



Effective Date: 2021/03/01

Number: FPD - 17

Title:

Practice Direction

Divorce Applications

Summary:

FPD - 15 - *Divorce Applications* dated June 25, 2020 is rescinded.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 a divorce order 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*:
 - a. a joint affidavit in Form F38 must be sworn after the Notice of Family Claim has been filed; or
 - b. if affidavits in Form F38 are 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. An application based on an allegation of cruelty must be supported by sufficient evidence.

Spousal Support

8. 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:
 - a. the applicant's financial circumstances with attached Form F8 financial statements and reasons for entitlement to support;
 - b. specific amount of support claimed;
 - c. the other spouse's income, assets, and financial means so far as it is within the knowledge of the applicant; and
 - d. proof that the spouse against whom an order is sought is aware of the amount of support being claimed and that they have 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 orders under the *Divorce Act* for parenting time, allocation of decision-making responsibilities or contact with a child and orders under the *Family Law Act* for guardianship, parenting time, allocation of parental responsibilities, or contact with a child, 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, in accordance with s. 12(2)(b) of the *Divorce Act*, 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.

Applications under Rule 11-3

12. The applicable Child Support Affidavit in Form F37, Form F36 signed by the registrar, and, if applicable, Form F102 (see Supreme Court Family Rule 15-2.2) must accompany all divorce applications made pursuant to Supreme Court Family Rule 11-3.

Chief Justice C. E. Hinkson