

# MOST COMMON ERRORS WHEN DRAFTING A COURT ORDER IN ACCORDANCE WITH AN ENDORSEMENT

The Order as approved as to form and content OR affidavit of service is not filed

The Order, as drafted, does not reflect the standard form. The body of the Order (the terms) should be pre-empted with the following statement: "In accordance with the Minutes of Settlement/Separation Agreement filed, it is ordered that:" As a result of this statement, each term will not individually declare that the parties agree, but rather, they will be statements that demonstrate what was agreed upon. For example: A term of the Separation Agreement that reads, "The parties agree that the wife will keep the house." will be translated to read, as follows: "The Respondent wife shall keep the house."

An endorsement often contains reasons and findings mixed in with the terms of the Order. When drafting, it is important to extract only those terms that are enforceable by the Court, and to leave out the reasons and findings.

The order is not identical to the endorsement (clauses are added or omitted )

Depending on the type of order made, there are certain mandatory clauses that must be included when the order is prepared (e.g. the post-judgment interest clause, if an order for payment of money is made, and the Family Responsibility Office filing clause, if a support order is made). These clauses are legislated and must be included in the issued order.

## Post-Judgment Interest Clause

All orders for the payment of money are subject to post-judgment interest under [section 129](#) of the *Courts of Justice Act* and must contain the following clause:

***"This order bears post-judgment interest at the rate of \_\_\_\_% per annum effective from the date of this order. Where there is a default in payment, the payment in default shall bear interest only from the date of default."***

The following information should be added to the pre-amble:

- names of all the parties and lawyers who were in court when the order was made;
- name(s) of the person(s) on whose behalf the court received evidence and heard submissions;

If the order includes provisions for custody of or access to children, the following information must be included:

- Full legal name and date of birth of each child to whom the order relates.

If the order includes provisions regarding parentage of a child, the following information must be included:

- Full legal name, sex, and date of birth of each child to whom the order relates.

If the order includes a provision for child support, the following additional information must be included

- Full legal name and date of birth of each child to whom the support order relates;

All support orders (other than a provisional support order) must be filed with the Director, Family Responsibility Office for enforcement, pursuant to the *Family Responsibility and Support Arrears Enforcement Act, 1996*, even if the parties know in advance that they will be withdrawing the support order from FRO.

The following clause must be included in all child and spousal support orders [[s. 9\(1\), FRSAEA](#)]:

***"Unless the order is withdrawn from the Director's office, Family Responsibility Office, it shall be enforced by the Director and amounts owing under the order shall be paid to the Director, who shall pay them to the person to whom they are owed."***