RULES OF COURT PROJECT

DRAFT *TRIAL DIVISION FAMILY RULES*
UPDATED September 26, 2016

NOTE: This draft is intended to repeal and substitute rule 56A and 56C

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RULE F (*TRIAL DIVISION FAMILY RULES*)

Section 1- How to Refer to this Part, What Proceedings this Part Applies to, and How to Interpret this Part

Rule F1 – Reference, Application, and Interpretation

Referring to this Part

F1.01 Part V of the rules may be referred to separately as the *Trial Division Family Rules*.

Application of this Part

F1.02 (1) This Part applies to proceedings in the Court, other than appeals, related to any of the following matters:

(a) child protection;

(b) parenting;

(c) child, spousal, partner, dependant, or parental support;

(d) enforcement of support orders;

(e) adoption;

(f) dividing property of spouses, former spouses, partners, and former partners;

(g) formation, dissolution, and annulment of a marriage;

(h) separation;

(i) divorce;

(j) consent to medical treatment of minors;

(k) change of name of minors;

(l) declaration of parentage or validity of a marriage;

(m) adult protection;

(n) applications under the *Family Relief Act*;

(o) interspousal and familial torts;

(p) applications under the *Family Homes on Reserves and Matrimonial Interests or Rights Act.*

(2) Where an issue respecting practice or procedure arises which is not covered by this Part, Part I of the rules may be applied, with any necessary modifications.

(3) Without limiting the generality of subrule (2), and subject to the express provisions of this Part, the following rules from Part I apply, with any necessary modification, to proceedings under this Part:

(a) Rule 7 (“Causes of action and parties”);

(b) Rule 8 (“Minors and mentally incompetent persons”), with the exception of rule 8.05;

(c) Rule 9 (“Partners”);

(d) Rules 14.23 (“Demand for particulars”) and 14.24 (“Striking out pleadings, etc.”);

(e) Rule 15 (“Amendments”);

(f) Rule 18 (“Consolidation of proceedings”);

(g) Rule 19 (“Discontinuance and withdrawal”);

(h) Rule 23 (“Change of solicitor”);

(i) Rule 24 (“Accounts”);

(j) Rules 26.07 to 26.11 (“Sales by the Court – II. Sales: General”);

(k) Rule 33 (“Notice to admit”);

(l) Rule 41 (“Trial sittings”);

(m) Rule 42 (“Trial procedures”);

(n) Rule 46 (“Trial evidence”);

(o) Rule 47 (“Evidence by deposition”);

(p) Rule 47A (“Electronic conferencing”);

(q) Rule 48 (“Affidavits”), with the exception of rules 48.09 and 48.10;

(r) Rule 49 (“Orders”), with the exception of rules 49.07, 49.08, and 49.13;

(s) Rule 50 (“Enforcement of orders: General”);

(t) Rule 51 (“Execution”);

(u) Rule 53 (“Contempt order”);

(v) Rule 53A (“Stays”); and

(w) Rules 55.15 to 55.38 and the Appendix to Rule 55.

Purpose of this Part

F1.03 (1) The purpose of this Part is to

(a) promote the just, timely, and cost effective resolution of every proceeding;

(b) minimize conflict and promote cooperation between the parties; and

(c) minimize the impact that the conduct of a proceeding may have on a child.

(2) Promoting the just, timely, and cost effective resolution of a proceeding includes, so far as is practical, conducting the proceeding in a way that is proportionate to

(a) the interests of any party or child affected;

(b) the importance of the issues in dispute; and

(c) the complexity of the proceeding.

(3) Every party to a proceeding must act in a manner which promotes the purpose of this Part.

(4) A judge, in determining whether to permit or restrict a particular procedural step, must consider whether the procedural step is required after considering the purpose of this Part.

Definitions

F1.04 The following definitions apply to this Part

(a) “circuit location” means a court location, other than a judicial center, designated by the Chief Justice and published in a practice note;

(b) “corollary relief proceeding" means a proceeding under the *Divorce Act* (Canada) in which either or both former spouses seek a child support order, a spousal support order, or a parenting order;

(c) “divorce proceeding” includes a proceeding in which a party seeks an order for divorce or an order for corollary relief;

(d) "Family Justice Services" is a division of the Department of Justice and Public Safety offering education and information sessions, mediation and counselling services, or any combination of these services

> (i) to parties or their children where such services are required by the Court, or
>
> (ii) to those persons who have not yet started a proceeding but wish to avail of the services in order to assist in the non-adversarial resolution of their dispute;

(e) "guidelines" means the *Federal Child Support Guidelines* established under the *Divorce Act* (Canada) and the *Child Support Guidelines Regulations* established under the *Family Law Act*;

(f) “hearing” includes a trial;

(g) “interim application” means an application for an order of a judge in an ongoing proceeding or, for the purpose of determining a matter relating to a final order, following final judgment but does not include an application to vary a final order;

(h) “judicial centre” means a judicial centre of the Trial Division under the *Judicature Act* and includes the following Court locations:

> Corner Brook;
> Gander;
> Grand Bank;
> Grand Falls-Windsor;
> Happy Valley-Goose Bay;
> St. John’s;

(i) "Note to Court" is a document, the form of which has been approved by the Chief Justice, filed with the Court by Family Justice Services, which indicates whether the parties participated in a parenting information session and mediation and whether the family law dispute was resolved;

(j) “officer of the court” includes a member of the Law Society of Newfoundland and Labrador in good standing;

(k) “originating application” includes a joint originating application unless the context requires otherwise;

(l) “originating application for variation” includes a joint originating application for variation unless the context requires otherwise.

(m) “parenting order” means any order relating to custody or access;

(n) “partial recovery costs” means party and party costs or costs awarded in accordance with the scale of costs included as an appendix to rule 55 in Part I, and “on a partial recovery basis” has a corresponding meaning;

(o) “party” means a party to a proceeding;

(p) “pleadings” include any document required to make, respond to, or reply to a claim in a proceeding required by these rules, including:

(i) an Originating Application in Form F4.03A or F4.04A,

(ii) an Originating Application for Variation in Form F5.05A or F5.06A,

(iii) a Response in Form F6.02A,

(iv) a Reply in Form F7.02A,

(v) a Financial Statement in Form F10.02A,

(vi) a Property Statement in Form F10.04A,

(vii) an Procedural Interim Application in Form F16.03A,

(viii) an Interim Application for Emergency Relief in Form F17.03A,

(ix) an Interim Application in Form F18.03A,

(x) an Affidavit in Response,

(xi) an Affidavit in Reply;

(q) “proceeding” means a proceeding described in rule F1.02(1);

(r) "property claim" means a claim in a proceeding for division of property by a spouse, former spouse, partner, or former partner;

(s) “shared custody” means a parenting arrangement where both spouses exercise a right of access to, or have physical custody of, a child for not less than 40 per cent of the time over the course of a year;

(t) “special and extraordinary expenses” means those expenses set out in section 7 of the guidelines;

(u) “split custody” means a parenting arrangement in which each parent has custody of one or more children;

(v) “substantial recovery costs” mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with the scale of costs included as an appendix to rule 55 in Part I, and “on a substantial recovery basis” has a corresponding meaning;

(w) “support order” means an order for child, spousal, partner, dependant, or parental support;

(x) "uncontested proceeding" means a proceeding in which

(i) the respondent has failed to file and serve a Response within the prescribed time,

(ii) the Response has been withdrawn or struck out,

(iii) the respondent has filed a Response stating that he or she is not contesting a claim in the application,

(iv) the applicant has failed to file a Reply in relation to a claim against them made in the Response within the prescribed time,

(v) the Reply has been withdrawn or struck out,

(vi) the applicant has filed a Reply stating that he or she is not contesting a claim in the Response,

(vii) the parties have applied together for the same relief, or

(viii) each party to the proceeding has indicated their consent on a draft judgment or order;

(y) “undue hardship” means the undue hardship that would be incurred by a person ordered to pay a support order or a person entitled to receive support payments as described in section 9 of the guidelines;

(z) "vary" or "variation" includes rescind and suspend, or rescission and suspension.

Proceedings under this Part

F1.05 (1) The Court must conduct proceedings under this Part as the judge directs and as informally as the circumstances permit.

(2) A judge may, in proceedings under this Part,

(a) provide directions and make procedural orders that advance the purpose of this Part; and

(b) relieve a party from strict compliance with a rule where it would cause injustice.

Transitional and coming into force

F1.06 (1) Proceedings commenced, but not completed, prior to the coming into force of these rules shall be governed by these rules without prejudice to anything lawfully done under the former rules.

(2) A party may request a case management hearing to get directions if there is doubt about the application or operation of these rules to a proceeding or if any difficulty, injustice, or impossibility arises as a result.

(3) For the purpose of calculating time limitations,

(a) where no time limit was provided under the former rules, the time limit under these rules applies, calculated from the date on which these rules come into force;

(b) where a time limit under these rules is shorter than the time limit under the former rules, the time limit under these rules applies, calculated from the date on which these rules come into force; and

(c) where a time limit under these rules is longer than the time limit under the former rules, the time limit under these rules applies, calculated from the time when the thing was to be done under the former rules.

(4) These rules come into force on [TBD].

Section 2 – Access to the Court and Confidentiality

Rule F2 – Access to Court Records

Who may access Court records

F2.01 The Court record of a proceeding, including the file and exhibits, may only be accessed by

(a) a party;

(b) a party's lawyer;

(c) an authorized Court staff member;

(d) a judge; or

(e) a person authorized in accordance with rules F2.02 or F2.03.

Request for access to Court record

F2.02 (1) A person may, at any time, apply for an order permitting access to the Court record of a proceeding.

(2) The application must be made in accordance with the procedure set out in rule F18.04 ("Making an interim application after the first case management hearing").

(3) Despite subrule (2), an officer of the court may apply in accordance with rule F16 ("Procedural Interim Applications (Without Notice)") for a judge's permission to access the Court record.

(4) Where a judge grants access to all or part of the Court record, the judge may do one or more of the following:

(a) require that the following information be redacted from any documents provided

(i) personal data identifiers,

(ii) personal information, and

(iii) information that may be harmful to a child's best interests;

(b) require that the person granted access sign an undertaking, before such access is provided, to keep information obtained from the Court record in confidence;

(c) impose any condition on the access that the judge considers appropriate.

Access by authorized person

F2.03 (1) A registry clerk may permit a person authorized by a party or by a party's lawyer to access a document in the Court record.

(2) Despite subrule (1), the registry clerk may require that the person sign an undertaking to keep the information obtained from the Court record in confidence before providing access.

Rule F3 – Access to Proceedings

When proceedings may be held in private

F3.01 A judge may exclude members of the public from all or part of the proceeding where the judge considers that person's presence to be unnecessary to the conduct of the proceeding and where the judge is of the opinion

(a) that the disclosure of evidence or information presented to the Court would be seriously injurious or seriously prejudicial to

(i) the person who is being dealt with in the proceeding, or

(ii) a person under the age of majority who is a witness in or is affected by the proceeding; or

(b) that it would be in the best interest of the proper administration of justice.

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Section 3 - How to Start or Respond to a Proceeding

Rule F4- How to Start a Proceeding

Scope of rule

F4.01 (1) This rule sets out

(a) the form to complete and the documents to file to start a proceeding;

(b) the information to include in the form;

(c) where to file the form and required documents;

(d) how to notify the other party that a proceeding has been started; and

(e) how to apply to have a proceeding transferred from one court location to another.

(2) This rule only applies to starting new proceedings.

(3) A proceeding to vary a final order for parenting or support must be started in accordance with rule F5 ("How to Apply to Vary a Final Order").

Starting a proceeding individually or together

F4.02 (1) A proceeding may be started under this rule

(a) by one person; or

(b) where the facts and the relief claimed are not in dispute, by two or more persons jointly.

(2) Where one person starts a proceeding on their own, the person starting the proceeding is called the applicant and the person against whom the claim is made is called the respondent.

(3) Where two or more persons start a proceeding jointly they are called co-applicants.

(4) The description of the parties in the title of proceedings must remain the same in any subsequent pleadings in that proceeding, subject to rule F4.04(7).

How to start a proceeding (individually)

F4.03 (1) Every person who intends to start a proceeding must file

(a) one signed original and three copies of the signed Originating Application in Form F4.03A; and

(b) the documents required under rule F10 ("Disclosure Requirements") with three additional copies of each document.

(2) A person who starts a divorce proceeding under the *Divorce Act* (Canada) must file the following in addition to the documents required under subrule (1)

(a) an original marriage certificate or registration of marriage, subject to rule F4.05; and

(b) a certified translation of the marriage certificate or registration of marriage, where the certificate or registration is in a language other than English or French.

(3) Where an applicant claims for divorce on the ground that the other spouse committed adultery with another person, the other person does not need to be named but, if named, the party claiming divorce must provide notice to that named person by serving, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy of the Originating Application on the named person.

(4) A person named under subrule (3) has all the rights of a respondent in relation to the claim of adultery.

How to start a proceeding (co-applicants)

F4.04 (1) Two or more persons may start a proceeding as co-applicants by filing

(a) one signed original and three copies of the signed Joint Originating Application in Form F4.04A; and

(b) draft consent orders in

(i) Form F34.02A, for consent orders for support, and

(ii) Form F34.02B for all consent orders other than support.

(2) The Joint Originating Application filed under subrule (1)(a)

(a) must be signed by the co-applicants;

(b) need not include notice to respondent;

(c) must be signed and issued by a registry clerk following the signatures of the co-applicants; and

(d) must not be noted for default.

(3) Co-applicants who start a divorce proceeding under the *Divorce Act* (Canada) must file the following in addition to the documents required under subrule (1)

(a) an original marriage certificate or registration of marriage, subject to rule F4.05; and

(b) a certified translation of the marriage certificate or registration of marriage, where the certificate or registration is in a language other than English or French.

(4) A co-applicant who intends to withdraw from a joint originating application must immediately

(a) file a Withdrawal of Joint Originating Application in Form F4.04B; and

(b) serve a copy of the Withdrawal of Joint Originating Application on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons").

(5) A Withdrawal of Joint Originating Application must not be filed after a divorce judgment is issued.

(6) If a co-applicant files and serves a Withdrawal of Joint Originating Application under subrule (4) and intends to oppose a claim made in the application, or intends to claim other relief, that co-applicant must file and serve a Response on the other party at the time of filing and serving the Withdrawal of Joint Originating Application.

(7) Where a former co-applicant has filed a Response under subrule (6),

(a) that former co-applicant must be named as the respondent on all subsequent pleadings filed; and

(b) the other co-applicant must be named as the applicant on all subsequent pleadings filed.

Where a certificate of marriage cannot be obtained

F4.05 (1) Where it is impossible or impractical to obtain a certificate of the marriage or the registration of the marriage, the applicant or respondent may apply without notice in

accordance with rule F16 ("Procedural Interim Applications (Without Notice)") for an order dispensing with the requirement to file a certificate or registration of the marriage.

(2) A person may apply in accordance with rule F16 ("Procedural Interim Applications (Without Notice)") for permission to file an Originating Application or Response without a certificate of the marriage or registration of the marriage if the person claiming divorce undertakes to file that certificate within a time specified by a judge.

(3) The Court may accept a document that provides proof of marriage in a foreign jurisdiction as proof of the marriage unless the contrary is proven.

Multiple claims

F4.06 (1) An Originating Application may contain any claim related to or connected with a claim made under rule F1.02 a person wishes to make against one or more persons.

(2) A judge may, with the consent of the parties and in accordance with section 43.11 of the *Judicature Act*, direct a non-family claim to be continued in a proceeding if the claim is related to or connected with a claim in that proceeding.

(3) A judge may deal with all issues in any way relating to the claims made in an Originating Application, Originating Application for Variation, or Response even if an issue is not specifically referred to in the pleading and the judge may make any judgment or order that the judge considers appropriate.

Information which must be included in the Originating Application

F4.07 (1) An Originating Application containing a claim for divorce, parenting, or child support must include

(a) the name, birth date, and place of residence of every child of the parties' relationship whether or not the children are over the age of majority and whether or not any relief is claimed in relation to the child; or

(b) a statement that there are no children of the parties' relationship.

(2) An Originating Application containing a claim for child support must also include the following information:

(a) whether child support is sought in accordance with the table amount determined under the guidelines;

(b) whether the party claims

(i) support is payable for a child of the age of majority or over,

(ii) the income of the payor is over $150,000.00,

(iii) the payor stands in the place of a parent for the child, or

(iv) there is split or shared custody;

(c) whether a claim for undue hardship is being advanced; and

(d) whether special or extraordinary expenses are sought, the child to whom the expense relates and the particulars of the expense and amount claimed.

(3) An applicant claiming one or more of the following must state the material facts supporting the claim:

(a) unequal division of matrimonial property;

(b) entitlement to a share of business assets;

(c) undue hardship in a child support proceeding;

(d) division of property between common law spouses;

(e) spousal support, partner support, parental support, or dependant support.

(4) Subject to subrule (5), every Originating Application and Joint Originating Application must contain the following contact information for the filing party or parties, as applicable:

(a) the office address of the party's lawyer, if the party is represented by a lawyer in the proceeding;

(b) the residential address of the party or a postal address within this province, if the party is not represented by a lawyer in the proceeding;

(c) the phone number and fax number of the party or, where the party is represented, the party's lawyer;

(d) the e-mail address of the party or, where the party is represented, the party's lawyer; and

(e) such other contact information that a registry clerk may specify.

(5) Where a party is not represented by a lawyer and for reasons of risk of harm to a party or a child, the party does not wish to provide contact information set out in subrule (4),

the party may

(a) provide an alternate name and address on the Form, and provide the information regarding the party to the Court in a separate envelope marked "Confidential"; or

(b) make a request for directions from a judge.

Where to start a proceeding (filing your form)

F4.08 (1) The applicant must file the Originating Application at the judicial centre indicated on Form F4.03A or F4.04A that is closest to the applicant's residence or, where the application includes a claim for child support or parenting, closest to the children's residence if the children do not normally reside with the applicant.

(2) A registry clerk must issue the Originating Application when it is filed.

(3) All documents in a proceeding must be filed in the same judicial centre as the Originating Application, unless a judge orders otherwise.

(4) Where a party requests that a proceeding be heard at a circuit location, a registry clerk may, if the registry clerk considers it necessary, set the proceeding to be heard at a location other than the requested circuit location.

Notifying the other party (service)

F4.09 (1) The applicant must serve, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy of the Originating Application and accompanying documents on the respondent within 180 days of the date of issuance of the Originating Application.

(2) The applicant may, before or after the 180 days expires, apply in accordance with rule F16 ("Procedural Interim Applications (Without Notice)") to extend the time for serving.

(3) A judge may order that a person who may have an interest in the matters in issue be served with a notice of the proceeding with or without adding that person as a party.

(4) Where a judge makes an order under subrule (3), the judge may provide directions about how to serve the notice on that person and how to conduct the proceeding.

(5) An applicant does not need to serve the Joint Originating Application or accompanying documents on a co-applicant.

Transfer of a proceeding

F4.10 (1) A judge may, upon request of a party at a case management hearing or at the judge's discretion, order that a proceeding be transferred to another judicial centre.

(2) A party may request to transfer a proceeding by filing a Request for Case Management in Form F14.04A after the respondent to the proceeding has filed a Response.

(3) An application made under section 6 of the *Divorce Act* (Canada) to transfer a divorce proceeding to this Court from a Court outside of this province must be accompanied by certified copies of all pleadings and orders made in the out of Province proceeding.

Rule F5 - How to Apply to Vary a Final Order

Scope of rule

F5.01 (1) This rule sets out

(a) when to make an application to vary a final order for parenting, child support, spousal support, partner support, parental support, or dependant support;

(b) the form to complete and the documents to include with the application;

(c) where to file the application and required documents; and

(d) how to notify the other party that a variation proceeding has been started.

(2) This rule does not apply to the recalculation of child support orders made under the *Child Support Service Regulations (*under the *Family Law Act).*

Restriction

F5.02 (1) A person may only apply for variation of a final order for parenting, child support, spousal support, partner support, parental support, or dependant support where

(a) the person can demonstrate a material change in circumstances from the time the original order was made; and

(b) either

(i) 180 days have expired from the date of the original order, or

(ii) a judge grants permission.

(2) Where a person intends to make an application under subrule (1) before 180 days have expired from the date of the original order, the person must first apply under rule F16 ("Procedural Interim Applications (Without Notice)") for permission to proceed with the application.

Applicability of rule F35 ("Provisional Support Orders")

F5.03 Where a judge determines that section 18(2) of the *Divorce Act* (Canada) applies to an application for variation of a support order, the application will proceed in accordance with the *Divorce Act* (Canada) and rule F35 ("Provisional Support Orders").

Applying to vary a final order individually or together

F5.04 (1) An application for variation of a final order may be started under this rule

(a) by one person; or

(b) by two or more persons jointly where the facts and the relief claimed are not in dispute.

(2) Where one person makes the application on their own, the person starting the proceeding is called the applicant and the person against whom the claim is made is called the respondent.

(3) Where two or more persons make the application jointly, they are called co-applicants.

(4) The description of the parties in the title of proceedings must remain the same in any subsequent pleadings in that proceeding, subject to rule F5.06(6).

How to apply to vary a final order (individually)

F5.05 (1) A person who applies to vary a final order must file

(a) one signed original and three copies of the signed Originating Application for Variation in Form F5.05A which must include:

(i) the place where the parties ordinarily reside,

(ii) the following contact information for the filing party, as applicable:

(A) the office address of the party's lawyer, if the party is represented by a lawyer in the proceeding;

(B) a postal address within this province, if the party does not reside in the province and is not represented by a lawyer in the proceeding;

(C) the phone number and fax number of the party or, where the party is represented, the party's lawyer;

(D) the e-mail address of the party or, where the party is represented, the party's lawyer; and

(E) such other contact information that a registry clerk may specify;

(iii) the name, birth date, and place of residence of every child of the parties' relationship regardless of whether the children are over the age of majority and regardless of whether any relief is claimed in relation to the child,

(iv) the party's marital status and an indication of whether the party has begun cohabiting with another person,

(v) details of the current parenting arrangements,

(vi) details of current support arrangements, including details of any unpaid support,

(vii) details of the variation asked for and of the changed circumstances that justify a variation of the order, and

(viii) in an application to vary a final order for support, whether the support was assigned to be paid to someone else and any details of that arrangement known to the party asking for the variation;

(b) the documents required under rule F10 ("Disclosure Requirements") with three additional copies of each document.

(c) a copy of any existing agreement that deals with parenting or support; and

(d) a copy of any existing order that deals with parenting or support that is not already part of the Court file.

(2) A person applying to vary a final order does not need to attach a document that has been previously filed with the Court if the Originating Application for Variation

(a) identifies the document;

(b) states that the document is in the Court file; and

(c) specifies either the date of the order or the filing date of the document.

(3) Despite subrules (1)(a)(i) and (ii), where a party is not represented by a lawyer and for reasons of risk of harm to a party or a child, the party does not wish to provide contact information, the party may

(a) provide an alternate name and address on the Form, and provide the information regarding the party to the Court in a separate envelope marked "Confidential"; or

(b) make a request for directions from a judge.

How to apply to vary a final order (co-applicants)

F5.06 (1) Two or more persons may start an application to vary a final order as co-applicants by filing

(a) one signed original and three copies of a signed Joint Originating Application for Variation in Form F5.06A which must include

(i) the place where the parties ordinarily reside,

(ii) the following contact information for the filing parties, as applicable:

(A) the office address of the parties' lawyer, if the parties are represented by a lawyer in the proceeding;

(B) the fax number of the party or, where the party is represented, the party's lawyer;

(C) the e-mail address of the party or, where the party is represented, the party's lawyer; and

(D) such other contact information that a registry clerk may specify;

(iii) the name, birth date, and place of residence of every child of the parties' relationship regardless of whether the children are over the age of majority and regardless of whether any relief is claimed in relation to the child,

(iv) the party's marital status and an indication of whether the party has begun cohabiting with another person,

(v) details of the current parenting arrangements,

(vi) details of current support arrangements, including details of any unpaid support,

(vii) details of the variation asked for and of the changed circumstances that justify a variation of the order, and

(viii) in an application to vary a final order for support, whether the support was assigned to be paid to someone else and any details of that arrangement known to the party asking for the variation;

(b) draft consent orders

(i) in Form F34.02A, for consent orders for support, and

(ii) in Form F34.02B for all consent orders other than support.

(c) where child support is agreed to that is different from the guideline table amounts or where there is a shared parenting arrangement, an affidavit from each co-applicant as to their respective incomes and their ability to support their children.

(2) The Joint Originating Application for Variation filed under subrule (1)(a)

(a) must be signed by the co-applicants;

(b) need not include notice to respondent;

(c) must be signed and issued by a registry clerk following the signatures of the co-applicants; and

(d) must not be noted for default.

(3) A co-applicant who intends to withdraw from a joint originating application for variation of a final order must immediately

(a) file a Withdrawal of Joint Originating Application in Form F4.04B; and

(b) serve a copy of the Withdrawal of Joint Originating Application on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons").

(4) A Withdrawal of Joint Originating Application must not be filed after a judgment is issued.

(5) If a co-applicant files and serves a Withdrawal of Joint Originating Application under subrule (3) and intends to oppose the claim for divorce or other relief claimed, or intends to claim other relief, that co-applicant must file and serve a Response on the other party at the time of filing and serving the Withdrawal of Joint Originating Application.

(6) Where a former co-applicant has filed a Response under subrule (6),

(a) that former co-applicant must be named as the respondent on all subsequent pleadings filed; and

(b) the other co-applicant must be named as the applicant on all subsequent pleadings filed.

(7) Despite subrule (1)(a)(i) and (ii), where a party is not represented by a lawyer and for reasons of risk of harm to a party or a child, the party does not wish to provide contact information, the party may

(a) provide an alternate name and address on the Form, and provide the information regarding the party to the Court in a separate envelope marked "Confidential"; or

(b) make a request for directions from a judge.

Additional information required for variation of child support order

F5.07 An applicant claiming a variation of child support must include the following information in the Originating Application for Variation:

(a) whether child support is sought in accordance with the table amount determined under the guidelines;

(b) whether the party claims

(i) support is payable for a child of the age of majority or over,

(ii) the income of the payor is over $150,000.00,

(iii) the payor stands in the place of a parent for the child,

(iv) there is split custody or shared custody;

(c) whether a claim for undue hardship is being advanced; and

(d) whether special or extraordinary expenses are sought and, if so, the child to whom the expense relates and the particulars of the expense and amount claimed.

Where to start a proceeding to vary a final order (filing the form)

F5.08 (1) The applicant must file the Originating Application for Variation at the judicial centre indicated on Form F5.05A or F5.06A that is closest to the applicant's residence or, where the application includes a claim for child support or parenting, closest to the children's residence if the children do not normally reside with the applicant.

(2) A registry clerk must issue the Originating Application for Variation when it is filed, subject to rule F5.02(2).

(3) All documents in a proceeding must be filed in the same judicial centre as the Originating Application for Variation, unless a judge orders otherwise.

(4) Where a party requests that a proceeding be heard at a circuit location, a registry clerk may, if registry clerk considers it necessary, set the proceeding to be heard at a location other than the requested circuit location.

Notifying the other party (service)

F5.09 (1) The applicant must serve, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), an Originating Application for Variation and the accompanying documents on the respondent within 180 days of the date it is issued by a registry clerk.

(2) The applicant may, before or after the 180 days expires, apply in accordance with rule F16 ("Procedural Interim Applications (Without Notice)") to extend the time for serving.

(3) A judge may order that a person who may have an interest in the matters in issue be served with a notice of the proceeding with or without adding that person as a party.

(4) Where a judge makes an order under subrule (3), the judge may provide directions about how to serve the notice on that person and how to conduct the proceeding.

(5) A co-applicant does not need to serve the Joint Originating Application for Variation or accompanying documents on a co-applicant.

Rule F6- How to Respond to an Originating Application or an Originating Application for Variation

Scope of rule

F6.01 This rule sets out

(a) the form to complete and the documents to file to

(i) contest a claim made in an Originating Application or an Originating Application for Variation,

(ii) make a claim in response to an Originating Application or an Originating Application for Variation, or

(iii) respond to an Originating Application or an Originating Application for Variation without contesting the claims;

(b) the information to include in or with the Response Form;

(c) where to file the Response Form and required documents; and

(d) how to notify the other party that a response has been made to the claims made in the Originating Application or Originating Application for Variation.

How to oppose a claim or make a claim in response

F6.02 (1) A respondent who intends to oppose a claim made in an Originating Application or Originating Application for Variation or make a claim against the applicant must file

(a) one signed original and three copies of the signed Response in Form F6.02A; and

(b) the documents required under rule F10 ("Disclosure Requirements") with three additional copies of each document.

(2) The documents required under subrule (1) must be filed with the Court and, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy must be served on the applicant,

(a) within 30 days after the date of service of the Originating Application or Originating Application for Variation if the respondent was served in Canada or the United States of America; or

(b) within 60 days after the date of service of the Originating Application or Originating Application for Variation if the respondent was served outside Canada or the United States of America.

(3) Despite subrule (2), a Response may be filed and served after the time for responding has expired, provided that a Notice of Default in Form F6.06A has not been filed.

(4) Where a respondent makes a claim for divorce in their Response, the respondent must also file

(a) an original marriage certificate or registration of marriage, subject to rule F4.05 ("Where a certificate of marriage cannot be obtained"); and

(b) a certified translation of the marriage certificate or registration of marriage, where the certificate or registration is in a language other than English or French.

(5) Rule F4.05 ("Where a certificate of marriage cannot be obtained ") applies, with any necessary modifications, to a Response.

Information which must be included in the Response

F6.03 (1) A Response claiming divorce, parenting, or child support must include

(a) the name, birth date, and place of residence of every child of the parties' relationship whether or not the children are over the age of majority and whether or not any relief is claimed in relation to the child; or

(b) a statement that there are no children of the parties' relationship.

(2) A Response containing a claim for child support must include the following:

(a) whether child support is sought in accordance with the table amount determined under the guidelines;

(b) whether the party claims

(i) support is payable for a child of the age of majority or over,

(ii) the income of the payor is over $150,000.00,

(iii) the payor stands in the place of a parent for the child, or

(iv) there is split or shared custody;

(c) whether a claim for undue hardship is being advanced; and

(d) whether special or extraordinary expenses are sought, the child to whom the expense relates and the particulars of the expense and amount claimed.

(3) A respondent claiming one or more of the following must state the material facts supporting the claim:

(a) unequal division of matrimonial property;

(b) entitlement to a share of business assets;

(c) undue hardship in a child support proceeding;

(d) division of property between common law spouses;

(e) spousal support, partner support, parental support, or dependant support.

(4) Subject to subrule (5), every Response must contain the following contact information for the filing party or parties, as applicable:

(a) the office address of the party's lawyer, if the party is represented by a lawyer in the proceeding;

(b) their residential address or postal address within this province, if the party is not represented by a lawyer in the proceeding;

(c) the fax number of the party or, where the party is represented, the party's lawyer;

(d) the e-mail address of the party or, where the party is represented, the party's lawyer; and

(e) such other contact information that a registry clerk may specify.

(5) Where a party is not represented by a lawyer and, for reasons of risk of harm to a party or a child, the party does not wish to provide contact information set out in subrule (4), the party may

(a) provide an alternate name and address on the Form, and provide the information regarding the party to the Court in a separate envelope marked "Confidential"; or

(b) make a request for directions from a judge.

How to respond to a claim without contesting

F6.04 (1) A respondent who does not contest the claims made in the Originating Application or Originating Application for Variation may continue to be advised of the progress of the application by filing a Demand for Notice in Form F6.04A.

(2) If the respondent files a Demand for Notice, the respondent must serve the applicant with the Demand for Notice in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons") within

(a) 30 days after service of the Originating Application or Originating Application for Variation if the respondent was served in Canada or the United States of America; or

(b) 60 days after service of the Originating Application or Originating Application for Variation if the respondent was served outside Canada or the United States of America.

(3) The applicant may proceed against a respondent who has filed and served a Demand for Notice as if that respondent had failed to file and serve a Response, but must serve notice of all subsequent pleadings and proceedings on that respondent.

Where to file your response

F6.05 The respondent must file the documents required under rule F6 in the judicial centre where the Originating Application or Originating Application for Variation was filed, unless a judge orders otherwise.

Consequences of not responding

F6.06 (1) The applicant may require a registry clerk to issue a Notice of Default in Form F6.06A where

(a) the applicant files proof of service of the Originating Application or Originating Application for Variation; and

(b) the respondent either

(i) fails to file and serve a Response within the prescribed time, or

(ii) files and serves a Demand for Notice.

(2) A Notice of Default must not be filed in relation to a parenting or child support claim until seven days after a Note to Court has been filed with the Court by Family Justice Services.

(3) Where a Notice of Default has been filed, the respondent is not permitted to file or serve a Response without

(a) the written consent of the applicant filed with the Court; or

(b) a judge's permission.

(4) Where a Notice of Default has been filed, a judge may proceed to decide the matter without hearing from the respondent, in accordance with rule F26 ("Uncontested Proceedings").

Rule F7- How to Reply to a Response

Scope of rule

F7.01 This rule sets out

(a) the form to complete and the documents to file to contest a claim made in a Response; and

(b) how to notify the other party that a Reply has been made to claims made in the Response.

Replying to a Response

F7.02 (1) An applicant who intends to oppose an allegation or a claim made in a Response must file:

(a) one signed original and three copies of the signed Reply in Form F7.02A and

(b) the documents required under rule F10 ("Disclosure Requirements") with three additional copies of each document.

(2) The documents required under subrule (1) must be filed with the Court and, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy must be served on the respondent within 10 days of service of the Response.

(3) Despite subrule (2), a Reply may be filed and served after the time for replying has expired provided that a Notice of Default in Form F6.06A has not been filed.

How to reply to a claim in a response without contesting

F7.03 (1) An applicant who does not contest the claims made in the Response may continue to be advised of the progress of those claims by filing a Demand for Notice in Form F6.04A.

(2) If the applicant files a Demand for Notice, the applicant must serve the respondent with the Demand for Notice in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons") within 10 days of service of the Response.

(3) The respondent may proceed against an applicant who has filed and served a Demand for Notice as if that applicant had failed to file and serve a Reply, but must serve notice of all subsequent pleadings and proceedings on that respondent.

Consequences of not replying

F7.04 (1) The respondent may require a registry clerk to issue a Notice of Default in Form F6.06A where

(a) the respondent files proof of service of the Response; and

(b) the applicant either

(i) fails to file and serve a Reply within the prescribed time, or

(ii) files and serves a Demand for Notice.

(2) A Notice of Default must not be filed in relation to a parenting or child support claim until seven days after a Note to Court has been filed with the Court by Family Justice Services.

(3) Where a Notice of Default has been filed, the applicant is not permitted to file or serve a Reply without

(a) the written consent of the respondent filed with the Court; or

(b) a judge's permission.

(4) Where a Notice of Default has been filed in relation to a claim made in a Response, a judge may proceed to decide the claim without hearing from the applicant in relation to that claim, in accordance with rule F26 ("Uncontested Proceedings").

Rule F8 - Providing Notice and Serving Documents on Other Parties or Persons

Scope of rule

F8.01 (1) This rule sets out

(a) the addresses and information that must be provided to the Court and the other parties to enable service of documents between parties;

(b) how to serve particular documents on a person;

(c) the circumstances in which service of documents is not required;

(d) how to serve documents outside of this province;

(e) specific requirements for the service of documents by electronic methods of communication;

(f) how to prove that a document was served on a person;

(g) how to get an order of the Court dispensing with the need to serve a document;

(h) how to validate service which was not done in accordance with this rule;

(i) how to challenge the service of a document where the document was not brought to a person's attention; and

(j) restrictions on who can serve documents.

(2) Where these rules require a document to be served on a person, the document must be served in accordance with this rule.

Address for service

F8.02. (1) Unless a judge permits otherwise, a party is required to provide an address for the service of documents which must be either:

(a) the office address of the party's lawyer, if the party is represented by a lawyer in the proceeding; or

(b) a residential address or postal address within this province, if the party is not represented by a lawyer in the proceeding.

(2) A party may provide, in addition to the address for service provided under subrule (1), one or more of the following as an address for service of documents:

(a) a postal address;

(b) a fax number;

(c) an e-mail address; or

(d) an account with an electronic document delivery service.

(3) A party may change their address or addresses for service of documents by filing and serving on the other parties

(a) the address for service of documents required under subrule (1); and

(b) any additional address for service of documents referred to in subrule (2) that the party intends to include.

(4) The address for service of a person whose address for service is not shown on the Originating Application, Originating Application for Variation, Response, or other pleading is

(a) the office address of the lawyer who is representing that person in the proceeding; or

(b) in the case of an individual, their usual or last known address.

(5) If a party files a pleading that does not include a valid address for the filing party in accordance with subrule (1), a judge may order that the pleading be struck.

(6) Despite the requirements of this rule, where a party is not represented by a lawyer and for reasons of risk of harm to a party or a child, the party does not wish to provide the contact information set out, the party may

(a) provide an alternate name and address on the Form, and provide the information regarding the party to the Court in a separate envelope marked "Confidential"; or

(b) make a request for directions from a judge.

Documents which must be personally served (hand-delivery)

F8.03 (1) The following documents must be personally served in accordance with subrule (2), (3), (4) or (5), as applicable, unless a judge orders otherwise:

(a) an Originating Application initiating a claim for parenting or divorce;

(b) an Originating Application for Variation seeking variation of a parenting order;

(c) a Response initiating a claim for parenting or divorce;

(d) a notice of contempt application;

(e) a pleading, order or other document served on a person who is not a party, including a subpoena to a witness;

(f) a notice of application or notice of default hearing in which the person to be served faces a possibility of imprisonment;

(g) a notice of a hearing of an emergency temporary relief application; or

(h) a document which is required under legislation to be served by personal service.

(2) To personally serve a document on a mentally competent, adult person, the party serving the document must hand-deliver a copy of the document to the person to be served.

(3) To personally serve a document on a mentally disabled person or a minor, the party serving the document must hand-deliver a copy of the document to the person to be served and

(a) the person's litigation representative, if one has been appointed;

(b) the person's parent or guardian, if no litigation representative has been appointed;

(c) an adult with whom the person resides, if there is no litigation representative, parent or guardian; or

(d) another person appointed by the Court;

(4) To personally serve a document on a manager, as defined in the *Children and Youth Care and Protection Act*, the party serving the document must hand-deliver a copy of the document to the manager.

(5) A party may personally serve a document upon a corporation in accordance with the *Corporations Act*.

Serving other originating documents

F8.04 (1) Unless a judge orders otherwise, the following documents must be either personally served in accordance with rule F8.03, or served in one of the alternative methods listed in subrules (2), (3), (4) or (5):

(a) an Originating Application which does not include a claim for parenting or divorce;

(b) an Originating Application for Variation which does not include a claim for the variation of a parenting order.

(2) Where the person to be served has a lawyer, service of a document may be carried out by leaving a copy of the document with the lawyer, but service under this subrule is only effective if the lawyer endorses the following, or similar words, on a copy of the document (note that service is not effective if the lawyer does not endorse the document):

"I, [name of lawyer], accept service of this document on behalf of [name of recipient] on [date]".

(3) Service of a document may be carried out by sending, by regular mail, a copy of the document together with an Acknowledgment of Service (Form F8.04A) to the recipient, but service under this subrule is only effective if the recipient returns a completed Acknowledgment of Service to the sender.

(4) Subject to rule F8.10, service of a document may be carried out by sending, by email, or other electronic form of communication, a copy of the document together with an Acknowledgment of Service (Form F8.04A) to the recipient, but service under this subrule is only effective if the recipient returns a completed Acknowledgment of Service to the sender.

(5) Service of a document may be carried out by sending a copy of the document by registered mail, certified mail, or courier to the last known address of the person to be served, but service under this subrule is only effective where the carrier is able to confirm delivery.

(6) Service of a document may be carried out by

(a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and

(b) on the same day or the following day mailing another copy of the document to the person at the place of residence.

Serving subsequent documents

F8.05 (1) Subject to rule F8.10, service of any other document not listed in rule F8.03 or F8.04 may be carried out by:

(a) leaving the document or a copy at the party's address provided in accordance with rule F8.02;

(b) mailing the document or a copy addressed to the party at the party's address provided in accordance with rule F8.02;

(c) faxing a copy of the document, where the party has provided a fax number in accordance with rule F8.02;

(d) emailing a copy of the document, where the party has provided an email address in accordance with rule F8.02;

(e) use of an electronic document exchange of which the party is a member or subscriber; or

(f) any other method ordered by a judge.

(2) Nothing in this rule shall be taken as prohibiting personal service of any document or as affecting any statute which provides for the manner in which a document may be served.

When service is effective

F8.06 (1) Service by personal service under rule F8.03 is effective on the day the copy was left with the person to be served.

(2) Service of a document under rule F8.04(2) is effective on the date that the lawyer endorsed on the document.

(3) Service of a document under either rule F8.04(3) and (4) is effective on the date indicated by the recipient on the Acknowledgment of Service.

(4) Service of a document under rule F8.04(5) is effective on the date shown on the confirmation of delivery as provided by the carrier.

(5) Service of a document under rule F8.04(6) is effective 5 days after the document was mailed.

(6) Service of a document under rule F8.05(1)(a) is effective on the day the copy of the document was left at the party's address or, if the document was left after 4 P.M., the following day.

(4) Service of a document by ordinary mail under rule F8.05(1)(b) is effective on the fifth day after it was mailed.

(5) Service of a document by fax or email under rule F8.04(1)(c) or (d) is effective on,

(a) the date shown on the first page of the fax or in the email message, as the case may be; or

(b) if the first page of the fax or the email message shows that the document was served after 4 P.M., the following day.

(6) Service of a document through an electronic document exchange under rule F8.04(1)(e) is effective only if the electronic document exchange provides a record of service showing the date and time of service and then service is effective on

(a) the date shown on the record of service; or

(b) if the record of service shows that the document was served after 4 P.M., the following day

Where service is not required

F8.07 Unless a judge orders otherwise, a party taking a step or filing a document in a proceeding does not need to provide notice of the step or serve the document on another party or person where

(a) a Notice of Default has been filed against that party and the party has not filed a Demand for Notice; or

(b) the party to be notified or served has already taken a step or filed a document in response to the document to be served.

Service outside of this province

F8.08 A document may be served on a person outside of this province in any of the following ways:

(a) in accordance with this rule; or

(b) in a manner permitted by the *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters*, if the country in which it is being served is a contracting state under the Convention.

Default under Hague Convention on Service Abroad

F8.09 (1) Where a commencement document has been transmitted abroad for the purpose of service under the provisions of the *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters* and no certificate of service has been received, despite the provision of the first paragraph of Article 15 of the *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters*, the Court may give judgment if the conditions set out in the second paragraph of Article 15 of the *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters* are fulfilled.

(2) Despite subrule (1), a judge may order, in case of urgency, any provisional or protective measures.

(3) Where an originating document has been transmitted abroad for the purpose of service under the provisions of the *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters* and a judgment has been entered against a respondent who has not filed a Response, the Court, on application, may relieve the respondent from the effects of the expiration of the time for appeal from the judgment if the conditions set out in the first paragraph of Article 16 of the *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters* have been fulfilled, but the Court will not entertain an application for such relief filed after the expiration of one year following the date of judgment.

(4) Subrule (3) must not apply to judgments concerning the status or capacity of persons.

Additional requirements for service by electronic communication

F8.10 (1) Service of a document may be carried out by electronic communication only if the total number of pages (including the cover page) to be transmitted:

(a) is 30 pages or fewer; or

(b) does not exceed an amount agreed to by the parties.

(2) A document served by electronic communication must indicate:

(a) the sender's name and address;

(b) the name of the person to be served;

(c) the date and time of transmission;

(d) the total number of pages, including a cover page, if applicable, transmitted;

(e) that the transmission is for service of court documents;

(f) the name and telephone number of a person to contact if there is a problem with transmission; and

(g) a return electronic address.

Proof of service

F8.110 A party may prove that a document has been served in accordance with this rule by filing:

(a) an Affidavit of Service in Form F8.11A setting out the details of the service, completed by the person who served the document;

(b) a copy of the document with the recipient's lawyer's endorsement on the document indicating an acceptance of service and the date of the acceptance;

(c) an Acknowledgment of Service in Form F8.04A completed by the recipient; or

(d) confirmation of delivery obtained from the registered or certified mail carrier or courier.

Where service impractical

F8.12 (1) A party attempting to serve a document on a person in accordance with this rule may apply in accordance with rule F16 ("Procedural Interim Applications (Without Notice)") for an order

(a) permitting the party to serve the document on the intended recipient by some other means; or

(b) dispensing with the requirement that the document be served.

(2) A party who applies for an order under subrule (1)(a) must set out the following in the application:

(a) an explanation of why service in accordance with the rule is impractical, with the details of any previous attempts to serve the document;

(b) a proposal for a means of serving the document; and

(c) an explanation of why the proposed means of service is likely to bring the document to the attention of the intended recipient.

(3) Unless a judge permits otherwise, an order permitting service of a document by another means must be

(a) attached to a document to be served; or

(b) referenced in an advertisement, where service is permitted by advertisement.

(4) A judge must, in an order permitting service by some other means, specify when service is considered to be effective, for the purpose of computation of time under these rules.

(5) A party who applies for an order under subrule (1)(b) must set out the following in the application:

(a) evidence which enables the judge to draw the inference that the person is likely to be aware that process has been or is about to be issued against them and is evading service; or

(b) other evidence which satisfies the judge that the benefit the party would gain in being permitted to proceed without notifying the intended recipient outweighs the potential detriment to the intended recipient.

(6) Where an order is made dispensing with the requirement to serve the document, the document is considered to have been served on the date the order is signed, for the purpose of computation of time under these rules.

Validating service

F8.13 Where a document has been served in a manner other than one provided for under applicable legislation, these rules, or a court order, a judge may make an order validating the service where the judge is satisfied that

(a) the document came to the attention of the person to be served; or

(b) the document would have come to the attention of the person to be served, were it not for the intended recipient's attempts to evade service.

Where document served but not brought to recipient's attention

F8.14 An intended recipient may, where necessary, challenge the service of a document by establishing that even though the document was served in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons") the document

(a) did not come to the intended recipient's attention; or

(b) came to the intended recipient's attention at a time later than when it was served.

Restrictions

F8.15 (1) A person may only serve a document under these rules if that person is at least 19 years of age.

(2) A document requiring hand-delivery in accordance with this rule must be served by a person other than a party.

Section 4 - How to Get Information for your Case

Rule F9 - General Rules Relating to Exchanging Information and Documents

Purpose of section

F9.01 (1) The purpose of this section is to:

(a) allow parties to obtain evidence that will be relied on in the proceeding;

(b) narrow and define the issues between the parties;

(c) encourage early disclosure of information and documents;

(d) facilitate evaluation of the parties' positions and, if possible, facilitate the resolution of issues in dispute; and

(e) discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of proceedings.

(2) A judge may do any of the following in order to achieve the purposes of this section:

(a) give directions;

(b) modify or waive any right under this section;

(c) make a costs award; and

(d) make any other order the judge considers appropriate under the circumstances.

Restrictions on the use of information obtained under this section

F9.02 (1) A party to a proceeding

(a) must keep the information and documents obtained under this section in confidence; and

(b) must only use the information and documents obtained under this section for the purposes of the proceeding in which the information or document was obtained.

(2) Subrule (1) does not apply

(a) where the person who disclosed the information or document consents to the information or document being released;

(b) where the information or document is referred to or used as evidence in a proceeding and a judge has made no order restricting its use or access to it;

(c) where the information or document is used as evidence to impeach the testimony of a witness in another proceeding;

(d) to prevent the information or document from being used in a later proceeding between the same parties;

(e) where the person is ordered by a judge to disclose the information or document;

(f) where the disclosure of information or documentation is required by law; or

(g) where a judge orders otherwise.

(3) A judge may, on an interim application by a party or at the judge's discretion, require a person to disclose information or a document that would normally be confidential, if the interests of justice outweigh any harm that would result to

(a) the person who provided the information or document;

(b) the parties to the proceeding; or

(c) a child affected by the proceeding.

(4) A person who fails to uphold this rule may be held in contempt of Court.

Requirement to keep information current

F9.03 If a party discovers that information that has been disclosed to another party under this section was incorrect or incomplete when made, or requires updating, the party must file and, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), serve the corrected, completed, or updated information, together with any supporting documents, on the other party

(a) at least four days before the hearing of an interim application in which the information is required or will be relied upon;

(b) at least seven days before a case management hearing, settlement conference, trial readiness conference or trial, in which the information is required or will be relied upon; or

(c) as otherwise ordered by a judge.

Consequences of non-disclosure

F9.04 (1) Where a party has not disclosed or provided information or a document as required under this section, a judge may do one or more of the following:

(a) where support is in issue, conclude that the party has no answer to the claims against the party and impute income to the party in the amount that the judge considers appropriate;

(b) direct that the party file and serve one or more of the following within a specified time:

(i) a Financial Statement,

(ii) a Property Statement,

(iii) the information requested in a Demand to Disclose,

(iv) the answers requested in a Demand for Answers, or

(v) the income information required under rule F10.02(4) for a child support claim for the basic table amount as prescribed by the guidelines,

(vi) any other disclosure required by these rules or that the party has undertaken to disclose;

(c) grant any other remedy requested or that the judge considers appropriate.

(2) If a party does not comply with an order requiring disclosure, a judge may

(a) dismiss that party's proceeding;

(b) strike out any document filed by that party;

(c) make a contempt order against that party or grant a party permission to apply for a contempt order;

(d) order that any information that should have appeared on a Financial Statement or Property Statement may not be used by that party at the hearing of an interim application or trial;

(e) order a person that is not a party, including a corporation or government institution, to provide information in that person’s custody or control that may be relevant to the issues in the proceeding; or

(f) make any other order the judge considers appropriate, including those orders that may be made under subrule (1).

(3) A person served with an order granted under rule subrule (2)(e) must do one of the following within 30 days after service:

(a) provide a written statement to the requesting party detailing the information requested or a statement that the information is not in the custody or control of that person; or

(b) apply for an exemption from providing any or all of the requested information in accordance with rule F18 (“Interim Application with Notice”).

(4) A judge may order that the expense of providing the information requested and the costs of the parties under this rule be paid to or by

(a) either of the parties to the proceeding; or

(b) the person ordered to provide information.

Rule F10 – Disclosure Requirements

Scope of rule

F10.01 This rule sets out

(a) the documentation which must be included with an Originating Application, Originating Application to Vary, Response, or Reply, as applicable; and

(b) how to get an extension of time for filing a Response, a Reply, or the required documents.

Information that must be disclosed where there is a child support claim

F10.02 (1) A party to a proceeding involving a claim for child support must file a Financial Statement in Form F10.02A if

(a) the party is making or responding to a claim for child support different from the basic table amount set out in the guidelines;

(b) the party is making or responding to a claim for variation of child support different from the basic table amount set out in the guidelines;

(c) the party is making or responding to a claim for special or extraordinary expenses under section 7 of the guidelines; or

(d) the party making or responding to a claim for child support is claiming undue hardship under section 10 of the guidelines.

(2) Where a Financial Statement is required under subrule (1), the party filing the Financial Statement must include all of the documentation required under section 19 of the *Child Support Guidelines Regulations* or section 21 of the *Federal Child Support Guidelines*, as applicable.

(3) A registry clerk must not accept an Originating Application, Originating Application for Variation, Response or Reply where the party filing it has not attached a Financial Statement and the documentation required under rule subrule (2).

(4) A party responding or replying to a claim for child support in the basic table amount must file:

(a) four copies of the party's three most recent statements of earnings indicating the total earnings paid in the year to date, including overtime, or where such a statement is not provided by an employer, a letter from the employer setting out that information including the rate of annual salary or remuneration;

(b) the following, as applicable:

(i) copies of the party's personal Income Tax Returns and copies of the party's Notices of Assessment (and any Notices of Reassessment) for each of the three most recent taxation years,

(ii) proof of Income Statements ("Option C" or "Income and Deduction" printouts) from the Canadian Revenue Agency for the three most recent taxation years,

(iii) a statement from the Canadian Revenue Agency that the party has not filed income tax returns for one or more of the three most recent taxation years.

(c) if the party has income from self-employment, a partnership or a corporation in which the party has a controlling interest, or is a beneficiary of a trust, the documents required under section 21(1) of the *Federal Child Support Guidelines* or section 19 of the provincial *Child Support Guidelines Regulations*, as applicable.

Information that must be disclosed where there is a claim for spousal, partner, parental, or dependant support

F10.03 A party to a claim for spousal support, partner support, parental support, or dependant support must file a Financial Statement in Form F10.02A, unless the parties have agreed on the relief to be granted and a draft consent order in Form F34.02A has been filed.

Information that must be disclosed where there is a property claim

F10.04 A party to a property claim must file a Property Statement in Form F10.04A unless the parties have agreed on the relief to be granted and a draft consent order in Form F34.02B has been filed.

Where information is not available when the Response or the Reply is required to be filed

F10.05 (1) If the financial information required under these rules is not available at the time the Response or Reply is filed, a party must complete schedule 4 of the Financial Statement, undertaking to provide the Court and the other party with the required financial information within 60 days from the date the undertaking is filed.

(2) If the financial information is not available at the expiry of 60 days from the date the undertaking is filed, the party providing the undertaking must request a case management

hearing to request an extension of time to file the required information upon providing an adequate explanation for the delay.

(3) Where the party does not provide the required information or an adequate explanation for the delay in providing the required information, a judge may do one or more of the following

(a) strike out the Response or Reply filed;

(b) make a costs award against the party; or

(c) make any other order the judge considers appropriate.

Rule F11 – Getting Additional Information

Scope of rule

F11.01 This rule sets out

(a) how to request disclosure of relevant documents from another party;

(b) when and how to ask another party questions in writing;

(c) when and how to ask another party questions in person before the trial; and

(d) when and how non-parties have to disclose information or documents.

How to request disclosure of relevant documents

F11.02 (1) A party may request that another party disclose one or more relevant documents by

(a) filing a Demand to Disclose in Form F11.02A; and

(b) serving a copy of the Demand to Disclose on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons").

(2) A Demand to Disclose may only be filed and served before a trial date is set, unless a judge orders otherwise.

(3) A party served with a Demand to Disclose who does not object to disclosing the requested document must, within 30 days of service of the Demand to Disclose,

(a) file a Response to a Demand to Disclose in Form F11.02B; and

(b) serve a copy of the Response to a Demand to Disclose on the requesting party, with the requested document attached, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons").

(4) A party served with a Demand to Disclose who objects to disclosing one or more of the documents requested in the Demand must, within 30 days of service the Demand to Disclose

(a) file a Response to a Demand to Disclose in Form F11.02B, setting out the objection and the reasons for the objection in writing; and

(b) serve a copy of the Response to a Demand to Disclose on the requesting party, with all documents the party does not object to disclosing, in accordance

with rule F8 (“Providing Notice and Serving Documents on Other Parties or Persons”).

When you can ask questions in writing

F11.03 (1) Where a Financial Statement or a Property Statement is required under these rules, a party may ask the party required to file the Statement to answer questions in writing relating to the financial or property issues by

(a) filing a Demand for Answers in Form F11.03A; and

(b) serving the Demand for Answers on that party, in accordance with rule F8 (“Providing Notice and Serving Documents on Other Parties or Persons”).

(2) A Demand for Answers may only be filed and served before a trial date is set, unless a judge orders otherwise.

(3) A party served with a Demand for Answers who does not object to answering the questions asked must, within 30 days of service of the Demand,

(a) file the answers using a Reply to a Demand for Answers in Form F11.03B; and

(b) serve a copy of the completed Reply to a Demand for Answers on the party who served the Demand, in accordance with rule F8 (“Providing Notice and Serving Documents on Other Parties or Persons”).

(4) A party served with a Demand for Answers who objects to answering one or more of the questions asked must, within 30 days of service of the Demand,

(a) file a Reply to a Demand for Answers in Form F11.03B, setting out the reason for the objection; and

(b) serve a copy of the Reply to a Demand for Answers, together with all answers to those questions which the party does not object to answering, on the party who served the Demand, in accordance with rule F8 (“Providing Notice and Serving Documents on Other Parties or Persons”).

When you can ask questions in person before trial (examination for discovery)

F11.04 (1) A party may only ask questions in person before trial where

(a) there is a claim for support and the proposed questioning relates to the determination of the income of a party who is self-employed, a beneficiary under a trust, or a shareholder, director, or officer of a corporation;

(b) there is a claim for the division of property and the proposed questioning relates to an interest in or the valuation of business assets; or

(c) a judge grants an order permitting it at a case management hearing.

(2) For greater certainty, a party may not ask questions in person in relation to parenting issues unless a judge has granted an order permitting it at a case management hearing.

(3) A party seeking an order under subrule (1)(c) must satisfy a judge that

(a) the party seeking the order has been unable to obtain the information it is seeking by more informal methods;

(b) it would be unfair to require the party seeking the order to proceed to a trial without the opportunity to question the person;

(c) the questioning will not unduly delay the progress of the proceeding;

(d) the questioning will not entail unreasonable expense for the other party;

(e) the questioning will not result in unfairness to the person sought to be questioned;

(f) the questioning is not made in bad faith or calculated to annoy, embarrass, or oppress the person sought to be questioned or another party; and

(g) the questioning is not otherwise prohibited by law.

(4) Where questioning in person is permitted under this rule, it must be conducted in accordance with rule 30 ("Examination for Discovery") in Part I.

When non-parties have to disclose

F11.05 (1) Where there is a claim for undue hardship by either party under the guidelines and a judge considers a claim for undue hardship to be appropriate after considering the pleadings and other evidence filed, the judge may order one or more of the following persons residing with a party to file and serve a Financial Statement in Form F10.02A:

(a) a person who has a legal duty to support the party or whom the party has a legal duty to support;

(b) a person who shares living expenses with the party or from whom the party otherwise receives an economic benefit as a result of living with that person if it is reasonable to consider that person as part of the party's household;

(c) a child over the age of majority whom the party or the person described in subrule (1)(a) or (b) has a legal duty to support.

(2) Where a judge makes an order under subrule (1), the person ordered to provide the Financial Statement must attach the following:

(a) copies of the person's three most recent statements of earnings indicating the total earnings paid in the year to date, including overtime, or where such a statement is not provided by an employer, a letter from the employer setting out that information including the rate of annual salary or remuneration;

(b) the following, as applicable:

(i) copies of the person's personal Income Tax Returns and copies of the person's Notices of Assessment (and any Notices of Reassessment) for each of the three most recent taxation years,

(ii) proof of Income Statements ("Option C" or "Income and Deduction" printouts) from the Canadian Revenue Agency for the three most recent taxation years, or

(iii) a statement from the Canadian Revenue Agency that the person has not filed income tax returns for one or more of the three most recent taxation years; or

(c) if the person has income from self-employment, a partnership or a corporation in which the person has a controlling interest, or is a beneficiary of a trust, the documents required under section 21(1) of the *Federal Child Support Guidelines* or section 19 of the provincial *Child Support Guidelines Regulations*, as applicable.

(3) Where a person referred to in subrule (1) has not made satisfactory disclosure after service of an order to file and serve a Financial Statement or has not provided the income information listed in subrule (2), or as further directed by a judge, the judge may:

(a) order a person other than a party, including a corporation or government institution, to provide information in that person's custody or control that may be relevant to the issues in the proceeding;

(b) strike out the claim for undue hardship; or

(c) provide any directions the judge considers appropriate.

(4) A party seeking an order under subrule (3) must satisfy a judge that

(a) the party seeking the order has been unable to obtain the information by more informal methods;

(b) it would be unfair to require that party to proceed to a trial without the information; and

(c) the disclosure requested

(i) will not unduly delay the progress of the proceeding,

(ii) will not entail unreasonable expense for any person,

(iii) will not result in unfairness to the person from whom disclosure is sought,

(iv) is not requested in bad faith or to annoy, embarrass, or oppress the person or another party, and

(v) is not otherwise prohibited by law.

(5) A person served with an order granted under rules F11.05 (1) or (3) must do the following within 30 days after service:

(a) provide a written statement to the requesting party detailing the information requested or a statement that the person is not in control or possession of the information; or

(b) apply in accordance with rule F18 ("Interim Application with Notice") for exemption from providing any or all of the requested information.

(6) A judge may order that the costs of providing the information requested and the costs of the parties in an application under this rule be paid to or by

(a) either of the parties to the proceeding; or

(b) the person ordered to provide information.

Where disclosure unsatisfactory

F11.06 (1) Where a party is dissatisfied with the disclosure made or objections raised in response to a request, notice, question, or order made under rule F11, the party may request, at a case management hearing, a determination of the completeness of the disclosure made.

(2) A judge may, at a case management hearing, provide any directions or make any order the judge considers appropriate.

Court may order production of documents

F11.07 (1) A judge may order the production of any document relevant to any matter in question in a proceeding for inspection by any party or the Court, at such time, place, and manner as the judge considers appropriate.

(2) Where a document is in the possession, custody, or control of a person who is not a party, and the production of the document might be compelled at a trial or hearing, the Court may, on notice to the person and any opposing party, order the production and inspection or the disclosure of a copy of the document.

Rule F12- Expert Reports

Scope of rule

F12.01 This rule sets out

(a) the duties of an expert engaged by a party to provide opinion evidence in relation to a proceeding; and

(b) the timeline for exchanging expert reports.

Experts' duties

F12.02 (1) Every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding must:

(a) provide opinion evidence that is fair, objective, and non-partisan;

(b) provide opinion evidence that is related only to matters that are within the expert's area of expertise;

(c) provide such additional assistance as the judge may reasonably require to determine a matter in issue; and

(d) immediately disclose any changes in opinion or any new information which might alter the expert's opinion.

(2) The duties in subrule (1) prevail over any obligation owed by the expert to the party on whose behalf the expert is engaged.

Timeline for exchange of expert reports

F12.03 (1) A party must serve, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), the following on the other party at least 30 days before the date scheduled for trial:

(a) a copy of any expert report they intend to rely on at trial; and

(b) a copy of the expert's resume or curriculum vitae.

(2) Despite subrule (1), the parties may agree, or a judge may order, that a different timeline applies for the exchange of expert reports.

Expert reports

F12.04 No party may rely upon an expert report which was not exchanged in accordance with rule F12 (“Expert Reports”), unless a judge permits otherwise**.**

Rule F13- Investigations and Reports Ordered by a Judge

Investigation ordered by judge

F13.01 (1) A judge may, at a case management hearing, direct a person to make an investigation and report that a judge deems necessary for the resolution of issues between the parties, including a proceeding in which parenting, child support, spousal support, partner support, parental support, dependant support, or property is in issue.

(2) Where a judge directs an investigation and report under subrule (1), the judge may receive evidence resulting from the investigation.

(3) The person making the investigation and report must, at least 24 hours before filing the report, serve a copy of the report upon every party to the proceeding, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), unless the judge orders otherwise.

(4) The person making the investigation is a competent and compellable witness.

(5) Subrule (4) does not apply to Family Justice Services, unless a judge orders otherwise

(6) A party may cross-examine a person who provides evidence obtained in the course of an investigation under this rule and may lead evidence in response.

(7) A judge may order how the expense related to an investigation must be paid.

Testing and assessments ordered by judge

F13.02 (1) A judge may, at a case management hearing, order any testing or assessment be conducted that the judge deems necessary for the resolution of the issues.

(2) Where a judge orders testing or an assessment, the person conducting the testing or assessment must prepare a written report and file it with the Court within the time ordered by the Court, and, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), serve a copy on both parties, unless a judge orders otherwise.

(3) Unless a judge orders otherwise, a report required under subrule (2) that relates to issues of parenting must include

(a) information the assessor considers relevant to the matters in dispute;

(b) an opinion as to the ability of a party to parent;

(c) an opinion as to what parenting plan would be in the best interests of the children;

(d) an opinion as to relevant services that are available to the parties or their children;

(e) the basis of the opinions provided; and

(f) information on any other matter referred by a judge.

(4) The person conducting the testing or assessment is a competent and compellable witness.

(5) Subrule (4) does not apply to Family Justice Services, unless a judge orders otherwise

(6) A party may cross-examine a person who provides evidence obtained in the course of any testing or assessment under this rule and may lead evidence in response.

(7) A judge may order how the expense related to the testing or assessment must be paid.

Section 5 - Court Assistance in Managing your Case

Rule F14- Case Management

Scope of rule

F14.01 (1) This rule sets out the procedure for case management, which is a form of judicial supervision of the proceeding.

(2) This rule provides

(a) which proceedings must be case managed;

(b) how the first case management hearing is scheduled in a proceeding;

(c) how subsequent case management hearings are scheduled;

(d) a party's duties and responsibilities at a case management hearing;

(e) the procedure at a case management hearing; and

(f) what a judge may do at a case management hearing.

Mandatory case management

F14.02 (1) Every proceeding must be case managed by a judge, subject to subrule (2) or an order of a judge providing otherwise.

(2) Unless a judge orders otherwise, case management is not required where one or more of the following applies:

(a) the proceeding has been brought under the *Children and Youth Care and Protection Act*;

(b) a Notice of Default has been filed on all issues;

(c) a Demand for Notice has been filed on all issues;

(d) a Consent Order has been filed on all issues;

(e) an objection to recalculation has been filed.

First case management hearing

F14.03 (1) A registry clerk must schedule a case management hearing

(a) where the proceeding involves claims for child support or parenting, 7 days after the filing of a Note to Court by Family Justice Services;

(b) where the proceeding does not involve a claim for child support or parenting, immediately after

(i) a Response has been filed, or

(ii) the applicant has filed an affidavit of service showing that the Originating Application has been served and the time for filing a Response has expired.

(2) Where a proceeding involves claims in addition to child support or parenting, a party may request a registry clerk to schedule a case management hearing in relation to any claim other than child support or parenting, but only after

(a) a Response has been filed, or

(b) the applicant has filed an affidavit of service showing that the Originating Application has been served and the time for filing a Response has expired.

(3) Where a case management hearing is scheduled under subrule (1) or (2), a registry clerk must notify the parties or their lawyers of the case management hearing.

Subsequent case management hearings

F14.04 (1) After the first case management hearing has been held, a judge may order or a party may request a subsequent case management hearing.

(2) A party may request a case management hearing under subrule (1) by filing a Request for Case Management in Form F14.04A.

(3) The party requesting the case management hearing must, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), serve the Request for Case Management on the other parties as soon as practicable and at least seven days prior to the date scheduled for the case management hearing, unless a judge orders otherwise.

Requirement to attend and be prepared

F14.05 (1) The parties and their lawyers must attend a case management hearing in person, unless a judge

(a) permits a party or lawyer to appear remotely pursuant to rule 47A("Electronic Conferencing") in Part I; or

(b) excuses a party or lawyer from attending.

(2) The parties and lawyers in attendance at a case management hearing must be prepared to discuss the issues in rule F14.06(2).

Procedure

F14.06 (1) Parties must not file affidavits or other documents in relation to a case management hearing, unless a judge orders otherwise.

(2) At a case management hearing the judge, the parties, and the lawyers must

(a) ensure that relevant information is disclosed and updated;

(b) identify the issues that are in dispute and those that are not in dispute;

(c) explore ways to resolve the issues that are in dispute;

(d) consider whether it is possible to simplify the case if the parties admitted certain facts;

(e) explore the chances of settling the proceeding;

(f) discuss the dispute resolution requirement in rule F20 ("Responsibility of Parties").

(g) schedule the date for the next step in the proceeding; and

(h) have the parties agree to a specific timetable for the steps to be taken in the proceeding before a trial.

Powers of case management judge

F14.07 (1) At a case management hearing the judge may do one or more of the following:

(a) order that a proceeding be transferred to another judicial centre;

(b) make an order extending or abridging any time period set out in these rules;

(c) make an order suspending or waiving a requirement to file a document;

(d) make any order in relation to document disclosure or production;

(e) order a party to file updated or additional pleadings where the judge deems it necessary;

(f) make an order with respect to amending pleadings or other documents;

(g) order that a person be questioned in writing under rule F11.03;

(h) order that a person be questioned in person under rule F11.04(1)(c) ("When you can ask questions in person before trial");

(i) make an order for an inspection of property;

(j) make an order for an appraisal of the value of property;

(k) order an accounting by a person approved by the judge;

(l) make an order to have a child interviewed which may specify how the interview is to be conducted, the purpose of the interview, and how the interview will be paid for;

(m) provide directions on Court-ordered reviews of parenting or support claims;

(n) order a testing, assessment, or investigation be conducted, or report be prepared, as a judge deems necessary for the resolution of the issues, and specify how these are to be conducted or prepared, their purpose, and who is required to pay for them;

(o) make an order to refer any issue to dispute resolution;

(p) approve a dispute resolution program or process;

(q) waive the requirement to attend a dispute resolution program or process in accordance with rule F20.03 ("Waiver of responsibility");

(r) order that a settlement conference be held and direct parties to advise if a binding opinion is requested under rule F25.04 ("Binding settlement conference");

(s) set dates for events in the proceeding or provide directions regarding the next steps to be taken in a proceeding, including setting follow-up case management hearing;

(t) permit a party to apply for a preliminary determination of a question of fact or law under rule F27 ("Pre-Trial Determination of Question of Fact or Law");

(u) permit a party to apply for summary judgment in accordance under rule F28 ("Summary Judgment");

(v) order that a trial readiness conference be held;

(w) order that a trial date be set;

(x) make an order for an informal trial in accordance with Rule F31 ("Informal Trial");

(y) make an order regarding admissions of fact at trial;

(z) make an order regarding the admission of documents at a trial, including

(i) agreements as to the purposes for which documents may be admitted,

(ii) the preparation of joint books of documents and document agreements, and

(iii) admission of documents properly in a Court file of which the other party has notice;

(aa) make an order imposing time limits on the questioning of witnesses, opening statements, and final submissions;

(bb) order that evidence be tendered by affidavit;

(cc) order that a person provide evidence by deposition in accordance with rule 47;

(dd) order that a party provide summaries of a witness' evidence;

(ee) make an order limiting the number of expert witnesses, setting timelines for the exchange of expert reports, and determining how expert witnesses may give their evidence;

(ff) make an order requiring the parties to make arrangements for expert witnesses to meet, on a without prejudice basis, to determine those matters on which they agree and to identify those matters on which they do not agree;

(gg) make an order setting out a plan for how the trial must be conducted;

(hh) make an order excusing a party or lawyer from attending a case management hearing, trial readiness conference, a dispute resolution process, or a settlement conference, in person or otherwise;

(ii) grant a party permission to apply for a contempt order;

(jj) make any procedural order which a judge may make under these rules;

(kk) make an order under subrule (2) or (6);

(ll) make any order on consent;

(mm)make any other order that may assist in just, timely, and cost-effective resolution of the proceeding.

(2) At a case management hearing a judge may make a temporary order for child support without the consent of a party or in the unexcused absence of a party where

(a) notice of the case management hearing has been served on the other party in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons");

(b) the required financial information has been filed or, the timeline for filing the financial information has expired and the facts pertaining to the child support claim are undisputed; and

(c) the order is in the best interests of the child.

(3) Where a judge makes a temporary order under subrule (2) in the absence of a party, the party who requested the order must, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), serve a copy of the order on the party against whom the order was made within ten days of the date the order was made.

(4) Despite rule F19.02 ("Getting permission to make an interim application to vary"), a party against whom an order has been made under subrule (2), and who has complied with the disclosure requirements under rule F10 ("Disclosure Requirements"), may, at any time, bring an interim application to set aside or vary the order and, where filed, the application must be heard within seven days.

(5) A temporary order made under subrule (2) must not be sent to the Support Enforcement Agency until seven days have passed from the date notice is sent to the party against whom the order was made, and where the temporary order has not been otherwise varied pursuant to subrule (4).

(6) At a case management hearing, a judge may make a temporary parenting order without consent of one or more parties or in the unexcused absence of a party where

(a) the judge is satisfied that the notice of the case management hearing has been served on the other party in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"); and

(b) the judge is satisfied that a delay in making an order would or may result in serious harm or prejudice to either party or a child and where such an order is in the immediate best interests of the child.

(7) In determining whether to make an order under subrule (6), a judge may consider all evidence already filed in the proceeding and any additional relevant information presented at the case management hearing.

(8) Where a judge makes an order under subrule (6), the judge must schedule a date for a hearing to be held within seven days of making the order to determine whether the order must be continued, modified, or vacated.

(9) Where the judge sets a hearing date under subrule (8), the applicant must, immediately or as directed by a judge, serve the order and notice of the hearing on all parties and persons affected by or interested in the order who were not present at the time the order was made, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), or as otherwise directed by a judge.

(10) Where a hearing is scheduled under subrule (4) or (8), each party may file one affidavit setting out that party's position and the relief sought.

(11) Any affidavit filed under subrule (10) must be filed and served on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons") at least two days prior to the hearing.

(12) At a hearing scheduled in accordance with subrule (4) or (8), the party benefitting from the order, as determined by the judge, has the burden of satisfying the Court that that the order should be continued.

(13) At the hearing scheduled in accordance with subrule (4) or (8), a judge may continue, modify, or vacate an order made under (2) or (6).

(14) Rule F32 ("Evidence and Affidavits") applies to hearings under this rule unless the context requires otherwise.

Section 6 - Resolving Issues in an Ongoing Proceeding (Making Interim Applications)

Rule F15- General Rules Applicable to Interim Applications

Scope of section

F15.01 (1) This section sets out the procedure governing interim applications, which include applications for an order of a judge in an ongoing proceeding or, for the purpose of determining a matter relating to a final order, following final judgment.

(2) Despite subrule (1), this section does not govern how to start an application to vary a final order, which must be started under rule F5 ("How to Apply to Vary a Final Order").

Evidence on interim applications

F15.02 Rule F32 ("Evidence and Affidavits") applies to interim applications unless the context requires otherwise.

Availability of interim applications

F15.03 (1) A party may make an interim application

(a) at any time where the party seeks one of the procedural orders listed in rule F16.02 ("Procedural interim applications (without notice)");

(b) at any time in an ongoing proceeding where a judge is satisfied that one of the circumstances outlined in rule F17.02 ("When an interim application for emergency relief may be made") applies;

(c) before a case management hearing has been held dealing with the claim to which the proposed interim application relates where one of the circumstances listed in rule F18.03 ("Getting permission to make an application before the first case management hearing") applies; or

(d) after a case management hearing has been held dealing with the claim to which the proposed interim application relates where the party applying has an issue which requires a timely resolution or which otherwise cannot await final resolution of the claim.

(2) A party may make an interim application to vary an interim order where the Court grants permission to make the application under rule F19.02 ("Getting permission to make an interim application to vary").

Order prohibiting further interim applications

F15.04 A judge may order that a party may not make a further application under this Part, without a judge's permission, if the judge determines that the party has

(a) unnecessarily delayed or added to the cost of a proceeding;

(b) made numerous interim applications without merit; or

(c) in any other way abused the Court's process.

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Rule F16 – Procedural Interim Applications (Without Notice)

Scope of rule

F16.01 This rule sets out

(a) certain limited situations in which a person may make an interim application for a procedural order without providing notice to a party or person affected;

(b) the form to complete and the documents to file with the application;

(c) what a judge may do upon review of the application; and

(d) what happens after a judge has granted an order on the application.

Procedural interim applications (without notice)

F16.02 (1) A person may, in accordance with this rule, make an application for an order without providing notice to a party or person affected where

(a) the application is made by an officer of the Court seeking access to a Court file in accordance with rule F2.02(3)("Request for access to Court record");

(b) the person applying is seeking an order in accordance with rule F4.05 ("Where a certificate of marriage cannot be obtained");

(c) the person applying is seeking an extension of time to file financial information which must accompany an Originating Application or Originating Application for Variation;

(d) the person applying is seeking an order to renew an Originating Application or Originating Application for Variation in accordance with rule F4.09 ("Notifying the other party (service)") or rule F5.09 ("Notifying the other party (service)");

(e) the person applying is seeking an order relating to the manner or timing of service of a document;

(f) a rule provides that an application may be made under this rule; or

(g) a judge orders.

(2) An application under this rule may be made at any time and may be made before an Originating Application or Originating Application to Vary has been filed.

How to make a procedural interim application without notice

F16.03 A person applying for a procedural order under this rule must file a Procedural Interim Application in Form F16.03A.

What a judge may do on a procedural interim application without notice

F16.04 Upon considering an application filed under this rule a judge may do one or more of the following:

(a) grant the application without any party or person appearing;

(b) dismiss the application;

(c) require the applicant to provide additional information as directed by the judge;

(d) require the applicant to appear in Court to address the application;

(e) refuse to hear the application until notice is provided to a party or person affected by or interested in the application;

(f) shorten the normal time for providing notice;

(g) permit substituted service;

(h) order that a hearing be held as quickly as possible;

(i) make any other order that balances the interests of the applicant with the interests of a party or person affected by or interested in the application.

Where procedural order granted

16.05 Where a judge makes a procedural order under this rule, the person to whom the order was granted must, immediately or as otherwise directed by a judge, serve the order on the other party to the proceeding and any person affected by or interested in the application, in accordance with rule F8 (“Providing Notice and Serving Documents on Other Parties or Persons”).

Rule F17 –Emergency Temporary Relief (Without Notice)

Scope of rule

F17.01 This rule sets out

(a) when a party may make an emergency temporary relief application without notice to the other party or a person affected by the application;

(b) the forms to complete and the documents to file to make the application;

(c) what a judge may do upon review of the application; and

(d) what happens after a judge has granted an order under this rule.

When an emergency temporary relief application may be made

F17.02 (1) A party may, at any time during a proceeding, make an emergency temporary relief application under this rule without providing notice to the other party or a person affected by the application where:

(a) one or more of the following circumstances exists

(i) there is an immediate danger of a child's removal from the jurisdiction,

(ii) there is an immediate danger to the physical or emotional health or safety of a child or another person,

(iii) not granting an order would have immediate and irreversible consequences; and

(b) it is appropriate to proceed without notice because

(i) the delay in giving notice would or may impose serious harm or prejudice on the party applying or child affected by the application;

(ii) there is a degree of urgency or another reason that makes it inappropriate to give notice; or

(iii) the circumstances of the case make notice to the other party unnecessary.

(2) Despite subrule (1), where a statute permits a person to make an application without notice, the application may be made under this rule.

How to complete and file an emergency temporary relief application

F17.03 A party making an application for emergency temporary relief without notice must file an application in Form F17.03A setting out:

(a) the reasons why the party applying is entitled to proceed with the application; and

(b) what steps have been taken or may be taken to minimize the prejudice to persons who will not be immediately notified of the application.

What a judge can do on an emergency temporary relief application

F17.04 (1) Where an application is filed in accordance with this rule a judge may do one or more of the following:

(a) grant an interim order for emergency relief without notice to the other party or persons who may be affected by the application, on such terms and conditions as the judge considers appropriate;

(b) refuse to hear the application until notice of the application is provided to the other party;

(c) dismiss the emergency temporary relief application;

(d) provide directions with respect to the further conduct of the proceeding;

(e) make an order with respect to the manner or timing of service;

(f) order that the applicant give an undertaking or provide security before granting an order for emergency temporary relief;

(g) order that the requirement of the parties to attend at Family Justice Services is to be delayed or waived, in accordance with rule F22.08 (“When a matter is urgent”);

(h) make any other order that balances the interests of the applicant with the interests of a party or person, including a child, affected by or interested in the emergency temporary relief application.

(2) Where the judge grants an order for emergency temporary relief under this rule without notice to the other party or a person affected by the application, ~~the~~ a registry clerk must schedule a date for an application with notice to be heard within seven days of the date the order was made.

(3) Unless a judge orders otherwise, the person to whom the emergency temporary relief order was granted must immediately serve, in accordance with Rule F8.03 ("Documents which must be personally served (hand-delivery)"), a copy of the order, a copy of the application, and notice of the hearing date on the other party or persons who may be affected by the order.

How to respond to an emergency temporary relief application

F17.05 A party who intends to contest an application under this rule must

(a) file one affidavit in response setting out that party's position and the relief sought; and

(b) serve, in accordance with Rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy of the affidavit in response on every other party to the application at least two days before the hearing, except where a judge permits otherwise.

Requirement to attend

F17.06 The parties and their lawyers must attend a hearing under this rule in person, unless a judge

(a) permits a party or lawyer to appear remotely pursuant to rule 47A ("Electronic Conferencing") in Part I; or

(b) excuses a party or lawyer from attending.

What a judge can do

F17.07(1) At a hearing scheduled in accordance with rule F17.04(2), the party who obtained an order for emergency temporary relief has the burden of satisfying a judge that the order should be continued.

(2) A judge may determine an application under this rule on the basis of the pleadings filed in relation to the application for emergency temporary relief and the submissions of the parties, unless a judge

(a) permits one or more parties to cross-examine the person who made the application or a person who swore or affirmed an affidavit; or

(b) provides other directions relating to the procedure and conduct of the application prior to determination of the application.

(3) The judge must consider all relevant evidence in determining whether the order for emergency temporary relief should be continued, modified, or vacated.

(4) A judge may, at the hearing of the application, continue, modify, or vacate an interim order for emergency relief without notice.

Where rule does not apply

F17.08 This rule does not apply to warrants under the *Children and Youth Care and Protection Act.*

Rule F18 – Interim Applications with Notice

Scope of rule

F18.01 This rule sets out

(a) when a party may make an interim application with notice;

(b) the forms to complete and the documents to file to make an interim application;

(c) how to respond to an interim application; and

(d) what a judge may do following the hearing of an interim application.

No applications for procedural relief

F18.02 (1) A party may not make an application under this rule where the relief requested is a procedural order which could be obtained at a case management hearing, unless a judge directs otherwise.

(2) Where a party files an interim application under this rule seeking a procedural order which could be obtained at a case management hearing, a judge may refuse to hear the application and direct the party to request a case management hearing instead.

Getting permission to make an interim application before the first case management hearing

F18.03 (1) Unless a statute provides otherwise, a party must request a judge's permission to proceed with an interim application where a case management hearing has not been held dealing with the claim to which a proposed interim application relates (for example, if your application relates to a claim for child support, you may not make an application under this rule before a case management hearing has been held dealing with your child support claim, unless a judge permits the application to proceed).

(2) A party may request permission to proceed with the interim application by filing an application in Form F18.03A.

(3) A judge may grant a party permission to proceed with the interim application where one or more of the following circumstances are present

(a) there is an immediate danger of a child's removal from the jurisdiction;

(b) there is an immediate danger to the physical or emotional health or safety of a child or another person;

(c) access that has previously been the subject of an order or a practice of the parties is being unreasonably withheld;

(d) there is an urgent need for child support based on the applicant's significant lack of ability to maintain their child;

(e) there is an urgent need to deal with property of the parties' relationship where such property is in danger of being sold, leased, damaged, dissipated, or otherwise affected such that a parties' interest in it may be irreparably impacted;

(f) there is an urgent need and legal basis for spousal support;

(g) there is a urgent need and legal basis for an order for exclusive possession of the matrimonial home;

(h) the applicant is arguing for an order requiring the respondent to desist in damaging, destroying, dissipating, or disposing of property;

(i) there is a need for the applicant to apply to the court to have the respondent's access to a bank account or another asset restricted or denied;

(j) there is an immediate need for access to property or to obtain disclosure;

(k) not allowing the application to be heard would have immediate and serious consequences.

(4) In granting permission to proceed with the interim application, a judge may

(a) impose such terms and conditions as the judge considers appropriate;

(b) order that the hearing be held at a specified time; or

(c) make an order relating to the manner or timing of service.

(5) Where permission to proceed with the interim application is granted by a judge, a registry clerk must issue the application and set a date for the hearing.

(6) A party permitted to make an application under this rule, must, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), serve a copy of the issued application on the other parties at least 10 days before the scheduled hearing date, unless the parties agree or a judge has directed otherwise.

(7) Where a judge denies permission to proceed with the interim application, the judge may provide directions respecting the next steps to be taken in the proceeding.

Making an interim application after the first case management hearing

F18.04 (1) A party who has an issue which requires a timely resolution or which otherwise cannot await final resolution of the claim may make an interim application on notice to the other party and any person affected after a case management hearing has been held dealing with the claim to which the interim application relates.

(2) To make the application, the party applying must file an interim application in Form F18.03A.

(3) Where a party files an application under subrule (1), a registry clerk must issue the application and set a date for the hearing.

(4) A party who makes an application under subrule (1), must, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), serve a copy of the issued application on the other parties at least 10 days before the scheduled hearing date, unless the parties agree or a judge has permitted otherwise.

Responding to an interim application

F18.05 Any person served with an interim application who intends to oppose a claim made in the application must

(a) file one affidavit in response, in a form that complies with rule F32 ("Evidence and Affidavits"), setting out that party's position and the relief sought; and

(b) serve, in accordance with Rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy of the affidavit in response on every other party to the application at least four days before the hearing of the application.

How to reply to a response to an interim application

F18.06 Any person served with an affidavit in response may

(a) file one affidavit in reply, in a form that complies with rule F32 ("Evidence and Affidavits"), responding to any new matters raised in the affidavit in response; and

(b) serve, in accordance with Rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy of the affidavit in response on every other party to the application at least two days before the hearing of the application.

Requirement to attend at the hearing of an interim application

F18.07 The parties and their lawyers must attend a hearing under this rule in person, unless a judge

(a) has allowed a party to appear remotely pursuant to rule 47A ("Electronic Conferencing") in Part I ; or

(b) excuses the party or lawyer from attending.

What a judge can do at the hearing of an interim application

F18.08 Upon hearing an interim application, the judge may do any one or more of the following

(a) make a decision on the basis of the application and affidavits filed and the oral arguments of the parties;

(b) disregard an affidavit that is not filed and served in time or that does not comply with rule F32("Evidence and Affidavits"), and may award costs against the party filing it;

(c) give permission to one or more parties to cross-examine a deponent;

(d) order that a party or a witness give oral evidence;

(e) give other directions relating to the conduct of the application.

Rule F19 – Varying an Interim Order before before a Final Order is made

Scope of rule

F19.01 This rule sets out

(a) when a party may make an interim application to vary an existing interim order in a proceeding;

(b) the forms to complete and the documents to file to make an interim application to vary;

(c) what a judge may do upon review of the interim application to vary; and

(d) what happens after a judge has granted permission to proceed to a hearing on the interim application to vary.

Getting permission to make application to vary interim order

F19.02 (1) A party must request a judge's permission to proceed with an interim application to vary an existing interim order.

(2) To request a judge's permission to proceed with an interim application to vary, a party must file an Application to Vary an Interim Order in Form F19.02A.

(3) A judge may grant permission to proceed with an interim application to vary where

(a) there has been a compelling change of circumstances since the date the interim order was made;

(b) there is an urgent or immediate need to hear the application as irreparable harm will likely occur before the matter can proceed to a final hearing; and

(c) either

(i) the party has taken steps to advance the matter to a hearing or otherwise resolve the issues in dispute, or

(ii) there is a valid reason why the matter has not advanced to a hearing or final resolution.

(4) In granting permission to proceed with the interim application to vary, a judge may do one or more of the following;

(a) impose such terms and conditions as the judge considers appropriate;

(b) order that the hearing be held at a specified time;

(c) make an order relating to the manner or timing of service.

(5) Where permission to proceed with the interim application to vary is granted by a judge, a registry clerk must issue the application and set a date for the hearing.

(6) A party permitted to make an application under this rule, must, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), serve a copy of the issued application on the other parties at least 10 days before the scheduled hearing date, unless the parties agree or a judge has directed otherwise.

(7) Where a judge denies permission to proceed with the interim application to vary, the judge may provide directions respecting the next steps to be taken in the proceeding.

Responding to an interim application to vary

F19.03 Any person served with an interim application to vary who intends to oppose a claim made in the application must

(a) file one affidavit in response, in a form that complies with rule F32 ("Evidence and Affidavits"), setting out that party's position and the relief sought; and

(b) serve, in accordance with Rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy of the affidavit in response on every other party to the application at least four days before the hearing of the application.

How to reply to a response to an interim application to vary

F19.04 Any person served with an affidavit in response may

(a) file one affidavit in reply, in a form that complies with rule F32 ("Evidence and Affidavits"), responding to any new matters raised in the affidavit in response; and

(b) serve, in accordance with Rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), a copy of the affidavit in response on every other party to the application at least two days before the hearing of the application.

Requirement to attend

F19.05 The parties and their lawyers must attend a hearing under this rule in person, unless a judge

(a) has allowed a party to appear remotely pursuant to rule 47A ("Electronic Conferencing") in Part I; or

(b) excuses party or lawyer from attending.

What a judge can do

F19.06 Upon hearing an interim application for variation, the judge may do any one or more of the following

(a) make a decision on the basis of the application and affidavits filed and the oral arguments of the parties;

(b) disregard an affidavit that is not filed and served in time or that does not comply with rule F32("Evidence and Affidavits"), and may award costs against the party filing it;

(c) give permission to one or more parties to cross-examine a deponent;

(d) order that a party or a witness give oral evidence;

(e) give other directions relating to the conduct of the application.

Section 7 – Facilitated Resolution of Claims

Rule F20 – Responsibility of Parties

Responsibilities of parties to engage in dispute resolution

F20.01 The 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.

What the responsibility includes

F20.02 (1) The responsibility of parties to actively work towards the resolution of their proceeding includes preparing for and good faith participation in at least one of the following dispute resolution programs or processes:

(a) Court ordered mediation in accordance with rule F24 ("Court Ordered Mediation");

(b) a settlement conference in accordance with rule F25 ("Settlement Conferences"); or

(c) any program or process approved by a judge for the purpose of this rule.

(2) A party may, at a case management hearing, request that a judge approve a dispute resolution program or process under subrule (1) (c) either before or after the program or process has been completed.

(3) Parties cannot request a trial date unless

(a) they have complied with the requirement in subrule (1); or

(b) a judge has waived the requirement.

Waiver

F20.03 A judge may, upon request of a party at a case management hearing or at the judge's discretion, waive the responsibility of the parties to participate in a dispute resolution program or process.

Family Justice Services

F20.04 The requirement in rule F20.02 is in addition to any programming, mediation, or counselling required or facilitated by Family Justice Services under rule F22 ("Family Justice Services").

Rule F21 - Confidentiality and Use of Information in Dispute Resolution

Definition

F21.01 In this rule, "dispute resolution program or process" means

(a) Family Justice Services programs or processes provided under rule F21 ("Family Justice Services");

(b) Court ordered mediation under rule F24 ("Court Ordered Mediation");

(c) a settlement conference under rule F25 ("Settlement Conferences"); or

(d) a program or process approved by a judge pursuant to rule F20.02(1)(c) ("What the responsibility includes").

Confidentiality and use of information

F21.02 (1) Unless the parties otherwise agree in writing, all documents produced at or in connection with a dispute resolution program or process and all information and communications exchanged at or in connection with a dispute resolution program or process

(a) are privileged and are considered to have been made or generated without prejudice;

(b) must be treated by the parties and participants in the process as confidential and may only be used for the purpose of that dispute resolution program or process; and

(c) must not be referred to or relied on in any proceeding unless such documents or communications are permitted or required by law as evidence in the proceeding.

(2) Any recording made by the Court during a dispute resolution program or process does not form part of the Court record of the proceeding.

(3) Documents produced at or in connection with a dispute resolution program or process must not be filed in the Court record of the proceeding, unless permitted or required by this Part.

(4) Where a judge is presiding over a dispute resolution program or process, any materials, documents, or correspondence filed for the use of that judge must be

(a) kept in the custody of that judge; and

(b) destroyed when the judge no longer requires them.

Compellability and liability

F21.03 (1) A judge, mediator, or employee of Family Justice Services will not be compelled to appear as a witness or expert in any proceeding involving one or more of the parties or relating in any way to the subject matter of a court ordered mediation or family justice services program or process.

(2) A mediator or counselor appointed under these rules may stipulate that he or she is not liable for loss or damage suffered by a person by reason of an action or omission of the mediator or counselor in the discharge of the duties under these rules.

(3) Subrule (1) does not apply where a judge orders a report from or refers a matter to Family Justice Services.

Rule F22- Family Justice Services

Requirement to attend intake session and parent information session

F22.01 (1) Where

(a) an Originating Application or Originating Application for Variation making a claim for child support or parenting has been filed and served; or

(b) a Response making a claim for child support or parenting has been filed,

the parties to the proceeding must attend an intake session and parent information session with Family Justice Services.

(2) A registry clerk must, within two business days of receiving proof of service of the Originating Application or Originating Application for Variation or the filing of the Response, forward a copy of the pleadings, along with the most current addresses and telephone numbers for the parties and their lawyers, if known, to the Family Justice Services office located closest to the applicant's residence or, if the applicant resides outside of this province, the Family Justice Services office located closest to the respondent's residence.

(3) Nothing in subrule (1) precludes Family Justice Services from providing services to consenting, eligible persons who wish to avail of the assistance of Family Justice Services without or prior to starting an application in the Court.

Legal representation at Family Justice Services

F22.02 (1) Where a party is represented by a lawyer, Family Justice Services must contact the party's lawyer to

(a) advise the lawyer of the start of mediation;

(b) provide the lawyer with draft consent orders;

(c) request provision of a party's financial disclosure from the lawyer, if not already provided; and

(d) advise the lawyer when a Note to Court has been filed.

(2) Family Justice Services must advise parties that they may seek legal advice at any time during their attendance at Family Justice Services and, in the event that an agreement is reached on any issue, Family Justice Services must advise the party that they may seek independent legal advice before signing any order.

Mediation or counselling sessions

F22.03 (1) Following intake for the parties, Family Justice Services must advise the parties whether or not mediation or counselling sessions will take place and, if so, the dates for any such sessions.

(2) The parties must attend and participate in good faith in the intake session, the parent information session, and any scheduled mediation or counselling session before scheduling a case management hearing or other appearance before the Court, unless exempted by Family Justice Services or a judge.

Parties to provide financial disclosure

F22.04 Where Family Justice Services requests financial disclosure from a party, the party must provide the disclosure in a timely manner.

Consequences of failing to participate

F22.05Where a party fails to attend or participate in an intake session, parent information session, or scheduled mediation session, or fails to provide financial disclosure as required by Family Justice Services, a judge may do one or more of the following:

(a) refuse to proceed with a case management hearing;

(b) refuse to consider an interim application brought by the party who failed to participate or disclose until such time as the party complies;

(c) order a party to attend an intake, education, or parent information session;

(d) make an order as to costs against the party;

(e) make any order that the judge considers appropriate.

If dispute is not resolved

F22.06 (1) Where Family Justice Services determines that the parties are unable to resolve all of the issues in dispute or that the procedure set out in this rule is inappropriate, Family Justice Services must

(a) file a Note to Court advising the Court of its determination; and

(b) provide a copy of the Note to Court to the parties or, if they are represented, their lawyers.

(2) Upon receipt of the Note to Court, a registry clerk must schedule a case management hearing as provided for in rule F14.03 ("First case management hearing") and notify the parties or their lawyers of the date.

Consent orders

F22.07 (1) Where Family Justice Services is successful in assisting the parties to reach an agreement on all or any of the child support and parenting issues raised by the pleadings, Family Justice Services, or either of the parties' lawyers, if either of the parties request, must prepare a draft consent order in accordance with rule F34.02 ("Consent orders") and forward the proposed consent order or orders for the approval of a judge.

(2) Where a proposed consent order is forwarded to the Court in accordance with subrule (1), a judge may grant the order without the parties appearing, unless the judge requires the parties to appear or answer any question in relation to the proposed order.

(3) If all issues have not been resolved by a final order, a registry clerk must, upon receipt of the Note to Court, schedule a case management hearing as provided for in rule F14.03 ("First case management hearing") and notify the parties or their lawyers of the date.

When a matter is urgent

F22.08 (1) Where a judge is satisfied that an application should proceed without involvement of Family Justice Services due to urgency or safety concerns or some other good and sufficient cause, the judge may order that rule F22 will not apply or may otherwise delay the involvement of Family Justice Services.

(2) Where a judge makes an order under subrule (1), a judge may subsequently order the issue to be referred to Family Justice Services.

Rule F23 – Offers to Settle

Offers to settle

F23.01 (1) A party may make an offer to settle one or more claims in a proceeding by delivering an Offer to Settle in Form F23.01A to any other party.

(2) An Offer to Settle may be delivered to any party at any time after the start of a proceeding.

(3) An Offer to Settle must be signed by the party making the Offer to Settle or by the party's lawyer.

(4) An Offer to Settle is made without prejudice, and must not be taken as an admission of any claim, unless the Offer to Settle provides otherwise.

Withdrawal

F23.02 A party who made an offer to settle may withdraw it by delivering a Withdrawal of Offer to Settle in Form F23.02A to the other party or the other party's lawyer at any time before the offer to settle is accepted.

Deemed rejection

F23.03 An offer to settle that is not accepted within the time set out in the offer is deemed to be rejected by the other party.

Confidentiality

F23.04 The fact that an offer to settle has been made or the terms of any such offer must not be referred to in any document filed with the Court or communicated in any other way to the Court or the judge dealing with the matter until after the judge has dealt with all the issues in dispute, except costs.

Acceptance

F23.05 (1) An offer to settle may be accepted by delivering an Acceptance of Offer in Form F23.05A to the party that made the offer or that party's lawyer at any time before the offer is

(a) withdrawn pursuant to rule F23.02; or

(b) deemed rejected pursuant to rule F23.03.

(2) A party may accept an offer to settle in accordance with rule F23.05 even if the party has previously rejected the offer or made an offer of their own, unless the offer is

(a) withdrawn pursuant to rule F23.02; or

(b) deemed rejected pursuant to rule F23.03.

(3) An accepted offer to settle constitutes an effective and binding agreement between the parties to the offer.

(4) Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may apply

(a) for judgment in terms of the accepted offer;

(b) to dismiss the party's case;

(c) to strike out the party's pleadings or any other documents filed with the Court;

(d) to enter a notice of default pursuant to rule F6.06 ("Consequences of Not Responding"); or

(e) for such other relief as may be appropriate.

Cost consequences

F23.06 (1) Where only one party has made an offer to settle issues of custody or access and the offer to settle

(a) is delivered

(i) at least two clear days before the application is to be heard, where it relates to an interim application, or

(ii) at least seven clear days before the trial is to commence, where the offer relates to a trial;

(b) is not accepted before the commencement of the application or trial;

(c) is not withdrawn in accordance with rule F23.02, or deemed rejected in accordance with rule F23.03 before the start of the hearing or trial; and

(d) is found to be as favourable or more favourable than the judicial outcome,

that party is entitled to the partial recovery costs of those portions of the proceeding to which the offer to settle related to be assessed on Column 3 of the Scale of Costs from the commencement of the proceeding to the date before the offer to settle was delivered and on Column 5 of the Scale of Costs from the date of the offer to settle to the conclusion of the proceeding, subject to rule F33.02(3) ("Presumption").

(2) Where a party has made an offer to settle one or more claims, other than a claim relating to custody or access, and the offer to settle

(a) is delivered

(i) at least two clear days before the application is to be heard, where it relates to an interim application, or

(ii) at least seven clear days before the trial is to commence, where the offer to settle relates to a trial;

(b) is not accepted before the commencement of the application or trial;

(c) is not withdrawn in accordance with rule F23.02, or deemed rejected in accordance with rule F23.03 before the start of the hearing or trial; and

(d) is found to be as favourable or more favourable than the judicial outcome,

that party is entitled to the partial recovery costs of those portions of the proceeding to which the offer to settle related to be assessed on Column 3 of the Scale of Costs from the commencement of the proceeding to the date before the offer to settle was delivered and on Column 5 of the Scale of Costs from the date of the offer to settle to the conclusion of the proceeding.

Request for determination of costs

F23.07 (1) After a hearing or trial, a party that has made an offer to settle pursuant to this rule may apply, within 15 days following the filing of the order, for a determination of costs on the basis of this rule.

(2) Upon the filing of an application under subrule (1), any prior decision of a judge with respect to costs of that hearing or trial must be suspended pending determination of the application; and

(3) On the hearing of the application, the judge, after considering the parties' positions throughout the proceeding and the factors set out in rule F33.03(2) ("Unreasonable behavior"), has discretion to make an award for costs pursuant to this rule or other award of costs the judge considers appropriate.

Burden of proof

F23.08 (1) The burden of proving that an offer to settle has been delivered is on the sending party.

(2) The burden of proving that a judicial outcome is as favourable as or more favourable than the offer to settle is on the party who claims the benefit of this rule.

Rule F24 – Court Ordered Mediation

Court ordered mediation

F24.01 (1) A judge may, upon request of a party at a case management hearing or at the judge's discretion, make an order requiring parties to attend mediation at any stage of the proceeding prior to the trial.

(2) In considering whether to require parties to attend mediation, the judge must consider all relevant circumstances, including

(a) the complexity and nature of the issues in the proceeding;

(b) the stage of the proceeding at the time mediation is contemplated;

(c) whether a party is represented by a lawyer or self-represented;

(d) the parties' financial resources;

(e) whether a dispute resolution program or process has been attempted on a previous occasion; and

(f) whether there are any allegations of domestic violence or undue influence that would make mediation inappropriate.

Contents of mediation order

F24.02 (1) A mediation order may provide:

(a) the name of the mediator or a method to select a mediator;

(b) the timeframe within which the mediation will start;

(c) the maximum length of the mediation, subject to agreement by the parties to extend the length of the mediation;

(d) who is responsible for paying the mediator's fees and expenses, or any other expenses associated with the mediation, and the manner and timing of payment;

(e) a provision excusing a party from attendance at a mediation session;

(f) a requirement that some other person attend the mediation in addition to a party;

(g) a requirement that the mediator advise the court when mediation has concluded or cannot proceed per F24.05(2) and F24.06; and

(h) any other terms and conditions the judge considers appropriate to facilitate the mediation.

(2) Unless a judge orders otherwise, where a mediation order is made under this rule,

(a) the proceeding is stayed until the mediator advises the Court that mediation has concluded; and

(b) any time limited for the doing of an act or the filing of a document will be suspended for the period of the stay.

(3) Where a mediation order is made under this rule, parties seeking a stay of an existing court order must make a separate application to the Court.

What must be filed prior to mediation session

F24.03 (1) Unless the parties and the mediator agree otherwise, each party must, at least seven business days before the first scheduled mediation session, provide to the mediator and each other party

(a) a brief statement of the factual and legal issues in dispute;

(b) a summary of that party's position;

(c) a copy of relevant pleadings filed by them; and

(d) copies of any documentation that the mediator determines necessary to the resolution of the issues in dispute.

(2) If it is not practical to conduct a mediation session because a party fails to comply with subrule (1), the mediator may cancel the session and immediately advise the Court that the mediation will not proceed.

Procedure at a mediation session

F24.04 (1) Where a judge refers an issue in a proceeding to a mediator for dispute resolution, the mediator must

(a) attempt to meet with the parties and, if the parties agree, attempt a resolution of their dispute; and

(b) meet with other persons, including lawyers, that the mediator thinks may be helpful in resolving the dispute.

(2) The procedure to be followed at a mediation session may vary according to the particular style and approach of the mediator who will, after consultation with the parties, adopt an approach which, in the mediator's opinion, is best suited to facilitate the purposes of the mediation and otherwise complies with the requirements of this rule.

Disposition of mediation

F24.05 (1) In the event that mediation is successful or partly successful, the parties may file consent orders, in accordance with rule F34.02 ("Consent Orders"), on those issues that have been agreed upon.

(2) If mediation is not successful or only partly successful, either party must file a Request for Case Management within 14 days of the conclusion of the mediation, accompanied by the mediator's confirmation that mediation occurred and the parties have not resolved all of the issues.

Failure to attend and other non-compliance

F24.06 Where a mediator advises the Court that a party failed to comply with a mediation order or a requirement of this rule, a judge may, upon request of a party at a case management hearing or at the judge's discretion, do one or more of the following:

(a) establish the next steps for the proceeding;

(b) require a further mediation session at the expense of the defaulting party;

(c) require a person to attend a rescheduled mediation session;

(d) stay further proceedings in Court until a mediation session has been conducted in compliance with this rule;

(e) require the parties to attend another dispute resolution program or process;

(f) make any other order the judge considers appropriate.

Costs of mediation

F24.07 Unless a judge orders or the parties otherwise agree, the mediator's fees and expenses will be borne equally by the parties to the mediation.

Rule F25– Settlement Conferences

Purpose of a settlement conference

F25.01 The purpose of a settlement conference is to settle all of the claims in a proceeding or to resolve as many claims and issues as possible with the assistance of a judge.

Judge may order a settlement conference

F25.02 (1) A judge may, upon request of a party at a case management hearing or at the judge's discretion, make an order requiring parties to participate in a settlement conference.

(2) A judge must not order that a settlement conference be scheduled unless all financial disclosure and other relevant information has been exchanged or can reasonably be expected to be exchanged prior to the settlement conference date.

Requirement to attend and be prepared

F25.03(1) The parties and their lawyers must attend a settlement conference in person, unless a judge

(a) permits a party or lawyer to appear remotely pursuant to rule 47A ("Electronic Conferencing") in Part I; or

(b) excuses a party or lawyer from attending.

(2) A party requesting a postponement of a settlement conference must appear before a judge to explain why the postponement is being sought, unless a judge permits otherwise.

(3) The parties and lawyers in attendance at a settlement conference must be prepared to discuss all outstanding issues.

(4) Each party must, at least seven days before the date of a settlement conference

(a) file a settlement conference brief; and

(b) serve the brief on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons").

(5) A party's settlement conference brief must

(a) set out, in fifteen pages or fewer, the issues to be resolved, the relevant facts, and the party's current position in terms of settlement;

(b) include any relevant legal question on which the party seeks an opinion from a judge;

(c) include references to relevant legislative provisions

(d) include the most up to date financial and property information required under this Part; and

(e) include relevant and necessary documents, which may include copies of expert reports and support calculations.

Binding settlement conference

F25.04 (1) The parties may, when requesting a settlement conference, jointly request that the settlement conference be binding with respect to one or more issues or claims.

(2) Parties requesting a binding settlement conference may, if they have a preference for a particular judge, indicate their preference to a registry clerk.

(3) Where a request under subrule (2) has been made in Family Division in St. John's, the registry clerk must consult with the senior administrative judge.

(4) The registry clerk must, to the extent practical, inform the parties as to which judge has been assigned to conduct the settlement conference 30 days prior to the date scheduled for the settlement conference.

(5) A party may withdraw consent to be bound by the opinion of the settlement conference judge on an issue submitted in accordance with this rule at any time prior to the start of the settlement conference provided the Court and the other party are notified.

(6) Where consent is withdrawn in accordance with subrule (5), the settlement conference must proceed in accordance with rule F25.03 and F25.05.

(7) The judge assigned to conduct a binding settlement conference may request additional information from the parties prior to the commencement of the binding settlement conference.

(8) Where parties have requested a binding settlement conference, a judge may, at the settlement conference, do one or more of the following

(a) if all the required documentation has been filed, give a decision on one or more issues submitted by the parties for consideration, which becomes a final order of the court binding on both parties;

(b) if all of the required documentation or sufficient documentation has not been filed, delay giving a decision until the parties provide the necessary documentation;

(c) determine it is not appropriate to give a decision; or

(d) make an order under rule F25.05(2).

Powers of a settlement conference judge

F25.05 (1) A judge may give a non-binding opinion on any question of fact or law raised at a settlement conference if the judge determines it is appropriate to do so.

(2) At the conclusion of the settlement conference, a judge may do one or more of the following:

(a) call the matter in Court for the purpose of making any order regarding procedural issues the judge considers appropriate, including any order a judge may make under rule F14.07(1);

(b) make any order on consent;

(c) refer the parties, with their consent, to further dispute resolution;

(d) call the matter in Court for the purpose of recording the terms of any agreement and such terms of agreement have the same force and effect as a consent order;

(e) schedule a case management hearing to set a trial date where all issues have not been resolved by the parties;

(f) order costs in the event that a settlement conference does not proceed or is otherwise adjourned because a party is not prepared, has not filed the required brief, has not made the required disclosure, or has otherwise not complied with this rule; or

(g) where a binding settlement conference has taken place, make an order under rule F25.04.

(3) The settlement conference judge must not, without the consent of the parties, preside at any further appearances or hear any further applications or the trial of the matter and must not discuss the settlement conference with any other judge.

Section 8 - Resolving Claims without a Trial

Rule F26 - Uncontested Proceedings

Scope of rule

F26.01 Where a proceeding is uncontested, as defined in rule F1.04 ("Definitions"), a party may apply for judgment in accordance with this rule.

Filing requirements

F26.02 (1) A party applying for judgment in an uncontested proceeding must, in all cases, file

(a) an Application for Judgment in Form F26.02A requesting that the proceeding be decided on the basis of affidavit evidence;

(b) evidence to satisfy the Court that the Originating Application, Originating Application for Variation, or Response making the claim was served on the other party in accordance with the rules for service;

(c) a copy of any written agreement, deed, will, previous court order, or other document applicable to the order sought; and

(d) any affidavits (prepared in accordance with rule F32 ("Evidence and Affidavits")) or supporting materials that may be required in the proceeding.

(2) Where the Originating Application, Originating Application for Variation or Response includes a claim for a parenting order, the party applying for judgment must also file evidence regarding

(a) the applying party's interest in the proceeding if the person is not a parent of a child who is the subject of the proceeding;

(b) the willingness of the person seeking custody to facilitate contact with each parent;

(c) the quality of the relationship that the child has with the applying party, the personality, character, and emotional needs of the child, the capacity of the applying party to act as legal custodian of the child or to care for the child during the times that the child is in that party's care, and the wishes of the child having regard to the age and maturity of the child;

(d) the physical, psychological, social, and economic needs of the child, the home environment proposed to be provided for the child, and the plans for the future of the child; and

(e) the income of the parties.

(3) Where the Originating Application, Originating Application for Variation, or Response includes a claim for spousal or partner support, the party applying for judgment must also file evidence regarding

(a) the age, physical and mental health of the parties;

(b) the length of time the parties cohabited and information about how the applying party may become financially independent and how long it might take;

(c) the legal obligation of either party to provide support for another person;

(d) a written agreement or previous court order applicable to the claim for support with a copy of the agreement or order attached, if not already filed with the Court; and

(e) the basis of any claim for entitlement, duration, and amount of support.

(4) Where the Originating Application or Response includes a claim for nullification of a marriage, the party applying for judgment must also file evidence establishing

(a) the marriage, if no certificate of the marriage or registration of the marriage has been filed;

(b) that there has been no collusion or connivance between the parties; and

(c) the basis for any claim for nullification of the marriage.

(5) Where a Demand for Notice has been served under rule F6.04 ("How to respond to a claim without contesting"), a party applying for judgment must serve, in accordance with rule F8 ("Providing Notice and Serving Documents on other Parties or Persons") a copy of the application for judgment to the other party.

Specific requirements for uncontested divorce and corollary relief proceedings

F26.03 (1) Where a party applies for a divorce judgment in an uncontested proceeding, the party must file all of the following, in addition to the material required under rule F26.02

(a) a draft judgment in Form F26.03A;

(b) where either or both child support or spousal support is claimed, a draft support order;

(c) 2 self-addressed, letter-sized, stamped envelopes,

(i) one of which is addressed to the other party at the address given in the affidavit of service of the Originating Application or Response, or any other address that may satisfy the Court that a copy of the judgment will reach that party, unless a judge orders otherwise, and

(ii) one of which is addressed to the applying party at the address for service provided by the applying party.

(2) A judge may require oral evidence before granting an order for divorce or any other claim.

(3) Where an applicant applies for judgment in an uncontested divorce proceeding on a basis other than separation, the respondent may apply for the divorce on the basis of separation by filing an Application for Judgment in Form F26.02A and all of the following

(a) the documentation required under rule F26.02;

(b) the documents and materials required under rules subrules (1) (a) through (c), where applicable;

(c) any other affidavits or supporting materials that may be required in the proceeding.

(4) The Application for Judgment and documentation required under subrule (3) must be served on the applicant in accordance with Rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons").

Form of evidence

F26.04 Evidence in an uncontested proceeding must be presented by affidavit, unless a judge orders otherwise.

Orders and judgments in uncontested proceedings

F26.05 (1) Upon review of an application for judgment in an uncontested proceeding, a judge must

(a) grant a judgment without anyone appearing; or

(b) direct the party applying or the lawyer for the party to appear.

(2) Where a claim is made for a specific amount of support, either periodic or a lump sum, or any other relief, and the respondent does not file a Response within the time

specified in these rules or otherwise does not contest the amount claimed, the judge may treat the respondent as if the respondent accepts the appropriateness of the claim.

(3) Where a judge requires further information to determine an application for judgment in an uncontested proceeding, the judge may give directions in order to determine the matter.

(4) The Court may order a party to pay the costs of an application for judgment in an uncontested proceeding to another party.

Rule F27 - Pre-Trial Determination of Question of Fact or Law

Scope of rule

F27.01 This rule sets out

(a) when a party may request a pre-trial determination of a question of fact or law;

(b) the procedure governing a pre-trial determination of a question of fact or law; and

(c) the powers of a judge on the hearing of a pre-trial determination of a question of fact or law.

When a request may be made

F27.02 (1) Unless a judge orders otherwise, a party seeking a hearing for a pre-trial determination of a question of fact or law must do so at a case management hearing scheduled in accordance with Rule F14 and must

(a) file a Request for a Pre-trial Determination of a Question of Fact or Law in Form F27.02A;

(b) serve the Request for a Pre-trial Determination of a Question of Fact or Law to the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least seven days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request at the case management hearing.

(2) A party has been served with a Request for a Pre-trial Determination of a Question of Fact or Law must

(a) complete and file a Request for a Pre-trial Determination of Fact or Law in Form F27.02A at least two days prior to the date set for the case management hearing;

(b) serve the form to the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least two days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request at the case management hearing.

Procedure

F27.03 At a case management hearing where a party requests a pre-trial determination of a question of fact or law, a judge may do one or more of the following

(a) set a date for the hearing;

(b) provide directions regarding the documents each party must file;

(c) where the pleadings do not sufficiently define the issues of fact, define the issues to be tried or direct the parties to define the issues, and give directions for the trial or hearing thereof;

(d) order different questions or issues to be tried by different modes and at different places or times;

(e) order disclosure, questioning, or inspection to be delayed until the determination of any question or issue; or

(f) refuse the request where it would be inappropriate to determine the question at a hearing under this rule.

What a judge may do

F27.04 Upon the hearing of a pre-trial determination of a question of fact or law, the judge may do any one or more of the following

(a) make a decision on the basis of the documents and affidavits filed and the oral arguments of the parties;

(b) disregard an affidavit that is not filed and served in time or that does not comply with rule F32("Evidence and Affidavits"), and may award costs against the party filing it;

(c) give permission to one or more parties to cross-examine a deponent;

(d) order that a party or a witness give oral evidence;

(e) give other directions relating to the conduct of the hearing.

(2) Following the hearing of a pre-trial determination of a question of fact or law, a judge may do one or more of the following:

(a) determine any relevant question or issue of law or fact, or both;

(b) determine any question about the admissibility of any proposed evidence;

(c) give directions regarding the next steps to be taken in the proceeding;

(d) make an order under F27.03.

Court may make final order

F27.05 Where in the opinion of the judge, the determination of any question or issue under this rule substantially disposes of the proceeding, or any issue in the proceeding, in whole or part, a judge may make a final order in respect of an issue in the proceeding or any other order the judge considers appropriate.

Rule F28 – Summary Judgment

Scope of rule

F28.01 (1) A party may, in accordance with this rule, request an application for summary judgment of one or more issues or claims raised in a proceeding.

(2) This rule sets out

(a) when a party may make an application for summary judgment;

(b) the procedure governing applications for summary judgment; and

(c) the powers of a judge on the hearing of an application for summary judgment.

When a request may be made

F28.02 (1) Unless a judge orders otherwise, a party seeking summary judgment on one or more issues or claims must do so at a case management hearing scheduled in accordance with Rule F14 and must

(a) file a Request for a Summary Judgment Hearing, in Form F28.02A;

(b) serve a copy of the Request for a Summary Judgment Hearing to the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least seven days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request at the case management hearing.

(2) A party who has been served with a Request for a Summary Judgment Hearing must

(a) complete and file the relevant portion of the Request for a Summary Judgment Hearing in Form F28.02A at least two days prior to the date set for the case management hearing;

(b) serve the form to the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least two days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request at the case management hearing.

Procedure at case management

F28.03 At a case management hearing where a party requests a summary judgment hearing, a judge may, in addition to the powers at rule F14.07 ("Powers of case management judge"), do one or more of the following

(a) grant the request and set a date for the hearing;

(b) provide directions as to the conduct of the hearing, including filing requirements and timelines;

(c) order that oral evidence be presented by one or more parties at the hearing, with or without time limits on its presentation;

(d) dismiss the request.

Evidence on a summary judgment hearing

F28.04 (1) On a hearing under this rule, a party may adduce evidence by one or more of the following:

(a) an affidavit prepared in accordance with rule F32 ("Evidence and Affidavits");

(b) an answer, or part of an answer, to written questions previously provided under rule F11.03("When you can ask questions in writing"); and

(c) any part of the evidence taken during an appointment for questioning under rule F11.04 ("When you can ask questions in person before trial").

(2) A deponent may be cross-examined and re-examined at the hearing of the application, provided permission was granted by the case management judge and at least three days' notice is given to the party submitting the affidavit to produce the deponent for cross-examination.

(3) An affidavit for use on the application may be made on personal knowledge but on the hearing of the application, an adverse inference may be drawn, if appropriate, from the failure of a party to provide the evidence of persons having personal knowledge of contested facts.

(4) A judge may draw an adverse inference from the failure of a party to cross-examine on, or file affidavit evidence in reply to, an affidavit used on an application made under this rule.

Brief required

F28.05 Each party must, at least two days before the summary judgment hearing

(a) file a brief setting out a concise statement of the facts and law relied on by the party; and

(b) serve a copy of the brief on every other party to the application, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons").

Disposition of application

F28.06 (1) Upon hearing an application under this rule, the judge must grant summary judgment if,

(a) the judge is satisfied that there is no genuine issue requiring a trial; or

(b) the parties agree to have all or some of the issues determined by a summary judgment and the judge is satisfied that it is appropriate to grant summary judgment.

(2) In determining whether there is a genuine issue requiring a trial, the judge must consider the evidence submitted by the parties, and the judge may do one or more of the following for that purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

(a) weigh the evidence;

(b) evaluate the credibility of a deponent;

(c) draw any reasonable inference from the evidence.

(3) A judge may, for the purpose of determining whether there is an issue requiring trial or deciding an issue under this rule, order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

(4) Where the judge decides that there is a genuine issue with respect to an issue or claim, a judge may nevertheless grant judgment in favour of any party, either upon an issue or generally, unless

(a) the judge is unable on the whole of the evidence before the Court on the application to find the facts necessary to decide the questions of fact or law; or

(b) it would be inappropriate to decide the issues at the hearing.

(5)Where a judge does not grant all of the relief requested, a judge may determine any material fact that is not genuinely in dispute.

Where the only genuine issue is amount

F28.07 Where the judge is satisfied that the only genuine issue is the amount to which a party is entitled, the judge may order a trial of that issue.

Only genuine issue is question of law

F28.08 Where the judge is satisfied that the only genuine issue is a question of law, the judge may determine the question and grant judgment accordingly.

Granting of judgment

F28.09 (1) A party who obtains judgment under this rule may proceed against the same party for any other relief and against any other party for the same or any other relief.

(2) The judge may order a stay on terms the judge considers appropriate where it appears that the enforcement of a summary judgment granted under this rule ought to be stayed pending the determination of any other issue in the proceeding.

Effect of dismissal of application

F28.10 (1) Where an application for summary judgment is dismissed, the party who applied for summary judgment must not make any further applications under this rule without a judge’s permission.

(2) Where the party who applied for summary judgment obtains no relief on the application, the judge must fix the responding party's costs of the application on a substantial recovery basis and order the party who applied for summary judgment to pay the costs as soon as practicable.

(3) Despite subrule (2), where the judge is satisfied that making the application, although unsuccessful, was nevertheless reasonable, the judge may fix costs on a partial recovery basis or some other basis, or not at all.

Where trial is necessary

F28.11 (1) Where a summary judgment hearing is dismissed, either in whole or in part, the judge may exercise the powers listed in rule F14.07 (“Powers of case management judge”) and may

(a) order the matter to proceed to trial;

(b) schedule a case management hearing to determine the next steps to be taken in the proceeding; or

(c) make any order the judge considers appropriate.

(2) Where a proceeding is ordered to proceed to trial, in whole or in part, a judge may give such directions, impose terms, or make an order the judge considers appropriate, including

(a) specifying what material facts are in dispute and defining the issues to be tried;

(b) specifying what additional pre-trial procedures should be undertaken and the manner in which the procedures will be exercised.

Judge not to preside

F28.12 A judge who has presided at a summary judgment hearing under this rule may only preside at the trial or a hearing if all parties consent.

Section 9 – Trial Procedure

Rule F29 – How to Get a Trial Date

Scope of rule

F29.01 This rule sets out how to request that a proceeding be scheduled for trial.

How to get a trial date

F29.02 (1) Unless a judge orders otherwise, a party seeking a trial date must do so at a case management hearing scheduled in accordance with Rule F14 and must

(a) file a Request for a Trial Date, in Form F29.02A

(b) serve a copy of the Request for Case Management and the Request for a Trial Date on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least seven days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request for a Trial Date at the case management hearing.

(2) A party who has been served with a Request for a Trial Date must

(a) complete and file the relevant portion of the Request for a Trial Date (Form F29.02A) at least two days prior to the date set for the case management hearing;

(b) serve the form on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least two days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request for a Trial Date at the case management hearing.

(3) At the case management hearing held under this rule the judge

(a) must determine whether the parties are ready for trial; and

(b) may exercise the powers of a case management judge as set out in rule F14.07 ("Powers of case management judge").

Rule F30– Trial Readiness Conferences

Judge may order trial readiness conference

F30.01 (1) Where a trial date has been scheduled, a judge may order that a trial readiness conference be held.

(2) Where ordered, a trial readiness conference must be scheduled to be held within 45 days of the trial, unless a judge orders otherwise.

Requirement to attend and be prepared

F30.02 (1) The parties and their lawyers must attend a trial readiness conference in person, unless a judge

(a) permits a party or lawyer to appear remotely pursuant to rule 47A ("Electronic Conferencing") in Part I; or

(b) excuses a party or lawyer from attending.

(2) Parties and their lawyers must be prepared to do the following at the trial readiness conference:

(a) provide a brief description of the testimony expected from each of the witnesses to be called and the evidence to be set out in any affidavit;

(b) confirm that a full list of documents and other exhibits to be tendered at the trial has been provided to the other party;

(c) confirm that the information provided in the Request for Trial Date Form remains accurate;

(d) discuss any matter referred to in rule F14.07 ("Powers of case management judge");

(e) confirm that the parties have exchanged or will exchange any expert reports to be tendered during the trial; and

(f) advise whether settlement discussions are occurring and the likelihood as to whether all, or any, issues will be resolved prior to the trial.

Powers of a trial readiness conference judge

F30.03 A judge at a trial readiness conference may make any order under rule F14.07 ("Powers of case management judge") and may postpone or otherwise vary the trial date**.**

Rule F31 – Informal Trial

Scope of rule

F31.01 (1) This rule sets out the procedure for informal trials.

(2) An informal trial is an alternative trial procedure in which the judge may

(a) take a more active role;

(b) admit any evidence that is relevant, material, and reliable, despite the fact that the evidence might be inadmissible under strict rules of evidence.

(3) The judge hearing the matter must give such weight to the evidence presented as the judge determines is appropriate.

(4) An informal trial may only be held with the written consent of the parties and the permission of a judge.

When a request may be made

F31.02 (1) Unless a judge orders otherwise, a party seeking an Informal Trial date must do so at a case management hearing scheduled in accordance with Rule F14 and must

(a) file a Request for an Informal Trial in Form F31.02A;

(b) serve a copy of the Request for Case Management and the Request for an Informal Trial to the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least seven days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request for an Informal Trial at the case management hearing.

(2) A party who has been served with a Request for an Informal Trial must

(a) complete and file the relevant portion of the Request for an Informal Trial (Form F31.02A) at least two days prior to the date set for the case management hearing;

(b) serve the form on the other party, in accordance with rule F8 ("Providing Notice and Serving Documents on Other Parties or Persons"), as soon as practicable and at least two days before the case management hearing; and

(c) be prepared to discuss the matters set out in the Request for an Informal Trial at the case management hearing.

(3) Prior to granting a request for an informal trial, a judge must

(a) determine whether the issues in dispute can be appropriately determined at an informal trial;

(b) confirm the parties have elected an informal trial with a knowledge and understanding of the provisions in this rule; and

(c) confirm that parties have not been threatened to agree to an informal trial process or been promised anything in exchange for agreeing to an informal trial.

(4) Where a judge grants an informal trial, the judge must provide timelines for the disclosure of any relevant documents or information which have not yet been exchanged.

Procedure

F31.03 The informal trial will be conducted as follows:

(a) at the beginning of an informal trial the parties will be asked to confirm that

(i) they have elected an informal trial with a knowledge and understanding of the provisions in this rule, and

(ii) they have not been threatened to agree to an informal trial process or have not been promised anything in exchange for agreeing to an informal trial;

(b) the judge may ask the parties or their lawyers for a brief summary of the issues to be decided;

(c) the applicant will be allowed to speak to the judge under oath concerning all issues in dispute. The party is not questioned by the party's lawyer, the other party or the other party's lawyer, but may be questioned by the judge to determine any issue;

(d) the judge will ask the respondent or the respondent's lawyer whether there are any other areas about which the party wishes the judge to make inquiries of the applicant. The judge will inquire into these areas if requested and determined to be relevant;

(e) the process in rules F31.03 (c) and (d) is then repeated for the other party;

(f) the judge may require the attendance of witnesses other than the parties;

(g) expert reports will be entered into evidence as the Court's exhibit. If either party requests, the expert will testify and be subjected to questioning by lawyers, the parties, or the judge;

(h) the parties may offer any documents they wish the judge to consider and must provide a copy of such documents to the other party. The judge will determine what weight, if any, to give each document. The judge may order the parties to provide other relevant documents. Letters or other documents by the parties' children that are intended to suggest parenting preferences are not permitted;

(i) upon the conclusion of questioning and entry of documents into evidence, the applicant or applicant's lawyer will be offered the opportunity to make submissions;

(j) the respondent or respondent's lawyer will be offered the opportunity to make brief submissions and to respond briefly to the applicant's submissions;

(k) the applicant or applicant's lawyer will be offered the opportunity to respond briefly to any new issues raised by the respondent;

(l) the parties or their lawyers will then be offered the opportunity to make a brief legal argument;

(m) upon consideration of the evidence and submissions, the judge must render judgment;

(n) the judge retains jurisdiction to modify these procedures as justice and fundamental fairness require.

Withdrawal of request for informal trial

F31.04 (1) A judge may permit a party to withdraw the party's consent to the informal trial process until the beginning of the informal trial.

(2) Where a party withdraws their consent, the judge must schedule a date for a regular trial or a regular trial must proceed on the date already scheduled.

(3) Where a party withdraws their consent, a judge may make any order that the judge considers appropriate.

Court may direct formal trial

F31.05 (1) Where a judge determines that the informal trial process is inappropriate, the judge may, at any time before or during the informal trial, direct that a proceeding continue under the regular trial process.

(2) Where a judge makes an order under subrule (1), the judge must determine the use to be made of any evidence already entered at the informal trial, if any, and may provide further directions or make an order under rule F14.07 (“Powers of case management judge”).

Rule F32 – Evidence and Affidavits

What evidence the Court may consider

F32.01 (1) A judge may decide an issue on oral or affidavit evidence or in a manner that the judge conducting a hearing or trial considers appropriate.

(2) At trial, the judge may consider any pleading or other document filed in accordance with this part and properly included in a Court file of which the other party has notice, unless a party has raised an objection to the document's admissibility at a prior case management hearing, at a trial readiness conference, or prior to the start of the trial and a judge has determined that the document should not be considered.

(3) Subrule (2) does not apply to pleadings or other documents that have been filed on an application under rules F16 ("Procedural Interim Applications (Without Notice)") or F17 ("Emergency Temporary Relief (Without Notice)"), unless a hearing with notice to the parties was held in relation to the application.

What information may be contained in an affidavit

F32.02 (1) A person signing an affidavit must only set out facts of which he or she has personal knowledge, except where this rule provides otherwise.

(2) An affidavit may contain information that the person learned from someone else if

(a) the affidavit is to be used on an interim application, or for a matter which will not determine the final outcome of the proceeding; and

(b) the source of the information is identified by name, the affidavit states that the person signing it believes the information is true, and the circumstances that justify the use of information learned from someone else are stated.

(3) Where an affidavit does not comply with this rule, a judge may

(a) disregard all or part of that affidavit; and

(b) make any order the judge considers appropriate.

(4) Where an affidavit contains material that is irrelevant, that may delay the trial or make it difficult to have a fair trial, or that is unnecessary or an abuse of the Court process, a judge may, at the request of a party or at their own discretion,

(a) disregard all or part of that affidavit; and

(b) make any order the judge considers appropriate.

(5) Where an affidavit or part of an affidavit has been disregarded under this rule, an opposing party who has filed an affidavit in Response to the offending material may be awarded costs of filing that affidavit to be paid as between lawyer and client.

Section 10 - Costs, Orders, Judgments, and Enforcement

Rule F33 - Costs

Purpose and scope of rule

F33.01 The purpose of this rule is to encourage parties to take a position towards the resolution of issues or claims in a proceeding, which position includes a reasonable element of compromise.

Presumption

F33.02 (1) The judge has the right to decide whether a party must pay the costs of another party.

(2) There is a presumption that a successful party is entitled to the costs of a proceeding.

(3) Despite the presumption in subrule (2), in matters of parenting the judge has the discretion to reduce or decline an award of costs to a successful party if the judge determines that the positions of both parties throughout the proceeding were reasonable, held in good faith, and in the best interests of the child.

Unreasonable behavior

F33.03 (1) A party, whether successful or unsuccessful, who has behaved unreasonably or has acted in bad faith during a proceeding

(a) may be deprived of all or part of the party's own costs; or

(b) may be ordered to pay all or part of the other party's costs.

(2) When deciding whether a party has behaved reasonably, unreasonably, or in bad faith, the judge may consider:

(a) the party's behaviour in relation to the nature, importance, and urgency of the issues;

(b) any conduct of the party which unnecessarily delayed the proceeding or unnecessarily increased the expense of the proceeding;

(c) whether the party has complied or failed to comply with any order of the Court;

(d) whether any step taken by the party in the proceeding was frivolous, improper, vexatious, or unnecessary;

(e) the party's denial or refusal to admit anything that should have been admitted;

(f) whether the party made an offer to settle;

(g) the reasonableness of any offer to settle the party made; and

(h) any offer to settle the party withdrew or failed to accept.

(3) The judge may order costs against a party if the party, without reasonable excuse

(a) does not appear at a step in the proceeding;

(b) appears but is not properly prepared to deal with the issues at that step; or

(c) appears but has failed to make the disclosure required before that step.

Divided success

F33.04 If success in a step in a proceeding is divided, the judge may apportion costs as the judge considers appropriate.

Fixed sum

F33.05 (1) A judge may make an order at any time during a proceeding that a party pay a fixed sum of money to another party instead of taxed costs.

(2) In determining whether to make an order pursuant to subrule (1) the judge must consider:

(a) the importance, complexity, or difficulty of the issues;

(b) the reasonableness or unreasonableness of each party's behaviour in the proceeding;

(c) the lawyer's fees, if a party is represented by a lawyer;

(d) the time properly spent on the proceeding, including

(i) discussions between the parties, their lawyers, and any witnesses,

(ii) drafting documents,

(iii) attempting to settle the matter and preparing for and attending any application or hearing, and

(iv) preparing any order;

(e) expenses properly paid or payable; and

(f) any other relevant matter.

Security for costs

F33.06 (1) A judge may, on an interim application made with notice under rule F18 ("Interim Applications with Notice"), make an order for security for costs in relation to a proceeding, other than a proceeding for parenting, which the judge considers appropriate, based on one or more of the following factors:

(a) a party ordinarily resides outside of this province;

(b) a party has an order against the other party for costs that remains unpaid, in the same proceeding or another proceeding;

(c) a party is a corporation and there is good reason to believe it does not have enough assets in this province to pay costs;

(d) there is good reason to believe that the proceeding is frivolous, improper, vexatious, or unnecessary and that the party does not have enough assets in this province to pay costs;

(e) a party has or is attempting to dispose of, hide, or waste assets which are the subject of the proceeding; or

(f) any other relevant matter.

(2) The judge must determine the amount of the security, its form, and the method of giving it.

(3) Until the security has been given, a party against whom there is an order for security for costs must not take any step in the proceeding, except to appeal from the order, unless a judge orders otherwise.

(4) If a party does not provide security for costs as ordered, a judge may, following an application, make an order

(a) dismissing the party's proceeding;

(b) striking out the party's pleadings or any other document filed by the party;

(c) noting the party in default pursuant to rule F6.06 ("Consequences of not responding"); or

d) providing any other relief the judge considers appropriate.

(5) The amount of the security, its form, and the method of giving it may be changed by order at any time.

(6) Security given for costs may be paid out or released on an order of the Court.

Rule F34 - Orders, Judgments, and Enforcement

General

F34.01 (1) Where a party claims under more than one statute the judge may issue one judgment with respect to all claims naming the relevant statute, subject to subrule (2).

(2) A separate formal order for support must be issued by the Court where support is granted.

Consent orders

F34.02 (1) A consent order for support filed under this Part must be in Form F34.02A.

(2) A consent order for all claims other than support filed under this Part must be in Form F34.02B.

(2) Unless a judge orders otherwise, an application for judgment or an order to be made by consent must be accompanied by appropriate evidence of the consent of each party.

(3) Appropriate evidence of consent includes:

(a) the signature of the lawyer of a party, if the party is represented by a lawyer;

(b) the signature of a party, personally sworn or affirmed before a person authorized to take an oath or affirmation;

(c) the signature of a party accompanied by a completed Affidavit of Execution in Form F34.02C; or

(d) the oral consent of a party on the court record.

(4) Parties seeking to file an order by consent may do so without seeking the Court's prior permission or appearing before a judge, unless a judge orders otherwise.

Necessary content of support orders

F34.03 (1) An order for child support or variation of child support must include:

(a) the name and birth date of each child to whom the order relates;

(b) the income of any party whose income is used to determine the amount of child support in a child support order;

(c) the table amount determined under the guidelines for the number of children to whom the order relates or another amount ordered by the court or agreed to between the parties;

(d) for a child the age of majority or over, the amount that the judge considers appropriate, having regard to the condition, means, needs, and other circumstances of the child and the financial ability of each party to contribute to the support of the child;

(e) the particulars of any special or extraordinary expense, the child to whom the expense relates, and the amount of the expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense;

(f) the address and contact information of all parties named in the order;

(g) the day, month, and year on which the lump sum or first payment is required to be made and the schedule for subsequent payments;

(h) the duration of the order;

(i) a recalculation clause where required; and

(j) that the order must be enforced by the Director of Support Enforcement and that amounts owing under the order must be paid to the person to whom it is owed through the director unless the order is withdrawn from the director.

(2) An order or variation order for spousal support, partner support, parental support, or dependant support must include:

(a) the address and contact information of all parties named in the order;

(b) the day, month, and year on which the lump sum or first payment is required to be made and the schedule for subsequent payments;

(c) the duration of the order; and

(d) that the order must be enforced by the Director of Support Enforcement and that amounts owing under the order must be paid to the person to whom it is owed through the director unless the order is withdrawn from the director.

Divorce judgments

F34.04 (1) A judge must not grant a judgment for divorce until

(a) a written notification issued from the central registry of divorce proceedings under the *Central Registry of Divorce Proceedings Regulations*

under the *Divorce Act* (Canada) has been filed indicating that no other divorce proceedings are pending; and .

(b) the judge is satisfied that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines.

(2) Where the requirement in subrule (1) (b) is not satisfied, the Court must stay the granting of the divorce until such arrangements are made.

(3) A judgment in a divorce proceeding must be in Form F26.03A.

(4) Where a claim for divorce is made together with one or more other claims, a judge may

(a) grant a divorce and direct that a judgment of divorce alone be entered; and either

(i) adjourn the hearing of one or more of the other claims to a later date, or

(ii) grant an order for one or more of the other claims; or

(b) refuse to grant judgment for divorce until any other issue is resolved.

How to register orders made in another jurisdiction under the *Divorce Act* (Canada)

F34.05 A support order, parenting order, variation order, interim support order, or interim parenting order made under the *Divorce Act* (Canada) in another jurisdiction may be registered by filing a certified copy of the order in the office of the Court with a written request that it be registered.

Enforcement

F34.06 A judgment or order listed in section 2(1) (l) of the *Support Orders Enforcement Act, 2006* may be enforced in accordance with that *Act*.

Section 11 - Special Rules Applicable to Certain Types of Proceedings

Rule F35- Provisional Support Orders – *Divorce Act*

Definitions

F35.01 In this rule

(a) "applicant" means a former spouse who makes an application for variation of a support order under section 18 of the *Divorce Act* (Canada);

(b) "minister" means the Attorney General; and

(c) "provisional order" means a provisional order for variation of a support order made under the *Divorce Act* (Canada).

Scope of rule

F35.02 This rule sets out the procedure which applies to applications for provisional variation of support orders made under section 18(2) of the *Divorce Act* (Canada).

Application for provisional variation order

F35.03 (1) Where a judge determines, under rule F5.03 (“Applicability of rule F35”), that section 18 (2) of the *Divorce Act* (Canada) applies, the Court must schedule a hearing date for an application for variation of a support order.

(2) Where the Court makes a provisional order, a registry clerk must send to the minister and to the applicant

(a) the documents filed in accordance with rule F5 (“How to Apply to Vary a Final Order”);

(b) a certified, sworn, or affirmed document setting out or summarizing the evidence given to the Court;

(c) three certified copies of the provisional order; and.

(d) a certificate from the registry clerk that the order is made provisionally and is of no legal effect until confirmed.

(3) Where a Court outside this province remits any matter back to the Court for further evidence

(a) a registry clerk must give to the applicant a Notice of Hearing in Form F35.03A; and

(b) the matter may be brought before any judge of the Court.

(4) Where the Court receives further evidence under this rule, a registry clerk must forward to the Court outside of this province that remitted the matter back

(a) a certified, sworn, or affirmed document setting out or summarizing the evidence; and

(b) any recommendations that the Court considers appropriate.

Confirmation of provisional variation order

F35.04 (1) On receipt of a provisional order for confirmation in this province, a registry clerk must serve the following on the person against whom the order has been made:

(a) a notice of case management hearing date to schedule a Confirmation Hearing;

(b) a copy of the documents received from the Court outside of this province that made the provisional order; and

(c) a Financial Statement in Form F10.02A to be completed by the person against whom the order was made.

(2) The Court may make a temporary order for support where the matter is remitted to the Court outside of this province that made the provisional order for further evidence.

(3) Where the Court has requested further evidence on a confirmation hearing and that evidence has been received, the minister must serve the following to the persons concerned:

(a) a Notice of Confirmation Hearing in Form F35.04A; and

(b) a copy of the documents sent by the Court outside of this province.

(4) An order confirming or otherwise dealing with a provisional order for child support, including a temporary order, must be in accordance with the guidelines.

(5) Where the Court makes an order refusing to confirm or varying a provisional order for support, the Court must provide written reasons for its decision

(a) to the minister; and

(b) to the Court that made the provisional order.

(6) Where an order is made confirming a provisional order, with or without variation, a registry clerk or the minister must file the order in the Court.

(7) On completion of the confirmation hearing, a registry clerk must forward a certified copy of the order to

(a) the minister;

(b) the Court that made the provisional order; and

(c) the Court that made the support order, where it is not the Court that made the provisional order.

Rule F36- Interjurisdictional Support Orders

Interjurisdictional Support Orders Act applies

F36.01 The procedure in the *Interjurisdictional Support Orders Act* will apply where the Court receives a provisional order for confirmation, a support application, or a support variation application, as defined in that Act, from a reciprocating jurisdiction.

Rule F37 - Child Protection Proceedings

Proceedings

F37.01 (1) To the extent that the procedure or time limits in this Part are inconsistent with the *Children and Youth Care and Protection Act*, the provisions of the *Act* will apply.

(2) Any hearing under the *Children and Youth Care and Protection Act* must be

(a) held as informally as the circumstances of the case permit;

(b) scheduled as expeditiously as the schedule of the Court allows and as fairness to the parties and affected persons requires; and

(c) held in private unless the judge hearing the matter determines that the proper administration of justice or the interests of a child require otherwise.

(3) A judge may make any order under rule F14.07 ("Powers of case management judge") not inconsistent with the *Children and Youth Care and Protection Act* that may assist in focusing a child protection hearing on the matters in dispute.

(4) An application for a protective intervention order and any other application under the *Children and Youth Care and Protection Act* must be started by presenting the original and one copy of an application to the Court.

(5) An application for another order relating to children in respect of whom a protective intervention order has already been sought or in respect of other children in the same family must be given the same file number as the original application where the application is made in the same judicial centre.

Summary judgment

F37.02 (1) Upon completion of a presentation hearing as required by section 31 of the *Children and Youth Care and Protection Act* and an order being made directing that a protective intervention hearing is to take place, a party may make an application for a summary judgment for a final order without a trial on all or part of any claim made or defence to be presented in the proceeding.

(2) The procedure set out in rule F28 ("Summary Judgment") applies to applications for summary judgment under this rule.

Judicial case conference

F37.03 (1) Where a party requests a judicial case conference in a child protection proceeding, or a judge determines that a judicial case conference is appropriate, the parties and any other

person required by the judge must attend before a judge who must consider such documents, other materials, and submissions the judge considers appropriate and give a non-binding opinion on the probable outcome of a hearing of the proceeding.

(2) A judicial case conference may only occur at some time after the conclusion of the presentation hearing as required by section 31 of the *Children and Youth Care and Protection Act* and before a full hearing occurs.

(3) A judge may conduct the judicial case conference in as informal a manner as the judge considers appropriate.

(4) A judge may hear from persons intended to be witnesses at the hearing, as well as the parties, either under oath or affirmation or not, during a judicial case conference if the judge so decides.

(5) A judge who conducts a judicial case conference must not preside at the protective intervention hearing and must note in the Court file the date or dates upon which the judicial case conference took place.

(6) A judicial case conference must be recorded with minutes kept but in such event, the record kept and any submissions must be sealed and may only be opened by order of a judge.

(7) Upon completion of the judicial case conference, the judge must return to the parties or their lawyers any materials filed or provided for the purpose of the judicial case conference not otherwise in the Court file.

(8) The judge conducting the judicial case conference or any person attending the judicial case conference must not disclose to the hearing judge or any other persons the positions taken by the parties or the opinions expressed at the hearing.

(9) A judge at a judicial case conference may give directions to the parties related to the conduct of the hearing, including setting a date and time for a hearing, and any such directions must be filed in the Court file as an order.

(10) A judge at a judicial case conference may make a continuous, temporary, or other order where the parties to the proceeding consent and the order must be filed in the Court file.

Rule F38- Applications for the Return of a Child under the *Hague Convention on International Child Abduction*

Definitions

F38.01 In this rule,

(a) "central authority" is the person so designated for each contracting state under Article 6 of the *Hague Convention on International Child Abduction*;

(b) "contact judge" is the person so designated in the province of Newfoundland and Labrador to ensure that interjurisdictional cases of parental child abduction are dealt with expeditiously;

(c) "contracting state" means a country that is a signatory to the *Hague Convention on International Child Abduction*; and

(d) "Hague Convention on International Child Abduction" means the *Convention on the Civil Aspects of International Child Abduction* as set out as a schedule to the *Children's Law Act*.

Use of the *Rules*

F38.02 (1) Rule F38 applies to the wrongful removal or retention of a child occurring in a contracting state under the *Hague Convention on International Child Abduction.*

(2) The child who has been wrongfully removed or retained must be under the age of 16 years.

(3) Wrongful removal or retention shall have the meaning set out in Article 3 of the *Hague Convention on International Child Abduction*.

(4) Sections 1, 2, 3, 4, 6, 9 and 10 and rules F26 and F27 of the *Trial Division Family Rules* apply to all proceedings for the return of a child under the *Hague Convention on International Child Abduction* unless rule F38 provides otherwise, in which case rule F38 takes precedence.

Proceedings must be dealt with expeditiously

F38.03 All proceedings under rule F38 must be dealt with expeditiously and these rules must be interpreted and applied so as to provide the timeliest and efficient disposition that is consistent with fairness to the parties involved.

Commencing an application for the return of a child

F38.04 (1) An application for the return of a child under the *Hague Convention on International Child Abduction* must be started in the Court by presenting an original and two signed copies of an Application for the Return of a Child in Form F38.04A.

(2) Applications under this rule must only address the return of a child and must not include a request for any other relief except for consequential relief related to the return of a child.

(3) All applications under this rule must be accompanied by Affidavit in Support of Application for the Return of a Child in Form F38.04B which complies with rule F32 ("Evidence and Affidavits") and contains:

(a) information concerning the identity of the applicant, the child, and the person or persons alleged to have removed or retained the child;

(b) where available, the date of birth of the child;

(c) the grounds on which the applicant's claim for the return of the child is based; and

(d) all available information relating to the whereabouts of the child and the identity of the person in whose care the child is presumed to be.

(4) The application may be accompanied or supplemented by:

(a) an authenticated copy of any relevant decision or agreement pertaining to parenting of the child;

(b) a certificate or an affidavit emanating from a central authority of the contracting state, competent authority or other qualified person where the child habitually resides setting out the relevant law of that jurisdiction; or

(c) any other relevant document.

(5) On receipt by the Court of an application under this rule, a return date must be assigned and noted on the application.

Service of the application

F38.05 (1) The following documents must be served personally on the respondent(s), in accordance with rule F8. 03 ("Documents which must be personally served (hand-delivery)"), within seven days of filing the application with the Court:

(a) the application;

(b) an affidavit in support of the application;

(c) the information required under rule F38.04, if applicable; and

(d) the Notice to Respondent

(2) If not named as a respondent, the person with whom the child is presumed to be must also be personally served with the application.

(3) If timely service cannot be effected, an application may be made to the Court for substituted service or to extend the time for service.

Notice to the central authority and the contact judge

F38.06. A Notice of Application to the central authority and contact judge in Form F38.06A must be filed at the same time as the application under rule F38.04 and a copy must forthwith be provided to the central authority of the province of Newfoundland and Labrador and the contact judge.

Responding to an application for the return of a child

F38.07 Despite rules F6.02 ("How to oppose a claim or make a claim in response") and F6.04 ("How to respond to a claim without contesting"), a Response to the application must be filed within seven days of being served with the application unless a judge orders otherwise.

How to oppose a claim

F38.08 (1) Unless a judge orders otherwise, a respondent who intends to oppose a claim made in an application must file and serve a Response in Form F6.02A.

(2) Rules F6.02 ("How to oppose a claim or make a claim in response") and F6.03 ("Information which must be included in the Response") do not apply to applications under this rule.

Hearings

F38.09 (1) On the first return date of an application under rule F38, where a Response has been filed, the Court must:

(a) establish appropriate timelines for the filing and service of materials;

(b) schedule the application for hearing; and

(c) decide on whether communication with judicial authorities in other jurisdictions is required.

(2) On the first return date of an application under this rule where no Response has been filed the Court may determine the application.

(3) In carrying out these responsibilities, the Court must have regard to the requirement for an expeditious determination of the matter.

(4) Any party may appear by way of telephone or video conference where appropriate facilities are available if that party makes arrangements at least two days prior to the hearing.

(5) Where the Court has notice of the alleged wrongful removal or retention of a child, the Court must not deal with the merits of rights of custody until an application for return of the child under the *Hague Convention on International Child Abduction* has been determined, unless a return application is not filed within a reasonable time after notice is given to the Court.

Disposition

F38.10 Applications must be dealt with expeditiously and except in extraordinary circumstances, decisions must be rendered within 42 days of the filing of the application.

Order

F38.11 Unless the order is signed when a judge decides on the merits of the application for return of a child, an appointment must be made to meet with the same judge to have the order signed within 24 hours of a decision being rendered.

Family Justice Services

F38.12 Unless a judge orders otherwise or on the consent of the parties, proceedings with respect to the return of a child under rule F38 must not be referred to Family Justice Services under rule F22 (“Family Justice Services”).

Case management

F38.13 Unless a judge orders otherwise or on the consent of the parties, proceedings with respect to the return of a child under rule F38 are not subject to case management.

Rule F39 -Review of Emergency Protection Orders made under the *Family Homes on Reserves and Matrimonial Interests or Rights Act.*

Definitions

F39.01 (1) In this rule

(a) "council", in relation to a First Nation, has the same meaning as the expression "council of the band" in subsection 2(1) of the *Indian Act*;

(b) "Court", unless otherwise indicated, means, in respect of a province, the Court referred to in any of paragraphs (a) to (e) of the definition "Court" in subsection 2(1) of the *Divorce Act*.

(c) "designated judge", in respect of a province, means any of the following persons who are authorized by the lieutenant governor in council of the province to act as a designated judge for the purposes of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*

(i) a justice of the peace appointed by the lieutenant governor in council of the province;

(ii) a judge of the Court in the province; or

(iii) a judge of a Court established under the laws of the province.

(d) "family home" means a structure — that need not be affixed but that must be situated on reserve land — where the spouses or common-law partners habitually reside or, if they have ceased to cohabit or one of them has died, where they habitually resided on the day on which they ceased to cohabit or the death occurred. If the structure is normally used for a purpose in addition to a residential purpose, this definition includes only the portion of the structure that may reasonably be regarded as necessary for the residential purpose.

(e) "First Nation" means a band as defined in subsection 2(1) of the *Indian Act*.

(f) "First Nation member" means a person whose name appears on the band list of a First Nation or who is entitled to have their name appear on that list.

(g) "interest or right" means

(i) the following interests or rights referred to in the *Indian Act*:

(A) a right to possession, with or without a Certificate of Possession or a Certificate of Occupation, allotted in accordance with section 20 of that Act,

(B) a permit referred to in subsection 28(2) of that Act, and

(C) a lease under section 53 or 58 of that Act;

(ii) an interest or right in or to reserve land that is subject to any land code or First Nation law as defined in subsection 2(1) of the *First Nations Land Management Act*, to any First Nation law enacted under a self-government agreement to which Her Majesty in right of Canada is a party, or to any land governance code adopted; and

(iii) an interest or right in or to a structure — that need not be affixed but that must be situated on reserve land that is not the object of an interest or right referred to in paragraph (a) — which interest or right is recognized by the First Nation on whose reserve the structure is situated or by a Court order made under section 48 of the *Act.*

(2) Unless the context otherwise requires, words and expressions used in this rule have the same meaning as in the *Indian Act*.

Review by Court

F39.02 The Court must review an order made under section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* within three working days after the day on which it is received or, if a judge is not available within that period, as soon as one becomes available.

Decision

F39.03 The Court, on reviewing an order made under section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* and the materials, must, by order,

(a) confirm the order if the Court is satisfied that there was sufficient evidence before the designated judge to support the making of the order; or

(b) direct a rehearing of the matter by the Court if the Court is not satisfied that the evidence before the designated judge was sufficient to support the making of all or part of the order.

Notice

F39.04 The Court must give notice to the parties and any person specified in the order made by the designated judge under section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* of its decision and of any consequent procedures.

Confirmed order

F39.05 An order made under section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* that is confirmed is deemed to be an order of the Court.

Rehearing order continues

F39.06 If the Court directs that a matter be reheard, the order made under section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* continues in effect and is not stayed unless a judge orders otherwise.

Evidence at rehearing

F39.07 The supporting materials forwarded to the Court under section 17 (1) of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* must be considered as evidence at the rehearing, in addition to any evidence presented at the rehearing, including evidence on the collective interests of the First Nation members, on whose reserve the family home is situated, in their reserve lands.

Order on rehearing

F39.08 On a rehearing, the Court may, by order, confirm, vary, or revoke the order made under section 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, and may extend the duration of the order beyond the period of 90 days referred to in subsection 16(1) of that *Act*.

Application to vary or revoke order

F39.09 (1) If an application is made under section 18 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* to have an order made under section 16 of the *Act* varied or revoked and a rehearing has been ordered but has not begun, that application must be heard at the rehearing.

(2) Any person in whose favour or against whom an order is made under section 16 or 17 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* or under this rule or any person specified in the order may apply to the Court in the province in which the designated judge has jurisdiction to have the order varied or revoked

(a) within 21 days after the day on which notice of the order made under section 16 is received, or within any further time that the Court allows; and

(b) at any time if there has been a material change in circumstances.

(3) The Court may, by order, confirm, vary, or revoke the order, and may extend the duration of the order beyond the period of 90 days referred to in subsection 16(1) of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

(4) The supporting materials for the order made by the designated judge must be considered as evidence at the hearing, in addition to any evidence presented at the hearing, including evidence on the collective interests of the First Nation members, on whose reserve the family home is situated, in their reserve lands.

Section 12- General Rules

Rule F40 – Court Administration

Issuing applications

F40.01 (1) The registry must issue the Originating Application and file the copies and if an application to change an order is made in the same Court centre where the original order was made, it must be filed in the original Court file.

(2) A registry clerk must enter every proceeding in an appropriate record maintained manually or in electronic form.

(3) The file number assigned to a family law proceeding in the Family Division must consist of the year of issue, a number to identify the judicial centre where the proceeding is started followed by the letter "F" as follows:

02F St. John's

04F Corner Brook

and then followed by the consecutive number of the proceeding in the order of filing in the registry of the judicial centre where the proceeding is started.

(4) The file number assigned to a family law proceeding in the General Division must consist of the year of issue, a number to identify the judicial centre where the proceeding is started followed by the letter "G" as follows:

03G Grand Falls-Windsor

05G Gander

06G Grand Bank

08G Happy Valley-Goose Bay

and then followed by the consecutive number of the proceeding in the order of filing in the registry of the judicial centre where the proceeding is started.

(5) All documents subsequently filed or served in the proceeding must bear the same file number.

Transferring files

F40.02 Where a proceeding is subsequently issued in relation to the same parties but in another judicial centre, the registry must make arrangements to transfer the file to that judicial centre.

Divorce proceedings

F40.03 (1) Where a party asks for a divorce in a proceeding, the registry must, on receipt of the appropriate fee,

(a) in addition to the file reference required by rule F40.01, assign to that divorce proceeding a separate number, to be known as a divorce registry number, that follows in sequence the last number assigned to a divorce proceeding in that judicial centre, as the case may be; and

(b) complete Part I of the registration of divorce proceeding form referred to in the *Central Registry of Divorce Proceedings Regulations* (Canada) and send it to the central registry of divorce proceedings.

(2) Where the Court varies, other than provisionally, a corollary relief order made under the *Divorce Act* (Canada) by a Court outside of this province, the registry must forward a certified copy of the variation order to

(a) the Court that made the original order; and

(b) any other Court that has varied the original order.

(3) Where a divorce judgment is granted, the registry must mail a copy of the Divorce Judgment in Form F26.03A to each of the parties.

(4) In uncontested divorce proceedings, a registry clerk must immediately forward to each of the parties, by ordinary mail

(a) a copy of the judgment granting a divorce; and

(b) a copy of any child support order.

Certificates of divorce

F40.04 (1) A Certificate of Divorce, stating that a divorce dissolved the marriage of the parties as of a specified date, must be in Form F40.04A.

(2) The registry must issue a certificate of divorce, on request of either party, on or after the day on which the judgment granting the divorce takes effect, where

(a) the registry is satisfied that an appeal is not in process; or

(b) the spouses have signed and filed with the Court an Undertaking in Form F40.04A that no appeal from the judgment will be taken, or if any appeal has been taken, that it has been abandoned.

(3) Where a certified copy of the certificate of divorce is requested, a registry clerk must provide a copy under the seal of the Court.

Central Registry of Divorce Proceedings Regulations

F40.05 The registry must complete the forms required by the *Central Registry of Divorce Proceedings Regulations* under the *Divorce Act* (Canada) and forward the forms to the Central Registry of Divorce Proceedings at Ottawa as required by those regulations.