

What you need to know about the new Provincial Court Family Rules

Recorded on February 23, 2022





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Legal Aid BC



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Applying for orders



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PROVINCIAL COURT FAMILY RULES

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*I acknowledge my respect for and share my deepest gratitude to the Ktunaxa peoples
on whose homelands I am honoured to live and work.*

Agenda

1. Purpose and objectives of the Rules
2. Registry requirements
3. Applications
4. Applying for Orders
5. Family Management Conferences
6. Family Settlement Conferences
7. Trial Preparation Conferences

Purpose and Objective

- ▶ Came into force May 2021
- ▶ Encourage parties to resolve case by agreement
- ▶ Help parties reach just and timely decisions
- ▶ Acknowledge impact of conflict on child and family
- ▶ Minimize conflict
- ▶ Promote cooperation
- ▶ Create processes for resolution that are efficient and consistent with complexity of case

Family Law Matter

- ▶ Parenting arrangements
 - ▶ Guardianship
 - ▶ Parental Responsibilities
 - ▶ Residence of Children
 - ▶ Parenting Time
 - ▶ Contact
- ▶ Support
 - ▶ Child Support
 - ▶ Spousal Support
- ▶ Protection Orders

Rule 7 - Which Registry?

- ▶ Filing Registry should be:
 - ▶ A) if there is existing case, the registry where it is located;
 - ▶ B) if no existing case with the same parties, the registry closest to:
 - ▶ If case involves child-related issues, the residence where the child lives most of the time
 - ▶ If no child related issues, the residence of the person who first files document

Designated Registries

- ▶ Some locations have designated registries
 - ▶ Various requirements to complete parenting education program / needs assessment / consensual dispute resolution
- ▶ Early Resolution Registry: Surrey and Victoria
- ▶ Family Justice Registry: Kelowna, Nanaimo and Vancouver (Robson Square)
- ▶ Parenting Education Program Registry: Abbotsford, Campbell River, Chilliwack, Courtney, Kamloops, New Westminster, North Vancouver, Penticton, Port Coquitlam, Prince George, Richmond, and Vernon
- ▶ All other registries have no additional requirements

New Application Forms

Application About a Family Law Matter

- ▶ All new forms
 - ▶ First Person, question and answer format
 - ▶ Fill out only the schedules that apply
 - ▶ Provides ability to provide narrative in a meaningful way
- ▶ Sequence
 - ▶ Initiating party files Application (Form 3)
 - ▶ Other party files Reply with Counter Application (Form 6)
 - ▶ Initiating party files Reply to Application with Counter (Form 8)
 - ▶ Attend Family Management Conference

Application – Form 3

Make an application

7. I am applying for a court order about the following family law matter(s):

Select all options that apply, complete and attach the required schedule(s)

Parenting arrangements

- ☐ parenting arrangements – new *[complete and attach Schedule 1]*
including parental responsibilities and parenting time
- ☐ parenting arrangements order/agreement – existing *[complete and attach Schedule 2]*
including parental responsibilities and parenting time

Child support

- ☐ child support – new *[complete and attach Schedule 3]*
- ☐ child support order/agreement – existing *[complete and attach Schedule 4]*

Contact with a child

- ☐ contact with a child – new *[complete and attach Schedule 5]*
- ☐ contact order/agreement – existing *[complete and attach Schedule 6]*

Guardianship of a child

- ☐ appointing a guardian of a child *[complete and attach Schedule 7]*
- ☐ cancelling guardianship of a child *[complete and attach Schedule 8]*

Spousal support

- ☐ spousal support – new *[complete and attach Schedule 9]*
- ☐ spousal support order/agreement – existing *[complete and attach Schedule 10]*

Application Form

Parenting time

During parenting time, a guardian has the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control, and supervision of the child. Complete section 3 below only if you are applying for an order about parenting time. You may leave this section blank.

3. I am applying for an order about the allocation of parenting time as follows:

Select all options that apply and complete the required information. You may leave a section blank.

☐ I am asking for the child(ren) to spend time with me as follows:

☐ I am willing to have the following conditions placed on my time with the child(ren):

☐ I am asking for the child(ren) to spend time with the other guardian(s) as follows:

Application Form

- ▶ **[X] I am applying for the following other order term(s) about parenting arrangements:**
 - ▶ Communication
 - ▶ Exchange and transport
 - ▶ Location of residence
 - ▶ Travel out of province and out of Country
 - ▶ What happens if there are problems with parenting issues
 - ▶ How to make changes to parental responsibilities or parenting time

Application Form

- ▶ **Best Interests of Child**
- ▶ **[X] I believe the order about parenting arrangements I am applying for... is in the child(ren)'s best interests because:**
 - ▶ Child's emotional health and well-being
 - ▶ Child's views
 - ▶ Child's relationships with parents, guardians, and other important people
 - ▶ History of care
 - ▶ Impact of any family violence

Application: Child Support Schedule

4. The current support arrangements are as follows:

5. Select only one of the options below

- ☐ I do not know the income of the other party.
- ☐ I believe the other party's annual income is \$.

6. I know the following facts about the other party's employment, training, health and ability to work:

If you do not have any information, please leave this section blank.

About the order

7. ☐ I am applying for an order for ongoing support to be paid by (name of paying party)
in the monthly amount set out in the child support guidelines table for the following child(ren) identified in section 12 of this application:

List the name(s) of each child you are asking for support for

Application: Child Support Schedule

Calculations

10. *Select only one of the options below*

- ☐ I am attaching calculations showing how much child support I believe should be paid according to the child support guidelines
- ☐ I am not attaching calculations because:

Undue hardship

11. *Complete only if applicable. You may leave this section blank.*

- ☐ I am applying for an order to change the guideline amount payable because the guideline amount would cause me undue hardship for the following reason(s):

Note: If this option applies to your situation, you will need to complete the undue hardship portion of the Financial Statement, Part 4 and Part 5, in addition to any other required parts

- ☐ I have an unusual or excessive amount of debt I incurred to support the family prior to separation or to earn a living
- ☐ I have unusually high expenses to exercise parenting time or contact with the child(ren)
- ☐ I have a legal duty to support another person, such as an ill or disabled person or a former spouse
- ☐ I have a legal duty to support a dependent child from another relationship
- ☐ other undue hardship circumstances (*specify*):

Special and extraordinary expenses

12. *Select only one of the options below*

- ☐ I am not applying for an order for special and extraordinary expenses for the child(ren).
- ☐ I am applying for an order for special and extraordinary expenses under section 7 of the child support guidelines. The following special or extraordinary expenses (net of tax credits, subsidies, deductions, credits and contributions from the child(ren)) are included in my application for child support:

Application: Child Support Schedule

Name of Child: Special and Extraordinary Expense				
	Annual Amount	Annual Amount	Annual Amount	Annual Amount
Child care expenses	\$	\$	\$	\$
Portion of medical/dental premiums attributable to child	\$	\$	\$	\$
Health related expenses that exceed insurance reimbursement by at least \$100	\$	\$	\$	\$
Extraordinary expenses for primary or secondary school	\$	\$	\$	\$
Post-secondary school expenses	\$	\$	\$	\$
Extraordinary extracurricular activities expenses	\$	\$	\$	\$
Total	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

Financial statement

13. Select only one of the options below

☐ I am filing a Financial Statement in Form 4 with this application because the following applies to my situation:

Select all options that apply

- ☐ I am the payor
- ☐ there is split or shared parenting time
- ☐ there is a child 19 years old or over for whom support is being applied for
- ☐ a party has been acting as a parent to a child of the other party
- ☐ the paying parent earns more than \$150,000 per year
- ☐ there is an application for special or extraordinary expenses for a child
- ☐ I am claiming undue hardship

☐ I am not required to file a Financial Statement at this time as none of these situations apply to me

☐ I am required to file a Financial Statement but I am not able to complete it at this time. I am filing an Application for Case Management Order Without Notice or Attendance in Form 11 requesting to waive the requirement that this application be filed with a completed Financial Statement.

Application: Spousal Support Schedule

SCHEDULE 9 – SPOUSAL SUPPORT – NEW **This is Schedule 9 to the Application About a Family Law Matter**

Complete this schedule only if you are making a new application about spousal support.

Entitlement to spousal support

1. I believe that I am, or the other party is, entitled to spousal support for the following reason(s):

Select all options that apply

- ☐ there are economic advantages or disadvantages to the spouses arising from the relationship or breakdown of the relationship
- ☐ to share the financial consequences arising from caring for the children during the relationship, beyond the duty to provide support for the child
- ☐ to relieve economic hardship of the spouses arising from the breakdown of the relationship
- ☐ to help each spouse become financially independent within a reasonable period

Current arrangements

2. The current support arrangements are as follows:

Income and earning potential

3. My current employment situation, training, health and ability to work are as follows:

Application: Spousal Support Schedule

4. *Select only one of the options below*

- ☐ I do not know the income of the other party
- ☐ I believe the other party's annual income is \$ _____

5. I know the following facts about the other party's employment, training, health and ability to work:

If you do not have any information, please leave this section blank

About the order

6. I am applying for an order for spousal support to be paid by _____ as follows:
(name of paying party)

Select all options that apply and complete the required information

- ☐ in the amount of \$ _____ per month to commence on _____ until _____
(mmm/dd/yyyy) (mmm/dd/yyyy)
- ☐ in a lump sum of \$ _____
- ☐ other (specify): _____

Application (Form 3)

Other Schedules

- ▶ Change or Cancel / Replace or Set Aside Existing Agreement or Order
- ▶ Appointment of Guardians
 - ▶ Require Guardianship Affidavit and Supporting Documents / Criminal Record Check
 - ▶ Indigenous ancestry of children
 - ▶ Must serve the Nisga'a Lisims Government or the Treaty First Nation to which the child belongs with notice of this application as described in section 208 or 209 of the *Family Law Act*
 - ▶ The court must consider the Nisga'a laws and customs or the laws and customs of the treaty First Nation in making its decision

Reply Forms / Consent Order Form

- ▶ Reply to an application about a family law matter (Form 6, PFA715)
 - ▶ Counter Application
- ▶ Reply to a counter application (Form 8, PFA716)
- ▶ Application for a family law matter consent order (Form 17, PFA723)
 - ▶ Judge can:
 - ▶ Make the order (maybe with changes)
 - ▶ Ask for more information
 - ▶ Set court appearance or give directions (such as notice)
 - ▶ Reject with reasons

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Notice of Motion Replaced

Notice of Motion Replaced

- ▶ New set of application forms:
 - ▶ Application for **case management order** (Form 10) / (Form 11 - without notice)
 - ▶ Application about a **protection order** (Form 12)
 - ▶ Application about **priority parenting matter** (Form 15)
 - ▶ Application for order **prohibiting the relocation** of a child (Form 16)
 - ▶ Application about **enforcement** (Form 29)
 - ▶ Enforcing agreements or Orders (such as for denial of parenting time / arrears of support)
- ▶ Written Response to Application (form 19)
- ▶ Court Appearance on the matter
- ▶ Hearing on the matter

Application for Case Management Order Form 10

- ▶ File management and access
- ▶ Transfer file to another registry
- ▶ Correcting filed document (e.g. date of birth / name)
- ▶ Financial disclosure or document disclosure timelines
- ▶ Parentage Test - DNA paternity testing
- ▶ Attendance at or adjournment of Court appearance
- ▶ Waiving or Modifying requirements under the Rules
- ▶ Settling terms of order
- ▶ Conduct Orders
- ▶ S.211 Reports
- ▶ Subpoena / appointment of lawyer
- ▶ Cancelling Order made in absence of a party

Case Management Orders

- ▶ May be made at any time
- ▶ To manage a case
- ▶ To prepare for next steps
- ▶ The application must be made with notice to the other party
- ▶ If the other party agrees, can apply by consent and choose to have the application reviewed by a judge with or without attending a court appearance
- ▶ To give notice, each other party must be served with a copy of the application and any supporting documents

Application for Case Management Order without Notice or Attendance (Form 11)

- ▶ Allowing a person to attend a court appearance using another method of attendance;
- ▶ Waiving or modifying service
- ▶ Alternative method for the service of a document
- ▶ Waiving or modifying any other requirement under these rules
- ▶ Requiring access to information per section 242
- ▶ Recognizing an extra-provincial order other than a support order

Application About a Protection Order Form 12

- ▶ Order that protects one family member from another family member if there is a risk of family violence
- ▶ Includes conditions the person named in it must follow
 - ▶ Examples: do not contact or communicate directly or indirectly
- ▶ It is a criminal offense to disobey (breach) any conditions in the order
- ▶ Orders expire on the date a judge orders for it to end. If no specific end date, it expires one year after date ordered
- ▶ Can apply for yourself and/or your child, or on behalf of another adult

Protection Order Application

- ▶ Determine if you should apply without notice
- ▶ Normally need to give notice to the other party by having the application documents personally served on them
- ▶ Under some circumstances, may be without notice:
 - ▶ Example: in imminent danger of harm; or
 - ▶ providing notice in advance would probably create real risk of some danger or serious consequence

Protection Order Application

- The Schedule 1 Affidavit must be signed with a commissioner for taking affidavits

ABOUT THE PROTECTION ORDER

3. *Complete only if applicable. You may leave this section blank.*

I do not want the other party to be able to attend at, enter or be found at the following place(s):

Select all options that apply

- ☐ residence
- ☐ school
- ☐ place of employment
- ☐ child care facility
- ☐ Other (specify): _____

4. *Complete only if applicable. You may leave this section blank.*

The protected party may need to communicate with the other party for the following reason(s):

Select all options that apply

- ☐ consensual dispute resolution
- ☐ parenting arrangements
- ☐ ongoing court action
- ☐ other (specify): _____

5. I have concerns the other party would cause harm with or threaten to use guns, explosives or another kind of firearm

☐ Yes ☐ No

If yes, explain the reason(s) for your concerns.

Protection Order Application

6. I believe the other party owns or has access to guns, explosives or another kind of firearm ☐ Yes ☐ No

If yes, explain the reason(s) for your belief.

7. I have concerns the other party would cause harm with or threaten to use a weapon that is not a gun or explosive

☐ Yes ☐ No

If yes, explain the reason(s) for your concerns.

8. I believe the other party owns a weapon that is not a gun or explosive ☐ Yes ☐ No

Examples of weapons someone might own include swords, hunting knives, and nunchucks.

If yes, explain the reason(s) for your belief.

9. The protected party currently shares a residence with the other party ☐ Yes ☐ No

Protection Order Application

Other information

16. I have concerns about the mental health of the protected party and/or the other party ☐ Yes ☐ No

If yes, explain your concerns and the reason(s) for your concerns.

17. Are there circumstances that may increase the risk of family violence ☐ Yes ☐ No

If yes, describe the circumstances such as: substances abuse, employment or financial difficulties, relationship status, criminal history, pregnancy, threats to you/another person/child/animal, stalking, forced sex, controlling behaviour, release from prison, strangling/choking/biting, threats or attempts to commit suicide, cultural religious beliefs or any other circumstances.

Protection Order Application

25. Describe any recent incidents of family violence against the protected party/parties and any child(ren).

Include:

- *how the other party made the protected party and/or the child(ren) feel unsafe (describe examples of the other party's behaviour that made you afraid)*
- *a description of the incident(s) (write as much detail as possible)*
- *who was involved (include the police if they were involved at any time)*
- *who witnessed it*
- *any exposure the child or children have had to violence or abuse*
- *any injuries or trauma from the incident*
- *any doctor's notes, police reports or photos (you must refer to them here as exhibits and make copies of them for the court)*

Application About Priority Parenting Matter Form 15

- ▶ Priority parenting matters are usually:
- ▶ decisions about children, where all guardians are not in agreement, and
- ▶ a court order is needed on the priority parenting matter before any other parenting issues can be addressed, or separately from any other parenting issues, because something must be done quickly

Application About Priority Parenting Matter Form 15

- ▶ Short Notice - less than 7 days
- ▶ Application Without Notice
 - ▶ real risk of some serious consequence if the other party is given notice
- ▶ If you need your order in less than 7 days or if there are special circumstances where the application should proceed without notice, you must complete and file the Application for Case Management Order Without Notice or Attendance (Form 11) with this application

Application About Priority Parenting Matter Form 15

- ▶ Health treatments if delayed will result in risk to the health
- ▶ Passport, licence, etc., if delay will result in risk of harm
- ▶ Travel with a child or participation by a child in an activity because consent to the travel or activity is required and is alleged to have been wrongfully denied
- ▶ Change in location of a child's residence, or if no previous agreement or Order and the change of residence can reasonably be expected to have a significant impact on the child's relationship with another guardian
- ▶ Wrongful removal of a child / International Child Abduction
- ▶ Interjurisdictional issues
- ▶ Certain Ministry matters

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Updates to Court Appearances

Family Management Conferences

- ▶ Typical first step in Application about a Family Law Matter: attend a family management conference
- ▶ Registry will help schedule
- ▶ Judge may
 - ▶ assist the parties to identify the issues to be resolved
 - ▶ explore options to resolve the issues
 - ▶ make case management orders or directions to make sure case is ready for the next step
 - ▶ make interim (temporary) orders about family law matters (without consent)
 - ▶ make an order by consent of the parties
 - ▶ make an order without a party, if a party does not show up or file a reply

Family Settlement Conference

- ▶ Previously known as Family Case Conferences
- ▶ Private conference between Judge, parties and counsel
- ▶ Judge will explore dispute
- ▶ Explore common ground
- ▶ Discuss needs of children and parenting plans
- ▶ Help parties reach agreement
- ▶ Each party given chance to talk about issues
- ▶ Judge may comment on strengths and weaknesses of each party's case

Trial Preparation Conferences

- ▶ Short court hearing with a judge to discuss how the trial will proceed
- ▶ Explore additional steps that must be taken to ready the parties for trial

Questions?

