

FAMILY LAW MOCK TRIAL: PILON v. TREMBLAY



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For each OJEN Family Law Mock Trial, there are three packages:

- » OJEN Family Law Mock Trial **Scenario**
- » OJEN Family Law Mock Trial **Role Preparation Package**
- » OJEN Family Law Mock Trial **Justice Sector Volunteer Package**

Youth need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

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PILON v. TREMBLAY

» Child Support

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LIST OF PARTICIPANTS

1. **Stella Pilon** (applicant)
2. **Alexandre Tremblay** (respondent)
3. **Amélie Tremblay** (Stella and Alexandre's daughter)
4. **Maureen Bradley** (respondent witness)
5. **Joseph Pilon** (applicant witness)
6. **Lawyers for the Applicant** (3)
7. **Lawyers for the Respondent** (3)
8. **Judge** (can be played by a student, a teacher, a judge, or a lawyer)
9. **Court Services Officer** (keeps order in the court) (*optional*)
10. **Court Clerk** (assists the judge) (*optional*)

WHAT HAPPENED?

Alexandre Tremblay's first marriage ended fourteen years ago in 1994. The first marriage only lasted for five years. He has one child from his first marriage. His first wife's name is Stella and his first child's name is Amélie. Amélie is eighteen years old and about to start university in the fall. She will be enrolled in a film studies program on a full-time basis.

Alexandre and Maureen have been married for fourteen years. This is Alexandre's second marriage. Alexandre and Maureen were married as soon as the divorce with Stella was finalized. Alexandre has two children from his second marriage with Maureen. Their names are Ben, who is fourteen, and Sam, who is eleven. Alexandre is a public school teacher who works in Toronto. He earns \$55,000 per year. Maureen works at a Loblaws grocery store as a cashier and earns \$32,000 per year.

When Alexandre and his first wife, Stella, broke up, Amélie was four years old. At first, Alexandre would see Amélie once in a while. It was always difficult for the two of them to talk, however, and many times, Amélie would say that she didn't want to see him. In fact, when she turned eight, Amélie refused to have anything more to do with her dad. She sent him a letter, telling him that she never wanted to hear from him or see him again. (She got a little help from her mom in writing the letter, as she could not fully articulate sentences on her own yet.)

Joseph is Stella's brother. He told her he did not think it was a good idea to have Amélie write the letter. He thought it would cause a lot of unnecessary anger between them, and might do more trouble than good. He has lived next door to Stella since she was married to Alexandre, and used to be good friends with Alexandre when he was married to Stella. He knows Alexandre well. But when Alexandre and Stella divorced, Stella made Joseph pick sides, and insisted he not communicate anymore with Alexandre.

Prior to receiving the letter from Amélie, Alexandre paid \$100/month of child support to Amélie. Alexandre was upset about paying child support to a child who did not love him and did not want to see him. When she wrote him the letter saying that she didn't want to hear from him again, that was the last straw. He decided not to have anything more to do with her, so he stopped calling altogether. However, he continued to pay child support, because he felt obliged to do so.

Stella worked after her marriage to Alexandre ended, but it was tough for her.

She suffered from depression and so she couldn't stay at a job for a long time. There were many times when she wanted to get Amélie new clothes or pay for her to participate in after-school programs, but she often could not because she did not make enough money. She was upset at Alexandre for never offering to help cover the cost of these programs for his daughter. She also thought that he could have been paying more than \$100 per month for child support, but never knew what to do about it. She is currently earning \$38,000 as a teacher's assistant.

Stella has brought an application for child support. She wants Alexandre to continue to pay child support while Amélie is in university. Alexandre thinks that now that Amélie is 18, he should not have to pay any more child support. He believes that Amélie ended the relationship with him when she sent him the letter and can no longer be considered a "child of the marriage." He is also angry at Stella because he is convinced that she helped Amélie write that letter, and might have actually been convincing Amélie not to like him.

WHAT HAPPENED?

STELLA IS ASKING FOR THE FOLLOWING:

- Continued payment of child support, but in the amount of \$510 per month, which is what she insists someone earning \$55,000 should be paying in child support (found at www.justice.gc.ca)
- \$45,000 in retro-active child support for underpaying child support over the past 14 years.
- That Alexandre pay for Amélie's university education.

ISSUES:

- Should Alexandre still be obligated to pay for Amélie to go to university?
- Has Amélie ended her relationship with her dad by writing the letter to him? Does that matter?
- Should Alexandre have to continue paying child support? If so, is \$510 reasonable?
- Should Alexandre have to pay retroactive child support?

NOTES:

- The parties divorced in 1994 but the divorce order does not deal with child support.

THE LAW

WHAT IS CHILD SUPPORT AND WHAT IS ITS PURPOSE?¹

WHAT IS CHILD SUPPORT?

All children have the right to receive reasonable and necessary financial support from their parents. Child support is money paid by one parent to another parent, for the benefit of the child, after the parents' relationship breaks down. The support payments ensure that the child's expenses are reasonably met. Normally, the parent with whom the child lives most of the time receives the payments on behalf of the child.

WHO HAS TO PAY CHILD SUPPORT?

Biological parents and parents who have adopted a child are obligated to pay child support. If a step-parent has contributed to the support and maintenance of the child for at least one year, they may also have to pay support – even if the biological parent is making a financial contribution. But the claim for child support against a step-parent must be made within one year from the time the step-parent last contributed to the child's financial expenses.

HOW DO YOU GET CHILD SUPPORT?

Child support can be worked out in a separation agreement. If you can't agree, you can apply to the court for an order that child support be paid, giving notice of your application to the other parent. Also, if you are on income assistance, you can seek help from your support worker at the Employment and Income Assistance program.

HOW IS CHILD SUPPORT DETERMINED?

The amount is determined by the Child Support Guidelines. The guidelines specify a certain amount of support, depending on the paying parent's income and the number of children. These guidelines became law on May 1, 1997 and were revised on May 1, 2006 (and updated again on April 1, 2007). You may find the Child Support Guidelines on the federal Department of Justice website at www.justice.gc.ca.

¹ From the Canadian Bar Association, online: <http://www.cba.org/BC/public_media/family/117.aspx>.



WHAT ARE “SPECIAL OR EXTRAORDINARY” EXPENSES?

In some cases, you can apply to the court for an additional contribution for “special or extraordinary” expenses. There are four types of special or extraordinary expenses the court can consider:

- **child care expenses**, so the parent who looks after the child can work or obtain training
- **medical or health related expenses** for the child
- some **educational expenses**
- some expenses for **extra-curricular activities**

These types of expenses aren’t automatically deemed to be special or extraordinary expenses – they have to be reasonable too. Each expense is also considered on its own merits to see if it falls within the category of special or extraordinary expenses in your particular circumstances. For example, a child’s piano lessons may be a special or extraordinary expense.

Each parent is expected to contribute to these special expenses in proportion to their income. For example, if the parents have equal incomes, they would each pay one-half of the special or extraordinary expenses. Or, if one parent earns twice as much as the other, then that parent would pay two-thirds of the special expenses and the lower earning parent would pay one-third.

THE LAW

WHAT IF EACH PARENT HAS A CHILD IN THEIR CARE?

If each parent has the primary care of one or more of the children, the child support to be paid by each parent for the children in the other parent’s care is calculated and set off against each other. The parent who would end up paying the higher amount then pays the difference to the other.

WHAT IF YOU CAN’T AFFORD THE AMOUNT SET BY THE CHILD SUPPORT GUIDELINES?

In certain circumstances, where it can be shown that the payments required would cause “undue hardship” for the child or either parent, the court can raise or lower the amount. Undue hardship means it would be very unfair or cause great deprivation. When a claim of undue hardship is made, a household standard of living test is applied, where the financial circumstances of each parent and their respective household incomes (including a new spouse’s income) are weighed against the other. Showing undue hardship is complicated and very difficult.



DO YOU HAVE TO DISCLOSE YOUR FINANCIAL CIRCUMSTANCES?

To obtain an order for child support, financial disclosure must be made. The paying parent must provide recent proof of their income, together with their recent income tax returns. The income that is normally considered is that which is declared on line 150 of the paying parent’s most recent income tax return, or their “total income.” In some cases, for example, where undue hardship is claimed or special expenses are sought, the receiving parent may be required to disclose their finances as well as the paying parent.

WHAT IS AN “INTERIM” SUPPORT ORDER?

After a claim is made for child support, a court usually makes an “interim” order. These orders can be obtained relatively quickly. Interim support is usually in place while people are waiting for their divorce to become final, or until a comprehensive agreement or final court order is in place. Interim support arrangements remain in effect until they’re either changed by another interim order or made permanent.

HOW LONG IS CHILD SUPPORT PAID FOR?

Child support is paid for as long as the child continues to fall within the legal definition of a “child.” In Ontario, a child is someone under the age of 19, or who is 19 or over but dependent on a parent. For example, a university student or someone with health problems requiring financial support may remain a child, even though they are 19 or over.

THE LAW

CAN YOU GET A CHILD SUPPORT ORDER TO COVER THE PAST?

Yes. Child support orders can be made retroactively, i.e. for the past, particularly if you notified the other parent about your need for child support or your intent to pursue child support or an increase in support payments.

WHAT IF CIRCUMSTANCES CHANGE?

Either parent can apply to have a child support order or agreement changed or varied if there’s a change in circumstances. The law requires updated financial information to be exchanged each year or if there is a change of income. If there has been a change, the Child Support Guidelines should be consulted to determine what new amount of child support should be paid.

WHAT CAN YOU DO IF CHILD SUPPORT ISN’T PAID?

If your spouse or partner doesn’t pay the required child support, the government-run Family Responsibility Office (FRO) can help you. Staff can help you collect



support payments that are owed and monitor a support order to make sure payments continue to be made.

WHAT IS THE FAMILY RESPONSIBILITY OFFICE (FRO)?

The FRO is a free program funded by the provincial government. It monitors your support payments and enforces court orders and filed separation agreements where support is to be paid. There is no cost for the services of this program.

THE FRO ASSUMES RESPONSIBILITY FOR ENFORCING YOUR ORDER OR AGREEMENT

You can get their permission to take some enforcement actions on your own, but once your order or agreement is filed with the FRO, the program normally enforces the order or agreement on its own. The program can take all the same legal actions that you could take yourself, as well as a lot of other things that an ordinary person cannot do, such as suspending your spouse's driver's licence or taking away their passport.

HOW DOES THE FRO ENFORCE AN ORDER OR AGREEMENT?

If your order or agreement is filed with the Family Responsibility Office, all support payments must be sent to the program. The FRO will then send the payments on to you. There are several steps the FRO can take:

- **Garnishment:** If a payment isn't made, the program can "garnish" or take the wages of the non-paying spouse to cover the support owed. This is normally the FRO's first step.
- **Notice of Attachment:** The program can issue what is called a Notice of Attachment against any person or institution that owes money to the non-paying spouse, so the program can receive this money instead. In addition to employers, these institutions include banks, the Workers' Safety & Insurance Board (WSIB), and the Government of Canada for tax refunds, employment insurance payments and other federal payments or rebates.
- **Property Encumbrance:** The program can file support orders against property owned by the non-paying spouse, so that the property cannot be sold or re-mortgaged without the arrears being dealt with first.
- **Jail:** Ultimately, if your spouse doesn't pay, the FRO can request the court to commit them to jail for the non-payment of arrears.



LEGISLATION

1. *Divorce Act* (found at www.laws.justice.gc.ca).

Specifically:

a. **Sections 2** (Definitions) and **15.1** (Child Support Orders).

2. Child Support Guidelines (found at www.justice.gc.ca).

Specifically:

a. **Section 3(2)(b)** and **section 7** (whether a child who is the age of majority is able to make a contribution to his or her university education).

3. *Family Law Act* (found at www.e-laws.gov.on.ca).

Specifically:

a. **Sections 31(1)** and **(2)** (Obligation of parent to support child enrolled in full time education program).

CASE LAW

Marler v. Marler [2007] A.J. No. 987 (Alta. Q.B.)

Green v. Green [2007] O.J. No. 454 (Sup. Ct.)

Farden v. Farden [1993] B.C.J. No. 1315 (S.C.)

Solomos v. Solomos [2007] O.J. No. 133 (S.C.)

Full decisions can be found at www.canlii.org



STELLA PILON, APPLICANT

Your background:

- You are 41 years old. You live in Toronto with your daughter, Amélie, in a bungalow.
- You and your ex-husband, Alexandre, divorced fourteen years ago in 1994.
- Your brother, Joseph, has been your neighbour for over 18 years.
- You are not currently married and are not seeing anyone.
- Amélie has applied for university and has been accepted to begin next semester in a film studies program.
- Amélie works at the Red Tomato restaurant on King Street in Toronto. Her wages are not good but she is a good server and she makes a lot of money in tips. She has been working for 1 year now. Last year, her income was \$12,000, including tips.
- Amélie has done really well in school. She graduated at the top of her class and she won a scholarship of \$2,000.00 toward her tuition fees.
- You currently earn \$38,000 as a teacher’s assistant, but because of your depression you find it hard to keep a job for long enough to gain a sense of security. You are not sure where things will be one year from now, though you hope to still be in the same job.

Your version of what happened:

- You are still angry at your ex-husband, Alexandre. You feel like you were abandoned by him. He didn’t make a lot of effort to be a father to Amélie. For example, she would phone him and he would not return phone calls. Often, he would cancel visits that Amélie had planned with him.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character’s full name.
- » Stick to the script. Don’t make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn’t in your package, you can say you don’t know the answer.
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STELLA PILON, APPLICANT

- You know that Amélie has strong memories of your divorce even though she was only four years old. She used to hear you crying yourself to sleep. This went on for years. You have never been the same since Alexandre left you. And you still don't understand why he wanted a divorce.
- You have never had a serious relationship since then. Amélie has always lived with you. When she goes to York University, she will be living in residence. This will be her first time on her own, and your first time on your own.
- You had an oral agreement with Alexandre, which is a binding contract, that he would pay \$100 per month for Amélie's child support. His daughter is not yet 19, and nonetheless, she is in a special circumstance that warrants Alexandre's continuing to pay child support – she is in university.
- You wanted him to pay more, but he said he couldn't. Many times in the years after the divorce you approached him to increase his payments as his income increased, but he refused to do so, always saying that he was not earning all that much more, plus he had two other children to support.
- Amélie's tuition at York University is \$5,278.00. Textbooks and supplies will cost between \$1000.00 and \$1500.00. She wants to live in residence with her best friend, Shawney, who is also studying film. Residence will cost \$3,986.00 per year. The mandatory meal plan is \$2,500.00 per year. You estimate her personal expenses per school year to be \$2,200.00 per year. She will have to join the medical plan at York which will cost \$190.00 for the year.

WITNESS INFORMATION

STELLA PILON, APPLICANT

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How did you feel about Alexandre getting remarried so soon after your divorce?

How did you feel about Alexandre ending the child support payments, now that Amélie is going to university?

Is Amélie's income enough to support herself in school? Will she be able to continue working when in school? Should she?

What are you doing to help ensure sufficient income to allow her to go school?

Should she stay in residence and get a meal plan? Would it be more responsible to have her live and eat at home? Would this save costs?

Is a compromise a reasonable option?

Will there be consequences if Amélie does not receive child support? What will they be? How will the tuition be paid if it is not paid by Alexandre?

What would the retro-active child support payments be used for if you got them?

Have you seen Alexandre's financial records? Do you know his true financial situation?



AMÉLIE TREMBLAY, DAUGHTER

Your background:

- You are eighteen years old, you live in Toronto, and you live with your mom, Stella.
- You work at the Red Tomato restaurant on King Street in Toronto. Your wages are not good but you are a good server and you make a lot of money in tips. You have been working for 1 year now. Last year, your income was \$12,000, including tips.
- You have done really well in school. You graduated at the top of your class and you won a scholarship of \$2,000.00 toward your tuition fees.

Your version of what happened:

- You are still angry at your father, Alexandre. You feel like you were abandoned by him. He didn't make a lot of effort to be your father. For example, you would phone him and he would not return phone calls. Often, he would cancel visits that you had planned together.
- You wrote a letter to your father but that was after he cancelled another visit with you and you were angry. You admit that your mother helped you write the letter.
- You have strong memories of your mother and father's divorce even though you were only four years old. You remember hearing your mom crying herself to sleep. This went on for years. Your mom has never been the same since your dad left your mom. For this, you blame your dad.
- You have never lived on your own. When you go to York University, you will be living in residence. This will be your first time on your own.

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AMÉLIE TREMBLAY, DAUGHTER

- Your tuition at York University is \$5,278.00. Textbooks and supplies will cost between \$1000.00 and \$1500.00. You want to live in residence with your best friend, Shawney, who is also studying film. Residence will cost \$3,986.00 per year. The mandatory meal plan is \$2,500.00 per year. You estimate your personal expenses per school year to be \$2,200.00 per year. You have to join the medical plan at York which will cost \$190.00 for the year.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How did you feel about your dad getting remarried so soon after your divorce?

How did you feel about your dad ending child support payments at this time in your life?

Is your income enough to support yourself in school? Will you be able to continue working when in school? Should you?

What role should your mom have in contributing to your education? Should everything rest on your dad's shoulders, especially considering that he has two other children to support?

What are you doing to help ensure sufficient income to allow yourself to go school? Are bursaries and student loans (e.g. O.S.A.P.) an option?

Should you stay in residence and get a meal plan? Would it be more responsible to live and eat at home? Would this save you and your parents costs?

What consequences will not receiving child support have on you? How else would you afford school?

If your mom succeeds in getting retro-active child support payments, should they go to you?



ALEXANDRE TREMBLAY, RESPONDENT

Your background:

- You are 44 years old. You admit that Amélie is your daughter through your marriage to her mother, Stella. You divorced your first wife, Stella, fourteen years ago in 1994.
- Immediately thereafter, you married Maureen and have been married to her for fourteen years.
- You have two children from your marriage with Maureen - Ben, who is fourteen, and Sam, who is eleven.
- You are a public school teacher in Toronto and earn \$55,000 per year. Your current wife, Maureen, works at a Loblaws grocery store as a cashier and earns \$32,000 per year.

Your version of what happened:

- You had an oral agreement with Stella that you would pay \$100 per month for Amélie's child support. You have two children now and you don't want to pay support to a child who ended her relationship with you when she was eight years old.
- You oppose Stella's application for continued child support while Amélie is in university. You believe that Amélie stopped being a child of marriage for child support purposes when she turned 8 and wrote you the letter ending your relationship with her in 1998.
- You think that it is ridiculous to go to university for a degree in film studies. Amélie will not be able to support herself or get a job with this kind of degree.

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ALEXANDRE TREMBLAY, RESPONDENT

- You know nothing about Amélie or her life or her financial needs. You heard that Amélie won some kind of scholarship and that she works as a waitress so you are not sure why she would need your money anyway.
- You wouldn't mind getting to know your daughter but you feel that it has to be on your terms. She needs to accept you for who you are and accept that you have moved on with your life.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How do you feel about Stella's inability to hold down a permanent job because of her depression?

Does the fact that Amélie works and earns her own money mean you should pay less, if anything, to her?

What are your obligations as her biological father?

How responsible is her mother for Amélie's well-being?

Does the fact that you have other financial responsibilities and other dependant children have any significance in supporting your insistence on not paying child support? Or, if you have to pay, should it act to reduce the amount you pay?

In the past you did not have the money to pay more than \$100 per month. What does this mean, if anything, for child support back-payments?

Have you tried to explain things to Stella, and perhaps even show her your financial records so she knows your actual financial situation?

WITNESS INFORMATION



JOSEPH PILON, APPLICANT WITNESS

Your background:

- You are 42 years old. You are Stella’s brother and have lived next door to Stella since she and her ex-husband, Alexandre, got married and bought the bungalow.
- You know that Amélie is their daughter. In fact, you attended her birth. You are her favorite uncle.
- You are single and live alone.

Your version of what happened:

- You remember when Alexandre divorced Stella, fourteen years ago in 1994, and how quickly he was remarried (to Maureen).
- You recall how often Amélie cried to you about her parent’s divorce, and how often she complained to you in later years about her father’s bad habit of standing her up for plans they had made together. She felt her dad was a liar and did not care enough about her to spend time with her. This made her very angry.
- You remember when Amélie told you she was writing a letter to her dad. You didn’t think it was a good idea, but you understood why she was so angry. When she said her mom was helping her write it, you advised Stella against it, but left it at that – you didn’t think it was your business to get into.
- You were at Amélie’s graduation, and helped her celebrate her award. You are proud of her, and know how proud she is to have achieved what she has academically. She really loves film, and is confident this is the program that best fits what she wants to do with her life.

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JOSEPH PILON, APPLICANT WITNESS

- You remember seeing the divorce order, and recall that it did not have anything relating to child support payments. But you also recall being told by Stella that she and Alexandre had orally agreed to \$100 per month in child support. You have also, on many occasions, seen the cheques written to Stella from Alexandre.
- You agree with Stella’s application for continued child support while Amélie is in university. You do not believe that Amélie stopped being a child of marriage for child support purposes when she turned 8 and wrote the letter ending her relationship with her dad in 1998.
- You know that Amélie works as a waitress, and recall being told by her on a few occasions that work is unpredictable; she told you that being a waitress is hard work and very tiring. As well, she said that restaurants are not as stable as they used to be, and that the one she works at has considered closing on a couple of occasions.

WITNESS INFORMATION



MAUREEN BRADLEY, RESPONDENT WITNESS

Your background:

- You are 42 years old. You are Alexandre’s current wife and have been married to him for fourteen years, since he divorced Stella in 1994.
- You work at the Loblaws grocery store as a cashier and earn \$32,000 per year.
- You have two children with Alexandre – Ben, who is fourteen, and Sam, who is eleven.

Your version of what happened:

- You remember when Alexandre divorced Stella, fourteen years ago in 1994. The two of you married shortly thereafter. You also had your first son right around that time too.
- You recall how often Alexandre tried to make appointments with Amélie, but had to break them because of how things would come up at work or with the two kids. Sometimes it was beyond his control, but he was too embarrassed to get into it with Stella or Amélie.
- You remember having to deal with phone calls from Stella in past years: she would call whenever she lost her job, and while crying on the phone would insist that Alexandre increase his child support payments. The calls would come in almost daily, then trickle away over a couple of weeks. Whenever she found a new job she wouldn’t call the house demanding more child support. In fact, she would usually become a bit nicer, as though sucking up to Alexandre.
- Both your children are involved in extra-curricular activities, including sports and music, which costs a lot of money. You see this as critical to their proper development, and are not about to stop it, even though it can be tough on the bank at times.

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