



**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION**

**NOTICE TO THE PROFESSION**

**UPCOMING RULE AMENDMENTS – *TRIAL DIVISION FAMILY RULES***

The Rules Committee of the Supreme Court of Newfoundland and Labrador, Trial Division, recently approved an amendment to the *Rules of the Supreme Court, 1986*. The regulation amending the *Rules* will be published in the February 24, 2017 edition of the *Newfoundland and Labrador Gazette*. The amendment will be in force on March 1, 2017, and may be viewed at the following link:

<http://www.assembly.nl.ca/legislation/sr/annualregs/2017/nr170011.pdf>

The amendment repeals Rule 56A and 56C, which governed family proceedings in the Court, and introduces a new Part IV, entitled “*Trial Division Family Rules*”. That new part of the *Rules* forms a comprehensive regime governing family proceedings in the Court. The amendment also included new forms for family proceedings. The new forms will be posted on the Supreme Court’s Family Division website in Word format, in advance of the in force date. The forms will also be released in a fillable PDF version following March 1, 2017. Family forms are available at the following link:

<http://www.court.nl.ca/supreme/family/forms.html>

While it is not possible to summarize all of the features of the new *Trial Division Family Rules* in this Notice, some of the more significant changes to the procedure applicable to family proceedings in the Court are outlined below. These include:

- (1) the purpose provision;
- (2) the procedure for getting access to a court record;
- (3) forms for joint originating applications and joint originating applications to vary;
- (4) the procedure for serving documents;
- (5) the rule on expert reports;

- (6) expanded case management powers;
- (7) the new interim applications rules;
- (8) the responsibility of parties to engage in alternative dispute resolution;
- (9) the new binding settlement conference process;
- (10) the new summary judgment rule;
- (11) the procedure for getting a trial date;
- (12) the informal trial rule;
- (13) the new rules governing evidence previously filed in Court file; and
- (14) the transitional provision.

Members of the Law Society are encouraged to review these new *Rules* in their entirety to familiarize themselves with the new procedures that apply in family proceedings.

### **(1) Purpose of the *Trial Division Family Rules***

Rule F1.03 of the *Trial Division Family Rules* outlines that the purpose of the *Rules* is to promote the just, timely, and cost effective resolution of every proceeding; minimize conflict and promote cooperation between the parties; and minimize the impact that the conduct of a proceeding may have on a child. The rule further provides that the proceeding must be conducted in a way that is proportionate to the interests of any party or child affected; the importance of the issues in dispute; and the complexity of the proceeding. Also, the rule places a duty upon every party to a proceeding to act in a manner which advances the purpose of the rules.

### **(2) Access to Court records**

The procedure for accessing Court records in the *Trial Division Family Rules* is governed by rule F2 and is different from the procedure in the former rule 56A.04 in two key ways. Firstly, the procedure for accessing a court record is the same, whether or not the proceeding is closed. Secondly, officers of the Court, including lawyers (other than a lawyer for a party), must apply for a desktop order permitting access to the Court record of a proceeding.

### **(3) New forms for joint originating applications and joint originating applications for variation**

Rules F4 and F5 of the *Trial Division Family Rules* allow parties to file a joint originating application or a joint originating application for variation, respectively, and there are now specific forms for these types of applications. Form F4.04A (Joint Originating Application) and

Form F5.06A (Joint Originating Application for Variation) have been designed to simplify the process of making a joint application.

#### **(4) Procedure for serving documents**

Rule F8 of the *Trial Division Family Rules* is a comprehensive rule for the service of documents in family proceedings. The new rule expands upon the former rule and details how each type of document must be served, when service is effective, and methods of proving service. There are also new Affidavit of Service and Acknowledgement of Service forms. Please see “Appendix A – How to Serve Documents” which outlines the requirements under the new service rule.

#### **(5) Expert reports**

Rule F12 of the *Trial Division Family Rules* sets out the duties of an expert engaged by a party to provide opinion evidence in relation to a family law proceeding. The rule also extends the timeline for the exchange of expert reports to 30 days before trial.

#### **(6) Expanded case management powers**

Rule F14 of the *Trial Division Family Rules* significantly expands case management powers in family proceedings allowing a judge to make a wider variety of procedural orders to advance the objects of the *Rules* and to ensure proportionality of proceedings. Two additions which should be highlighted are found in rules F14.07(2) and F14.07(6), which allow a judge, in limited circumstances, to make a temporary child support or temporary parenting order, respectively, without the consent of a party or in the unexcused absence of a party.

#### **(7) Interim applications**

Rules F15 through F19 of the *Trial Division Family Rules* now govern the process for making interim applications. Rule F15 sets out rules applicable to interim applications generally, while the other rules provide for the following four types of interim applications:

- Rule F16- Interim Applications without Notice for a Procedural Order
- Rule F17- Emergency Interim Applications
- Rule F18- Interim Applications with Notice
- Rule F19- Applications to Vary Interim Orders

Rule F19 was included in the new *Rules* to address a gap in the former *Rules* relating to the procedure for varying an interim order before a final order is made. The rule requires a party to request a judge’s permission to proceed with the application.

There is a separate form provided for each type of interim application. Please see “Appendix B- Requirements for the Different Types of Interim Applications”.

### **(8) The responsibility of the parties to engage in alternative dispute resolution**

Rule F20 of the *Trial Division Family Rules* provides that parties are responsible for actively working towards the resolution of their proceeding in a timely and cost-effective way that reduces the adversarial nature of the proceeding. This responsibility requires parties to participate in a dispute resolution process before proceeding to trial, unless the requirement is waived. A judge may approve a dispute resolution process that the parties will complete prior to trial or may approve a dispute resolution process that the parties have participated in prior to commencing proceedings.

### **(9) Binding settlement conference**

Rule F25 of the *Trial Division Family Rules* outlines a comprehensive procedure for settlement conferences in family proceedings. A significant addition is rule F25.05 which allows parties to jointly request a binding settlement conference on one or more issues. A binding settlement conference must be requested at a case management hearing and may be requested in relation to one or more issues. Parties have the option of requesting a particular judge; the request will be considered and parties will be advised in advance of the settlement conference as to which judge has been assigned to conduct the binding settlement conference. Parties may, individually or jointly, withdraw consent to participate in a binding settlement conference any time prior to the settlement conference. In the event that consent is withdrawn, the settlement conference will proceed as an ordinary settlement conference.

### **(10) Summary judgment**

Rule F28 of the *Trial Division Family Rules* outlines the summary judgment procedure applicable in family proceedings. Rule F28 allows a judge to grant summary judgment if the judge is satisfied that there is “no genuine issue requiring a trial” rather than “no genuine issue for trial”.

Rule F28 also includes expansive fact finding powers such as the ability of the judge to weigh the evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence. A judge may also order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

Rule F37 provides that the procedure in rule F28 is applicable to child protection proceedings with the necessary modifications.

### **(11) Procedure for getting a trial date**

Rule F29 of the *Trial Division Family Rules* requires a party to request that a proceeding be scheduled for trial at a case management hearing. The “Schedule A to Notice of Case Management Seeking a Trial Date” under the old rules has been replaced with a new “Request for a Trial” form which must be filed and served on the other party seven days prior to the date set for the case management hearing. The other party must then file and serve their Request for a Trial two days prior to the date set for the case management hearing. A trial will not be

scheduled unless the parties have complied with the alternative dispute resolution requirement in rule F20 or a judge has waived the requirement.

**(12) Informal trial**

Rule F31 of the *Trial Division Family Rules* provides for the option of an informal trial as a method of enhancing access to justice by providing parties with the option of a simplified process. The process is only available when both parties consent and complete the applicable waiver. The determination as to the type of trial the parties prefer will be addressed at a case management hearing. At an informal trial, the judge will take a more active role and admit any evidence that is relevant, material, and reliable, despite the fact that the evidence might be inadmissible under strict rules of evidence. A party can withdraw consent to participate in an informal trial at any time prior to the beginning of the trial. If consent is withdrawn, a judge must schedule a date for a regular trial or a regular trial must proceed on the date already scheduled and the judge may make any other order the judge considers appropriate.

**(13) Evidence**

Rule F32.01 of the *Trial Division Family Rules* provides that documents, properly in a Court file and of which the other party has notice, will presumptively be considered by the trial judge, subject to an objection from a party. Documents submitted as part of a denied application for a procedural order or a denied application for emergency temporary relief will not be presumptively considered unless a hearing with notice to the parties was held in relation to the application. The revisions were made in light of access to justice initiatives which frequently identify the need for less stringent procedural and evidentiary requirements in family law proceedings.

**(14) Transitional provisions**

Rule F1.06 provides that the *Trial Division Family Rules* will come into force on March 1, 2017. Proceedings commenced, but not completed, prior to the coming into force of the new rules shall be governed by the new rules without prejudice to anything lawfully done under the former *Rules*. The rule allows a party to request a case management hearing where there is a question about the applicable rules or the operation of the rules. Further, the rule describes which rules govern the calculation of time limitations in various circumstances.

A Table of Concordance can be found in Appendix C.

**If you have any questions in relation to this matter, please contact the Court's Legal Officer, André Clair, at (709) 729-4743 or [andreclair@supreme.court.nl.ca](mailto:andreclair@supreme.court.nl.ca).**

RAYMOND P. WHALEN  
CHIEF JUSTICE, TRIAL DIVISION

**Appendix A- How to Serve Documents**

<b>Rule F8.03 - Documents which must be personally served (hand-delivery)</b>			
<b>Type of Document</b>	<b>Method of Service</b>	<b>Effective Date of Service</b>	<b>Proof of Service</b>
<p>Originating Application initiating a claim for parenting or divorce</p> <p>Originating Application for Variation seeking variation of a parenting order</p> <p>Response initiating a claim for parenting or divorce</p> <p>Application for the Return of a Child</p> <p>Notice of contempt application</p> <p>Pleading, order, or other document served on a person who is not a party, including a subpoena to a witness</p> <p>Notice of application or notice of default hearing in which the person to be served faces a possibility of imprisonment</p> <p>Notice of a hearing of an emergency interim application</p> <p>Copy of a temporary order granted under rule F17.04(a), F17.04(h), or rule F14.07(6) and</p> <p>Document which is required under legislation to be served by personal service.</p>	<p>Personal Service ( the document must be hand delivered to the recipient by a person other than the party and who is at least 19 years of age)</p>	<p>Date the copy was left with the person to be served.</p>	<p>Affidavit of Service (Form 8.11A)</p>

<b>Rule F8.04 - Serving other originating documents</b>			
<b>Type of Document</b>	<b>Method of Service</b>	<b>Effective Date of Service</b>	<b>Proof of Service</b>
Originating Application which does not include a claim for parenting or divorce	Personal service	Date the copy was left with the person to be served	Affidavit of Service (Form F8.11A)
	Leaving a copy with the recipient's lawyer	Date document was endorsed	Lawyer's endorsement
Originating Application for Variation which does not include a claim for the variation of a parenting order	Emailing a copy to the recipient's lawyer	Date of reply email	Reply email
	Leaving a copy with an adult at the recipient's address (must also send a copy by mail)	5 days after the date the document was mailed	Affidavit of Service (Form F8.11A)
Response initiating a new claim other than one for parenting or divorce	Registered mail, certified mail, or courier	Date on the delivery confirmation	Delivery confirmation or Acknowledgement of Service (Form F8.04A)
	Regular mail	5 days after the date the document was mailed	Acknowledgment of Service (Form F8.04A)
	Fax	Date of returned Acknowledgement of Service	Acknowledgement of Service (Form F8.04A)
	Email	Date of reply email or date of returned Acknowledgement of Service	Reply email or Acknowledgement of Service (Form F8.04A)
	Electronic document exchange	Date the delivery confirmation confirms delivery	Delivery confirmation or Acknowledgement of Service (Form F8.04A)

<b>Rule F8.05 - Serving subsequent documents</b>			
<b>Type of Document</b>	<b>Method of Service</b>	<b>Effective Date of Service</b>	<b>Proof of Service</b>
Subsequent documents (any document not listed in rules F8.03 or F8.04)	Personal service	Date the copy was left with the person to be served	No proof of service required (unless the Court orders otherwise)
	Leaving a copy with the recipient's lawyer	Date document was left	
	Emailing a copy to the recipient's lawyer	Date shown on the email	
	Leaving a copy with an adult at the recipient's address	Date the copy of the document was left at the party's address or, if the document was left after 4pm, the following day	
	Registered mail, certified mail, or courier	5 days after the document was mailed	
	Regular mail	5 days after the date the document was mailed	
	Fax	Date shown on the fax or, if the document was sent after 4:00 p.m. the following day	
	Email	Date shown on the email or, if the document was sent after 4:00 p.m., the following day	
	Electronic document exchange	Date the delivery confirmation confirms delivery or, if the document was sent after 4:00 p.m. the following day	

## Appendix B- Requirements for the Different Types of Interim Applications

<b>Rule</b>	<b>Type of Application</b>	<b>Is Notice Required?</b>	<b>Is Leave (Request for Permission) Required?</b>	<b>When can a party bring this Application?</b>
F16	Interim Application Without Notice for Procedural Order	×	×	Anytime
F17	Emergency Interim Application	×	×	Anytime
F18	Interim Application (before case management hearing)	✓	✓	Before case management hearing
F18	Interim Application (after case management hearing)	✓	×	After case management hearing
F19	Interim Application for Variation	✓	✓	After interim order is made

## Appendix C- Table of Concordance

<i>Rules of the Supreme Court , 1986</i> <b>Part IV- Trial Division Family Rules</b> <b>Rules F1 –F40</b>	<i>Rules of Supreme Court, 1986</i> <b>Part II.1</b> <b>Rules 56A and 56C</b>	
<b>How to Refer to this Part, What Proceedings this Part Applies to, and How to Interpret this Part</b>	<b>Section 1</b>	
Reference, Application, and Interpretation	Rule F1	Rules 56A.01, 56A.02, 56A.69, 56A.71
<b>Access to Court and Confidentiality</b>	<b>Section 2</b>	
Access to Court Records	Rule F2	Rule 56A.04
Access to Proceedings	Rule F3	Rule 56A.03
<b>How to Start or Respond to a Proceeding</b>	<b>Section 3</b>	
How to Start a Proceeding	Rule F4	Rules 56A.06, 56A.07, 56A.08, 56A.09, 56A.33, 56A.42, 56A.43, 56A.44, 56A.45, 56A.49, 56A.51, 56A.56, 56A.58
How to Apply to Vary a Final Order	Rule F5	Rules 56A.52, 56A.53, 56A.54, 56A.58
How to Respond to an Originating Application or an Originating Application for Variation	Rule F6	Rules 56A.12, 56A.13, 56A.15, 56A.58
How to Reply to a Response	Rule F7	Rules 56A.14, 56A.15
Providing Notice and Serving Documents on Other Parties and Persons	Rule F8	Rules 56A.10, 56A.11
<b>How to Get Information for your Case</b>	<b>Section 4</b>	
General Rules Relating to Exchanging Information and Documents	Rule F9	Rules 56A.05, 56A.38, 56A.39, 56A.41
Disclosure Requirements	Rule F10	Rules 56A.27, 56A.28, 56A.29, 56A.30, 56A.31, 56A.32, 56A.34, 56A.58
Getting Additional Information	Rule F11	Rules 56A.35, 56A.36, 56A.37, 56A.40, 56A.57
Expert Reports	Rule F12	-----

Investigations and Reports Ordered by a Judge	Rule F13	Rule 56A.68
<b>Court Assistance in Managing your Case</b>	<b>Section 5</b>	
Case Management	Rule F14	Rule 56A. 21
<b>Resolving Issues in Ongoing Proceedings (Making Interim Applications)</b>	<b>Section 6</b>	
General Rules Applicable to Interim Applications	Rule F15	Rules 56A.16, 56A.17
Interim Applications without Notice for a Procedural Order	Rule F16	Rules 56A.16, 56A.17, 56A.18, 56A.19
Emergency Interim Applications (Getting a Temporary Order)	Rule F17	Rules 56A.16, 56A.17, 56A.18, 56A.19
Interim Applications with Notice	Rule F18	Rule 56A. 16
Varying an Interim Order before a Final Order is made	Rule F19	-----
<b>Facilitated Resolution of Claims</b>	<b>Section 7</b>	
Responsibility of Parties	Rule F20	-----
Confidentiality and Use of Information in Dispute Resolution	Rule F21	-----
Family Justice Services	Rule F22	Rule 56C
Offers to Settle	Rule F23	Rule 56A.26A
Court Ordered Mediation	Rule F24	-----
Settlement Conferences	Rule F25	Rule 56A. 72
<b>Resolving Claims without a Trial</b>	<b>Section 8</b>	
Uncontested Proceedings	Rule F26	Rule 56A.24, 56A.44, 56A.46, 56A.59, 56A.60, 56A. 61
Pre-Trial Determination of Questions of Fact or Law	Rule F27	-----
Summary Judgment	Rule F28	-----
<b>Trial Procedures</b>	<b>Section 9</b>	
How to Get a Trial Date	Rule F29	Rule 56A.23
Trial Readiness Conference	Rule F30	Rule 56A.73
Informal Trial	Rule F31	-----
Evidence and Affidavits	Rule F32	Rules 56A.20, 56A.22
<b>Costs, Orders, Judgments, and Enforcement</b>	<b>Section 10</b>	
Costs	Rule F33	Rules 56A.26

Orders, Judgments, and Enforcement	Rule F34	Rules 56A.25, 56A.46, 56A.48, 56A.62
<b>Special Rules Applicable to Certain Types of Proceedings</b>	<b>Section 11</b>	
Provisional Support Orders-Divorce Act	Rule F35	Rules 56A.63, 56A.64, 56A.65
Interjurisdictional Support Orders	Rule F36	Rules 56A.66, 56A.67
Child Protection Proceedings	Rule F37	Rules 56A.74, 56A.75, 56A.76
Applications for the Return of a Child under the Hague Convention on International Child Abduction	Rule F38	Rules 56A.77, 56A.78, 56A.79, 56A.80, 56A.81, 56A.82, 56A.83, 56A.84, 56A.85, 56A.86, 56A.87, 56A.88, 56A.89, 56A.90, 56A.91, 56A.92
Review of Emergency Protection Orders made under the <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>	Rule F39	-----
<b>General Rules</b>	<b>Section 12</b>	
Court Administration	Rule F40	Rules 56A.06, 56A.46, 56A.47, 56A.50, 56A.55