**D. UNCONTESTED DIVORCES**

1. General
   1. Lawyers and self-represented parties are reminded of the requirements in *Rule* 70.19 of the *Rules of Civil Procedure*, which addresses motions for judgment where a divorce proceeding is not contested.
   2. Provided the court is satisfied the requirements in the legislative regime, and the *Rules*, have been complied with, the court may decline to require a hearing.
2. Certificates
   1. If the certificate of marriage filed in support of the motion is not signed by the Director of Vital Statistics for Prince Edward Island, the petitioner’s affidavit must refer to the certificate by title, date and place, name and office of issue, and state that it contains the correct particulars.
   2. The original marriage certificate, or a notarized copy of the original marriage certificate, must be filed with the court. If there are children of the marriage, a birth certificate for each child, or notarized copies of birth certificates, must also be filed.
   3. If the certificate of marriage filed in support of the motion, or the birth certificates of any children of the marriage, are in a language other than English or French, the certificate(s) must be translated by a certified translator into either English or French. The original certificate (or a notarized copy), as well as the certified translated copy of the certificate, must be filed.
3. Children

The affidavit in support of the motionis to clearly indicate if there are, or are not, children of the union. If there are children of the union, the affidavit is to state the names and dates of birth of the children and indicate whether each child remains a “child of the marriage” as defined in s. 2(1) of the *Divorce Act,* RSC 1985, Cap. 3.

1. Division of Property/Equalization
   1. Lawyers and self-represented parties are reminded that if the parties have reached a suitable division of property, either by formal or informal agreement, or if there is to be no division of property, *Rule* 70.19(5)(i) provides the petitioner’s affidavit must state that they do not wish to claim division at this time and that they understand they may be barred from doing so later.
   2. Any settlement of division of property shall be referred to in the petitioner’s affidavit and any such agreement shall be filed with the court (for example, a separation agreement or memorandum of settlement).
   3. Where a petitioner claims an equalization of net family property, and the respondent does not file an Answer, the petitioner may request that the respondent be noted in default. A hearing will generally be required in order to seek an order for equalization. In such a case the petitioner may request a date for a motion. Notwithstanding the default, the court may in its discretion require notice of the motion be provided to the respondent.
   4. The petitioner is to provide detailed proof of the value of the family property, including for example, appraisals of real property, valuation of pensions, etc. An exact proposed equalization should be sought, with supporting evidence. A Statement of Property Form 70 I(D) is to be filed.
2. Divorce Judgment
   1. All requested terms (i.e. relief sought) in proposed judgments must be consistent with the relief sought in the divorce petition. Therefore, the petitioner is to cross-check the proposed judgment with the petition for accuracy.
   2. Divorce judgments are not to contain clauses which purport to oust or restrict the court's jurisdiction to review or vary spousal or child support provisions in the future.
   3. Lawyers and self-represented parties are reminded that the court is required to follow the governing statutes in terms of subject matter to be included in a divorce judgment. Therefore, unenforceable excerpts from a separation agreement or memorandum of settlement are not to be included in a divorce judgment.
   4. If the parties reach a settlement at any stage in a proceeding and plan to file a Consent Divorce Judgment, supporting documents must be filed with the Consent Divorce Judgment. The supporting documents include a Notice of Motion for Judgment, the petitioner’s affidavit (or respondent’s affidavit as the case may be), and the Registrar’s Certificate, unless the court directs otherwise.
   5. A divorce judgment will not be issued unless birth certificates for all dependent children of the marriage are filed. This is so the deputy registrar can ensure that the names and birth dates of the children on the divorce judgment are the same as on the birth certificate.