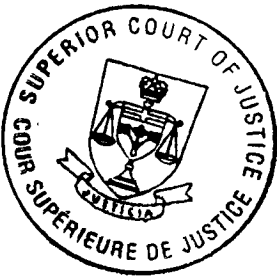


**Ontario  
Superior Court of Justice****Between:****M.M.****Petitioner**

and

**J.H.****Respondent****PETITION FOR DIVORCE****TO THE RESPONDENT**

A LEGAL PROCEEDING FOR A DIVORCE HAS BEEN COMMENCED AGAINST YOU by the petitioner. The claim made against you appears on the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare an answer in Form 69D prescribed by the Rules of Civil Procedure, serve it on the petitioner's lawyer(s) or, where the petitioner does not have a lawyer, serve it on the petitioner, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this petition is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your answer is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing an answer, you may serve and file a notice of intent to defend in Form 69J prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your answer.

If this petition for divorce contains a claim for support or a division of property, you must serve and file a financial statement in Form 69K prescribed by the Rules of Civil Procedure within the time set out above for serving and filing your answer, whether or not you wish to defend this proceeding. If you serve and file an answer, your financial statement must accompany your answer.

IF YOU FAIL TO SERVE AND FILE AN ANSWER, A DIVORCE MAY BE GRANTED IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, JUDGMENT MAY BE GRANTED AGAINST YOU ON ANY OTHER CLAIM IN THIS PETITION AND YOU MAY LOSE YOUR RIGHT TO SUPPORT OR DIVISION OF PROPERTY. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

NEITHER SPOUSE IS FREE TO REMARRY until a divorce has been granted and has taken effect. Once a divorce has taken effect, you may obtain a certificate of divorce from this court office.

Date: June 15, 2004

Issued by:

Local registrar

Address of court office: 393 University Avenue, Toronto, ON

**Stephanie Sroka**

To: J.H.  
c/o Borden Ladner Gervais LLP  
Barristers & Solicitors  
Scotia Plaza, 40 King Street West  
Toronto, ON M5H 3Y4

**Julie K. Hannaford**  
Tel: (416) 367-6206  
Fax: (416) 361-2710

Solicitors for the Respondent

**CLAIM**

(State precisely everything you want the court to include in the judgment. If you claim support or a division of property, set out the nature and amount of relief claimed and the amount of support claimed for each dependant. If you want to include provisions of a separation agreement in the judgment, refer to the specific provisions to be included.) (If relief is claimed under any other Act, refer to the Act in the claim.)

## 1. The petitioner claims:

- (a) a divorce; and
- (b) an Order that the definition of spouse in section 2(1) of the *Divorce Act*, R.S.C. 1985, c. D-3.4 is unconstitutional and offensive to the parties' rights under section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule "B" of the *Canada Act* (U.K.), 1982, c.11, cannot be saved under section 1, and should be judicially amended by removing the words "to each other".
- (c) costs payable by the Attorney General of Canada in the event this relief is opposed.

**GROUND FOR DIVORCE****2(a) Separation**

The spouses have lived separate and apart since (date) June 23, 2003

The spouses have resumed cohabitation during the following periods in an unsuccessful attempt at reconciliation: Date(s) of cohabitation (if None, state "None"):

None.

**2(b) Adultery**

~~The respondent has committed adultery. Particulars are as follows:~~

**2(c) Cruelty**

~~The respondent has treated the petitioner with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses. Particulars are as follows:~~

**RECONCILIATION**

- 3. There is no possibility of reconciliation of the spouses.
- 4. The following efforts to reconcile have been made: (Give details. Where no efforts have been made, state "None".)  
None.

**DETAILS OF MARRIAGE**

(Where possible, copy the information from the marriage certificate.)

- 5. Date of marriage:  
June 18, 2003
- 6. Place of marriage: (municipality and province, state or country)

Toronto, ON

7. Petitioner's surname immediately before marriage:
8. Petitioner's surname at birth:
9. Respondent's surname immediately before marriage:
10. Respondent's surname at birth:
11. Marital status of Petitioner at time of marriage:  
(never married, divorced or widower) Divorced
12. Marital status of Respondent at time of marriage:  
(never married, divorced or widow) Divorced
13. Petitioner's birthplace: (province, state or country) Toronto, Ontario
14. Petitioner's birth date: April 30, 1963
15. Respondent's birthplace: (province, state or country) Ottawa, Ontario
16. Respondent's birth date: July 4, 1943

(Check (a), (b) or (c) and complete as required.)

17. (a) ☐ A certificate of ☐ the marriage  
☐ the registration of the marriage  
of the spouses has been filed with the court.
- (b) ☐ It is impossible to obtain a certificate of the marriage or its registration because:
- (c) ☒ A certificate of the marriage or its registration will be filed before this action is set down for trial or a motion is made for judgment.

**RESIDENCE**

18. The petitioner has resided in (municipality and province, state or country)  
the City of Toronto  
since (date) birth .
19. The respondent has resided in (municipality and province, state or country)  
the City of Toronto  
for all of her adult life .
20. The respondent's current address is:  
c/o Borden Ladner Gervais LLP, Barristers & Solicitors, Scotia Plaza, 40 King Street West,  
Toronto, Ontario, M5H 3Y4
21. The ☒ petitioner  
☒ respondent  
has habitually resided in Ontario for at least one year immediately preceding the commencement of the proceeding.

**CHILDREN**

22. The following are all the living children of the marriage as defined by the *Divorce Act* (Canada): There are no children of the marriage.

The children ordinarily reside in ~~(municipality and province, state or country)~~

23. (a) ~~The petitioner seeks an order for custody or joint custody of the following children on the following terms: (Be sure that this paragraph agrees with the claim on page 2.)~~

The respondent ☐ agrees

☐ does not agree

with the above terms:

~~(Strike out if not applicable.)~~

- (b) ~~The petitioner is not seeking an order for custody and~~

☐ ~~is content that a previous court order for custody continue in force~~

☐ ~~is attempting to obtain an order for custody in another proceeding~~

~~full particulars of which are as follows:~~

~~(Give name of court, court file no. and particulars of the order or proceeding.)~~

- (c) ~~The petitioner seeks an order for access (visiting arrangements) and is content that the respondent have an order for custody of the following children on the following terms: (Be sure that this paragraph agrees with the claim on page 2)~~

The respondent ☐ agrees

☐ does not agree

with the above terms:

~~(Give details such as days of week, hours of visit and place of access.)~~

24. (a) ~~The following are the existing visiting arrangements (access) for the spouse who does not have the children living with him or her:~~

- (b) ~~The existing visiting arrangements (access) are~~ ☐ ~~satisfactory~~

☐ ~~not satisfactory~~

~~(If not satisfactory, give reasons and describe how the arrangements should be changed.)~~

25. ~~The order sought in paragraph 23 is in the best interests of the children for the following reasons:~~

26. ~~The following material changes in the circumstances of the spouses are expected to affect the children, their custody and the visiting arrangements (access) in the future:~~

27. (a) ~~The existing arrangements between the spouses for support of the children are as follows:~~

**Amount to  
be paid**

**Time period**  
*(weekly, monthly, etc.)*

**To be paid by**  
*(Husband or wife)*

**To be paid for**  
*(Name of child)*

**Amount to  
be paid****Time period**  
(weekly, monthly, etc.)**To be paid by**  
(Husband or wife)**To be paid for**  
(Name of child)(b) ~~The existing support arrangements~~☐ are being honoured.☐ are not being honoured.*(If not being honoured, specify how much is unpaid and for how long. If you seek an order for payment of part or all of the unpaid amount, be sure to include it in the claim above.)*(c) ~~The petitioner proposes that the support arrangements for the children should be as follows: (Be sure that this paragraph agrees with paragraph 1)~~**Amount to  
be paid****Time period**  
(weekly, monthly, etc.)**To be paid by**  
(Husband or wife)**To be paid for**  
(Name of child)28: ~~The educational needs of the children~~☐ are being met.☐ are not being met.*(If not being met, give particulars.)***OTHER COURT PROCEEDINGS**29. The following are all other court proceedings with reference to the marriage or any child of the marriage: *(Give the name of the court, the court file no., the kind of order the court was asked to make and what order, if any, the court made. If the proceeding is not yet completed, give its current status.)*

Not Applicable.

**DOMESTIC CONTRACTS AND FINANCIAL ARRANGEMENTS**30. The spouses have entered into the following domestic contracts and other written or oral financial arrangements: *(Indicate whether the contract or arrangement is now in effect, and if support payments are not being paid in full, state the amount that has not been paid.)***Date****Nature of contract or  
arrangement****Status**

April 30, 2004

Separation Agreement resolving all issues between the parties arising from their marriage and its breakdown, including possession, ownership and division of property and spousal support.

In full force and effect.

**COLLUSION, CONDONATION AND CONNIVANCE**

31. There has been no collusion in relation to this divorce proceeding.

~~(Strike out this paragraph if the divorce is sought on the ground of separation only.)~~

32. ~~There has been no condonation or connivance at the grounds for divorce in this proceeding. (Where there has been condonation or connivance, strike out the previous sentence. Give details and set out the facts relied on to justify a divorce in the circumstances.)~~

### MATTERS OTHER THAN DIVORCE AND CUSTODY

33. The grounds for the relief sought in paragraph 1, other than a divorce or custody, are as follows:

The definition of spouse is unconstitutional following the binding authority of *M. v. H.*, [1999] 2 S.C.R. 3 and *Halpern v. Canada (Attorney General)*, [2002] 60 O.R. (3d) 321 (Div. Ct.). The remedy requested is consistent with *Schachter v. Canada*, [1992] 2 S.C.R. 679 and the Quebec Court of Appeal decision in *Ligue Catholique pour les droits de l'homme c. Hendricks*, [2004] J.Q. no 2593 (C.A.), which find that the issue of marriage for same sex couples is res judicata and of national application.

### TRIAL

34. The petitioner proposes that if there is a trial in this action, it be held at (place).  
393 University Avenue, Toronto, ON

### DECLARATION OF PETITIONER

35. I have read and understand this petition for divorce. The statements in it are true, to the best of my knowledge, information and belief.

June 1, 2004  
.....  
(Date)

.....  
Signature of petitioner

### STATEMENT OF SOLICITOR

36. I (name) Martha McCarthy  
solicitor for the petitioner, certify to this court that I have complied with the requirements of section 9 of the Divorce Act. *(Where in the circumstances it would clearly not be appropriate to discuss the matters in section 9 with the applicant, set out the circumstances.)*

June 1, 2004  
.....  
(Date)

.....  
Signature of solicitor

(name, address and telephone number of petitioner's  
solicitor or petitioner)

Epstein Cole LLP

Barristers

401 Bay Street, 32<sup>nd</sup> Floor

Toronto, Ontario M5H 2Y4

**Martha A. McCarthy**

Tel: (416) 862-6226 Fax: (416) 862-2142

Solicitors for the Petitioner

M.M. \_\_\_\_\_ and \_\_\_\_\_ J.H. \_\_\_\_\_  
Petitioner Respondent

Court File No. 24FP297613

FLS

**ACKNOWLEDGMENT OF SERVICE**

I, \_\_\_\_\_  
am the respondent named in this petition. I acknowledge receipt of a copy of this  
petition. My address for service of documents in this divorce proceeding is:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of respondent

\_\_\_\_\_  
Signature of witness

I, \_\_\_\_\_  
served this petition personally on the respondent.

☐ The respondent completed and signed the acknowledgement of service above  
in my presence and I signed as a witness.

OR

☐ The respondent declined to complete and sign the acknowledgement of service.

\_\_\_\_\_  
Signature

**Ontario  
Superior Court of Justice**

Proceeding commenced at:  
**Toronto, Ontario**

**PETITION FOR DIVORCE**  
*(form 69A under the Rules)*

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Solicitors for the Petitioner