

The new Provincial Court Family Rules

Surrey and Victoria
Provincial Court Registries

Recorded on February 2, 2022





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Legal Aid BC



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Provincial Court Family Rules

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Introduction

- On **May 17, 2021**, a new set of Provincial Court Family Rules started to take effect. The Rules intend to take a holistic approach to family disputes and encourage people to resolve disputes outside of court hearings.
- The rules apply in Provincial Court to: *Family Law Act* (FLA) family law matters (parenting arrangements, child support, contact with a child, guardianship of a child, spousal support);
 - protection orders under the *Family Law Act*;
 - priority parenting matters;
 - relocation;
 - and enforcement, including enforcement of support orders under the *Family Maintenance Enforcement Act*.
- The PCFR does **not** apply to child protection matters, adoption, divorce, property, or pension division.

Major Objectives

Encourage	early out-of-court resolution where appropriate
Minimize	conflict and promote co-operation between the parties
Make	court processes and court forms user friendly
Make	each court appearance meaningful and productive

Key Points

- New Forms to use for specific applications
- **First steps are different based on the registry.** If filing an application for parenting arrangements, support matters, contact, guardianship, consider what steps you need to take at your particular registry before the first court appearance.
- Streamlined Court Processes. For example:
 - Family Management Conferences (FMCs) vs. First Appearances under the old PCFR
 - Trial procedure

Where to File

An Application must be filed in:

- The registry where there is an existing case with the same parties (if applicable)
- If the matter involves a child related issue, the registry closest to where the child lives most of the time
- If the matter does not involve a child related issue, the registry closest to where the party seeking to resolve the matter lives most of the time

Types of Registries

Early Resolution Registry (Part 2)

- Surrey & Victoria
- Before starting a court application, file a notice of intention to resolve a family law matter
- Participate in a needs assessment
- Complete a parenting education program
- Participate in consensual dispute resolution if appropriate

Family Justice Registry (Part 6)

- Kelowna, Nanaimo, Vancouver (Robson Square)
- Participate in needs assessment
- Complete a parenting education program
- Voluntary consensual dispute resolution

Parenting Education Program Registry (Part 7)

- Abbotsford, Campbell River, Chilliwack, Courtenay, Kamloops, New Westminster, North Vancouver, Penticton, Port Coquitlam, Prince George, Richmond, and Vernon
- Complete a parenting education program
- Voluntary participation in a needs assessment and consensual dispute resolution

Early Resolution & Case Management Model

The Early Resolution & Case Management Model utilizes existing family justice services, such as assessment, mediation, and parenting education, but moves the referral to those services early in the process.

The Early Resolution and Case Management Model is operational in Surrey and Victoria as of December 7, 2020 for Family Law Act matters filed in those registries. Family justice services related to this initiative are provided through the Surrey Justice Access Centre and the Victoria Justice Access Centre

The model helps families focus on earlier, more collaborative resolution. Where issues aren't fully resolved, they will be clarified and narrowed, and families will be better prepared to proceed.

Applying for Orders (Part 3)

Application About a Family Law Matter

Filed when you are seeking new orders or applying to change or cancel existing orders or agreements
Application has schedules: complete and submit only the relevant schedules



Reply to an Application About a Family Law Matter (with Counter Application)

A reply must be filed **within 30 days** of being served with the Application About a Family Law Matter.



Reply to a Counter Application

A reply to a counter application must be filed **within 30 days** of you being served with the Reply to an Application About a Family Law Matter with Counter Application.

Family Management Conferences (Part 4)

- Family Management Conferences take the place of First Appearances (Family Remand) and are conducted by a judge.
- Intended to assist parties with certain orders while increasing trial readiness
- Rule 36: Judges are able to make interim orders (including orders without consent) to address needs until the parties resolve their family law matters
- Parties must meet the early resolution, needs assessment, or parenting education requirements (whichever applies) before a family management conference is scheduled by the registry
- The registry must schedule an FMC if a reply has not been filed, 30 days have passed, and the party, who filed the application, has completed the early resolution, needs assessment, or parenting education requirements

Applications for Other Orders: Replacing Notices of Motion (Part 5)

Protection Orders

Orders about Priority Parenting Matters

Orders About Relocation

Case Management Orders

Application for Consent Orders

Application About a Protection Order

- Form 12 for applying for, changing, or terminating a protection order under section 183 of the *Family Law Act* along with supporting evidence or documents
- Can be made with or without notice
 - If made with notice, then the application and supporting documents must be personally served on the other party at least 7 days' before the hearing
- Form 7 – Certificate of Service: adult serving the application must complete a certificate of service and provide it to the person applying for the order
- Order can be made even if one or more parties has not complied with the requirements for the registry at which the application is made
- Evidence can be given orally or by affidavit

Application About Priority Parenting Matters

- Can be made with or without notice
 - If made with notice, then the application and supporting documents must be personally served on the other party at least 7 days' before the hearing
- Form 7 – Certificate of Service: adult serving the application must complete a certificate of service and provide it to the person applying for the order
- Order can be made even if one or more parties has not complied with the early requirements for the registry at which the application is made
- Evidence can be given orally or by affidavit

What are Priority Parenting Matters?

- Rule 2 of the *PCFR* defines priority parenting matters as:
 - Matters about consent to medical decisions related to a child
 - Applications for passports or travel if delay will result in risk of harm to the child
 - Matters related to a change in location of a child's residence
 - Matters related to the removal of a child
 - Section 64 [*orders to prevent removal of a child*] of the *FLA*
 - Section 77(2) [*wrongful removal of a child*] of the *FLA*
 - Hague Convention Matters
 - Interjurisdictional Issues
 - Effective January 4, 2022, includes orders under section 45 [*orders respecting parenting arrangements*] or 51 [*orders respecting guardianship*] of the *FLA* where there are *CFCSA* proceedings and the child may be r has been removed, is no longer under an interim supervision order, or the director is seeking to enforce a supervision order after the protection hearing.

Application About a Relocation

- Rule 80 of the *PCFR*: applies if 1) a party is applying for an order respecting relocation under section 69 of the *FLA* **prohibiting** a relocation of a child AND 2) there is a written agreement or order for parenting arrangements
- Party applying to prohibit the relocation of a child must file and serve materials on the other party at least 7 days before the hearing date. These materials include:
 - Form 16 [*Application for Order Prohibiting the Relocation of a Child*];
 - Copy of the written agreement or order for parenting arrangements;
 - Notice of Relocation described in Section 66 of the *FLA*

Application for Case Management Orders

- More detailed rules regarding case management orders
- List of Case Management Orders in Section 62 of the *FLA*. Orders include:
 - Transferring court files from one registry to another
 - Access to court files;
 - Correcting or amending a filed document;
 - Setting a specified period for filing and exchanging court information;
 - Requiring that a parenting test be taken under section 33 of the *FLA*
- By consent: Form 10
- Without Notice and without consent: Form 11

Application for Consent Orders

- To apply for a consent order, you must file:
 - An application for a consent order in Form 17 (*Application for a Family Law Matter Consent Order*);
 - A draft consent order in Form 18 [*Consent Order*] signed by the parties or their lawyers;
 - Any additional documents required by applications for certain orders: see rule 25 and rule 26
- Application for Consent Orders about Case Management
 - If filing for a case management order by consent (Form 10), you can use the desk order process (i.e. file the order without a court appearance). Your application must include a draft consent order in Form 18 signed by the parties or their lawyers.

Family Settlement Conferences (Part 8)

- The purpose of a family settlement conference is to provide a process in which a judge helps the parties try to resolve any issues in dispute by agreement
- A judge who conducts a family settlement conference may conduct a trial in respect of the same issues only if no other judge is reasonably available to conduct the trial.

Trial (Part 9)

- Trial Readiness Statement (Rule 110)
- Trial Preparation Conferences (Division 3)
- Adjourning a trial date (Rule 114)
- Child's Evidence (Rule 115)
- Reports under section 211 of the *FLA* (Rule 116 & Rule 117)
- Expert Evidence Requirements
- Judges who start trial must continue (Rule 123)

Application About Enforcement (Part 10)

- Can enforce written agreements, determinations by parenting coordinators, extra provincial or foreign orders, and orders made by BC Supreme Court
 - Rule 135 outline requirements for filing an application for order about enforcement, which is Form 29
- Rule 139 outlines enforcement of support orders under *Family Maintenance Enforcement Act*

Consequences (Part 11)

- Applies where there is non-compliance with the rules and failure of party to attend court appearance
- Issuing and enforcing warrants for arrest
- Extraordinary remedies under section 231 of the *FLA*
 - Hearings
 - Form 38 Order for Imprisonment
 - Warrants related to orders for imprisonment
 - Suspension of extraordinary remedy and release of person

General (Part 12)

- Affidavit Evidence
- Rule 162 - Child's Lawyer
- Rule 163 - Party's Lawyer
- Rule 168 – Preparation of orders
- Division 4 – Service
- Division 5 - Changing a filed document
- Division 6 - Discontinuance
- Rules around Electronic Filing

Transition Provisions

- Part 13 of the *PCFR*
- Rule 196:
A pre-existing proceeding continues under and in accordance with the new rules as if it had been started under them
 - A step taken under the former rules in a pre-existing proceeding is deemed to have been taken under these rules
 - A form filed under the former rules must be treated as if it were the corresponding form under these rules for a similar purpose
 - A notice of motion filed under the former rules continues as if it were an application for an order or direction
 - If a form was filed but not served before the effective date of the rules, the form must be served in accordance with the requirements of the new rules