


PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 067, Approved and Ordered FEB - 4 2013


Lieutenant Governor

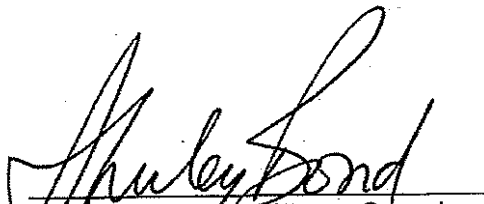
Executive Council Chambers, Victoria


On the recommendation of the undersigned, made after consultation with the Chief Justice of the Supreme Court, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 18, 2013, the Supreme Court Family Rules, B.C. Reg. 169/2009, are amended as set out in the attached Schedule.

DEPOSITED

February 5, 2013

B.C. REG. 41/2013


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: O.C. 303/2009

January 22, 2013

SCHEDULE

- 1** *Rule 10-3 of the Supreme Court Family Rules, B.C. Reg. 169/2009, is amended by adding the following after the italicized wording under subrule (4):*

[If an order is sought to appoint a person as the guardian of one or more children, the affidavit referred to in Rule 15-2.1 must be provided to the court with the other application materials.]

- 2** *Rule 10-4 is amended*

(a) in subrule (2) (d) by striking out “may” and substituting “subject to Rule 15-2.1, may”, and

(b) by adding the following after subrule (2):

[If an order is sought to appoint a person as the guardian of one or more children, the affidavit referred to in Rule 15-2.1 must be provided to the court.]

- 3** *Rule 10-6 is amended*

(a) in subrule (2) (b) by striking out “the original” and substituting “subject to Rule 15-2.1, the original”, and

(b) by adding the following after subrule (2):

[If an order is sought to appoint a person as the guardian of one or more children, the affidavit referred to in Rule 15-2.1 must be provided to the court with the other application materials.]

- 4** *Rule 10-7 is amended*

(a) in subrule (1) by adding the following paragraph:

(c.1) if guardianship of one or more children is being sought, an affidavit in Form F101; , and

(b) by adding the following after subrule (1):

[If an order is sought to appoint a person as the guardian of one or more children, the Form F101 affidavit referred to in Rule 15-2.1 must be provided to the court with the other application materials.]

- 5** *Rule 10-8 is amended*

(a) in subrule (1) (c) by striking out “affidavit” and substituting “subject to Rule 15-2.1, affidavit”, and

(b) by adding the following after subrule (1):

[If an order is sought to appoint a person as the guardian of one or more children, the affidavit referred to in Rule 15-2.1 must be provided to the court with the other application materials.]

- 6** *Rule 10-10 is amended*

(a) *in subrule (2) by adding the following paragraph:*

(f.1) if guardianship of one or more children is being sought, an affidavit in Form F101; , *and*

(b) *by adding the following after the italicized wording under subrule (2):*

[If an order is sought to appoint a person as the guardian of one or more children, the Form F101 affidavit referred to in Rule 15-2.1 must be provided to the court with the other application materials.]

7 *Rule 11-3 is amended*

(a) *in subrule (5) by striking out “may introduce” and substituting “may, subject to Rule 15-2.1, introduce”, and*

(b) *by adding the following after subrule (5):*

[If an order is sought on a summary trial application to appoint a person as the guardian of one or more children, the affidavit referred to in Rule 15-2.1 must be provided to the court with the other application materials.]

8 *The following rule is added:*

RULE 15-2.1 – 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 an affidavit in Form F101 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 court any other evidence the court 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 F101 affidavit referred to above.]

Interim order may be made

- (2) The court may make an interim order for guardianship without an affidavit in Form F101 having been filed if the court 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 the court.

Currency of information

- (4) Unless the court otherwise orders,
 - (a) an affidavit referred to in subrule (1) must be sworn or affirmed

- (i) not more than 28 days before the date set for the hearing at which the order referred to in that subrule is sought, or
- (ii) if the order is sought without a hearing, not more than 7 days before the date on which the materials in support of the application are filed, and
- (b) any records check, criminal records check or protection order records check attached as an exhibit to the affidavit must be dated
 - (i) not more than 60 days before the date set for the hearing at which the order referred to in subrule (1) is sought, or
 - (ii) if the order is sought without a hearing, not more than 60 days before the date on which the materials in support of the application are filed.

Materials required if hearing adjourned

- (5) Unless the court otherwise orders, if the swearing or affirmation of, and the date of the record checks exhibited to, a Form F101 affidavit referred to in subrule (1) are in compliance with the requirements of subrule (4) (a) (i) and (b) (i), as those requirements relate to the date originally set for the hearing at which the order referred to in subrule (1) is sought, the following apply if that hearing is adjourned:
 - (a) if the hearing is adjourned to a date that is not more than 14 days after the date originally set for the hearing, the following apply:
 - (i) if there has been no material change in any of the information contained in the Form F101 affidavit, the applicant may rely on that affidavit whether or not it complies with the requirements of subrule (4) (a) (i) and (b) (i) in relation to the new date set for the hearing;
 - (ii) if there has been a material change in any of the information contained in the Form F101 affidavit, the applicant must promptly file a new affidavit setting out the material change and serve a copy of that filed new affidavit on each of the parties and on every other person who may be affected by the orders sought;
 - (b) if the hearing is adjourned to a date that is more than 14 days after but not more than 6 months after the date originally set for the hearing, the applicant must, at least 7 days before the new date set for the hearing,
 - (i) if there has been no material change in any of the information contained in the Form F101 affidavit, file a new affidavit confirming that fact and serve a copy of that filed new affidavit on each of the parties and on every other person who may be affected by the orders sought, or
 - (ii) if there has been a material change in any of the information contained in the Form F101 affidavit, file a new affidavit setting out the material change and serve a copy of that filed new affidavit on each of the parties and on every other person who may be affected by the orders sought;
 - (c) if the hearing is adjourned to a date that is more than 6 months after the date originally set for the hearing, the applicant must, at least 14 days before the new date set for the hearing, file a new affidavit in Form F101 that complies

with the requirements of subrule (4) (a) (i) and (b) (i) in relation to the new date set for the hearing and serve a copy of that filed new affidavit on each of the parties and on every other person who may be affected by the orders sought.

9 *The following form is added:*

FORM F101 (RULE 15-2.1 (1))

This is the[1st/2nd/3rd/etc.].... affidavit
of[name]..... in this case
and was made on[dd/mmm/yyyy].....

Court File No.:

Court Registry:

In the Supreme Court of British Columbia

Claimant:

Respondent:

AFFIDAVIT

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

I,[name]....., of[address].....,[occupation]....., SWEAR (OR AFFIRM) THAT:

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 is/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 section 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 section 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 section 1 of this affidavit as follows:[set out detailed plans for how the child(ren) is/are to be cared for].....

[Select whichever one of the 2 immediately following section 6's is correct, provide any required information and remove the section 6 that has not been selected so that it does not appear in the form when the form is filed.]

6 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 section 1 of this affidavit.

6 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 section 1 of this affidavit:[describe the incidents of family violence of which you are aware].....

[Select whichever one of the 2 immediately following section 7's is correct, provide any required information and remove the section 7 that has not been selected so that it does not appear in the form when the form is filed.]

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

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

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

[Select whichever one of the 2 immediately following section 8's is correct, provide any required information and remove the section 8 that has not been selected so that it does not appear in the form when the form is filed.]

8 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.

8 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[A, B, etc.]... to this affidavit.

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

9 Attached to this affidavit and marked as Exhibit ...[A, B, etc.]... is a copy of a British Columbia Ministry of Children and Family Development records check dated[dd/mmm/yyyy]..... [Note that under Rule 15-2.1, this records check must be dated within 60 days of the date of the hearing or, if there is to be no hearing, within 60 days of the date on which this affidavit is filed.]

- 10 Attached to this affidavit and marked as Exhibit ...[A, B etc.]... is a copy of a Protection Order Registry protection order records check dated[dd/mmm/yyyy].... . [Note that under Rule 15-2.1, this records check must be dated within 60 days of the date of the hearing or, if there is to be no hearing, within 60 days of the date on which this affidavit is filed.]
- 11 Attached to this affidavit and marked as Exhibit ...[A, B etc.]... 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 15-2.1, this records check must be dated within 60 days of the date of the hearing or, if there is to be no hearing, within 60 days of the date on which this affidavit is filed.]

[Select whichever one of the 2 immediately following section 12's is correct, provide any required information and remove the section 12 that has not been selected so that it does not appear in the form when the form is filed.]

- 12 There are no criminal offences, other than those, if any, specified in the criminal records check referred to in section 11 of this affidavit, of which I have been convicted and not pardoned.
- 12 In addition to the convictions, if any, specified in the criminal records check referred to in section 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]..... .

[Select whichever one of the 2 immediately following section 13's is correct, provide any required information and remove the section 13 that has not been selected so that it does not appear in the form when the form is filed.]

- 13 I am not currently charged with any criminal offences.
- 13 I am currently charged with criminal offences: The particulars of each charge are set out below:

Name 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]...