

RULE 71
FAMILY LAW PROCEEDINGS

APPLICATION OF THE RULE

71.01 Rules 71.02 to 71.13 apply to proceedings under the *Family Law Act* and the *Custody Jurisdiction and Enforcement Act*.

DEFINITIONS

71.02 In Rules 71.03 to 71.13,

- (a) "applicant" includes a plaintiff;
- (b) "respondent" includes a defendant;
- (c) "responding document" means a statement of defence, defence to counterclaim or affidavit in opposition to an application; and
- (d) "registrar" means the registrar of the family section of the trial division or the prothonotary.

ORIGINATING PROCESS

Claim for Relief

71.03 (1) An originating process that contains a claim for support or division of property shall set out the nature and amount of relief claimed and, if support is claimed, the amount for each dependant.

Application by Government Agency

- (2) Where an application is made pursuant to s. 33(3) of the *Family Law Act* the originating process shall be served on the defendant.

FINANCIAL STATEMENTS

Applicant's Financial Statement

- 71.04** (1) Where an order is sought for a division of property, support or variation of support, a financial statement (Form 70I) shall be filed and served with the originating process, together with a notice to file financial statement (Form 70U).
- (2) Where the originating process is a notice of action, the financial

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statement shall be delivered with the statement of claim.

Respondent's Financial Statement

- (3) A respondent served with the applicant's financial statement shall deliver a financial statement with his or her responding document.
- (4) A respondent who does not intend to defend the proceeding shall nevertheless deliver a financial statement within the time prescribed for the delivery of his or her responding document, but a respondent's failure to do so does not prevent the applicant from bringing the proceeding on for hearing or moving for judgment.

Registrar to Refuse Documents Unless Accompanied by Financial Statements

- (5) Where a financial statement is required to be filed or delivered with an originating process, statement of claim or responding document, the registrar shall not accept the originating process, statement of claim or responding document for issuing or filing without the financial statement.

Order for Delivery

- (6) Where a respondent fails to comply with a notice to file financial statement, the applicant may move without notice for an order requiring the delivery of a financial statement within a specified time.
- (7) In a proceeding in which a claim is made for custody of a child, the court may order the parties to deliver financial statements within a specified time.

Subrule 70.14(8) to (14) Apply

- (8) Subrules 70.14(8) to (14) (particulars, failure to deliver, cross-examination, duty to correct) apply, with necessary modifications, to financial statements referred to in subrules (1) to (7).

Net Family Property Statement

- (9) In a proceeding in which a claim is made for a division of property, each spouse shall deliver a net family property statement (Form 70L) at least seven days before the pre-trial conference. If any substantial

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change occurs in the values before the hearing of a motion for judgment or before the hearing of the matter, then each spouse shall deliver an updated net family property statement at least seven days before the motion for judgment or before the hearing.

Divorce Action

- (10) Where a claim under the *Family Law Act* or the *Custody Jurisdiction and Enforcement Act* is made in a divorce action, the obligations of the spouses respecting financial statements are governed by Rule 70.14.

PLACE OF HEARING

- 71.05** (1) An applicant who makes a claim for custody of or access to a child who ordinarily resides in Prince Edward Island shall name in the originating process the place of hearing, Charlottetown or Summerside, whichever is closest to where the child ordinarily resides.
- (2) Where a claim referred to in subrule (1) is made in a divorce action, the place of trial is governed by Rule 70.17.
- (3) The hearing shall be held at the place named in the originating process unless an order is made under Rule 46.02 to change the place of hearing, and for the purpose of changing the place of hearing an application shall be treated as an action.

DIRECTOR OF CHILD WELFARE'S REPORT

71.06 Subrules 70.16(1) to (8) (Director of Child Welfare's Report) apply, with necessary modifications, to proceedings under the *Custody Jurisdiction and Enforcement Act*.

REFERENCE TO A FAMILY MEDIATOR OR COUNSELLOR

71.07 Rule 70.21 (reference to family mediator or counsellor) applies, with necessary modifications, to any question or issue arising under the *Family Law Act* and the *Custody Jurisdiction and Enforcement Act*.

INTERIM RELIEF

71.08 Rule 70.15 (interim relief) applies, with necessary modifications, to a motion for interim relief in a proceeding under the *Family Law Act* or the

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Custody Jurisdiction and Enforcement Act.

VARIATION APPLICATION

71.08.1 Rule 70.23 (variation of final order) applies, with necessary modifications, in respect of a support order made under the *Family Law Act* or the *Reciprocal Enforcement of Maintenance Orders Act* or a custody or access order under the *Custody Jurisdiction and Enforcement Act*.

WARRANT FOR ARREST

71.09 A warrant for the arrest of a debtor referred to in the *Family Law Act* shall be in Form 71A.

RECOGNIZANCE

71.10 A recognizance required by an order made under the *Family Law Act* or the *Custody Jurisdiction and Enforcement Act* shall be in Form 71B and shall be entered into before the registrar or such other person as a judge directs.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

71.11 On receipt by the registrar of a written request under subsection 2(3) of the *Reciprocal Enforcement of Maintenance Orders Act*, the registrar shall deem a final order of the court within the meaning of clause 1(f) of that Act that is referred to in the request to be a registered order under subsection 2(3) of that Act and shall issue a certificate accordingly.

REQUEST BY EXTRA-PROVINCIAL TRIBUNAL FOR EVIDENCE IN CUSTODY CASES

Issuing Summons to Give Evidence

71.12 (1) Where the Attorney General refers a request of an extra-provincial tribunal to the court under section 24 of the *Custody Jurisdiction and Enforcement Act*, the registrar shall issue a summons in Form 71E requiring the person named in the request to produce or give evidence in accordance with the request.

Service of Summons

(2) The summons and a copy of the request of the extra-provincial tribunal and any supporting material that accompanied the request

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shall be served on the person named in the request, personally and not by an alternative to personal service, at least five days before he or she is required to produce or give evidence.

- (3) Where the person named in the request is not a party to the proceeding before the extra-provincial tribunal and the summons requires the person to give oral evidence, attendance money calculated in accordance with Tariff A shall be paid or tendered to the person when the summons is served.
- (4) A copy of the summons shall be served on the Attorney General within the time prescribed by subrule (2).

Affidavit Evidence

- (5) Where the summons does not require the person to give oral evidence, the person may file with the registrar the evidence required, verified by the person's affidavit.

Oral Evidence

- (6) Where the summons requires the person to give oral evidence, the person shall attend before a judge or officer of the court, as set out in the summons, to be examined in accordance with the summons.

Evidence to be Sent to Extra-Provincial Tribunal

- (7) The registrar shall send to the extra-provincial tribunal a certified copy of evidence produced or given under this rule.

Sanctions for Disobeying Summons

- (8) Subrules 53.04(7) and (8) apply, with necessary modifications, to a person who after having been served in accordance with subrules (2) and (3) fails to comply with the summons.