



THE NEWFOUNDLAND AND LABRADOR GAZETTE

EXTRAORDINARY

Part II

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NEWFOUNDLAND AND LABRADOR REGULATION

28/07



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Provincial Court Family Rules, 2007
under the
Provincial Court Act, 1991
(O.C. 2007-070)

(Filed February 28, 2007)

Under the authority of section 29.1 of the *Provincial Court Act, 1991*, the Lieutenant-Governor in Council makes the following rules.

Dated at St. John's, February 28, 2007.

Robert C. Thompson
Clerk of the Executive Council

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**RULE 1
CITATION, APPLICATION AND
INTERPRETATION**

Citation

1.01 These rules may be cited as the *Provincial Court Family Rules, 2007*.

Application

1.02 (1) These rules govern all proceedings in the court under the

- (a) *Adoption Act*;
- (b) *Change of Name Act*;
- (c) *Child, Youth and Family Services Act*;
- (d) *Children's Law Act*;
- (e) *Family Law Act*;
- (f) *Interjurisdictional Support Orders Act*;
- (g) *Neglected Adults Welfare Act*;

(h) *Solemnization of Marriage Act*; and

(i) *Support Orders Enforcement Act*.

(2) A proceeding commenced in the court before the commencement of these rules shall be continued in accordance with these rules except where the rules cannot be adapted.

(3) Notwithstanding subsection (1), these rules shall not apply to a proceeding where they are, or appear to be, contradictory to an Act under which an application is before the court.

Objective of rules

1.03 The objective of these rules is to secure the just, equitable, accessible and expedient determination of every proceeding.

Application of
Rules of the Supreme Court, 1986

1.04 The *Rules of the Supreme Court, 1986* apply at the discretion of the court when no provision under these rules is made.

Definitions

1.05 In these rules, unless the context otherwise requires,

(a) "affidavit" includes a solemn or statutory declaration;

(b) "applicant" means a person who makes an application under these rules;

(c) "application" means an application for a hearing and a proceeding, and includes an interim application, an interlocutory application and an application without notice;

(d) "clerk" means a clerk as defined under the *Provincial Court Act, 1991*;

(e) "counsel" means a person who is entitled to appear and represent a party in the Provincial Court under the *Law Society Act, 1999* or the *Family Law Act*;

(f) "court" means court as defined under the *Provincial Court Act, 1991* and includes a judge of the court whether sitting in court or in chambers;

(g) "court centre" means a court centre referred to in rule 6.02(2)(b);

- (h) "document" includes a sound recording, photograph, film, plan, chart, computer disc, graph, report, or record of any kind, or a certified copy;
- (i) "order" means an order or other decision or judgment of the court;
- (j) "party" means a person named in an application under these rules or by leave of the court;
- (k) "person under disability" means a mentally incompetent person or a minor;
- (l) "respondent" means a person against whom proceedings are taken under an Act referred to in rule 1.02(1); and
- (m) "rule" or "rules" means the *Provincial Court Family Rules, 2007*.

Waiver of rule by
agreement

1.06 Subject to the approval of the court, the parties may agree to waive a rule.

RULE 2 **EFFECT OF NON-COMPLIANCE**

Non-compliance
with rules

2.01 (1) A failure to comply with a requirement of these rules shall be treated as an irregularity and shall not nullify a proceeding, a step taken in a proceeding or a document or order, unless the court otherwise orders.

(2) An application to set aside a proceeding for an irregularity shall not be allowed unless it is made within a reasonable time and before the party who commenced the proceeding has remedied the irregularity after becoming aware of it.

RULE 3 **TIME**

Computation of
time

3.01 The computation of time under these rules or an order of the court is governed by the following provisions:

- (a) where there is a reference in these rules to a number of days, or clear days or "at least" a number of days between 2

events, in calculating the number of days there shall be excluded Saturdays, Sundays, statutory holidays and the days on which the events happen;

- (b) where a time is expressed to begin or end at, on, or with a specified day, or to continue to or until a specified day, the time includes that day;
- (c) where a time is expressed to begin after, to be from, of, or before a specified day, the time does not include that day; and
- (d) where there is a reference to a period of time consisting of a number of months before or after a specified day, the number of months shall be counted from the specified day.

Extension, etc. of time

3.02 (1) The court may, on terms that it considers appropriate, extend or abridge the period within which a person is required or authorized by these rules, or by an order, to do or abstain from doing an act in a proceeding.

(2) An extension or abridgement of the period shall not be granted where the extension or abridgement would unnecessarily delay or otherwise interfere with the proceedings.

(3) The period within which a person is required by these rules or by an order to serve, file or amend any pleadings or other document may be extended with the consent of the parties.

RULE 4 FORMS

Forms

4.01 The forms as prescribed by practice memoranda shall be used where applicable with such variations as the circumstances of the particular proceeding require, with the approval of the judge.

RULE 5 PARTIES

More than one party

5.01 Two or more parties, with the leave of the court, may be joined in one proceeding as either applicants or respondents.

Order separate trials	<p>5.02 Notwithstanding rule 5.01, where the parties are joined in a proceeding and such joinder may cause embarrassment or delay the hearing, or the proceeding ought to be disposed of by a separate hearing, or it is otherwise inconvenient, the court may order separate hearings.</p>
Change of parties	<p>5.03 (1) The court may at any stage of a proceeding, on an application without notice or its own motion, where it considers it necessary to ensure that all matters in the proceeding may be heard, order</p> <ul style="list-style-type: none">(a) a person to be made a party to the proceeding in addition to or in substitution for a party; and(b) the proceeding to be continued upon other terms and conditions as if the person who is made a party was a party to the original application. <p>(2) A person made a party under this rule may, within 10 days after service of the order, apply to the court to have the order rescinded or varied.</p>
Permitted representatives	<p>5.04 A party may be represented in a proceeding</p> <ul style="list-style-type: none">(a) by a person authorized by the <i>Law Society Act, 1999</i>;(b) by a person authorized by the legislation under which the application is made; or(c) with the permission of the court, by another person who is not receiving remuneration for appearing.
Guardian for the action	<p>5.05 (1) A person under disability shall commence or defend a proceeding by a guardian for the action unless the court otherwise orders.</p> <p>(2) Unless a rule otherwise provides, anything in a proceeding that is required or authorized by the rules to be done by a party, shall or may, where the party is a person under disability, be done on the person's behalf by the guardian for the action.</p>
Appointment of guardian for the action	<p>5.06 (1) Unless the court otherwise orders or legislation otherwise provides, a person may be a guardian for the action of a person under disability without being appointed by the court.</p>

(2) Where a party has a guardian for the action in a proceeding, another person shall not, unless the court otherwise orders, act as the guardian for the action.

(3) The court may remove, appoint, or substitute a guardian for the action where, in the opinion of the court, it is in the interest of a party who is a person under disability to do so.

(4) Before the name of a person is used in a proceeding as the guardian for the action, there shall be filed with the court

(a) the person's written consent to be the guardian for the action; or

(b) where the person has been appointed a guardian for the action by a court, a true copy of the order appointing him or her.

(5) Except where a guardian for the action has been appointed under legislation, the guardian for the action shall file with the court a certificate certifying that he or she knows or believes that

(a) the person to whom the certificate relates is a person under disability, giving the grounds of the knowledge or belief, and where a mentally incompetent person, that a guardian has not been appointed under any legislation; and

(b) he or she has no interest in the proceeding adverse to the person to whom the certificate relates.

Settlement, etc. by
person under dis-
ability

5.07 Where in any proceeding money is claimed by or on behalf of a person under disability, no settlement, compromise, payment or acceptance of money, whenever entered into or made, shall be valid without the approval of the court as far as it relates to that person's claim.

Control of money
recovered

5.08 Where an order is granted providing for the recovery of money by a person under disability, or that a proceeding be dismissed or stayed upon payment of the money to that person, the money shall be dealt with in accordance with the order.

Third person as
party

5.09 A person may, with leave of the court and subject to legislation respecting confidentiality, intervene in a proceeding and become a party where he or she

- (a) establishes to the satisfaction of the court by the filing of an affidavit containing the grounds for the intervention, a direct interest in the subject matter of the proceeding; or
- (b) has a right to intervene under legislation or a rule.

Friend of the court

5.10 A person may, with leave of the court and without becoming a party to a proceeding, intervene in the proceeding as a friend of the court for the purpose of assisting the court.

RULE 6 **COMMENCEMENT OF PROCEEDINGS**

Commencement of proceedings

6.01 Every proceeding shall be commenced by filing the original and 3 signed copies of an application in the prescribed form with the court and the proceeding is considered to have been commenced on the date of the filing.

Duties of the clerk

6.02 (1) Upon receipt of an application, a clerk shall

- (a) insert a file number and the date of filing on the original and the copies of the application;
- (b) sign the application and the copies;
- (c) file the original application with the court;
- (d) in all cases where the matter is being referred to the Family Justice Services Division in accordance with rule 19.02, attach an information sheet provided by the division to both the applicant's and the respondent's copy of the application; and
- (e) return the original application, the applicant's copy, the respondent's copy and a notice to respondent to the applicant.

(2) The file number assigned to a proceeding shall consist of

- (a) the letter "F" for a proceeding in the family division of the court;
- (b) a number designating the court centre where the proceeding is commenced in accordance with the following:

01 St. John's	09 Gander
04 Placentia	10 Grand Falls-Windsor
05 Harbour Grace	13 Corner Brook
06 Clarenville	14 Stephenville
08 Grand Bank	16 Wabush
	17 Happy Valley-Goose
	Bay; and

(c) the consecutive number of the proceeding in order of filing in that court centre.

(3) All documents subsequently filed or delivered in the proceeding shall bear the same file number.

(4) A proceeding permanently transferred to another court centre shall be assigned an appropriate file number in that court centre.

Facsimile transmissions

6.03 (1) A document may be filed with the court by telephone facsimile transmission as provided in this rule.

(2) A document may be served by a party on counsel of record in accordance with subsection (3).

(3) A document which is delivered by a telephone facsimile transmission shall include a cover page indicating

(a) the sender's name, address and telephone facsimile number;

(b) the date and time of transmission;

(c) the names of the parties in the proceeding and the file number, where one has been assigned;

(d) the total number of pages transmitted, including the cover page;

(e) the telephone facsimile number from which the document is transmitted; and

(f) the name and telephone number of a person to contact in the event of transmission problems.

(4) Filing shall be considered complete at the time a telephone facsimile transmission is received by the court and the filed facsimile shall have the same effect as the original.

(5) Notwithstanding subsection (4), a document filed by telephone facsimile transmission shall only be received on weekdays, excluding holidays, between 9:00 a.m. and 4:00 p.m.

(6) Within 7 days after the court has received the transmission, the person filing the document shall deliver the original signed document to the court, and where the document is an application, shall also deliver the 3 signed copies referred to in rule 6.01.

(7) The original document, and signed copies in the case of an application, shall be clearly marked on the first page "Sent by telephone facsimile transmission" and shall include the date and time of the transmission.

(8) Where there has been a failure to comply with the requirements of this rule, the court may make such orders as it considers appropriate, including, but not limited to, an order striking pleadings or parts of proceedings, removing the facsimile document from the file, staying further proceedings until compliance is complete, or dismissing the proceeding or any part of the proceeding.

(9) Notwithstanding rule 15.03, a certified document sent by the court by facsimile transmission in accordance with subsection (3) shall be considered to be a certified original document.

RULE 7 SERVICE

Service of documents

7.01 (1) Except where these rules or legislation otherwise provides, the following documents shall be served personally on a respondent:

(a) an application; and

(b) other documents that the court may require to be personally served.

(2) Service of a true copy of a document shall be considered service of the original document.

(3) A person who serves an application or other document shall

- (a) at the time of service, request the person served to complete and sign in his or her presence the acknowledgement of service; or
- (b) sign an affidavit confirming the service of the application or document and the affidavit of service shall be sworn or affirmed.

(4) An originating application shall be served within 6 months of the date on which it was filed with the court but an application to extend the time for service may be made to the court before or after the 6 month period has expired without giving notice to the other party.

Support applications under the
Family Law Act

7.02 (1) Personal service of an application for support made under the *Family Law Act* shall not be required unless ordered by the court.

(2) An application for support may be served

- (a) by sending a true copy of the document by certified mail, or other mail delivery which produces a receipt, or other proof of delivery signed by the recipient, addressed to the respondent at his or her last known address; or
- (b) in another manner directed by the court.

Substituted service

7.03 (1) Where it is impractical to serve an application or other document required to be served personally, the court may make an order for substituted service or dispense with service upon terms that the court may determine.

(2) Substituted service may be effected by

- (a) serving the agent, counsel, other representative or an adult family member of the person to be served;
- (b) serving the guardian or guardian for the action where the person to be served is under disability;
- (c) certified mail or other mail delivery which produces a receipt, or other proof of delivery signed by the recipient, forwarded to the last known address of the person to be served;

- (d) an advertisement in a newspaper serving the area where the person to be served is believed to reside, where the address of that person is unknown; or
- (e) in such manner as the court may deem appropriate in the circumstances.

Affidavit of service

7.04 (1) The service of an application or other document may be proved by an affidavit which shall state by whom the application or other document was served, the day of the week, the time of day and the date on which it was served, where it was served, and how it was served.

(2) Where

- (a) the application or document is served by mail, service may be proved by filing an acknowledgement of receipt card or other confirmation of delivery provided by Canada Post with the court;
- (b) the acknowledgement of receipt card or other proof of delivery is not signed by the party being served, the court shall satisfy itself that the party to be served has knowledge of the proceedings and may proceed in the absence of that party;
- (c) mail has not been accepted by the respondent or another person on his or her behalf, the court may proceed to hear the matter in the same manner as if that party was served; or
- (d) the court proceeds under paragraph (b) or (c) and it has subsequently been established to the satisfaction of the court that the service was not properly effected, the court may make any order deemed necessary to correct an injustice done as a result of proceeding in the absence of the party required to be served.

(3) A written acceptance or acknowledgement of service of an application or document by a party need not be verified by affidavit.

(4) Instead of requiring another proof of service, the court may allow a person to prove by sworn or affirmed oral evidence that a person has been served.

No service in cer-
tain cases

7.05 Where, under a rule, a document is required to be served on a person but is not required to be served personally and at the time when service is to be effected, the person is in default as to filing a response or appearing on an application or has no address for service, the document need not be served on that person unless the court otherwise orders or a rule or legislation otherwise provides.

RULE 8
AMENDMENT

Amendment by
party

8.01 A party may amend a document filed by that party, other than an order,

- (a) once, without leave of the court, where the amendment is made at least 5 days before the hearing of an application;
- (b) at another time where the written consent of all the parties is filed; or
- (c) with leave of the court.

Court may grant
amendment

8.02 (1) The court may grant an amendment under this rule in such manner and on such terms that it considers appropriate.

(2) Where an amendment would make a document difficult or inconvenient to read, or would alter the substance of the document, a new document as amended and bearing the date of the original document shall be filed and every reasonable effort shall be made to serve or otherwise provide the amended document to the other party before the date of the hearing.

(3) Clerical mistakes in pleadings, judgments or orders or errors arising from an accidental mistake or omission or an amendment to provide for a matter which should have been but was not adjudicated upon, may be corrected or granted by the court.

RULE 9
RESPONSE AND REPLY

Response

9.01 Unless otherwise provided in these rules or where a court otherwise orders, a respondent shall file a response to an application with the court within 30 days of being served with an application.

Service on applicant

9.02 A respondent shall deliver a true copy of the response referred to in rule 9.01 to the applicant and such delivery may include sending it by ordinary mail.

Reply

9.03 Where a party wishes to oppose an allegation or claim raised in a response referred to in rule 9.01, he or she shall file a reply with the court within 10 days of receipt of the response.

Service on opposing party

9.04 A party shall deliver a true copy of the reply referred to in rule 9.03 of the rules to the opposing party and such delivery may include sending it by ordinary mail.

RULE 10 ADMISSIONS AND EXPERT WITNESSES

Voluntary admissions

10.01 (1) A party may give notice at a case conference, settlement conference or hearing, or otherwise in writing, that he or she admits the truth of the whole or a part of the case of another party.

(2) The court may allow a party to withdraw an admission or denial upon such terms that it considers appropriate in the circumstances.

Expert witnesses

10.02 (1) Unless a written report of an expert is provided to an opposing party at least 5 days before the hearing, that report shall not be admissible without the approval of the court.

(2) The court may order that the number of expert witnesses to be called at a hearing shall be limited.

RULE 11 CASE CONFERENCES AND SETTLEMENT CONFERENCES

Use of electronic communication

11.01 A judge may, on his or her own motion or on the application of a party, direct that a case conference or settlement conference be held wholly or partly by telephone, teleconference, video conference or other form of electronic telecommunication acceptable to the judge, with the actual costs to be paid by the party making the application.

Case conference procedure

11.02 (1) Except in the case of an application for a protective intervention hearing, an interim application or an application made without

notice, the clerk shall schedule a case conference to be heard before a judge

- (a) when a response has been filed;
- (b) upon the expiry of the time in which to file a response;
- (c) when the Family Justice Services Division has referred the matter back to court for a hearing; or
- (d) at such other time as may be directed by a judge.

(2) The clerk shall

- (a) advise the parties of the date and time for the case conference by ordinary mail; or
- (b) where each party is represented by counsel, advise counsel of the date and time for the case conference by ordinary mail, e-mail or facsimile transmission.

(3) At a case conference, the judge and the parties shall, where appropriate, consider

- (a) the simplification and clarification of the issues;
- (b) the necessity or desirability of an amendment to an application, affidavit or notice;
- (c) disclosure of relevant evidence;
- (d) the possibility of obtaining an admission of fact or of a document that may avoid unnecessary proof;
- (e) limiting the number of expert witnesses;
- (f) resolution of one or more issues which may lead to a settlement;
- (g) organizing the trial process, including the production of documents, affidavits or exhibits, determining the witnesses who are to testify and setting a hearing date;

(h) granting interim or other relief when agreement is reached;
and

(i) another issue that may aid in the disposition of the proceeding.

(4) A judge may set over a case conference to such a time and on such terms that he or she thinks appropriate in the circumstances.

(5) Upon the conclusion of a case conference, the court shall ensure that the log notes recorded by the clerk are placed in the court file.

(6) A judge who presides at a case conference shall not be considered to be seized of the proceeding and a hearing may be heard by that judge or another judge.

Settlement conference procedure

11.03 (1) At or after a case conference, a judge may, on his or her own motion or on the application of a party, direct the parties to attend a settlement conference and the judge may conduct the settlement conference in a manner that he or she considers appropriate, including requiring the production of all relevant documentation and authorities.

(2) A judge who has presided at the settlement conference shall not preside at a subsequent hearing unless all parties consent.

RULE 12 **HEARING PROCEDURES**

Failure to attend

12.01 (1) Where a proceeding is called for hearing, the court may order the proceeding to be dismissed where both parties fail to appear.

(2) Where a proceeding is called for hearing and one of the parties fails to appear, the court may

(a) proceed in the absence of that party;

(b) where the applicant appears and the respondent fails to appear, allow the applicant to prove the application and dismiss a response;

(c) where the applicant fails to appear and the respondent appears, dismiss the application and allow the respondent to prove the response; or

(d) make an order that it considers appropriate.

(3) Where a party fails to appear, the court may order costs that it considers appropriate.

(4) On a failure to appear, judgment shall not be entered against a respondent under this rule unless the court is satisfied that the respondent had notice of the hearing or had been served as directed by these rules or service has been dispensed with under these rules.

(5) Unless the court otherwise orders or a rule otherwise provides, a respondent who fails to appear at the hearing of an application shall not be entitled to receive notice of subsequent steps taken in the proceeding against him or her.

(6) Where parties arrive at a settlement or an agreement prior to the hearing, they shall immediately notify the court.

Adjournment

12.02 Where a hearing cannot be conveniently heard or completed, the court may adjourn the hearing.

Exclusion of witnesses, etc.

12.03 The court may at any stage of a proceeding,

(a) order a witness to be excluded from the court room until called to testify;

(b) order a party or a witness not to communicate with another witness prior to the latter having given evidence; and

(c) where there has been an improper communication, exclude the testimony of any party or witness.

Exclusion of persons from the court room

12.04 In addition to its powers under rule 12.03, the court may, at a hearing, exclude a person other than counsel, a party, or a witness from all or part of the proceedings where the court considers that

(a) his or her presence is unnecessary; and

- (b) evidence or information presented to the court, if made public, would seriously injure or prejudice
 - (i) the person who is being dealt with in the proceedings, or
 - (ii) a person under 16 years of age who is a witness in or is affected by the proceedings; or
- (c) it would be in the best interest of public morals, the maintenance of order or the proper administration of justice to exclude the person from the court room.

Copies of documents for other party

12.05 A party shall be entitled to a copy of relevant documents and affidavits to be used in a hearing.

Order for documents

12.06 (1) The court may

- (a) order a party to file and serve on an opposing party to a proceeding a list of documents or affidavits;
- (b) order a party to file or deliver documents or affidavits related to the matters specified in the order;
- (c) where it appears that an issue or question in the proceeding should be determined before the filing and delivery of all or any of the documents, order that the issue or question be determined; and
- (d) where satisfied that all or any of the documents are not necessary at that time or later, dismiss or adjourn the application, or make another order that is appropriate.

(2) Where a person is compelled to produce a document at a hearing, the court may order the person to produce the document.

Who may access court records

12.07 (1) The court's record of a family law proceeding is confidential and only a party, a party's counsel, an officer of the court or a judge may have access to it unless otherwise ordered by the court or otherwise provided by legislation or a rule.

(2) The clerk may permit a person authorized by a party or by a party's counsel to access a document in the court record and may re-

quire that person to sign an undertaking to keep the information obtained from the court record in confidence before giving them access.

(3) The clerk may require that an application be made to the court for access to court records.

Requirement to
keep information
confidential

12.08 (1) A person who has access to a document, evidence or information obtained as a result of his or her involvement in a proceeding governed in whole or in part by these rules

(a) shall keep the document, evidence and any information obtained from the document or evidence or from the court record in confidence; and

(b) may only use the document, evidence and information for the purposes of the family law proceeding in which the document or evidence was obtained or to which the court record relates.

(2) Subsection (1) does not apply where

(a) the person who disclosed the document or gave the evidence consents to the information being released;

(b) the document or evidence is used to impeach the testimony of a witness in another proceeding;

(c) the document or evidence is used in a later proceeding between the same parties; or

(d) the person is ordered by a court to disclose the document or evidence.

Interpreters

12.09 The court may appoint an interpreter and order compensation of the interpreter to be paid out of funds provided by law for that purpose or by one or more of the parties as costs.

Subpoena

12.10 (1) The court may, at the request of a party, issue a subpoena requiring the person named in the subpoena to attend at court at the time and place stated and, where required, to produce certain documents at the hearing.

(2) A person is bound to appear or give evidence under a subpoena notwithstanding that the person has not been paid or tendered witness fees.

Service of subpoena **12.11** (1) A copy of the subpoena shall be served by personal service and where the witness requests, the original subpoena shall be produced and shown.

(2) Unless otherwise ordered, a subpoena shall be served no later than 2 days before the date of the hearing.

(3) Service of a subpoena may be proved by affidavit.

Duration of subpoena **12.12** A subpoena continues to have effect until the conclusion of the hearing at which the attendance of the witness is required.

Subpoena of opposing party **12.13** A party who desires to call an opposing party as a witness at a hearing shall serve that party, or his or her counsel, at least 2 days before the hearing with a subpoena and where the opposing party does not attend the hearing, the court may pronounce judgment against the party or postpone the hearing upon terms that it considers appropriate.

Failure to obey **12.14** Where a witness fails to obey a subpoena, he or she may be dealt with according to law.

RULE 13 AFFIDAVITS

Form of affidavit **13.01** An affidavit used in a proceeding shall be

- (a) entitled with the name of the parties involved in the proceeding, except where there is more than one applicant or respondent or proceeding when it shall be sufficient to state the name of the first applicant, respondent and proceeding followed by the words "and other" or "and other proceedings";
- (b) expressed in the first person and state the name in full, place of residence and occupation of the deponent, and where the deponent is a party or the counsel, agent or employee of a party, it shall state that fact;

- (c) divided into consecutively numbered paragraphs with each paragraph being confined as far as possible to a distinct portion of the subject and any dates, sums or other numbers may be expressed in figures; and
- (d) signed by the deponent with the jurat completed and signed by the person before whom it is sworn or affirmed.

Contents of affidavit

13.02 (1) An affidavit used to commence an application may contain statements as to the belief of the deponent with the sources and grounds.

(2) Unless the court otherwise orders, an affidavit used at a hearing shall contain only those facts that the deponent is able to establish from his or her own knowledge.

Exhibits

13.03 An exhibit referred to in an affidavit as being produced, attached or otherwise annexed shall be identified with the initials of the person before whom the affidavit was sworn or affirmed

RULE 14 **DISCONTINUANCE AND WITHDRAWAL**

Notice to be filed and served

14.01 After a proceeding has begun,

- (a) an applicant may discontinue the proceeding or withdraw a cause of action against any respondent; and
- (b) a respondent may withdraw the response or a part of the response against any applicant

by filing and serving a notice of discontinuance or withdrawal.

Court may make order

14.02 Upon the filing of a notice of discontinuance or withdrawal, the court may make an order containing terms as to costs, the bringing of a subsequent proceeding, or otherwise, that are appropriate and within the jurisdiction of the court.

Effect of discontinuance

14.03 Subject to the terms of an order granted by the court, the discontinuance of a proceeding or withdrawal of a cause of action shall not be a bar to a subsequent proceeding for the same or substantially the same cause of action.

RULE 15
ORDERS

Requiring an act to be done

15.01 An order that requires a person to do or refrain from doing an act shall specify the time within which the person is to do or refrain from doing the act.

Preparation and filing of an order

15.02 (1) An order shall be prepared by the successful party or by the court, where circumstances warrant, and filed with the court, provided that where an order is not filed within 10 days after the judgment, decision or direction is given, another party may prepare and file the order.

(2) An order shall contain

- (a) the title of the proceeding;
- (b) the name of the judge who granted it;
- (c) recitals of the proceedings and legislation on which it is based;
- (d) the operative parts of the order divided into convenient paragraphs;
- (e) the date the decision was rendered as well as the date the order is issued;
- (f) the name of the court;
- (g) the signature of the clerk or the signature of the judge who made the order; and
- (h) other particulars required by the legislation under which the order was made.

(3) An order for child support which includes a provision for automatic recalculation of the amount of child support shall be prepared separately from any other order arising out of the proceeding.

(4) An order shall be as prescribed in these rules with any variation that the circumstances may require.

(5) The clerk shall cause a copy of all orders filed with the court to be sent to a party or his or her counsel, if any, and where applicable, to the Family Justice Services Division or the recalculation office unless legislation or an order of the court requires that the order be served on a person.

Certification of order

15.03 An order shall be certified by a court by signing a copy and certifying it as a true copy.

Leave not required

15.04 (1) Unless the court orders otherwise, an originating application to file a consent order shall be accompanied by

(a) the written consent of counsel for each party who is represented by counsel; or

(b) the written consent of each party who is not represented by counsel, witnessed by a person duly authorized to administer an oath or affirmation.

(2) Parties to a proceeding may file an order by consent without leave of the court and such an order shall comply with the requirements of rules 15.01 and 15.02.

(3) Where it appears to a judge that the consent order referred to in subsection (2) cannot be approved as filed, the matter shall be set for a case conference.

(4) Where a judge is satisfied as to the form and content of a consent order referred to in subsection (2), he or she may approve the order by reading it into the court record without the necessity of an appearance by the parties before the court.

Recalculated orders for child support

15.05 Where the recalculation office has recalculated child support in accordance with the recalculation clause contained in an order for child support and the child support variation order (recalculated) has been submitted to the court, a judge may, upon being satisfied as to its form and content, approve the order by reading it into the court record without the necessity of an appearance by the parties before the court.

RULE 16
TRANSFER AND CONSOLIDATION OF A
PROCEEDING AND EXERCISE OF
JURISDICTION BY ANOTHER JUDGE

Transfer of proceeding

16.01 The court may order a proceeding to be transferred from one court centre to another.

Consolidation

16.02 Where 2 or more proceedings are pending in the court, the court may order the proceedings to be consolidated on terms that it considers appropriate, or may order them to be tried at the same time or one immediately after the other, or may order any of them to be stayed until after the determination of any of them.

Exercise of jurisdiction

16.03 (1) Where a judge is unable to act in or conclude a proceeding, another judge of the court may be appointed to hear the proceeding or to continue the proceeding.

(2) A judge appointed under subsection (1) may make an order or render a judgment in a proceeding on the evidence already adduced or may rehear evidence.

RULE 17
PRACTICE MEMORANDA

Practice memoranda

17.01 The chief judge, after receiving a recommendation from a judge, a group of judges or a rules committee constituted by the chief judge, may issue practice memoranda consistent with these rules for the better operation of these rules and the functioning of the court.

RULE 18
APPLICATIONS WITHOUT NOTICE

When application may be made

18.01 An application may be made without notice to a party or another interested or affected person where

- (a) a statute or rule permits the application to be made without notice or before a party is served; or
- (b) the court is satisfied that

- (i) the delay caused by giving notice would or may impose serious harm or prejudice to the applicant or a child affected by the application;
- (ii) there is a degree of urgency for another reason that makes the requirement of notice inappropriate;
- (iii) the circumstances of the case make notice unnecessary, or
- (iv) the applicant is the only party.

Filing application

18.02 (1) A person who makes an application without giving notice shall

- (a) file an affidavit stating why the applicant is entitled to proceed without notice and what steps have been or may be taken to minimize the prejudice to a person who is not provided notice of the application; and
- (b) submit a proposed application respecting the same subject matter and seeking more permanent relief, to be heard by the court after giving notice to the other parties.

(2) The proposed application referred to in paragraph (1)(b) shall be issued when the application without notice is heard by the court.

Making orders
without notice

18.03 When an application is made without notice the court may

- (a) refuse to hear the application until notice is given to a party or a person affected by or interested in the application;
- (b) shorten the prescribed time for the giving of notice;
- (c) order that a hearing be held as quickly as possible;
- (d) hear the application without notice on terms and conditions that the court considers just;
- (e) make another order that balances the interests of the applicant with the interests of a party or person affected by or interested in the application; and

(f) grant an order on terms and conditions that may include the applicant giving an undertaking or providing security.

Return date

18.04 (1) Where a court makes an order without notice, it shall set a return date which is within 7 days of the making of the order and the applicant shall serve notice of that date and the documents referred to in rule 18.02(b) as soon as is reasonably possible on all parties or persons affected by or interested in the order.

(2) Where an application without notice is heard at a circuit location and the court will not be sitting at that location on the return date referred to in subsection (1), the return date shall be set for the home court in the court centre where the application was filed.

Setting aside an order made without notice

18.05 (1) A party to or a person affected by or interested in an order made without notice may apply to set aside or change the order by filing an application and serving it on the other parties at least 2 days before the date set for the hearing of the application, or on shorter notice where the court has given permission.

(2) A court may, on an application made under subsection (1) or on its own motion, set aside or change an order made without notice.

(3) At a hearing held under subsection (1) or referred to in rule 18.02(2), the party who obtained the order without notice shall have the burden of satisfying the court that the order should be continued and the court shall consider all relevant evidence in determining whether the order should be continued.

RULE 19
FAMILY JUSTICE SERVICES DIVISION

Definitions

19.01 In this rule

(a) "Family Justice Services Division" is a division of the court offering education and information sessions and mediation to parties and counselling services to the parties or their children or any combination of these services deemed required, or offered to those persons referred to in Rule 19.02(2) in order to assist in the non-adversarial resolution of their dispute;

- (b) "note to court" is a document, the form of which has been approved by the chief judge, filed with the court by the Family Justice Services Division where there is a family law proceeding, advising of whether the parties participated in the services available at the Family Justice Services Division and whether they have resolved their family law dispute; and
- (c) "staff" refers to staff assigned to and working with the Family Justice Services Division.

Family Justice
Services Division
procedures

19.02 (1) Where a family law proceeding involving a claim for child support, spousal or partner support, custody or access is initiated by way of an application or a response filed with the court, the court clerk shall, within 2 days of receipt of proof of service of the application or the filing of the response, forward a copy of the application or the response along with the most current addresses and telephone numbers for the parties to the Family Justice Services Division office located closest to the applicant's residence, or, if the applicant resides outside the province, the Family Justice Services Division office located closest to the respondent's residence.

(2) Nothing in subsection (1) precludes the provision of service where both parents, spouses or partners wish to avail of the assistance of the Family Justice Services Division without commencing an application to the court.

(3) An applicant shall serve the application on the respondent in accordance with rule 7 as soon as is reasonably practical and thereafter file an affidavit of service with the court.

(4) Counsel for the parties shall be contacted by the Family Justice Services Division staff where the names of counsel are placed on the documents filed with the court or the staff become aware of a counsel's involvement with either party.

(5) Unless counsel for each of the parties have provided written confirmation to the Family Justice Services Division that they wish to negotiate the issues and that there is a reasonable potential for a negotiated settlement in that manner, the staff shall contact each of the parties and their counsel, if any, and advise them of a date and time for an intake session.

(6) Following intake for the parties, the staff shall advise the parties whether or not a dispute resolution session, including mediation or counselling, will take place and, if so, advise of the dates for a dispute resolution sessions.

(7) Except where exempted by the staff of the Family Justice Services Division or a judge, the parties shall attend an intake session, a scheduled information session and a scheduled dispute resolution session prior to scheduling a case conference or any other appearance before the court.

(8) The filing of a response may be delayed until such time as the Family Justice Services Division files the note to court at which time the respondent shall file a response within 7 days.

(9) Where a party fails to attend an intake, information or dispute resolution session as required by the Family Justice Services Division, the court may

- (a) refuse to proceed with a case conference;
- (b) order a party to attend an intake, education or information session;
- (c) make an order as to costs against the party; and
- (d) make such other order as the court considers just and appropriate in the circumstances.

(10) In the event that a matter remains at the Family Justice Services Division for more than 2 months from the intake session in a case where support is the only issue and for more than 3 months in any other case or upon the agreement of the parties, the court shall be notified of the extension of time for dispute resolution by the filing of a note to court.

(11) Where the Family Justice Services Division has determined that the parties have not resolved their dispute, or where the procedure set out in this part is deemed inappropriate by the staff, the staff shall file a note to court advising the court of same and shall forward a copy to the parties or their counsel.

Consent orders

19.03 (1) Where the Family Justice Services Division is successful in assisting the parties in reaching an agreement on all or any of the issues raised in the proceeding, the staff or counsel shall prepare a draft consent order signed by the parties or their counsel and file it with the court.

(2) Where a draft consent order is filed in accordance with subsection (1), a judge may approve the consent order by reading it into the court record without appearance by the parties except where the judge may require counsel or the parties to appear to answer any questions related to the order.

(3) Where a consent order is filed in accordance with subsection (1) on some, but not all, issues raised in the proceeding, the staff shall file a note to court advising the court of same and shall forward a copy to the parties or their counsel.

Urgent matters

19.04 (1) Where a judge is satisfied that an application should proceed without involvement of the Family Justice Services Division due to urgency, safety concerns or some other good and sufficient cause, he or she may order that rules 19.02 and 19.03 shall not apply or may delay the involvement of the Family Justice Services Division to another date as determined by the court.

(2) Where a judge makes an order under subsection (1), a judge may subsequently order the matter to be referred to the Family Justice Services Division.

Interim applications

19.05 An application for interim relief shall not be filed without leave of the court in any proceeding required to be sent to the Family Justice Services Division in accordance with rule 19.02.

RULE 20
REPEAL AND COMMENCEMENT

Repeal

20.01 *The Provincial Court Family Rules, Newfoundland and Labrador Regulation 2/99, are repealed.*

Commencement

20.02 *These rules shall come into force on March 1, 2007.*

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<u>Title of Act and Subordinate Legislation made thereunder</u>	<u>CNLR or NL Reg.</u>	<u>Amendment</u>	<u>NL Gazette Date & Page No.</u>
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Provincial Court Act, 1991

Provincial Court Family Rules, 2007 (In force March 1, 2007)	NLR 28/07	R & S NLR 2/99	Feb. 28/07 p. 3
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