

RULE 63A – FAMILY LAW PROCEEDING

FINANCIAL DISCLOSURE

Interpretation

(1) In this rule:

"applicable income documents" means, in respect of a person,

(a) a copy of every personal income tax return filed by the person for each of the 3 most recent taxation years,

(b) a copy of every notice of income tax assessment or reassessment issued to the person for each of the 3 most recent taxation years,

(c) if the person is receiving employment insurance benefits, a copy of the 3 most recent employment insurance benefit statements,

(d) if the person is receiving workers' compensation benefits, a copy of the 3 most recent workers' compensation benefit statements,

(e) if the person is receiving social assistance, current documentary evidence of the social assistance that is being received by that person,

(f) if the person owns or has an interest in real property, a copy of the most recent assessment notice issued from an assessment authority for each property,

(g) if the person is an employee,

(i) the most recent statement of earnings indicating the total earnings paid to the person in the year to date, including overtime, or

(ii) if that statement is not provided by the employer, a letter from the person's employer setting out the information referred to in subparagraph (i) and including the person's rate of annual salary or remuneration,

(h) if the person is self employed, the following information for the 3 most recent taxation years:

(i) the financial statements of the person's business or professional practice, other than a partnership;

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the person does not deal at arm's length,

(i) if the person is a partner in a partnership, confirmation of the person's income and draw from, and capital in, the partnership for each of its 3 most recent taxation years,

(j) if the person controls a corporation, the following information for the corporation's 3 most recent taxation years:

(i) the financial statements of the corporation and its subsidiaries;

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation and every related corporation does not deal at arm's length, and

(k) if the person is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's 3 most recent financial statements;

"child support guidelines" means,

(a) in reference to an application under the *Family Property and Support Act*, the *Yukon Child Support Guidelines*, or

(b) in reference to an application under the *Divorce Act (Canada)*, the *Federal Child Support Guidelines*;

"financial statement" means a statement in Form 94;

"parent" means, the father or mother of a child by birth, or because of an adoption order made or recognized under the *Children's Act*, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family other than under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

"party" means a party to a family law proceeding who is claiming, or against whom is claimed,

(a) an order for child support or an order varying an order for child support,

(b) an order for spousal support or an order varying an order for spousal support,

(c) an order for parental support or an order varying an order for parental support, or

(d) a division of family or non-family assets;

"social assistance" includes income assistance from the Government of Yukon or Government of Canada.

"support" includes maintenance.

Application of this rule

- (2) This rule applies to a family law proceeding in which an application is made to obtain or to vary an order for child support, for spousal support, for parental support or for a division of family or non-family assets as follows:
 - (a) if an application is made to obtain or to vary an order for child support, subrules (1), (3) to (8) and (13) to (38) apply in respect of that application;
 - (b) if an application is made to obtain an order for spousal support or parental support, subrules (1), (9), (10), (13) to (15) and (17) to (36) apply in respect of that application;
 - (c) if an application is made to obtain or to vary an order for division of family or non-family assets, subrules (1), (11) to (15), (17) to (33), (34) (a) to (d), (35) and (36) apply in respect of that application.

APPLICATIONS FOR CHILD SUPPORT

Who must provide Part 1 of a financial statement

- (3) Each party who is required under the child support guidelines to provide income information must provide to the other party
 - (a) Part 1 of a financial statement,
 - (b) the party's applicable income documents, and
 - (c) any other documents that the party is required to provide under subrules (4) to (6).

Numbering applicable income documents

- (4) Each page of the applicable income documents that are to be used in court must be numbered consecutively and attached to the financial statement.

Who must provide Parts 2 and 3 of a financial statement

- (5) In addition to the documents that a party is obliged to provide under subrule (3) (a) and (b), the party must provide to the other party Parts 2 and 3 of a financial statement if the child support guidelines require the court to consider any or all of the following:
 - (a) the financial ability of the parties;
 - (b) the means of the parties; or
 - (c) the condition, means, needs and other circumstances of the parties or the child,

If special or extraordinary expenses are claimed

- (6) A party who makes a claim for special or extraordinary expenses must provide to the other party Part 4 of a financial statement in addition to any documents that the party is obliged to provide under subrules (4), (5) and (7).

If undue hardship is claimed

- (7) If a claim for undue hardship is made, a party must provide to the other party the following documents, as applicable, in addition to any documents that the party is obliged to provide under this rule:
 - (a) the party making that claim must provide Parts 1, 2, 3, 5 and 6 of a financial statement along with all applicable income documents;
 - (b) unless the court otherwise orders, the other party must provide Parts 1, 2, 3 and 6 of a financial statement along with all applicable income documents.

When party must serve documents

- (8) Each party who is obliged to provide documents under subrule (4), (5), (6) or (7) must serve those documents on the other party as follows:
 - (a) if the party is obliged to provide the documents in respect of a claim made by that party in a pleading or in application materials, within 30 days after serving that pleading or those application materials on the other party;
 - (b) if the party is obliged to provide the documents in respect of a claim made by the other party in a pleading or in application materials and is served with a notice in accordance with subrule (16),
 - (i) within 30 days after service if the party resides in Canada or the United States of America, or
 - (ii) within 60 days after service if the party resides elsewhere; or
 - (c) within such time as the court may order.

Agreement instead of documents

- (9) Parties are deemed to have complied with the requirements of the child support guidelines, and with the requirements of this rule, respecting the provision of documents if
 - (a) the parties have agreed on the annual income of the party who is to pay the child support and on the amount to be paid for child support,
 - (b) the parties have signed an agreement in Form 96, and

(c) the agreement has been filed with the court together with the documents referred to.

APPLICATIONS FOR SPOUSAL OR PARENTAL SUPPORT

Who must provide income documents

- (10) A party must provide to the other party Parts 1, 2 and 3 of a financial statement, along with the party's applicable income documents, if
- (a) the party is seeking to obtain a spousal or parental support order,
 - (b) the party is seeking to vary a spousal or parental support order,
 - (c) a spousal or parental support order is being sought against the party, or
 - (d) the other party is seeking to vary a spousal or parental support order obtained against the party.

When party must serve documents

- (11) Each party who is obliged to provide documents under subrule (10) must serve those documents on the other party as follows:
- (a) if the party is obliged to provide the documents in respect of a claim made by that party in a pleading or in application materials, within 30 days after serving that pleading or those application materials on the other party;
 - (b) if the party is obliged to provide the documents in respect of a claim made by the other party in a pleading or in application materials and is served with a notice in Form 95 in accordance with subrule (16),
 - (i) within 30 days after service if the party resides in Canada or the United States of America, or
 - (ii) within 60 days after service if the party resides elsewhere; or
 - (c) within such time as the court may order.

APPLICATIONS FOR DIVISION OF ASSETS

Who must provide Part 3 of a financial statement

- (12) Each party who is making a claim for division of family or non-family assets or against whom such a claim is being made, if not otherwise obliged under this rule to provide any portion of a financial statement to the other party, must provide to the other party Part 3 of a financial statement.

When parties must serve documents

- (13) Each party who is obliged to provide documents under subrule (12) must serve those documents on the other party as follows:
- (a) if the party is obliged to provide the documents in respect of a claim made by that party in a pleading or in application materials, within 30 days after serving that pleading or those application materials on the other party;
 - (b) if the party is obliged to provide the documents in respect of a claim made by the other party in a pleading or in application materials and is served with a notice in Form 95 in accordance with subrule (16),
 - (i) within 30 days after service if the party resides in Canada or the United States of America, or
 - (ii) within 60 days after service if the party resides elsewhere;
 - (c) within such time as the court may order.

FINANCIAL STATEMENT

Assessment notice to be included

- (14) Part 3 of a financial statement must have attached to it or have accompanying it a copy of the notice that is, at the time that the statement is provided to a party under this rule, the most recent assessment notice provided by an assessment authority for any real property that the party owns or has an interest in unless that assessment notice has already been provided.

When documents must be filed

- (15) A party who is obliged under this rule to serve a financial statement on any other party must file a copy of that document with the court before the end of the period within which that service must be completed.

NOTICE TO FILE A FINANCIAL STATEMENT

Service of notice to file financial statement

- (16) Each party who, under this rule, is entitled to receive documents from another party, including a financial statement and applicable income documents, must serve on the other party a Notice to File a Financial Statement in Form 95 along with the pleading or application materials referred to in subrule (8), (11) or (13), as the case may be.

Endorsement of notice

- (17) If a claim for child support is made in the family law proceeding, the notice referred to in subrule (16) may be endorsed with a statement that if the party receiving the notice does not comply with the applicable requirement under subrule (4), (5) (6) or (7), the requesting party will, for the purposes of determining child support, apply to the court to attribute to the party receiving the notice an annual income in a specified amount.

PARTICULARS OF FINANCIAL STATEMENTS

Particulars may be demanded

- (18) If a financial statement lacks particularity, the other party may demand particulars.

Court may order particulars

- (19) If the party from whom particulars are demanded under subrule (18) fails to provide those particulars within 7 days after receipt of the demand, the court may, on terms it considers appropriate,
- (a) order particulars to be delivered within a specified time, or
 - (b) order that a new financial statement be delivered within a specified time.

Cross-examination on financial statements

- (20) A party may be cross-examined on his or her financial statement at any time before the trial or hearing, and Rules 27 and 42 (31), (33), (35) and (36) apply to the cross-examination.

CHANGES IN FINANCIAL CIRCUMSTANCES

Information must be kept current

- (21) Whenever a material change in circumstances renders information provided by a party inaccurate or incomplete, the party must, whether the inaccurate or incomplete information is contained in a financial statement, in particulars provided under subrule (18) or (19) (a), in the party's applicable income documents or in a statement provided under this subrule, promptly after that change, deliver to the other party
- (a) a written statement setting out particulars of the accurate or complete information, or
 - (b) a revised financial statement containing the correct current information.

Additional documents

- (22) If the change in circumstances referred to in subrule (21) is such that the party becomes obliged to provide documents under this rule that are additional to the documents previously provided by that party, the party must
- (a) provide those additional documents, and
 - (b) comply with subrule (21) in relation to the previously provided documents.

If written statement or particulars provided

- (23) If a party provides a written statement under subrule (21) or particulars under subrule (18) or (19)(a),
- (a) the statement or particulars may be treated at a trial or hearing as if they formed part of the original financial statement of the party, and
 - (b) the other party may, with leave of the court, require that the statement or particulars be
 - (i) verified by an affidavit of the party providing the statement or particulars, or
 - (ii) the subject of further cross-examination.

Updated statements

- (24) A party who has delivered a financial statement more than 90 days before the commencement of the trial or hearing must deliver to the other party an updated financial statement at least 30 days and not more than 60 days before the commencement of the trial or hearing, but the delivering party may not be cross-examined before the trial or hearing on the updated financial statement, unless the court gives leave or the parties agree.

DISCLOSURE OF BUSINESS INTERESTS

Production of documents

- (25) If a party discloses business or corporate interests in a financial statement delivered under this rule, the party receiving the statement may, in writing, request the disclosing party to produce for inspection and copying specified documents or classes of documents in the disclosing party's possession or control that might reasonably be required to verify the valuation of the disclosing party's interest or to determine the disclosing party's income.

Responding to demand

- (26) A party receiving a request under subrule (25) must, within 21 days after receipt, deliver a notice to the requesting party stating

(a) a time and place, during normal business hours, at which the documents may be inspected, and

(b) the cost of copying the documents.

Request to corporation, partnership or proprietorship

(27) If the party who makes a request under subrule (25) is not satisfied with the response to the request, that party may make a written request to the corporation, partnership or proprietorship in which the other party has disclosed an interest, to produce for inspection all documents that are relevant to the valuation of the interest or the determination of the disclosing party's income.

Production required

(28) A corporation, partnership or proprietorship receiving a request under subrule (27) must, within 21 days after receipt, provide a written statement to the requesting party

(a) detailing the documents, in its possession or control, that it is obliged to produce in response to the request,

(b) identifying those documents, if any, in respect of which the corporation, partnership or proprietorship intends to seek an exemption under subrule (30),

(c) specifying a time and place at which the documents for which an exemption is not being sought may be inspected, and

(d) specifying the cost of copying the documents for which an exemption is not being sought.

Application to court for directions

(29) A corporation, partnership or proprietorship or either of the parties may apply to the court at any time for directions respecting any request for production of documents under subrule (25) or (27), including directions respecting payment of the costs of copying the documents, and the court may give those directions accordingly.

Application to court for exemption

(30) A corporation, partnership or proprietorship may, within 21 days after the date a request is served on it under subrule (27), apply to the court for an order exempting it from the requirement to produce any document.

Application by person authorized

(31) An application under subrule (29) or (30) may be made on behalf of a corporation or partnership by a person who has been authorized by the corporation or partnership for that purpose.

Court may order exemption

- (32) On an exemption application under subrule (30), the court may issue an order exempting the applicant from the requirement to produce all or any of the requested documents if the court considers that
- (a) the documents and information already received by the party who made the request under subrule (27) are sufficient for the purposes of the main application,
 - (b) the production of the documents is not necessary for the purposes of the main application,
 - (c) in the case of a corporation, the prejudice likely to be caused to the corporation, or to its directors or shareholders, by refusing to exempt the corporation, outweighs the prejudice likely to be caused to the person requesting the documents if the corporation is exempted, or
 - (d) in the case of a partnership, the prejudice likely to be caused to the partnership, or to its partners or associates, by refusing to exempt the partnership, outweighs the prejudice likely to be caused to the person requesting the documents.

Costs

- (33) The costs of producing documents under subrule (26) or (28) and the costs of an application under subrule (29) or (30) are in the discretion of the court and the court may order that the costs be paid in favour of or against
- (a) either of the parties to the proceeding, or
 - (b) the corporation, the partnership or the owner of the proprietorship, as the case may be.

When costs are payable

- (34) The court may order when any costs awarded under subrule (33) are payable.

ENFORCEMENT OF THIS RULE

Relief

- (35) If a party fails to comply with a requirement under this rule to file or serve a financial statement, particulars if ordered or any applicable income document, or fails to comply with a notice under subrule (16), the court may do any or all of the following:
- (a) order that the financial statement, particulars or applicable income document, as the case may be, be delivered on terms the court considers appropriate;
 - (b) dismiss the application or strike out a party's statement of defence or counterclaim;

- (c) proceed under Rule 59 to punish the party for contempt of court;
- (d) draw an adverse inference against the party;
- (e) attribute income to that party in an amount the court considers appropriate.

CONFIDENTIALITY OF INFORMATION

Confidentiality

- (36) Any person who has access to documents obtained under this rule must keep the documents and any information contained in them in confidence and must not disclose the documents or information to anyone other than
 - (a) for the purposes of a valuation of an asset,
 - (b) for a determination of the disclosing party's income, or
 - (c) in the course of permitting the documents to be introduced into evidence during the proceeding.

Sealing of financial information

- (37) If the court considers that public disclosure of any information filed in a family law proceeding to which this rule applies would be a hardship on the person in respect of whom the information is filed,
 - (a) the court may order that the whole or any part of the document in which the information is contained, and the whole or any part of the transcript of the cross-examination on the document, must promptly be sealed in an envelope, and
 - (b) if an order is made under paragraph (a), no person may search the sealed documents without an order of the court.

CONFLICT WITH GUIDELINES

Child support guidelines prevail

- (38) If and to the extent that there is a conflict between any provision of this rule and a provision of the child support guidelines, the provision of the child support guidelines prevails.

No conflict

- (39) For the purposes of subrule (38), it is not a conflict between the child support guidelines and this rule merely because this rule

(a) requires a person to provide information that is different from or additional to the information, if any, that that person would be obliged to provide under the child support guidelines,

(b) requires that certain information required by this rule but not by the child support guidelines be presented in a manner or form that is different from the manner or form in which information required under the child support guidelines is to be presented, or

(c) requires the provision, in one manner or form, of information some or all of which is required under the child support guidelines to be provided in a different manner or form.