



Effective Date: 2010/07/01

Number: FPD - 3

Title:

Practice Direction

Divorce Applications

Summary:

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.

Maintenance and Support

8. Subject to paragraph 9 of this direction, maintenance provisions set out in the draft order should be drawn as follows:
 - a. where there are no special terms of child maintenance, in the form of the Order (or Consent Order) attached as Schedule A to this direction, or
 - b. where there are special terms ordered by the court, in accordance with that order.
 - c. 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:
 - d. the need of the applicant (with attached financial statements) and a specific amount of support claimed
 - e. the other spouse's income and capital so far as it is within the knowledge of the applicant; and
 - f. 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.

Custody

9. If there is a claim of custody, in addition to the information required under paragraph 9 of Form F38, the following information should be provided in the affidavit:
 - a. particulars of the child(ren)'s present and proposed living arrangements and a summary of the custodial history of the child(ren), to the date of the affidavit; and
 - b. if the other parent agrees to a custody 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.

Additional forms of order (suggested only)

13. To assist in preparing orders to comply with the Federal Child Support Guidelines, suggested forms of orders are attached:
 - a. Order on Application (Interim) (see Schedule B)
 - b. Change Order (see Schedule C)

Robert J. Bauman
Chief Justice

Schedule A

FORM F52 (RULE 15-1 (1))

Court File No.:

Court Registry:

In the Supreme Court of British Columbia

Claimant:

Respondent:

FINAL ORDER

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

| | | |
|-----------------------|---|-----------------------|
| |) | |
| |) | |
| BEFORE THE HONOURABLE |) | |
| |) |[dd/mmm/yyyy].... |
| MR. /MADAM JUSTICE |) | |
| |) | |
| |) | |

This family law case coming on

for trial at, on[dd/mmm/yyyy]....., and on hearing, [the lawyer for] the claimant and, [the lawyer for] the respondent,

for summary trial under Rule 11-3 of the Supreme Court Family Rules,

as an undefended family law case without an oral hearing under Rule 10-10 of the Supreme Court Family Rules,

and on considering the evidence put forward;

THIS COURT ORDERS that

Divorce Order *[Check this box and complete the required information if a divorce is granted.]*

Subject to section 12 of the *Divorce Act* (Canada), the claimant,[name]....., and the respondent,[name]....., who were married at[place]..... on[dd/mmm/yyyy]....., are divorced from each other, the divorce to take effect

on the 31st day after the date of this order

on[dd/mmm/yyyy].....

Other Orders *[If orders other than or in addition to divorce orders are made, check this box and set out, in numbered paragraphs, the terms of all orders other than divorce orders. If any of the orders are by consent, indicate that fact by adding the words "By consent" to the beginning of the description of the order.]*

1. *[Order for custody, guardianship and access, specifying the enactment relied upon]*

2. *[Order for child support, specifying the enactment relied upon]*

[Choose and insert relevant provisions]

[Standard Child Support Preamble]

UPON the ...*[description and name of party]*..., Payor, having been found to have a Guideline Income of \$..... and *[if applicable]* the ...*[description and name of party]*..., having been found to have a Guideline Income of \$.....:

Pursuant to: *[indicate the statute under which the order is made]*

the Divorce Act *[or]*

the Family Relations Act,

the ...*[description and name of party]*..., Payor, shall pay to the ...*[description and name of party]*, Recipient, the sum of \$..... per month for the support of the child(ren), ...*[set out name(s) and birthdate(s)]*..., payable on the day of each and every month, commencing on ...*[dd/mm/yyyy]*... and continuing for so long as ...*[choose one or the other]*... the child(ren) is/are a child/children of the marriage" as defined in the *Divorce Act* *[or]* the child(ren) is/are a child/children as defined in the the *Family Relations Act*.

[Additional Expenses]

The ...*[description and name of party]*..., Payor, shall pay to the ...*[description and name of party]*..., Recipient, the sum of \$..... per month for additional expenses for the child(ren), payable on the day of each and every months, commencing on ...*[dd/mm/yyyy]*... and continuing for so long as ...*[set out contingency, if any, which determines when these payments will cease]*..., allocated as follows:

| Child | Nature of Additional Expenses | Amount |
|---|--|---|
| <i>[name of child to whom additional expenses relate]</i> | <i>[type of special or extraordinary expense under s. 7 of the Guidelines]</i> | <i>[Amount of Payor's contribution]</i> |

[Undue Hardship]

The ...*[description an name of party]*..., Payor, having satisfied the Court that payment of the full amount of child support prescribed in the Federal/Provincial Child Support Guidelines *[as applicable]* would cause him/her undue hardship due to *[set out factor which contributes to hardship]*, shall pay to the

...[description and name of party]..., Recipient, for the support of the child(ren), ...[set out name(s) and birthdate(s)]..., payable on the day of each and every month, commencing on ...[dd/mm/yyyy]... and continuing up to and including ...[dd/mm/yyyy]...

[and]

The child support shall be reviewed in [month and year set for review], it being determined that the cause of the undue hardship should be eliminated by that date.

[or]

Commencing on ...[dd/mm/yyyy]... the [description and name of party] shall pay the amounts prescribed the the Federal/Provincial Child Support Guidelines [as applicable], namely \$.....

[Child Over Age of Majority]

The ...[description and name of party]..., Payor, shall pay to the ...[description and name of party]..., Recipient, the sum of \$..... per month for ...[name of child]..., a child over the age of majority, payable on the day of each month, commencing ...[dd/mm/yyyy]... and continuing for so long as [set out contingency upon which payments will cease].

[Medical and Dental Coverage]

The ...[description and name of party]..., Payor, shall provide medical and dental insurance coverage for the child(ren) for so long as it is available through his/her employment.

3. [Order for spousal support, specifying the enactment relied upon]

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

[A signature line in the following form must be completed and signed by or for each approving party.]

.....
Signature of [] party [] lawyer for ...[name of party(ies)]...

.....[type or print name].....

.....
Signature of [] party [] lawyer for ...[name of party(ies)]...

.....[type or print name].....

By the Court.

.....
Registrar

Schedule B

FORM F51 (RULE 15-1 (1))

Court File No.:

Court Registry:

In the Supreme Court of British Columbia

Claimant:

Respondent:

ORDER ON APPLICATIONS (INTERIM)

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

| | | |
|-------------------------|---|-----------------------|
| |) | |
| |) | |
| BEFORE |) | |
| |) | |
| THE HONOURABLE JUSTICE |) | |
| or A JUDGE OF THE COURT |) |[dd/mmm/yyyy].... |
| |) | |
| or |) | |
| |) | |
| MASTER |) | |
| or MASTER OF THE COURT |) | |

ON THE APPLICATION of[party(ies)].....

[] coming on for hearing at on[dd/mmm/yyyy]..... and on hearing[name of party/lawyer]..... and[name of party/lawyer].....;

[] without notice coming on for hearing at on[dd/mmm/yyyy]..... and on hearing[name of party/lawyer].....;

[] without a hearing and on reading the materials filed by[name of party/lawyer]..... and[name of party/lawyer].....;

AND UPON the ...[description and name of party]..., Payor, having been found to have a Guideline Income of \$..... and [if applicable] the ...[description and name of party]..., Recipient, having been found to have a Guideline Income of \$.....:

AND UPON the Court being advised that the name and birthday of each child is as follows:

| Name | Date of Birth |
|--|-----------------------|
| <i>[list the full legal names of each child]</i> | <i>[dd//mm//yyyy]</i> |

THIS COURT ORDERS that:

[Standard custody, guardianship and access provisions]

[Standard child support payment clause]

Pursuant to *[specify the statute under which the order is made]*

the *Divorce Act* *[or]*

the *Family Relations Act*,

the *...description and name of party*..., Payor, shall pay to the *...[description and name of party]...*, Recipient, the sum of \$..... per month for the support of the child(ren), *...[set out name(s) and birthdate(s)]...*, payable on the day of each and every month, commencing on *...[dd/mm/yyyy]...* and continuing for so long as *...[choose one or the other]...* the child(ren) is/are a child/children of the marriage” as defined in the *Divorce Act* *[or]* the child(ren) is/are a child/children as defined in the the *Family Relations Act*.

[Additional Expenses]

The *...[description and name of party]...*, Payor, shall pay to the *...[description and name of party]...*, Recipient, the sum of \$..... per month for additional expenses for the child(ren), payable on the day of each and every months, commencing on *...[dd/mm/yyyy]...* and continuing for so long as *...[set out contingency, if any, which determines when these payments will cease]...*, allocated as follows:

| Child | Nature of Additional Expenses | Amount |
|---|--|---|
| <i>[name of child to whom additional expenses relate]</i> | <i>[type of special or extraordinary expense under s. 7 of the Guidelines]</i> | <i>[Amount of Payor’s contribution]</i> |

[Undue Hardship]

The *...[description an name of party]...*, Payor, having satisfied the Court that payment of the full amount of child support prescribed in the Federal/Provincial Child Support Guidelines *[as applicable]* would cause him/her undue hardship due to *[set out factor which contributes to hardship]*, shall pay to the *...[description and name of party]...*, Recipient, for the support of the child(ren), *...[set out name(s) and birthdate(s)]...*, payable on the day of each and every month, commencing on *...[dd/mm/yyyy]...* and continuing up to and including *...[dd/mm/yyyy]...*

[and]

The child support shall be reviewed in [month and year set for review], it being determined that the cause of the undue hardship should be eliminated by that date.

[or]

Commencing on ...[dd/mm/yyyy]... the [description and name of party] shall pay the amounts prescribed the the Federal/Provincial Child Support Guidelines [as applicable], namely \$.....

[Child Over Age of Majority]

The ...[description and name of party]..., Payor, shall pay to the ...[description and name of party]..., Recipient, the sum of \$..... per month for ...[name of child]..., a child over the age of majority, payable on the day of each month, commencing ...[dd/mm/yyyy]... and continuing for so long as [set out contingency upon which payments will cease].

[Medical and Dental Coverage]

The ...[description and name of party]..., Payor, shall provide medical and dental insurance coverage for the child(ren) for so long as it is available through his/her employment.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

[A signature line in the following form must be completed and signed by or for each approving party.]

.....
Signature of [] party [] lawyer for ...[name of party(ies)]...

.....[type or print name].....

.....
Signature of [] party [] lawyer for ...[name of party(ies)]...

.....[type or print name].....

By the Court.

.....
Registrar

Schedule C

FORM F51 (RULE 15-1 (1))

Court File No.:

Court Registry:

In the Supreme Court of British Columbia

Claimant:

Respondent:

CHANGE ORDER

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

| | | |
|-------------------------|---|-----------------------|
| |) | |
| |) | |
| BEFORE |) | |
| |) | |
| THE HONOURABLE JUSTICE |) | |
| or A JUDGE OF THE COURT |) |[dd/mmm/yyyy].... |
| |) | |
| or |) | |
| |) | |
| MASTER |) | |
| or MASTER OF THE COURT |) | |

ON THE APPLICATION of[party(ies)]....., coming on before me on[dd/mmm/yyyy]....., and on hearing[name of party/lawyer]..... and[name of party/lawyer].....;

AND UPON the _____[description and name of party], Payor, having been found to have a guideline income of \$_____ and [if applicable] the _____[description and name of party], Recipient, having been found to have a guideline income of \$_____.

AND UPON the Court being advised that the name and birth dates of each child is as follows:

| Name | Date of Birth |
|--|---------------------------------------|
| <i>[list the full legal names of the children]</i> | <i>[list birth dates of children]</i> |

THIS COURT ORDERS that:

The Order of the Honourable Madam/Mr. Justice _____ made _____, _____ is hereby varied as follows:

(a) to delete the paragraph(s) of the said Order related to the payment of child support;

(b) to include the following in substitution therefor:

[Choose and insert applicable provisions]

[Standard child support payment clause]

The _____ *[description and name of party]*, Payor, shall pay to the _____ *[description and name of party]*, Recipient, the sum of \$_____ per month for the support of the child(ren), _____ *[set out name(s) and birthdate(s)]*, payable on the ____ day of each and every month, commencing on *[day] [month] [year]* and continuing for so long as *[choose one or the other]* the child is a “child of the marriage” as defined in the *Divorce Act* *[or]* the child is a “child” as defined in the *Family Relations Act*.

[Additional expenses]

The _____ *[description and name of party]*, Payor, shall pay to the _____ *[description and name of party]*, Recipient, the sum of \$_____ per month for additional expenses for the child(ren), payable on the ____ day of each and every month, commencing on *[day] [month] [year]* and continuing for so long as *[contingency if any which determines when these payments will cease]*, allocated as follows:

| Child | Nature of Additional Expenses | Amount |
|---|--|---|
| <i>[name of child to whom additional expenses relate]</i> | <i>[type of special or extraordinary expense under s. 7 of the Guidelines]</i> | <i>[amount of payor’s contribution]</i> |

[Undue Hardship]

The _____ *[description and name of party]*, Payor, having satisfied the Court that payment of the full amount of child support prescribed in the Federal/Provincial Child Support Guidelines *[as applicable]* would cause him/her undue hardship due to _____, shall pay to the _____ *[description and name of party]*, Recipient, for the support of the child(ren), _____, *[set out name(s) and birthdate(s) of child(ren)]*, the sum of \$_____ per month, payable on the ____ day of the month commencing up to and including *[day] [month] [year]*.

[and]

The child support shall be reviewed in *[month and year of date set for review]* it being determined that the cause of the undue hardship should be eliminated by that date.

[or]

Commencing on [day] [month] [year] the _____ [description and name of party], Payor, shall pay the amounts prescribed by the Federal/Provincial Child Support Guidelines [as applicable], namely \$_____.

[Child Over Age of Majority]

The _____ [description and name of party], Payor, shall pay to the _____ [description and name of party], Recipient, the sum of \$_____ per month for _____, a child over the age of majority, payable on the ___ day of each month, commencing on [day] [month] [year] and continuing for so long as [contingency upon which payments will cease].

[Medical and Dental Coverage]

The _____ [description and name of party], Payor, shall provide medical and dental insurance coverage for the child(ren) for so long as it is available through his/her employment.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONTENT (Or CONSENTED TO):

[A signature line in the following form must be completed and signed by or for each approving party.]

.....
Signature of [] party [] lawyer for ...[name of party(ies)]...

.....[type or print name].....

.....
Signature of [] party [] lawyer for ...[name of party(ies)]...

.....[type or print name].....

By the Court.

.....
Registrar