

SUPREME COURT FAMILY RULES

COMMENCING PROCEEDINGS: DISCLOSURE AND DISCOVERY

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I. FINANCIAL STATEMENTS

- 5-1(2) All or part of a Financial Statement in FORM F8 **must be completed** where a family law case includes a claim is made for:
1. *child support*;
 2. *spousal support*;
 3. *parental support*; or,
 4. the *division of assets* under Part 5 of the *FRA*.

NOTE: The parties who *must produce Financial Statements* and the parts they must complete are identified in subrules (4), (5), (6), (7) and (10). The parties who *must produce income documents* are identified in subrule (9).

- 5-1(28) If a party fails to comply with an obligation to produce a Financial Statement, financial documents or particulars the court may:
1. *order compliance* on terms;
 2. *dismiss* all or part of a claim or a defence to a claim;
 3. *punish for contempt* of court;
 4. draw an *adverse inference* against the party, including attributing income to the party; or,
 5. make an order as to *costs*.

NOTE: See Rule 21-5 regarding the *consequences of noncompliance* with the rules and Rule 21-7 regarding *contempt of court*.

- 5-1(2) Financial Statements are **not required** where the only claims are for the division of pensions under Part 6 or to an interest in property under the *common law* or under legislation *other than the FRA*.

- 5-1(8) Where the parties file an Agreement as to Annual Income in FORM F9 they are deemed to have complied with the disclosure requirements of the CSG and a Financial Statement is **not required** for child support purposes.

- 5-1(29) Documents produced pursuant to Rule 5-1 are subject to a **limited confidentiality**.

COMMENCING PROCEEDINGS

- 5-1(11) A party *making a claim* requiring a Financial Statement must file and serve Financial Statement **within 30 days** of service of the claim.
- 5-1(11) A party *responding to a claim* requiring a Financial Statement must file and serve Financial Statement
1. if resident in *Canada or the USA*, **within 30 days** of service of the claim
 2. if resident *elsewhere*, **within 60 days** of service of the claim

JUDICIAL CASE CONFERENCES

- 7-1(8), 7-1(10) A party *requesting a JCC* must serve a *Financial Statement* **at least 30 days** before the date set for the JCC; the original Financial Statement must be *filed* **at least 7 days** before the JCC.
- 7-1(11) A party *served with a JCC request* must file and serve a *Financial Statement* **at least 7 days** before the JCC.

PARTICULARS AND FURTHER DOCUMENTS

- 5-1(13) A party may **demand particulars** if a party's Financial Statement "lacks sufficient information."
- 5-1(14) If particulars of a Financial Statement are *not produced* **within 7 days** of a demand, the court may order that:
1. *particulars* within a certain time; or,
 2. *a new Financial Statement* be served within a certain time.
- 5-1(19) A party may **demand production of additional documents** if the other party's Financial Statement discloses business interests where the documents are necessary to:
1. *value* the business interest; or,
 2. *determined* the party's *income*.
- 5-1(22), 5-1(24) Demands for documents relating to a party's business interest *must be complied with* **within 21 days** of the demand; applications for exemption from a disclosure demand must be made **within 21 days** of service of the demand.

OBLIGATION TO KEEP CURRENT

- 5-1(15), 5-1(16) Where there is a *material change* in a party's circumstances:
1. which makes the information in a Financial Statement incorrect, the party must **promptly** notify the other party of the change or provide a revised Financial Statement; or,
 2. which requires the production of additional documents, the additional documents must be served **within 28 days** of the change

- 5-1(18) Where a party's *most recent Financial Statement* will have been served **more than 91 days** before hearing or trial, the party must produce an *updated Financial Statement* **63 to 28 days before** the trial or hearing.

II. LISTS OF DOCUMENTS

- 9-1(1) The parties to a family law case **must produce** Lists of Documents in FORM F20 unless:
1. the parties *agree to waive* the requirement; or,
 2. the *court otherwise orders*.

NOTE: A party may not put a document in evidence that has not been disclosed or produced for inspection under this rule. [9-1(18)]

- 9-1(1)(b) A party *serving* a Notice of Family Claim must serve a List of Documents **within 35 days** of being served with a *Response to Family Claim*.

- 9-1(1)(b) A party *replying to a claim* must serve a List of Documents **within 35 days** of serving his or her *Response to Family Claim* or *Response to Counterclaim*.

- 9-1(12), 9-1(13) A party preparing a List of Documents must allow the other party to inspect and obtain copies of the listed documents during business hours.

NOTE: The court may make an *order for the inspection and copying of documents* on terms it thinks appropriate, including documents in the possession of non-parties. [9-1(14), 9-1(15)]

PARTICULARS AND FURTHER DOCUMENTS

- 9-1(5) The court may order a party to prepare an **affidavit verifying** a List of Documents.
- 9-1(7), 9-1(8) Where a party believes a List of Documents is *incomplete*, the party may **demand the production** of a Supplementary List of Documents
- 9-1(9), 9-1(10) Demands for *Supplementary Lists of Documents* must be complied with or refused with an explanation **within 35 days** of receipt of the demand or the requesting party may apply for an order for compliance.

OBLIGATION TO KEEP CURRENT

- 9-1(6) If a List of Documents becomes *inaccurate* or *incomplete*, the party preparing the list must **promptly** serve a *Supplementary List of Documents*.

III. EXAMINATIONS FOR DISCOVERY

- 9-2(1), 9-2(12) A party may examine for discovery *any party* to a family law case **who is adverse in interest** by serving an Appointment to Examine for Discovery in FORM F21.

NOTE: This rule applies to persons living outside British Columbia. [9-2(23)]

- 9-2(5) Where a party is *not an individual*, the examining party **may examine a representative of the examinee** who is knowledgeable about the matters at issue.
- 9-2(7) Where a party is *an infant*, the examining party **may examine the guardian ad litem**.
- 9-2(8) Where a party is *mentally incompetent*, the examining party **may examine the guardian ad litem** or **committee**, or, with leave, the mentally incompetent person him- or herself.

TIME FOR DISCOVERY

- 9-2(2) Examinations for discovery **cannot exceed 5 hours**, or any greater period to which the examinee consents, without leave.
- 9-2(3) On an **application to extend the time** for an examination for discovery, the court *must* consider:
1. the *examinee's evasiveness or unresponsiveness*, and the examinee's *failure to provide complete answers*;
 2. the examinee's *unreasonable refusal to make admissions*;
 3. the *conduct of the examining party*;
 4. whether it is *possible to complete* the examination for discovery within 5 hours; and,
 5. the *number of parties and examinations for discovery*, and the "*proximity of the various interests* of those parties."

SCHEDULING DISCOVERIES

- 9-2(12), 9-2(24) Appointments to Examine for Discovery must be served, *with witness fees*, **at least 7 days** before the examination for discovery.

NOTE: Witness fees are set out at Schedule 3 of Appendix C to the SCFR.
Witness fees are *non-attachable*. [9-2(14)]

- 9-2(13) Examinations for discovery are to take place **within 30km of the court registry** closest to residence of the examinee, unless the parties *otherwise agree* or the *court orders*.

IV. PRE-TRIAL EXAMINATIONS

- 9-4(1) With leave, a party may **examine a non-party** who may have evidence material to a matter at issue.

NOTE: This rule *does not apply to experts retained by an opposing party*, unless the evidence cannot be obtained by other means. [9-4(2)]

NOTE: This rule applies to persons living outside British Columbia. [9-2(23), 9-4(10)]

- 9-4(3), 9-4(4) Applications for leave are made through the *usual application process* and the *proposed examinee must be served* with the application materials

TIME FOR EXAMINATION

- 9-4(9) Examinations by all parties **cannot exceed 3 hours** in total without leave.

SCHEDULING EXAMINATIONS

- 9-4(5), 9-4(7) Where leave is granted, a Subpoena to Witness in FORM F23 must be *served on all parties at least 7 days* before the date of the examination.

V. DEPOSITIONS

- 9-7(1), 9-7(14) With leave or by consent, **a person may be examined and cross-examined**, before or during trial, so that the person's *evidence will be available at the trial*.

NOTE: This rule applies to persons living outside British Columbia. [9-7(8)]

- 9-7(3) At an **application for leave**, the court *must* consider:
1. the *convenience* of the examinee;
 2. the possibility that the examinee will *not be available to testify* at trial;
 3. the possibility of having the examinee give evidence at trial by *video conferencing* or other means; and,
 4. the *cost* of bringing the examinee to the trial.

- 9-7(4) The court may impose **limits** on the *examination and cross-examination* of a person under this rule.

SCHEDULING DEPOSITIONS

- 9-7(13) Where leave is granted, a Subpoena to Witness in FORM F23 must be *served on all parties at least 7 days* before the date of the examination.

- 9-7(7) Depositions are to take place **within 30km of the court registry** closest to residence of the examinee, unless the parties *otherwise agree* or the *court orders*.

NOTE: See subrules (9) to (12) regarding the deposition of persons living outside British Columbia.

VI. INTERROGATORIES

- 9-3(1), 9-3(4) Discovery may be obtained by Interrogatories in FORM F22 *only with leave or the agreement of the examinee*. The court may impose terms in granting leave.

- 9-3(4) An *affidavit in answer* must be served **within 21 days** of service of Interrogatories.

- 9-3(7) The examining party **may apply for an order** that the examinee provide a *further answer by affidavit or on oral examination* where the examinee's answer is insufficient.

OBJECTIONS

- 9-3(6) An examinee **may object to answering** an interrogatory on the basis of *privilege or irrelevancy* in the examinee's affidavit in answer.
- 9-3(8) An examinee **may apply to have an interrogatory struck** on the basis that the interrogatory *will not further the object* of the SCFR.

OBLIGATION TO KEEP CURRENT

- 9-3(11) If an examinee learns that an answer given to an interrogatory is *incomplete or inaccurate*, the examinee **must serve** an affidavit deposing to the *complete or correct answer*.

VII. ADMISSIONS

- 9-6(1) A party may **request another party to admit** the *truth of a fact* or the *authenticity of a document* by serving a Notice to Admit in FORM F24.
- 9-6(2) A party *must serve a written response* **within 14 days** of service of a Notice to Admit or the requested admissions will be **deemed admitted**.
- 9-6(5) A party **may not withdraw an admission** except *by consent or with leave*.

NOTE: Admissions in this subrule include admissions made consequent to a Notice to Admit as well as admissions made in *pleadings, Petitions* and *Responses to Petition*. [9-6(5)(c)]

VIII. EXAMINATION AND INSPECTION

PERSONS

- 9-5(1), 9-5(2) The court **may order** a person to *submit to one or more physical or psychological exams* when the person's *physical or mental condition is at issue*.

NOTE: The court may authorize a person to enter on any land or building to carry out an order made under Rule 9-5. [9-5(5)]

NOTE: This rule applies to persons living outside British Columbia. [9-2(23), 9-5(6)]

- 9-5(3) The examiner **may ask any relevant question** concerning the *history* of the examinee's *physical or mental condition*.

PROPERTY

9-5(4) The court **may order** property to *be produced for inspection, examination and testing*.

NOTE: The court may authorize a person to enter on any land or building to carry out an order made under Rule 9-5. **[9-5(5)]**

NOTE: This rule applies to property located outside British Columbia. **[9-5(6)]**