

SUPREME COURT FAMILY RULES

COMMENCING PROCEEDINGS: PROCESS AND PROCEDURE

John-Paul Boyd
Aaron Gordon Daykin Nordlinger
March 2010

I. GENERAL PROVISIONS

PRINCIPLES

- 1-3(1) The *object* of the SCFR is to secure the resolution of family law disputes **speedily and fairly** and in a way which **minimizes conflict** and takes into account the impact of the litigation on any **children**.
- 1-3(2) The manner in which disputes are handled is to be **proportionate** to:
1. the *interests of any children*;
 2. the *importance* of the issues; and,
 3. the *complexity* of the case.
- 22-1(8) Whenever practical, the **same judge** or **master** is to hear *all applications* and *all judicial case conferences* in and the *trial* of a family law case.

PARTIES

- 1-1(1) The **parties** to an action are:
1. *claimant*;
 2. *respondent*;
 3. *respondent by counterclaim*;
 4. *petitioner*;
 5. *petition respondent*; and,
 6. ministers as may be applicable under the *Divorce Act* and government designates, such as the director of the FMEP.
- 20-3(2), 20-3(4) Parties under a **legal disability** must act through a *litigation guardian*; litigation guardians must act by *lawyer*.
- 20-2(1) **Children** age 16 or older may act without a litigation guardian.

INDIGENT STATUS

- 20-5(1), 20-5(2)** The court may *waive fees* for *all* or *part of an action* on finding a party is **indigent**, unless the court believes the action or defense to be unreasonable, frivolous or an abuse of process.
- 20-5(4)** *Indigent status* may be **revoked** or **varied** on the motion of a party or the court.

PLEADINGS

- 1-1(1)** **Pleadings** are:
1. *Notice of Family Claim* in FORM F3;
 2. *Response to Family Claim* in FORM F4;
 3. *Counterclaim* in FORM F5; and,
 4. *Response to Counterclaim* in FORM F6.

NOTE: This definition excludes *Petitions* and *Responses to Petition*.

- 8-1(1)** *Pleadings* may be **amended** *once*, without leave, before service of the Notice of Trial; otherwise pleadings may only be amended *with leave* or *with written consent*.

NOTE: *Amended pleadings* must be **served** on each party **within 7 days** of filing. [8-1(4)]

- 11-2(1)** The court may order *all* or *part of a pleading* to be **struck** or **amended** at any stage of a proceeding if the pleading:
1. discloses *no reasonable claim or defence*;
 2. is *scandalous, frivolous or vexatious*;
 3. will *prejudice or delay* the fair hearing of the claim; or
 4. is an *abuse of process*.

- 21-1(4)** All **court forms** must have a 5cm² blank space at the upper left corner of the first page.

ADDRESSES FOR SERVICE

- 6-1(1)** Every party must maintain an **address for service**, being:
1. an *accessible address* that is *the office of the party's lawyer*;
 2. or, if not represented by counsel,
 - a. an *accessible address* that is *within 30km of the registry*, or
 - b. if *not within 30km*, then an *accessible address* plus a *postal address* in British Columbia or a *fax number* or an *email address*

NOTE: "Accessible address" is defined as an address in British Columbia accessible to the public during business hours. Quare the suitability of condominium addresses. [1-1(1)]

- 6-1(2) In addition to an accessible address, **additional addresses for service** may include:
1. a *postal address*;
 2. a *fax number*; and,
 3. an *email address*.

II. MODE OF COMMENCEMENT

- 1-1(1) The SCFR apply to matters falling within the definition of **family law case**. *Family law cases* are actions which include claims:
1. for orders under the *Divorce Act* or the *Family Relations Act*;
 2. relating to *agreements* between married spouses and the parties to a marriage-like relationship;
 3. based on trust law and unjust enrichment, *where the claim arises from a marriage-like relationship*; and,
 4. for *annulment*.

NOTE: The SCFR do not define “marriage-like relationship.”

NOTE: The definition of “family law case” does not include claims under other legislative authority such as the *Interjurisdictional Support Orders Act*, the *Land (Spouse Protection) Act*, the *Land Title Act*, the *Law and Equity Act*, the *Court Jurisdiction and Proceedings Transfer Act* or the Hague Convention on child abduction.

- 3-1(1) Family law cases are commenced by:
1. *Notice of Family Claim* under Rules 2-2 and 4-1; or,
 2. *Petition* under Rule 17-1.

- 2-2(1) Family law cases commenced by **Notice of Family Claim** include:
1. *joint family law cases*, jointly commenced family cases in which all relief except for divorce is going by consent; and,
 2. *undefended family law cases*, family law cases in which no responsive pleadings have been filed or in which such pleadings have been filed and the claim or defence of one party has been withdrawn, struck or discontinued.

- 3-1(2), 3-1(4) An action *must* be commenced by **Petition** where the claim seeks orders for:
1. adoption and declarations of parentage;
 2. the return of a child under the Hague Convention;
 3. leave under *Divorce Act* ss. 16(3) or 17(2);
 4. the variation of extraprovincial *Divorce Act* orders for custody, access and support, providing there is no other family law case in which the claim could be brought;
 5. apprehension of a child under *Family Relations Act* s. 36(1), providing there is no other family law case; and,
 6. the recognition and enforcement of a foreign order under *Family Relations Act* s. 48, providing there is no other family law case.

- 3-1(5), 21-3(1) **Other claims**, such as claims in tort, contract or negligence or brought under legislation other than the *Divorce Act* and *Family Relations Act*, may be brought in a family law case *as long as the other claims relates to relief property pled in the family law case.*
- 3-1(5), 21-3(2) **Other persons** may be joined as parties *as long as the claims against those parties relate to relief property pled in the family law case.*

III. COMMENCING AN ACTION

- 4-1(1) A **claimant** commences a *family law case* by filing and personally serving a **Notice of Family Claim** in FORM F3.
- 2-2(1) **Claimant 1 and claimant 2** commence a *joint family law case* by filing a **Notice of Joint Family Claim** in FORM F1.
- 17-1(2) A **petitioner** commences a *petition proceeding* by filing and personally serving a **Petition** in FORM F73, together with copies of all affidavits relied upon.
- 4-1(2), 17-1(3) **Personal service** is required when commencing *family law cases* and *petition proceedings*.

NOTE: Where an *amended pleading* has been filed before the other party has replied to the original pleading, the amended pleading must be **personally served** on that party. [8-1(4)]

- 6-3(2), 6-3(4) Personal service is effected in the usual manner. 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.

IV. REPLYING TO AN ACTION

- 18-2(1), 18-2(3) A **respondent** or **petition respondent** may apply to *strike* or *stay all* or *part of an action* after filing a **Jurisdictional Response** in FORM F78.

NOTE: The application to strike or stay must be brought **within 30 days** of filing the Jurisdictional Response. Until the application is heard, the party may apply for and enforce orders without attorning to the jurisdiction.

- 4-3(1) A **respondent** defends a *family law case* by filing and serving a **Response to Family Claim** in FORM F4 **within 30 days** of service.

NOTE: A *respondent* who **fails to file** a Response within the 30 day limit is not entitled to notice of any further step in the action. [4-3(2)]

4-4(1), 4-4(2) A **respondent** may bring a claim against a *claimant* by filing and serving a **Counterclaim** in FORM F5 **within 30 days** of service

NOTE: The claims which may be brought by *Counterclaim* are those which would be properly pled as a family law case if the respondent had commenced the action, including **other claims** and claims brought against **other parties**. [4-4(1)(f), 4-4(3)]

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.

6-2(1) *Responses to Family Claims, Counterclaims and Responses to Petition* are served by **ordinary service**

NOTE: **Other parties** made parties by a *Counterclaim* must be personally served with the *Counterclaim* and the *Notice of Family Claim* **within 60 days** of service. [4-4(4)(b)]

6-2(2) Ordinary service is effected by:

1. *leaving* the document at the party's *address for service*;
2. *mailing* the document to the party's *postal address for service*;
3. *faxing* the document to the party's *fax number for service*; or
4. sending the document by *email* to the party's *email address for service*.

NOTE: "Address for service" includes a *postal address* for service, a *fax number* for service and an *email address* for service. [6-1(2)]

NOTE: Where a party has **not given** an address for service, service is effected by mailing the document to the party's lawyer or, where the party is not represented, to the party's last know address. [6-2(7)]

6-2(3) Documents **left** at an *address for service* are served 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.

6-2(4) Documents **mailed** to a *postal address for service* are deemed served *one week later*.

6-2(5) Documents **faxed** to a *fax number for service* are served when faxed where the document is *less than 30 pages*. Documents longer than 30 pages must be faxed *between 5:00pm and 8:00am*, or at such other time as may be *agreed*.

- 6-2(6) Documents **emailed** to an *email address for service* are served the day they are emailed where the document is emailed *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.

V. REPLYING TO A COUNTERCLAIM

- 18-2(1), 18-2(3) A **claimant** may apply to *strike* or *stay all* or *part of a counterclaim* after filing a **Jurisdictional Response** in FORM F78.

NOTE: The application to strike or stay must be brought **within 30 days** of filing the Jurisdictional Response.

- 4-4(5) A **claimant** defends a *Counterclaim* by filing and delivering a **Response to Counterclaim** in FORM F6 **within 30 days** of service of the Counterclaim.

NOTE: A *new party* named by Counterclaim who **fails to file** a Response to Claim within the 30 day limit is not entitled to notice of any further step in the action. [4-4(6)]

- 6-2(1) *Responses to Counterclaim* are served by **ordinary service**.

VI. JUDICIAL CASE CONFERENCES

- 7-1(1) A party to a *family law case* may request a JCC **at any time**, whether or not a JCC has already been held in the action.

NOTE: Matters commenced by **Petition** are included in the definition of *family law case*. [1-1(1)]

- 7-1(2), 7-1(3) *Notices of Application* and supporting *affidavits* **may not be served** until a *judicial case conference* has been conducted, except where:

1. the application is for an order under *Family Relations Act* ss. 57 or 67;
2. the application is *by consent* or *without notice*; or,
3. the application is for a *variation of a final order*.

- 7-1(4), 7-1(5) A party may apply for **exemption** from this requirement by **Requisition** in FORM F17 and **supporting letter** where:

1. the JCC would be *premature* or *impractical*;
2. it would be *unfair* to force compliance with the requirement;
3. a proposed application is *urgent*; or,
4. a *party's attendance* or *delaying an application* would be dangerous to the health or safety of a person

- 7-1(7), 7-1(8) JCCs are *booked* by filing a **Notice of Judicial Case Conference** in FORM F19 and serving a copy on all parties **at least 30 days** before the JCC, along with the booking party's **Financial Statement** in FORM F8.

7-1(11) A party *served with* a Notice of Judicial Case conference must file and serve a **Financial Statement** in FORM F8 **at least 7 days** before the JCC.

7-1(12), 7-1(13) JCCs are *conducted* by a **judge** or a **master** and must be attended by the parties and their counsel, unless otherwise ordered

NOTE: The **specific powers** of the court at JCCs are enumerated in detail at Rule 7-1(15); review this provision carefully.

7-1(17), 7-1(18) The judge or master presiding at a JCC may order that he or she **be seized**, or subsequently be relieved of seizement, of *all further applications* [7-1(17),(18)]

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

VII. DISCONTINUANCE AND WITHDRAWAL

11-4(1), 11-4(2) A *claimant* may **discontinue** *all or part of a family law case* at any time before a Notice of Trial is filed by filing and serving a **Notice of Discontinuance** in FORM F39; thereafter discontinuance requires *consent or leave*.

11-4(1), 11-4(8) A *petitioner* may **discontinue** *all or part of a petition proceeding* by filing and serving a **Notice of Discontinuance** in FORM F39.

11-4(3), 11-4(6) A *respondent* may **withdraw** *all or part of a Response to Family Claim* at any time by filing and serving a **Notice of Withdrawal** in FORM F40, and the *claimant* may proceed as if no Response to Family Claim had been filed.

11-4(6), 11-4(8) A *petitioner respondent* may **withdraw** *all or part of a Response to Petition* at any time by filing and serving a **Notice of Withdrawal** in FORM F40, and the *petitioner* may proceed as if no Response to Petition had been filed.