

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL


Order in Council No. 066 , Approved and Ordered FEB - 4 2013


  
Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, made after consultation with the Chief Judge of the Provincial Court, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 18, 2013, the Provincial Court (Family) Rules, B.C. Reg. 417/98, are amended as set out in the attached Schedule.

DEPOSITED  
February 5, 2013  
B.C. REG. 40/2013

  
Minister of Justice and Attorney General

  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

Authority under which Order is made:

Act and section: Court Rules Act, R.S.B.C. 1996, c. 80, s. 1

Other: OTC 1444/98

January 22, 2013

R/50/2013/7

## SCHEDULE

- 1 **Rule 2 of the Provincial Court (Family) Rules, B.C. Reg. 417/98, is amended by striking out “see rule 17.” in the italicized wording under subrule (5) and substituting “see rule 17. To apply for an order for guardianship, see rule 18.1.”.**
- 2 **Rule 3 is amended by striking out “see rule 17.” in the italicized wording under subrule (2) and substituting “see rule 17. To apply for an order for guardianship, see rule 18.1.”.**
- 3 **Rule 12 is amended**
  - (a) **in subrule (1) (b) by striking out “, and” at the end of subparagraph (i), by adding “, and” at the end of subparagraph (ii) and by adding the following subparagraph:**
    - (iii) if the application relates to the guardianship of one or more children, on the persons referred to in section 52 of the *Family Law Act*, , **and**
  - (b) **in subrule (3) by striking out “Evidence” and substituting “Subject to rule 18.1, evidence”.**
- 4 **Rule 14 is amended by adding the following after subrule (1.1):**

*[If the order sought is for guardianship of one or more children, see rule 18.1.]*
- 5 **The following rule is added:**

### RULE 18.1 – GUARDIANSHIP ORDERS

#### Guardianship affidavit required

- (1) When an order is sought appointing a person as the guardian of one or more children, the applicant must
  - (a) file with the court the original and 3 copies of an affidavit in Form 34 that complies with subrule (4) and serve a copy of that filed affidavit on the other parties and on any other person who may be affected by the orders sought, and
  - (b) provide to the judge any other evidence the judge considers necessary.

*[A person who is a guardian within the meaning of section 39 of the Family Law Act does not need to apply for guardianship and does not need to file the Form 34 affidavit referred to above.]*

#### Interim order may be made

- (2) A judge may make an interim order for guardianship without an affidavit in Form 34 having been filed if the judge is satisfied that it is in the best interests of the child that an interim guardianship order be made before that affidavit is filed.

#### Duration of interim order

- (3) An interim order under subrule (2) must expire within 90 days after the date of pronouncement unless renewed by a judge.

**Affidavit required before hearing**

- (4) Unless a judge otherwise orders,
  - (a) if the order referred to in subrule (1) is being sought at a hearing, an affidavit referred to in subrule (1) must be filed and served at least 7 days before the date set for the hearing, or
  - (b) if the order referred to in subrule (1) is being sought without a hearing,
    - (i) an affidavit referred to in subrule (1) must be sworn not more than 7 days before the date on which the materials in support of the application are filed, and
    - (ii) any records check, criminal records check or protection order records check attached as an exhibit to the affidavit must be dated not more than 60 days before the date on which the materials in support of the application are filed.

**What to do if information changes**

- (5) Unless a judge otherwise orders, if the order referred to in subrule (1) is being sought at a hearing and there is a material change in any of the information contained in an affidavit referred to in subrule (1) between the date it is sworn and the date of the hearing, the applicant must do the following before the hearing:
  - (a) if the change relates to information contained in a records check attached to the affidavit,
    - (i) obtain a new records check to replace the one that has changed,
    - (ii) file an original and 3 copies of an affidavit attaching the new records check, and
    - (iii) serve a copy of that filed affidavit on each of the parties and on every other person who may be affected by the orders sought;
  - (b) if the change relates to information that is not contained in a records check attached to the affidavit,
    - (i) file an original and 3 copies of an affidavit describing the material change, and
    - (ii) serve a copy of that filed affidavit on each of the parties and on every other person who may be affected by the orders sought.

**6**     *The following form is added:*

FORM 34 (RULE 18.1 (1) )

**AFFIDAVIT**

Court File No. ....

Court Location .....

F.M.E.P. No. ....

In the Provincial Court of British Columbia

**In the case between:**

.....[name].....

and

.....[name].....

I, .....[name]....., .....[occupation]....., of  
.....[address]..... swear or affirm that I know or believe the following facts to be true. If these facts are based on information from others, I believe that information to be true.

1 I am applying under the *Family Law Act* to become a guardian of the following child(ren):

Full name of child	Birth date of child	Name(s) of current guardian(s) of child	Name(s) of parent(s) who are not current guardian(s) of child

2 My date of birth is .....[dd/mmm/yyyy].....

3 The nature and length of my relationship with the child(ren) referred to in paragraph 1 of this affidavit is as follows:

Name of child	Nature of relationship [specify if parent, step-parent, grandparent, aunt, uncle, family friend, etc.]	Length of relationship

4 The current living arrangements applicable to the child(ren) referred to in paragraph 1 of this affidavit are as follows:

Name of child	Current living arrangements

5 I plan to care for the child(ren) referred to in paragraph 1 of this affidavit as follows:  
.....[set out detailed plans for how the child(ren) is/are to be cared for].....

6 [Check whichever paragraph is correct.]

I am not aware of any incidents of family violence, as that term is defined in section 1 of the *Family Law Act*, that affect the child(ren) referred to in paragraph 1 of this affidavit.

I am aware of the following incidents of family violence, as that term is defined in section 1 of the *Family Law Act*, that affect the child(ren) referred to in paragraph 1 of this affidavit: .....[describe the incidents of family violence of which you are aware].....

7 [Check whichever paragraph is correct.]

I am not a parent, step-parent or guardian of any children except that child/those children referred to in paragraph 1 of this affidavit.

I am the parent, step-parent or guardian of the following child(ren) who is/are not referred to in paragraph 1 of this affidavit:

Full name of child	Birth date of child	Nature of relationship to child [specify whether parent, step-parent or guardian]

8 [Check whichever paragraph is correct.]

I have not been involved in court proceedings in British Columbia under the *Child, Family and Community Service Act*, the *Family Relations Act*, the *Family Law Act* or the *Divorce Act* (Canada) concerning children under my care, or in any other court proceedings under comparable legislation in any other jurisdiction concerning children under my care.

I have been involved in the following court proceedings in British Columbia under the *Child, Family and Community Service Act*, the *Family Relations Act*, the *Family Law Act* or the *Divorce Act* (Canada) concerning children under my care, and in the following court proceedings under comparable legislation in any other jurisdiction concerning children under my care:

Item	Names of parties to the proceeding	Name and location of court in which the proceeding was conducted	Date of any orders concerning children under my care made in the proceeding
1			
2			

The orders referred to in the table above are attached as Exhibits to this affidavit as follows:

- (a) the order dated .....[dd/mmm/yyyy].... referred to in ....[Item 1, 2, etc.].... above is attached as Exhibit ..... to this affidavit.
- (b) the order dated .....[dd/mmm/yyyy].... referred to in ....[Item 1, 2, etc.].... above is attached as Exhibit ..... to this affidavit.

- 9 Attached to this affidavit and marked as Exhibit ..... is a copy of a British Columbia Ministry of Children and Family Development records check dated .....[dd/mmm/yyyy]..... . [Note that under rule 18.1, if there is to be no hearing for this application, this records check must be dated within 60 days of the date on which this affidavit is filed.]
- 10 Attached to this affidavit and marked as Exhibit ..... is a copy of a Protection Order Registry protection order records check dated ....[dd/mmm/yyyy]..... . [Note that under rule 18.1, if there is to be no hearing for this application, this records check must be dated within 60 days of the date on which this affidavit is filed.]
- 11 Attached to this affidavit and marked as Exhibit ..... is a copy of a criminal records check dated .....[dd/mmm/yyyy]..... obtained from the .....[name and location of police force or department from which the criminal records check was obtained]..... . [Note that under rule 18.1, if there is to be no hearing for this application, this records check must be dated within 60 days of the date on which this affidavit is filed.]

12 [Check whichever paragraph is correct.]

There are no criminal offences, other than those, if any, specified in the criminal records check referred to in paragraph 11 of this affidavit, of which I have been convicted and not pardoned.

In addition to the convictions, if any, specified in the criminal records check referred to in paragraph 11 of this affidavit, I have been convicted of, and not pardoned for, the following criminal offences:

.....[provide details of any criminal convictions, not referred to in the criminal records check, for which you have not received a pardon]..... .

13 [Check whichever paragraph is correct.]

I am not currently charged with any criminal offences.

I am currently charged with criminal offences. The particulars of each charge are set out below:

Nature of alleged offence	Date of alleged offence	Name and location of court in which proceedings are outstanding

SWORN (OR AFFIRMED) BEFORE )  
 ME at ....., British Columbia )  
 on .....[dd/mmm/yyyy]..... ) .....  
 )  
 ..... )  
 A commissioner for taking )  
 affidavits for British Columbia )  
 ....[print name or affix stamp of commissioner]....