

# SUPREME COURT FAMILY RULES

## CHAMBERS PROCEEDINGS: PROCESS AND PROCEDURE

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### I. GENERAL PROVISIONS

**10-3(1)** “Chambers proceeding” includes:

1. petition proceedings;
2. applications for interim and final orders;
3. applications to vary a final order; and,
4. appeals from the decisions of master, registrars and special referees.

**10-3(2)** The court may proceed to hear a chambers proceeding if a **party fails to attend**, but may require *evidence of service* of the application.

**NOTE:** Orders made in a party’s absence must not be reconsidered unless the court is satisfied that the party is not guilty of willful delay or default. [10-3(3)]

**NOTE:** See Rule 6-6 regarding proving service and Rule 6-2 for the rules on ordinary service. See Rule 6-3 for the rules on personal service as required in petition proceedings.

**10-3(4)** *Evidence* at chambers proceedings is to be **given by affidavit** in FORM F30, subject to the court’s discretion to order the examination or cross-examination of a deponent, direct an inquiry, assessment or accounting under Rule 18-1, or receive other forms of evidence.

**NOTE:** Rule 10-4 sets out the various rules applicable to affidavits.

**10-3(6)** Applications *set for hearing on a day the court does not sit* are automatically **adjourned without order** to the next chambers day.

**10-3(10)** A *registrar* may **adjourn** a chambers proceeding.

**10-3(7)(b)** A *party* may set an **chambers proceeding adjourned generally** for hearing on **3 days notice**.

**10-3(7)** At the **hearing of an chambers proceeding**, the court may:

1. *grant* or *refuse all or some of the relief* sought;

2. *adjourn* the chambers proceeding;
3. obtain the *assistance of an expert*; or,
4. *order a trial* of the chambers proceeding.

**NOTE:** Rule 13-5 applies in chambers proceedings when the court elects to obtain the assistance of its own expert.

**10-3(8)** At the *hearing of without notice chambers proceeding*, if the court thinks **notice should have been given** it may:

1. *dismiss* the chambers proceeding; or,
2. *adjourn* the chambers proceeding and direct that *service be effected*.

**NOTE:** Special instructions for without notice applications are set out at Rule 10-9(6) to (8).

**21-2(2)** The court may *shorten* or *extend any time period*, including on an application brought after the expiry of the time period.

**NOTE:** Special instructions for urgent applications are set out at Rule 10-9(1) to (5).

**21-2(1)** Where a *time period* is for **less than 7 days**, *holidays* are not counted.

**NOTE:** “Holiday” is defined by the *Interpretation Act*.

**1-1(1)** The **parties** to an *application* are

1. the *applicant*; and,
2. the *application respondent*.

**NOTE:** Whenever practical, the same judge or master is to hear *all applications* in a family law case. [22-1(8)]

**1-1(1)** The **parties** to an *petition proceeding* are

1. the *petitioner*; and,
2. the *petition respondent*.

**10-2(1), 10-2(4)** Applications are to be heard in the **judicial district** in which *the family law case is being conducted* unless the registrar grants leave to have the application heard elsewhere.

**10-2(2), 10-2(3)** If there is more than one court in the judicial district the *applicant* may have the application heard at **any of those courts**, subject to the potential *costs consequences* if the application is heard at a court other than the court in which the family law case is being conducted.

**10-4(1)** Affidavits used in family law cases must be filed.

- 21-2(4) Where *final judgment has not been pronounced and no step has been taken for a year*, a party may proceed until **28 days after** service of a Notice of Intention to Proceed in F48.

## II. INTERIM ORDERS

### BRINGING AN APPLICATION

- 10-6(2) A party wishing to *bring an application* must file a **Notice of Application** in FORM F31 and the original of every **affidavit** to be relied upon an not already filed.
- 10-6(3) The *Notice of Application* must:
1. describe the *orders sought*;
  2. summarize the *factual basis of the application*;
  3. set out *authority and argument* supporting the application;
  4. list the *affidavits* to be relied upon;
  5. give a *time estimate*; and,
  6. where possible, give the *date of the hearing*.

### SERVING AN APPLICATION

- 10-6(6) The *applicant* must serve **filed copies** of the *Notice of Application and supporting materials* on all parties and other persons affected by the relief sought by ordinary service.

**NOTE:** Obtain an **Affidavit of Service** if there is any likelihood that the respondent will not attend the hearing. [10-3(3), 6-6(1)]

- 10-6(7)(a) *Service* must be accomplished **at least 7 days** before the *hearing date*.

### RESPONDING TO AN APPLICATION

- 10-6(8) A *person* wishing to *respond to an application* must file an **Application Response** in FORM F32 and the original of every **affidavit** to be relied upon an not already filed **within 5 days** of service of the Notice of Application.

**NOTE:** An *application respondent* is defined as a person who has filed an *Application Response*. A person who does not file an *Application Response* is not entitled to notice of the hearing date. [10-6(1)]

- 10-6(9) The *Application Response* must:
1. indicate whether the application respondent *consents to, opposes or takes no position* on each order sought;
  2. summarize the *factual and legal basis* on which any orders are opposed;
  3. list the *affidavits* to be relied upon; and,
  4. give a *time estimate*.

- 10-6(11) The *application respondent* must serve **filed copies** of the *Application Response and supporting materials* on all parties **at least 2 days** before the *hearing date*.

### RESPONDING TO A RESPONSE

- 10-6(12) An *applicant* wishing to *respond to a response* must file and serve the original of any new **affidavits** on *all application respondents* **by noon the day before** the hearing date.

### SETTING A HEARING DATE

- 10-6(5) The *hearing date* for applications estimated to take **more than 2 hours** must be *fixed by the registrar*.

- 10-6(4) The *time of hearing* must be set for **9:45am**, subject to the direction of the court or registrar.

**By noon the day before** the hearing date, the *applicant* must:

- 10-6(14) 1. *file* an **Application Record** **by noon the day before** the hearing date; and,  
10-6(15) 2. *serve* a copy of the **index** on *all application respondents*.

**NOTE:** Where a cross-application will be heard simultaneously, the parties are to prepare a Joint Application Record. [10-6(16)]

- 10-6(20) If the *applicant* **does not set a hearing date** within a reasonable time following the *request of the application respondent*, the application respondent may **apply for directions** by Requisition on FORM F17 on **2 days notice** to the applicant.

## III. FINAL ORDERS: SUMMARY TRIALS

### BRINGING AN APPLICATION

- 11-3(2) A *party* may apply for judgment on *all or some issues* where:
1. in a *family law case*, a **Response to Family Claim** has been *filed*; and,
  2. in a *family law case by Counterclaim*, a **Response to Counterclaim** has been *filed*.

10-6(2), 11-3(5) A *party* wishing to *bring an application* must file and serve:

- 11-3(8), 11-3(9) 1. a **Notice of Application** in FORM F31;  
2. the original of every **affidavit** to be relied upon an not already filed;  
3. every **expert report** relied upon;  
4. all extracts from **examinations for discovery** relied upon;  
5. all **answers to interrogatories** relied upon; and,  
6. all **admissions** relied upon.

**NOTE:** The Applicant must serve notice **at least 14 days** before the hearing date where evidence from *examinations for discovery, answers to interrogatories* or *admissions* will be relied upon. [10-6(7), 11-3(10)]

- 10-6(3)** The *Notice of Application* must:
1. describe the *orders sought*;
  2. summarize the *factual basis of the application*;
  3. set out *authority* and *argument* supporting the application;
  4. list the *affidavits* to be relied upon;
  5. give a *time estimate*; and,
  6. where possible, give the *date of the hearing*.

### **SERVING AN APPLICATION**

- 10-6(6)** The *applicant* must serve **filed copies** of the *Notice of Application and supporting materials* on all parties and other persons affected by the relief sought by ordinary service.

**NOTE:** Obtain an **Affidavit of Service** if there is any likelihood that the respondent will not attend the hearing. [10-3(3), 6-6(1)]

- 10-6(7)(b)** Service must be accomplished **at least 14 days** before the *hearing date*.

### **RESPONDING TO AN APPLICATION**

- 10-6(8), 11-3(5)** A *person* wishing to *respond to an application* must, **within 11 days** of service, file:
1. an **Application Response** in FORM F32;
  2. the original of every **affidavit** to be relied upon an not already filed;
  3. every **expert report** relied upon;
  4. all extracts from **examinations for discovery** relied upon;
  5. all **answers to interrogatories** relied upon; and,
  6. all **admissions** relied upon.

**NOTE:** An *application respondent* is defined as a person who has filed an *Application Response*. A person who does not file an *Application Response* is not entitled to notice of the hearing date. [10-6(1)]

**NOTE:** The Applicant must serve notice **at least 2 days** before the hearing date where evidence from *examinations for discovery, answers to interrogatories* or *admissions* will be relied upon. [10-6(11), 11-3(10)]

- 10-6(9)** The *Application Response* must:
1. indicate whether the application respondent *consents to, opposes* or *takes no position* on each order sought;
  2. summarize the *factual* and *legal basis* on which any orders are opposed;
  3. list the *affidavits* to be relied upon; and,
  4. give a *time estimate*.

- 10-6(8)** The *application respondent* must serve **filed copies** of the *Application Response and supporting materials* on all parties **at least 2 days** before the *hearing date*.

## RESPONDING TO A RESPONSE

- 10-6(12)** An *applicant* wishing to *respond to a response* must file and serve the original of any new **affidavits** on *all application respondents* **by noon the day before** the hearing date.

## PRELIMINARY MATTERS

**11-3(11)** On or *prior to the hearing date*, the court may, on application:

- 11-3(12)**
1. **adjourn** the hearing of the application;
  2. **dismiss** the application on the basis that the subject matter is *not suitable* for disposition at a summary trial or that the summary trial *will not assist in the resolution* of the action\;
  3. order the **service of affidavits** within a fixed time;
  4. order that a **deponent be examined**;
  5. order that **cross examinations** be completed within a fixed time; or,
  6. order that **briefs** be prepared within a fixed time.

**NOTE:** Applications for preliminary relief may be heard by a judge or master. Unless otherwise ordered, a judge hearing such an application is not seized of the summary trial. [11-3(13), 11-3(14)]

## SETTING A HEARING DATE

**11-3(3)** The application must be *heard at least 42 days* before the *trial date*.

**10-6(5)** The *hearing date* for applications estimated to take **more than 2 hours** must be *fixed by the registrar*.

**10-6(4)** The *time of hearing* must be set for **9:45am**, subject to the direction of the court or registrar.

**By noon the day before** the hearing date, the *applicant* must:

- 10-6(14)**
- 10-6(15)**
1. *file* an **Application Record**; and,
  2. *serve* a copy of the **index** to the Application Record on *all application respondents*.

**NOTE:** Where an application and cross-application will be heard together, the parties are to prepare a Joint Application Record. [10-6(16)]

**10-6(20)** If the *applicant does not set a hearing date* within a reasonable time following the *request of the application respondent*, the application respondent may **apply for directions** by Requisition on FORM F17 on **2 days notice** to the applicant.

## JUDGMENT

**11-3(15)** At the hearing, the court may:

1. **grant judgment**, on *some or all of the issues*, **unless**

- a. the court *cannot find the facts necessary* to decide issues of fact or law, or
- b. *it would be unjust* to decide those issues;
2. impose **terms** on the enforcement of a judgment; or,
3. order **costs**.

**11-3(17)** Where the court *cannot grant judgment*, the court may:

1. order the parties to **attend a JCC**;
2. make any order that **could be made at a JCC** under Rule 7-1(15); or,
3. make **any other order**.

**NOTE:** Where the court refuses to grant judgment, the applicant may not make a further application for summary judgment without leave. [11-3(16)]

**NOTE:** Rule 7-1(15) sets out a lengthy digest of the court's authority at JCCs.

#### **IV. FINAL ORDERS: PETITION PROCEEDINGS**

##### **COMMENCING A PETITION PROCEEDING**

**17-1(2)** A **petitioner** commences a *petition proceeding* by filing and serving a **Petition** in FORM F73, together with copies of all **affidavits** relied upon.

**NOTE:** Special instructions for adoptions are set out at Rule 17-1(24) to (26).

**17-1(19)** A Petition may be **amended** once before *service of the Notice of Hearing* and otherwise with consent or leave.

**17-1(20)** *Petitions* expire in **12 months** if not renewed; renewed Petitions expire **12 months** from the date of the renewal order.

##### **SERVING A PETITION**

**17-1(3)** **Personal service** is required when commencing *petition proceedings*.

**6-3(2), 6-3(4)** *Personal service* on an **individual** is effective on the day of service where the document is served *before 4:00pm* on a day *other than Saturday or a holiday*; service will otherwise be effective on the next day that is not a Saturday or a holiday.

**NOTE:** "Holiday" is defined by the *Interpretation Act*.

**NOTE:** Substitutional service is discussed in Rule 6-4. Service *ex juris* is discussed in Rule 6-5; see also the provisions for jurisdictional disputes made in Rule 18-2.

## RESPONDING TO A PETITION

- 17-1(4), 17-1(5) A **petition respondent** defends a *petition proceeding* by filing and serving a **Response to Petition** in FORM F74, together with copies of all affidavits relied upon:
1. **within 21 days** of service where the petition respondent lives in *Canada*;
  2. **within 35 days** of service where the petition respondent lives in *the USA*; or,
  3. **within 49 days** of service where the petition respondent lives anywhere else.

**NOTE:** A *petition respondent* is defined as a person who has filed a *Response to Petition*. A person who does not file a *Response to Petition* is not entitled to notice of the hearing date. [17-1(4)]

- 17-1(5) The *Response to Petition* must:
1. indicate whether the petition respondent *consents to, opposes or takes no position* on each order sought;
  2. summarize the *factual and legal basis* on which any orders are opposed;
  3. list the *affidavits* to be relied upon; and,
  4. give a *time estimate*.
- 17-1(19) A *Response to Petition* may be **amended** once before *service of the Notice of Hearing* and otherwise with consent or leave.

## RESPONDING TO A RESPONSE

- 17-1(6) A *petitioner* wishing to *respond to a response* must file and serve the original of any new **affidavits** on *all petition respondents* **at least 7 days** before the hearing date.

## SETTING A HEARING DATE

- 17-1(8) A *petitioner* may set an *petition proceeding* for **hearing**:
1. where **no Response to Petition** has been served, by *filing* a **Notice of Hearing** in FORM F75 at any time before the hearing date; or,
  2. otherwise, by *filing* a **Notice of Hearing** and *serving* a copy of the filed notice on all *petition respondents* **at least 7 days** before the *hearing date*.
- 17-1(10) The *hearing date* for *petition proceedings* estimated to take **more than 2 hours** must be *fixed by the registrar*.
- 17-1(9) The *time of hearing* must be set for **9:45am**, subject to the direction of the court or registrar.

Where a *petition proceeding* is opposed, the *petitioner* must, **by noon the day before** the hearing date:

- 17-1(11) 1. *file* an **Petition Record**; and,
- 17-1(12) 2. *serve* a copy of the **index** on *all petition respondents*.

**NOTE:** Where a *petition respondent* intends an application to be heard at the same time, the parties are to prepare a Joint Petition Record. [17-1(13)]

- 17-1(17) If the *petitioner* **does not set a hearing date** within a reasonable time following the *request of a petition respondent*, the petition respondent may **apply for directions** by Requisition on FORM F17 on **2 days notice** to the petitioner.

## V. VARYING FINAL ORDERS

### BRINGING AN APPLICATION

- 10-6(2) A *party* wishing to *bring an application* must file a **Notice of Application** in FORM F31 and the original of every **affidavit** to be relied upon an not already filed.
- 10-6(3) The *Notice of Application* must:
1. describe the *orders sought*;
  2. summarize the *factual basis of the application*;
  3. set out *authority and argument* supporting the application;
  4. list the *affidavits* to be relied upon;
  5. give a *time estimate*; and,
  6. where possible, give the *date of the hearing*.

### SERVING AN APPLICATION

- 10-6(6) The *applicant* must serve **filed copies** of the *Notice of Application and supporting materials* on all parties and other persons affected by the relief sought by ordinary service.
- 10-6(7)(c) Service is by **personal service** and must be accomplished **at least 28 days** before the *hearing date*.

### RESPONDING TO AN APPLICATION

- 10-6(8) A *person* wishing to *respond to an application* must file an **Application Response** in FORM F32 and the original of every **affidavit** to be relied upon an not already filed **within 5 days** of service of the Notice of Application.

**NOTE:** An *application respondent* is defined as a person who has filed an *Application Response*. A person who does not file an *Application Response* is not entitled to notice of the hearing date. [10-6(1)]

- 10-6(9) The *Application Response* must:
1. indicate whether the application respondent *consents to, opposes or takes no position* on each order sought;
  2. summarize the *factual and legal basis* on which any orders are opposed;
  3. list the *affidavits* to be relied upon; and,

4. give a *time estimate*.

**10-6(11)** The *application respondent* must serve **filed copies** of the *Application Response and supporting materials* on all parties **at least 2 days** before the *hearing date*.

#### **RESPONDING TO A RESPONSE**

**10-6(12)** An *applicant* wishing to *respond to a response* must file and serve the original of any new **affidavits** on *all application respondents* **by noon the day before** the hearing date.

#### **SETTING A HEARING DATE**

**10-6(5)** The *hearing date* for applications estimated to take **more than 2 hours** must be *fixed by the registrar*.

**10-6(4)** The *time of hearing* must be set for **9:45am**, subject to the direction of the court or registrar.

**By noon the day before** the hearing date, the *applicant* must:

- 10-6(14)** 1. *file* an **Application Record by noon the day before** the hearing date; and,  
**10-6(15)** 2. *serve* a copy of the **index** on *all application respondents*.

**NOTE:** Where a cross-application will be heard simultaneously, the parties are to prepare a Joint Application Record. [10-6(16)]

**10-6(20)** If the *applicant* **does not set a hearing date** within a reasonable time following the *request of the application respondent*, the application respondent may **apply for directions** by Requisition on FORM F17 on **2 days notice** to the applicant.

## VI. SUMMARY

	<b>Applications for Interim Orders</b>	<b>Summary Trials</b>	<b>Applications to Vary Final Orders</b>	<b>Petitions</b>
<b>Apply by</b>	Notice of Application	Notice of Application	Notice of Application	Petition
<b>Reply by</b>	Response to Application	Response to Application	Response to Application	Response to Petition
<b>Mode of Service</b>	Ordinary	ordinary	personal	Personal
<b>Served on respondent by</b>	7 days before hearing	14 days before hearing	28 days before hearing	renewal required after 1 year
<b>Reply filed by</b>	5 days after service	11 days after service	5 days after service	prior to service of reply
<b>Reply served on applicant by</b>	2 days before hearing	2 days before hearing	2 days before hearing	21 days after service of Petition in Canada, 35 days after service in US, 49 days after service elsewhere
<b>Response to reply served by</b>	by noon on day before hearing	by noon on day before hearing	by noon on day before hearing	7 days before hearing
<b>Record filed by</b>	by noon on day before hearing	by noon on day before hearing	by noon on day before hearing	by noon on day before hearing
<b>Record index served by</b>	by noon on day before hearing	by noon on day before hearing	by noon on day before hearing	by noon on day before hearing