

SUPREME COURT FAMILY RULES BACKGROUND TO AMENDMENTS

The Supreme Court Family Rules have been amended to bring them into conformity with the Family Law Act. As well, some other minor amendments have been made to clarify language and procedures and to correct errors. These changes will come into effect on March 18, 2013 at the same time as the Family Law Act.

Throughout the rules and forms the following changes are made to terminology:

Old Term	New Term
Family Relations Act	Family Law Act
custody, access, guardianship	guardianship, parenting arrangements, contact with a child
change an order	change, suspend or terminate an order
family court counsellor	family justice counsellor
parental support	deleted (not provided for under Family Law Act)
rescind, change or suspend an order	change, suspend or terminate an order
restraining order under section 37 or 38	protection order

AMENDMENTS TO RULES

In addition to terminology, section references and housekeeping amendments, the following changes are made to the rules:

Rule 1-1 - Interpretation

Rule 1-1(1) is amended as follows:

- the term “family court counsellor” is repealed and replaced with the term “family justice counsellor” which is defined to make it clear that it covers both current counsellors who were appointed under the Family Relations Act and counsellors who are appointed under the Family Law Act; and
- the definition of “family law case” is repealed and replaced with a new definition which
 - removes the reference to an order in relation to an agreement. The Family Law Act has specific provisions respecting agreements, which means that an order in relation to an agreement is covered by paragraph (b), an order under the Family Law Act;
 - removes the reference to a declaration of parentage. The Family Law Act has specific provisions dealing with declarations of parentage, which means that an order for a declaration of parentage is covered by paragraph (b), an order under the Family Law Act; and

- makes it clear, by cross-reference to the new provision in Rule 3-1(4.1), that a proceeding started by filing an agreement is a family law case.

Rule 2-1 - Agreements

Rule 2-1 is repealed and replaced to set out the process for filing written agreements which may be filed with the court for enforcement under various provisions of the Family Law Act. New Form F17.1, Requisition is used to file a written agreement.

New Rule 2-1.1 – Determinations of Parenting Coordinator

New Rule 2-1.1 sets out the process for filing parenting coordinator determinations. New Form F17.2, Requisition is used to file a parenting coordinator determination. Parenting coordinator determinations can be made under section 18 of the Family Law Act.

Rule 3-1 – Choosing the Correct Form of Proceeding

- Rule 3-1 continues the general rule that a family law case is started by filing a notice of family claim. It repeals and replaces subrule (2) to set out the exceptions to the general rule.
- New Rule 3-1(2.2) lists the circumstances in which a petition is to be used and carries forward subrule (2)(b), (d) and (e). It does not carry forward (c), a family law case for an order for a declaration of parentage.
- New Rule 3-1(2.3) provides a new general rule that an order for a declaration of parentage must be brought by notice of family claim unless subrule (4) applies.
- New Rule 3-1(2.4) replaces Family Relations Act section references in subrule (2)(f) and (g) with Family Law Act references, carries forward subrule (2)(h) and adds paragraphs (a) and (b) to conform with the provisions of the Family Law Act.
- New Rule 3-1(4.1) provides a new way of starting a family law case if there is a written agreement. If there is no existing family law case, an agreement filed under Rule 2-1 is taken to start the family law case and it is not necessary to file a notice of family claim as well.
- New Rule 3-1(4.3) provides a way to start a case respecting a parenting coordinator determination. If there is no existing family law case in which to file the determination, a person starts a family law case by filing a requisition (Form F17.1) with the parenting coordination agreement (the agreement to use a parenting coordinator) attached and then files a requisition (F17.2) with the parenting coordinator determination attached.

Rule 4-1 – Notice of Family Claim

Rule 4-1(1) is amended to change cross-references to reflect the changes to Rule 3-1.

Rule 4-4 – Counterclaim

Rule 4-4(1) is amended by deleting the reference to paragraph (c) respecting agreements. The Family Law Act has specific provisions respecting agreements, which means that an order in relation to an agreement is covered by paragraph (b), an order under the Family Law Act.

Rule 5-1 – Financial Disclosure

Rule 5-1(2) is amended to add provisions to identify which parts of the financial disclosure rule apply if a person applies to set aside or replace an agreement for child support or spousal support or to review an agreement for spousal support. Rule 5-1(28) is amended to reflect that section 213 of the Family Law Act provides the court with some additional powers to enforce disclosure on information.

Rule 6-3 – Personal Service

Rule 6-3(1) is amended to add the following documents to the list of documents that must be served personally:

- a notice of application to set aside or replace an agreement; and
- a notice of application to change or set aside a parenting coordinator determination.

Rule 7-1 – Judicial Case Conference

- Rule 7-1(3) is amended as follows:
 - to remove the reference to an application for a declaration that there is no reasonable prospect of reconciliation under section 57 of the Family Relations Act. Section 57 has not been carried forward in the Family Law Act. Under the Family Law Act, there is only one triggering event- the date of separation; and
 - to add applications to set aside or replace agreements and applications to change or set aside parenting coordinator determinations to the list of applications that can be brought at a judicial case conference.
- Rule 7-1(15)(d) is amended to replace the reference to mediation with a private mediator with the broader Family Law Act term family dispute resolution professional. This provision excludes family justice counsellors because they are referred to in paragraph (e).

Rule 8-2 – Change of Parties

Rule 8-2(8)(b)(ii) is amended to replace the reference to “change or cancel the order” with “change or set aside the order”.

Rule 10-1 – Choosing the Appropriate Procedure

Rule 10-1(1) is amended to remove the reference to “non-final order” and to make it clear that Rule 10-5 applies to all applications other than those identified in Rule 10-1(2)[applications for final orders in undefended family law cases] and (3)[applications for final orders in defended family law cases].

Division 2 – Non-Final and Change Orders

The title of Division 2 of Part 10 is repealed and replaced by a new title: Usual Application Procedure.

Rule 10-5 – Applications for Non-Final Orders or to Rescind, Change or Suspend a Final Order

- The title of Rule 10-5 is repealed and replaced by a new title: Application Procedure.
- The rule is amended to more clearly set out the rules which apply to the making of different types of applications, including applications to set aside or replace filed agreements, applications to set aside or replace parenting coordinator determinations, applications to enforce filed agreements, orders and parenting coordinator determinations.

Rule 10-6 – Usual Application Procedure

- Rule 10-6 (6) is amended by to make it clear that the notice referred to in paragraph (c) must be served in addition to a copy of the filed notice of application and a copy of each affidavit and document referred to in the notice of application that has not already been filed.
- Rule 10-6(6) is also amended to add new paragraphs (d) and (e) which list additional documents that must be served if the application relates to a filed agreement or a parenting coordinator determination filed under Rule 2-1.1(1).
- Rule 10-6(7) is amended to apply the application procedure to applications to change or set aside a parenting coordinator determination. Personal service of the documents is required at least 7 days before the date set for the hearing of the application.

Rule 10-7 – Consent Applications

Rule 10-7(1) is repealed and replaced as follows:

- to allow a consent application to be made under this rule to enforce a filed agreement or an order to enforce compliance with a parenting coordinator determination; and
- to add consent applications to set aside or replace a filed agreement and to change or set aside a filed parenting coordinator determination to the list of consent applications covered by this rule.

Division 3 – Final Orders

The title of Division 3 of Part 10 is repealed and replaced by a new title: Procedure for Applications for Final Orders.

Rule 13-1 – Court Ordered Reports and Expert Witnesses

- Rule 13-1(1) is amended to add a requirement that a person who conducts an assessment under section 211 of the Family Law Act must file their report and serve a copy of it on the parties at least 42 days before the scheduled trial date. The requirement in section 15(3) of the Family Relations Act that the report be served 30 days in advance is not carried forward in the Family Law Act.
- Rule 13-1(2) is amended to change the time limit for a party who wishes to cross-examine the report writer to serve the required notice on the report writer and the parties from 49 days before the trial date to 28 days before the scheduled trial date.

Rule 15-1 – Orders

Rule 15-1(1) is amended to provide different forms for protection orders under the Family Law Act (Forms F54 and F54.1) and restraining orders under the Family Maintenance Enforcement Act (Form 54.2).

Rule 15-4 – Enforcement of Orders

Rule 15-4(35) is amended to allow for enforcement of certificates of expenses which are provided for in Rules 16-1 and 16-2. The Family Law Act provides authority for the court to award expenses in certain circumstances.

Rule 16-1 – Costs

Rule 16-1 is expanded to cover expenses as well as costs. The Family Law Act provides authority for the court to award expenses in certain circumstances.

New Rule 16-2 – Assessment of Expenses

New Rule 16-2 is added to set out a procedure for assessing expenses to be paid by one party to another. The Family Law Act provides authority for the court to award expenses in certain circumstances.

Rule 20-2 – Minors

Rule 20-2(1) is repealed and replaced to expand the circumstances in which a child may act without a litigation guardian in a case under the Family Law Act to conform with section 201 of the Family Law Act. Section 201 of the Family Law Act allows a child to act without a litigation guardian in a case under the Act if the child is 16 or older, a spouse or a parent. Section 201 expands the circumstances in which a child may act without a litigation guardian beyond those set out in section 4(2) of the Family Relations Act in light of a court challenge of the Family Relations Act provision.

Rule 21-3 – Multiple Claims and Parties

A new subrule (8.1) is added to Rule 21-3 to set out the procedure that governs the consolidation of proceedings started in Provincial Court with proceedings started in Supreme Court, as authorized under section 194(3)(c) of the Family Law Act.

New Rule 23-2 – Family Law Act Transitional Provisions

New Rule 23-2 provides rules to govern the transition from the Family Relations Act to the Family Law Act. The rule makes it clear that family law cases started before March 18, 2013 under the Family Relations Act can continue under the amended rules as if they were cases started under the Family Law Act. The rule also provides that if there is a dispute about the procedure that applies, any party can apply to court for directions on the procedure to be followed.

AMENDMENTS TO FORMS

The forms are amended to replace Family Relations Act terminology and section references with Family Law Act terminology and section numbers. There are also some housekeeping amendments. In addition to these changes, the forms are amended as follows:

Forms F1, F3 and F4

- adds a Lawyer's Certificate (required under section 197(1) of the Family Law Act) to the form to show that the lawyer has satisfied the requirement in section 8(2) of the Family Law Act to discuss various types of family dispute resolution with clients and to tell them about what resources are available to help them resolve their dispute. This is similar to the existing certification under the Divorce Act, which is included on the Supreme Court forms.

Form F3, Notice of Family Claim

New Form F3 also incorporates the following changes:

- makes it clear that the child's full legal name must be provided in Schedule 2-Children;
- removes the request for a declaration that there is no reasonable prospect of reconciliation under section 57 of the Family Relations Act from Schedule 4-Property. Section 57 has not been carried forward in the Family Law Act. Under the Family Law Act, there is only one triggering event- the date of separation; and
- adds division of family debt to the claims available to conform with the Family Law Act which specifically provides for division of family debt.

Form F5 – Counterclaim

New Form F5 incorporates the following changes:

- makes it clear that the child's full legal name must be provided in Schedule 2-Children;
- removes the request for a declaration that there is no reasonable prospect of reconciliation under section 57 of the Family Relations Act from Schedule 4-Property. Section 57 has not been carried forward in the Family Law Act. Under the Family Law Act, there is only one triggering event- the date of separation; and
- adds division of family debt to the claims available to conform with the Family Law Act which specifically provides for division of family debt.

Form F8 – Financial Statement

Form F8 is amended to reword part of the instructions for completing the form to make them clearer.

New Form F17.1 – Requisition

New Form F17.1 is to be used to file an agreement under Rule 2-1(2).

New Form F17.2 – Requisition

New Form F17.2 is to be used to file a determination of a parenting coordinator under Rule 2-1.1(3).

Form F23 – Subpoena to Witness

Form F23 is amended to add the text of Rule 14-7(38), which sets out what the court may do if a person who receives a subpoena to witness fails to attend court as required in the subpoena. This will make it clear to a person receiving a subpoena, what the consequences of failing to obey it are.

Form F38 – Affidavit-Desk Order Divorce

Form F38 is amended to replace Divorce Act and Family Relations Act terminology with more general terminology that covers both the Divorce Act and the Family Law Act.

Form F54 - Restraining Order

Restraining orders under sections 37 and 38 the Family Relations Act are replaced by the protection order under Part 9 of the Family Law Act. Currently, Form F54 is used for restraining orders under both the Family Relations Act and the Family Maintenance Enforcement Act. The new Form F54 deals only with protection of people in cases of family violence under the Family Law Act. The title of the form is changed to Protection Order. The new Form F54.2 is to be used for a restraining order under the Family Maintenance Enforcement Act.

New Form F54.1 – Change of Protection Order

New Form F54.1 is added for use if a protection order is changed under section 187 of the Family Law Act.

New Form F54.2 – Restraining Order

New Form F54.2 is added for restraining orders under the Family Maintenance Enforcement Act. The current Form F54, Restraining Order is used for restraining orders under the Family Relations Act and under the Family Maintenance Enforcement Act. Form F54 will now be used only for protection orders under the Family Law Act. Under s. 183(5) of the Family Law Act only orders made under that section (protection from family violence) can be included in the protection order.

Form F55 – Appointment

Form F55 is amended to add assessment of expenses to the list of items for which an appointment may be scheduled. The Family Law Act authorizes the court to award expenses in certain circumstances.

New Form F71.1 – List of Expenses

New Form F71.1 is added for the assessment of expenses under new Rule 16-2, Assessment of Expenses. The Family Law Act authorizes the court to award expenses in certain circumstances.

Form F72 – Certificate of Costs

Form F72 is amended to add references to expenses to conform with the Family Law Act which authorizes the court to award expenses in certain circumstances. The title of the form is changed to Certificate of Costs or Expenses.