

RULE 71**FAMILY LAW PROCEEDINGS****APPLICATION OF THE RULE**

71.01 Rules 71.02 to 71.12 apply to proceedings under the *Family Law Act* and the *Children's Law Act*.

DEFINITIONS

71.02 In Rules 71.03 to 71.12,

- (a) "applicant" includes a plaintiff;
- (b) "contact order" has the same meaning as in Rule 70.02(c);
- (c) "financial statement" means one or more of Forms 70 I(A) through 70 I(D) that is directed to be filed by a judge or the Rules;
- (d) "parenting order" has the same meaning as in Rule 70.02(h);
- (e) "respondent" includes a defendant; and
- (f) "responding document" means a statement of defence, defence to counterclaim or affidavit in opposition to an application.

ORIGINATING PROCESS**Claim for Relief**

- 71.03** (1) An originating process that contains a claim for support or division of property shall set out the nature of relief claimed.
- (1.1) An originating process pursuant to the *Children's Law Act* must:
- (a) include a statement by the party certifying that they are aware of their duties under section 3 of the *Children's Law Act*; and
 - (b) if the party has a lawyer, include a statement by the lawyer certifying that they have complied with section 4 of the *Children's Law Act*.
- (1.2) A document that responds to an originating process pursuant to the *Children's Law Act* must:
- (a) include a statement by the party certifying that they are aware of their duties under section 3 of the *Children's Law Act*; and
 - (b) if the party has a lawyer, include a statement by the lawyer certifying that they have complied with section 4 of the *Children's Law Act*.
- (1.3) An originating process under the *Children's Law Act* in which a party seeks a child support order, contact order or parenting order must address questions 37 to 40 of the Petition for Divorce (Form 70 A) ("Other court proceedings or orders"), with necessary modifications.

Application by Government Agency

- (2) Where an application is made pursuant to s. 33(3) of the *Family Law Act* the originating process shall be served on the defendant.

Case Management Conference

- (3)(a) Within 45 days of the filing of the defence, the case management co-ordinator shall set a date for a case management conference with a judge.
- (b) Following each case management conference, the court shall provide to the parties a case management conference report which shall include any directions provided by the judge at the case management conference.

FINANCIAL STATEMENTS**Where required**

- 71.04** (1) Where an order is sought for a division of property, support or variation of support, the parties shall file a financial statement as directed by the case management conference judge, which shall include the specific form or forms to be filed and the required time for filing.
- (2) Revoked.
- (3) Revoked.
- (4) Revoked.

~~Registrar to Refuse Documents Unless Accompanied by Financial Statements~~

- (5) Revoked.

Order for Delivery

- (6) Where a respondent fails to comply with a direction by the court to file a financial statement, the applicant may move without notice for an order requiring the delivery of a financial statement within a specified time.
- (7) In a proceeding in which a claim is made for a parenting order, the court may order the parties to deliver financial statements within a specified time.

Subrule 70.14(8) to (13) Apply

- (8) Subrules 70.14(8) to (13) (particulars, failure to deliver, cross-examination, duty to correct) apply, with necessary modifications, to financial statements referred to in subrules (1) to (7).

Financial Statement

- (9) Revoked.

Divorce Action

- (10) Where a claim under the *Family Law Act* or the *Children's Law Act* is made in a divorce action, the obligations of the spouses respecting financial statements are governed by Rule 70.14.

PLACE OF HEARING

- 71.05** (1) An applicant who makes a claim for a parenting order or contact order in respect of a child who habitually resides in Prince Edward Island shall name in the originating process the place of hearing, Charlottetown or Summerside, whichever is closest to where the child habitually resides.
- (2) Where a claim referred to in subrule (1) is made in a divorce action, the place of trial is governed by Rule 70.17.
- (3) The hearing shall be held at the place named in the originating process unless an order is made under Rule 46.02 to change the place of hearing, and for the purpose of changing the place of hearing an application shall be treated as an action.

DIRECTOR OF CHILD PROTECTION'S REPORT

- 71.06** Subrules 70.16(1) to (13) (Children and Director of Child Protection's Report) apply, with necessary modifications, to proceedings under the *Children's Law Act* and applications for a victim assistance order or variation of an emergency protection order under the *Victims of Family Violence Act*.
- 71.06.1** Where the proceeding referred to in Rule 71.06 is an application for a victim assistance order or variation of an emergency protection order, the Director of Child Protection shall
- (a) provide the notice required by Subrule 70.16(4) within three days of the application for variation being filed; and
- (b) if the Director intends to intervene, file the report referred to in Subrule 70.16(8) within 14 days of receiving notice of the application.

REFERENCE TO A FAMILY MEDIATOR OR CLINICIAN

71.07 Rule 70.21 (reference to mediator or clinician) applies, with necessary modifications, to any question or issue arising under the *Family Law Act* and the *Children's Law Act*.

INTERIM RELIEF

71.08 Rule 70.15 (interim relief) applies, with necessary modifications, to a motion for interim relief in a proceeding under the *Family Law Act* or the *Children's Law Act*.

VARIATION APPLICATION

71.08.1 A person who wishes to vary, suspend or rescind a final support order under the *Family Law Act*, or a final parenting order, contact order, or support order under the *Children's Law Act*, shall do so by Notice of Application (Form 14 E).

71.08.2 Rule 70.23(1.1), and (6.1) to (7) (variation of final order) applies, with necessary modifications, in respect of a support order made under the *Family Law Act* or the *Interjurisdictional Support Orders Act* or an order made under Part 5 (care of and time with children) or Part 6 (child support) of the *Children's Law Act*.

WARRANT FOR ARREST

71.09 A warrant for the arrest of a debtor referred to in the *Family Law Act* shall be in Form 71 A.

RECOGNIZANCE

71.10 A recognizance required by an order made under the *Family Law Act* or the *Children's Law Act* shall be in Form 71 B and shall be entered into before the Registrar or such other person as a judge directs.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

71.11 Revoked.

REQUEST BY EXTRA-PROVINCIAL TRIBUNAL FOR EVIDENCE IN CUSTODY CASES**Issuing Summons to Give Evidence**

71.12 (1) Where the Attorney General refers a request of an extra-provincial tribunal to the court under section 76 of the *Children's Law Act*, the registrar shall issue a summons in Form 71 E requiring the person named in the request to produce or give evidence in accordance with the request.

Service of Summons

- (2) The summons and a copy of the request of the extra-provincial tribunal and any supporting material that accompanied the request shall be served on the person named in the request, personally and not by an alternative to personal service, at least five days before the person is required to produce or give evidence.
- (3) Where the person named in the request is not a party to the proceeding before the extra-provincial tribunal and the summons requires the person to give oral evidence, attendance money calculated in accordance with Tariff A shall be paid or tendered to the person when the summons is served.
- (4) A copy of the summons shall be served on the Attorney General within the time prescribed by subrule (2).

Affidavit Evidence

- (5) Where the summons does not require the person to give oral evidence, the person may file with the registrar the evidence required, verified by the person's affidavit.

Oral Evidence

- (6) Where the summons requires the person to give oral evidence, the person shall attend before

a judge or officer of the court, as set out in the summons, to be examined in accordance with the summons.

Evidence to be Sent to Extra-Provincial Tribunal

- (7) The registrar shall send to the extra-provincial tribunal a certified copy of evidence produced or given under this rule.

Sanctions for Disobeying Summons

- (8) Subrules 53.04(7) and (8) apply, with necessary modifications, to a person who after having been served in accordance with subrules (2) and (3) fails to comply with the summons.