

RULE 63 – DIVORCE AND FAMILY LAW

Definitions

(1) In this rule,

“claim for relief” includes a child support order, a spousal support order, a custody order, a property order, and corollary relief under the *Divorce Act* (Canada);

“divorce proceeding” means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a custody order;

“family law proceeding” includes a proceeding in which relief is claimed under the *Family Property and Support Act*, the *Children’s Act* or the *Divorce Act* (Canada), divorce proceeding, uncontested divorce proceeding, and applications for division of property under the common law;

“uncontested divorce proceeding” means a family law proceeding in which a claim for divorce is made and

(a) no statement of defence has been filed,

(b) a statement of defence has been filed that disputes the claim for divorce, or a counterclaim has been filed that makes a claim for divorce, but the statement of defence or counterclaim, as the case may be, has been

(i) withdrawn under subrule (11), or

(ii) struck out or dismissed, or

(c) all claims other than the claim for divorce have been settled, and the parties have filed a statement to that effect signed by the parties or their lawyers.

Application

(2) Except as provided in this rule, the Rules of Court apply to a family law proceeding.

COMMENCEMENT OF PROCEEDING

Commencement by statement of claim

(3) A family law proceeding must be commenced by a statement of claim.

Claim for relief after divorce granted

- (4) If a divorce order has been granted and no claim for relief was sought in the proceeding in which that order was granted, any subsequent claim for relief must be brought in a family law proceeding in accordance with subrule (3).
- (5) If an order from another jurisdiction has been filed by requisition for purposes of enforcement, an application to rescind, vary or suspend the order must be brought by notice of application.

Application to vary, suspend or rescind

- (6) An application to vary, suspend or rescind an order made by this court in a proceeding brought under the *Family Property and Support Act*, the *Children's Act* or the *Divorce Act* (Canada) must be brought by notice of application in the family law proceeding.

Procedural step after long delay

- (7) If no step has been taken in a family law proceeding for one year,
 - (a) the applicant must
 - (i) comply with Rule 3(6), or
 - (ii) personally serve the other parties of record with the notice of application, in which event the applicant need not comply with Rule 3(6), and
 - (b) Rule 11 (5) and (12) do not apply to service of the notice of application in (a)(ii).

PLEADINGS

Form of pleadings

- (8) In a family law proceeding,
 - (a) a statement of claim must be in Form 91.
 - (b) a statement of defence must be in Form 92, and
 - (c) a counterclaim must be in Form 93.

Appearance

- (9) If no appearance, statement of defence or counterclaim is filed, the family law proceeding may proceed on an uncontested basis.

Person allegedly involved in adultery

- (10) If it is alleged in a pleading that a spouse has committed adultery,
- (a) the name of another person alleged to have been involved in the adultery must not be set out in that pleading unless that person is made a party to the proceeding,
 - (b) the other person must not be made a party to the proceeding unless relief is claimed against that person, and
 - (c) particulars of the identity of the other person may be demanded from the plaintiff, but any particulars provided in response to that demand must not be filed before the trial or hearing.

Withdrawal of pleading

- (11) A party who has filed a pleading in a divorce proceeding may withdraw the pleading or any part of it by filing and delivering a notice of withdrawal in Form 102.

FINANCIAL DISCLOSURE

- (12) The Rules for financial disclosure in a family law proceeding are set out in Rule 63A.

FAMILY LAW CASE CONFERENCE

- (13) A family law case conference shall be held in all family law proceedings, except those exempted as set out in a practice direction, no later than 60 days from the filing of a statement of claim.
- (14) The purpose of the family law case conference is to ensure that all parties are aware of alternative dispute resolution procedures available.
- (15) The judge conducting the family law case conference may,
- (a) proceed to a judicial settlement conference under Rule 37. or
 - (b) proceed to a case management conference under Rule 36, and
 - (c) make any orders under Rule 36(6) to facilitate the proceeding or resolution of it in Form 109
- (16) The family law case conference shall be conducted as set out in the family law case conference and case management practice directions.

MARRIAGE CERTIFICATE

Certificate to be filed

- (17) Before the issuance of a pleading or an amended pleading in which a claim for divorce is made, a certificate of the marriage or a registration of the marriage must be filed unless the pleading states that
 - (a) it is impossible to obtain such a certificate, or
 - (b) the certificate will be filed before the action is set down for trial or before an application is made for an order of divorce.
- (18) A party may apply in writing to the clerk for the return of the original marriage certificate. The clerk may make a certified copy of the marriage certificate and return the original marriage certificate to the party that filed it.

ADDITION OF CLAIMS AND PARTIES

Addition of claims and parties

- (19) Subject to Rule 5 (6), a claim that, on its own, would not be the subject matter of a family law proceeding may be made in a family law proceeding, and a person by or against whom any such claim is made may be joined in that proceeding, if the claim is related to or connected with any relief in the family law proceeding.
- (20) The judge may give directions to the parties for the procedure and hearing of the additional claim.
- (21) Where a child protection proceeding is filed in Territorial Court and a custody proceeding for the same child(ren) is filed in Supreme Court and, where it is expedient to do so, the Supreme Court judge may sit as a Territorial Court judge in the child protection proceeding and a Supreme Court judge in the custody proceeding.

MINORS

Party who is a minor

- (22) A minor who has attained the age of 16 years and who is a party to a family law proceeding may act without a litigation guardian and the provisions of Rule 6 do not apply to that party.

Appointment of litigation guardian

- (23) Notwithstanding subrule (22), if the court considers that it is in the interest of a minor referred to in subrule (22) or of any child of the minor, it may, on application or on its own motion, appoint a litigation guardian for the minor or for the child of the minor.

SERVICE

- (24) A statement of claim and a statement of defence or counterclaim in a family law proceeding must be served by someone other than the plaintiff or defendant.

Affidavit of service

- (25) An affidavit of service in Form 7 of a statement of claim, statement of defence or counterclaim in a family law proceeding must state the means by which the person served was identified.

SECURITY FOR COSTS

Security for costs

- (26) The court may, in a family law proceeding, make an order for payment of, or for security for, the costs of a party, including interim or advance costs in appropriate cases.

UNCONTESTED PROCEEDINGS

Proceedings in default

- (27) Rule 17 does not apply to family law proceedings but a party may proceed where the served party fails to appear or file a statement of defence.

Uncontested divorce proceeding

- (28) In an uncontested divorce proceeding, the evidence, and any information required to enable the court to comply with sections 10 and 11 of the *Divorce Act* (Canada), may be presented by affidavit, unless the court otherwise orders.

Application for judgment in uncontested family law proceeding

- (29) In an uncontested family law proceeding, a party may apply for judgment
- (a) by requisition in accordance with subrule (30), or
 - (b) by setting the proceeding for trial or hearing in the manner directed by these rules or by practice direction.

Application by requisition

- (30) An application for judgment under subrule (29)(a) may be made by either party to the court by filing
- (a) a requisition setting out briefly the nature of the relief sought,
 - (b) a draft order or orders,

- (c) if necessary, proof of service of the statement of claim, or proof of delivery of a counterclaim,
 - (d) an affidavit for divorce order in Form 97 stating that the action is uncontested,
 - (e) if appropriate, an affidavit in Form 59, and
 - (f) if appropriate, a Child Support Affidavit in Form 98.
- (31) Upon receipt of an application by requisition, the clerk may issue a certificate certifying that the pleadings and proceedings are in order.

Powers of court on application

- (32) On being satisfied that an application under subrule (29) or (30) is appropriate, the court may give any directions that it considers necessary and may, without limitation,
- (a) make an order or give judgment without the attendance of the lawyer or the applicant,
 - (b) direct the attendance of the lawyer or the applicant, or
 - (c) direct that further evidence be presented.

DIVORCE JUDGMENTS AND ORDERS

Pending prior divorce proceedings

- (33) A judgment granting a divorce must not be pronounced unless the court is satisfied that no earlier divorce proceeding was instituted and is pending anywhere in Canada.

Claim for divorce joined with other claims

- (34) If a claim is made for divorce together with one or more other claims, the court may do one or more of the following:
- (a) set the proceeding for trial pursuant to Rule 41;
 - (b) grant a divorce and direct that an order for divorce alone be entered;
 - (c) grant a divorce and give judgment on the other claims;
 - (d) adjourn the hearing of the claim for divorce;
 - (e) give judgment on the other claims and direct that a separate order dealing with them be entered;

(f) adjourn the hearing of the other claims.

Form of divorce order

(35) An order for divorce must be in Form 100.

Form of certificate of divorce

(36) The certificate of divorce referred to in section 12(7) of the *Divorce Act* (Canada) must be in Form 101 and issued by the clerk or a judge.

Delivery of divorce order

(37) Unless the court otherwise orders, the party who applies for an order for divorce must

(a) deliver a true copy to the other party at the other party's address for delivery, or

(b) if the other party does not have an address for delivery, leave a stamped envelope with the clerk addressed to the last known address of the party and the clerk shall forward the order by ordinary mail.

CONSENT ORDERS

(38) Consent orders in family law proceedings, where no affidavits have been filed in support of the relief being sought, may be filed pursuant to Rule 43(9), (10), (11) and (12) subject to the condition that one party shall file an affidavit setting out the factual basis and reasons for the consent order.

RESTRAINING ORDERS

(39) Where a judge makes a restraining order in a family law proceeding;

(a) it shall be in Form 99, and

(b) a party may request the inclusion of an RCMP assist clause in the order.

APPEALS

No stay on appeal

(40) If a custody order or support order is appealed, the order remains in force until the determination of the appeal, unless the court that made the order or the appeal court, otherwise directs.

PROVISIONAL AND EXTRA-PROVINCIAL ORDERS

Provisional orders made in Yukon

- (41) A provisional order made by the court under section 18(2) of the *Divorce Act* (Canada) must show on its face that it is a provisional order and that it has no legal effect until it is confirmed in accordance with the applicable statutory provisions.

Provisional orders made in another territory or province

- (42) The Minister of Justice must send all copies of a provisional order and other documents received from the Attorney General of another territory or province under section 18(4) of the *Divorce Act* (Canada) to the clerk of the court
- (a) in which the original order varied by the provisional order was entered, or
- (b) if the original order was not made in Yukon, nearest to the place of residence of the respondent as shown in the documents.

Duty of clerk

- (43) Unless section 19(3) of the *Divorce Act* (Canada) applies, the clerk to whom documents referred to in subrule (41) are sent must
- (a) serve on the respondent in the variation proceeding
- (i) a copy of the documents, and
- (ii) notice of the date of the hearing to confirm the provisional order, and
- (b) ensure that notice of the date of hearing is sent to the applicant in the variation proceeding by ordinary mail addressed to the applicant's last known address.

Registration of orders

- (44) If an order that has legal effect throughout Canada under section 20(2) of the *Divorce Act* (Canada) is made by a court other than the Supreme Court, the order may be registered without fee by filing a certified copy of the order in the Supreme Court.

Exchange of orders between territories and provinces

- (45) The clerk of the court must, on request or if the court is required by section 17(11) of the *Divorce Act* (Canada), and without a fee, send a certified copy of a custody order, support order or variation order made by the court
- (a) to the clerk of a court in another territory or province or to any person holding an equivalent position to that of clerk in relation to that court,

(b) to a public welfare organization in another territory or province, or

(c) to any person designated by the Attorney General of another territory or province.

Enforcement in Territorial Court

- (46) A support order or maintenance order made by the court or registered under subrule (44) may be filed in and enforced by the Territorial Court as if it were contained in an order of that court.

SEARCHES

Search of files

- (47) Unless the court otherwise orders,

(a) no person, other than the following, may search a registry file in respect of a family law proceeding or an *Interjurisdictional Support Orders Act* proceeding:

- (i) a lawyer of a party;
- (ii) a party;
- (iii) a person authorized by a party; or
- (iv) a person authorized by a party's lawyer.

Search of exhibits

- (48) The exhibits produced at the trial or hearing of a proceeding referred to in subrule (47), but not including exhibits attached to affidavits, must be sealed by the clerk in a secure manner and, unless the court otherwise orders, no person other than a party's lawyer, a party or a person authorized by a party or by a party's lawyer, may search the exhibits.