



**Effective Date:** 2013/03/19

**Number:** FPD - 11

**Title:**

## **Practice Direction**

### **Divorce Applications**

**Summary:**

FPD - 8 - *Divorce Applications* dated April 25, 2012 is rescinded.

This Practice Direction provides instruction to assist in the preparation of material in support of applications under Rule 10-10 and Rule 11-3 of the Supreme Court Family Rules.

**Direction:**

**Sworn date of Form F38**

1. Form F38 must be sworn within thirty (30) days of the date on which the application for judgment is filed in the registry, unless leave of the court to rely on an earlier affidavit is obtained.
2. Form F38 must not be sworn until after the expiration of the time for filing:
  - a. a Response to Family Claim (if the application is made by the claimant); or
  - b. a Response to Counterclaim (if the application is made by the respondent).
3. Where the only ground for divorce is marriage breakdown due to separation, the affidavit in Form F38 must not be sworn earlier than one (1) year after the date of separation.

**Joint family law case**

4. In a joint family law case for divorce, the application for judgment must be supported by either an affidavit in Form F38 jointly sworn by both applicants or by an affidavit in Form F38 sworn by each applicant.

5. In order to comply with section 8(2)(a) of the *Divorce Act*, the joint affidavit in Form F38, or if filed separately, at least one of the affidavits, must be sworn after the notice of family claim has been filed.

#### **Affidavit of witness**

6. An affidavit of witness submitted in proof or corroboration of an allegation of adultery or cruelty must:
  - a. set out the witness's personal knowledge of the facts which tend to prove the allegation
  - b. describe the relationship of the witness to the applicant.
7. In the case of an allegation of cruelty, a medical report must be attached as an exhibit to the affidavit.

#### **Support**

8. Subject to paragraph 9 of this direction, support provisions set out in the draft order should be drawn as follows:
  - a. If there is a claim for spousal support, either alone or together with a claim for child support, in addition to the information required in Form F38, the following information should be provided in the affidavit:
    - i. the need of the applicant (with attached financial statements) and a specific amount of support claimed
    - ii. the other spouse's income and capital so far as it is within the knowledge of the applicant; and
    - iii. proof that the spouse against whom an order is sought is aware of the amount of support being claimed and that s/he has had notice of the claim for a support order. The consent of that spouse to the order requested, or a separation agreement establishing the agreement of the other spouse to the support claim, is preferable.

#### **Parenting Orders**

9. If the application is for a parenting order, including parenting time, allocation of parental responsibilities, contact with a child, custody or access, in addition to the information required under paragraph 7 of Form F38, the following information should be provided in the affidavit:
  - a. particulars of the present and proposed arrangements for parenting for the child or children and a summary of how the children have been cared for to the date of the affidavit; and
  - b. if the other parent agrees to a parenting order, evidence of that agreement.

#### **Form F36**

10. If the material submitted in support of an application for judgment does not comply with the Rules of Court or with this direction, the registrar will not sign Form F36 until the irregularity is corrected.

**Undertaking not to appeal**

11. Where spouses agree and undertake that no appeal will be taken from a judgment granting a divorce, the written undertaking given by the other spouse must be signed after service of the Notice of Family Claim. A party must, at least, be aware of the order sought against her/him before s/he can decide to give up her/his right of appeal.

**Applications under Rule 11-3**

12. The applicable Child Support Affidavit, in Form F37, and Form F36, signed by the registrar, must accompany all divorce applications made pursuant to Supreme Court Family Rule 11-3.

**Robert J. Bauman**  
**Chief Justice**