable income and the Respondent-Father shall include the payments in his taxable income.

# Practice Points:

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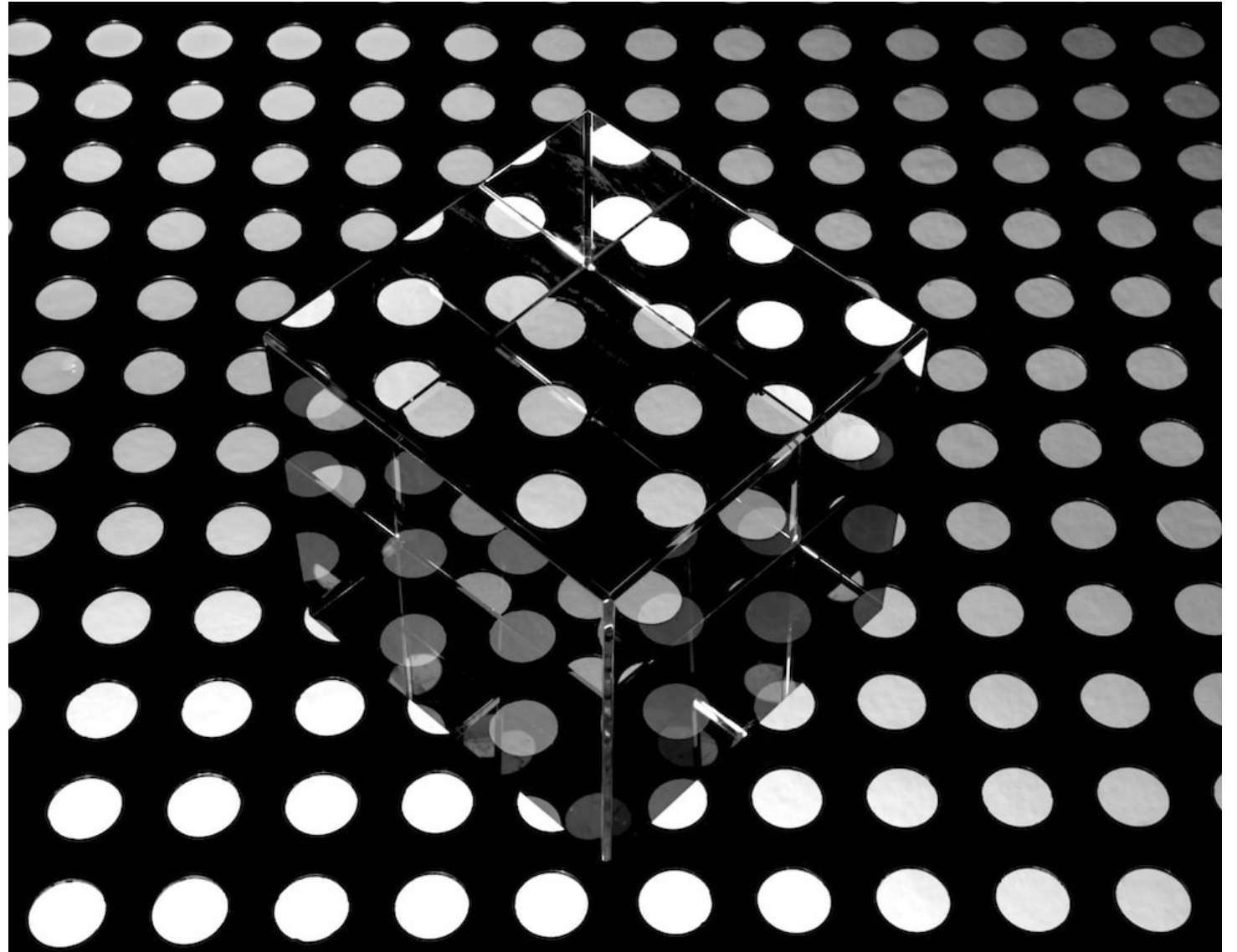
- Will versus shall; use active voice
- Who is paying whom?
- When exactly did the support commence?
- What exactly is the Applicant getting credit for?
- What will the tax treatment be? Who is deducting? Who is including?



# Spot the problems (4)

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The children will spend alternate March Breaks with each parent.



# A Better Approach:

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The parties shall share equally the holiday periods, on the terms set out herein:

a. **March Break:** Commencing in 2020, the children shall spend March Break with the Applicant Mother in even-numbered years and with the Respondent Father in odd-numbered years, from the Friday at the commencement of the break from school at 3:30 pm until the Sunday at the conclusion of the break from school at 5:00 pm.



# Practice Points:

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- Help parties reduce future conflicts:
  - Define your terms – what is March Break
  - Monday to Friday?
  - Include one or both weekends?
- When does the alternating pattern start?
- Who gets the first year?
- How you will settle any difference of opinion on parenting issues that comes up in the future? i.e., overlapping holidays



# Practice Points:

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## **Parenting Schedules generally:**

- When does the regular parenting schedule commence?
- What are the transition times in the regular schedule?
- Will the parenting schedule be reviewed? When and How?
- What happens on sick days? Snow days?
- Turn your mind to the right of first refusal
- Third party caregivers
- **Help your clients avoid conflict – be clear in your Minutes on what the agreement is**

# Practice Points continued

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- Be specific about which parent will be responsible for pick up and drop off. How will this plan be coordinated?
- Who will transport the children between homes? Who will pay for transportation?
- With respect to reviewing parenting schedule, how much notice will be required if a change is needed? (travel, social event, etc.)
- Children's social life – how will children spend time with friends?
- Children's belongings: will children have two sets of certain belongings? Who will purchase items for the children?
- Travel – will you and the other parent notify each other about plans to travel with your children? If so, how far in advance? Any restrictions??

## Resources

- <https://www.justice.gc.ca/eng/fl-df/parent/ppc-lvppp/index.html>
- <https://afccontario.ca/parenting-plan-guide-and-template/>



# Spot the problems (5)

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The Respondent will make an equalization payment of \$74,000 as soon as possible but within the next two weeks, otherwise interest will be due and owing in the usual fashion.



# A Better Approach:

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In full and final satisfaction of all claims under Part 1 of the *Family Law Act* including but not limited to equalization of the parties' respective net family property, the Respondent-Father **shall** within fifteen (15) days of the execution of these Minutes of Settlement **make a payment** to the Applicant-Mother of \$74,000 **by certified cheque delivered to her counsel**.

In the event of default, the Respondent-Father shall pay to the Applicant-Mother post-judgment interest on a monthly basis in accordance with the *Courts of Justice Act*, from and after the date of default until payment in full of the amount set out in this paragraph.



# Practice Points:

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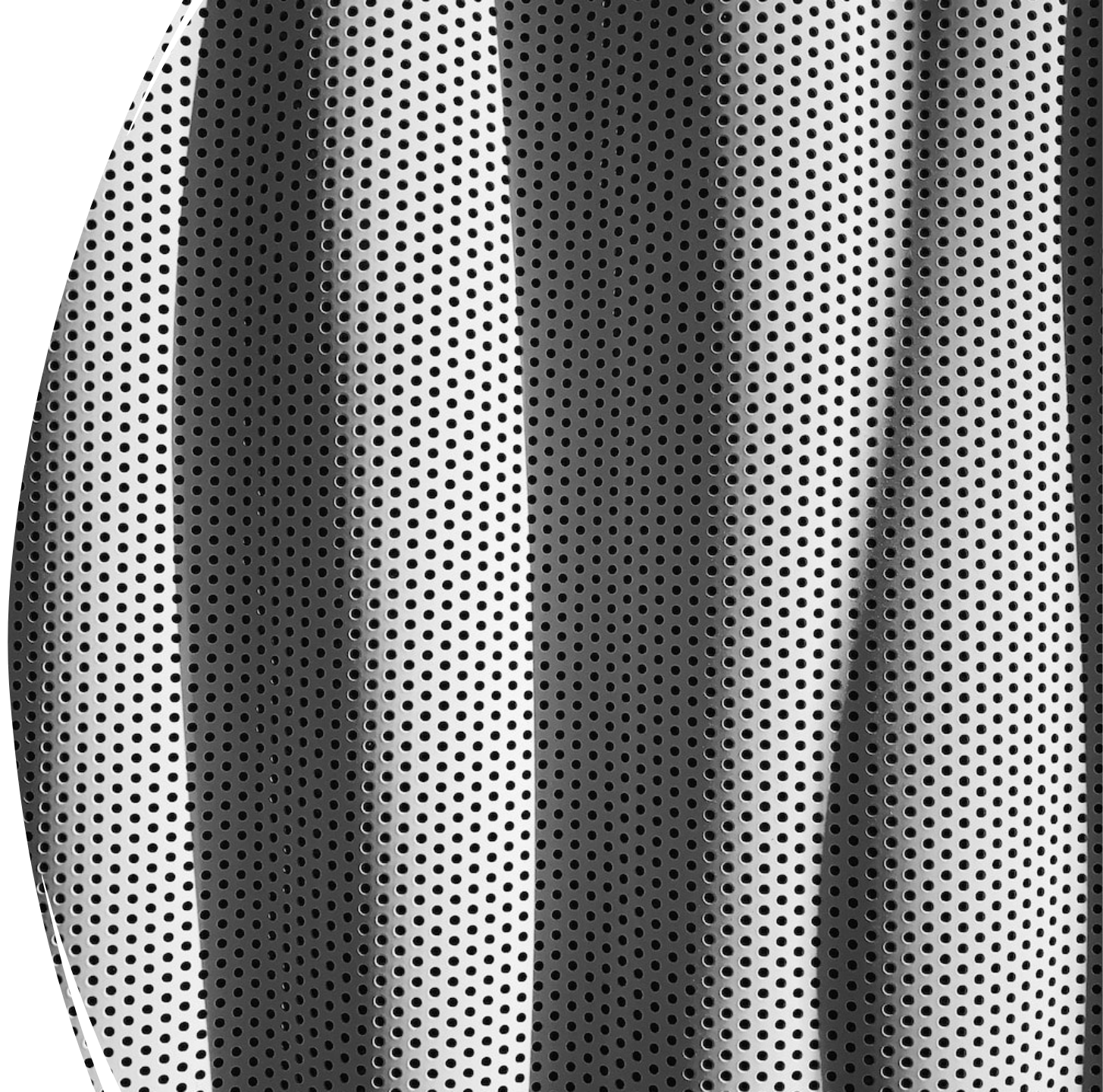
- *Shall*, not will
- Clear timeline
- Who is being paid by whom
- Consequence of default set out
- What is “the usual fashion” - Usual to whom?



# Spot the problems (6)

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- Within 2 weeks the Respondent will transfer \$14,500 from his RRSP and the parties will complete the necessary tax forms at the same time.





# A Better Approach:

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Within fifteen (15) days of the execution of these Minutes of Settlement, the Respondent-Father shall:

(a) rollover from his RRSP, TD account # 12345, to the Applicant-Mother's RRSP, Scotiabank account number 54321, the sum of \$14,500 in cash pursuant to s. 146(16) of the *Income Tax Act*; and

(b) complete Form T2220 and deliver it to the Applicant-Mother's to effect the rollover.

# A Better Approach:

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The Respondent-Father shall ensure that these RRSPs are not locked in and are available now for the Applicant-Mother to transfer to other RRSP assets or collapse and, further,

The Respondent-Father shall indemnify the Applicant-Mother against any commissions or other charges on the transfer or collapse of these RRSPs, except the Applicant-Mother's own income tax, for which she shall be solely responsible.



# Practice Points:

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- *Shall*, not will
- To whom are the RRSP's being transferred?
- What are the necessary forms?
- Who pays any fees associated with the rollover?
- What, exactly, is the Applicant-Mother responsible for paying?





# Spot the problems (7)

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The Respondent will transfer the matrimonial home as soon as the real estate lawyer deems practical to the Applicant, and the Applicant will take over the mortgage at her cost.

# A Better Approach:

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Within fifteen (15) days of the execution of these Minutes of Settlement:

(a) the Respondent-Father shall transfer his interest in the matrimonial home, municipally known as 64 Dingleberry Lane, Toronto, to the Applicant-Mother, free of all encumbrances except for the existing mortgage in the amount of \$192,500 in favour of the Bank of Nova Scotia. The Applicant-Mother shall pay the cost of the preparation and registration of the transfer

# A Better Approach:

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(b) The Applicant-Mother shall obtain a release of the Respondent-Father's obligations under the existing mortgage, failing which she shall indemnify him for all claims the lending institution may make under the existing mortgage. The Applicant-Mother shall be responsible for all penalties, interest and costs resulting from this existing mortgage including but not limited to its re-financing.

# Practice Points:

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- *Shall*, not will
- To whom is the house being transferred?
- When will this all take place?
- What is the balance on the mortgage that is being assumed by the Applicant?
- From what point does the Applicant become responsible for the mortgage and costs associated with the home?



# Other Practice Points for Consideration

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## Spousal Support Reviews

- What is being reviewed – entitlement, quantum?
- Is it mandatory or at the option of either party
- When?

Remember that the Court cannot order a waiver or a release

- Attach a schedule
- Sign a separate domestic contract

Don't forget about costs



# Other Practice Points for Consideration

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- Especially with respect to parenting arrangements, it is important to consider the “best interests of the child.” Is it necessary to include in the minutes i.e., child’s needs, views, and preferences and each parent’s willingness to support the child’s relationship with the other parent?
- Include an example of decision-making responsibility i.e., do not just state joint/sole/parallel but define the duties that entail each type - be as specific as possible
  - If one parent is responsible for religion and the other for education, you might disagree about how a particular type of school may impact the child’s religious views— how to resolve these types of disagreements?

# Other Practice Points for Consideration

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- Dispute resolution mechanisms, if any
  - Mediation clause?
  - Mediation-Arbitration clause (if so, attach med-arb agreement)
- Be clear about which paragraphs will be included in the Order

That's it!  
Happy drafting.

With appreciation to:

**Michael B. Kleinman, LL.B.,**  
Kleinman Family Law

**Janet M. Whitehead, LL.B.**  
AccFM, Whitehead Law &  
Mediation

For the generous sharing  
of their work

