

**PROVINCIAL COURT (FAMILY) RULES  
BACKGROUND TO AMENDMENTS**

The Provincial 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. There are also some changes to Rule 21 (Parenting after Separation Program) and Form 32 (fax cover sheet) which came into effect on July 1, 2012.

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

<b>Old Term</b>	<b>New Term</b>
Family Relations Act	Family Law Act
custody, access, guardianship	guardianship, parenting arrangements, contact with a child
change or cancel an order	change, suspend or terminate an order
child or spousal maintenance	child or spousal support
parental maintenance	deleted (not provided for under Family Law Act)
file	defined as file with the registry so references to "file with the registry" are changed to "file"
maintenance	support (support defined to include maintenance since the term is retained in the Family Maintenance Enforcement Act)
restraining order under section 37 or 38	protection order
references to an adult	a person who is at least 19 years of age
warrant	warrant for arrest
deliver	serve
agreement	filed agreement (defined as an agreement filed under the relevant sections of the Family Law Act and establishing that for an agreement dealt with under the rules, it must be filed).

## AMENDMENTS TO RULES

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

### **Rule 1 - Purpose and Interpretation**

Rule 1(4) is added to provide that the definitions of the Family Law Act to apply to the rules, unless a contrary intention appears.

### **Rule 2 - Making and Filing an Application**

- The title is repealed and replaced with a new title: Making, Filing and Serving an Application. This reflects what is covered under this rule.
- Rule 2(1) and 2(2) are repealed and replaced to incorporate Family Law Act terms. A provision is added clarifying that an application to vary an interjurisdictional support order is brought using Form 2 (Application to Change an Order).
- Rule 2(2) is amended to provide that Form 2 is used to apply to set aside or replace a filed agreement.

### **Rule 3 - Replying to the Application**

- The title of Rule 3 is repealed and replaced by a new title, which is more descriptive of the rule: Replying to the Application and Making a Counterclaim.
- Rule 3(1) and (5) are amended to refer to “a filed copy” instead of “a copy”. This makes it clear that parties must be served with a copy of the application or the reply that has been filed with the registry.
- Rule 3(1) is amended by substituting the words “if applicable” with “if required under rule 4” to clarify that documents must be filed if required under Rule 4.
- Rule 3(2)(c) and (d) are repealed and replaced by a new (c) to incorporate Family Law Act terms and to clarify that a respondent who wants to bring an application to vary an interjurisdictional support order is to use Form 3 (Reply).

### **Rule 4 - Provision of Financial Information**

- Rule 4(1)(g) is repealed and replaced with a new (g) which clarifies and updates the language and a new (h) which provides that the rules about providing financial information apply to a person who applies to set aside or replace a filed agreement.

## **Rule 5 - Procedures in Family Justice Registries**

- Rule 5(2) is amended by adding a new (c) to clarify that the procedures in Rule 5 (meeting with a family justice counsellor before appearing in court) do not apply if the only applications are for return of a child under the Hague Convention on international child abduction.
- Rule 5(4)(d) (listing what the family justice counsellor can do) is amended to replace the reference to mediation with a private mediator with the broader Family Law Act term - family dispute resolution professional. The provision excludes family justice counsellors because they are referred to in a separate subrule.
- Rule 5(6) is amended to conform with Rule 21 (Parenting after Separation Program) to provide that the clerk will not serve the parties with a notice of their hearing date until after they have attended Parenting after Separation.
- Rule 5(7) is amended to allow a judge to refer the parties to any of the persons or programs that family justice counsellors can refer them to.
- Rule 5(10) is amended to make it clear that Rule 22 (electronic filing) applies in family justice registries.

### **Rule 5.1 - Procedures in Fax Filing Registries**

The term “registrar” is deleted because there are no registrars in Provincial (Family) Court.

## **Rule 6 - First and Subsequent Appearances in Court**

- Rule 6(1)(d)(ii) is amended to make its meaning clearer.
- Rule 6(3)(i) is repealed and replaced with a new (i) which adds making a conduct order under the Family Law Act to the list of what a judge can do at a first appearance. Two types of conduct orders are specifically mentioned: an order to require parties to participate in family dispute resolution and an order to require parties or a child to attend counselling.
- Rule 6(5)(d) replaces the reference to mediation with a private mediator with the broader Family Law Act term - family dispute resolution professional.
- Rules 6(11)(b), (12) and (13) are amended by substituting the word “judge” for “justice”. These provisions deal with the use of warrants for arrest issued under family law legislation. The practice is for a judge to deal with situations involving warrants and the rules are amended to reflect this.

### **Rule 7 - Family Case Conference**

- Rule 7(4)(c) is amended in the same manner as Rule 6(3)(i) to refer to conduct orders under the Family Law Act.
- Rule 7(4)(e) is amended to remove the reference to mediation since Rule 7(4) (c) is now broader as a result of the amendment referred to in the preceding bullet.

### **Rule 8 - Trial Preparation Conference**

Rule 8(4)(b) is amended to replace the term “deliver to” with “serve on”. The term deliver is not defined in the rules and is unclear. Under this rule, the document should be served within the meaning of the rules.

### **Rule 9 - Other Rules about Service and Proving Service**

- Rule 9(1)(a) is amended by adding a provision allowing service by e-mail if a party provides an e-mail address as part of their address for service.
- Rule 9(4) is amended to provide that parties need to provide their address for service when filing an Application to Obtain an Order (Form 1), an Application respecting Existing Orders or Agreements (Form 2) or a Reply (Form 3).
- Rule 9(10)(a) is amended by adding a reference to e-mail. An affidavit of service is used to prove service by e-mail.
- Rule 9(12) is added to provide that an application or notice of motion can be served outside British Columbia in certain circumstances.

### **Rule 10 - Witnesses**

Rule 10(9)(b) is amended by replacing the term “peace officer” with “police officer”. This is the term used in the Family Law Act and includes both municipal police and RCMP.

### **Rule 11 - Trial Date and Evidence**

- A new subrule (1.1) is added to require the person who conducts an assessment to include an address for service in their report (so parties can summons them to give evidence, if necessary) and to require the person to serve the report on the parties at least 30 days before trial.
- A new subrule (1.2) is added to require a party contesting anything in the report to cross-examine the person who prepared the report at trial. This confirms the existing practice.
- Rule 11(2)(a)(i) is repealed because it requires parties to serve the report prior to cross examining the writer of the report but the new subrule requires that the report be served 30 days before trial.

## **Rule 12 - Applying By Notice of Motion for Orders or Directions**

Currently, there is inconsistency in practice across the province in how notices of motion are used. Rule 12 is amended to clarify when a notice of motion is to be used and to incorporate processes under the Family Law Act. It does this by providing a more detailed list of orders, directions or reviews that can be sought by notice of motion. Orders that must be sought using a notice of motion include:

- enforcing orders or filed agreements;
- changing, suspending or terminating an order that was made because a person did not file a reply or an order was made in their absence;
- enforcing or setting aside the determination of a parenting coordinator;
- ordering the taking of tissue samples and or blood samples (to determine parentage);
- reviewing filed agreement or order respecting spousal support; and
- determining whether arrears of support are owed.

A new subrule (6) is added to require a person who is seeking a review of spousal support in a filed agreement or order to provide financial information.

## **Rule 13 – Affidavits**

Rule 13(4)(b) is amended to replace “delivered to” with “served on”. The term deliver is not defined in the rules and is unclear. Under this rule, the document should be served within the meaning of the rules.

## **Rule 14 - Consent Orders**

The revisions to Rule 14 clarify the procedure for consent orders sought without appearing in court (desk orders) and those sought at a hearing. Practice is inconsistent across the province and the Family Law Act provisions dealing with consent orders change the process established under recent caselaw. Under the new rules, when parties seek a consent order without appearing in court, they must file a request (Form 18), a consent to the order (Form 19), draft consent order (Form 20) and one or more affidavits in support of the order. Upon receipt of the filed materials, a judge may approve the order and sign the consent or may require the parties to appear before him or her. If parties seek a consent order before a judge, they must provide evidence of the consent as the judge requires.

### **Rule 15 - Paternity Tests**

Paternity tests under the Family Relations Act are replaced by parentage tests - tests of blood samples or tissue samples- under the Family Law Act. Rule 15 is repealed because the authority to order the tests is in the Family Law Act and does not need to be repeated in the rules. An application to order blood tests or tissue tests to determine parentage can be brought under Rule 12 by notice of motion.

### **Rule 16 - Applying for Enforcement of Custody Orders or for Recognition of Custody and Access Orders**

This rule is confusing as it deals with two potentially unrelated matters: applying for enforcement of custody orders and applying for recognition of custody and access orders made outside British Columbia. Under the revised rules, applications for the enforcement of orders are made under Rule 12, so those have been removed from Rule 16. The new rule deals only with applying for the recognition of orders made outside the province and the title is changed to Applying for Recognition of Extraprovincial Orders. The process for applying for recognition of an extraprovincial order has not changed.

### **Rule 17 - Applying for Enforcement of Maintenance Orders under the Family Maintenance Enforcement Act**

Rule 17(3)(n) is amended to add the power of the Director of Maintenance Enforcement to direct ICBC to disregard a notice not to issue or renew the licence and plates for a vehicle or trailer owned by a debtor. This power was added to the Family Maintenance Enforcement Act in 2009 but was not added to the rules.

### **Rule 18 - Orders**

Rule 18(2) is split into two subrules: one dealing with who prepares the order and one setting out the forms of order. There are different forms for a protection order under the Family Law Act (Form 25) and a restraining order under the Family Maintenance Enforcement Act (Form 25.1).

### **Rule 19 – Transfer of Files**

The title of Rule 19 is repealed and replaced with a new title: Transfer of Court Files. Some terminology changes are made to make the rule clearer.

## **Rule 20 – General**

- Rule 20(10), dealing with who can search a court file, is expanded to allow a lawyer, who is not the party's lawyer, and any person authorized in writing by a party or their lawyer to search the file. This brings the provision more in line with the file search provision in the Supreme Court Family Rules and will allow duty counsel to search files.
- Rule 20(12), dealing with the filing of agreements under the Family Relations Act, is amended by replacing Family Relations Act section references with references to the provisions of the Family Law Act under which agreements are made and providing for the filing of the determination of a parenting coordinator as authorized under the Family Law Act.

## **Rule 21 – Parenting after Separation Program**

- Effective July 1, 2012, Rule 21(5) is repealed and replaced by a new provision to allow a judge to order a person to attend Parenting after Separation even if the person would otherwise be exempted from attending because they had already attended within the preceding 24 months.
- Effective July 1, 2012, Rule 21(6) is repealed and replaced with a new provision which reflects that the program is now offered online. If the program is not offered in the community where the person lives, the program administrator can require the person to complete the program online, if the person has electronic access to the program and the program is offered online in a language in which the person is fluent.
- Rule 21(4) is amended to add a new paragraph to make it clear that Rule 21 does not apply if one or both parties seeks an order for return of a child under the Hague Convention on international child abduction. This provision comes into effect on March 18, 2013.

## **New Rule 22 -Electronic Filing**

Electronic filing allows individuals and law firms to electronically file civil court documents from their home or office for a small fee. Not all court documents can be filed electronically. Documents that cannot be filed electronically are set out in Rule 22(5). A party wanting to electronically file documents must first enter into an electronic services agreement and the filing of documents is governed by the provisions of that agreement.

Rule 22 is a new rule to allow for electronic filing of documents. This rule adopts the majority of the provisions in the Supreme Court Family Rule 22-4 relating to the electronic filing of documents in court registries.

## 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, including correcting section references and form numbers. In addition to these changes, the forms are amended as follows:

### Forms 1, 2 and 3

- adds a space in the address for service for an e-mail address (under Rule 9(1)(a) a party can be served by e-mail if he or she provides their e-mail address as part of the address for service);
- 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.
- adds a section for applying (or responding to a claim) for retroactive child or spousal support;

#### *Form 1, Application to Obtain an Order*

The new Form 1 also incorporates the following changes:

- moves the notice about the consequences of failing to reply from the bottom of the form to the front page with other important notes to the respondent;
- rewords the information about the provision of financial information to make it clearer to the parties what their obligations are; and

#### *Form 2, Application to Change or Cancel an Order*

The new Form 2 also incorporates the following changes:

- is titled Application Respecting Existing Orders or Agreements to reflect the amendments to Rule 2 which require a party seeking changes to a filed agreement to file a Form 2;
- moves the notice about the consequences of failing to reply from the bottom of the form to the front page with other important notes to the respondent; and
- rewords the information about the provision of financial information to make it clearer to the parties what their obligations are.

#### *Form 3, Reply*

The new Form 3 also incorporates the following change:

- refers to the respondent's own application as a "counterclaim" since that is how it is commonly referred to and the rules refer to the counterclaim (the phrase "respondent's own application" is retained in brackets).

#### **Form 4 - Financial Statement**

Adds a space in the address for service for an e-mail address (under Rule 9 a party can be served by e-mail if he or she provides their e-mail address as part of the address for service).

#### **Form 6 - Referral Request**

The check box that refers to attending with a private family mediator is replaced to reflect the amended power in Rules 5 and 6 to order parties to attend with a family dispute resolution professional.

#### **Form 8 - Warrant for Arrest**

- The term peace officer is replaced by police officer. This is the term used in the Family Law Act and it includes both municipal police and RCMP.
- The term justice of the peace is replaced by the term judge. The practice is for a judge to deal with situations involving warrants and this change reflects the change made to the rules to reflect this.

#### **Form 11 – Notice of Change of Address**

Adds a space in the address for service for an e-mail address (under Rule 9 a party can be served by e-mail if he or she provides their e-mail address as part of the address for service).

#### **Form 13 – Affidavit of Service**

Adds a check box for service by e-mail (under Rule 9 a party can be served by e-mail if he or she provides their e-mail address as part of the address for service).

#### **Form 16 - Notice of Motion**

Form 16 is replaced. The new form:

- adds a space in the address for service for an e-mail address (under Rule 9 a party can be served by e-mail if he or she provides their email address as part of the address for service);
- expands the list of orders that may be sought by notice of motion to reflect the amendments to Rule 12; and
- inserts a notice stating the if you do not appear, an order may be made in your absence.

### **Form 21 - Application to Enforce a Custody Order**

This form is repealed because under the revised rules an application to enforce an order respecting parenting arrangements or contact with a child is brought by notice of motion. Currently, Form 21 is rarely used.

### **Form 22 - Application to Recognize a Custody or Access Order Made by an Extraprovincial Tribunal**

The revised form has a new title to reflect Family Law Act terminology and the changes to Rule 12 under which applications to enforce orders respecting guardianship, parenting arrangements or contact with a child are brought using a notice of motion. The new title is Application to Recognize an Extraprovincial Order for Guardianship, Parenting Arrangements or Contact.

### **Form 24 - Notice of Motion in Maintenance Enforcement Proceedings**

The form is amended to add another application to the list of applications that can be brought by notice of motion (from Rule 17(3)(n)) - an application for an order that the Director of Maintenance Enforcement direct ICBC to disregard a notice not to issue or renew the licence and plates for a vehicle or trailer owned by a debtor. This power was added to the Family Maintenance Enforcement Act in 2009 but was not added to the Rules.

### **Form 25 - Restraining Order**

The restraining order under the Family Relations Act is replaced by the protection order under Part 9 of the Family Law Act. The current Form 25 is used for restraining orders under both the Family Relations Act and the Family Maintenance Enforcement Act. The new form 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.

### **New Form 25.1 - Restraining Order Under Family Maintenance Enforcement Act**

This form is added for restraining orders under the Family Maintenance Enforcement Act. The current Form 25, Restraining Order is used for restraining orders under the Family Relations Act and under the Family Maintenance Enforcement Act. Form 25 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 27 – Transfer Consent**

Adds a space in the address for service for an e-mail address (under Rule 9 a party can be served by e-mail if he or she provides their e-mail address as part of the address for service).

### **Form 28 - Consent to File Agreement**

This form is repealed since parties are not required to file it when they file an agreement.

### **Form 31 – Parenting After Separation Exemption Request**

Effective July 1, 2012, this form is amended to reflect the change to Rule 21(6) that if the program is not offered in the community where the person lives, the program administrator can require the person to complete the program online, if the person has electronic access to the program and the program is offered online in a language in which the person is fluent.

The form is also amended by adding a new check box to reflect the change to Rule 21(4) that Rule 21 does not apply if one or both parties seeks an order for return of a child under the Hague Convention on international child abduction. This change comes into effect on March 18, 2013.

### **Form 32 – Fax Cover Sheet**

The current form is the same as the one used in small claims court. Effective July 1, 2012, this form is repealed and replaced with a new Form 32 for use only in family court. The title of the form is changed to Fax Cover Sheet in the Provincial Court of British Columbia (Family) and references to payment information have been removed from the form.

### **New Form 33 - Electronic Filing Statement**

This is the new form that must accompany forms that are submitted for filing electronically under new Rule 33.