

RULE 63 – DIVORCE AND FAMILY LAW

Definitions

(1) In this rule,

“claim for relief” includes a child support order, a spousal support order, a parenting order, a property order, and corollary relief under the *Divorce Act* (Canada);

“common law proceeding” means a proceeding in a court in which a party seeks any of child support, spousal support, custody, access or division of property under the *Children’s Law Act* and/or the *Family Property and Support Act*.

“divorce proceeding” means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a parenting order;

“family law proceeding” includes a proceeding in which relief is claimed under the *Family Property and Support Act*, the *Children’s Law Act* or the *Divorce Act* (Canada), divorce proceeding, uncontested divorce proceeding, and applications for division of property under the common law;

“uncontested divorce proceeding” means a family law proceeding in which a claim for divorce is made and

(a) no statement of defence has been filed,

(b) a statement of defence has been filed that disputes the claim for divorce, or a counterclaim has been filed that makes a claim for divorce, but the statement of defence or counterclaim, as the case may be, has been

(i) withdrawn under subrule (11), or

(ii) struck out or dismissed, or

(c) all claims other than the claim for divorce have been settled, and the parties have filed a statement to that effect signed by the parties or their lawyers.

Application

(2) Except as provided in this rule, the Rules of Court apply to a family law proceeding.

COMMENCEMENT OF PROCEEDING

Commencement by statement of claim

- (3) A family law proceeding must be commenced by a statement of claim.

Claim for relief after divorce granted

- (4) If a divorce order has been granted and no claim for relief was sought in the proceeding in which that order was granted, any subsequent claim for relief must be brought by way of a common law proceeding, in accordance with subrule (3).
- (5) If an order from another jurisdiction has been filed by requisition for purposes of enforcement, an application to rescind, vary or suspend the order must be brought by notice of application.

Application to vary, suspend or rescind

- (6) An application to vary, suspend or rescind an order made by this court in a proceeding brought under the *Family Property and Support Act*, the *Children's Law Act* or the *Divorce Act* (Canada) must be brought by notice of application in the family law proceeding.

Procedural step after long delay

- (7) If no step has been taken in a family law proceeding for one year,
- (a) the applicant must
- (i) comply with Rule 3(6), or
- (ii) personally serve the other parties of record with the notice of application, in which event the applicant need not comply with Rule 3(6), and
- (b) Rule 11(5) and (12) do not apply to service of the notice of application in (a)(ii).

PLEADINGS

Form of pleadings

- (8) In a family law proceeding:
- (a) a Statement of Claim (Family Law – Divorce) in Form 91A;
- (b) a Statement of Claim (Family Law – Common Law) in Form 91B;
- (c) a Statement of Defence (Family Law – Divorce and Common Law) in Form 92;
and

(d) a Counterclaim (Family Law – Divorce and Common Law) in Form 93.

Appearance

- (9) If no appearance, statement of defence or counterclaim is filed, the family law proceeding may proceed on an uncontested basis.

Person allegedly involved in adultery in a divorce proceeding

- (10) If it is alleged in a pleading for divorce that a spouse has committed adultery:
- (a) the name of another person alleged to have been involved in the adultery must not be set out in that pleading unless that person is made a party to the proceeding;
 - (b) the other person must not be made a party to the proceeding unless relief is claimed against that person; and
 - (c) particulars of the identity of the other person may be demanded from the plaintiff, but any particulars provided in response to that demand must not be filed before the trial or hearing.

Withdrawal of pleading

- (11) A party who has filed a pleading in a divorce proceeding may withdraw the pleading or any part of it by filing and delivering a Notice of Withdrawal (Family Law – Divorce and Common Law) in Form 102.

FINANCIAL DISCLOSURE

- (12) The Rules for financial disclosure in a family law proceeding are set out in Rule 63A.

FAMILY LAW CASE CONFERENCE

- (13) A family law case conference shall be held in all family law proceedings, except those exempted as set out in a practice direction, no later than 60 days from the date of service of the statement of claim.
- (14) A party requesting any additional family case conference other than pursuant to (13), shall file and deliver a Notice of Family Law Case Conference in Form 95A on the other party at least 7 days, not counting Saturday or holidays, before the date set for the hearing.
- (15) The purpose of the family law case conference is to ensure that all parties are aware of alternative dispute resolution procedures available.
- (16) The judge conducting the family law case conference may:
- (a) proceed to a judicial settlement conference under Rule 37; or

- (b) proceed to a case management conference under Rule 36;
 - (c) proceed to a binding Judicial Settlement Conference pursuant to Practice Direction 12; and
 - (d) make any orders under Rule 36(6) to facilitate the proceeding or resolution of it in a Family Law Case Conference Order, Form 109.
- (17) The family law case conference shall be conducted as set out in the family law case conference and case management practice directions.

MARRIAGE CERTIFICATE

Certificate to be filed

- (18) Before the issuance of a divorce pleading or an amended divorce pleading, a certificate of the marriage or a registration of the marriage must be filed unless the pleading states that:
- (a) it is impossible to obtain such a certificate; or
 - (b) the certificate will be filed before the action is set down for trial or before an application is made for a Divorce Order.
- (19) A party may apply in writing to the clerk for the return of the original marriage certificate. The clerk may make a certified copy of the marriage certificate and return the original marriage certificate to the party that filed it.

ADDITION OF CLAIMS AND PARTIES

Addition of claims and parties

- (20) Subject to Rule 5(6), a claim that, on its own, would not be the subject matter of a family law proceeding may be made in a family law proceeding, and a person by or against whom any such claim is made may be joined in that proceeding, if the claim is related to or connected with any relief in the family law proceeding.
- (21) The judge may give directions to the parties for the procedure and hearing of the additional claim.
- (22) Where a child protection proceeding is filed in Territorial Court and a custody or parenting proceeding for the same child(ren) is filed in Supreme Court and, where it is expedient to do so, the Supreme Court judge may sit as a Territorial Court judge in the child protection proceeding and a Supreme Court judge in the custody or parenting proceeding.

MINORS

Party who is a minor

- (23) A minor who has attained the age of 16 years and who is a party to a family law proceeding may act without a litigation guardian and the provisions of Rule 6 do not apply to that party.

Appointment of litigation guardian

- (24) Notwithstanding subrule (22), if the court considers that it is in the interest of a minor referred to in subrule (23) or of any child of the minor, it may, on application or on its own motion, appoint a litigation guardian for the minor or for the child of the minor.

SERVICE

- (25) A statement of claim and a statement of defence or counterclaim in a family law proceeding must be served by someone other than the plaintiff or defendant.

Affidavit of service

- (26) An Affidavit of Service in Form 7 of a statement of claim, statement of defence or counterclaim in a family law proceeding must state the means by which the person served was identified.

SECURITY FOR COSTS

Security for costs

- (27) The court may, in a family law proceeding, make an order for payment of, or for security for, the costs of a party, including interim or advance costs in appropriate cases.

UNCONTESTED PROCEEDINGS

Proceedings in default

- (28) Rule 17 does not apply to family law proceedings but a party may proceed where the served party fails to appear or file a statement of defence.

Uncontested divorce proceeding

- (29) In an uncontested divorce proceeding, the evidence, and any information required to enable the court to comply with ss. 10 and 11 of the *Divorce Act* (Canada), may be presented by affidavit, unless the court otherwise orders.

Application for judgment in uncontested family law proceeding

- (30) In an uncontested family law proceeding, a party may apply for judgment:
 - (a) by requisition in accordance with subrule (31); or
 - (b) by setting the proceeding for trial or hearing in the manner directed by these rules or by practice direction.

Application by requisition

- (31) An application for judgment under subrule (30)(a) may be made by either party to the court by filing:
 - (a) a Requisition for Divorce Order in Form 97A or for common law proceedings, a Requisition for Order in Form 3, setting out briefly the nature of the relief sought;
 - (b) a draft order or orders (for divorce proceedings a Divorce Order in Form 100 or Divorce Order (Uncontested) in Form 100B or for common law proceedings an Order in Form 54);
 - (c) if necessary, proof of service of the statement of claim, or proof of delivery of a counterclaim;
 - (d) if appropriate, an Affidavit for Divorce Order in Form 97 or an Affidavit for Divorce Order (Divorce Only) in Form 97B stating that the action is uncontested;
 - (e) if appropriate, an Affidavit in Form 59; and
 - (f) if appropriate, a Child Support Affidavit in Form 98.
- (32) Upon receipt of an application for divorce by requisition, the clerk may issue a certificate certifying that the pleadings and proceedings are in order.

Powers of court on application

- (33) On being satisfied that an application under subrule (30) or (31) is appropriate, the court may give any directions that it considers necessary and may, without limitation:
 - (a) make an order or give judgment without the attendance of the lawyer or the applicant;
 - (b) direct the attendance of the lawyer or the applicant; or
 - (c) direct that further evidence be presented.

APPLICATION FOR JUDGMENT ON CONSENT

Judgment on Consent

- (34) In a divorce proceeding, in which the parties are seeking judgment on consent, the evidence, and any information required to enable the court to comply with ss. 10 and 11 of the *Divorce Act* (Canada), may be presented by affidavit, unless the court otherwise orders.
- (35) In a family law proceeding, the parties may apply for judgment on consent by filing:
 - (a) a Requisition in Form 3, setting out briefly the nature of the relief sought;
 - (b) a draft order or orders (for divorce proceedings a Divorce Order (Consent) in Form 100A) and for common law proceedings a Consent Order in Form 53);
 - (c) if appropriate, an Affidavit for Divorce in Form 97 or an Affidavit for Divorce Order (Divorce Only) in Form 97B;
 - (d) if appropriate, an Affidavit in Form 59; and
 - (e) if appropriate, a Child Support Affidavit in Form 98.

Powers of court on application

- (36) On being satisfied that an application under subrule (35) is appropriate, the court may give any directions that it considers necessary and may, without limitation:
 - (a) make an order or give judgment without the attendance of the lawyer or the parties;
 - (b) direct the attendance of the lawyer or the parties; or
 - (c) direct that further evidence be presented.

DIVORCE ORDERS

Pending prior divorce proceedings

- (37) A order granting a divorce must not be pronounced unless the court is satisfied that no earlier divorce proceeding was instituted and is pending anywhere in Canada.

Claim for divorce joined with other claims

- (38) If a claim is made for divorce together with one or more other claims, the court may do one or more of the following:
 - (a) set the proceeding for trial pursuant to Rule 41;

- (b) grant a divorce and direct that an order for divorce alone be entered;
- (c) grant a divorce and give judgment on the other claims;
- (d) adjourn the hearing of the claim for divorce;
- (e) give judgment on the other claims and direct that a separate order dealing with them be entered;
- (f) adjourn the hearing of the other claims.

Form of divorce order

- (39) An order for divorce must be in either Form 100, Form 100A for divorces on consent or Form 100B for uncontested divorces.

Form of certificate of divorce

- (40) The Certificate of Divorce referred to in s. 12(7) of the *Divorce Act* (Canada) must be in Form 101 and issued by the clerk or a judge.

Delivery of divorce order

- (41) Unless the court otherwise orders, the party who applies for an order for divorce must:
 - (a) deliver a true copy to the other party at the other party's address for delivery; or
 - (b) if the other party has not provided an address for delivery, by mailing the order to the party's last known address by ordinary mail.

CONSENT ORDERS

- (42) Consent orders in family law proceedings, where no affidavits have been filed in support of the relief being sought, may be filed pursuant to Rule 43(9), (10), (11) and (12) subject to the condition that one party shall file an affidavit setting out the factual basis and reasons for the consent order.

RELOCATION

Notice of Relocation

- (43) A party who, pursuant to s. 16.9 of the *Divorce Act* (Canada) is required to provide notice that they are intending to undertake a relocation, shall, at least 60 days before the expected date of relocation and in accordance with the requirements of the *Divorce Act* (Canada):
 - (a) serve the other party a Notice of Relocation in Form 1;

(b) if appropriate, serve any other party with a Notice- Persons with Contact in Form 3; and

(c) the party is not required to file the notice, except in accordance with (45)(b).

Objection

(44) A party objecting to the relocation shall:

(a) Serve the other parties a Notice of Objection to Relocation in Form 2; and/or

(b) File a notice of application in accordance with (45).

Notice of Application

(45) A Notice of Application with regard to relocation:

(a) Shall be made in accordance with Rule 47 and the *Divorce Act* (Canada), s. 16.9 and 16.91; and

(b) Except as permitted by the *Divorce Act* (Canada), if the moving party is the party intending to undertake a relocation, shall include the Notice of Relocation in Form 1 and/or Notice – Persons with Contact in Form 3.

RESTRAINING ORDERS

(46) Where a judge makes a restraining order in a family law proceeding:

(a) it shall be in Form 99; and

(b) a party may request the inclusion of an RCMP assist clause in the order.

APPEALS

No stay on appeal

(47) If a parenting order, custody order, contact order or support order is appealed, the order remains in force until the determination of the appeal, unless the court that made the order or the appeal court, otherwise directs.

**INTER-JURISDICTIONAL PROCEEDINGS AND PROCEEDINGS FROM A DESIGNATED JURISDICTION
UNDER THE DIVORCE ACT**

Application

- (48) An applicant shall commence a proceeding going to another jurisdiction under s. 18.1 or 19 of the *Divorce Act* by filing with the designated authority for Yukon a Statement of Claim (Family Law – Divorce) in Form 91A, if one has not already been commenced, a Notice of Application in Form 52 and an Affidavit in Form 59 in support.

Receipt of Application

- (49) The designated authority for Yukon under the *Divorce Act* shall send an application commenced from another jurisdiction under s. 18.1(1)(a) or 19(1)(a) of the *Divorce Act* to the clerk of the court.

Service on Respondent

- (50) The clerk shall serve on the respondent:
- (a) A copy of the application referred to in (45); and
 - (b) Notice of Inter-jurisdictional Proceeding shall be in Form 102B and shall set out the manner in which the respondent shall respond to the application and the respondent's obligation to provide documents or information.

Conversion of Applications

- (51) A respondent to an application made under s. 17(1)(a) for a support variation order may request, pursuant to s. 18.2 of the *Divorce Act* (Canada) that the court convert the application into an inter-jurisdictional proceeding under s. 18.1 of the *Divorce Act* (Canada) by filing a Request to Convert in Form 102A.
- (52) Where child support is paid to a third-party, the third-party shall complete only the portion of the form related to the assignee.

Service not Possible

- (53) If the clerk is unable to serve the application and all applicable documents, they shall return the application to the designated authority for Yukon.

Registration of orders

- (54) If an order that has legal effect throughout Canada under s. 20(2) of the *Divorce Act* (Canada) is made by a court other than the Supreme Court, the order may be registered without fee by filing a certified copy of the order in the Supreme Court.

Exchange of orders between territories and provinces

(55) The clerk of the court must, on request or if the court is required by s. 17(11) of the *Divorce Act* (Canada), and without a fee, send a certified copy of a parenting order, support order or variation order made by the court:

(a) to the clerk of a court in another territory or province or to any person holding an equivalent position to that of clerk in relation to that court;

(b) to a public welfare organization in another territory or province; or

(c) to any person designated by the Attorney General of another territory or province.

Enforcement in Territorial Court

(56) A support order or maintenance order made by the court or registered under subrule (54) may be filed in and enforced by the Territorial Court as if it were contained in an order of that court.

SEARCHES

Search of files

(57) Unless the court otherwise orders,

(a) no person, other than the following, may search a registry file in respect of a family law proceeding or an *Interjurisdictional Support Orders Act* proceeding:

(i) a lawyer of a party;

(ii) a party;

(iii) a person authorized by a party;

(iv) duty counsel to a party; or

(iv) a person authorized by a party's lawyer.

Search of exhibits

(58) The exhibits produced at the trial or hearing of a proceeding referred to in subrule (57), but not including exhibits attached to affidavits, must be sealed by the clerk in a secure manner and, unless the court otherwise orders, no person other than a party's lawyer, a party or a person authorized by a party or by a party's lawyer, may search the exhibits.