COLLAS CRILL

Defended divorce

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Defended divorce proceedings occur when a divorce petition is issued, and either the respondent does not accept that the marriage has broken down irretrievably or does not accept the grounds upon which the petition has been issued.

In practice, defended divorces are very rare. Without wishing to state the obvious, spending money on lawyers arguing about who is going to divorce who or on what ground is rarely seen to be productive. In general terms, the Court will always look to encourage parties engaged in combat by defended divorce to look for alternative ways of resolving their differences.

If a divorce petition is to be defended, the respondent is required to file at Court the Memorandum of Appearance within 14 days indicating a desire to defend the petition. The respondent must then within a further 14 days file his defence. This is called an Answer. The Answer is a formal response to the petition and takes a similar form. The Answer will specify which paragraphs of the petition are accepted and which are not. The respondent is at liberty to draft his Answer either in general terms on the basis that each and every allegation is denied, or by providing a full blow by blow response to each and every allegation.

In divorce proceedings based on adultery, the onus is upon the petitioner to prove the allegation. Whilst it is rare in practice to file an Answer in divorce proceedings based on the grounds of adultery, it is possible to do so if the adultery is denied.

As might be expected, the most commonly defended petition is one of unreasonable behaviour. This is one reason why behaviour petitions should be drafted very carefully. Most unfortunately, some divorce petitions are drafted in a deliberately inflammatory way. This practice is not in accordance with the Law Society Protocol, and is far from helpful to the parties at a time when they are often struggling to come to terms with the marital breakdown itself.

It cannot be said enough times that arguing about who is going to divorce who or on what ground is almost always a complete waste of money. The main reason for this is that there is usually no tactical or financial advantage in making inflammatory allegations against the other party. The only exception to this is cases of gross misconduct, where one party's actions are just so unreasonable that they cannot be ignored and must be taken into account in dividing the matrimonial assets. For the Court to take behaviour into account in dividing the assets, the conduct must be exceptionally bad. Examples of such behaviour include paedophiles, attempted murder and cases of severe financial or other gross misconduct. In practice, such cases are extremely rare indeed.

In almost all divorces, there is no benefit in pursuing a defended divorce.

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If you receive a behaviour petition and you do not accept the allegations, it may be possible to amend the petition in such a way that is acceptable to both parties. The petition will then proceed undefended on the basis of the amended allegations.

The other point to bear in mind is that in acknowledging receipt of a behaviour petition, you do not actually admit the allegations.

As an alternative, advocates often write letters in response to such petitions reserving their client's position to challenge any of the allegations should they become relevant in any later proceedings. This letter passes between advocates and is not provided to the Court. All the Court would see is the petition proceeding on an undefended basis.

Flow chart of a defended divorce:

1

Divorce papers filed at Greffe and served same as undefended divorce.

2

Within 14 days of receipt, respondent files completed Memorandum of Appearance at Greffe giving notice of intention to defend the petition.

3

Within 28 days of receipt of divorce petition, respondent files his Answer to the petition denying the allegations.

4

Petitioner lists matter for trial.

5

At trial, petitioner is required to prove that the marriage has broken down irretrievably. Court grants or refuses the petition and Final Order is granted if appropriate.

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