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Cc: Sandhu, Tara AG:EX
Subject: Family Workflow Manual

Hello,

I've not received any feedback from the Family Manual Workflow that I've created. I'm unsure if that is due to nobody having any objections to it, or if it's just that nobody's reviewed it.

As such, I will be placing it in the Shared Drive here:

s.15 [Registry\FAMILY\Procedures\Workflow Manual – Family](#)

If you come across something that you feel should be added to the manual or want to make any amendments, feel free to do so. This document is a "live" document in the sense that it should ideally be updated constantly. If you are wishing to speak to me about something included in the manual or have any comments/concerns/questions, please let me know!

Thanks,

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FAMILY WORKFLOW MANUAL

Registry Location: Robson Square

Last Updated:01-MAR-2022

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List Preparation

Backup and Rough Lists

1. Prepare a backup list for the next week
 - In CEIS, click "Court List Module" and navigate to "Daily Court List". For the "Date" field, ensure that you enter the Court sitting one week from now. Click "Preview List" and print it out.
 - For example, if you are working on list prep for January 2, 2021, you would be preparing the backup list (for all courtrooms) for January 9, 2021.
 - Place the full backup court list in the Emergency Backup List folder at the back of the Family Registry.
 - If you notice a backup court list for "today" or a past date, please remove them from the backup folder as they're no longer required
2. Prepare a "Rough List" to use while working on list prep. This copy may be used for you to make notations on or to keep track of any changes
 - In CEIS, click "Court List Module" and navigate to "Daily Court List". For the "Date" field, enter "tomorrow's" date. Click "Preview List" and print it out.
3. Print out a "File Pull List" to keep track of what files need to be pulled for list prep.
 - In CEIS, click "Court List Module" and navigate to "File Pull List". For the "Date" field, enter "tomorrow's" date. Click "Preview List" and print it out.
 - To assist the person who will be working on list prep the next day, also prepare a "File Pull List" for the date that is 2 days from "today".
4. Prepare file pull cards to be slotted into the spots where files have been removed. Once these have been prepared, pull the files in which you have prepared file pull cards for.
 - After your files have been pulled, you may wish to then pull the files for tomorrow's list prep person as well, or you may pull them later in the day depending on operational requirements.
 - If you notice that any files have a cross referenced file (i.e. the file jacket says "x-ref (File number)", you may wish to create a file pull card and pull these files as well.

Organizing the Files

1. On the right hand side of the file, examine the Court Summary sheet from the previous hearing to:
 - Determine if there were any Orders made that amended the names of parties on file
 - Determine that if any parties have since retained counsel, that this is reflected under the "Parties" tab in CEIS, under the "Party details" subheading.
2. All documents that are bringing the file before the Court, or are reference/support documents, shall be left loose and placed on the **right hand side** of the file, on **top** of the Court Summary sheets.
 - The document that is bringing the matter before the Court (i.e. the Application) shall be left on top of the pile of loose pulled documents
 - If Court appearances are taking place in person, any Orders that permit a party to appear by telephone shall be on the **VERY TOP**
 - Any replies or other supporting documents shall be placed below the Application in the pile of loose pulled documents.
 - This would include Certificates/Affidavits of Service
 - **NOTE:** Any completed applications, or supporting documents for completed applications, should be placed under the "Concluded" section in the file.
3. On your Rough List, ensure that the file number is correct and the names of the parties are correct. You will want to ensure that you are able to ascertain how the Application before the Court arrived at that point (i.e. you are able to follow the paper trail).
 - Occasionally, you may notice that an Application before the Court has no issues showing.
 - In these situations, investigate the previous hearings in either CEIS or on the previous Court Summary Sheets to see if a matter should have been "ended" during a previous appearance or not.
 - If the matter has been adjourned over, click the "Appearance" tab and "Record Results". If one of the issues has the "Concluded" box ticked when it should not have been, untick the box.
 - Due to internal errors in CEIS, issues may be absent for no apparent reason. After you have investigated the above and there does not

appear to be a reason for why issues may be absent, you may wish to attempt to un-schedule then re-schedule a matter.

- Under the Appearance tab, select "Appearance details" for the Court appearance that is missing issues. The document that is currently scheduled will have a check box next to it. Taking note of the Courtroom and time that the matter is set for, deselect the document, hit "save", and then reselect it. You may need to re-enter the date/time and Courtroom.
- **NOTE:** If the box that says "Scheduled by JCM?" says "Y", you cannot proceed to un-schedule and re-schedule the document by this method. You may need to contact the JCM and ask them to un-schedule and re-schedule the document for you.
- If a party is attending by teleconference, when the standard attendance method is in person, ensure that under the "Appearance" tab, under "Parties attending", it is clearly reflected in the "Method" field, that the party is attending by teleconference, and their telephone number is reflected under the "Number" field.

Finalizing the List

1. The preparation and organization of files should be completed by no later than 1:00 PM, at the latest. The JCM typically sends out the final adjudicator assignment list by around 2:30 PM to 3:00 PM.
 - **NOTE:** For Assignment Court, **NO** adjudicator shall be entered into CEIS. You will be manually reflecting which Judge will oversee each assignment court file. (See Distribution)
2. In CEIS, go to "Court List Module", "Daily Court List", and enter tomorrow's date under the "Date" field. Click "Prepare List".
3. If you notice any red entries, click "Save List" before proceeding.
4. Based on the email received from the JCM, enter the name of the adjudicator under the "Adjudicator" drop box.
5. Wherever possible, re-sequence the files so that matters with counsel come before matters with lay parties. Any files that have more than one matter going ahead on a day should be scheduled together (e.g. one Application appearance and one FXD appearance).
 - Sequencing may be done manually by entering a sequence number under the "Re-Seq" heading. Once you have re-sequenced your files, click "Update by Sequence".

- Sequencing may also be done chronologically by clicking "Update by Appr Time"
- 6. Once you have completed re-sequencing and have entered the name of the adjudicator, click "Save List" one final time, then click "Lock List".
 - Locking a list prevents changes to the adjudicator name and the sequence of the files.
 - **NOTE:** If you "unlock" the list, the sequence of the files may change unpredictably and you may have to re-sequence your files again.
- 7. As a courtesy to the Court Clerks, use a pencil to write down the file sequence number on the file jacket so the Court Clerks can easily pull the correct file when calling them in Court.
- 8. Physically organize your files in terms of how you have sequenced them in CEIS.

Photocopying and Distribution

Click here for a condensed version of distribution instructions



List Prep Distribution
Instructions.doc



1. Complete Court List Sets

- Click "Court List Module" and then navigate to "Daily Court List". Ensure that the "Room" field says "All", then click "Preview List". Once you have inspected it and can verify everything has been correctly entered, print out 3 stapled copies of this full court list.
 - 1 copy to the Family Counter
 - 1 copy for the back tray
 - 1 copy for Judge's mail tray (upstairs)
 - A digital copy of the Complete Court List is to be emailed to Family Duty counsel at ^{s.15; s.17} @legalaid.bc.ca and ^{s.15; s.17} @legalaid.bc.ca.
 - **For CFCSA days (i.e. Wednesday list), provide an additional copy for the Parent's Legal Counsel by email at ^{s.15; s.17} @legalaid.bc.ca.
 - A digital copy of the FMEP Court List is to be emailed to FMEP at ^{s.15; s.17} @fmep.ag.gov.bc.ca

2. Assignment Court List

- 4 copies of Assignment Court List to Courtroom 101 (into Courtroom 101 Clerk tray)
 - 1 copy of the Assignment Court List to each feeder Court
 - On the "Week at a Glance" rota, a "Feeder court" is any additional Court that says "Trial Feeder" on it
 - 1 copy of the Assignment court List to each file for the Judge (i.e. one copy of the Assignment Court List is to be attached to each file in Assignment Court)
 - Highlight the file number and names that pertain to the file that said list is attached to
3. Per Courtroom Lists
- 4 copies of specific Courtroom list for the Court clerks (+1 if room 105)
 - 2 copies only for FCC's/FSC's
 - 1 copy for the sitting Judge (to be attached to the file)
4. Lists to be Faxed
- On Tuesday Fax Feenie MacDonald (Fax # 604-669-4792) CFCSA list
Fax Somers, Poulin & Hall (Fax # 604-525-2932) CFCSA list
 - Day before Fax Paul Reimer (Norma Fax: 604-264-8815) ISO list
Fax Bella Circuit Court Users the Bella Circuit Court list

*****SEE CONDENSED LIST OF PHOTOCOPYING/DISTRIBUTION LIST FOR LIST OF JUDGES WHO DO NOT NEED THEIR FILES*****

Bringing the Files Upstairs

1. Once your Court lists have been distributed, it is now time to bring your files upstairs
 - **NOTE:** The Monday 105 FLA list and the Wednesday 105 CFCSA list **DO NOT** need to be brought upstairs. These larger lists may simply be left in the cart by the Court Clerk Courtroom trays (see condensed list of photocopying/distribution list for exceptions)
2. Ensure that you also bring up any Orders that are waiting to be signed by a Judge. These may be left in the mail slot of the applicable Judge
3. Deposit the files in the mail slots of the Judge that the files are assigned to. If there is no room, or no specific Judge has been assigned, you may simply leave the file(s) on the table.

4. The copy of the complete court list for the Judge's lounge should also be placed in the applicable tray.

Post List Prep Duties

1. If you haven't already done so, pull the files for the next day's list prep person
2. Filing
3. Assist with any other duties as operationally required

Data Entry

General Procedures

1. Open the CCD Logsheet for the specific Court date/appearance in which you are doing data entry on
 - o Navigate to the "K:" drive → 2045 → CCDLogsheet → Date of appearance → Courtroom of appearance → HTML Document
2. In CEIS, enter the file number and click the "Appearance" tab. After you have selected the appearance that you are doing data entry for, click "Record Results"
3. In comparison with the CCD Logsheet, ensure that all parties that had appeared in the Logsheet are showing as having appeared in CEIS.
 - o If a party was represented by Counsel/Duty Counsel, ensure that the "Method" field reads as "Counsel" or "Duty Counsel", as the case may be. The "Counsel" field would then reflect the name of the Counsel that attended as well as their method of attendance
 - o If a party was represented by an agent, the "Method" field would read as "Party Represented by Agent". The name of the agent would be reflected under the "Counsel" field, as well as their method of attendance
 - o If a party attended by MS Teams (Audio) or MS Teams (Video), by telephone, or video conference, that would be reflected under the "Method" field.
 - o If a party attended personally, the "Method" field would read as "Present".
 - o If a party did not attend at all, the "Method" field would read as "Not Present"
4. Once you have verified that the attendance information is correct, proceed to the "Results" tab.
 - o For CFCSA processes, see **BELOW**

- Once again, compare the results on this page with what was discussed on the CCD Logsheet.
 - If the Document Result shows as "End", verify that on the CCD Logsheet, that there is no returnable date for the Application and that no matters are outstanding
 - If the Issue Result shows as "OM", "OMC", "COMP", "DIS", "NST", "WD", check the CCD Logsheet to see if an Order was made on an Issue, or if the specific Issue was addressed in a way that indicates it will not be spoken to again further. In these situations, the "Concluded" box would be ticked as to prevent the issue from showing up on future appearances/court lists.
5. If the matter is adjourned over to a specific date (i.e. either a FMC date or a Monday Afternoon Application date), ensure that the document result is "ADD" and then click the "Next Appr." tab
- Based on what was spoken to in Court and reflected on the CCD Logsheet, select the document that has been ordered to be adjourned and enter the new Courtroom/Court date that the matter was adjourned over to. Once that has been completed, click "Save" then click "Close".
6. Under the "Appearance" tab, ensure that the adjudicator clearly reflects the name of the adjudicator on the Logsheet, as well as their method of appearance. If the "Actual duration" field has been left blank, the Court Clerk may have left a note that specifies the duration of the appearance. Close out of "Record Results"
7. Back on the CEIS home screen, click "Results from Court". Ensure that the "Class" field reads as "Family", and that you enter the date in which you are doing data entry for.
- If the file that you are doing data entry for is not shown on the list, you may close out of this window and proceed to Step 8
 - If the file you're doing data entry for is listed here, select it and you can view the note that has been left by the Court Clerk.
 - The note will typically provide an instruction/information for the Registry, such as:
 - Scanning an order signed on the bench
 - Sending documents/notification to a party by email
 - The matter has been assigned to a Courtroom
 - A Trial date has been vacated

- Other than “Scanning an Order signed on the bench”, these notes should be copied and pasted into the data entry
 - Under “Record Results”, navigate to the “Results” tab and paste these comments/directions under the “Comment” box.
 - **NOTE:** In the CCD Logsheet, any administrative orders/directions from a Judge should also be copied and pasted into the “Comment” box.
 - Once you have completed the direction from the Clerk, select the “done” tick box and click “Complete task”.
8. Click “Print Court Summary”. After you have done a final verification that all the data on the Court Summary Sheet clearly reflected what occurred in Court, print out a copy of the Summary Sheet for the file.
 9. Erase the pencil-marked sequence number that was written onto the jacket of the file

CFCSA Files – Commencement Hearings

1. For CFCSA files, matters may be adjourned over for a commencement hearing. Typically, the document in Court will be a “Presentation Report”
2. The Judge may have made an Interim Order with a term that a commencement hearing is to be heard at a future date/time.
3. Under the “Results” tab, ensure that the issues before the Court have the “Concluded” tick box selected.
4. Click “Add new Issue” and add the corresponding new placeholder issue based on the attached “CEIS Issue codes” document.
 - Locate the issue under the “Comm” column that corresponds to the issue on the Presentation Report. The new corresponding placeholder issue will be the one directly to the right under “Description”.
 - Ensure that when you are adding the new issue, that if there are multiple children, you enter one new instance of the issue per child.



CEIS Issue Codes.xlsx

5. Click the "Next Appr." Tab and schedule the Presentation Report for a commencement hearing date, pursuant to the Order granted by the Judge.
 - The appearance reason will be "FA" still.
 - If the Presentation Report has a Document result of "End", change it to "ADD"
6. Once you have scheduled the Presentation Report for a commencement hearing appearance, print out the Court Summary Sheet and ensure that it clearly reflects that the matter has a new upcoming date and a new issue.
7. Once the Application for an Order is filed, go to the "Appearance" tab in CEIS and navigate to the placeholder appearance that we had set for the Presentation Report. Click "Record Results", and under the "Results" tab, enter "END" into the "Document Result" field, and indicate that the "Adjourned prior date" is the date in which the Application for an Order is filed.
 - The Application for an Order is replacing the Presentation Report, so the date/time requested on the Application should match the date/time as granted on the Presentation Report.

Reasons for Judgment

1. Once the Registry receives a Reasons for Judgment back from a Judge, we will need to process it on the same day.
2. In CEIS, look up the file number and go to the "Documents" tab. Add a Document that is Filed by the "Registry" with the Doc Type "RFJ". In the Comment box, identify the Date of the Hearing, the Date of Judgment, and the Judge.
 - a. Ensure that the filed date reflects the date of the stamp on the front of the Reasons for Judgment
3. Navigate back to the Documents List screen and then click the "Orders" button on the left-hand side of the screen.
4. Click "Add Order", taking care to reflect the adjudicator making the order as well as the type of Order being made. The Date Granted will be the date of the judgment and the date entered will be the stamped date on the front of the Reasons for Judgment.
5. Read through the Reasons for Judgment and take care to note any Orders made by the Judge in their Reasons.

NOTE: Some Judges will clearly summarize the order terms at the end of their Reasons, but you should still read through entirety of the Judgment anyways.

6. Under the "Order Terms" screen, under the "Terms of Order" heading, enter in each Order term that's made in the Reasons. Each paragraph in the Reasons for Judgment has a paragraph number so this should be reflected in this field

EXAMPLE: [1] The Party, John Smith, shall have parenting time with the child...

- If the Order starts midway through a paragraph, you may reflect it as such:
EXAMPLE: [1]...the Party, John Smith, shall have parenting time...
7. Save the Terms of the Order and file the Reasons for Judgment away.

Adjournment Requests

Requests to adjourn any matter type other than a Trial:

- Adjournment by consent of both parties:
 - Per Practice Direction FAM 09, counsel may complete a Consent Adjournment Form and email it to the applicable Court Registry. The Consent must clearly indicate if a matter, other than a Trial, is being adjourned from one Court date to another or if it's adjourned generally. At least one of the parties must be represented by counsel and the filing counsel must have obtained consent of all other parties.
 - The Filing counsel shall use only one form per Court File/Court date, and if the matter is being adjourned to another date, it must be for either the same time estimate or less.
 - If Adjourned to a specific date/time/courtroom, Counsel must contact the Court to obtain the date/room information to complete the form. If it's for a matter/time that's been set by the JCM, they will need to contact the JCM to get the date/time/room
 - The document shall be submitted to the Registry by 4:00 PM at least 2 clear business days in advance of the appearance. Except when adjourned generally, counsel shall provide a copy of the filed document to all other parties

Adjournment NOT by Consent

NOTE: If the matter is not by Consent and/or there are Counsels on record, parties may wish to complete a Form 10 Application for Case Management Order to adjourn a Court appearance.

Filing an Application – Family Law Act

Application About a Family Law Matter – New Order

- Receive the application.
- Search CEIS if parties have any existing file.

COURT FILE EXISTS

1. Pull existing file.
2. Check application to ensure that it has been completed in full, the style of cause is correct (matches CEIS and initiating document), both parties reside in British Columbia, has been signed by the party or his/her counsel and contains the addresses of both parties. *(If the other party's address is unknown, initiate trace through Family Search. Refer to section titled "Family Search". If the address is not in BC, or there is no address, it is up to the party to arrange for service. Rule 186 – Service outside of BC: FLA permits service outside of the Province; we are able to accept applications for a person or persons who reside outside of BC).*
NOTE: Rule 175 states that If a party's address for service is outside British Columbia, the party must provide an email address for service.
3. If the party is asking for Child Support or Extraordinary Expenses, they must file a Financial Statement at the same time as the Application (Rule 25)
4. File document by date stamping all copies and initialing the original application inside the date stamp.
5. Place Document # stamp on the top right-hand side of the application.

Preparing the File

6. Ensure that there is a blue divider sheet on each side of the folder to separate the new proceedings from the previous ones (if applicable).
7. Complete a "Requirement for First Appearance" sheet and place on right hand side of the file folder on top of the court summary sheet.
8. Enter Document in CEIS.
9. Enter the filing party's address only.
10. If the application is filed through the mail, photocopy (2X) page 2 of the cover sheet on the application, and highlight step 3 and step 4, family forms should be mailed to the filing party along with the documents.
11. Distribute application and financial statement, if necessary.

COURT FILE DOES NOT EXIST

1. Check application to ensure that it has been completed in full, has been signed by the party or his/her counsel and contains the addresses of both parties. *(If the respondent's address is unknown, initiate trace through Family Search. Refer to section titled "Family Search". If the address is not in BC, or there is not address, it is up to the party to arrange for service Rule 186 – Service outside of BC: FLA permits*

service outside of the Province, we are able to accept applications for a person or persons who reside outside of BC).

2. If the party is asking for Child Support or Extraordinary Expenses, they must file a Financial Statement at the same time as the Application (Rule 25).
3. File document by date stamping all copies and initialing the original application inside the date stamp.
4. Place Document # stamp on the top right-hand side of the application.

Preparing the File

5. Open new file.
6. Label the outside of the folder with a **red** label (red line on the top) with party surname first, then first name. More than one label may be used if there are many parties. Affix year sticker.
7. Place blue divider sheets on both sides of the folder (if applicable).
8. Complete the top portion of the court summary sheet and place it on the right hand side of the folder on top of the blue sheet.
9. Complete a "Requirement for First Appearance" sheet and place on top of court summary sheet.
10. Enter new file in CEIS.
11. Enter the filing party's address only.
12. If the application is filed through the mail, photocopy (2X) page 2 of the cover sheet on the application, and highlight step 3 and step 4, family forms should be mailed to the filing party along with the documents.
13. Distribute application and financial statement, if necessary.

Distribution of Documents

- **Court File**
 - Court file copy (original) on left hand side on top of blue divider
 - Financial statement under the summary sheet
- **Filing Party**
 - Filing Party's copy of application
 - Family Justice Registries brochure
 - PAS brochure
- **Other Party**
 - Other Party's copy of application
 - Blank Financial Statement if necessary
 - Blank Reply to an Application About a Family Law Matter
 - Family Justice Registries Brochure
 - PAS Brochure
- **Proof of Service**
 - proof of service copy of the application
 - to the Filing Party for the server to complete

- **Family Justice Counsellors**

- Scanned copy of the filed Application to be sent by email (via CEIS)

Service of Documents

- the application must be served **PERSONALLY** on the other party by a person, other than the filing party, who is at least 19 years of age.
- unless a judge grants permission to use a different method of service (*application for sub-service via Application for Case Management Order (Form 10) or Application for Case Management Order Without Notice or Attendance (Form 11)*) application must be served personally.

- s.3

NOTE: Don't make this direction just because someone is reluctant to arrange their own service or feel it's inconvenient.

Application About a Family Law Matter – Existing Order

- Receive the application.
 - A party must file an application about a family law matter, to change an existing order, in the registry where the order was made or transferred to. A party cannot apply to change or cancel a Supreme Court order in the Provincial Court.
1. Check CEIS for file number and pull file.
 2. Ensure that a copy of the Order has been attached, by the party, to the Application.
 3. Check application to ensure that it has been completed in full, the style of cause is correct (matches CEIS and initiating document), both parties reside in British Columbia, has been signed by the party or his/her counsel and contains the addresses of both parties. *(If the other party's address is unknown, initiate trace through Family Search. Refer to section titled "Family Search". If the address is not in BC, or there is no address, it is up to the party to arrange for service. Rule 186 – Service outside of BC: FLA permits service outside of the Province; we are able to accept applications for a person or persons who reside outside of BC).*
 4. If the party is asking for Child Support or Extraordinary Expenses, they must file a Financial Statement at the same time as the Application (Rule 25)
 5. File document by date stamping all copies and initialing the original application inside the date stamp.
 6. Place Document # stamp on the top right hand side of the application.

Preparing the file

7. Ensure that there is a blue divider sheet on each side of the folder to separate the new proceedings from the previous ones.
8. Complete a "Requirement for First Appearance" sheet and place on right hand side of the file on top of the court summary sheet.
9. Enter Document in CEIS.
10. Enter the filing party's address only.
11. If the application is filed through the mail, photocopy (2X) page 2 of the cover sheet on the application, and highlight step 3 and step 4, family forms should be mailed to the filing party along with the documents.
12. Distribute application and financial statement, if necessary.

Distribution of Documents

- **Court File**
 - Court file copy (original) on left hand side on top of blue divider
 - Financial Statement under the summary sheet
- **Filing Party**
 - Filing Party's copy of application
 - Family Justice Registries Brochure
 - PAS Brochure

- **Other Party**
 - Other Party's copy of application
 - Blank Financial Statement if necessary
 - Blank Reply to an Application About a Family Law Matter
 - Family Justice Registries Brochure
 - PAS Brochure
- **Proof of Service**
 - proof of service copy of the application
 - to the Filing Party for the server to complete
- **Family Justice Counsellors**
 - Scanned copy of the filed Application to be sent by email (via CEIS)

Service of Documents

- the application must be served **PERSONALLY** on the Other Party by a person, other than the Filing Party, who is at least 19 years of age.
- unless a judge grants permission to use a different method of service (*application for sub-service via Application for Case Management Order (Form 10) or Application for Case Management Order Without Notice or Attendance (Form 11)*) application must be served personally.
- s.3

NOTE: Don't make this direction just because someone is reluctant to arrange their own service or feel it's inconvenient.

FLA Application Concurrent with CFCSA Application

***Exempt from Needs Assessment and Parenting After Separation**

- Receive the application.
- Search CEIS if parties have any existing file.

COURT FILE EXISTS

1. Pull existing file.
2. Check application to ensure that it has been completed in full, the style of cause is correct (matches CEIS and initiating document), both parties reside in British Columbia, has been signed by the party or his/her counsel and contains the addresses of both parties. *(If the other party's address is unknown, initiate trace through Family Search. Refer to section titled "Family Search". If the address is not in BC, or there is no address, it is up to the party to arrange for service. Rule 186 – Service outside of BC: FLA permits service outside of the Province; we are able to accept applications for a person or persons who reside outside of BC).*
NOTE: Rule 175 states that if a party's address for service is outside British Columbia, the party must provide an email address for service.
3. If a party is asking for extraordinary expenses or spousal support, the party must file a Financial Statement at the same time as the Application (Rule 25)
4. File document by date stamping all copies and initialing the original application inside the date stamp.
5. Affix Document # stamp on the top right-hand side of the application.

Preparing the File

6. Ensure that there is a blue divider sheet on each side of the folder to separate the new proceedings from the previous ones.
7. Complete a "Requirement for First Appearance" sheet and place on right hand side of the file folder on top of the court summary sheet.
8. Enter Document in CEIS.
9. Enter the filing party's address only.
10. If the application is filed through the mail, photocopy (2X) page 2 of the cover sheet on the application, and highlight step 3 and step 4, family forms should be mailed to the filing party along with the documents.
11. Search child's or children's name(s) in CEIS and cross reference on file cover for both FLA and CFCSA files.
12. **The Director is not named as a party, but does need to be given notice.**
13. Distribute application and Financial Statement if necessary.
14. After replies filed or after 30 days and Certificate of Service has been filed, then a court date should be set on the day the Counsel for the Director sits.

COURT FILE DOES NOT EXIST

1. Check application to ensure that it has been completed in full, has been signed by the party or his/her counsel and contains the addresses of both parties. *(If the other party's address is unknown, initiate trace through Family Search. Refer to section titled "Family Search". If the address is not in BC, or there is no address, it is up to the party to arrange for service. Rule 186 – Service outside of BC: FLA permits service outside of the Province; we are able to accept applications for a person or persons who reside outside of BC).*

NOTE: Rule 175 states that if a party's address for service is outside British Columbia, the party must provide an email address for service.

2. If the party is asking for extraordinary expenses or spousal support, the party must file a Financial Statement at the same time as the Application (Rule 25).
3. File document by date stamping all copies and initialing the original application inside the date stamp.
4. Affix Document # stamp on the top right hand side of the application.

Preparing the File

5. Open new file.
6. Label the outside of the folder with a **red** label (red line on the top) with party surname first, then first name. More than one label may be used if there are many parties. Affix year sticker.
7. Place blue divider sheets on both sides of the folder.
8. Complete the top portion of the court summary sheet and place it on the right hand side of the folder on top of the blue sheet.
9. Complete a "Requirement for First Appearance" sheet and place on right hand side of the file folder on top of the court summary sheet.
10. Enter Document in CEIS.
11. Enter the filing party's address only.
12. If the application is filed through the mail, photocopy (2X) of page 2 of the cover sheet on the application, and highlight step 3 and step 4, family forms should be mailed to the filing party along with the documents.
13. Search child's or children's name(s) in CEIS and cross reference on file cover for both FLA and CFCSA files.
14. **The Director is not named as a party, but does need to be given notice.**
15. Distribute application and financial statement if necessary.
16. After replies filed or after 30 days and Certificate of Service has been filed, then a court date should be set on the day the Counsel for the Director sits.

Distribution of Documents

- **Court File**
 - Court file copy (original) on left hand side on top of blue divider
 - Financial Statement under the summary sheet

- **Filing Party** - Filing Party's copy of application
- **Other Party** - Other Party's copy of application
- Blank Financial Statement if necessary
- Blank Reply to An Application About a Family Law Matter
- **Director** - Make 2nd copy to Director
- **Proof of service** - Proof of service copy of the application to Filing Party for server to complete
- Make a 2nd copy of the proof of service copy for server to complete after serving Director

Service of Documents

- the application must be served **PERSONALLY** on the Other Party by a person, other than the Filing Party, who is at least 19 years of age.
- Unless a judge grants permission to use a different method of service (*application for sub-service via Application for Case Management Order (Form 10) or Application for Case Management Order Without Notice or Attendance (Form 11)*) application must be served personally.

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Don't make this direction just because someone is reluctant to arrange their own service or feel it's inconvenient.

Bella Bella – Bella Coola - Klemtu (WAGLISLA)

***Exempt from Needs Assessment and Parenting After Separation**

APPLICATION ABOUT A FAMILY LAW MATTER

- Receive the application.
- Search CEIS if parties have any existing file.

COURT FILE EXISTS

1. Pull existing file.
2. Check application to ensure that it has been completed in full, the style of cause is correct (matches CEIS and initiating document), both parties reside in British Columbia, has been signed by the party or his/her counsel and contains the addresses of both parties. *(If the other party's address is unknown, initiate trace through Family Search. Refer to section titled "Family Search". If the address is not in BC, or there is no address, it is up to the parties to arrange for service. Rule 186 – Service outside of BC: FLA permits service outside of the Province, we are able to accept applications for a person or persons who reside outside of BC).*
NOTE: Rule 175 states that if a party's address for service is outside British Columbia, the party must provide an email address for service.
3. If the party is asking for extraordinary expenses or spousal support, the party must file a Financial Statement at the same time as the Application (Rule 25).
4. File document by date stamping all copies and initialing the original application inside the date stamp.
5. Affix Document # stamp on the top right hand side of the application.

Preparing the File

6. Ensure that there is a blue divider sheet on each side of the folder to separate the new proceedings from the previous ones.
7. Complete a "Requirement for First Appearance" sheet and place on right hand side of the file folder on top of the court summary sheet.
8. Enter Document in CEIS. Remember to change the location.
9. Enter the filing party's address only.
10. If the application is filed through the mail, photocopy (2X) of page 2 of the cover sheet on the application, and highlight step 3 and step 4, family forms should be mailed to the filing party along with the documents.
11. Distribute application and Financial Statement, if necessary.

COURT FILE DOES NOT EXIST

1. Check application to ensure that it has been completed in full, has been signed by the party or their counsel and contains the addresses of both parties. *(If the respondent's address is unknown, initiate trace through Family Search. Refer to section titled "Family Search". If the address is not in BC, or there is no address, it is up to the parties to arrange for service. Rule 186 – Service outside of BC: FLA permits service outside of the Province, we are able to accept applications for a person or persons who reside outside of BC).*

NOTE: Rule 175 states that if a party's address for service is outside British Columbia, the party must provide an email address for service.

2. If the party is asking for extraordinary expenses or spousal support, the party must file a Financial Statement at the same time as the application (Rule 25).
3. File document by date stamping all copies and initialing the original application inside the date stamp.
4. Affix the Document # stamp on the top right hand side of the application.

Preparing the File

5. Open new file.
6. Label the outside of the folder with a red label (red line on the top) with party surname first, then first name. More than one label may be used if there are many parties. Affix year sticker. Write court location in bold letters on the cover of the file.
7. Place blue divider sheets on both sides of the folder.
8. Complete the top portion of the court summary sheet, crossing off "Robson Square" and writing appropriate location, and place it on the right hand side of the folder on top of the blue sheet.
9. Enter new file in CEIS. Remember to change the location.
10. Enter the filing party's address only.
11. If the application is filed through the mail, photocopy (2X) of page 2 of the cover sheet on the application, and highlight step 3 and step 4, family forms should be mailed to the filing party along with the documents.
12. Write on an orange filler card the court location and file number and file in the regular Robson Square Provincial Court family filing. The green file will be filed with the other circuit court files in the back file room.
13. Distribute application and Financial Statement, if necessary.

Distribution of Documents

- **Court File** - Court file copy (original) on left hand side on top of blue divider
- **Filing Party** - Filing Party's copy of application
 - Blank Financial Statement if necessary

- **Other Party**
 - Other Party's copy of application
 - Blank Financial Statement if necessary
 - Blank Reply to An Application About a Family Law Matter
- **Proof of Service**
 - Proof of service copy of application
 - To the Filing Party for server to complete

Notice of Family Management Conference will be sent if a Reply is filed or after 30 days of service.

If the matter is for an interim appearance, i.e. FMC schedule on the Bella Bella/Bella Coola video-phone remand list, at Robson Square, Courtroom 101, 9:30 a.m., unless otherwise directed, check the Circuit Court Remand schedule.

If the matter is being heard up in the community, the Courtroom number is 001, remember to choose the correct court location.

Service of Documents

- The application must be served **PERSONALLY** on the Other Party by a person, other than the applicant, who is at least 19 years of age.
- Unless a judge grants permission to use a different method of service (*application for sub-service via Application for Case Management Order (Form 10) or Application for Case Management Order Without Notice or Attendance (Form 11)*) application must be served personally.

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NOTE:

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Don't make this direction just because someone is reluctant to arrange their own service or feel it's inconvenient.

Vancouver/Burnaby/MSD Applications (Somers, Poulin, & Hall)

*****Effective May 2015, parties were no longer required to assign Family Maintenance Rights to MSD. As such, maintenance services are now provided through FMEP so this program is discontinued*****

Replying to an Application About a Family Law Matter (FLA)

- An Other Party who receives an Application (or a Filing Party who receives a Reply to an Application About a Family Law Matter which includes a Counter Application from the Other Party) may do one or more of the following:
 - agree with one or more of the issues
 - disagree with one or more of the issues
 - apply to the Court with his/her own Application (only on a Reply to an Application About a Family Law Matter, not a Reply to a Counter Application).

Note: A Reply to an Application About a Family Law Matter must be filed in the registry within 30 days after the Other Party has been served with the application. The registry may accept a Reply to an Application About a Family Law Matter up until a hearing, unless an order has been made.

1. Receive Reply to an Application About a Family Law Matter.
2. Pull court file to make sure no order has been made on that application.
3. Check to make sure that the reply has been completed in full, the style of cause is correct (matches CEIS and initiating document), has been signed and dated by the party or his/her counsel contains the addresses of both parties.
4. Enter the document in CEIS, if the Other Party has made his/her own application on the reply, enter all issues. If the Other Party has issues of support, he/she must file a financial statement before the registry can file the reply.
NOTE: The Other Party **CANNOT** make an Application for an issue that has already been applied for by the Filing Party on the Application About a Family Law Matter
5. File document by stamping all copies and initialing the original reply inside the date stamp.
6. Affix document # stamp on top right hand corner.
7. Enter the address of the respondent in the Parties tab in CEIS.
8. Update "Requirement for First Appearance" sheet.

Filing Party May Respond If the Reply to An Application About a Family Law Matter Includes a Counter Application

Under the Rules (Rule 34) there is a requirement for the Filing Party to respond to the Counter Application in a Reply to an Application About a Family Law Matter. However, the registry does not include a blank Reply to a Counter Application when sending a Reply with a Counter Application to the receiving party. The registry may provide one if asked.

- If a Reply to a Counter Application is received by the registry it must be filed within 30 days after being served.

- The Registry will file the Reply to a Counter Application, by entering the document in CEIS as a Reply (RTCA), date stamp all copies, initial the inside of the date stamp on the original.

Distribution of Documents

- **Court File** - court file copy (original) on left hand side under the Application (and Reply with Counter Application)
- **Receiving Party** - Filing Party's copy of reply to an application about a family law matter, mail to other party and stamp on original application that reply to an application about a family law matter was mailed to applicant
- **Filing Party** - Other Party's copy of reply to an application about a family law matter
- mail or return filing party's copy
- **Proof of Service** - email proof of service copy to Family Justice Counselors'

PCFR Rule 33 - Within 21 days after a reply to an application about family law matter is filed, the clerk must serve on the other party a filed copy of the reply to an application about a family law matter.

Note: An Other Party who has not filed a reply to an application about a family law matter is not entitled to receive notice of any part of the proceedings

Filing a Late Reply

If a Reply is not filed within 30 days, pursuant to PCFR Rule 28(4), a party may wish to make an Application for Case Management Order Without Notice or Attendance (Form 11) to request permission to file a Late Reply.

Application About Priority Parenting Matter - FLA

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

1. Receive Application About Priority Parenting Matter.
2. Check document to ensure it has been completed in full, the style of cause is correct (matches CEIS and initiating document), and contains the addresses of both parties.
3. Assign an appearance on the FLA Application list at 2:00 PM (on FLA days only) or 3:00 PM. allowing enough time for party to effect service (of seven (7) clear days, not counting the first day and the last day). If party advises they have already pre-arranged a date other than a remand day with the Judicial Case Manager, phone JCM to confirm.
4. File document by date stamping all copies and initialing the original Application inside the date stamp.
5. Affix Document # stamp on top right hand corner.
6. Enter document in CEIS. Enter appearance as APP in CEIS.
7. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.

Service of Documents

- person filing Application About Priority Parenting Matter is responsible for serving.
- service must be done at least **7** days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by leaving the documents at the party's last address for service;
- by mailing the documents by registered mail to the party's address for service;
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page;
- by e-mail, if the e-mail address is included in the address for service provided;
- by leaving the Application with the other party's lawyer;
- by having another person, at least 19 years of age, leave the Application with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

In special or urgent circumstances, or for an application for sub-service, on an Application for Case Management Order/Application for Case Management Order

Without Notice or Attendance, a judge may make an order without notice having been given to the other party.

It is not necessary to respond to an Application About Priority Parenting Matter, but other party may respond by filing a Written Response to Application (Form 19).

Application for Order Prohibiting Relocation of a Child

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

1. Receive Application for Order Prohibiting Relocation of a Child.
2. Check document to ensure it has been completed in full, the style of cause is correct (matches CEIS and initiating document), and contains the addresses of both parties.
3. Assign an appearance on the FLA Application list at 2:00 PM (on FLA days only) or 3:00 PM, allowing enough time for party to effect service (of seven (7) clear days, not counting the first day and the last day). If party advises they have already pre-arranged a date other than a remand day with the Judicial Case Manager, phone JCM to confirm.
4. File document by date stamping all copies and initialing the original Application inside the date stamp.
5. Affix Document # stamp on top right hand corner.
6. Enter document in CEIS. Enter appearance as APP in CEIS.
7. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.

Service of Documents

- person filing Application for Order Prohibiting the Relocation of a Child is responsible for serving.
- service must be done at least 7 days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by leaving the documents at the party's last address for service;
- by mailing the documents by registered mail to the party's address for service;
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page;
- by e-mail, if the e-mail address is included in the address for service provided;
- by leaving the Application with the other party's lawyer;
- by having another person, at least 19 years of age, leave the Application with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

In special or urgent circumstances, or for an application for sub-service, on an Application for Case Management Order/Application for Case Management Order Without Notice or Attendance, a judge may make an order without notice having been given to the other party.

It is not necessary to respond to an Application for Order Prohibiting Relocation of a Child, but other party may respond by filing a Written Response to Application (Form 19).

NOTE: Even if a party files a Form 19, they must still attend the hearing.

Request for Scheduling

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

1. Receive Request for Scheduling
2. Check document to ensure it has been completed in full and the style of cause is correct (matches CEIS and initiating document).
3. Examine the file and the form to determine if the matter is to be reset on the Application List or the FMC List.
4. If applicable, assign an appearance on the FLA Application list at 2:00 PM (on FLA days only) or 3:00 PM, allowing enough time for party to effect service (of seven (7) clear days, not counting the first day and the last day).
 - Alternatively, if the matter is to be reset for a Family Management Conference, schedule an appearance on either the Monday FMC list in Courtroom 105 or one of the alternative Courtroom 115 FMC lists.
 - If party advises they have already pre-arranged a date other than a remand day with the Judicial Case Manager, phone JCM to confirm.

NOTE: In situations where there was an interim order made on a document, such as a Notice of Motion, and all the issues have since been concluded, you may need to add the "new" issues to the Request for Scheduling and schedule the Request for Scheduling itself in an Application list slot. Otherwise, the originating Notice of Motion/Application will be the document that is scheduled into Court.

5. File document by date stamping all copies and initialing the original Request for Scheduling inside the date stamp.
6. Affix Document # stamp on top right hand corner, if applicable.
7. Enter document in CEIS. Enter appearance as APP in CEIS.
8. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.

Service of Documents

- person filing Request for Scheduling is responsible for serving.

- service must be done at least **7** days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by leaving the documents at the party's last address for service;
- by mailing the documents by registered mail to the party's address for service;
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page;
- by e-mail, if the e-mail address is included in the address for service provided;
- by leaving the Application with the other party's lawyer;
- by having another person, at least 19 years of age, leave the Application with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

In special or urgent circumstances, or for an application for sub-service, on an Application for Case Management Order/Application for Case Management Order Without Notice or Attendance, a judge may make an order without notice having been given to the other party.

It is not necessary to respond to a Request for Scheduling, but other party may respond by filing a Written Response to Application (Form 19), if an interim order is being sought.

NOTE: Even if a Form 19 is filed, the party must still attend the hearing.

Application for Case Management Order (Form 10)

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

1. Receive Application for Case Management Order.
NOTE: If the party is wishing for the Judge to review their application and supporting documents without attending Court, ensure that a draft Consent Order is signed and attached to each copy of the Application.
2. Check document to ensure it has been completed in full, the style of cause is correct (matches CEIS and initiating document), and contains the addresses of both parties.
3. Assign an appearance on the FLA Application list at 2:00 PM (on FLA days only) or 3:00 PM, allowing enough time for party to effect service (of seven (7) clear days, not counting the first day and the last day). If party advises they have already pre-arranged a date other than a remand day with the Judicial Case Manager, phone JCM to confirm.
4. File document by date stamping all copies and initialing the original Application inside the date stamp.
5. Affix Document # stamp on top right hand corner.
6. Enter document in CEIS. Enter appearance as APP in CEIS.
7. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.

Service of Documents

- person filing Application for Case Management Order is responsible for serving.
- service must be done at least **7** days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by leaving the documents at the party's last address for service;
- by mailing the documents by registered mail to the party's address for service;
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page;
- by e-mail, if the e-mail address is included in the address for service provided;
- by leaving the Application with the other party's lawyer;
- by having another person, at least 19 years of age, leave the Application with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

In special or urgent circumstances, or for an application for sub-service, on an Application for Case Management Order/Application for Case Management Order Without Notice or Attendance, a judge may make an order without notice having been given to the other party.

It is not necessary to respond to an Application for Case Management Order, but the other party may respond by filing a Written Response to Application (Form 19).

NOTE: Even if a Form 19 is filed, the party must still attend the hearing.

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

1. Receive Application for Case Management Order Without Notice or Attendance.
2. Check document to ensure it has been completed in full, the style of cause is correct (matches CEIS and initiating document), and contains the address of the filing party.
3. File document by date stamping all copies and initialing the original Application inside the date stamp.
4. Affix Document # stamp on top right-hand corner.
5. Enter document in CEIS.
6. Send the Application and any relevant supporting documents/attachments, to the JCM by email to Robson.Scheduling@provincialcourt.bc.ca. The JCM will assign the processing of the Application to an available Judge and will "CC" the Registry to advise us as to which Judge will be working on the Application. If no local Judge is available, it may be assigned to a Judge at a foreign Court location.
 - The subject line of the email should read as "Desk Order, File #".
NOTE: If the party is at the Registry waiting for the Judge's decision, we can also add in the notation "Applicant Waiting" to the Subject line.
 - If the Application is being made in relation to a filed document, ensure that you indicate the document # in CEIS, in the body of the email, so the Judge can more easily review the supporting document in CEIS.
7. Once the Judge has processed the Application, they will email a completed Reasons/Rejection/Terms of Order form back to the Registry at our generic email address CSBRCS@gov.bc.ca.
8. If the Judge makes an Order, draft the Order, and email it back to the Judge for electronic signature.
NOTE: The Judges have been directed to provide us with a digital copy of the Reasons/Rejection/Terms of Order form so that we may copy and paste the terms of the Order into CEIS, upon generation of the Order. However, if they have scanned a digital image back instead, we will need to manually type the Order terms into CEIS.
9. Upon receipt of the signed Order, enter it into CEIS and contact the party to advise them that the Application/Order have been processed by a Judge and are ready for pickup (if applicable/requested).

NOTE: The party is required to serve a copy of the filed Application and Order on the other party upon the granting of an Order.

Service of Documents

- person filing Application for Case Management Order is responsible for serving.
- service must be done at least 7 days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by leaving the documents at the party's last address for service;
- by mailing the documents by registered mail to the party's address for service;
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page;
- by e-mail, if the e-mail address is included in the address for service provided;
- by leaving the Application with the other party's lawyer;
- by having another person, at least 19 years of age, leave the Application with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

In special or urgent circumstances, or for an application for sub-service, on an Application for Case Management Order/Application for Case Management Order Without Notice or Attendance, a judge may make an order without notice having been given to the other party.

It is not necessary to respond to an Application for Case Management Order, but the other party may respond by filing a Written Response to Application (Form 19).

NOTE: Even if a Form 19 is filed, the party must still attend the hearing.

Application About Enforcement

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

10. Receive Application About Enforcement. Ensure that a copy of the referenced order, written agreement or determination has been attached to each copy of the Application.
11. Check document to ensure it has been completed in full, the style of cause is correct (matches CEIS and initiating document), and contains the addresses of both parties.
12. Assign an appearance on the FLA Application list at 2:00 PM (on FLA days only) or 3:00 PM, allowing enough time for party to effect service (of seven (7) clear days, not counting the first day and the last day). If party advises they have already pre-arranged a date other than a remand day with the Judicial Case Manager, phone JCM to confirm.
13. File document by date stamping all copies and initialing the original Application inside the date stamp.
14. Affix Document # stamp on top right hand corner.
15. Enter document in CEIS. Enter appearance as APP in CEIS.
16. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.

Service of Documents

- person filing Application About Enforcement is responsible for serving.
- service must be done at least **7** days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by leaving the documents at the party's last address for service;
- by mailing the documents by registered mail to the party's address for service;
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page;
- by e-mail, if the e-mail address is included in the address for service provided;
- by leaving the Application with the other party's lawyer;
- by having another person, at least 19 years of age, leave the Application with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

In special or urgent circumstances, or for an application for sub-service, on an Application for Case Management Order/Application for Case Management Order

Without Notice or Attendance, a judge may make an order without notice having been given to the other party.

It is not necessary to respond to an Application About Enforcement, but other party may respond by filing a Written Response to Application (Form 19).

NOTE: Even if a Form 19 is filed, the party must still attend the hearing.

Application for Order under the Family Maintenance Enforcement Act – FMEA

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

1. Receive Application for Order under the Family Maintenance Enforcement Act.
2. Check document to ensure it has been completed in full, the style of cause is correct (matches CEIS and initiating document), and contains the addresses of both parties.
3. Assign an appearance on the FMEP Application list at 2:00 PM, allowing enough time for party to effect service (of seven (7) clear days, not counting the first day and the last day). If party advises they have already pre-arranged a date other than a remand day with the Judicial Case Manager, phone JCM to confirm.
4. File document by date stamping all copies and initialing the original Application inside the date stamp.
5. Affix Document # stamp on top right hand corner.
6. Enter document in CEIS. Enter appearance as APP in CEIS.
7. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.

Service of Documents

- person filing Application for Order under the Family Maintenance Enforcement Act is responsible for serving.
- service must be done at least 7 days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by leaving the documents at the party's last address for service;
- by mailing the documents by registered mail to the party's address for service;
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page;
- by e-mail, if the e-mail address is included in the address for service provided;
- by leaving the Application with the other party's lawyer;
- by having another person, at least 19 years of age, leave the Application with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

In special or urgent circumstances, or for an application for sub-service, on an Application for Case Management Order/Application for Case Management Order Without Notice or Attendance, a judge may make an order without notice having been given to the other party.

It is not necessary to respond to the Application, but other party may respond by filing a Written Response to Application (Form 19).

NOTE: Even if a Form 19 is filed, the party must still attend the hearing.

Affidavits

An affidavit may be the evidence of a party in support of his or her own case, or it may be the evidence of another person. The person whose evidence it is must make sure the contents are true:

- to support an application.
 - Parties may also respond to an Application using a Form 19 Written Response to Application

- to give evidence at a hearing or trial, but only with the judge's permission;

NOTE: The filing of unsworn affidavits is permitted, but it will be up to the presiding Judge at a hearing to decide how much weight will be given to the unsworn Affidavit

1. Receive affidavit.
2. Ensure that the affidavit is sworn or affirmed. *(If affidavit is not sworn or affirmed, a commissioner may swear or affirm the document)*, and check that any exhibits referred to are attached and commissioned.
NOTE: Pursuant to NP 20, parties may have their affidavits commissioned with a notary/lawyer remotely. They are required to attach a certificate from the commissioner that states that the process of commissioning the documents in person was unsafe medically for both the deponent and the commissioner. There may be two identical copies of the Affidavit where the commissioner has signed a copy and the deponent has signed the other.
3. Enter document in CEIS (code AFF).
4. File document by date stamping all copies and initialing the original affidavit inside the date stamp.
5. Place original in court file on right hand side, under court summary sheet, unless it is accompanied with an Application, then attach to the Application and place on the left hand side, and give copies back to party for service.

NOTE:

- the person filing the Affidavit of Evidence is responsible for effecting service.

- service must be done at least seven days before the date of the court hearing.

Affidavit of Personal Service/ Certificate of Service/ (Proof of Service)

- The person who served the other party may complete an Affidavit of Personal Service, or Certificate of Service where applicable, to confirm that the documents were served in accordance with the Provincial Court (Family) Rules.
 - (a) in relation to a document served personally by an individual other than a peace officer, a Certificate of Service in Form 7 or Affidavit of Personal Service in Form 48.
 - (b) in relation to a document served by mail or fax, a Certificate of Service in Form 7
 - (c) in relation to a document served personally by a peace officer, a Certificate of Service in form 14
 - (d) if a different method of service of a document is permitted by a judge, a filed copy of the judge's order must be served with the document, unless the judge orders otherwise or orders notice to be given by advertisement

REGISTRY RECEIVES AFFIDAVIT OF SERVICE - RULE 5

1. Pull file.
2. Update "Requirement for First Appearance" sheet.
3. Update CEIS (code AFS), note service date of person served in the comment field in the document details tab.
4. File document by date stamping and initialing the original affidavit of service inside the date stamp, 2-hole punch and place the Affidavit of Service under the Summary sheet on the right side of the file.
5. If file contains a Referral Request and PAS certificate and 30 days **has not** elapsed from date of service, make a photocopy of the requirement for first appearance sheet and place it in the Bring Forward file folder/accordion.
6. If the 30 days has elapsed from date of service and Referral Request and PAS certificate has been filed, refer to section titled "**Setting a Court Date**".
7. If the file **does not** contain a Referral Request and/or PAS certificate, then file away.

AFFIDAVIT OF ATTEMPTED SERVICE

If the server is unable to serve the party they may complete an *Affidavit of Attempted Service*. This will confirm to the court that attempts were made to serve the party but were unsuccessful and will be helpful for the filing party if he/she makes an application for substitutional service.

1. Receive the Affidavit of Attempted Service.
2. Ensure the affidavit is sworn or affirmed (*If the Affidavit is not sworn or affirmed, a commissioner may swear the document*), and check that any exhibits referred to are attached and commissioned.
3. Enter the document in CEIS (code AAS).
4. File document by date stamping all copies and initialing the original affidavit of attempted service inside the date stamp.
5. Place the original in the court file on the right hand side, under the court summary sheet.

Needs Assessment- Family Justice Registries

- This rule applies to Applications About a Family Law Matter (Form 3) and Reply to an Application About a Family Law Matter (Form 6)

Rule does **NOT** apply:

1. If the proceedings is transferred to a registry that is not a family justice registry or;
2. If there is a concurrent CFCSA application.
3. If the proceedings only concern a Protection Order or Priority Parenting Matter
4. ISO Applications
5. Bella Bella, Bella Coola, and Klemtu files

REFERRAL BY A CLERK

- Before setting a date for the parties' Family Management Conference before a judge, a clerk **must** refer the Party and Other Party who has filed a reply to a Family Justice Counselor for a Needs Assessment.
- Referral is either done in person by the clerk or for applications by mail or filing agent, referrals are made through the Family Justice Registries Brochure
- Note how referral was made on "Request for Family Management Conference" sheet.

OPTIONS FOR PARTIES

- At any time after meeting with the family justice counsellor, a party may do any of the following:
1. Ask to appear before a judge on one or more issues by filing in the registry a referral request.
 2. Seek a consent order.

When Does a Needs Assessment and PAS Apply?

Pertaining **ONLY** to Application About a Family Law Matter

	<u>Needs Assessment</u>	<u>PAS</u>
Applications for parenting arrangements (parental responsibilities & parenting time), guardianship, parental responsibilities, contact with child, child support, spousal support	Yes	Yes
Non-removal <u>only</u>	Yes	No
Protection order <u>only</u>	No	No
Spousal support <u>only</u>	Yes	No
Child support arrears <u>only</u>	Yes	No
Primary residence <u>only</u>	Yes	No
Child Family and Community Services Act (CFCSA) applications	No	No
Family Law Act (FLA) applications concurrent with CFCSA matter	No	No
Inter-jurisdictional Support Order (ISO) applications	No	No
Applications by Consent going into court	No	No
Guardianship under the School Act (by consent)	No	No
Bella Bella / Bella Coola / Klemtu	No	No

Filing of (Form 21) Referral Request

FORM 21

- under Rule 39 both the party and other party are required to meet with a Family Justice Counsellor for a Needs Assessment before a Family Management Conference can be set; however, as long as one-party attends and the other requirements are met, a court date can be set.
- signature of Family Justice Counsellor is required.
- filing of Form 21 advises the registry that the party and other party have complied with the rule of meeting with a Family Justice Counsellor.
- separate Form 21 must be filed for the party and other party.
- Form 21 (6) provides information to the judge regarding the outcomes of any disputes resolution attempts, what issues have been resolved and what issues are still outstanding.

REGISTRY RECEIVES (FORM 21) REFFERAL REQUEST

1. Pull file.
2. Make sure that both sections have been completed and include the signature of the Family Justice Counselor.
3. Update CEIS (code REF) *(if specific issues have been resolved, note them under "Document Details" in CEIS)*. File document by date stamping and initialing the original referral request inside the date stamp.
4. Update "Requirement for Family Management Conference" sheet. Place Form 21 on left hand side underneath the application.

Parenting After Separation (PAS) Certificate

1. Pull file.
2. Enter into CEIS (code PAS).
3. File document by date stamping and initialing the original PAS inside the date stamp.
4. Update "Requirement for Family Management conference" sheet.
5. Place on left hand side underneath the application.

Setting a Court Date – Family Law Act

Application About a Family Law Matter **Family Law Act - Rule 39**

- In order for a court date to be set you **must** have the following:
 - Reply to an Application About a Family Law Matter
 - Referral Request form from either the party, the other party, or both
 - Parenting After Separation certificate from either the party, the other party, or both

or

- Certificate of service (*and 30 days has elapsed from date of service*)
 - Referral Request form from either the party, the other party, or both
 - Parenting After Separation certificate from either the party, the other party, or both
1. Refer to "Requirement for Family Management Conference" sheet to see if court date can be set.
 2. If all documentation has been filed, then set a date four weeks in advance, six weeks if a party resides outside the Lower Mainland. The Other Parties are only notified if a Reply to an Application About a Family Law Matter has been filed.
 3. Review and update the FMC & Application Hearing Dates spreadsheet with the file number/style of cause of the matter in an available time slot
 4. Enter court date in CEIS
 4. Update "Requirements for First Appearance Date" sheet.
 5. If Reply to an Application About a Family Law Matter includes a counter application, schedule a date with the application in CEIS.
 6. Produce Notice of Family Management Conference (NPMC) in CEIS.

Claims of Urgency

- All applicants are expected to comply with Rule 39 referral to a Family Justice Counsellor unless the Party indicates the matter is urgent and wishes to schedule the matter for court ASAP.
- If the Party feels that matter is urgent, he/she may apply to waive compliance with the rule and make an Application for Case Management Order Without Notice or Attendance (Form 11) to waive/modify a requirement related to service or giving notice to the other party.

NOTE: It's not necessary to also make an Application About a Family Law Matter if a party is only wishing to make an Application About a Priority Parenting Matter, Application for Order Prohibiting Relocation of a Child, or an Application About a Protection Order

Determine Urgency of Application

- If party wants to file an application and considers it to be urgent, refer the matter to a FJC.
- FJC will assist in determining the level of urgency (*again if the FJC feels the matter is non-urgent and party insist on matter be heard right away, registry will not deny access to court*).

NOTE: Even if the party is insisting that the matter is urgent, they will still need to make an Application for Case Management Order Without Notice or Attendance (Form 11)

Applications About a Protection Order (s. 183)

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

1. Receive Application About a Protection Order. Inquire if party would like to receive advice from Duty Counsel. They can be referred to Family Duty Counsel if they wish to seek legal advice.
2. The party will indicate on the form if they are wishing to go in "Ex-Parte" (i.e. without notice to the other party), or if they will provide notice of the Court appearance. Where appropriate, matters under section 183 can be referred to a Family Justice Counsellor for assistance in completing the form and addressing the level of urgency
3. Check to see if there is an existing file.

NOTE: Parties may open a file with an Application About a Protection Order without an Application About a Family Law Matter if the only issue being sought is a Protection Order.

4. Ensure that the party also completes a Request for Service of Family Protection

Order

5. File document by date stamping all copies and initialing the original application inside the date stamp.
 6. Affix document # stamp on the top right-hand side of the application.
 7. Enter document in CEIS.
 8. Call Judicial Case Manager to assign a date/time and courtroom. The JCM will advise where the file should go.
 9. Set court date and time for Application About a Protection Order in CEIS. Set for the matter for a Court appearance in CEIS.
- **Once a Protection Order has been made, see "Protection Orders" for next steps.

Application for Family Law Matter Consent Order

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

- Instead of having a matter proceed to court, parties may file a *Consent Order* when both parties can agree to the terms of the order.
- Parties can also file a *Consent Variation Order* to agree to change an existing order.

At any time in the course of the proceedings the parties can apply for a *Consent Order* by filing:

- An Application About a Family Law Matter (Form 3)
 - A Consent Order to be signed by a Judge (Form 18)
 - A Reply to an Application About a Family Law Matter (Form 6)
 - A Financial Statement, if applicable (Form 4)
 - Any Affidavits in support of the order, if applicable (e.g. Record Check results for Guardianship Affidavit)
- ✓ Check for signatures of all parties and witnesses on Consent and by the Commissioner on exhibits to Affidavits.

Note: Administrative Judge to sign Consent Orders

Order of Documents for packages to his/her Honour:

- (1) Application About a Family Law Matter (Form 3)
- (2) Consent Order to be signed by Judge (Form 18)
- (3) Reply to an Application About a Family Law Matter (Form 6)
- (4) Financial Statement, if applicable (Form 4)
- (5) Affidavit(s) in support of Order, if applicable
- (6) Whole Court file

By Consent

- This **DOES NOT APPLY** to offshore parents wanting someone to be the guardian of their children (per Judge Low).
- Receive the Application About a Family Law Matter Consent Order.
- Check CEIS to see if there is an existing file.

COURT FILE EXISTS (**Check for an Appearance Date – Adjourn prior the date in CEIS (ADG) or call JCM to vacate the date (TDC) date.

1. Pull existing file.
2. Check application to confirm that the party is seeking a new order and not seeking to change an existing order.
3. Check application to ensure that it has been completed and signed.
4. File application and all other documents by date stamping all copies, **EXCEPT FOR THE CONSENT ORDER TO BE SIGNED**, and initialing the original application and documents inside the date stamp.
5. Check supporting documents to make sure they have been completed in full.

Preparing the File

6. Ensure that there is a blue divider sheet on each side of the folder to separate the new proceedings from the previous one.
7. Enter Documents in CEIS. (*Enter Application first, and other documents filed*).
8. Give file to a Judge for signature. (As set out by the Administrative Judge).

COURT FILE DOES NOT EXIST

1. Check application to ensure that it has been completed and signed.
2. File document by date stamping all copies **EXCEPT FOR THE CONSENT ORDER TO BE SIGNED** and initialing the original application and documents inside the date stamp.
3. Check supporting documents to make sure that they have been completed in full.

Preparing the File

1. Open new file.
2. Label the outside of the folder with a **red** label (red line on the top) with party surname first, then first name. More than one label may be used if there are many parties. Affix year sticker.
3. Place blue divider sheets on both side of the folder.
4. Complete the top portion of the court summary sheet and place it on the right hand side of the folder on top of the blue divider.
5. Enter new file in CEIS (*enter Application first, and other documents filed*).
6. Give file to Judge for signature. (As set out by Administrative Judge).

*****IF A COURT DATE HAS BEEN SET, ADJOURN (ADG) OR NOTIFY THE JUDICIAL CASE MANAGER TO VACATE DATE.**

IMPORTANT NOTE: Protection Orders can only be made by way of Application About a Protection Order, not a Consent Order.

Judge may sign consent order or require parties to attend

Clerk will place the Application, draft consent order and supporting documents before a judge who may:

- (a) Approve and sign the consent order without the parties having to attend, if the judge is satisfied that the order is appropriate or,
- (b) Direct that the parties attend before a judge to explain why the order should be made.

If Order is signed by Judge:

- (1) Order Details screen in CEIS.
- (2) Add Desk Order (ORD).
- (3) Enter date granted as the date the order is signed by the Judge.
- (4) Enter the filed date as the date file stamped.
- (5) Enter the terms of the order or see electronic image.
- (6) Scan Order.
- (7) Copy and distribute as required (*See Order Distribution section*).

As per CEIS IN MOTION: The terms of order for all desk orders must be entered at the time the order is entered, not at the time the order is submitted. Referral tracking should be used to track all desk order applications.

If Judge Directs parties to attend to explain why the Order should be made:

- (1) Contact the Judicial Case Manager; get a date for a 20 minute hearing before the Judge who referred the matter back to the parties, in 4-6 weeks.
- (2) Produce a Notice of Hearing (NOH) in CEIS and send to the parties along with a letter advising the parties that the court requires more evidence. You may include a copy of the Request with the Judges notes, if appropriate.

Section 211 FLA: Request for S. 211 Report

A judge may order a Views of the Child Report or full report (under section 211 of the FLA) directing a Family Justice Counselor (FJC) to investigate a family matter with respect to the issues of guardianship, parenting arrangements and/or the views of the child. The court clerk prepares a *Request for S. 211 Report* and faxes it to Family Justice. The registry enters the Request for S. 211 Report in CEIS (code RFR). The FJC will conduct an investigation and submit a report to the court. The report is prepared to help the judge make a decision about guardianship, parenting time, and/or the views of the child. A judge may also refer a case to a FJC for mediation, and may order a mediation report to be prepared. No form is available for this purpose, as referrals are usually oral. Referrals from the court may take place at any time before the disposition is made; but, generally they occur either at the first appearance or at the family case conference.

Registry receives S. 211 Report from the FJC

If one copy of the Report is received:

1. Date stamp the report and enter the document in CEIS.
2. Check to see if a Judge is seized and/or if a hearing date is set.
3. If a Judge is seized or a date is set, make a copy of the report and send up to the Judge.
4. If a Judge is not seized and no date is set, the original report is placed in the file.
5. Place the original report in the file.

If three copies of the Report are received:

1. Date stamp the report and enter the document in CEIS.
2. If there is time available prior to the court date send a copy to the Party, the Other Party and the Judge (if they are seized) (you may need to contact the JCM to find out what judge is sitting on the scheduled date if a judge is not seized). If there is no time available to send the reports out by regular mail, leave copies for all parties in the file for the day of the hearing.
3. Place the original report in the file.

Written Agreement (WAG) or Separation Agreement (SA)

- A Written Agreement is a document in which the parties involved in a separation set out the terms of that separation.
 - Separation Agreements previously filed in Supreme can be filed in Provincial Court if it is a certified true copy from the Supreme Court. It can then be enforced, varied or rescinded in Provincial Court under section 121.
 - A Written Agreement cannot supersede an Order signed by a Judge but an Order does supersede a Written Agreement.
 - A Written Agreement may contain many provisions, but the Provincial Court can only enforce guardianship, parenting time, child support or spousal support.
 - Written Agreements made before July 1, 1995 requires consent to filing by both parties before agreement can be filed.
1. Receive Request to File an Order (Form 28) or Request to File an Agreement (Form 26) and written agreement.

NOTE: *The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party*

2. Ensure that the names of the party on the Request to File an Order/Request to File an Agreement match the names of the parties as shown on the written agreement/Supreme Court Order
3. **Check agreement to ensure that you have:**
 - (a) The *original agreement* or a copy of an agreement, or a certified true copy from the Supreme Court;
 - (b) Both parties' signatures on the agreement;
 - (c) Style of cause, date of the agreement.
3. Check CEIS for file number and pull files.
4. If no file exists, open new file.
5. Enter the Request to File an Order in CEIS as RORD or Request to File an Agreement in CEIS as RFA
6. Enter document in CEIS. Enter the Written Agreement or Separation Agreement in the document tab, CEIS code (WAG or SA). It is not necessary to enter the terms of the agreement; scan agreement.
7. Send WAG letter in the shared drive and certified true copies of the WAG to each party.
8. If a party's address has changed, have the party complete a Notice of Address Change form, enter in CEIS and update Parties tab in CEIS. If there is no address on the agreement, have the party fill out a change of address form or requisition.

Do not reject a Written Agreement due to a missing address. The address is for registry purposes and should not preclude the filing of the Written Agreement. See #7, above, for filing parties address.

If Parties wish to enroll with Child Support Recalculation Service, see below or [here](#)

Child Support Recalculation Service

Parties are Wishing to Enroll Voluntarily

- When parties have enrolled a Child Support agreement with the Court, and either one or both parties are wishing to enroll it with the Child Support Recalculation Service, they will need to complete a CSRS Application, attach a copy of their filed order/agreement to it and submit it to CSRS.
 - Once the Order has been received by CSRS, they will forward a Notice of Enrolment to the applicable Registry.
1. Once received, go to the "File Details" section in CEIS
 2. Under the "Special Programs" section, set the program to "Child Support Recalculation Service". The "Reason IN" field shall be set as "Voluntary" if the parties have applied to the service themselves. The "Date IN" field will be the date of enrolment with the service (see date as shown on the Notice of Enrolment)
 - When a matter is removed from the service, we would add the date of removal in the "Date OUT" field.
 3. Navigate back to the "Documents" portion in CEIS and add in the code "NOE" for the Notice of Enrolment. File stamp and scan into CEIS.

Order Made in Court to Enroll with Service

- When a Judge has made an Order that a matter be enrolled with the Child Support Recalculation Service, a copy of the produced/signed Order will need to be emailed with the Service.
1. Complete the Data Entry for the matter out of Court.
 2. If applicable, produce the Order for the Judge to sign.
 3. Once the Order has been stamped, filed, and distributed, click the CEIS "Email Documents" button.
 4. Select the tick-mark next to "Child Support Recalculation Service", select the tick-mark next to the Order that directs the matter be enrolled with the service, and click "Send Email".
 5. Navigate back to the "File Details" section in CEIS
 6. Under the "Special Programs" section, set the program to "Child Support Recalculation Service". The "Reason IN" field shall be set as "Mandatory" as a Judge has Ordered that the matter be enrolled with the service. The "Date IN" field will be the date that the Order was made to enroll with the service.
 7. After some time, the Notice of Enrolment will be sent to the Court from CSRS. Enter the document with the code "NOE", file stamp and scan it into CEIS.

Notice of Discontinuance

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

- A Notice of Discontinuance is a form used by parties to discontinue the whole of their application or parts of it.
 - If a Trial Preparation Conference has already happened or if the trial date is within 30 days of the date of filing of the Notice, then the filing party must obtain consent from the other party (by signing the "Consent of the Parties" portion of the form) prior to filing the document with the Court.
1. Receive Notice of Discontinuance
 2. Check the form to ensure that the names of the parties match the names of the parties as shown on the Application About a Family Law Matter.
 3. Check that if a Trial Preparation Conference has already happened or if the trial date is within 30 days of the date of filing of the Notice, that both parties have signed the "Consent of the Parties" section of the form.
 4. File document by date stamping all copies and initialing the original Notice inside the date stamp.
 5. Enter document in CEIS.
 6. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.
 7. If there is a Court appearance that would be impacted by the filing of the Notice of Discontinuance (e.g. Application scheduled for court is discontinued), ensure that the matter is adjourned.

- a. For matters set by the Registry, go to the Appearance Tab, click "Record Results", and "END" the appearance, noting that the matter was adjourned prior (the date would be the date that the Notice is filed)
- b. For matters set by the JCM, provide a copy of the Notice of Discontinuance to the JCM to cancel the appearance in PCSS.

CFCSA Procedures

- Child, Family and Community Service (CFCSA) deals with the protection of children.
- Administered by the Ministry of Children and Family Development.
- Act allows the Ministry of Children and Family Development to designate one or more persons as Directors who, in turn, can delegate any or all of the Director's powers and duties under the Act to a person (*i.e. social workers*).

Presentation Hearing (S. 35)

- If there are reasonable grounds to believe that a child needs protection, that child may be removed by the Director.
- No later than **7 days** after the day a child is removed, the Director must attend court for a **presentation hearing**.
- Presentation Form (*Form 1*) is emailed/faxed in. Provincial Court (CFCSA) Rule 8(17) allows any document to be filed in a registry by fax, but a judge may require that the original document be filed later.
 - For fax submissions, if the original is later submitted to the Court, write in the word "Original" at the top of the form, in pencil, then staple the original to the filed copy.
- Check to see if there's any previous file or any previous proceedings with the same mother or a sibling. (*If there is a previous file involving the mother and/or another sibling, the new presentation form is to be combined in the same file*).

COURT FILE EXISTS

1. Pull existing file. (*If adding to a sibling's file, add name to file folder (green sticker on front and in CEIS)*).
2. Check presentation form to ensure that it has been completed in full, and signed. Ensure children's names and date of birth matches the initiating document.
3. Presentation form will include the court date and time. (*Each region has been designated a specific day and time each week*). If day and time is different from what they have been assigned, call social worker for explanation.
4. Ensure the parent's names are added as parties.
5. File document by date stamping and initialing the presentation form inside the date stamp.
6. Affix document # stamp on the top right hand side of the document and file on the left side on top of the blue divider.

Preparing the File

7. Ensure that there is a blue divider on each side of the folder to separate the new proceedings from the previous ones.
8. Enter Document in CEIS.
9. Add child(ren)'s names, parent's names as parties if applicable.
10. Add counsel's name.
11. Enter Appearance date in CEIS, as set out on presentation form.

COURT FILE DOES NOT EXIST

1. Check presentation form to ensure that it has been completed in full, and signed.
2. Search CEIS to see if party has existing file. Check under the Mother's name, if Mother has other children with an existing file, file the new document in the existing file, add the new child's name, and father if applicable, to the parties tab in CEIS.
3. Presentation form will include the court date and time. *(Each region has been designated a specific day and time each week)*. If day and time is different from what they have been assigned, call social worker for explanation.
4. File document by date stamping and initialing the presentation form inside the date stamp.
5. Affix document # stamp on the top right hand side of the document and file on the left side on top of the blue divider.

Preparing the File

6. Open new file.
7. Label the outside of the folder with a **green** label (green line on the top) with child(ren)'s surname first, then first name. More than one label may be used if there are many children. Affix year sticker.
8. Place blue divider sheets on both sides of the folder.
9. Complete the top portion of the court summary sheet and place it on the right hand side of the folder on top of the blue sheet.
10. Enter new file in CEIS.
11. Add parent's or guardian's names as parties.
12. Add counsel's name.
13. Enter appearance date in CEIS, as set out on the presentation form.

Subsequent Applications

Application for an Order (form 2)

Application to Change or Cancel an Order (form 3)

1. Application is emailed/faxed in.
2. Check CEIS for file number and pull file.

3. Check application to ensure that it has been completed in full and signed. Ensure child(ren)'s names and date of birth matches the initiating document.
4. Application will include court date, time and what section they are applying for. *(If court date or time does not correspond to what they have been assigned, call social worker for explanation).*
5. File document by date stamping, and initialing the application inside the date stamp.
6. Affix Document # stamp on the top right hand side of the application and file on the left side on top of the blue divider.

Prepare the File

7. Ensure that there is a blue divider on each side of the folder to separate the new proceedings from the previous ones.
8. Check CEIS for any existing court dates already set for the same day.
9. Enter document in CEIS. Application for an Order – CFCSA – CEIS code (AFO), to Change/Cancel – CEIS code (AFC).
10. Enter appearance date in CEIS, as set out on the application.
11. Application is placed on left hand side on top of Report to Court.

Family Maintenance Enforcement Program (FMEP)

FMEP is a program which enforces maintenance orders including Supreme Court Orders and monitors payments on behalf of the creditor.

REQUEST FOR CERTIFIED COPIES

1. Receive letter from FMEP requesting certified copies either by mail or fax.
2. Pull file.
3. Enter in CEIS as "FRCC".
4. Check to see if FMEP file number is entered in CEIS; if not, enter in file details tab.
5. File document by date stamping letter and initialing the document inside the date stamp. Check off order attached on the bottom of document.
6. Make required number of copies of order and certify them.
7. Mail certified copies of order with copy of letter back to FMEP with circled "CTC attached".
8. File document on the right hand side of the file under the blue divider sheet.

NOTICE OF FILING

FMEP will notify registry that the creditor is now enrolled in the Program.

1. Check CEIS by party name to confirm if a file exists.
2. Pull file if one exists.
3. Enter in CEIS as "NOF".
4. Check to see if FMEP file number is entered in CEIS; if not, enter in file details tab.
5. File document by date stamping and initialing the original document inside the date stamp.
6. Scan document.
7. If the file cannot be found on-site, check the files off-site list and note the box it is filed in.
8. File document on the right hand side of the file under the blue divider sheet.

NOTICE OF WITHDRAWAL FROM PROGRAM

1. Receive the notice of withdrawal.
2. Enter in CEIS as "NWD". In comments: "Withdrawn from FMEP, effective (date)".
3. In CEIS, go to the File Details screen, tick the "Withdrawn" Box in External Agency/File # box (it is not necessary to delete any information).
4. File document by date stamping and initialing the original document inside the date stamp.
6. Scan document.

7. If the file cannot be found on-site, check the files off-site list and note the box it is filed in.
8. File document on the right hand side of the file under the blue divider sheet.

NOTE: If a party re-enrolls with the FMEP program just un-tick the "Withdrawn" box in External Agency/File # box in the File Details Screen.

NOTICE OF ATTACHMENT

A Notice of Attachment is an administrative tool that the FMEP uses to enforce maintenance orders filed with the Director of Maintenance Enforcement. Parties must be enrolled in the Program to use this form of enforcement.

1. Receive the Notice of Attachment.
2. If a Notice of Attachment has been previously entered in CEIS, there is no need to enter another.
3. File all documents by date stamping and initialing the documents inside the date stamp.
4. Enter documents in CEIS as "NA".
5. File document on the right hand side of the file under the blue divider sheet.

NOTE: FMEP rarely sends Notices of Attachment to the Court now for filing

Supreme Court Orders for Enforcement

NOTICE OF FILING

FMEP files a Notice of Filing advising Provincial Court that they would like to file the certified copy of the Supreme Court Order. It is for enforcement purposes and the parties cannot change the Order.

- Receive Request to File an Order (Form 28), Notice of Filing and copy of Supreme Court Order.
 - Search CEIS if parties have any existing file.
1. Check for Order copy. Return to package to FMEP if a copy of the order is not attached.
 2. Search party names using ALL to ensure there are no other provincial court file initiated with the parties. If there is, write down the file number and location and return the package back to FMEP.
 3. Pull file existing file or open file with new file number.
 4. File Request to File an Order, Notice of Filing, and Order by date stamping documents and initialing inside the date stamp.
 5. Enter documents in CEIS:
 - a. Initiate File
 - b. File Details enter External Agency Number: FMEP Case #
 - c. Enter Party Names: Applicant / Respondent (always go by names on Supreme Court Order)
 - d. Filed by - Other
 - e. Document Type - ORO = Order (opens file) Enforcement Order
 - f. Date Filed – today's date
 - g. Act – FMEP
 - h. Parties filed by – FMEP (remember to remove applicant party)
 - i. Add document Request to File an Order (RORD)
 - j. Add document Notice of Filing (NOF)
 6. Scan document
 7. If the file cannot be found on-site, check the files off-site list and note the box it was filed in.
 8. Fax to FMEP with file number on the Notice of Filing.
 9. Stamp faxed stamp on the Notice of Filing.
-

Application for Garnishment, Summons, or Warrant – FMEA

The party is responsible for ensuring they provide 1 copy for the Court, 1 copy for the other party, 1 service copy, and 1 copy for themselves. At most, the Registry may provide one photocopy for the party

1. Receive Application for Garnishment, Summons, or Warrant
NOTE: The Application itself does not get scheduled for a Court appearance
2. Check document to ensure it has been completed in full, the style of cause is correct, (matches CEIS and initiating document), and contains the addresses of both parties.
3. Ensure that a copy of the Written Agreement or Order is attached to each copy of the Application.
4. Depending on what method of enforcement the Applicant is hoping to pursue, ensure that a copy of one of the following is also attached to each copy of the Application:
 - Summons
 - Warrant for Arrest
 - Garnishing Order
 - Summons to a Default Hearing
 - Summons to a Committal Hearing
 - Warrant of Execution
5. File document by date stamping all copies and initialing the original notice of motion inside the date stamp.
6. Affix Document # stamp on top right hand corner.
7. Enter document in CEIS.
8. Place original on left hand side of folder on top of blue divider. Give all remaining copies (3) back to party to effect service.

Service of Documents

- person filing Application is responsible for serving.
- if the Creditor is in enrolled with the Family Maintenance Enforcement Program, the Director of Maintenance Enforcement must be served via fax, the Application for Garnishment, Summons, or Warrant, the relevant enforcement document, and the Fax Cover Page in Form 10. An Affidavit of Service should be filed, along with the fax confirmation sheet.
- If applicable, service must be done at least 7 days before the date of the court hearing (seven (7) clear days, not counting the first day and the last day).

To serve a party, you may deliver it:

- by ordinary mail to the party's last address for service;*
- by fax, if the fax number is included in the address for service provided by that party together with a fax cover-page in Form 10;

- by e-mail, if the e-mail address is included in the address for service provided
- by leaving the notice of motion with the other party's lawyer;
- by having another person, at least 19 years of age, leave the notice of motion with the party (personal service).

** a document served by mail is presumed to have been served 14 days after it was mailed.*

NOTE: Garnishing Orders must be served on the Garnishee by registered mail or personally and a Summons must be served personally.

In special or urgent circumstances, a judge may make an order without notice having been given to the other party.

Garnishing Order

A garnishing order is an order that a creditor can apply for to enforce arrears of a maintenance order. It is normally used by creditors who are not enrolled in FMEP. The garnishing order is effective for twelve months.

- creditor submits (not all documents will be submitted)
 - Application for Garnishment, Summons, or Warrant (*required*)
 - Request for Service of Documents (if applicable)
 - Garnishing Order
 - Affidavit in Support of Garnishing Order (*required*)
 - Statement of Arrears
 - Affidavit of Arrears
 - Statement of Finances
- Clerk checks documents
- Forward garnishing order and affidavit to judge for signature
- Once signature is obtained, date stamp all documents
- Enter document in CEIS and distribute
- Example file: 2002-16066 (HERNANDEZ, Aida / LAGANIERE, Richard)

Distribution of Documents

- **Court File** - all original documents
- **Creditor** - all creditor copies

Service of Documents

- **Garnishee** - garnishee copy of garnishing order only
- **Debtor** - copy of garnishing order and affidavit in support
- **Server** - copy of Request for Service of Documents, garnishing order

The registry will arrange for personal service by a Sheriff on the garnishee and the debtor by completing a *Request for Service* to the Sheriff which will be forwarded along with the service package to the Sheriffs— garnishee served first, if successful then debtor is served.

If the creditor or his/her counsel advises that they will effect service, provide them with the service packages and the creditor copies.

Service can be effected by personal service on a party or by registered mail to the last address for service given on a document filed by that party in a current application.

If the garnishee is a limited company, the documents may be served by registered mail to the registered office.

If the Provincial Government is the garnishee, the garnishing order is served at:

Legal Encumbrances Office
Ministry of Finance in Victoria
2nd Floor, 617 Government Street
Victoria, BC V8V 4R8

If the Federal Government is the garnishee, the garnishing order is served at:

Attn: Garnishment Registry
Department of Justice
British Columbia Regional Office
Suite 900 - 840 Howe Street
Vancouver, BC V6Z 2S9

NOTE: An Application to Garnish Federal Monies must be submitted along with the Garnishing Order at the time of filing. A copy of this Application must be provided back to the Applicant, Department of Justice, and the other Party.

Forward the file to accounting to update the family court payment card.

Proof of Service

- Once personal service has been completed by a Sheriff or other person, a Certificate of Service (Form 7) should be completed and filed.
- If service is by registered mail, the Certificate of Service must have attached the delivery confirmation page.
- When the registry has proof that the garnishing order has been served successfully to the debtor and the garnishee and the ten day dispute period has elapsed, the first payment goes to the creditor. After that, the court makes all future payments directly to the creditor without further notice to the debtor.

Response from Garnishee

- If a garnishee indicates that the party is no longer employed or has no funds due, the clerk will:
 1. File letter received from garnishee by date-stamping
 2. Forward a copy of the letter to the Applicant
 3. Place letter on file

Garnishing a Provincial Government Employee's Wages

- The garnishee named is:
"Her Majesty the Queen in the Right of the Province of British Columbia".
- The garnishee is served by serving the documents (garnishment application, garnishing order and copy of the order) on the Deputy Minister of Finance or leaving them at the Office of the Deputy Minister of Finance and Corporate Relations in Victoria:

Office of the Deputy Minister of Finance and Corporate Relations
2nd Floor, Room 219
617 Government Street
Victoria, BC V8V 4R8
Attention: Legal Encumbrances

Garnishing a Federal Government Employee's Wages

- The creditor prepares a garnishment application in addition to the documents outlined in the previous section (not filed in court registry).
- The garnishee named is:
"Her Majesty the Queen in right of Canada".
- The garnishee is served by serving the documents (garnishment application, garnishing order and copy of the order) at:

Department of Justice
Vancouver Regional Office
Suite 900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Attention: Garnishment Registry

Notice of Dispute

- The Other Party or Garnishee may dispute the Garnishing Order but must do so within 10 days of it being served.
- If a Notice of Dispute is received, the clerk will:
 - Check the document and file the Notice of Dispute to Monies Paid into Court by Garnishee by date-stamping
 - Advise Accounting Clerk a dispute has been filed to ensure that payment to the applicant is not made before the matter is determined in Court
 - Sets Hearing date on Application list
 - Prepares Notice of Hearing or Conference
 - Scans document into CEIS and schedule matter in CEIS

- Provide filed copies of the Notice of Dispute and Notice of Hearing to the filing party to serve.

Garnishing Order Absolute

- If a Garnishee has been served with a Garnishing Order and they have not responded, the Applicant/FMEP may make an Application to the Court for a Garnishing Order Absolute.
- The Applicant will submit an Application for Order Under the Family Maintenance Enforcement Act (Form 35) and select "requiring payment by attachee who failed to pay in accordance with a notice of attachment or to respond in accordance with regulation".
- The clerk will:
 - Checks to ensure that the application is being filed at the court location where the maintenance/support order was filed, and that the correct parties' names and court file number are indicated.
 - Enters a date for the hearing of the application (Choose an FMEP Application timeslot).
 - The applicant must arrange for service of the documents by email, fax, ordinary mail or leaving at the person's address for service. The date selected needs to consider how the other parties will be served.
 - Files the application by date-stamping.
 - Retains the original and provides copies to the applicant to effect service.
 - Provides a blank copy of the Certificate of Service (Form 7) (PFA 714).
 - Enters the application in CEIS.

*For an overview about how to process an Application for Garnishment, Summons, or Warrant, click [here](#)

Summons to a Default Hearing

Creditor enrolled with FMEP

1. Receive (require 4 copies of all documents)
 - Summons to a Default Hearing
 - Application for Order Under the Family Maintenance Enforcement Act (*if FMEP is seeking to shorten the time for serving an Affidavit stating that the Statement of Finances has not been filed*)
 - Statement of Arrears (certified copy of a Supreme Court Order may be attached as an exhibit)
 - Application for Garnishment, Summons or Warrant
 - Notice to Debtor
 - Statement of Finance
 - A blank Statement of Finances (*if the debtor is being requested to file one*)
 - About This Summons fact sheet (1 copy)
 - Request for Service of Documents (to be sent along with the service package to the Sheriff for service) (2 copies).
2. File all documents by date stamping and initialing the original document inside the date stamp except the Summons to Default Hearing and the blank Statement of Finances.
3. Set a hearing date on a FMEP Monday at 2:00 PM.
 - 6 weeks within Vancouver
 - 8 weeks outside Vancouver
 - 4 months for Surrey address.
4. Neatly write the date on the Summons and Application for Order Under the Family Maintenance Enforcement Act.
5. Enter all documents in CEIS (except the blank Statement of Finances) and add the appearance date and time (CEIS code – DEFH).
6. Forward the Summons to the JP for signature.
7. Distribute documents as outlined below.

Creditor not enrolled with FMEP

1. Receive and check the following documents for accuracy
 - Application for Garnishment, Summons, or Warrant
 - Statement of Arrears
 - If applicable, certified true copy of Supreme Court order with Request to File an Order.
2. File all documents by date stamping and initialing the original document inside the date stamp except the Summons to Default Hearing and the blank Statement of Finances.
3. Set a hearing date on a FMEP Monday at 1:30 p.m.
 - 6 weeks within Vancouver
 - 8 weeks outside Vancouver

- 4 months for Surrey address.
- 4. Registry to prepare Summons and enter the document and appearance date in CEIS.
- 5. Forward the Summons to the JP for signature.
- 6. Distribute documents as outlined below.

Distribution of Documents

- **Court File**
 - court copy (original) of Application for Order Under the Family Maintenance Enforcement Act, Summons to Default Hearing and Statement of Arrears to be placed on left hand side of file on top of blue divider
 - court copy (original) of Application for Garnishment, Summons, or Warrant, Notice to Debtor and covering letter to be placed on right hand side of file underneath court summary sheet
- **Recipient / FMEP** - recipient / FMEP copy of Application for Order Under the Family Maintenance Enforcement Act, Summons to Default Hearing, Statement of Arrears, Notice to Debtor, Application for Garnishment, Summons, or Warrant
- **Service**
 - sheriff package: Request for Service of Documents, service copy of Application for Order Under the Family Maintenance Enforcement Act, Summons to Default Hearing, Statement of Arrears, Application for Garnishment, Summons, or Warrant, Notice to Debtor, Blank Statement of Finances
 - payor package: copy of Application for Order Under the Family Maintenance Enforcement Act, Summons to Default Hearing, Statement of Arrears, Application for Garnishment, Summons, or Warrant, Notice to Debtor, blank Statement of Finances, About This Summons fact sheet

Affidavit of Service or Certificate of Service on a Summons to a Default Hearing

1. Receive affidavit of service or certificate of service back from the sheriff.
2. Ensure that the affidavit of service or certificate of service is sworn or affirmed. (Check that any exhibits referred to are attached and commissioned).
3. Enter document in CEIS (code AFS or CSV).
4. File document by date stamping copy and initialing the original document inside the date stamp.
5. File on the right hand side of the file under the court summary sheet.

Summons to a Committal Hearing

Creditor enrolled with FMEP

1. Receive (require 4 copies of all documents)
 - Application for Garnishment, Summons or Warrant
 - Statement of Arrears
 - Summons to Committal Hearing.
2. File all documents by date stamping and initialing the original document inside the date stamp except the Summons to Committal Hearing.
3. Set a hearing date on a FMEP Monday at 1:30 p.m.
 - 6 weeks within Vancouver
 - 8 weeks outside Vancouver
 - 4 months for Surrey address.
4. Neatly write the date on the Summons.
5. Enter all documents in CEIS and add the appearance date and time (CEIS code – CH).
6. Forward the Summons to the JP for signature.
7. Distribute documents as outlined below.

Creditor not enrolled with FMEP

1. Receive and checks the following documents for accuracy
 - Application for Garnishment, Summons or Warrant
 - Affidavit of Arrears with the following documents attached as exhibits:
 - copy of maintenance order
 - copy of default order
 - copy of payment record.
2. File all documents by date stamping and initialing the original document inside the date stamp except the Summons to Committal Hearing.
3. Set a hearing date on a FMEP Monday at 1:30 p.m.
 - 6 weeks within Vancouver
 - 8 weeks outside Vancouver
 - 4 months for Surrey address.
4. Neatly write the date on the Summons.
5. Enter all documents in CEIS and add the appearance date and time (CEIS code – CH).
6. Forward the Summons to the JP for signature.
7. Distribute documents as outlined below.

Distribution of Documents

- **Court File**
 - court copy (original) of Summons to Committal Hearing and Statement of Arrears to be placed on left hand side of file on top of blue divider

- court copy (original) of Application for Garnishment, Summons, or Warrant to be placed on right hand side of file underneath court summary sheet
- **Recipient / FMEP** - creditor copy of Summons to Committal hearing, Statement of Arrears, Application for Garnishment, Summons, or Warrant
- **Service**
 - sheriff package: service copy of Summons to Committal Hearing, Statement of Arrears, Application for Garnishment, Summons, or Warrant, Request for Service of Documents
 - payor package: debtor copy of Summons to Committal hearing, Statement of Arrears, Application for Garnishment, Summons, or Warrant

Affidavit of Service or Certificate of Service on a Summons to Committal Hearing

1. Receive the affidavit of service or certificate of service back from the sheriff.
2. Ensure that the affidavit of service or certificate of service is sworn or affirmed.
(Check that any exhibits referred to are attached and commissioned).
3. Enter document in CEIS (code AFF or CSV).
4. File document by date stamping copy and initialing the original document inside the date stamp.
5. File on the right hand side of the file under the court summary sheet.

Family Search

1. The Filing Party is to complete a search request.
2. Place a copy of search request in file and fax (preferred method) the search request and supporting documents (i.e. picture) to:

Fax: 604-660-3728 (pre-programmed in copier)

3. If matter is urgent, phone the Family Search Administrator for approval to fax request and be given rush status.
4. Enter search request in CEIS (CEIS code – SR).
5. Registry receives search response by fax.
6. Place search request on top of summary sheet, under the cheat sheet, complete the cheat sheet with the date the matter referred to search.

Successful Search

1. Place successful search in white envelope “Information Received from Family Search Program”. Fill out name and file number on envelope. File envelope in search cabinet by year and file number.
2. Staple blank orange sheet to the bottom of the blue sheet on right hand side of the file (this will flag us that there is a Search Request on file).
3. Prepare a Request for Service of Documents for the Sheriff and send the Request and documents for service to the Sheriffs at the closest Sheriff office to the person being served.
4. Copy of Request for Service of Documents goes in the file with the located address blacked out (may have to photocopy the document).
5. Enter search request response and request for service of documents in CEIS (CEIS code – SRR and RFS).
6. Per directive, do not communicate address to Filing Party.

NOTE: When the sheriff provides the registry with the Affidavit of Service or Certificate of Service, the original Affidavit of Service or Certificate of Service shall be filed away in the search cabinet. Only a photocopy of the Affidavit of Service or Certificate of Service and any documents disclosing the confidential address shall be blacked out and place in the file under the court summary sheet.

Unsuccessful Search

1. Prepare advisory letter to applicant/counsel indicating the party was not located or whether the party was no longer living in BC; include a blank Application for Case Management Order Without Notice or Attendance and Affidavit so the party may make an application for substitutional service.
2. Enter search request response in CEIS (CEIS code – SRR).

3. Date stamp the search response and place in the court file under the summary sheet on the right side of the file.

Warrants

Warrant of Arrest

1. Receive file from data entry.
2. Review file to determine if warrant is issued pursuant to the FLA, FMEA, or CFCSA and prepare the applicable Warrant of Arrest in Record Results, Warrants tab, including the identification section on the reverse.
3. Complete a Personal Information Form for Family Warrants. It is required for **Vancouver CPIC only** to create an Assist Police File. Most of the information can be obtained from the file. If the information is not available from the file, forward the Personal Information Form to counsel who requested the warrant to complete.
Information required are:

1. height, weight *mandatory
2. eye and hair color *mandatory
3. valid DL# (if available)
4. valid vehicle plate# (if available)
5. visible mark/scar/tattoos

4. Forward warrant to the JP for signature.
5. Receive the signed warrant back from the JP.
6. Stamp both copies of the warrant with the below stamp

Document sent to:
.....
CPIC Department for entry
Date:
.....
Any questions or concern please call s.15; s.16

7. For **Vancouver CPIC**, scan warrant and the personal information form (use photocopier scanner for an adobe document). Email the scanned documents (requesting a delivery and read receipt) to s.15; s.16 @vpd.ca' with the following wording:

Hello CPIC,

Please enter attached warrant for arrest issued on July 21, 2005 by Judge Dhillon. .

Please note that this file will be dealt with at Robson Square Provincial Court, 800 Hornby Street, Vancouver, BC. Any document should be returnable to this location. Any questions or concerns, please call s.15; s.16

Relationship to the City of Vancouver, Application filed and heard at Robson Square Provincial Court



20120214102754.p
df

Thank you,

Your Name
Your Title
100 – 800 Hornby Street
Vancouver, BC V6Z 2C5
604-660-Your phone number

8. For **Burnaby CPIC**, fax Burnaby RCMP at ^{s.15; s.16} and place the original and one copy in the Burnaby RCMP pick-up box.
9. Place copy into the court file on the right hand side on top of court summary sheet.

Arrested and Released (once person arrested and they've attended court)

1. Conduct a JUSTIN and CEIS provincial wide search for other warrants or files.
2. Confirm that matter is a provincial family and not a Supreme Court matter.
3. Prepare a warrant cancellation form (Adult Form 307) and enter in CEIS (CEIS code – WCL).
4. Phone or fax the warrant squad to advise the warrant has been executed/cancelled/vacated as follows:

- **Vancouver warrants - phone:** ^{s.15; s.16} to advise of the warrant cancellation and on the warrant copy in the file, draw a line through the warrant and write, executed/vacated/cancelled and the date. Photocopy this and attach to the original warrant cancellation form, place in the Vancouver CPIC box and put a copy in the court file.

- **Burnaby warrants – fax:** ^{s.15; s.16} keep sent confirmation report and place with documents. Draw a line through the warrant and write, executed/vacated and the date. Photocopy this and attach to the original warrant cancellation form, place a copy in the Burnaby RCMP warrant box, put a copy in the court file and put a copy in the warrant folder to track the return of the original warrant.

5. In CEIS, in the Party Details screen, choose party name the warrant is attached to and move cursor to the warrant section issued line and scroll down to the blank line and hit save. This will cancel the warrant for the person in CEIS.
6. Add Warrant Cancellation document (CEIS code - WCL) in CEIS, filed by registry.
7. Leave warrant cancellation form and cancelled warrant on top of summary sheet on the right of the file and make a copy of the cancelled warrant and place in the "Awaiting return of original warrant" folder, next to exhibit clerk desk. The JP's / supervisor will monitor receipt of the original warrant from **Burnaby CPIC** only and move the documents to concluded upon receipt. (Vancouver CPIC receives warrant through email – no original warrant to be returned).
8. Contact JCM for a courtroom and schedule matter for court.
9. Contact Sheriffs to arrest person if person turns himself / herself in at the counter.
10. Provide copy of warrant to sheriffs to execute.
11. Advise counsel of arrest (ie. FMEP or MSD).
12. If counsel is unable to attend court, obtain a returnable date from counsel.
13. Schedule appearance as JIR in CEIS and put the file in courtroom.
14. Receive file from the court clerk.
15. Complete data entry as usual.
16. Review the file to determine if the warrant is issued pursuant to the FLA, FMEA or CFCSA and prepare the applicable release document.
17. In CEIS, in the document screen add a document and prepare a "Release" (CEIS code - RO), print and give all copies to the JP.
18. Update address, phone number and date of birth (if applicable) once JP returns file to family desk.
19. Fax Release to counsel.

Arrested and Released at the Judicial Justice Centre

1. Receive faxed documents from criminal JP.
2. Conduct a JUSTIN and CEIS provincial wide search for other warrants or files.
3. Prepare a warrant cancellation form (Adult Form 307) and enter in CEIS (CEIS code – WCL).

4. Phone or fax the warrant squad to advise the warrant has been executed/cancelled/vacated as follows:

s.15; s.16

- **Vancouver warrants - phone:** to advise of the warrant cancellation and on the warrant copy in the file, draw a line through the warrant and write, executed/vacated/cancelled and the date. Photocopy this and attach to the original warrant cancellation form, place in the Vancouver CPIC box and put a copy in the court file.

s.15; s.16

- **Burnaby warrants – fax:** keep sent confirmation report and place with documents. Draw a line through the warrant and write, executed/vacated and the date. Photocopy this and attach to the original warrant cancellation form, place a copy in the Burnaby RCMP warrant box, put a copy in the court file and put a copy in the warrant folder to track the return of the original warrant.

5. In CEIS, in the Party Details screen, choose party name the warrant is attached to and move cursor to the warrant section issued line and scroll down to the blank line and hit save. This will cancel the warrant for the person in CEIS.
6. Add Warrant Cancellation document (CEIS code - WCL) in CEIS, filed by registry.
7. Leave warrant cancellation form and cancelled warrant on top of summary sheet on the right of the file and make a copy of the cancelled warrant and place in the "Awaiting return of original warrant" folder, next to exhibit clerk desk. The JP's / supervisor will monitor receipt of the original warrant from **Burnaby CPIC** only and move the documents to concluded upon receipt. (Vancouver CPIC receives warrant through email – no original warrant to be returned).
8. Schedule appearance as JIR, location as Justice Centre, courtroom as JPC, record results and prepare documents in CEIS according to the Judicial Justice ROP.
9. Transfer information on court summary sheet.
10. Fax Release to counsel.
11. Once original documents are received from the Judicial Justice Centre, re-place the faxed copies.

Warrant of Committal ordered

1. Receive the file from the court clerk.
2. Prepare the warrant of committal.
3. In CEIS place an "I" beside the name of the party in custody
4. Forward the warrant and the file to the JP for signature.
5. Copy goes to file, original and a copy goes to the JP for the sheriff, copy goes to accounting for updating the Record of Payments.

Warrant of Execution ordered

1. Creditor or FMEP submits:
 - Application for Garnishment, Summons, or Warrant
 - Statement of Arrears
 - Information letter describing assets debtor has (optional)
 - Warrant of Execution.
2. Check documents.
3. Date stamp all documents except Warrant of Execution.
4. Enter Warrant of Execution in CEIS (CEIS code – WAE).
5. Forward to the JP for signature.
6. Receive the signed warrant back, date stamp and distribute as below.

Distribution of Documents

- **Court File** - Application for Garnishment, Summons, or Warrant, Statement of Arrears and court copy of Warrant of Execution to be placed on right hand side under blue divider
- **Creditor** - Application for Garnishment, Summons, or Warrant, Statement of Arrears, Warrant of Execution
- **Service** - mail to FMEP who will forward packages to bailiffs
 - bailiff package: Application for Garnishment, Summons, or Warrant, Statement of Arrears and original Warrant of Execution
 - debtor package: debtor copy of Application for Garnishment, Summons, or Warrant, Statement of Arrears

Foreign Warrants

- Originating court file will be scheduled to the location where the warrant is being cancelled or executed. The results will be updated by the hold location and the new appearance date will be scheduled back to the home location.
- It is the responsibility of the home location to call and cancel the warrant (see previous warrant procedures – Arrested and Released).

NOTE: each location has designated users with "open extended access" which allows them to update files across the province.

Procedures for Foreign (Hold) Location:

1. Hold location will contact the originating location and advise that a party is appearing on an outstanding warrant.
2. Hold location will schedule as JIR, the document which the arrested person failed to appear in CEIS after hold location receives the faxed documents.
3. Hold location will prepare dummy file with record of proceedings and forward to court.
4. After court appearance, prepare release document and record results in CEIS.
5. Fax and mail original documents to the originating registry.

Procedures for Originating (Home) Location:

1. Originating location will contact CPIC to remove warrant and follow-up with warrant cancellation form.
2. Advise counsel of arrest (ie. FMEP or MSD) and obtain a returnable date to advise the hold location.
3. Fax a copy of the warrant and related documents (ie. Application for Order Under Family Maintenance Enforcement Act, Other Applications, Affidavits, Summons to Default Hearing, Summons to Committal Hearing etc.) applicable to the warrant to the hold location and a future date for the party to attend at the home location.
4. Remove the warrant flag against the party index after fax confirmation of the release document from the hold location.
5. Update originating court file of proceedings in hold location.
6. Fax Release to counsel.

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Withheld pursuant to/removed as

s.15

FAMILY WARRANT - EXECUTION PROCEDURES Checklist

- ☐ Conduct a JUSTIN and CEIS provincial wide search for other warrants or files.
- ☐ Confirm that matter is a provincial family and not a Supreme Court matter.
- ☐ Confirm if warrant is Vancouver or Burnaby or elsewhere in BC. If elsewhere in BC, call applicable registry and speak to a JP. Request that the warrant and copy of the relevant application(s) be faxed over and ask for a returnable date for court. (Please note: the foreign registry will complete the warrant cancellation on their file.)
- ☐ Call JCM and inform her of family IC and find out which courtroom file is to be heard in.
- ☐ Check the file to see if FMEP is involved. If involved, call Thomas Berger at ^{s.15; s.17} Provide to Thomas Berger name of case, file number and which courtroom file is to be heard in. If Wilson is not available to attend court to speak to the matter, find out when he wants to schedule the next date.
 - o The email address for Mr. Berger is ^{s.15; s.17} @fmep.ag.gov.bc.ca
- ☐ Cancel warrant with the proper Police jurisdiction.

For Burnaby Files:

Complete a warrant cancellation form (located on the intranet in Adult Criminal Forms – ADM 307) and fax to BBY CPIC/Warrant at ^{s.15; s.16} (listed on speed dial #7). Make one photocopy of the warrant cancellation form and place original warrant cancellation form in file. Keep sent confirmation report and place in file.

Draw a line through warrant on file and write executed/vacated and the date. Make one photocopy and place the copy in warrant folder to track the return of the original warrant and a copy for file.

****If Burnaby clerk calls to inform us they do not have the warrant on their CPIC system, call VPD to confirm they have the warrant. If so, follow procedures to cancel warrant as set out for Vancouver files.

For Vancouver Files: Call Warrant Squad at ^{s.15; s.16} to cancel warrant. Complete the warrant cancellation form by writing the name of person spoken to, the time of the call and the date on form. Make one photocopy and place original warrant cancellation form in VPD mail box and place a copy in the file. Draw a line through the warrant on file and write executed/vacated and the date. Make a copy for file.

Delete warrant on CEIS. In CEIS, click on Parties, highlight Party Name, click on Party Details tab, warrant drop down, highlight blank line and save.

Warrants – Detailed Procedures

Warrant of Arrest

1. Receive file for data entry and complete data entry
 - Ensure that a “Personal Information Form for Warrants” has been completed by the party to assist the Police in the arrest.



Personal Information
Form for Warrants.do

2. Under the “Appearance” tab, select the appearance in which the Warrant was issued (“Rslt” will show as “WI”) and click “Record Results”
3. Click the “Warrants” tab, and ensure that the tick box next to the relevant warrant is selected (“Sel.” Tickbox).
4. Ensure that the “Filed” field clearly reflects the date in which the Warrant was issued, as well as the “Failed to appear date”.
 - Ensure that the “Reason for Arrest” field matches the circumstances that brought about the warrant (e.g. “As required by a summons served on a person, as ordered by the court in the presence of a person, as specified on a release, as required by a subpoena, or other”)
 - Ensure that the warrant clearly reflects that it’s being made on an individual and the party’s name and role are clearly reflected. If the warrant is being issued on a non-party, add their name under the “Non-Party Name” field.
5. Click “Produce Document”
6. Double check that the “Recital” matches the “Reason for Arrest” from the previous screen and that the “Failed to Appear Date” reflects the Court date in which the party did not attend Court.
 - Under the “Style of Cause” tab, please ensure that the names of the parties on screen are up to date as they will show up on the CEIS produced Warrant. To ensure that it is up to date, click “ReGenerate from Participants”, and it will update the style of cause on the warrant

7. On the "Data Capture for Warrant for Arrest" screen, Page 1, ensure that you have entered the correct Court location, the correct name, date of birth, and address of the person that the warrant is issued against
 - Please enter your initials under "Clerk Initials"
 - Under "Type of Person Signing", you will be entering "Clerk of the Court on behalf of (form will insert Judge's name)"
8. Under "Reason for Arrest", indicate if the warrant was issued because the person did not attend court, is required to attend court to explain non-compliance, is required to attend court to show cause why an order should not be enforced, or for another reason.
9. Under "Page 2", ensure that any information that has been provided on the Personal Information Form is also reflected on this page.
10. Click "Print Preview", and then "Save Form". Return to the "Documents" tab in CEIS
11. In "Documents", ensure that the "Warrant for Arrest" is highlighted, and click the "Referral" tab at the top.
12. The "Checked by" field would be your name, and the "Date Checked" would be "Today's" date.
 - The "Referred to Group" field would read as "DDR" and the "Reason" would read as "Signing/Review".
 - Once all fields have been completed, click "Add Referral", and this will send the Referral directly to a DDR for signing (i.e. Justice of the Peace)
13. Once the Justice of the Peace has signed off on the Warrant, return to the "Documents" screen and view the image. You will notice that the signature/initials of the JP appear on the Warrant now.
 - With the PDF image of the document up on your screen, click the "Stamp" button, Save it, and Print it out.
14. With a physical copy of the warrant, apply the following stamps:
 - "Sent to (Police department name) on (Date)"
 - Please note that this file will be dealt with at Robson Square
15. Use your printer fob to email the scanned documents to yourself. Ensure that the subject is either "WOA (file number)" or "WOA (full name of person)"
16. Forward the email to^{s.15} with the subject line being "WOA – (full name of person)". Please use the following template message when sending the warrant to CPIC:

s.15; s.17

- When sending the email, under the “Options” tab in Outlook, ensure that you Request a Delivery and Read Receipt
 - For Burnaby CPIC, fax Burnaby RCMP at^{s.15; s.16} and place original and one extra copy of the Warrant in the Burnaby RCMP pick up box
17. Place copy into the Court file on the right-hand side on top of the Court Summary Sheet
 18. Once email has been received back from VPD, print it out and attach to the Warrant for Arrest and the Personal Information Form

Warrant Cancellation (Turning Themselves In At Counter)

1. If a party is turning themselves in on a Warrant of Arrest, immediately alert the Sheriffs

2. Download the Warrant Cancellation Form from the Family Court Manual at <https://csb.jag.gov.bc.ca/Forms/adm307.pdf>



adm307.pdf

3. For Vancouver, call s.15; s.16 or s.15; s.16 and get the name and number of the person you're speaking to, noting down the time and date of the call.
 - Let them know that somebody has turned themselves in on an arrest warrant and give them the name, DOB, and other information if requested
4. On the Warrant Cancellation form, on the top right hand corner, enter Robson Square's address: Robson Square Provincial Court, Suite 100 – 800 Hornby St, Vancouver, BC, V6Z 2C5
5. Under the "To:" field, put "Warrants Squad" and complete the Date and Court File No. fields.
6. Enter the Name and Date of birth for the person in which the warrant was issued against. For "Charge", write in "Subject to an Application under the Family Maintenance Enforcement Act", if the Warrant was granted under the FMEA.
 - If the Warrant was granted under the FLA, you may need to indicate instead "Subject to an Application under the Family Law Act".
7. Complete the "Date warrant issued" field and select the tick box for "Warrant executed". Print off the document and sign it.
8. Once signed, print off one copy for the "VPD" Mailbox at the front and place the other copy of the signed warrant in the file. The Warrant Cancellation is to be attached to the copy of the Warrant in the file that is being cancelled.
9. Call Thomas Berger of FMEP at 604-678-5670 at extension 5687 (or extension 5471 for Karen Anderson) to let them know the warrant has been executed. Let them know that you are wanting to know when they are wanting the matter to be returnable for, and whether counsel will be appearing
10. Call the Judicial Case Manager to confirm if and when there's space for a person who has turned themselves in on a Family Warrant for Arrest to appear before a Judge
11. In CEIS, schedule the Summons (that brought about a Warrant for

- Arrest) into a date/time and Courtroom that is provided to you by the JCM. The Appearance reason will be "JIR" (Judicial Interim Release). Print off the additions list and bring the files into Court. Please ensure that if FMEP has provided a returnable date, that you advise the Court of this by leaving a note for the Clerk.
12. After the Court appearance and a Release is issued, add the document "RO" to CEIS. *R C*
 - In the field that says "Select Warrant Prompting this Document", select the name of the Defendant and the date in which the Warrant was issued, then click "Produce Form"
 - The "Current Appearance Date" field would be the date in which the Release was granted.
 - The "Next Appearance Date" field would be the returnable date that the Judge had released the person to return to Court on.
 - **NOTE:** If there's no "Next Appearance Date" field, you may have to return to the Data Entry step and ensure that a "Next Appr" date has been entered.
 13. Once this information has all been completed, click "Produce Form"
 14. Ensure that the person being released has the most up to date address information entered.
 15. Enter your Clerk Initials, then hit Print Preview. Ensure that you click the "Stamp" button and Save the form
 16. Give the Stamped release to the JP to sign and have the individual being released sign the document in the presence of the JP
 - Ensure that you fax a copy of the signed Release to FMEP
 17. In CEIS, navigate to the appearance in which the warrant was issued and click "Record Results"
 - Go to the "Warrants" tab, ensure that the Warrant that you're working on has the appropriate "Sel." Box tick marked. In the Status box, change it to "Executed". This will remove the warrant flag from CEIS for that Warrant.

Family Court Orders

The Registry is responsible for preparing orders for unrepresented parties. If a party is represented, counsel prepares the order unless a judge orders otherwise.

Drafting Orders (Post-Data Entry)

1. Typically, when parties are appearing in Family Court but are self-represented, the Judge may make an Order that the Registry is to draft an Order.
 - Orders for drafting may be found in the "Orders for typing" tray at the back of the Family Registry.
 - **NOTE:** Always ensure that when you are drafting an Order, that you have the physical file on hand as well
 - The terms of the order are usually pulled into CEIS automatically from CCD, except for matters that are not recorded, such as Conferences
2. In CEIS, navigate to the "Orders" tab, then select "Order Terms". Ensure that the terms as listed here are reflected by the Order terms as shown on the CCD log sheet when data entry was completed.
 - If you are needing to expand a Term No. in order to be able to see the complete order term, press CTRL + E
3. Depending on how the Order term was entered in Court, you may need to "clean up" the terms for the copy of the Order that is to be signed.
4. After you have cleaned up the Order terms, click "OK", then "Save".
5. On the main "Orders" screen, click "Produce Form"
6. Under the "Form details" tab, the "Judgment Date" field should reflect the date in which the Order was pronounced. Under the "Style of Cause" tab, click "ReGenerate from Participants" to ensure that you have the most up to date style of cause reflected on the Order. Once you have verified these two tabs are correct, click "Produce Form"
7. Ensure that the Court Location/Court address are correct. If the data has not already pulled through automatically from CCD, ensure that the name of the Judge and their honorific is entered as well as the persons appearing at the hearing, and their attendance method.
8. For "Type of Order", this will usually pull through from CCD as well, but if not, you may need to manually select "Interim Order", "Final Order", "By Consent", or "Without Notice".
9. Click "Print Preview" and check the produced form for correctness. If it's ready to go, click "Print Form"
10. After data entry has been completed and the Order has been drafted, place the Order, and its accompanying file, into the appropriate Court Clerk's tray, by Patrick's office.
 - To determine which Court Clerk will be checking the Order, refer to the initials on the Court Summary sheet to see which Court Clerk was present at the hearing in which the Order was made.

Receive Orders for signature

1. Date stamp back of order with date received stamp and place in "Order to be pulled" tray at the back.
2. Remove the orders from the "Orders to be pulled" tray.
3. Complete a file filler card and pull files.
4. Place the order inside the file and place the file in the appropriate file sorter for the clerk who clerked that day (by the JP desk).

Checked Orders

1. Once a Court Clerk has checked the Order that we have produced for them, they will apply a square "Checked by" stamp onto the Order.
2. The Court Clerk will place the file, with the Order enclosed, on the trays across from the Family photocopier
3. Consult the list of Judges to see if a Judge will need the physical file along with the Order when they sign it.
 - If a Judge will not be requiring the file to sign the Order, place the Order in one of the cream coloured folders with the Judge's name on it and leave it in the tray in which you found it. The List prep person will bring this folder upstairs when they bring the files up
 - o The file may be placed on the "Family Files Awaiting Judge's" shelf, located by the incoming mail tray.
 - If a Judge does require their files (i.e. the list explicitly states the Judge wants their files), or the name of the Judge isn't listed, place the complete file within the cream coloured folder, with the Judge's name on it, and the list prep person will bring it upstairs when they bring the files up.

Orders for signature

1. Remove the checked orders from the order checked tray for judge's signature.
2. Any orders that have a rejection letter are to be sent back to counsel submitting the order by the court clerk (Note: rejection letters addressed to judge are to be sent on to judge for direction).
3. Remove order from file and place in assigned folder for each judge (Note: some judges prefer the court file accompanied with the order).
4. Orders are brought up to judge's chamber for signature.

Orders signed by Judge

1. Retrieve file from "Orders awaiting signature" shelf.
2. Review each order to determine if any steps need to be taken, i.e POR, preparation of a summons, substitutional service of documents.
3. Date stamp signed order.

4. Enter date order in CEIS.
5. Scan order in CEIS.
6. Photocopy and certify orders (refer to Orders - Distribution).
7. Distribute orders (refer to Orders - Distribution).

If the Order is an Order that a matter be enrolled with the Child Support Recalculation Service, please see [here](#).

Orders – Distribution

If agent form is attached, eg: West Coast Title, Dye & Durham, etc. then attach requested copies with form in tray at front counter for pick up.

FLA Orders

- 1 certified copy to counsel and 1 certified copy for each party they represent
- 1 certified copy to each unrepresented party

CFCSA Orders

- Somers Poulin Hall – 1 certified copy
- Feenie MacDonald – 5 certified copies to Director to CFCSA (Director's office will distribute to regional offices (place Director's copy in their mailbox)
- 1 certified copy to each counsel who signed

FMEP Orders

- 1 copy to counsel for the Director of Maintenance Enforcement, depending on the request from the letter by FMEP
- 1 certified copy to the debtor / respondent

Consent Orders drawn by FJC

- 1 certified copy to the FJC
- 1 certified copy to the applicant
- 1 certified copy to the respondent

Written Agreement or Separation Agreement

- 1 certified copy to each party with letter

Circuit Court Orders (Bella Bella, Bella Coola, Klemtu) Administrative Judge signs

- CFCSA: Hollis Lucky – 3 certified copies to Director, 1 certified copy to counsel along with 1 certified copy for each party they represent
- FLA: 1 certified copy to each unrepresented party or 1 certified copy to counsel along with 1 certified copy for each party they represent

ISO and Provisional Orders

- 3 certified copies to FMEP Central Enrollment office (PO Box 9216)
- 3 certified copy to the ISO office (Vancouver)
- 1 certified copy to Paul Reimer (amicus curiae)
- 1 certified copy to the party living in this jurisdiction

Guidelines for Checking Orders

- Ensure that court file number and court location are correct. Do not reject if the file number is the only incorrect issue. Change file number and initial. If there are other errors, include the correct file number in your rejection.
- The style of cause should always remain the same as set out in the first Application to Obtain an Order, Agreement or Supreme Court Order on file (**very important**). Please review document #1 on the file if you are unsure.
- Check that the date of the order is the date the matter was before the court and the Judge's name is correct. On RFJ use date of judgment.
- If order is made ex-parte, final, interim, by consent or provisional, ensure this is indicated on the order.
- If evidence was heard at the appearance, ensure the words "evidence adduced" are in the first paragraph (**important**). If an affidavit was attached at the appearance, ensure the words "upon reading the affidavit of etc." are in the first paragraph (**important**). **For CFCSA matters:** they use evidence has been adduced when a Judge considers filed documentary evidence such as the Report to Court for the removal of the child. If the Judge does not hear viva voce evidence nor consider documentary evidence, they refrain from putting that reference in the order.
- Check that the names of the parties, children and children's birthdates are the same as those on the application, presentation form, or agreement (**important especially on CFCSA matters**).
- Check that the terms of the order are correct and do not exceed those made in court (if order prepared by counsel is not correct, complete Order Rejection Notice explaining why order was sent back). Make a copy of the rejection and order, place the copy on top of the summary sheet in the file and return the original to counsel.
- If order is Consent Order, order is signed by both parties.
- If order is prepared by counsel it must be signed as approved as to form by counsel.
- Initial order as being checked with the checked stamp.
- Place files in order checked tray located at the family section.

- The jurat can be "By the Court" or "A Judge of the Provincial Court of British Columbia".

Note:

Please use pencil on the order to indicate any errors.

When rejecting an order, make sure you review the whole order before sending or returning it back to counsel.

Protection Orders

Policy

This policy applies to the following orders:

- A restraining order made under sections 183 of the *Family Law Act* (FLA), *Family Maintenance Enforcement Act* (FMEA), *Child, Family and Community Service Act* (CFCSA), *Family and Child Service Act* (FCSA), or an order which changes or ends a restraining order;
- A protective intervention order made under the CFCSA, or an order which changes or cancels a protective intervention order;
- An order containing a condition that a child is not to be removed from a specified geographic location (for example, from British Columbia, or from a particular city). These orders should be sent to POR only if the judge makes the order within the context of "family violence". It is the court clerk's responsibility to clarify this on record.

Registry Clerk's Responsibility

- Clearly flag the files which contain the protection orders (file cover stamped POR, POR flagged in CEIS).
- Use the Control Log/Fax Cover Sheet to keep track of protection orders made with a CFC/firearms term, and whether they have been emailed/faxed to the Chief firearm officer.

NOTE: POR's are sent through to the Protection Order Registry through CEIS directly, though they may be sent by Fax in emergency situations in the interim until the Registry Clerk can send it via CEIS at a later point.

- If sending by fax, clearly indicate that they will be sent to the POR Registry in CEIS at a later point.
- Provide Contact Information forms to protected persons or counsel on request.
- Provide Request for Service of Family Protection Order and ensure that it is completed and provided back to the Registry as soon as possible.
- Receive Contact Information forms from:
 - protected party or party's lawyer, in the case of restraining orders
 - social workers, in the case of restraining orders and protective intervention orders issued under the CFCSA.

- Keep the Contact Information form separate from the case file so the party who is subject of the order cannot obtain access to it, and destroy once confirmation of receipt has been received from POR.
- Fax each protection order, with CFC/Firearms term, and Contact Information form to the POR on the same day the order is made, together with the Control Log/Fax Cover sheet.
- Prepare the protection order if protected party is not represented by counsel or as directed by the court.

Procedures

1. Check order to ensure it agrees with the Court Summary Sheet.
 2. Obtain judge's signature on the Protection Order.
 3. Prepare and send (via CEIS) the Notice of Protection Order (or Protection Order) on the same day of the hearing, to indicate that a protection order has been made, if counsel does not provide the Protection Order, in the terms ordered, on the day of the hearing.
 - If CFC/Firearm term is present, ensure Notice of Protection Order/Protection Order is sent to the Chief Firearms Officer via Fax along with the Control Log/Fax Cover Sheet.
- NOTE:** When counsel subsequently files a Protection Order, in instances where a Notice was prepared and sent to POR: check the order, obtain judge's signature; enter on Control Log/Fax Cover Sheet; fax to POR; file the Protection Order and file the Notice on the right hand side of the file under the blue divider sheet.
4. On the day the order is made, varied or ended, and/or a Request for Service of Family Protection Order form is received, send the following documents to POR via CEIS: Protection Order, Notice of Protection Order, or copy of ended or varied order; Request for Service of Family Protection Order.

Order Cancellation/Varied Order

1. If a Protection Order is cancelled, an Order Terminating a Protection Order must also be prepared and sent to the Protection Order Registry via CEIS.
 - For POR's that are either extended or varied, the Court Clerk must create two separate orders in CEIS, one to cancel the previous POR and one containing the new POR (both must be sent to the POR Registry in this instance, along with the Request for Service of Family Protection Order).
2. After an order has been ended or varied in court or out of court, make a copy of the order which has been ended or varied and draw a line through the **copy of the order**.

3. Write the date and notation along the line to indicate the order has been ended or varied.
4. Record POR on the Protection Order to indicate that it has been sent to the POR Registry via CEIS.

For CFC/Firearms POR's

Sending CFC's via Fax

1. Attach the copy to the Control Log/Fax Cover Sheet.
2. Maintain an audit trail using a control log system to track all Protection Orders made, with a CFC/Firearm term, and whether they have been sent to CFC.
3. Record that the Protection Order has been faxed (including the clerk's initials and the date faxed) on the Control Log/Fax Cover Sheet.
4. Stamp the back of the Notice/Order with the POR stamp.
5. Attach the Contact Information, if any, to the Control Log/Fax Cover Sheet (not in the file) until confirmation of receipt is printed off from the fax machine.
6. Attach any copies of the orders or notices to the Control Log/Fax Cover Sheet to await confirmation.

Staff at the Security Programs Division will receive the fax. They **DO NOT** confirm receipt of each order. A confirmation receipt from the fax machine is confirmation that you have faxed to CFC.

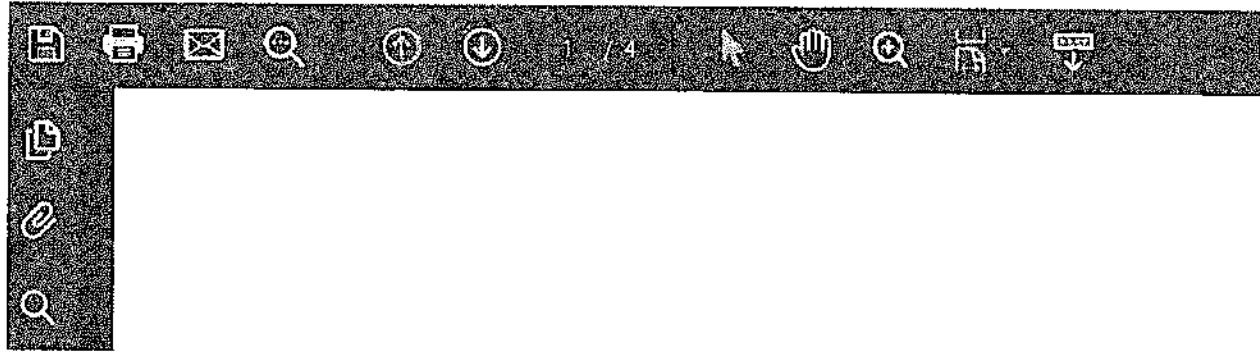
1. Clerk will wait for the fax confirmation receipt from the fax machine to ensure that the fax to CFC is sent successfully.
2. Resend any orders if necessary.
3. Place the Control Log/Fax Cover Sheet and the fax confirmation receipt in the POR/CFC folder awaiting supervisor to reconcile.
4. File the Notice/Order in the court file.

Sending CFC's via Email

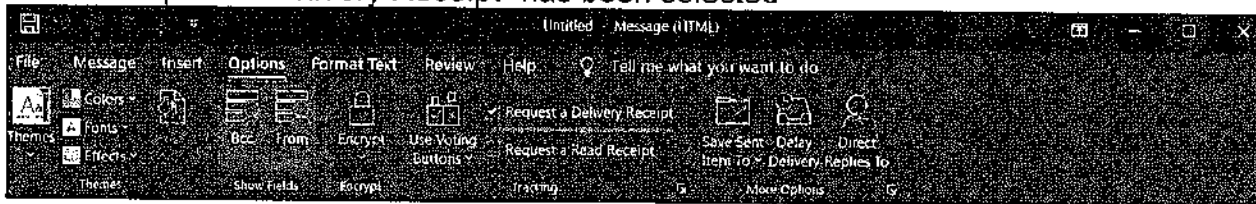
1. Once the Protection Order has been entered into CEIS, click the "*" symbol from the Documents screen, or click the "View Doc" button from the Orders screen to open up a preview of the PDF
2. Once the preview is open, if you move your cursor around, you'll notice a toolbar will open at the bottom of the screen. Click the "Adobe symbol" to expand the toolbar



3. At the top left corner, select the envelope symbol and you'll be presented with an option to email a copy of the PDF.



4. You'll be prompted to choose which program you want to send the PDF through. Ensure that "Default email application (Microsoft Outlook) is selected, then click "Continue". From the window that pops up, click "Send Copy".
5. Ensure that the email is being sent to the following address:
s.15; s.16 @rcmp-grc.gc.ca
6. In the Subject field, change the subject line to the s.15; s.16
s.15; s.16
7. Double check that the Protection Order has been attached.
8. From the command toolbar, select "Options" and ensure the check mark for "Request a Delivery Receipt" has been selected



9. Send the email. Go to your "Sent Items" folder and print out a copy of the email that you have sent as well as a copy of the POR/CFC that you have sent
10. Place these documents in the red folder for reconciliation.

When a Protection Order is made at a location other than where the court file resides, the host location where the order is made will:

- Be responsible for sending it to the POR via CEIS and/or faxing it to CFC;
- Return the documents to the originating location with a clear notation that the Protection Order was made and sent to the POR and/or CFC.

Where a case containing a Protection Order has been transferred to another court location, the originating registry will ensure the file transfer memo indicates that there is a Protection Order on the file.

Reserved Judgments

1. Determine whether the order contains a Protection Order.

2. Follow above procedures to notify POR- including preparing and faxing a Notice of Protection Order.
3. Enter notation 'Reserved Judgment' as a comment under the POR Details Tab, in the "Comment" field/box.

ANY DISCREPANCIES SHOULD BE REFERRED TO THE SUPERVISOR IMMEDIATELY.

Order for Attendance of A Prisoner (Spring Order)

If there is a court appearance for a party to a file, who is in-custody on another matter, an Order for Attendance of a Prisoner must be completed and signed by a Justice of the Peace in order to have the person brought before the court.

Counsel or the Party requesting the attendance must file the following at the registry:

1. *Application for Attendance of a Prisoner* (pursuant to s. 527 of the CCC) or *Procuring Court Attendance of a Prisoner* (pursuant to s. 41(1) of the *Offence Act*, that must include the following:
 - a. Applicant's name,
 - b. Prisoner Name, in full and Date of Birth,
 - c. Prison Location,
 - d. Court Location,
 - e. Date(s) Required.
2. Affidavit attesting to why the prisoner's personal appearance is required.

Procedure

1. Receive the application and affidavit.
2. Prepare an Order for Attendance – found in the shared drive – family – family forms (see example on next page).
 - * **Note the appropriate Act on the form**
3. Forward the application, affidavit and unsigned Order for Attendance to the JP for signature.
4. Receive the signed Order for Attendance back from the JP.
5. Original Order for Attendance and one photocopy are placed in the Sheriff box.
6. Place a copy in the court file.
7. Inform the JCM a party will be appearing in-custody so the matter can be scheduled in a secure courtroom.
8. Enter Order for Attendance as correspondence in CEIS.

Section 51 Guardianship Procedures

- Parties may attend the registry to retrieve Guardianship Applications under s. 51 of the FLA packages by court order or desk order. See attached pages.
- Desk Orders **DO NOT APPLY** to off shore parents wanting someone to be the guardian of their children (per Judge Low).

Party attending registry to file documents

1. Date stamp "Request for Protection Order Registry Search" and "Consent for Child Protection Record Check" once received.
2. Write down court file number and fax number 604-660-8950 on both documents.
3. Fax to POR and MCFD. Attach fax confirmation to the back of those documents.
4. Enter and scan documents in CEIS. Remember to put in comments who the check is for.

RPS – Request for Protection Order Registry Search

CPR – Consent for Child Protection Record Check

5. Place documents on top of the court summary sheet.

Record Checks Results returned

6. Date stamp "Record Check Results – s. 51 Protection Order Registry" and "Record Check Results – s. 51 Child Protection" once we received the faxed copies.
7. Enter and scan documents in CEIS. Remember to put in comments who the check is for and associate the document ref #.

RCR – Record Check Results – s. 51 Protection Order Registry

RCF – Record Check Results – s. 51 Child Protection (MCFD)

8. Place the Guardianship Sticker on an envelope.
9. Fill in the file number, name and mark off the appropriate check box for the results.
10. Photocopy the results and place the "copy" in the envelope (this envelope will be given to the named person or counsel).
11. Staple the "original faxed copy" to the related document - "Request for Protection Order Registry Search" or "Consent for Child Protection Record Check".
12. Place documents on top of the court summary sheet for the Judge to see; until after the Form 34 Affidavit has been filed.

Party attending registry to retrieve documents

13. Check ID.
14. Provide envelope to party.
15. Mark on "original faxed copy" of the "Request for Protection Order Registry Search" and "Consent for Child Protection Record Check" that the copies are provided and

date it at the bottom. (IE: Jan. 25/16 - picked up by "person" per ID BCDL or PASSPORT or Bar Card...)

16. File the "Request for Protection Order Registry Search" and "Consent for Child Protection Record Check" under the concluded documents under blue divider sheet on the right.

NOTE: Party may file their Criminal Records check at any time; however, we do not enter it in CEIS. We can just place it in the envelope and return it to the party. The Criminal Records check is part of the Affidavit, Form 5.

Guardianship Applications under s. 51 of the FLA

Requirements for Guardianship Applications to the Court:

1. **Application About a Family Law Matter (Form 3):** with the person(s) applying for guardianship named as the party and the parents named as the other party(ies).
2. **Consent for Child Protection Check** – you must bring government issued picture identification when you file this document (for example, BCID, DL, passport).
3. **Request for Protection Order Registry Search.**
4. **Criminal Record check** – you must attend your local police station or RCMP detachment to obtain a criminal record check. It is your responsibility for the costs incurred.
5. **Affidavit (Form 5)** from the party(ies) with records attached (records: Record Check Results – s. 51 Child Protection, Records Check Results – s. 51 Protection Order Registry and Criminal Record check). This can be signed before a Commissioner for taking Affidavits. It is your responsibility to contact the Family Court Registry at 604-660-8989 option 3 to inquire if your search results are available for pick up.

The party serves the Affidavit (Form 5) on the other parties, at least seven (7) days before the hearing. This document may be served later.

6. **Service on the other Parties** - arrange to have the other party personally served by someone, other than yourself, who is nineteen (19) years of age or older.

The other party has thirty (30) days to respond to the application from the date of service. If there has been no response after thirty (30) days, then an affidavit of service should be completed, by the server, and signed before a Commissioner for taking Affidavits.

7. **Rule 39:** request an appointment with a Family Justice Counsellor for a Needs Assessment. You may request an appointment in person at their office located at #290 – 800 Hornby Street, Vancouver, or by telephone at 604-660-2084.

The Family Justice Counsellor will complete a Referral Request form, which must be filed at the Family Court Registry.

8. **Parenting After Separation:** request an appointment to attend the workshop. The telephone number is 604-505-6577 or e-mail: pas@westcoastfamily.org

At the end of the session, you will be presented with a Certificate of Attendance, which you must file with the Family Court Registry.

9. If the Child is 12 Years or Older

If a child who is the subject of the guardianship application is 12 years of age or older, and you are not a parent of the child, you must also obtain the child's written approval to the appointment or provide evidence to satisfy the court that the appointment is in the best interests of the child.

***NOTE: If this Guardianship Application is by consent, you may wish to apply by desk order. Please see the Family Court Registry for additional information.**

Guardianship Applications under s. 51 of the FLA

Requirements for Guardianship Applications by Desk Order:

1. **Application About a Family Law Matter (Form 3):** with the person(s) applying for guardianship named as the party(ies) and the parents named as the other party(ies).
2. **Reply to an Application About a Family Law Matter (Form 6):** with the person(s) named as the other party(ies) indicating they are in agreement with the issue of guardianship being sought on the Application About a Family Law Matter.
3. **Consent for Child Protection Check** – you must bring government issued picture identification when you file this document (for example, BCID, DL, passport).
4. **Request for Protection Order Registry Search.**
5. **Criminal Record check** – you must attend your local police station or RCMP detachment to obtain a criminal record check. It is your responsibility for the costs incurred.
6. **Affidavit (Form 5)** from the party(ies) with records attached (records: Record Check Results – s. 51 Child Protection, Records Check Results – s. 51 Protection Order Registry and Criminal Record check). This can be signed before a Commissioner for taking Affidavits. It is your responsibility to contact the Family Court Registry at 604-660-8989 option 3 to inquire if your search results are available for pick up.

The record checks must all be dated within 60 days before the date that the record check is filed. The Affidavit must be sworn no more than 7 days before the Affidavit is filed.

The party serves the Affidavit (Form 5) on the other parties, at least seven (7) days before the hearing. This document may be served later.

7. **Application for a Family Law Matter Consent Order (Form 17).**
8. **Draft Consent Order (Form 18):** This must be signed by all the parties
9. **If the Child is 12 Years or Older**
If a child who is the subject of the guardianship application is 12 years of age or older, and you are not a parent of the child, you also must obtain the child's

written approval to the appointment or provide evidence to satisfy the court that the appointment is in the best interests of the child.

***NOTE: A Judge will review the above documentation and decide whether to grant the desk order. If granted, the Judge signs the Order and the Family Court Registry will provide parties a copy of the Order. If not signed, the Family Court Registry will set a Family Management Conference for the application and a Notice of Family Management Conference will be sent to the parties to attend court.**

Update Log

- 16-JUN-2021 First revision completed – Added “List Preparation”, “Data Entry”, “Orders”, “Warrants”, and “Spring Order”
- 07-SEP-2021 Merged Old Workflow with New Workflow
- 21-OCT-2021 Removed references to MSD (Vancouver) and MSD (Burnaby) applications, updated “Orders-Distribution” section by changing FMEP box number from 5100 to 9216. Removed reference to stamp that says “ *Please note that this file will be dealt with at Robson Square Provincial Court, 800 Hornby Street, Vancouver, BC*” when sending a warrant out.
- 05-NOV-2021 Added section about sending CFC’s via email
- 22-NOV-2021 Added section about Reasons for Judgment
- 10-JAN-2022 Updated List Prep section to reflect FMEP’s request to have completed copies of list emailed instead of faxed. Also included Duty Counsel email for list prep distribution.
- 14-FEB-2022 Updated List Prep section to reflect email address that Parents Legal Centre is to receive copies of the court list at
- 01-MAR-2022 Updated section regarding the Child Support Recalculation Service and added links/references to that section in both the “Orders Signed by Judge” and “Written Agreement/Separation Agreement” sections.

Family Court Manual

Summary of changes

Housekeeping – August 2023

Chapter 3 – ERP registries producing Notice of Family Management Conference

- Clarified where JCM has been unable to provide notice of the Family Management Conference to the party(ies) due to a lack of email address the registry is to prepare the Notice of Family Management Conference and mail it out along with the IRA and scheduling memo.

Revised text highlighted in green.

List of previous manual amendments

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Overview

This chapter describes what registry staff should know about the *Family Court Manual*. It discusses

- who and what the manual is for,
- describes what it covers,
- details on amendments and circulars and
- provides a list of the abbreviations and
- definitions used.

Who and What this Manual is for?

This manual outlines how registry clerks should perform tasks and deliver services, so they know what they have the authority to do and how they should do it. This manual also sets out the practices required by the Provincial Court Family Rules (PCFR). The manual's goal is to help staff be confident in delivering efficient, effective, and consistent services to all clients.

All the procedures outlined in this manual are policy rather than guidelines. Court Managers may ask their Regional Director, for exemptions to any policy in this manual. The Regional Director sends the request to the ADM for approval. Any approved exemptions must be placed in the manual.

Although this manual focuses on the procedures that registry clerks must follow, everyone working in family court registries should become familiar with them. It is important to remember that, although this manual is intended to accurately reflect the law, it is not the law. Its policy and procedures are subject to change. The manual also refers to Acts and Rules which may be changed by the Legislature.

Court Services welcomes your comments on this manual. Your response will help us to serve your needs better when we revise this manual and write others.

If you have any business procedure and policy questions, please contact

- For business procedures, policy questions or comments contact AskPolicy@gov.bc.ca
- For CEIS business procedure questions, contact [CEIS Support](#)
- For training questions, contact the [Centre for Court Administration](#)
- For FLA Assistant and eFiling questions, contact [CSB Support](#)
- For Family Law picklist questions, contact [DARS Office](#)

What the Manual Covers

The *Family Court Manual* outlines procedures for how registry clerks should perform tasks and deliver services.

The manual is divided into chapters explaining the procedures necessary at certain stages in the court process. The section on each specific procedure begins by explaining when to do the procedure and what laws regulate it, then provides step-by-step instructions. Each specific procedure begins by telling the clerk how to do it. Additional sections clearly marked by tabs follow Chapter 10, contain more information helpful to registry staff.

A brief overview of what each chapter covers appears below.

Chapter 1 - Family Court: Its Purpose, Legislation, and People

This chapter describes the purposes, legislation, and people of Family Court. It discusses what Family Court is and does, its powers, the Acts and Rules it applies, and the people and programs involved.

Chapter 2 - General Procedures Used in Family Court

This chapter describes the general procedures used for processing documents in Family Court matters. It discusses when and how to open and handle files, request trace information, obtain transcripts, and hire court interpreters.

Chapter 3 - Procedures for Rules Applied Under the Family Law Act and Family Maintenance Enforcement Act

This chapter describes the series of procedures necessary to obtain a Court Order. Most of the procedures described are governed by the *Provincial Court Family Rules*. Usually, the court process begins with the filing of an application. The application is served on the other party, who may file a reply. The next step is a court appearance which results in a Court Order (depending which registry the file is in, there may be requirements to be met before a court date can be set). Not all applications proceed to full trial. The filing of a Consent Order (Form 18), along with an Application for Case Management Order (Form 10), or Application for Case Management Order Without Notice or Attendance (Form 17), by the parties, perhaps one reached at a family management conference or at mediation, will also result in a court order. Filed written agreements are also to be treated as court orders.

Filing an application is not the only way that a court file is initiated, and a court order obtained. The process of filing a written agreement or the order of another court also results in the opening of a court file and are outlined in this Chapter.

The Chapter ends with procedures for appealing a Court Order. Each procedure ends with a reference to the next appropriate procedure.

Chapter 4 - Enforcement

If a party does not obey the provisions in a Court Order or agreement, the other party may take steps to enforce it. Chapter 4 describes the procedures used to enforce a Court Order or agreement. If the order contains provisions for support, the creditor may enroll it with the Family Maintenance Enforcement Program (FMEP). The FMEP will enforce the order for the creditor. This Chapter also describes the procedures used to enroll with the FMEP.

Chapter 5 - Procedures for ISO

This chapter sets out the procedures required by the Interjurisdictional Support Orders legislation. It describes the processes to obtain, vary, and enforce support orders when either the claimant/creditor, or the respondent/debtor resides in B.C. and the other party resides in a reciprocating jurisdiction.

Chapter 6 - Procedures for Extraprovincial Matters Respecting Parenting Arrangements

This chapter sets out the procedures under Division 7 of the *Family Law Act* relating to extraprovincial parenting arrangements. It describes how to obtain an order to recognize, enforce, or supersede an extraprovincial order regarding guardianship, parenting arrangements or contact.

Chapter 7 - CFCSA Procedures

This chapter describes the procedures governed by the *Child, Family and Community Service Act* (CSCSA). It begins by describing the purpose of the CFCSA, the definitions of terms used under the CFCSA, and the roles of the people involved in CFCSA matters. The procedures in the chapter describe the court's involvement after the removal of a child, issuing Interim, Temporary and Continuing Custody Orders, applications that can be made to the Court and the appeal process.

Chapter 8 Procedures for Rules Applied Under the Adult Guardianship Act

This chapter describes the series of procedures necessary to obtain a court order under Part 3 (Abuse and Neglect) of the *Adult Guardianship Act*. This Act provides protection for vulnerable adults, such as seniors and disabled adults, and is under the auspices of the Public Guardian and Trustee of British Columbia. The purpose of Part 3 is to provide for support and assistance for adults who are abused or neglected and who are unable to seek support and assistance because of

- a. physical restraint,
- b. a physical handicap that limits their ability to seek help, or
- c. an illness, disease, injury, or other condition that affects their ability to make decisions about the abuse or neglect.

The "court" in Part 3 is defined as the Provincial Court of British Columbia.

Chapter 9 Protection Orders, Restraining Orders and Protective Intervention Orders

This chapter describes the meaning of a protection order and what provisions it must include. Orders must be made under s. 183 of the FLA to be called a protection order under the FLA. Protection or restraining orders may also be made in family court under the *Child Family and Community Service Act*, the *Family Maintenance Enforcement Act*, and the *Adult Guardianship Act*.

Amendments and Circulars

Court Services will inform registry staff of changes to policy by issuing a memorandum explaining the amendments to this manual. When the registry receives an amendment, staff should read the amended text to familiarize themselves with the revised policy. The memorandums can be found on the Court Services [intranet](#) home page.

If the policy change is urgent, Court Services will issue a circular explaining the new policy. The manual will be updated and available on the intranet reflecting the changes, highlighted in green.

Abbreviations

The following is a list of the abbreviations used in the manual. They are part of the day-to-day language of the Family Court system.

AG - Attorney General
CDR – Consensual Dispute Resolution
COEA - *Court Order Enforcement Act*
CPPU - Central Payment Processing Unit
CPIC - Canadian Police Information Centre
CRA - *Court Rules Act*
CFCSA - *Child, Family and Community Service Act*
ERP – *Early Resolution and Case Management process*
FJSD – *Family Justice Services Division*
FMEA - *Family Maintenance Enforcement Act*
FMEAR - *Family Maintenance Enforcement Act Regulation*
FMEP - Family Maintenance Enforcement Program
FMW - Family Maintenance Worker
FOAEAA - *Family Orders and Agreements Enforcement Assistance Act*
FLA - *Family Law Act*
GAPDA - *Garnishment, Attachment and Pension Diversion Act*
GAR - Garnishment and Attachment Regulations
ISO - *Interjurisdictional Support Orders Act*
LSS - Legal Services Society/Legal Aid BC
PAS – Parenting After Separation
PCA - *Provincial Court Act*

Definitions

The following definitions are provided to give registry staff a general understanding of what the terms listed mean. However, please note that these definitions are not the full series of legal definitions for each term. The definitions only explain how each term is defined under **one** particular legislative Act.

Each Act has an interpretations section that defines what terms mean in the context of that piece of legislation. Each term can have different meanings depending on which Act is being used.

Because of these variations in definition, registry staff should become familiar with the interpretations section of each Act and be sure to refer to the Act itself for specific direction. The *Family Law Act* has several interpretation or definition sections. The first is located on the first page of the Act under Part 1 (Interpretation). The next under Part 4 (Care of and Time with Children) Division 6(65) and Division 7 (72). The next two sections are under Part 7 (Child and Spousal Support), Division 1 (146) and Division 3 (153). Part 9 (Protection from Family Violence) (182), Part 11 (Search Officers) (235) and Part 13 (Transitional Provisions) (250) complete the definitions.

Adjournment

The postponement of a court hearing, usually to a specified time and date

Adult

A person who is at least 19 years of age

Affidavit

A written, sworn statement

Application

An application to the court for relief under family legislation

At Risk Family Member

A person whose safety and security is or is likely at risk from family violence carried out by a family member

Attachee

Under FMEA legislation, a person or company who hires a debtor, and who must deduct money from the debtor's wages, salary, or other remuneration under a *Notice of Attachment* or *Attachment Order*

Attachment Order

Under FMEA legislation, an order made by the court at a default hearing or other proceeding directing an attachee to deduct money from a debtor's wages, salary, or other remuneration

Business Day

Under CFCSA legislation, means a Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday

Case

- (a) a proceeding started under these rules, or
- (b) a pre-existing proceeding within the meaning of rule 195 [definitions for part 13]

Certificate of Service

Certificate in Form 7 prepared in accordance with rule 183 (PCFR) [proving service], that certifies service

Certified copy

The original or a copy of a court document that a proper officer of the court has certified to be a true copy by an original signature

Certified true copy

A copy of a document or record that has been signed and certified as a true copy by the officer who has been entrusted with the custody of the original **document**. A true copy of a document is exactly the same as the original

Child

Under FLA and CFCSA legislation, a person under the age of 19

Child Care or Support Issue

Any matter related to, or similar in nature to, guardianship, parenting arrangements, contact with a child, child support or spousal support, including a matter in respect of which International Child Abduction applies

Child Support Guidelines

Means the child support guidelines, provided for under section 247 of the FLA, for calculating child support

Clear days

Under section 25 of the *Interpretation Act*, if a certain number of clear days are given for any act to be done, the first and last days are excluded when calculating the specific period that the clear days cover

Clerk

A person who provides administrative support to the court

Confirmation Order

Under ISO legislation, an order made under the FLA confirming an order made from a reciprocating state, or allowing a reciprocating state to confirm a B.C. order

Consensual Dispute Resolution

Mediation with a qualified family law mediator, or as a collaborative family law process, or facilitated negotiation of a child or spousal support matter with a child support officer

Consent Order

An order to which both parties give their consent, without duress or deception

Contact with a Child or Contact with the Child

Contact between a child and a person, other than the child's guardian, the terms of which are set out in an agreement or order

Court

For the purposes of this manual, the Provincial Court of British Columbia

Creditor

Under FMEA legislation, a person who is entitled under a Order for Support to receive support for themselves or another person

Date-stamp

To affix a stamp with a registry's name and current date to a document filed in the registry. A date-stamp indicates that document has been received

Debtor

Under FMEA legislation, a person who owes support/maintenance money under Support/Maintenance Order

Default Order

Under FMEA legislation an order made by the Court at a default hearing to collect any arrears that a debtor may owe

Director of Maintenance Enforcement

Under FMEA legislation, a person whom the Attorney General designates to enforce a Support or Maintenance Order if the order is filed with the FMEP. Except for matters of access to information, the Director may delegate any power, duty, or function under the FMEP to any person, service agency, or body

Disposition

A judge's ruling; the announced settlement of a court matter

Document

A written instrument used to prove a fact. It records or transmits information in writing, on

paper. For the purposes of providing evidence to a court, documents include books, maps, drawings, graphs, etc

Early Resolution Registry

A registry specified in rule 6 (a) to which Part 2 [Early Resolution Registries] applies

Ex-parte Application

An application to the court that is not served on any party to the legal action

Ex-parte Order

An order of the court that is granted without the presence of the other party. An Ex-parte Order is not a final order of the court, and can be set aside with notice

Extrajurisdictional Declaratory Order

An order of an extrajurisdictional tribunal that declares whether a person is a child's parent

Extrajurisdictional Order

An order of an extrajurisdictional tribunal that is similar in nature to an order respecting guardianship, parenting arrangements or contact with a child

Extrajurisdictional Tribunal

A court or tribunal, outside British Columbia, having authority to make an extrajurisdictional order or to make an extrajurisdictional declaratory order.

Family Dispute Resolution

A process used by parties to a family law dispute to attempt to resolve one or more of the disputed issues outside court, and includes:

- a. assistance from a family justice counsellor
- b. the services of a parenting coordinator
- c. mediation, arbitration, collaborative family law and other processes, and
- d. prescribed processes

Family Dispute Resolution Professional

Any of the following:

- a. a family justice counsellor;
- b. a parenting coordinator;
- c. a lawyer advising a party in relation to a family law dispute;
- d. a mediator conducting a mediation in relation to a family law dispute, if the mediator meets the requirements set out in the regulations;
- e. an arbitrator conducting an arbitration in relation to a family law dispute, if the arbitrator meets the requirements set out in the regulations;
- f. a person within a class of prescribed persons

Family Justice Counsellor

A person appointed as a family justice counsellor under section 10 [family justice counsellors] of the Family Law Act. Family Justice Counsellors work in Family Justice Centres and Justice Access Centres located in communities across the province to provide services to British Columbian going through separation or divorce

Family Justice Manager

A person

- a. in a class of decision makers prescribed under the *Family Law Act*, and
- b. appointed as a decision maker under the *Provincial Court Act*

Family Justice Registry

A registry specified in rule 6 (b) to which Part 6 [Family Justice Registries] applies;

Family Law Matter

- a. parenting arrangements, including parental responsibilities, and parenting time;
- b. child support;
- c. contact with a child;
- d. guardianship of a child;
- e. spousal support

Family Member

with respect to a person, means

- a. the person's spouse or former spouse,
- b. a person with whom the person is living, or has lived, in a marriage-like relationship,
- c. a parent or guardian of the person's child,
- d. a person who lives with, and is related to,
 - i. the person, or
 - ii. a person referred to in any of paragraphs (a) to (c), or
- e. the person's child,

and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

Family Violence

Includes with or without an intent to harm a family member,

- a. physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- b. sexual abuse of a family member,
- c. attempts to physically or sexually abuse a family member,
- d. psychological or emotional abuse of a family member, including
 - i. intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,

- ii. unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - iii. stalking or following of the family member, and
 - iv. intentional damage to property, and
- e. in the case of a child, direct or indirect exposure to family violence;

Filed

A document is filed when it is checked for accuracy and date-stamped with the registry stamp

Financial Statement

A document listing a party's income and expenses, and, if applicable the child's portion of that income and expenses. It must be filed by the applicant and the respondent in a maintenance matter

Garnishee

A person who is required by a *Garnishing Order* to pay money owed to a debtor named in the order

Garnishing Order

An order directing a person who hires a debtor to deduct money from wages or payment due to the debtor

Guardian

39 (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian. An agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian. A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:

- a. section 30 [parentage if other arrangement] applies and the person is a parent under that section;
- b. the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
- c. the parent regularly cares for the child.

(4) If a child's guardian and a person who is not the child's guardian marry or enter into a marriage like relationship, the person does not become a guardian of that child by reason only of the marriage or marriage-like relationship.

Lawyer of Record

Under CFCSA legislation, in relation to a party, means a lawyer who has provided notification or advised the court in accordance with Rule 8(20)

Method of Attendance

In relation to a court appearance, includes

- a. attending in person, and
- b. attending by telephone, video conference or other means of electronic communication.

Needs Assessor

Means a family justice counsellor who conducts a needs assessment under rule 16

[participating in needs assessment] or 93 [participating in needs assessment in family justice registries]

Notice of Attachment

Under FMEA legislation, an administrative remedy directing a person who hires a debtor to deduct money from wages or payment due to the debtor. This notice enforces payment of ongoing or overdue support when a debtor is in arrears. It only applies to Support Orders filed with the Director of Maintenance Enforcement

Order

A direction of a court or judge that is binding on the parties to the action. An order is usually first made orally by the judge, then prepared in written form by either a clerk or a solicitor for the judge's signature

Parenting Education Program Registry

A registry specified in rule 6 (c) to which part 7 [Parenting Education Program Registries] applies

Parental Responsibilities

- a. making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- b. making decisions respecting where the child will reside;
- c. making decisions respecting with whom the child will live and associate;
- d. making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- e. making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- f. subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- g. applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- h. giving, refusing or withdrawing consent for the child, if consent is required;
- i. receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- j. requesting and receiving from third parties health, education or other information respecting the child;
- k. subject to any applicable provincial legislation,
 - i. starting, defending, compromising or settling any proceeding relating to the child, and
 - ii. identifying, advancing and protecting the child's legal and financial interests;
 - iii. exercising any other responsibilities reasonably necessary to nurture the child's development.

Parenting Arrangements

Arrangements respecting the allocation of parental responsibilities or parenting time, or both

Parenting Time

The time that a child is with a guardian, as allocated under an agreement or order. During parenting time, a guardian may exercise, subject to an agreement or order that provides otherwise, the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child

Party

includes the following persons who may be named in a case:

- a. a person who files a notice to resolve a family law matter, or is named as the other party on a notice to resolve, under rule 10 [early resolution requirements must be met before application filed];
- b. a person who files an application;
- c. a person who files a reply, or may file a reply, to an application;
- d. a person who is named as the other party in an application under these rules;
- e. a person who is added as a party under these rules;
- f. the Director of Maintenance Enforcement, if the application is made under Division 2 [Enforcement of Support Orders Under the Family Maintenance Enforcement Act] of Part 10 [Enforcement]

Payor

A person who, under an agreement or order, must pay child support

Peace Officer

- a. a sheriff, or
- b. a police officer, police constable or constable, including a member of the Royal Canadian Mounted Police who is deemed to be a provincial constable under section 14(2) [Royal Canadian Mounted Police as provincial police force] of the Police Act

Priority Parenting Matter

- a. giving, refusing or withdrawing consent, by a guardian, to medical, dental or other health-related treatments for a child, if delay will result in risk to the health of the child;
- b. applying, by a guardian, for
 - i. a passport, licence, permit, benefit, privilege or other thing for the child, if delay will result in risk of harm to the child's physical, psychological or emotional safety, security or well-being; or
 - ii. travel with a child or participation by a child in an activity if consent to the travel or activity is required and is alleged to have been wrongfully denied;
- c. relating to change in location of a child's residence, or a guardian's plan to change location of a child's residence, if
 - i. no written agreement or order respecting parenting arrangements applies in respect of the child, and
 - ii. the change of residence can reasonably be expected to have a significant impact on the child's relationship with another guardian

- d. relating to the removal of a child under section 64 [orders to prevent removal of child] of the *Family Law Act*;
- e. determining matters relating to the interjurisdictional issues under section 74(2)(c) [determining whether to act under part 4 – Care of and Time with Children] of the *Family Law Act*;
- f. relating to the alleged wrongful removal of a child under section 77 (2) (c) [wrongful removal of child] of the *Family Law Act*;
- g. relating to the return of a child alleged to have been wrongfully removed or retained under the Convention on the Civil Aspects of International Child Abduction signed at the Hague on October 25, 1980
- h. applying for an order under section 45 [*orders respecting parenting arrangements*] or 51 [*orders respecting guardianship*] of the *Family Law Act* in one of the following circumstances:
 - (i) the child to whom the order relates has been removed under section 30 [*removal of child*], 36 [*interim supervision order no longer protects the child*] or 42 [*enforcement of supervision order after the protection hearing*] of the *Child, Family and Community Service Act* and a director under that Act has advised that the order will allow the child to be returned to the person applying for the order;
 - (ii) a director under the *Child, Family and Community Service Act* has advised that the child to whom the order relates will be removed under section 30, 36 or 42 of that Act unless the order is made;

Priority Parenting Matters capture a distinct list of time sensitive matters that proceed directly to a court appearance with a judge and can be made before parties complete any applicable initial requirements to apply for a related family law matter. The Priority Parenting Matters replace the Notice of Motion process under the old rules and specify a list of matters that can be addressed as a priority, before or separate from other parenting issues.

Provisional Order

Under ISO legislation, a Provisional Order can be any of the following:

- a. a support order of a court in British Columbia that has no effect until confirmed by a court in a reciprocating jurisdiction, or
- b. a similar order made in a reciprocating jurisdiction and received for confirmation in British Columbia

Provisional Variation Order

Under ISO legislation, any of the following:

- a. a variation of a support order of a court in British Columbia that has no effect until confirmed by a court in a reciprocating jurisdiction, or
- b. a similar order made in a reciprocating jurisdiction and received for confirmation in British Columbia.

Recipient

A person to whom child support must be paid

Registry

Under CFCSA legislation, means a registry of the court

Relocation

A change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with

- a. a guardian, or
- b. one or more other persons having a significant role in the child's life

Reply to an Application About a Family Law Matter

Document that a party in an action must file (with a counterclaim if desired) in order to attend the first appearance and subsequent proceedings. If no reply is filed, the party is not entitled to receive notice of any hearings or conferences, and orders may be made in that party's absence

Report

A report requested by the Court under section 211 of the FLA. It makes recommendations regarding the care of and time with children

Residence

A place where a family member normally or temporarily resides, including a place that was vacated because of family violence

Spouse

Under the FLA, a person is a spouse if the person is married to another person, or has lived with another person in a marriage-like relationship, and has done so for a continuous period of at least 2 years, or (except in Parts 5 [*Property Division*] and 6 [*Pension Division*]), has a child with the other person. A spouse also includes a former spouse.

Statement of Income and Expenses

Under FMEA legislation, the Court may order a debtor to file a Statement of Income and Expenses on a regular basis. This is also referred to as a Reporting Order

Statement of Finances

Under FMEA legislation, where the debtor has defaulted in a payment, the creditor (if not enrolled with FMEP) or the Director of Maintenance Enforcement may require the debtor to file a Statement of Finances

Subpoena

A document requesting a person to appear in court to give evidence

Substituted Service

Service conducted in some manner other than personal service that is specified and authorized by the court. It is used when the party who should be served cannot be found or reached

Support Order

Is an order respecting child support or spousal support; a support order within the meaning of the Interjurisdictional Support Orders Act; or an order of a court or tribunal, made in any jurisdiction, that is similar in nature to an order respecting child support or spousal support.

Transcript

An official record of court proceedings

Trial

A judicial examination and determination of the issues between parties to an action. A trial takes place before a court that has jurisdiction

Trial Preparation Conference

A procedural device used before a trial to ensure that the parties are ready to present their cases at trial, and to identify how long the trial will take and how many witnesses will be called

Trial Readiness Statement

Each party must file and serve a trial readiness statement in Form 22 [Trial Readiness Statement]

- a. at least 7 days before the date of the trial preparation conference if a trial preparation conference is scheduled, or
- b. at least 30 days before the first date of trial if no trial preparation conference is scheduled

Variation Order

An order that changes an order made earlier

Warrant of Execution

A direction that to seize and sell personal property owned by the debtor to satisfy a Maintenance obligation. It may collect no more than one year's arrears of maintenance payments, unless the court orders otherwise

Witness

A person whose declaration under oath is received by the court as evidence for any purpose—whether evidence is given on oral examination or by affidavit

Written Agreement

An agreement that is in writing and signed by all parties.

Chapter 1 - Family Court: Purpose, Legislation and People

Overview

It discusses what Family Court

- is and does,
- its powers,
- confidentiality and disclosure issues,
- people and programs involved, and
- the Acts and Rules it applies.

What Family Court Is and Does

Family Court is part of British Columbia's Provincial Court System, created by the *Provincial Court Act*. The table below, "The Courts of B.C.", shows the relationships between the different levels of courts in the court system.

Family Court applies legislation that governs how matters arising from family breakdown are to be resolved. The Acts, described later in this chapter, set out what must be done, while the *Provincial Court Family Rules* (PCF Rules), the *Provincial Court (CFCSA) Rules* (PC(CFCSA) Rules) and the *Provincial Court (Adult Guardianship) Rules* (PC(AG) Rules) specify how to do it.

Family legislation regulates guardianship, parenting arrangements or contact with a child; child support; and spousal support. It also encompasses other areas of the law, such as the enforcement of Support Orders and protection

The Courts of B.C.

Court of Appeal
• Is not a trial court. • Reviews decisions of Supreme and Provincial Courts. • 3 or 5 judges may preside on an appeal.
Supreme Court
• Can hear any type of civil case, for any amount. • Hears divorce and family matters. • Hears the most serious criminal cases. • Trials may be by judge alone, or judge and jury.
Provincial Court
• Hears 90% of all criminal cases in BC. • Conducts preliminary hearings for all Supreme Court criminal trials. • Hears family disputes (separation, guardianship, parenting

arrangements, contact, support, child protection, abuse and neglect of adults)

- Conducts trials for civil cases up to \$35,000.
- Hears cases involving traffic offences.
- All trials are heard by a judge, without a jury.

Powers of Family Court

Family Law Act, the *Family Maintenance Enforcement Act*, the *Child, Family and Community Service Act*, and Part 3 of the *Adult Guardianship Act*, Part 10, Division 1 of the *Family Law Act* provides that the Provincial Court has jurisdiction generally over all matters in the FLA except:

- Part 3 [Parentage], except as necessary to determine another family law dispute over which the Provincial Court has jurisdiction, or
- Part 5 [Property Division], 6 [Pension Division] or 8 [Children's Property]
- Divorce and matters falling under the federal *Divorce Act*

The procedures in Family Court are governed by rules, namely the *Provincial Court Family Rules*, the *Provincial Court (Child, Family and Community Service Act) Rules* and the *Provincial Court (Adult Guardianship) Rules*. Since Family Court is intended to allow people to represent themselves, the Provincial Court rules are simpler than the *Supreme Court Rules* applying to family proceedings.

Purpose of the Provincial Court Family Rules (PCFR)

The purpose of these rules is to encourage parties to resolve their cases by agreement or to help them obtain a just and timely decision in a way a) that takes into account the impact the conduct of a case may have on a child and family, b) minimizes conflict, c)

Understanding How to Use these Rules

These rules apply to cases in the Provincial Court about the following matters:

- Family law matters
- Protection orders under Part 9 [Protection from Family Violence] of the *Family Law Act*
- Priority parenting matters
- Relocation and
- Enforcement, including enforcement of support orders under the *Family Maintenance Enforcement Act*

These rules do not apply to:

- Divorce
- Property division and pension division
- Adoption
- Child protection that is addressed under the *Child, Family and Community Service Act*, and the *Provincial Court (Child, Family and Community Service Act) Rules*
- Adult Guardianship
- Interjurisdictional support orders



Provisions which apply to specific registries:

Early Resolutions Registries – Surrey and Victoria

Family Justice Registries – Kelowna, Nanaimo and Vancouver (Robson Square)

Parenting Education Registries – all registries, except early resolution registries and family justice registries.

Confidentiality and Disclosure

PCA s. 3

Court proceedings are open to the public unless a judge otherwise orders.

PCFR r. 166

A party must not use or disclose any information of any other parties contained in a record provided or entered as evidence under these rules except to the extent necessary to resolve a case under these rules.

PCFR 174

(1) Unless the court otherwise orders, only the following persons may search a court file under these rules:

- (a) a party to the court file;
- (b) a lawyer, whether or not the lawyer represents a party, and including a lawyer for a child;

- (c) a family justice counsellor
- (d) a person authorized by a judge;
- (e) a person authorized in writing by a party to the court file or by the party's lawyer

(2) Despite subrule (1), any person may access the following information about a case, unless the court otherwise orders:

- (a) the names of the parties as identified in the case;
- (b) the case file number;
- (c) the registry at which the court file is located;
- (d) the date the case was started

The FMEP is entitled to receive copies of court file documents on request – regardless of whether a certified copy of a support or maintenance order has been enrolled with the program. This is because the Director of Maintenance Enforcement is considered to be a “party” as defined by the Rules as soon as a party files their enrolment package with the FMEP.

PC(CFCSA)R 8(13)

No one is entitled to search a registry file respecting an application under the Act except:

- a. a party;
- b. a party's solicitor; or
- c. a person authorized by a party, by a party's solicitor, or by a judge.

See **Chapter 7** for provisions that apply to disclosure of CFCSA files and **Chapter 8** for provisions that apply to disclosure of AGA files.

The Provincial Court's Access to Court Records Policy indicates in section 3.3 that: “Except as provided for in paragraphs 3.1 [PCFR Rule 174] and 3.2 [PC(CFCSA)R Rule 8(13)] above, court registries will not provide public access to a family court file other than to provide, when requested, the court file number and location for a family court file, unless otherwise ordered by the Court.”

This section of the access policy permits Court Services Branch to acknowledge the court file exists and give out the court file number and location of a FLA/CFCSA, unless the Court orders otherwise.

Review the Access to Provincial Family and Supreme Court Family files for guidelines regarding access to a family file in person or via requests by mail or telephone. Additional resource materials are available on the Records Access Policies page.

Access to court records and entitlement to obtain a CD of a recording of family matters is also governed by Policies Regarding Public and Media Access in the Provincial Court of British Columbia.

In relation to family or children's matters before the court, a person must not publish at any time anything that would reasonably be likely to disclose to members of the public the identity of the child or party.

If registry staff have doubts about a search request or a document to be searched, they should refer the matter to their manager for direction. The manager may in turn refer the matter to the Court.

If you suspect that there has been a breach of access to a court record, please refer to [How to Report a Court Record Incident or Loss](#) and follow the steps provided.

Distributing Family Court Lists

The Office of the Chief Judge has directed that registries must distribute internal family court lists, including CFCSA matters to counsel, either by providing a printed list in person to counsel attending at the registry or by fax to a number provided by counsel. The CFCSA remand lists must be faxed one business day before the scheduling of family remand/first appearance list.

These lists do not need to be redacted. Court registry staff should remind counsel of their obligations under S. 3(6) of the Provincial Court Act (6):

People and Programs Involved in Family Court

Registry staff are in contact with many people involved in Family Court proceedings. Some of these people and the programs they work with are listed below. In addition, registry staff should be aware of the community service agencies in their district that offer members of the public assistance in family law matters (such as lawyer referral services, community law clinics, and transition houses).

Court Bailiffs

Court Bailiffs are officers of the court appointed under the *Sheriff Act*. In Family Court, they exercise the powers of a sheriff in enforcing *Warrants of Execution* obtained under the FMEA.

Court Clerks

Court clerks are officers of the court who ensure that the court's atmosphere is one of dignity and respect. In Family Court, the clerk records the proceedings, calls the cases, swears in or affirms witnesses, enters exhibits, and writes down the judge's order or disposition. The clerk must ensure that the record is accurate, legible, and complete. When a dispute arises about a judge's order or disposition, the clerk's record is the first source referred to resolve the dispute.

Court Interpreters

Upon request, Court Services provides interpreters for hearings in Family Court. The request for an interpreter may be made by a party, legal counsel, or a judge. Registry staff arrange for the attendance and payment of the interpreter.

Designated Agency

A public body, organization or person may be designated as an agency for the purposes of Part 3 of the *Adult Guardianship Act*, under the Designated Agencies Regulation, B.C. Reg. 76/2000. The designated agency may make an application for an access order, a support and assistance order, or an order with respect to an adult they believe may be abused or neglected or in need of health care.

Family Justice Counsellors

FLA s. 10

Family justice counsellors are located in the offices of Family Justice Centres and Justice Access Centres. The Attorney General appoints counsellors under section 10 of the FLA, to provide counselling and mediation services for people who want help to resolve their family problems. They help parents negotiate their differences, and search for solutions that will meet the needs of both the parents and the children involved. When this process results in an agreement, the family justice counsellors help the parties to prepare and file a Consent or Written Agreement. However, they do not prepare Consents (for either parents or children) if the application is for a consent guardianship order and one or more of the children involved is over the age of 12 years. Court registries should refer all interested parties to the Family Justice Centre and leave it to them to determine who meets the service criteria.

FLA s. 211

A judge may order a *Report* related to the Care of and Time with Children (under section 211 of the FLA) directing the counsellor to assess a family matter. The counsellor completes the assessment, then submits the *Report* to the court to help the judge make a decision

Family Justice Manager

Family justice managers have authority to make decisions about certain procedural, case management, interim and consent orders.

Family Maintenance Enforcement Program (FMEP)

The FMEP framework is established by the *Family Maintenance Enforcement Act* (FMEA).

The Act establishes the position of Director of Maintenance Enforcement, to whom the Act assigns certain powers and responsibilities. The Director has delegated many of these powers to the FMEP, which operates under the Crown Agency, BC Family Maintenance Agency. The

primary object of the FMEP is to ensure that when the Court makes a Support Order, or a party files an agreement under FLA, the support is paid as specified, in full and on time.

Creditors may choose to enrol in the FMEP at no cost. FMEP's services are delivered through offices located throughout the province.

Cases are normally managed by the FMEP office nearest the Provincial Court where the creditor's file is located. FMEP counsel represents the Director when formal court action is required to enforce a Support Order or defend an application by the debtor challenging enforcement.

Locate Services Program

Locate Services is part of the Justice Services Branch, Maintenance, Enforcement and Locate Services (MELS). This program conducts searches, where necessary, to find a specific person's location, assets, employment and sources of income in order to obtain, change or enforce orders respecting the care of or time with children, support orders or agreements. This service is available to anyone in British Columbia. Family search requests are accepted from authorized requesting agencies, including court registries, rather than directly from the public.

Locate Services can also request address and employment information from federal databanks and can request information from enforcement agencies in reciprocating jurisdictions.

In addition, Locate Services also assists other jurisdictions that have arrangements with B.C. for reciprocal searching. This means that the program may be able to locate information about a party who may reside outside of B.C.

Family Maintenance Workers

Family Maintenance Workers help administer the Family Maintenance Program (FMP). They work at Family Maintenance Program offices throughout B.C. The following is an example of some of the things that family maintenance workers help people do:

- Reach consensus about support payments;
- Apply for or change a Support Order;
- File a Support Order with the Family Maintenance Enforcement Program (FMEP).



Recipients of income assistance are required to assign their support rights to the Ministry of Social Development.

Judges

All Provincial Court judges in British Columbia are appointed by the Lieutenant Governor in Council on the recommendation of Judicial Council. Judges can deal with all matters under the jurisdiction of the Provincial Court.

Judicial Case Managers

Judicial Case Managers are staff of the Provincial Court judiciary who schedule hearings and trials and control the judges' rotas. They provide scheduling information to court registry staff, who enter it in CEIS.

Justices of the Peace

PCA s. 30(1)

Justices of the peace are appointed under section 30(1) of the *Provincial Court Act*. The Chief Judge of the Provincial Court gives each justice of the peace an assignment of duties setting out what the justice may do. A justice of the peace is only authorized to exercise his or her jurisdiction as set out in the assignment of duties from the Chief Judge. In general, a Court Services Branch justice of the peace performs critical pre-trial functions in the justice system.

A link to the current assignment of duties for Court Services justices of the peace is [here](#).

See **Chapter 7** for provisions that apply to CFCSA files and **Chapter 8** for provisions that apply to AGA files.

Lawyers

Lawyers appear in Family Court as:

- legal counsel hired by a party;
- family advocates appointed by the Attorney General;
- contract counsel provided by the Attorney General, to help a party register final orders, and to deal with certain matters under ISO legislation;
- counsel for the FMEP, to act for parties enrolled in the FMEP who are enforcing a Support Order;
- counsel for the government to help parties on income assistance when they request help to obtain or change a Support Order;
- counsel contracted by the Minister under the *B.C. Benefits Act* to act for a Director designated under the *Child, Family and Community Service Act*.

Legal Services Society / Legal Aid BC

Legal Services Society of British Columbia, doing business as Legal Aid BC, provides legal counsel to help make or respond to an application made under the FLA, and in some cases, under the CFCSA. A party must meet certain financial qualifications before being eligible for assistance. Legal Aid BC does not provide assistance for applications made under the FMEA.

Parenting Education Program

An educational program that is designed to support informed and child focused decisions and that is approved by the Family Justice Services Division of the Ministry of Attorney General

Peace Officer

A sheriff or a police officer, police constable or constable, including a member of the Royal Canadian Mounted Police who is deemed to be a provincial constable under section 14 (2) [Royal Canadian Mounted Police as a provincial police force] of the Police Act

Sheriffs

Sheriffs are peace officers appointed under the *Sheriff Act*. In Family Court they maintain courtroom security, escort prisoners, and serve documents.

Social Workers

A director with the Ministry of Children and Family Development may delegate any or all of the director's powers, duties or functions under the CFCSA to social workers. This gives social workers the authority to offer support to children and families, enter into agreements, investigate the need for protection and remove children.

The Director

The Minister of Children and Family Development may designate one or more persons as directors for the purposes of Part 1 to 8 of the CFCSA. Subject to the regulations, a director may delegate to any person or class of person such as social workers, any or all of the director's powers, duties or functions under this Act.

Acts and Rules Applied in Family Court

Legislation creates rights and powers. It also imposes duties and attaches consequences, and in some cases penalties, to actions. In addition, legislation regulates how these rights, powers, and duties are exercised, accessed, or imposed.

Legislation can be characterized as either substantive (creating rights) or procedural (determining how law is applied). It defines the laws that the courts interpret, apply, and are governed by in their procedures.

The Provincial Court, unlike the Supreme Court, has no inherent jurisdiction. The power of the Provincial Court and its judiciary must be found in legislation. In contrast, Supreme Court judges can exercise inherent jurisdiction. An example is their *parens patriae* jurisdiction in matters affecting children.

Adult Guardianship Act

Part 3 of the Adult Guardianship Act provides for support and assistance for adults who are abused or neglected and who are unable to seek support and assistance themselves.

The Act empowers the court to make an access order authorizing someone from a designated agency to enter the premises and interview the adult, if they have been denied entry. Similarly, the court may make an order authorizing a health care provider to enter the premises to examine the adult to determine whether health care should be provided. A justice of the peace may issue a warrant for these purposes if an application for a court order would result in a delay that could result in harm to the adult.

After conducting an investigation, a designated agency may apply to the court for a support and assistance order authorizing the provision of services to the adult, if the report of the assessment is that the adult is incapable of deciding not to accept the services. The support and assistance order may include an order for support.

The court may also make an interim protection order or a protection order if it finds that the adult has been abused.

Employment and Assistance Act

The *Employment and Assistance Act* mandates the provision of income assistance to persons in need. Section 37 permits an individual receiving income assistance to assign his or her rights to the government. Once an assignment is given, the government has authority to conduct support action on behalf of an individual. The *Employment and Assistance Act* requires that notice of any support proceeding be given to the government when support rights have been assigned.

Child, Family and Community Service Act (CFCSA)

The *Child, Family and Community Service Act* governs the law of child protection and is administered by the Ministry of Children and Family Development. It establishes a duty to report when a child is believed to need protection and sets out the process for bringing an abused or neglected child before the court. The court will determine if the child should be placed into the temporary or continuing care of the director or a person other than the parent or returned to or remain in the custody of the parent.

Court Order Enforcement Act (COEA)

The *Court Order Enforcement Act* (COEA) creates various mechanisms to enforce court orders for the payment of money. The COEA establishes the rights and process governing the garnishment (attachment) of wages, and execution against goods and chattels (personal property) and land (real property).

The COEA is incorporated by reference in the *Family Maintenance Enforcement Act* (FMEA), so that the exemptions that apply to the garnishment of wages and the process for their variation in the COEA apply to the attachment process issued under the FMEA.

The interrelation of the COEA and the FMEA is an example of the principle of legislative interpretation that the particular rules over the general. The FMEA is a very comprehensive and specific statute governing the enforcement of Support Orders (orders for the payment of money). So to determine the process that applies to the enforcement of Support Orders, registry staff should look to the FMEA, and turn to the COEA only when the FMEA directs them to do so, or the matter is not otherwise covered by the FMEA.

Court Rules Act (CRA)

This legislation enables the Lieutenant Governor in Council to enact court rules for the various levels of courts in the province. Rules are made on the recommendation of the Attorney General, after consultation with the Chief Judge of the appropriate level of court. The Supreme Court has a Rules Committee to develop and review the rules of that court. A committee of the Provincial Court assisted in the development of the *Provincial Court Family Rules*.

Family Maintenance Enforcement Act (FMEA)

The *Family Maintenance Enforcement Act* (FMEA) governs the enforcement of Support Orders, including the support provisions of Agreements filed in the Provincial Court. It establishes the position of Director of Maintenance Enforcement, who has authority to act on behalf of creditors enrolled in the Family Maintenance Enforcement Program (FMEP). Under the FMEA, the Director is given enforcement powers that are not available to creditors acting on their own behalf. For example, only the Director may issue a *Notice of Attachment* to attach a debtor's wages.

The FMEA applies to all support enforcement proceedings, whether or not the creditor is enrolled with the FMEP.

Family Maintenance Enforcement Act Regulation (FMEAR)

The *FMEA Regulations* prescribe certain procedures and forms for matters under the FMEA, including:

- how orders are to be filed with the Director;
- how orders are to be withdrawn;
- when direct payment to the creditor is permitted;
- how to serve an attachee with a *Notice of Attachment* or *Attachment Order*;
- how the attachee responds to a *Notice of Attachment*.

The *FMEA Regulations* also prescribe the forms for *Notice of Attachments* and *Statements of Arrears*.

Family Orders and Agreements Enforcement Assistance Act (FOAEAA)

The *Family Orders and Agreements Enforcement Assistance Act* (FOAEAA) is federal legislation enacted to enforce the payment of support obligations from funds owed by the federal government to a debtor (other than wages and employment pensions).

All of the following can be garnished:

- Income tax refunds;
- Old Age Security payments;
- Canada Pension Plan payments;
- Unemployment Insurance benefits;
- funds payable under the *Agricultural Stabilization Act*, the *Western Grain Stabilization Act*, and the *Canadian Dairy Commission Act*;
- training allowances under the *National Training Act*.

This list is not all-inclusive.

The garnishment process is set out under the *Family Maintenance Enforcement Act* (FMEA).

Family Law Act (FLA)

The *Family Law Act* (FLA) is the principal Act governing family law in British Columbia. It sets out the rights and obligations of parties involved in family breakdown, considering the best interests of any children from the relationship.

The following matters can be dealt with under the FLA in Family Court:

- care of time with children;
- maintenance and support obligations;
- the reciprocal enforcement of Support Orders under ISO.

The FLA also governs matrimonial property, pensions, children's property and parentage, but these matters may be heard only in Supreme Court. The Supreme Court can hear every matter that the Provincial Court may hear under the FLA.

Garnishment, Attachment and Pension Diversion Act (GAPDA)

The *Garnishment, Attachment and Pension Diversion Act* (GAPDA) is federal legislation, first enacted in 1980, that subjects the Crown to the process of enforcing payment of support debt. The wages and pensions of Federal government workers can only be garnished according to this Act.

Remuneration paid to all of the following can be garnished under GAPDA:

- federal departments;

- employees of federal Crown corporations;
- members of the Armed Forces;
- Members of Parliament;
- Senators;
- federally appointed judges (except for justices of the Supreme Court of Canada).

This list is not all-inclusive. GAPDA specifies its own procedures and forms.

Interjurisdictional Support Orders Act

British Columbia has reciprocal agreements with all the Canadian provinces and territories, and with several foreign countries. These are “reciprocating jurisdictions”. This means that B.C. and each of the “reciprocating jurisdictions” have agreed to recognize the family support orders and agreements made in the other place. An order or written agreement made in one place is “good” in the other.

The B.C. law about reciprocity is the *Interjurisdictional Support Orders Act* (ISO). Many of the reciprocating jurisdictions have very similar ISO laws. Using ISO, a party can apply for a support order in one of the reciprocating jurisdictions without having to go there. A party can also apply to change an existing support order. The party making the application does not usually have to go to court – the respondent (the person in the reciprocating jurisdiction) goes to court to respond to the application.



The ISO Act also establishes procedures for reciprocating jurisdictions that still require a provisional order, where the applicant/claimant must go to court.

Interpretation Act

The *Interpretation Act* sets out rules and definitions that apply to the interpretation of legislation.

For an example of a rule of interpretation (or construction) contained in the *Interpretation Act*, see section 19. It provides that “If by an enactment judicial or quasi judicial powers are given to a judge or officer of a court, the judge or officer in exercising the powers does so in his official capacity and representing his court.”

A further example of a rule of interpretation in the *Interpretation Act* that is particularly relevant to the PCFR is section 28. It provides that “If a form is prescribed by or under an enactment, deviations from it not affecting the substance or calculated to mislead do not invalidate the form used.” Therefore, word-processor versions and adaptations of the prescribed PCFR forms can be used.

An example of the *Interpretation Act*’s definition of terms, which is relevant to the PCFR is the definition of *peace officer* in section 29 of the Act. The reference to a peace officer in rule 2(3)(b) should be read in light of the definition of *peace officer* contained in the *Interpretation Act*. The definition reads:

Peace officer includes:

- a. a mayor, sheriff and sheriff's officer;
- b. a warden, correctional officer and any other officer or permanent employee of a penitentiary, prison or correctional centre; and
- c. a police officer, police constable, constable or other person employed for the preservation and maintenance of the public peace.

The act also contains provisions governing the calculation of time (section 25).

Another important section of the *Interpretation Act* is section 36, which sets out standard provisions governing the transition from an existing legislated procedure to a new one. The application of this section is always subject to any transition provisions in the new legislation. Basically, a proceeding commenced under the previous procedure is to be continued following the new procedures as closely as is practical. This act does not apply when particular legislation contains its own interpretation section.

Offence Act

The *Offence Act* is procedural legislation. It does not create or define what is an offence. It sets out the process to be followed in proceedings:

- involving the prosecution of offences defined under other legislation; or
- "where a justice is authorized by an enactment to make an order".

Section 232 of the FLA provides that the *Offence Act* no longer applies in most Family Law matters. For historical reasons, the Provincial Court had been assigned non-criminal jurisdiction in small claims matters and certain family law matters. Family law matters had fallen back on the *Offence Act* to govern their process. Because of the predominance of the criminal process (historically and in volume of cases), the fit between the *Offence Act* and jurisdiction over civil matters had not been an easy one. The FLA provides a complete code for enforcement and almost all available remedies are included with the FLA.

Provincial Court Act (PCA)

The Provincial Court is a court of statutory jurisdiction. The province established the Provincial Court under its constitutional jurisdiction over property and civil rights, and over the administration of courts in the province. The Provincial Court is a court of record. As such it is given certain powers over its own process—for example, the power to commit (incarcerate) people for contempt in the face of the court.

The PCA provides for the appointment of judges, their remuneration, and inquiry into judicial conduct. Justices of the peace are also appointed under the authority of the PCA, by the Lieutenant Governor in Council. The chief judge is authorized to assign powers and jurisdiction to justices of the peace. The Act itself gives powers directly to justices of the peace over certain pre-hearing procedural matters.

Provincial Court (Adult Guardianship) Rules

The *Provincial Court (Adult Guardianship) Rules* regulate matters under the *Adult Guardianship Act*. They prescribe the procedures and forms for these matters.

Provincial Court (Child, Family and Community Service Act) Rules

The *Provincial Court (CFCSA) Rules* regulate matters under the CFCSA. They prescribe the procedures and forms for these matters.

Provincial Court Family Rules (PCFR)

The *Provincial Court Family Rules* regulate matters under the FLA and certain matters under the *Family Maintenance Enforcement Act*. They prescribe the procedures and forms for these matters.

Chapter 2 – General Procedures

Overview

This chapter describes the general procedures used for processing documents in Family Court matters. It discusses when and how to open and handle files, request trace information, obtain transcripts, and hire court interpreters

Practice Directions

PCFR 160

The Chief Judge may issue practice directions which are consistent with the rules and their purpose. Staff must follow these directions and apply them to the applicable business processes to which they relate. Some, but not all, practice directions will be incorporated into the business procedures.

The practice directions relating to Provincial Family matters are found here:

<https://www.provincialcourt.bc.ca/types-of-cases/family-matters/chief-judge-practice-directions>

Staff must regularly review the practice directions as they are subject to change.

In addition, the Chief Judge may issue notices to the profession and public or general practice directions that apply to Provincial Court matters, and several of which also apply to family. The notices and general practice directions are found here:

<https://www.provincialcourt.bc.ca/about-the-court/practice-directions/NoticestotheProfession>

<https://www.provincialcourt.bc.ca/about-the-court/practice-directions/general-practice-directions>

Opening and Organizing Court Files

Opening Court Files

Background

Applications for different types of relief can be filed in different court locations.

1. The registry that must be used for filing a form or document under these rules is the following:
 - a. if there is an existing case with the same parties, the registry where the existing case is located;
 - b. if there is not an existing case with the same parties, the registry closest to the following:

- i. if the case involves a child related issue, the residence where the child lives most of the time;
 - ii. if the case does not involve a child-related issue, the residence of the person who first files a document under these rules.
 - iii. Permitted by court order
2. If there is an existing case,
 - a. the existing court file must be used if the parties are the same, or
 - b. a new court file in the same registry must be used if paragraph a. does not apply
3. A party seeking an order about a protection order or a priority parenting matter may do so in any registry, with permission of the court. Rule 7(3) underscores that protection orders and priority parenting matters can be filed and/or heard with permission of the court at any registry. This is to respond to circumstances where a party may have left their residence because of concerns about a family violence and needs to apply for an order in another court location. Parties can ask permission to file in another registry by applying for a case management order under Part 5, Division 2, rule 61 or 62



If an applicant is seeking a change to a guardianship order and was not a party to the existing order (as per [Practice Direction \(FAM 05\)](#)). It is treated as an application for change or cancellation of an existing order under [PCFR Rule 24](#).

Please refer to **[Chapter 3 – S. 51 Guardianship Applications](#)** for more information about how to file an application for guardianship.

When a clerk receives an application, the clerk checks CEIS to ensure that no previous file exists in the Province for the parties/ named on the application.

If CEIS shows no previous file exists, the clerk opens a new file and enters it on CEIS. Registry clerks should use this file for all subsequent applications filed at this location between the two parties. Only one file per court location should exist for all of the applications between parties involved together in a proceeding.

For example, while checking the automated indexing system, a clerk may have found that two files exist for William Ahmad. File #1234 lists William Ahmad and Shashi Ahmad as parties, and File #5678 lists William Ahmad and Alanna Morton as parties. William Ahmad is involved in two separate matters with two different people. Only one file should exist for all of the applications between William Ahmad and Shashi Ahmad, and another separate file should contain all of the applications between William Ahmad and Alanna Morton.

If a CFCSA file exists, and a person other than a guardian subsequently makes an application for contact, that application is filed in the original CFCSA file. However, if they apply for guardianship, it is made under the FLA, and a new FLA file is opened for the application.

If a judge has ordered that a FLA file is to be joined with a CFCSA file for all purposes, because one or more of the children are involved in both proceedings, the documents for both applications should be held in the same file. The other, now empty, file folder must be cross-referenced to the new file. See **Appendix A in Chapter 7** for the style of proceedings to be used on an order where files have been joined for all purposes for a single hearing.

Procedures

1. Clerk checks Civil Electronic Information System (CEIS)

The clerk:

- checks all of the party's names on the document to see whether an order or agreement for the same type of relief has been filed at a different court location;
- if so, go to **step 4**
- checks CEIS to see whether court file exists at that location.

- **If court file exists, go to step 2.**
- **If court file does not exist, go to step 3.**

2. Court file exists

The clerk:

- pulls existing file from filing system;
- ensures correct file number is recorded on documents submitted to registry;
- if other party's address is unknown, initiates trace through Family Search;
- if another application is set for hearing, ensures both matters are set for same time;
- if necessary, sets hearing date;
- prepares, processes, and distributes documents for service as outlined in specific procedures throughout manual.

3. Court file does not exist

The clerk:

- assigns file number to documents submitted;
- places file number on all documents submitted;
- enters names of parties on CEIS;
- if other party's address is unknown, initiates trace through Family Search;
- if necessary, sets hearing date;
- prepares, processes, and distributes documents for service as outlined in specific procedures throughout manual.

4. Order or agreement for same type of relief previously filed at a different court location

The clerk:

- advises the party that the documents must be filed at the other court registry, unless they are filing an Application About a Protection Order or Application About a Priority Parenting Matter pursuant to PCFR Rule 7(3); and
- returns the documents.

Organizing Court Files

Background

Organizing and maintaining court files helps the court system to be more efficient. Neat files allow clerks to find applications and supporting documents more quickly, and thus serve their clients more quickly and easily.

Registries may organize the contents of a Family Court file in many different ways. A registry may decide how to organize its own files, provided that:

- The organization is clear, logical, and consistent;
- Documents are organized in order of the date they were received, with the most recent on top;
- Documents are arranged in a way that allows people to have access to them easily.

Procedures

1. Local practice for organizing court files

Discuss with your court manager or administrator how your registry will organize its court files. Keep in mind the requirements set out in the "Background" section. Confirm with the manager or administrator what his or her decision is.

2. Local practice to be followed by this registry

Write down the format to be followed, and the date of the decision, in the space below:

This registry's format of organizing files:

Date: _____

Signature of manager/administrator: _____

Receiving and Filing Applications and Other Documents

Background

When a court registry receives applications or other documents, a clerk checks them for completeness, files them by date-stamping, and places them in the court file. All copies of transcripts received should be date-stamped, and the original placed in the court file.

If any information is missing, or if the application or other document has any errors, the clerk notifies the party or counsel who submitted it.

Note that with some documents, notably the Financial Statement, it will not be possible for the clerk to determine whether information is missing or incorrect. It may only be possible to check that certain key parts of the form have been completed, and the remainder of the form will not be checked.

If a party attempts to file a photocopy of a document in a situation where the original is required, and informs the clerk that it is impossible to file the original, the clerk notifies the party that their options are limited to one of following:

- Filing a certified copy of the document, if possible; or
- Obtaining a court order allowing a photocopy of the document to be filed.

If the party still wishes to submit the documents after being notified of the errors, the party may apply for a case management order to permit the filing of a form that is deficient by filing an Application for Case Management Order in either Form 10 or 11 depending on whether they are applying with notice.

When returning documents to the party, often it will be appropriate to include blank forms that the individual will need for the next step in their case. For example, when an *Application About a Family Law Matter* is filed the registry will give the filing party their copies of the Application, Instructions For Filing A Reply form, that will provide information to the party being served on how to file a Reply and where to obtain the forms they may need and a blank Certificate of Service (Form 7)(PFA 714).

A document that has been filed by date-stamping becomes part of the court file and may not be removed. If the party claims he or she made an error on an application about a family law matter, reply to an application about a family law matter or reply to counter application the party may change the document within specified timelines under PCFR Rule 188. The amended document(s) will have to be served on the other party.

If a party wishes to discontinue all or part of an application, a reply or a reply to a counter application they may do so by filing a notice of discontinuance in (Form 50) (PFA 767) in accordance with Rule 191 and serve the notice of discontinuance on each other party before the earlier of: 14 days after the party filed the notice or the date of the next scheduled court appearance. If the documents have been forwarded to the Sheriff's Office for service and the

other party has not yet been served with them, the clerk asks the Sheriff's Office to return the documents. A notice of discontinuance can be filed at any time, but sometimes the consent of the other party or permission of the court is required first.

Purging Court Files

Background

Discarding or **purging** duplicate copies of documents on file after a matter has been concluded is important to maintaining files properly. It should be part of a clerk's general routine.

Keep all original documents including *Summonses*. Discard only the duplicates. (For example, discard the copy of a *Warrant* when the original has been executed or vacated, and has been returned.) **However, do not discard any copy that has a completed *Certificate* or *Affidavit* attached to it.**

Access to Court Files

Background

PCFR r. 166

A party must not use or disclose any information of any other parties contained in a record provided or entered as evidence under these rules except to the extent necessary to resolve a case under these rules.

PCFR r. 174

- 1) Unless the court otherwise orders, only the following persons may search a court file under these rules:
 - a) A party to the court file;
 - b) A lawyer, whether or not the lawyer represents a party, and including a lawyer for a child;
 - c) A family justice counsellor;
 - d) A person authorized by a judge;
 - e) A person authorized in writing by a party to the court file or by the party's lawyer
- 2) Despite subrule (1), any person may access the following information about a case, unless the court otherwise orders:
 - a) The names of the parties as identified in the case;
 - b) The case file number;
 - c) The registry at which the court file is located;
 - d) The date the case was started

Practice Direction (FAM 02) clarifies that:

Under Rule 174: "a lawyer" includes an articling student acting for a party or an articling student acting as agent for a party's lawyer.

CFCSA r. 8(15)

Unless a judge orders otherwise, no person other than the following may search a registry file respecting a matter under the Act:

- (a) a party;
- (b) a party's lawyer of record;
- (c) A person authorized in writing by a party;
- (d) a person authorized in writing by a party's lawyer of record.

If an applicant seeking a change to an order respecting guardianship was not a party to the original order, they must make an application under Rule 174(d) to request authorization from a judge for access to the original court file, as they are required to attach a copy of the original order to their application about a family law matter to change or cancel an order. This is also the case if such an applicant applies to a judge under Rule 62 or family justice manger Rule 63 for transfer of the existing file to another registry (as per Practice Direction (FAM 05)).

The file is not to be removed from the registry, nor are any documents to be removed. The authorized persons or people listed above may ask for photocopies of any of the documents on file.

The Provincial Court's Access to Court Records Policy was updated on December 10, 2019, to permit Court Services Branch to acknowledge the court file exists and give out the court file number and location of a FLA/CFCSA, unless the Court orders otherwise. Under Rule 174(2) for **family files**, staff can acknowledge the court file exists as well as providing the names of the parties, the file number, the registry location, and the date case was started.

On request, registry staff will provide lawyers with copies of court clerks' notes and conference records.

Review the Access to Provincial Family and Supreme Court Family files and other additional resource materials on the Records Access Policies page.

Coroners Act s. 11(1)(e) and (2)

Although coroners are not listed in Rule 174 as authorized persons to search files, they are entitled to do so under section 11(1) of the *Coroners Act*, and this takes precedence over Rule 174 .

- 11(1) If a coroner has reason to believe that a person died in any of the circumstances described in Part 2, the coroner may do one or more of the following as necessary, in the opinion of the coroner, to investigate the facts and circumstances relating to the death:

(e) inspect, copy and seize any records relating to the deceased person or the circumstances of the death that the coroner has reason to believe are relevant to the investigation, except records

(i) held by an officer of the Legislature as that term is defined in the *Freedom of Information and Protection of Privacy Act*, or

(ii) that are subject to solicitor-client privilege;

- (2) Despite any other enactment and any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, a person who receives a request for records under subsection (1) (e) must promptly comply with the request.

Evidence Act s. 29(1)

In some instances, copies of court documents must be certified. The person(s) in the court registry who may certify copies of documents vary with the type of request.

A copy of the document may be certified "by the officer entrusted with the custody of that" document. Court Services Branch has obtained a legal opinion which defines an "officer" to be "a person of sufficient authority to have assumed and be able to attest to some responsibility for the safekeeping and authenticity of the documents in their possession". In a small registry, this might be the Court Manager or Registrar; in a larger registry, this might be the supervisor of the particular registry where the document is filed.

Transcripts

Section 3(6) of the *Provincial Court Act* does apply to transcripts, with regard to protecting the privacy of individuals involved in family or children's matters. This section prohibits the publishing of anything that would be reasonably likely to disclose to the public the identity of the child or party. Transcripts in the court file are subject to [Rule 174](#). Although a court clerk may listen to portions of audio recorded proceedings to confirm their notes in the event of a dispute as to what the judge said, normally the only access to audio recorded contents is by purchasing a transcript from a court transcription firm. For more information on policies relating to searching and accessing documents, review the [Provincial Court's Record Access Policy](#).

CFCSA s. 96

Section 96 CFCSA provides the Director of CFCSA with the right to access any information that is necessary to enable the Director to exercise his or her powers or perform duties and functions under the CFCSA. However, this is limited to information that is in the custody and control of a public body as defined in the *Freedom of Information and Protection of Privacy Act*, and court file documents are exempt from this Act.

Access to court files is governed by [Rule 174](#) of the Provincial Court Family Rules which provide that a lawyer, whether or not a lawyer of a party, may search a file in respect of a *Family Law Act* proceeding. If the Director requests access to a provincial court family file, it is

not necessary for the Director to apply to the court for an order authorizing access as the Director, being a lawyer, may access the court file. However, a MCFD social worker may only be permitted access if they are authorized by a judge to have access; or a party or a party's lawyer have given written authorization for the social worker to have access.

For information on access to *Child, Family and Community Service Act* files, see Chapter 7.

Unclaimed Property Program

Permission must be obtained before Provincial Family Court file information may be released to the British Columbia Unclaimed Property Society (BCUPS). For more information, contact the Senior Financial Policy and Revenue Analyst at Court Services Branch HQ and review the *Financial Operations Manual*, Chapter 4.1, Administration, Money Held in Trust for Over 5 Years and Unclaimed Property Review.



In Provincial Family Court, a Judge has signing authority to authorize payment of unclaimed court funds to the administrator appointed under the *Unclaimed Property Act*.

Distribution of Internal Court Lists

The Office of the Chief Judge has directed that registries must distribute internal family court lists, including CFCSA matters to counsel, either by providing a printed list in person to counsel attending at the registry or by fax to a number provided by counsel. The CFCSA remand lists must be faxed one business day before the scheduling of family remand/first appearance list.

These lists do not need to be redacted. Court registry staff should remind counsel of their obligations under S. 3(6) of the Provincial Court Act:

In relation to family or children's matters before the court, a person must not publish at any time anything that would reasonably be likely to disclose to members of the public the identity of the child or party.

Registry staff should establish and maintain a group distribution list for fax, of the court list to counsel. Please refer to the instructions for your fax machine or Outlook regarding set up.

Access to family court records is governed by Policies Regarding Public and Media Access in the Provincial Court of British Columbia.

If you suspect that there has been a breach of access to a court list, please refer to [How to Report a Court Record Incident or Loss](#) and follow the steps provided.

Procedures

1. Party requests that address be confidential (withheld from other party). A protection order exists The court orders the address to be sealed

The clerk:

- advises the party to provide as an address for service, the address of a third party;
- marks the outside and inside of the file according to the situation.

If a Judge orders that a party's address is to be kept confidential, the clerk:

- photocopies all documents containing the party's address;
- places the original documents in a sealed envelope;
- attaches a copy of the clerk's notes or a photocopy of the order made to the front of the envelope;
- removes the address from photocopies of the documents using white out or a black felt pen;
- returns the photocopies (with addresses removed) to the appropriate section of the court file.

2. British Columbia Unclaimed Property Society (BCUPS) requests documents

BCUPS may request any initiating document, third party notices and/or any applicable orders which address funds be paid out.

Requests will:

- include the court file number and case name;
- be provided by mail, enclosing a self-addressed stamped envelope.

When the registry receives a request from BCUPS:

The clerk:

- contacts the Senior Financial Policy and Revenue Analyst at Court Services Branch HQ for direction.
- reviews the *Financial Operations Manual*, Chapter 4.1, Administration, Money Held in Trust for Over 5 Years and Unclaimed Property Review, for more information.

Transferring Files to Other Locations

Background

Parties may open a court file by filing an application and supporting documents in a Family Court registry closest,

- to where the child lives most of the time, if the case involves a child-related issue, or
- to the residence of the person who first files a document, if the case does not involve a child-related issue.



A party who seeking an order about a **protection** order or a **priority parenting** matter may file their application in any registry, with permission of the court, PCFR 7(3).

However, once an order has been made (or a written agreement has been filed), the parties must use that registry to file any subsequent applications regarding the same type of relief. The court hearing must also take place at that registry.

A dispute between two parties may involve numerous applications by both parties over a considerable period of time. One of the parties may have moved elsewhere in the province after the court heard the original application. This party may find that making a court appearance at the registry where the original application was heard is difficult. For this reason, the party may wish to transfer the file to another location for the next application and hearing, or for all future purposes. This procedure is sometimes called a **change of venue**. **Venue** means court location.

PCFR r. 62 and 63

To get a file transferred for one application or for all purposes, a party must either:

- obtain the consent to transfer of the other party named in the application (and the consent of the FMEP, if applicable). If the parties' consent to transfer, they may file an Application for Case Management Order (Form 10)(PFA 717) along with a draft Consent Order(Form 18)(PFA 739), signed by both parties ;
- apply to a judge or family justice manager at the registry where the file is located for permission to transfer. In this case, the parties must appear in court;



This is also the case if an applicant seeking a change to an order respecting guardianship was not a party to the existing order (as per Practice Direction (FAM 05)).

- File Application for Case Management Order Without Notice or Attendance (Form 11) if only the requesting party resides in B.C.

PCFR r. 139

Enforcement of Support Orders under the Family Maintenance Enforcement Act: A proceeding under this Division may be held separately from other proceedings under these rules. The filing party may choose one of the following registries for a hearing under this Division:

- a) the registry where the existing case is filed; or
- b) the registry closest to the debtor's last known address.

If the file is transferred, the originating registry sends the file using one of these methods:

- in-house mail, using signature service or
- registered mail, enclosing an Acknowledgement of Receipt Card;

If there is not sufficient time to mail the file, registry staff should check with their manager/supervisor to arrange for an alternative delivery method.

If the file is transferred for hearing only, the receiving registry keeps it separate from its other files and does not assign it a new file number. When the hearing is over, the registry returns the file to the originating registry.

If the file is transferred for all purposes, the receiving registry opens a new file and places it with its other Family Court files.

If the file is transferred for all purposes but is later transferred back to the original registry for all purposes, the original registry must open a new physical file and assign a new file number. CEIS cannot reactivate the original file number because some of the electronic history of the file would be lost.

If a case is being transferred to a circuit court location for hearing, the file must be sent to the 'hub' court registry that administers the circuit court, not to the circuit court location itself.

Procedures

- **If parties consent and make application to transfer a file for a specific appearance or all purposes, go to step 1.**
- **If a party applies to court to transfer a file for a specific appearance or all purposes, go to step 2.**
- **If a file is to be transferred for hearing only go to go to step 3 .**
- **If a file is to be transferred for all purposes go to step 4.**

1. Court registry receives an *Application for Case Management Order and draft Consent Order to transfer file for a specific appearance or all purposes*

A party submits:

- Application for Case Management Order (Form 10) (PFA 717), and
- Consent Order (Form 18) (PFA 739)

Clerk:

1. Check the Application for Case Management Order and Consent Order to ensure they are complete:
 - Name
 - Contact Information
 - Email
 - Counsel
 - Section 5 completed to indicate that each party including any persona directly affected by the order, consents to the order
 - Both parties or their lawyer have signed the Consent Order
 - Relevant Schedule(s) attached per issue and financial statement or or an agreement as to income prepared by FJSD, if required.
2. File the Application for Case Management Order.
3. Forward the file to the data entry clerk for processing.

Clerk:

4. Follows the detailed business procedures in **Desk Order Process** in this Chapter.
 - **If Court makes order to transfer file for all purposes, go to step 3.**
 - **If a file is to be transferred for hearing only, go to step 4.**
 - **If Court denies *application* to transfer file, go to step 5.**

2. Party applies to court to transfer for a specific appearance or all purposes

A party submits:

- *Application for Case Management Order (Form 10) (PFA 717);*
- *Affidavit (Form 45) (PFA 762), optional.*

Clerk:

1. Check the Application for Case Management Order to ensure it is complete:
 - Name
 - Contact
 - Email
 - Counsel
 - Part 7/8 filled out
2. Check CEIS to determine if an existing FMC or other family court appearance has already been scheduled:

- If yes **and** the application does not require an appearance before the existing FMC or scheduled family court appearance, schedule to the date of FMC or the scheduled family court appearance.
 - If no, **or** if the application requires an appearance before the existing FMC or scheduled family court appearance, schedule in CEIS as “APP” to the designated courtroom/time. Depending on local practice, this step may require the registry to contact the JCM before setting a date.
3. Advise the filing party that the application must be served with 7 day’s notice to other party and direct them to read the information about notice on service which is found on the application form and provide party with Certificate of Service (Form 7)(PFA 714)

Clerk

- 4. Enter the Application for Case Management order in CEIS .
 - 5. Scan the application and affidavit, if filed, into CEIS.
 - 6. Schedule the application in CEIS for the date provided to the party by the counter staff.
- **If Court makes order to transfer file for all purposes, go to step 3.**
 - **If a file is to be transferred for hearing only, go to step 4.**
 - **If Court denies *application* to transfer file, go to step 5.**

3. Court makes order to transfer file for all purposes

The clerk:

- enters disposition in CEIS ;
- if party requesting transfer is not represented by counsel or consent order wasn’t submitted and signed, prepares order;
- if party requesting transfer is represented by counsel, checks prepared order against court clerk’s notes;
- obtains judge’s signature on order;



If unable to obtain judge’s signature in a timely manner, if there is/has been a delay in counsel submitting the prepared order, or if there has been a date set for the new location and it is a matter of urgency then transfer the file after the data entry has been completed. After the order has been signed by the judge an Extended Access User should scan the signed Order into CEIS and enter the date. The signed original order should then be forwarded to the new location.

- files signed order by date-stamping then scan in CEIS;
- photocopies order to transfer for party(ies); places original transfer order in court file;
- advises Exhibit Clerk to arrange transfer of any exhibits;

- Transfers file in CEIS for all purposes to new location, and prints 2 copies of the Transfer File Memo
- mails the original orders and all remaining documents in court file to new court location using signature service or registered mail;
- puts a copy of the Order transferring file to new location and copy of transfer memo inside file
- registry may choose to make a notation on the front of cover of the empty court file folder that remains that states, "transferred to (location) on (date) pursuant to (court order/ consent order)";
- Files the folder in the court files slot in the filing system
- Sends a copy of the entered order to the party(ies) or counsel;

Receiving court receives file transferred for all purposes



If you know you will be receiving a file that is transferred for all purposes, do not add a new appearance date into CEIS. Instead, phone the sending location and ask them to transfer the file to you in CEIS and add the date to the new file that is opened at your location.

When a court registry receives a physical court file that was transferred for all purposes, the clerk in the receiving registry:

- accepts the electronic transfer of the file in CEIS;
- assigns a new file number to the file;
- places the contents of the physical file in a new file folder.

If the file is subsequently transferred back to the original court for all purposes, go to **step 6**. Otherwise, no further action.

4. Court makes order to transfer file for hearing only

The clerk:

- enters disposition in CEIS
- if party requesting transfer is not represented by counsel or consent order wasn't submitted and signed, prepares order;
- if party requesting transfer is represented by counsel, checks prepared order against court clerk's notes;
- obtains judge's signature on order;
- files signed order by date-stamping then scan in CEIS;
- photocopies order to transfer for parties;
- places a copy of the transfer order and the transfer memo in the out folder
- advises Exhibit Clerk to arrange transfer of any exhibits that may be required for hearing;

- mails the entire court file to other court location for the hearing using signature service or registered mail;
- completes a file out folder containing a copy of the transfer order and the transfer memo indicating where the file has been transferred to;
- files the out card in the court files slot in the filing system place;
- Sends a copy of the entered order to party(ies) or their counsel.



If documents are filed at the "home" location while the file is away for hearing only, all documents unrelated to the hearing should be accepted for filing at the home location. If the filed document is an unrelated application, the parties can make an application at the home registry if they also want it heard at the "away" location.

Following the hearing, the clerk in the receiving court:

- Updates the appearance details in CEIS including transferring the file back electronically
- advises Exhibit Clerk to transfer back all exhibits (if any);
- returns the file to original registry by mail using signature service or registered mail

When the original registry receives the file, the clerk:

- accepts the transfer in CEIS;
- replaces the out card with the file ensuring any copies in the out card folder are confidentially shredded and any documents received while the court file was at the other location are placed in the file.

No further action.

5. Court denies application to transfer the file

The clerk:

- enters disposition in CEIS.

No further action.

6. File is transferred back to the original court for all purposes

When the original court registry receives a physical court file that has been transferred back for all purposes (from another court where it was previously transferred for all purposes), the clerk in the original registry:

- accepts the electronic transfer of the file in CEIS;
- assigns a new file number to the file;
- places the contents of the physical file in a new file folder.

Receiving Files from Other Locations

Background

When a registry receives a file from another court registry, the registry clerk must determine if it is for one hearing or for all purposes. If the file is transferred in for all purposes, the clerk must open a new file.

Procedures

- If file is transferred in for all purposes, go to step 1.
- If file is transferred in for hearing only, go to step 2.

1. Court file is transferred in for all purposes

The clerk:

- opens new court file;
- assigns file new file number;
- enters file on CEIS;
- places new file number on any subsequent documents submitted to court registry.

If necessary, see Opening a Court File in this chapter.

2. Court file is transferred in for one hearing only

The clerk:

- places incoming documents in temporary file folder (does not give file new file number);
- if necessary, prepares Order after hearing. (If necessary, see Court Order in Chapter 3);
- when order has been filed, return file to originating court registry. (If mailing, use signature service, or registered mail with an *Acknowledgement of Receipt Card*).

Recording Changes of Name and Changes to Case Name

Background

Changes of name are either legal or customary. A legal change of name means a person's name has been changed under the *Name Act* or on marriage. A customary change of name means that a person has assumed a name informally, as when one common-law spouse assumes the name of the other.

A party usually notifies registry staff of a change of name :

- during the course of a proceeding;
- in writing;

- when a party files a subsequent application.

If a party wishes the case name (style of cause) of an existing file to be changed to reflect a legal or customary change of name, it is necessary to apply to the court by filing an Application for Case Management Order, as a court order is required. Parties may also make changes to the style of cause by consent by filing an Application for Case Management Order (Form 10) along with a Consent Order (Form 18) signed by the parties or their lawyers.

Sometimes a person, who as a child was the subject of CFCSA proceedings, may wish to have his or her name removed from the computer listing or case documents. It is necessary for an application to be made to the court, asking that the case name be changed before that person's name may be severed from the documents or from the computer system.

Fee Policy in Provincial Family Court

Background

Court Services Branch policy is to charge fees in Provincial Family Court to counsel of record and any other lawyer, or media; only the parties are exempt from paying fees in accordance with [Finance Bulletin 1](#)

If a Commissioner for Taking Affidavits in the registry swears an affidavit, no fee will be charged.

Correcting an Order Containing a Clerical Error

Procedures

1. Clerk prepares an amended order

If a clerical error, such as incorrect date or name, is detected in an order after it has been signed by the judge, whoever prepared the original order (counsel or registry clerk) prepares an order with the heading "Amended Order", copying the full text contained in the original order except for the corrected information, which should be underlined in red. The clerk then:

- follows [procedures in Chapter 3 – Court Order and Protection Order](#) for processing the amended order; and
- makes a notation on the original order, indicating that an amended order has been filed.

Changes to Documents

Introduction

This section outlines the procedure for making changes to an Application About a Family Law Matter, a Reply or a Reply to Counter Application. It does **not** apply to *Orders* or to sworn

documents such as *Affidavits* and *Financial Statements* which require a judge's order to be changed.

A party may change anything in an Application About a Family Law Matter, a Reply or a Reply to a Counter Application, document that he or she has filed without a court order before the first Family Management Conference or with a court order or consent of the parties, at any time. However, after the Family Management Conference is held, no changes may be made to a document without the permission of a judge or family justice manager.

Changes Before a Family Management Conference

Changes may be made right up to the time set for the start of the conference. Changes should be made on a copy of the filed document. Indicate at the top of the document that the document has been changed and the date the change is made and include a reference to the order that authorizes the change, if applicable. Anything being added should be underlined and any deletions should be crossed out.

If there are too many changes to use a copy of the original, the document may be retyped by the party who filed the original. All the contents of the original document must be retyped exactly.

Example: If a paragraph is to be deleted and a new paragraph substituted, the old paragraph should be typed and then crossed out. The new paragraph should be added and underlined.

A notation should be made in place of the registry stamp -- for example, "Original filed January 16, 1997."

If an original document required a signature, the persons' name should be typed in quotation marks to show that the original document was signed by that person. The new document should not be signed.

Sometimes a change is made by order of a judge. This should be written on the document.

Example: "Amended this _____ day of _____, 1997 by order of Judge Smith."

Changes After a Family Management Conference

After a Family Management Conference has been held, no document may be changed without a judge's permission unless by consent of all parties. A party wishing to change a document must file An Application for Case Management Order, (Form 10) (PFA 717) and serve it on the other party at least seven days before the date set for hearing of the application. If all parties consent then the applicant will file an Application for Case Management Order, along with a Consent Order, Service may be done by following provisions of Rule 189.

If the judge grants permission, the party must make the changes to the document as outlined above. The date the order to change the document was granted must be written at the top of the amended document.

Serving Amended Documents

The person who requested the change is responsible for filing the amended document at the registry and serving it on the other party and anyone else who must be served.

The changed document must be served on each other party within 7 days of filing the changed application about a family law matter, reply or reply to counter application. No further step may be taken in the claim until the other party has been served.

Replying to Amended Documents

The person who is served with an amended application about a family law matter, reply or reply to a counter application has the option of amending their reply or relying on their original reply.

The served party must file and serve their amended reply within 14 days, unless the change included adding a new child or spousal support application, in which case the timeline is 30 days.

Obtaining Transcripts

Background

A transcript is the official printed record of a court proceeding. Private contractors produce these transcripts; their fee depends on how many pages the transcript is and the timeframe the party who is ordering it wants it provided by.

If parties wish to obtain a transcript, or an estimate of how much it would cost, registry staff must refer them to the transcript contractor in their region. The party who orders a transcript must pay for it.

The ISO procedures in **Chapters 5** specify situations where the clerk is responsible for ordering a transcript of a hearing. The clerk prepares the transcript request form then forwards them to the transcript contractor, according to local practice.

Obtaining Court Interpreters

Background

Court Services provides court interpreters for Family Court matters when a party, counsel, or a judge requests them. Whenever possible, Court Services obtains and pays court interpreters and sign-language interpreters, giving preference to those with accreditation.

Accredited and non-accredited interpreters receive different fees. The Interpreter Directory lists interpreters who have signed a contract Ministry of Attorney General. Any interpreter used must have signed a contract.

Procedures

1. Party, counsel, or judge requests interpreter

The clerk:

- refers to the *Court Interpreter Program - Policy and Procedures Manual* for policy and procedures relating to retaining interpreters following requests, recording the attendance of interpreters, and paying accredited and non-accredited interpreters.

Using Locate Services Program

Background

FLA Part 11

The Locate Services program can help locate information about the address and employment of the other party living in B.C. This service is available to anyone in B.C. wishing to serve the other party to obtain, change, or enforce an order concerning a childcare or support issue. Locate Services also assists programs in other jurisdictions that have arrangements with B.C. for reciprocal searching. This means that the program may be able to locate information about other parties who are not in B.C.

Registry staff should use Locate Services whenever they do not know a party's address or place of employment and require that information to serve the other party. The family search may be requested right away by an applicant when they do not have the required information. It is not necessary to obtain a court order before conducting a search.

The Vancouver office of Maintenance Enforcement and Locate Services operates the Locate Services program. The program's Search Officers have the authority to require any person or public body (including the Crown) to release the following information about the other party or debtor to them:

- For the purpose of serving documents, the person's address or location; the person's place of employment;
- with regard to a maintenance matter, the person's address, employment, source of income and location of assets.

However, under section 237 (2) of the FLA a search officer cannot demand:

- personal correspondence between the other party and his or her parent, child, spouse, brother, or sister;

- information about the other party that is in the possession of the other party's legal counsel that is subject to solicitor client privilege.
- information in the possession or control of a Family Justice Counsellor;
- information that cannot be disclosed under section 9(1)(b) of the *Statistics Act*.

Penalties can be assessed for the inappropriate request or disclosure of searches. Locate Services can also request address and employment information from federal databanks for the purpose of **enforcing** support, parental responsibilities, parenting time and contact orders. Family Search requests are accepted from authorized requesting agencies (such as a court registry with an application needing to be served) rather than directly from the public.

Responses from Locate Services

Addresses obtained by Locate Services cannot always be confirmed and in some cases may only be an address where the person's mail is directed. If a search is unsuccessful, it is sometimes beneficial to request another search, in particular if new information becomes available to the applicant or court registry which may assist Locate Services in providing more successful results.

If the Locate Services cannot obtain the information requested, the person seeking the information may wish to hire a private tracing firm. However, those who wish to do so must arrange and pay for these services themselves. A party can search the internet for a local company.

If the *Search Response* indicates that the other party resides outside of British Columbia, the registry notifies the applicant - "other party located outside of BC" – without specifying the location or jurisdiction. If the applicant is in British Columbia, the registry provides the applicant with the Locate Services file number and advises the applicant to include the Locate Services file number with the ISO support application (or support variation application) when submitting it to the BC Interjurisdictional Support Services (IJSS) for processing. This enables IJSS to link the response with the application, so that they can use the other party's information without delaying the process to request a new family search.

Although it is the applicant's responsibility to serve an application and certain other documents for privacy and security reasons it would be inappropriate for the court registry to give the applicant the information obtained by Locate Services. This means the applicant cannot arrange for service using the search results. The applicant must apply to the court by filing an Application for Case Management Order without Notice or Attendance, (Form 11) (PFA 718), seeking an order for service by a peace officer (sheriff).

An alternative to performing a Family Search is for the applicant to apply by filing an Application for Case Management Order Without Notice or Attendance for another method of service. A judge may make an order with respect to an alternate method of service including an order excusing a party from serving the application.

Procedures

1. Party's location, address, place of employment, location of assets, or source of income is not known

The clerk:

- identifies the information which is required for the case;
- prepares and signs *MELS Search Request* form, requesting only required information;

Mails or faxes documents to **Maintenance Enforcement and Locate Services**.

203 - 865 Hornby Street
Vancouver BC V6Z 2G3
Fax: (604) 660-3728

If the matter is urgent, the clerk should telephone the Locate Services team leader at (604) 660-2528 for approval to arrange for the search to be given "rush" status.

2. Registry receives Search Response from Locate Services

The Search Response will indicate the most current information obtained.

The clerk:

- files *Search Response* by date-stamping.
- if search locates party:
 - contacts the requesting party to advise response came back and party was located either within or outside of B.C



If the party requesting the address is responsible for serving the document(s), that party must file an Application for Case Management Order Without Notice or Attendance requesting an order for service by a peace officer (sheriff). This can be done before, during, or after a family search request is made, as requesting a family search is not contingent on the result of the Application for Case Management Order. If the order is granted, the registry completes the Request for Service of Documents (RFS) form and sends the package of service documents to the Sheriff's Office to serve on the other party, if an address is located.

- if *Search Response* indicates Locate Services was unable to locate party, prepares advisory letter to party or party's counsel;
- if *Search Response* indicates party is no longer living in BC:
 - prepares advisory letter to party or party's counsel;
 - "respondent located outside of BC" – without specifying location or jurisdiction;
 - if applicant is in BC, advises applicant to include the "Search File" number (Locate Services' file number found at the top of the confidential report) with ISO support application (or support variation application) when submitting to IJSS;
 - places *Search Response* in court file. (If no court file has been opened, both *Search Request* and *Search Response* are discarded after notifying applicant).



If Locate Services has obtained information from either a federal government database or from a reciprocating jurisdiction, this information, as well as information from British Columbia sources, will be provided to the court registry. Such traces can take several months to conduct and there is no confirmation that the person sought resides at the address provided.

It is the responsibility of the court registry to maintain confidentiality of information provided by Family Search by enclosing it in envelope PFA 119. Although the RFS is entered in CEIS, the

address information obtained from Family Search Program should be redacted before scanning/uploading. The original RFS with the address is placed in the search envelope.

This envelope is to be used to store information received from the Locate Services to keep it separate from the rest of the court file contents. The envelope is filed in the court file, but it must be removed whenever a file search takes place, as the information is confidential. The envelope's contents must not be searched even by the parties.

Another option is to store the envelope separately from the court file, but if this is done the court file must be marked in some way so that staff know where to find the information if it is needed (such as to arrange for personal service).

When Sheriffs are filing a Certificate of Service for Family files that are part of the Family Search Program, a best practice is to take a photocopy of the original Certificate, place the original in the Family Search envelope, and redact the address on the copy to enter in CEIS and place in the file.

While file volumes make it impractical to search all existing files to locate information submitted by Locate Services, if staff come upon such information in the course of their normal document processing duties, they should be sure to place it in the envelope. The envelope must always be used for new information received from the Locate Services Program.

Child Support Recalculation Service (CSRS)

Background

FLA Part 7 Division 3 – Child Support Service

In 2006 the Kelowna Provincial Family Court implemented a pilot project which enables child support orders to be automatically revised on an annual basis without necessitating a court appearance.

On January 24, 2022, Cabinet approved amendments to the Family Law Act Regulation to expand the recalculation services. Commencing March 1, 2022, the Child Support Recalculation Service will be available to every Provincial Court Registry.

See Child Support Recalculation flowchart.

CSRS General Information Fact Sheet handout

Procedures

Order made in court with a term that the order be enrolled or removed from CSRS:

If the court makes an order regarding child support with a term for mandatory recalculation (or removal from mandatory recalculation), the clerk will:

1. File, data enter and scan the order into CEIS
2. Use the CEIS email function to send the entered order to the Child Support Recalculation Service
3. Distribute a copy of the order to the parties.



Where the court includes a term that the child support order is to be enrolled in or removed from the Child Support Recalculation Service, the registry **must** send the new order to CSRS. CSRS will determine if the Order is eligible and if it is **will** send the registry a Notice of Enrolment.

Order or agreement filed in the registry and party enrolls into the Child Support Recalculation Service

A party may voluntarily enrol into the CSRS if they have a child support order or an agreement filed with the registry. A party will need to complete a CSRS enrolment application, attach a copy of their order or agreement and submit it to CSRS. If the CSRS determines the order or agreement is eligible, CSRS will send the Notice of Enrolment, with the CSRS file number, to both parties and file a copy in the appropriate court registry.

The clerk will:

1. File, data enter and scan the Notice of Enrolment into CEIS and ensure that the file is recorded being enrolled into the CSRS program

Child Support Recalculation Service sends a Statement of Recalculation for filing in the registry:

A Statement of Recalculation is a recalculation decision issued by CSR which refers to the date of the order or agreement that it is recalculating, and includes the new child support amount, the income(s) used to recalculate the amount, and when they become payable.

When the registry receives a Statement of Recalculation from the Child Support Recalculation Services (CSRS), the clerk will:

1. File, data enter and scan the statement into CEIS and ensure that the file is recorded in CEIS as being entered into the CSRS program
2. Use the CEIS email function to send a filed copy to the Child Support Recalculation Service

A Party Disputing a Statement of Recalculation

Once a Statement of Recalculation is issued by CSRS, a party who disputes the recalculation results due to new income information or changing circumstances, for example, must file an application with the court *within 30 days (or “notification period”) of receiving notice of the Statement of Recalculation*. In Early Resolution registries, a party must file a Notice to Resolve

(Form 1). In all other registries (non-ERP), the party must file an Application About a Family Law Matter (Form 3) and provide a copy to CSRS.

If a party files an application to change the child support order during the "notification period", CSRS must suspend recalculation of the order or agreement until either:

- a) a new order is made by the court, or
- b) 60 days has passed and the party has taken no further steps to pursue the matter in court (suspension of the recalculation).
- c) application is withdrawn

If the parties do not file an application to change the order, the Statement of Recalculation comes into effect 30 days after the notification period, as indicated in the statement, and the recalculated amount of child support then applies.

Court makes order to change the existing child support order (order enrolled in the CSRS)

If the court grants an order to change the child support on an order or agreement that is enrolled in the CSRS or was recalculated by the CSRS, the registry **must** forward a copy of the order to the Child Support Recalculation Service.

The clerk will:

- 1. Follow standard CEIS business procedures to enter the court's order
- 2. Use the CEIS email function to send the entered order to the Child Support Recalculation Service
- 3. Distribute entered order to the parties.



Where the judge grants an order to change an enrolled child support order or agreement, the registry **must** send the order to CSRS.

Child Support Recalculation Service files an Amended Statement of Recalculation

Clerical errors on a statement of recalculation that has already been filed **may** be corrected by the Child Support Recalculation Service. The CSRS submits an Amended Statement of Recalculation to the appropriate court registry. The registry will file the amended statement and send a filed copy back to the CSRS.

The clerk will:

- 1. File, data enter and scan the Amended Statement of Recalculation in CEIS and;
- 2. Use the CEIS email function to send the filed Amended Statement to the Child Support Recalculation Service

Child Support Recalculation Service files a Recalculation Suspension Notice

When a party objects to a recalculation and has filed a court application within 30 days of being notified of the Statement of Recalculation, CSRS must suspend the recalculation and will send a Recalculation Suspension Notice to both parties and a copy to the registry for filing.

The clerk will:

1. File, data enter and scan the Recalculation Suspension Notice in CEIS.

Child Support Recalculation Service files a Recalculation Suspension Ending Notice

When a party has filed a court application to object to the Statement of Recalculation but has not taken any further steps within 60 days of filing that application to show that the matter is proceeding, CSRS will send a Recalculation Suspension Ending Notice to both parties and a copy to the registry for filing. Note that CSRS will monitor and communicate directly with the parties with respect to the suspension of the recalculation.

The clerk will:

1. File, data enter and scan the Recalculation Suspension Ending Notice in CEIS.

Child Support Recalculation Service files a File Withdrawn Notice

When a party has opted into the CSRS and both parties' consent to withdraw **OR** the court makes an order removing the parties from CSRS, then CSRS will send a File Withdrawn Notice to both parties, and a copy to the registry for filing to confirm that the parties have been removed from the program.

The clerk will:

1. File, data enter and scan the File Withdrawn Notice in CEIS



A filed copy of the Statement of Recalculation (or the Amended Statement of recalculation) **must** be returned to CSRS. The registry is not required to return a filed copy of the other Notices listed below.

For any court registry that has had a file transferred to their location prior to March 1, 2022, that is enrolled in the CSRS program please refer to [Changes to Child Support Recalculation Service \(CSRS\) for the Kelowna Registry](#).

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Withheld pursuant to/removed as

s.17

	• Ineligible under Section 18 of the FLA Regulation: ○ Child Over Age of Majority and parties do not agree to ongoing recalculation ○ Court Imputed Income to Payor ○ Income Over \$150,000 and Table Amount Not Applied ○ Payor Stands in Place of Parent ○ Payor's Income Based on Pattern of Income ○ Payor's Income from Self-Employment or Partnership ○ Shared Parenting (factors other than table amounts applied) ○ Undue Hardship
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Appointment of Family Advocates

Background

If a judge indicates his or her intention to order a Family Advocate, the court clerk shall advise the judge that the Ministry of Attorney General no longer provides a Family Advocate service, and that no similar alternative service is available.

Requesting Services from Family Justice Counsellors

Background

FLA Part 2, Division 2

Family justice counsellors are part of the Family Justice Services Division of Justice Services Branch, Ministry of Justice. They are located in Family Justice Centres and Justice Access Centres. The Attorney General appoints counsellors under Part 2, Division 2 of the FLA.

A family justice counsellor may provide the following assistance to a person:

- a. information respecting a family law dispute;
- b. family dispute resolution, including respecting
 - i. guardianship,
 - ii. parenting arrangements,
 - iii. contact with a child, and
 - iv. child and spousal support;
- c. referrals to other service providers or agencies
- d. a family justice counsellor may assist the court under section 211 [orders respecting reports].

A judge may order a report (under section 211 of the FLA) directing the Family Justice Counsellor to investigate a family matter. It is necessary for the court registry to prepare a Request for a section 211 Report form (PFA 807) and have counsel or the parties complete a Contact Information for section 211 Full Reports and section 211 Views of the Child Reports (PFA 912) as soon as possible after the Report is ordered. The Family Justice Counsellor completes the investigation, then submits the report to the court to help the judge make a decision. A judge may also refer a case to a family justice counsellor for mediation and may order a mediation report to be prepared. No form is available for this purpose, as referrals are usually oral. Referrals from the court may take place at any time before the disposition is made, but generally they occur either at the first appearance or at the family settlement conference.



It is unnecessary to prepare the request form if the order specifies that a private counsellor/psychologist is to prepare the report, rather than a Family Justice Counsellor.

- See **Consent Order** procedures in Chapter 3 if the family justice counsellor submits an **Application for a Family Law Matter Consent Order (Form 17) (PFA 723)** and draft **Consent Order (Form 18) (PFA 739)**.
- See **Notice of Family Management Conference and Scheduling Instructions** in Chapter 3, if a party files a **Referral Request** after meeting with the family justice counsellor

Procedures

1. Judge orders a s. 211 report

If the matter is adjourned in order to obtain a report that is to be completed by a Family Justice Counsellor, the clerk:

1. Gives a Contact Information for section 211 Full Reports and section 211 Views of the Child Reports form to counsel/parties to be completed, prior to their leaving the courtroom or if attending via telephone or MS teams, sending them a copy.
2. The clerk receives completed contact form back from counsel/parties. After court, the clerk will complete and fax the Request for a section 211 Report, completed Client Contact form and a court summary sheet to:

Family Justice Report Service
#301 – 32555 Simon Avenue
Abbotsford, BC V2T 4Y2
Phone: 778 360-2052
Fax: 604 851-7062

3. The request is entered in CEIS as a document: "Request for S. 211 Report" (CEIS code "RFR"). This document is scanned into CEIS.

4. Upon receiving confirmation that the fax has been received, the clerk puts the Contact Information form, Request for s. 211 Report and fax confirmation in the file.
5. If a party indicates their contact information is to be kept confidential, the Contact Information form is to be placed into a separate envelope before being put in the file.
6. The envelope containing the Contact Information form is to be removed from the file prior to the file being searched.



It is critical that all the information requested on the forms be completed. If the parties/counsel are unable to provide full particulars, ensure that the reason why that information is not being provided is stated in the appropriate space on the form. The Family Justice Report Service will reject and return forms to CSB if full particulars are not provided, creating undue delay for the Court and the parties and creating additional work for registry staff.

2. Family justice counsellor submits a report

When an original and 3 copies of a report are submitted by the family justice counsellor, the clerk:

- Once the Section 211 Report is filed or received by mail, it is entered in CEIS as a "Full Report" (code "FULL") or "Views of the Child(ren) Report" (code "VOC").
- files the report by date-stamping;
- distributes documents as follows:

Document	Applicant	Respondent	Judge	Court File
s. 211 Report	Copy	Copy	Copy	Original

If time allows before the court date, lawyers' copies of the report may be left in their boxes to be picked up. The court file copy, judge's copy and copies for self-represented parties are filed in the court file and distributed on the court date, although parties may pick up their copies in advance. If time is ample, copies for parties or their lawyers may be mailed rather than picked up.

- **If a hearing date has already been set, see Hearing or Trial procedures in Chapter 3.**
- **If a hearing date has not been set, the party(ies) must file a Request for Scheduling (Form 39)(PFA 732) to bring the matter back to a further Family Management Conference**

Fax Filing

Background

Fax filing is permitted in all Provincial Court Registries.

A clerk may accept for filing any document, other than a certified copy of an order, that has been transmitted to the registry by fax.

The only reasons a clerk may refuse to fax file a document include:

- Fax not accompanied with fax filing cover page (Form 52)(PFA 734)
- Documents related to more than one court file
- Documents are not legible
- Documents incomplete
- Document submitted to the wrong registry
- Document does not conform to practice and procedures set out in the rules or any applicable enactment

Policy

A document that is transmitted by fax and received by the registry will be filed as soon as possible unless the document is refused under 194 (2).

Submissions should be reviewed and prioritized. The registry cannot guarantee a document will be filed on the day it is received. It is the responsibility of the filing party to indicate if there is a time limit on the document. A requirement for "Rush" or "Urgent" should be indicated on the Fax Cover Sheet.

A faxed document that meets the document filing standards must be accepted for filing.

Business Process

Preparation

- Staff should regularly check the dedicated fax machine to ensure it is adequately stocked with paper and toner.

Processing Fax Filed Documents

1. Check incoming faxes visually as they are taken off the fax to ensure the documents can be accepted for filing. To be accepted for filing the document(s) **must** be:
 - accompanied by a fax cover sheet in Form 52 [Fax Filing Cover Page – Provincial Court Family];
 - related only one court file;
 - legible and can be relied on in court

- complete
 - have been sent to the correct registry
 - conforms to practice and procedure under these rules and any applicable enactment
2. If the documents are not accepted for filing for any of the reason set out in Step 1, prepare and send the submitting party a **Rejection Letter** advising them for the reason(s) for the rejection. If the submitting party has not provided sufficient information to send a rejection letter, take no further action and retain the rejected submission filed by transmissions.
 3. Process documents according to normal procedure (i.e. file by applying the date stamp, enter and scan into CEIS,
 4. Send confirmation of the filing, to the filing party by either transmitting the confirmation by fax or providing the confirmation in a manner requested and agreed to. The confirmation must include a cover sheet, the first page of the document that was filed showing the date stamp and file number and any other page that was altered by the court or the registry .
 5. Place the document(s) submitted by fax in the court file. The faxed copies are treated like an original unless the court orders the original paper version be filed with the court.

Electronic Filing Statement

PCFR 192

A person filing a document electronically must

- Enter into an agreement with the Court Services Branch of the Ministry of Attorney General respecting the terms and conditions under which those filings may be made
- Submit documents for filing in accordance with that agreement

A certified copy of an Order is the only document that may not be filed electronically

PCFR 193

If a party is submitting an Affidavit or other signed document for evidentiary purposes it must clearly identify the signatory and must be accompanied by an Electronic Filing Statement (Form 51) (PFA 768) by the party or the lawyer who is submitting the form with a statement in the form indicating

- The original paper version of the document appears to bear an original signature of the person signing it and the person making the electronic filing statement has no reason to believe that the signature on the document is not the signature of the party who signed
- The version of the document that is being submitted for filing electronically appear to be a true copy of the original paper version of the document and the person making the

electronic filing statement has no reason to believe that it is not a true copy of the original paper version

The party submitting the document electronically must

- Keep the original paper version of the document until the earliest
 - The date the proceeding, including any appeals, is finally disposed of
 - The appeal period has expired, if a notice of appeal respecting the proceeding is filed within that period
 - The date a judge orders that the original paper version be filed

Court Clerk

1. Receives a document and an electronic Filing Statement (Form 51)(PFA 768)
2. File stamps both documents separately
3. Enters and scans into CEIS

Order for Attendance of a Prisoner

Order for Attendance of a Prisoner (Party to a Civil/Family Matter)

If a party to a civil or family matter is in custody on criminal proceedings, Counsel or a party to the civil or family case may request the attendance of that party by making an application, using an *Order for Attendance of a Prisoner* (commonly referred to as a "spring order"). A judge or a Court Services Branch (CSB) JP may sign the Spring Orders made on a written Application (under section 40 of the BC Offence Act). However, an application to a judge is required for a Spring Order made under s. 2(2) of the Small Claims Act:

2(1) The purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.

(2) Subject to this Act and the rules, in conducting a hearing the Provincial Court may make any order or give any direction it thinks necessary to achieve the purpose of this Act and the rules.

A spring order authorizes the escort of a prisoner to court for an appearance in court and back to custody at the conclusion of the appearance, unless the court orders otherwise.

The judge may also make an *Order for Attendance of a Prisoner* (PFA 876) in court as a result of an oral application. Registry staff will prepare the spring order when the order has been made in response to an oral application; however, they are not required to complete the Affidavit of Applicant section.

When a person is brought to court on an *Order for Attendance of a Prisoner*, if the matter is adjourned and they are needed for subsequent appearances, a new Order for Attendance of a Prisoner must be prepared for each subsequent court date.



Federal inmates: There is no jurisdiction under the *Offence Act* to procure the attendance of a federal inmate for civil or family matters. Correctional Service Canada has agreed to facilitate these appearances by video. *Prepare an Order for Attendance of Prisoner* indicating appearance by video for federal inmates.

If the sheriff must make a special escort run to bring the prisoner to court, there may be reasonable charges associated with the escort. The sheriff will determine the costs that will be charged and obtain the prior approval of the requesting counsel or party of these costs as per Sheriff policy set out at section 8.22.4 of the *Sheriffs Policy Manual*.

A fee is charged in Small Claims if counsel or the party swears the Affidavit of Application portion of the *Order for Attendance of Prisoner* in front of a Court Services commissioner for taking affidavits.

Order for Attendance of a Prisoner – Filed application filed by Party or Counsel

Registry clerk

1. On receiving the *Order for Attendance of a Prisoner* (PFA 876), forward it to a judge or JP for signature.
2. In CEIS, enter the document type "Order for Attendance of a Prisoner."
3. Scan the Order for Attendance into CEIS.
4. Distribute the *Order for Attendance*, giving one copy to the applicant, sending the original to the Sheriffs to coordinate attendance with BC Corrections, and placing one copy in the file.
5. If the prisoner is attending by video from a federal penitentiary, refer to Chapter 5 - Requesting and Scheduling Videoconference of the *Videoconferencing Policy Manual*.

Order for Attendance of a Prisoner – Oral application made by Party or Counsel

When a judge orders the attendance of a prisoner as a result of an oral application:

Registry clerk

1. Prepare the *Order for Attendance of a Prisoner* (PFA 876). (Completion of the Affidavit portion is not necessary.)
2. Forwards it to the judge for signature.
3. When the Order has been signed, distribute the documents, giving one copy to the applicant, sending the original to the Sheriffs to coordinate attendance with BC Corrections, and placing one copy in the file. If the prisoner is attending by video from a federal penitentiary, refer to Chapter 5 - Requesting and Scheduling Videoconference of the Videoconferencing Policy Manual.

Order for Attendance of Prisoner (Witness for Civil and Family Matters)

If a witness who is required to give evidence at a Civil or Family appearance is in custody, the counsel or a party who require the witness may request the attendance of the witness by making an application to a judge (a CSB JP may also make these orders as long as the BC Offence Act applies), using an Order for Attendance of a Prisoner (commonly referred to as a "spring order"). A spring order authorizes the escort of a prisoner to court for an appearance in court and back to custody at the conclusion of the appearance, unless the court orders otherwise.

The judge may also make an *Order for Attendance of a Prisoner* in court as a result of an oral application. Registry staff will prepare the spring order when the order has been made in response to an oral application; however, they are not required to complete the Affidavit of Applicant section.

When a witness is brought to court on an Order for Attendance of a Prisoner, if the matter is adjourned, a new *Order for Attendance of a Prisoner* must be prepared for each subsequent court date if they are required.



Federal inmates: There is no jurisdiction under the *Offence Act* to procure the attendance of a federal inmate for civil or family matters. Correctional Service Canada has agreed to facilitate these appearances by video. *Prepare an Order for Attendance of Prisoner* indicating appearance by video for federal inmates.

If the sheriff must make a special escort run to bring the prisoner to court, there may be reasonable charges associated with the escort. The sheriff will determine the costs that will be charged and obtain the prior approval of the requesting counsel or party of these costs as per Sheriff policy set out in section 8.22.2 of the *Sheriffs Policy Manual*.

A fee is charged in Small Claims if the party or counsel swears the Affidavit of Application portion of the *Order for Attendance of Prisoner* in front of a Court Services commissioner for taking affidavits.

Order for Attendance of a Prisoner (witness) – Filed application

Registry clerk

1. On receiving the *Order for Attendance of a Prisoner* (PFA 876), forward it to a judge or JP for signature.
2. When the Order for Attendance is signed by the judge or CSB JP and returned to the court registry:
3. Remove two copies of the Order for Attendance form.
4. Place one copy in the court file and forward the second copy to the party who filed the application.
5. Send the original to the Sheriffs to coordinate attendance with BC Corrections.

6. If the prisoner is attending by video from a federal penitentiary, refer to Chapter 5 - Requesting and Scheduling Videoconference of the *Videoconferencing Policy Manual*.

Order for Attendance of a Prisoner (witness) – Oral application

When a judge orders the attendance of a witness prisoner as a result of an oral application:

Registry clerk

1. Prepares the *Order for Attendance of a Prisoner* (PFA 876). (Completion of the Affidavit portion is not necessary.)
2. Forwards it to the judge for signature.
3. Make two photocopies of the Order for Attendance form.
4. Place one copy in the court file and forward the second copy to the party who filed the application.
5. Forward the original Order for Attendance to the sheriffs to coordinate attendance with BC Corrections.
6. If the prisoner is attending by video from a federal penitentiary, refer to Chapter 5 - Requesting and Scheduling Videoconference of the *Videoconferencing Policy Manual*.

Chapter 3 - Rules Procedures

Chapter Overview

This chapter describes the series of procedures necessary to obtain a court order. Most of the procedures described are governed by the *Provincial Court Family Rules*. Usually the court process begins with the filing of an application. This starts an action. The applicant arranges for another person to serve the application on the other party. If the other party files a reply, or if the applicant files a request for a court appearance, the next step is appearance at one or more hearings or conferences, which results in a court order. Not all applications proceed to full trial. The filing of a Consent by the parties will also result in a court order.

Filing an application is not the only way that a court file is initiated, and a court order obtained. The process of filing a Written Agreement or the order of another court also results in the opening of a court file and is outlined in this Chapter.

Generally, if the document being filed requires service, three copies plus the original must be filed; if service is not required, then two copies plus the original must be filed.

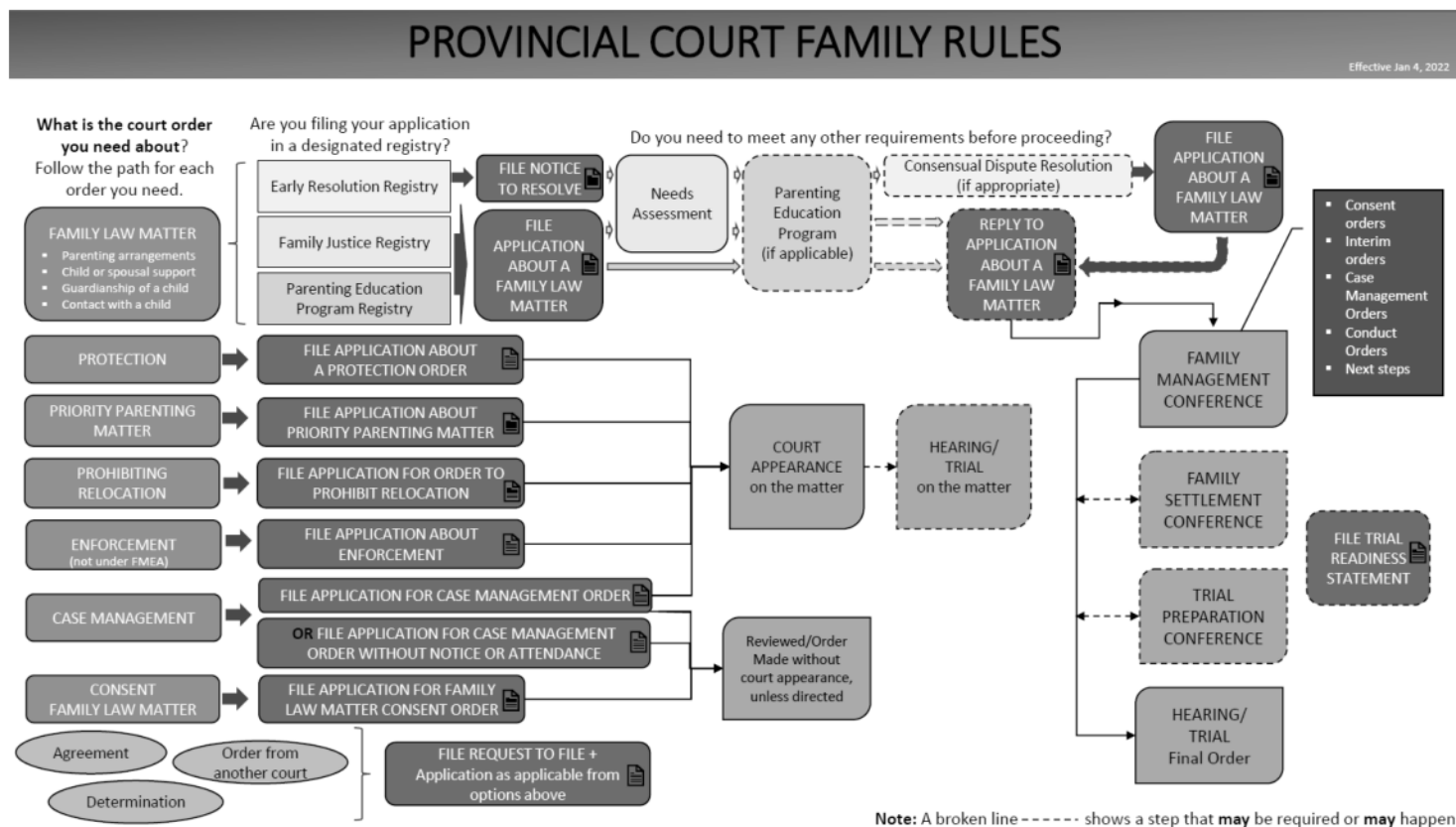
The Chapter ends with procedures for appealing a court order. Each procedure ends with a reference to the next appropriate procedure.

PCFR 173

Unless a party files electronic documents in accordance with Division 7 [Electronic Filing], a party who files a document under these rules must file

- (a) One copy for the court
- (b) One copy for the filing party
- (c) One copy for each party other than the filing party, and
- (d) If applicable, one copy for each lawyer for a child

Starting a Family Court File flowchart:



Starting the Process

Background

This section of the chapter describes documents which require the registry clerk to create a new court file. The procedures for these documents, include filing instructions, and notification to the party(ies) that their order has been filed. Once opened, an action may be commenced at any time by the filing of document (such as a Case Management Order, Application About a Priority Parenting Matter or Application for Family Law Matter Consent Order).

It also describes documents that are submitted which require the clerk to open a court file and to begin the process of bringing the parties to court to deal with the application submitted. The procedures are described for these applications, including checking and filing of documents, setting a hearing date and recording the hearing date in CEIS. When completed, reference is made to the next appropriate procedure.

A Family Court file may be opened in Provincial Family Court by:

- Notice to Resolve a Family Law Matter (ERP registry only)
- filing an Application About a Family Law Matter
- filing an Application for a Family Law Matter Consent Order

- filing an Application About A Protection Order
- filing an Application for a Case Management Order
- filing an Application About a Priority Parenting Matter
- filing an Application for Order Prohibiting the Relocation of a Child
- filing an Application About Enforcement
- filing a Request to File an Agreement
- filing a Request to File an Order (could be a Supreme Court Order or Interjurisdictional Order)
- filing Request to File an Agreement
- filing Request to File a Determination of Parenting Coordinator
- filing Request to File an Order
- receiving a transferred in file (**See Receiving file from other locations in Chapter 2**).

Starting an action:

- filing an original application;
- receiving ISO process (**See Chapter 5 Procedures**).

Early Resolution Registries

PCFR 6(a)

Surrey and Victoria registries are early resolution registries for the purposes of Part 2 [Early Resolution Registries]

Early Resolution requirements must be met before application filed

PCFR 10

Before filing an application about a family law matter under Part 3 [Applications About Family Law Matters], a party seeking resolution of a family law matter in an early resolution registry must, unless otherwise provided in these rules:

- file a notice to resolve in Form 1 [Notice to Resolve a Family Law Matter]
- provide a copy of the notice to the resolve to each other party
- participate in a needs assessment under rule 16 [participating in needs assessment]
- complete a parenting education program under rule 17 [completing parenting education program]
- if appropriate participate in at least one consensual dispute resolution session under rule 18 [participating in consensual dispute resolution]

Early resolution requirements must be met before reply filed

PCFR 11

Before filing a reply under rule 28 to an application about a family law matter in an early resolution registry, the party filing the reply must, unless otherwise provided in these rules

- participate in a needs assessment under rule 16
- complete a parenting education program under rule 17 and file the certificate of

- completion with the family justice registry
- participate in at least one consensual dispute resolution session under rule 18

Exception to early resolution requirements

PCFR 12

There are exceptions to the requirements that parties complete early resolution requirements before attending a family management conference and they do not apply if

- the application about the family law matter is only for child support and that party has assigned child support rights to the government under the *Employment Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*
- the court file for the case is transferred to a registry that is not an early resolution registry, and
- if a party is only applying for one or more of the following orders under Part 5 of the rules [Applying for Other Orders]
 - case management order
 - protection order
 - order about a priority parenting matter
 - order about relocation
 - consent order

Certain parties exempt from requirements

PCFR 14

Rule 13 sets out that government, ministries, and public officials are exempt from the early resolution requirements.



Parties can make an application concerning a protection order or priority parenting matter before complying with the early resolution requirements if there is also a family law matter

Participating in needs assessment in early resolution registries

PCFR 16

Each party must participate individually in a needs assessment conducted by a needs assessor who may provide help with the following:

- assistance with identifying legal and non-legal needs
- information about resolving issues including how to resolve family law matters and other issues out of court and next steps in the court process
- referral to an appropriate parenting education program or an exemption from a parenting education program under Division 5 [Parenting Education Program]
- an exemption from a parenting education program under that Division
- referrals to other resources including where and how to seek legal advice, access legal information, access resources for issues that are not legal in nature and access resources for children dealing with family changes
- assessment of any risk of family violence
- referrals to other resources for individuals and families experiencing or concerned about family violence

Completing parenting education in early resolution registry
PCFR 17

Each party must complete a parenting education program unless a needs assessor exempts that party because

- the party has already completed the parenting education program in the 2 years before the date of the needs assessment
- the family law matter is related only to spousal support
- every child involved in the family law matter has reached 19 years of age
- the party cannot access an online version
- the parenting education program is not offered in a language in which the party is fluent
- the party cannot complete an online version due to literacy challenges
- the party cannot complete the parenting education program due to a serious medical condition

Participating in consensual dispute resolution in early resolution registry
PCFR 18

The parties must attempt to resolve a family law matter by participating in at least one consensual dispute resolution session unless

- a needs assessor determines that the party cannot access consensual dispute resolution services
- a needs assessor or consensual dispute resolution professional determines that participation in a consensual dispute resolution session is not appropriate

To prepare for consensual dispute resolution session each party must participate in any preparatory meetings or other preparatory process as required by the consensual dispute resolution professional

Certain parties not required to comply with consensual dispute resolution
PCFR 19

The requirement to participate in consensual dispute resolution do not apply to any of the parties if one party is

- the Director of Maintenance Enforcement
- a director under the *Child, Family and Community Service Act*

Financial information for consensual dispute resolution
PCFR 20

If financial information for consensual dispute resolution is required, it must be provided in the form required by the consensual dispute resolution professional

Application in early resolution registry may proceed once filed
PCFR 21

If a party has met the early resolution registry requirements the party may proceed to make an Application About a Family Law Matter even if the other party is unable or unwilling to comply

with the early resolution requirements

Failure of party to comply with early resolution requirements

PCFR 22

If a party who receives a notice to resolve does not comply with the early resolution requirements the party may not participate in the case unless the court orders otherwise

Family Justice Registries

PCFR 6(b)

Nanaimo, and Vancouver (Robson Square) registries are family justice registries for the purposes of Part 6 [Family Justice Registries]

Requirements in family justice registries

PCFR 89

Before attending a family management conference parties seeking resolution of a family law matter in a family justice registry must meet the following requirements, unless otherwise provided in the rules:

- each party under rule 93 must individually participate in a needs assessment conducted by a family justice counsellor and
- under rule 94 complete a parenting education program and file the certificate of completion with the family justice registry.

Exceptions to family justice registry requirement

PCFR 90

There are exceptions to the requirements that parties complete a needs assessment and a parenting education program before attending a family management conference and they do not apply if

- (a) the application is only for support and the party has assigned support rights to the government under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*
- (b) court file for the case is transferred to a registry that is not a family justice registry
- (c) a party is only applying for one or more orders under Part 5 of the Rules [Applying for Other Rules]



Parties can make an application concerning a protection order or priority parenting matter before completing the needs assessment and parenting education program requirements when they are applying for an order about a family law matter at the same time

Certain parties exempt from requirements

PCFR 91

A party who is the government, a minister or a public officer is not required to meet the requirements that apply to a party under this part. Rule 91 exempts government parties from the needs assessment and referral requirements.

First referral by clerk

PCFR 92

After a party files an application about a family law matter or a reply to an application about a family law matter, a clerk must refer the parties to a needs assessor

Participating in needs assessment in family justice registries

PCFR 93

Each party must participate individually in a needs assessment conducted by a needs assessor who may provide help with the following:

- assistance with identifying legal and non-legal needs
- information about resolving issues including how to resolve family law matters and other issues out of court and next steps in the court process
- referral to an appropriate parenting education program or an exemption from a parenting education program under Part 7 [Parenting Education Program Registries]
- referrals to other resources including where and how to seek legal advice, access legal information, access resources for issues that are not legal in nature and access resources for children dealing with family changes
- referrals to consensual dispute resolution or to another family dispute resolution professional, if appropriate
- assessment of any risk of family violence
- referrals to other resources for individuals and families experiencing or concerned about family violence

Completing parenting education program in family justice registries

PCFR 94

Each party must complete a parenting education program unless they have received an exemption because:

- the family law matter is related only to spousal support
- every child involved in the family law matter has reached 19 years of age
- the party cannot access an online version
- the parenting education program is not offered in a language in which the party is fluent
- the party cannot complete an online version due to literacy challenges
- the party cannot complete the parenting education program due to a serious medical condition

- a consent order is filed that resolves all issue involving children



To request an exemption from the requirement under subrule (1), a party must submit a request for exemption in(Form 20)(PFA 740) [Notice of Exemption from Parenting Education Program] to the Family Justice Services Division of the Ministry of Attorney General for approval

The requirement to complete a parenting education program does not apply, if:

- the party has already completed the parenting education program in the 2 years before the date of the family management conference or

To demonstrate completion or exemption from the parenting education program a party must file a parenting education program certificate or a notice of exemption

Referral to judge after demonstrating completion of or exemption from parenting education program

PCFR 95

At any time after having met the family justice requirements a party may request to attend a family management conference on one or more issues in the case by filing a referral request in (Form 21) (PFA 740)

Scheduling family management conferences

PCFR 96

After the parties have filed a referral request and have demonstrated completion or exemption of a parenting education program, the registry must provide the parties with information about the procedure for scheduling a family management conference

See **Application About a Family Law Matter** for detailed procedures

Parenting Education Registries

PCFR 6(c)

All registries, except early resolution registries and family registries are parenting education registries for the purposes of Part 7 [Parenting Education Program Registries]

Transition – parenting education program registries

PCFR 97.1

Parenting education does not apply if the application was filed before January 4, 2022, and the registry which the application was filed in was not a parenting education registry at the time of filing

Requirements in Parenting Education Program Registries

PCFR 100

Before attending a family management conference about an application about a family law matter, each party must complete a parenting education program unless they have received an exemption because:

- the family law matter is related only to spousal support
- every child involved in the family law matter has reached 19 years of age
- the party cannot access an online version
- the parenting education program is not offered in a language in which the party is fluent
- the party cannot complete an online version due to literacy challenges
- the party cannot complete the parenting education program due to a serious medical condition
- a consent order is filed that resolves all issues involving children



To request an exemption from the requirement under subrule (1), a party must submit a request for exemption in (Form 20)(PFA 740) [Notice of Exemption from Parenting Education Program] to the Family Justice Services Division of the Ministry of Attorney General for approval

The requirement to complete a parenting education program does not apply, as set out in rule 100(3), if:

- the party has already completed the parenting education program in the 2 years before the date of the family management conference or
- the application about a family law matter is only for child support and that party has assigned child support rights to the government under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*

Certain parties exempt from parenting education program registry requirements

PCFR 101

A party who is the government, a minister or a public officer is not required to meet the requirements that apply to a party

Demonstrating Exemption or completion

PCFR 102

To demonstrate completion or exemption from the parenting education program a party must file a parenting education program certificate or a notice of exemption before attending a family management conference

Requirements to be met before scheduling

PCFR 103

The registry may schedule a family management conference only after at least one party has filed, as applicable

- a certificate of completion, or
- Notice of Exemption

See **Application About a Family Law Matter** for detailed procedures

Party Roles after May 17, 2021

New File

If a party is opening a new file, use the role types Party and Other Party

Existing file pre May 17, 2021

If there is an existing file (pre May 17, 2021) and new documents are filed or there is a court appearance, post May 17, 2021, the clerk will need to add new party roles of Party and Other Party and deactivate the party roles of Applicant and Respondent or Party 1, Party 2 Party 3 etc. in CEIS.

Consent Orders

Consent Orders can be made in a court appearance at any time or they can be applied for without a court appearance. Parties may apply for an order by consent when both can agree to the terms of the order. The parties may also consent to change an existing order.

Consent Orders about family law matters without hearing **PCFR 81**

To apply for an order by consent about a family law matter, without having to appear before a judge or family justice manager, the parties must file

- an Application for a Family Law Matter Consent Order in (Form 17) (PFA 723)
- any applicable as described in rule 25 and 26 additional documents
- a draft Consent Order (Form 18) (PFA 740) signed by all parties or their lawyers – for consent orders about family law matters without a court appearance.

These applications can be made before an Application About a Family Law Matter, after an Application About a Family Law Matter and can also initiate a file prior to any pre court requirements if applicable

Existing order or written agreement **PCFR 25(1)(a)**

Where the order sought is about an existing order or written agreement that order or agreement

must be attached to the application

Financial Information

PCFR 25 (1)(b)(c)

Where the order sought is for child support, the parties must also comply with rule 25(1)(b) and file a Financial Statement (Form 4) (PFA 713) and any information or documents required by the child support guidelines. This includes income information including recent income tax returns and income tax notice of assessments or reassessments. The parties are deemed to have complied with the Child Support Guidelines Regulation and requirement to file financial statement where they comply with the provisions set out.

The requirement to file a Financial Statement also applies if the Order being sought is for spousal support.

Guardianship

PCFR 25(2) and PCFR 26

Where the order sought is for guardianship of one or more children, the parties must also comply with rules 25(2) and 26 by filing an Guardianship Affidavit (Form 5)(PFA 733) with the following exhibits attached

- Record check from Ministry of Children and Family Development
- A protection order record check from the protection order registry
- A criminal record check

Consents for guardianship applications where the parents are not parties generally require a court order made at a hearing. For detailed information, **see s. 51 Guardianship Applications**



If the parties wish to speak to the matter in court, schedule in CEIS to the designated courtroom/time (as arranged by your court location). Depending on local practice, this step may require the registry to contact the JCM before setting a date.

Consent Orders about case management

PCFR 83

To apply for a case management order by consent the parties must file:

- An Application for Case Management Order (Form 10)(PFA 717) with section 5 of the form completed to indicate that each party, including any person directly affected by the order, consents to the order.
- If the parties do not wish to appear before the court they will check off that option in section 5 and

- a draft Consent Order signed by each party, and any other person directly affected by the order, or their counsel
- any supporting documents (if applicable and submitted by the parties)

A judge considering an application for a family law matter consent order or a judge or family justice manager considering an application for a consent order about a case management order may:

- Approve and sign the Consent Order as a desk order
- Give directions to obtain further information or evidence including to require both parties, and any other specified person, to appear in court
- Make changes to the draft Consent Order and, if the parties consent to the changes, require the parties to attend the registry to review and sign the changes
- Reject the application with reasons

Procedures

1. Court registry receives Application for a Family Law Matter and draft Consent Order or Application for Case Management Order and draft Consent order

A party submits:

- Application for a Family Law Matter Consent Order (Form 17)(PFA 723) and draft Consent Order(Form 18)(PFA 739) signed by both parties or counsel **or**
- Application for Case Management Order (Form 10)(PFA 717) and draft Consent Order (Form 18)(PFA 739) signed by both parties or counsel
- Affidavit although not mandatory (Form 45) (PFA 762)
- if order includes child support, Financial Statement (Form 4) (PFA 713) including all attachments - income information (recent income tax return and notice of assessment or reassessment), or an agreement as to income;
- if order is about an existing order or written agreement a copy of that document
- if order is for guardianship under s.51 of FLA party must file a Guardianship Affidavit (Form 5) (PFA 733) with
 - record check from Ministry of Children and Family Development
 - protection order record check from protection order registry
 - criminal record check
- written consent of a child if needed as per FLA s. 51 (optional - if the application is for guardianship and the child is over 12 years of age and court is not being asked to make a guardianship order without consent of child but in best interest of child);



The Guardianship Affidavit must be sworn no more than 7 days before the date the affidavit is sworn and the record checks must be dated within 60 days before the date that the record check is filed

The clerk will **not** check for children's consents.

The clerk:

- checks documents;
 - name
 - contact information
 - Email
 - Counsel
 - relevant schedules attached per issue, financial statement if required and any other relevant attachments
- checks CEIS to see whether court file exists;
- if court file does not exist, opens new file.
- **See Desk Order Process in this Chapter for detailed procedures.**
-

Written Agreement and Parenting Coordinator's Determination

Background

A Written Agreement is an agreement that is in writing and signed by all of the parties. Searching of Agreements is subject to the access provisions that govern family files. Review the [Records Access Policy](#) for details.

It is not necessary that the original agreement be filed with the Court. If a copy of an agreement is presented for filing, it is to be accepted as long as it complies with the other requirements for filing an agreement. A photocopy of an agreement that has already been filed with Supreme Court may also be filed in Provincial Court. A certified copy is not required in this case.

There is no legislative requirement that all agreements be witnessed. However, some provisions of an agreement can only be enforced if the agreement was witnessed. You may advise a party that some provisions of the agreement may be difficult to enforce if the agreement is not witnessed, however, if a person wishes to file an agreement that has been signed but not witnessed, it should be accepted for filing. It is not appropriate for Court Services staff to sign agreements as a witness.

Though a Written Agreement may have many provisions, the only provisions that the Provincial (Family) Court can enforce are those that set the terms for care of and time with a child; support of the child; or support of the spouse. The Provincial Court can enforce those terms when all of the following requirements are met:

FLA s. 15, 44(3), 58(3), 148(2) 163(3)

Every party against whom a provision may be enforced, except a child, has signed the Written Agreement.

FLA s. 7

A party may apply to change or cancel any provision in the Written Agreement that is enforceable under the FLA or FMEA or may file a new Written Agreement if all parties consent to the change.

PCFR 132

A party may file a copy of written agreement in the family provincial court using a Request to File an Agreement (Form 26) (PFA 736)

PCFR 133

A party may file a copy of a determination by a parenting coordinator using Request to File Determination of Parenting Coordinator (Form 27) (PFA 737)

To enforce a parenting coordinator's determination, rule 135 requires that the determination be filed

For information about how to enforce an Agreement or to enforce, change or set aside a filed determination of a parenting coordinator see Application About Enforcement in this Chapter for detailed procedures

Procedures

1. Court registry receives Request to File an Agreement or Request to File a Determination of Parenting Coordinator

A party submits:

- Request to File an Agreement or
- Request to File a Determination of Parenting Coordinator

The clerk checks:

- Written Agreement or Determination to ensure it has been dated and signed by the parties;

The clerk:

- files documents by date-stamping;
- checks CEIS to see whether court file exists;
- if court file does not exist, opens new file.

2. Clerk separates and distributes filed Agreement

The clerk:

- gives the party their copy(ies) **If party applies to change or cancel Written Agreement, go to Application About A Family Law Matter in this Chapter.**
- **If parties wish to change Written Agreement by filing new Written Agreement, follow above procedures.**
- **If party applies to enforce filed Agreement, go to Application About Enforcement.**

Supreme Court Orders in Provincial (Family) Court

Background

FMEA s. 33

FLA s. 195

Under the FMEA (maintenance/support) and FLA (parenting arrangements or contact with a child) the Provincial (Family) Court may enforce any order for maintenance/support, contact or parenting arrangements made by or registered with the Supreme Court. To enforce a Supreme Court Order, the party must file a certified copy of it in Provincial (Family) Court.

The Provincial (Family) Court may not vary a Supreme Court Order. If a party wishes to vary a Supreme Court Order, the party must bring the matter before the Supreme Court.

Procedures

1. Court registry receives Supreme Court Order

A party submits:

- Request to File an order (Form 28)(PFA 745)and a certified copy of Supreme Court Order.

The clerk:

- files the Request to File an Order and the Supreme Court Order by date-stamping;
- checks CEIS to see whether court file exists;
- if court file does not exist, opens new file and enters new file information on CEIS;
- places new file number on all documents submitted;
- Scans each document into CEIS
- sends copy of filed documents to party who submitted order.

Notice to Resolve a Family Law Matter (Early Resolution Registries)

Background

Family law matters which benefit from and are appropriate for the Early Resolution Process include:

- Parenting arrangements including parental responsibilities and parenting time
- Child support
- Contact with a child
- Guardianship of a child
- Spousal support

Early resolution requirements must be met before application filed

PCFR 10

Before filing an Application About a Family Law Matter under Part 3 [Applications About Family Law Matters], a party seeking resolution of a family law matter in an early resolution registry, must, unless otherwise provided in the rules

- filing a Notice to Resolve a Family Law Matter (Form 1)(PFA 710)
- provide a copy of the notice to resolve to each other party
- participate in a needs assessment under rule 16 [participating in needs assessment
- complete a parenting education program under rule 17 [completing a parenting education program]
- participate in at least one consensual dispute resolution session under rule 18 [participating in consensual dispute resolution]

Early resolution requirements must be met before reply filed

PCFR 11

Before filing a reply, under rule 28 to an Application About Family Law Matter in an early resolution registry the other party must

- participate in a needs assessment
- complete a parenting education program
- participate in at least one consensual dispute resolution session

Exception to early resolution requirements

PCFR 12

The early resolution requirements in rules 10 and 11 do not apply if

- the Application About the Family Law Matter is only for child support and that party has assigned child support rights to the government

- if the court file is transferred to a registry that is not an early resolution registry
- if a party is only applying for one or more of the following orders
 - case management order
 - protection order
 - order about priority parenting matter
 - order about relocation
 - consent order

Certain parties exempt from requirements **PCFR 13**

A party who is the government, a minister or a public officer is not required to meet the requirements that apply to a party under this part



Order exempting parties from the early resolution requirements

If there is an order exempting the parties from the Early Resolution Requirements, parties still require a Notice to Resolve to be on file for the documents to be processed, however they will not be required to attend the JAC and participate in the Early Resolution Requirements as outlined in the order they have received.

If counter staff are aware of this exemption at the time of the filing there is no requirement to send the Notice to Resolve to the Justice Access Centre

There may be circumstances where proceedings were initiated with a Notice to Resolve and the party took no further activity for over a year (whether the original issues were resolved or not). The correct form would be the Notice of Intention to Proceed. See **Notice of Intention to Proceed** in this chapter.



If a party identifies new issues and wishes to proceed with filing a new Notice to Resolve, accept the document for filing and process following standard business procedures.

It is possible to have more than one Notice to Resolve on file.

Procedures

Clerk

Client should be made aware of the ERP forms/process.

1. Check CEIS for existing file:

- if yes, Notice to Resolve (Form A) is filed on existing file;
 - if no, Notice to Resolve (Form A) opens a new file.
2. Check document for completeness:
 - Name
 - Mailing address
 - Email address
 - Telephone
 - Jurisdiction box checked (closest to where the child resides)
 3. Initiate file or add document in CEIS:
 - If no existing file, assign a file number and initiate file in CEIS
 - Enter party name(s) and their email addresses (there is no necessity to enter any other contact information at this time)
 4. Scan Notice to Resolve (pages 5 and 6 must be included) into CEIS
 5. Email Notice to Resolve (pages 5 and 6 must be included) to FJSD:
 - For Victoria – s.15; s.17 [@gov.bc.ca](mailto:ceis@gov.bc.ca) through CEIS (see 'Emailing Documents Through CEIS')
 - For Surrey – s.15; s.17 [@gov.bc.ca](mailto:ceis@gov.bc.ca) through CEIS (see 'Emailing Documents Through CEIS')
 6. Make a photocopy of the Notice to Resolve and provide copy to filing party.
 7. Provide information to party filing Notice to Resolve:
 - Refer to the Justice Access Centre (information on page 2 of the Notice to Resolve) and advise they need to contact them to book Needs Assessment.
 - Advise party 1 of requirement to provide copy of Notice to Resolve to party 2 (via text, email or in person). Note - this does not need to be served.
 8. Forward the file to the data entry clerk to complete the data entry.



ERP registries may wish to arrange with their local FJSD for “contact information” labels to be printed to affix on the Notice to Resolve or order a stamp (through your local admin) with the appropriate FJSD contact information to eliminate the need to write the contact information on the form for parties at the time of filing.



To comply with section R. 26 and allow adequate time for the search results to be returned, the guardianship record check documents (*Consent for Child Protection Record Check* and *Request for Protection Order Registry Search*) may be filed at the time of filing the Notice to Resolve where guardianship is identified as one of the issues. Data Entry Clerk should process these record check documents so long as there is a Notice to Resolve on the file. Clerks should ensure a Notice to Resolve is on file before filing or processing these documents.

Clerk

1. Completes the data entry:
 - Enter party addresses
 - Double check spelling of names/emails entered at counter.



Once the notice to resolve has been processed, no further action is required by the registry as the party(s) must participate in the Early Resolution Process with Family Justice Services Division.

File Summary Sheets (Early Resolution Registries)

Until an Application About a Family Law Matter is filed, the only action required by the registry is to process any File Summary Sheets that may have been submitted. These will be emailed daily by FJSD/ JAC.

Procedures

Each morning, check the email inbox and process any File Summary Sheets received:

- (a) Ensure the parenting education program (Parenting After Separation; PAS) is complete or exempt:
 - If the box has not been checked, look in CEIS/ file to ensure PAS has been completed within the last two year and filed or the party was exempted.
 - If there is no record (completion or exemption) of PAS in CEIS or on the file, the party's Application about a Family Law Matter or Reply to an Application about a Family Law Matter (as applicable) should not be accepted for filing, the registry must advise the party to provide a copy of the certificate or exemption to proceed.
- (b) Check File Summary Sheet to determine if any parties require an interpreter. Update CEIS if interpreter requirements identified.
- (c) File (Stamp) the File Summary Sheet
- (d) Scan the File Summary Sheet into CEIS and enter comment in CEIS that PAS is complete.
- (e) Ensure the Family ID has been entered as external agency FIS2 in CEIS (top right corner of File Summary Sheet).

See CEIS instructions for more information on entering FIS2 numbers

- (f) Upload document to CEIS.
- (g) Print/Place copy on backer (prongs) on file.



It is the party's responsibility to file the PAS completion certificate or exemption with the court registry. When the application or reply are filed, the registry **must** check to confirm that the PAS certificate or exemption was filed and that this has been completed within that last two years. If the certificate/exemption has not been filed or is out-of-date the registry must advise the party, they must provide a copy of the certificate or exemption to proceed.

File Summary Sheet Addendums

If any addendum to the File Summary sheet is filed, the same process outlined above applies. It is not necessary to associate it to the original File Summary Sheet.

Application About a Family Law Matter

Background

FLA s. 193

PCFR 24

FLA s. 149, 165

A party must file an application about a family law matter for:

- a new order about a family law matter
- an order to change or cancel all or part of an existing final order about a family law matter
- an order to set aside or replace all or part of an agreement about a family law matter

Family Law Matters include:

- Orders about parenting arrangements, including parental responsibilities, and parenting time
- Child support
- Contact with a child
- Guardianship of a child
- Spousal support

A party may not apply in provincial court to determine parentage of a child separate from a claim for support for that child (FLA s. 193 (2)). The judge may determine parentage while resolving the application for support.

A party may also submit an application to enforce or appeal a Court Order made on the original application. **See Appeal or Application About Enforcement.**

Applications for different types of relief can be filed in different court locations, unless an order has already been made for that type of claim in a particular location, in which case the application must be filed in the same location where the order was made. If there is no existing file with the same parties, and the matter involves a child(ren), then they must file in the registry closest to where the child(ren) lives most of the time and if the case does not involve child related issues they must file at the registry closest to where the person who first files a document lives.

Article 16 Hague Convention

If the court registry receives an application, or correspondence from a parent in another jurisdiction, that relates to disputed custody of children and that refers to or cites:

- the 'Hague Convention'; or
- Article 16;

Please refer to **Part 28 Hague Convention Protocol** of the **Supreme Court Family Manual** for the procedures for court registry staff.

PCFR r. 25(2) and PCFR 26

If a party is applying for an order about being appointed as a guardian under s. 51 of the *FLA* they must also complete:

- Consent for Child Protection Record Check
- Request (provided by the registry) to search the protection order registry

And attach the search results, along with their criminal record check to their Guardianship Affidavit

For detailed procedures, see S. 51 Guardianship Applications.

PCFR r. 25(1)(a)

If a party is applying to change or cancel all or part of an existing final order about a family law matter or to set aside or replace all or part of an existing agreement about a family law matter they must also attach a copy of that written agreement or order

PCFR r. 25(1)(b)(c)

If a party is applying for child support or spousal support, they must also file a Financial Statement (Form 4)(PFA 713) at the same time they file the Application About a Family Law Matter if required by the PCFR. If the applicant is unwilling or unable to file the Financial Statement at that time they may file an Application for Case Management Order Without Notice or Attendance (Form 11) (PFA 718) to request permission from a Judge to file at a later date.

For detailed procedures, see **Case Management Orders**

FLA s. 213
FMEA s. 14(1)(b)
Small Claims Act s. 3(1)(a)
PCFR 140, PCFR 141, PCFR 142,
COEA s. 3(2)(b)

If a party fails to submit the necessary financial information, the judge may order the party to pay an amount up to \$5,000. This money will go to the spouse, parent, or child on whose behalf the request was made. The payment cheque should be made out to the person who will benefit, and should be paid directly, rather than paid to the court in trust, unless the judge orders otherwise. For detailed procedures, see **Court Order and Protection Order.**

If a party fails to comply with an order to pay such an amount, the FMEP will take enforcement action if the Director of Maintenance Enforcement is acting on behalf of that party. Otherwise, it is necessary for the party to do one of the following:

- enforce through the Small Claims on basis that the order constitutes a debt, specifying on the claim that it is for failure to comply with an order of the court. All Small Claims filing fees will apply.
- File an Application for Garnishment for Garnishment, Summons or Warrant (Form 30)(PFA 749) for a garnishing order, a warrant for the arrest of the debtor, or summons to a default hearing

Non-compliance with the rules
PCFR 147

A failure to comply with the rules is treated like an irregularity, however if a party does not comply with the rules or an order made by a judge or family justice manager, a judge may:

- Disregard a document filed in court of the proceeding
- Change or cancel an order
- Order a court appearance be cancelled or adjourned, or to continue as if the party was not present - whether they are present or not
- Require the party meet a requirement by a specific date
- Require the party pay
 - Reasonable expenses incurred by another person that resulted from the non-compliance
 - An amount not exceeding \$5,000 for the benefit of any other person, or a spouse or child whose interests were affected by the actions, or
 - A fine not exceeding \$5,000
- Make any order or give any directions the judge considers necessary and advisable in the circumstances including making an order to dismiss or grant the application.

If a party fails to comply with an order to pay such an amount, the person to whom the amount is owed may enforce the order following the same processes noted above.

PCFR 27(1)

When a party submits an Application About a Family Law Matter to the court registry, that party is responsible for having the other party(ies) personally served with

- a filed copy of the application and any attachments
- instructions in the form provided by the registry about how to file a reply and how to obtain the Reply to an Application About a Family Law Matter (Form 6)(PFA715)
- If the applicant filed financial information and any applicable documentation, a filed copy of each of these documents must also be served.

These documents must be served directly on the other party(ies) by an adult who is not a party and who is at least 19 years of age. A judge may also grant permission to use another method of service. For detailed procedures, see **Service**.

In accordance with FMEA 7(2), if the application is to change a support order that is filed with FMEP, the party must serve a copy of the application on the Director of Maintenance Enforcement (by mail)



The court registry will supply the applicant with a blank certificate of service (Form 7)(PFA714).

PCFR 27(2)

If a certificate of service is required, the adult who served the application about a family law matter and any additional documents must complete the certificate of service and provide it to the applicant.

PCFR 27(3)

If a reply is not filed within 30 days of service of the application about a family law matter the applicant must file the certificate of service

PCFR 37 and PCFR 38

A first appearance date is not set until the respondent files a reply regarding contested issues, or until more than 30 days elapse since the application was served on the respondent and the applicant requests that a family management conference be scheduled.

Notice of Intention to Proceed **PCFR 42**

If more than a year has passed where a party has filed an Application About a Family Law Matter and there has been no final order and over the course of one year there has been no

action taken under the rules the next step to refresh the process will be for one of the parties to file a Notice of Intention to Proceed.

See Notice of Intention to Proceed for detailed procedures.

Procedures in Early Resolution Registries

After a party meets the applicable early resolution requirements (or has been exempt) and the File Summary Sheet has been entered, the party may complete the Application About a Family Law Matter (Form 3) and submit it for filing at the registry.

Clerk

1. Check CEIS to confirm that the File Summary Sheet received and scanned in:
 - a) If no, check mailbox to ensure it is not awaiting processing.
 - i. If the File Summary Sheet is in the mailbox, process it at the counter and proceed to step 1(b).
 - ii. If the File Summary Sheet is not awaiting processing, ensure a Notice to Resolve was filed.
 - If a Notice to Resolve has been filed but there is no File Summary Sheet, refer the party back to the JAC as per the instructions on page 2 of the Notice to Resolve (a copy of the Notice to Resolve may be given to the filing party).
 - If a Notice to Resolve **has not** been filed, advise them of the necessity to complete the Notice to Resolve.
 - b) If yes, check for completeness of the application and that all relevant schedules are attached (as per the issues):
 - Name(s)
 - Counsel (if applicable)
 - Email addresses
 - Contact information
 - Issues
 - Child(ren)'s names and date(s) of birth / details
2. File the application.
3. Provide party with a copy of their filed application, together with a copy of the ERP - Instructions for Filing a Reply information sheet, and Certificate of Service (Form 7).
4. Provide party with information regarding service:
 - Document must be personally served on the other party in accordance with PCFR 27.
 - Reply period is 30 days.
 - Refer party to instructions on the Application About a Family Law Matter regarding what to expect if a reply is filed, or if the party does not file a reply within 30 days being served.
 - In accordance with FMEA 7(2), if the application is to change a support order that is filed with FMEP, the party must serve a copy of the application on the Director of Maintenance Enforcement (by mail).

5. Refer to data entry clerk for entry and scanning into CEIS.

Data Entry Clerk

6. Check and update contact information.
7. Scan document into CEIS.
8. Place documents in file, file can be filed.

Notice of Participation

FLA 208(2)(b) and 209(1)(b)

Background

If a party indicates, in under Schedule 7 of the Application About a Family Law Matter, that the child(ren) is a Nisga'a or Treaty First Nation child(ren) they must serve the Nisga'a Lisims Government or the Treaty First Nation to which the child belongs with notice of their application per s. 208 or 209 of the *Family Law Act*. The Nisga'a Lisims Government or Treaty First Nation may file a Notice of Participation (PFA 747)

The Nisga'a Lisims Government or Treaty First Nation has standing in a case about guardianship of a Nisga'a or Treaty First Nation child or children.

Procedure

The Registry

1. Receives a Notice of Participation
 - a. File stamps, enters and scans into CEIS

Once this document has been filed with the courts the **court registry is required to serve/provide the Nisga'a Lisims Government or Treaty First Nation with copies of any court documents**, including any application and supporting documents, as you would the other party, unless otherwise ordered by the court.

Procedures in non-Early Resolution Registries

1. Court registry receives Application About a Family Law Matter

A party submits:

- *Application About a Family Law Matter* (Form 3)(PFA 712)

If party is applying for:

- An order about an existing order or written agreement the party must attach a copy of the order or existing agreement
- Child Support the party must also submit a completed Financial Statement (Form 4) (PFA 713) and any applicable financial documentation described in the Financial Statement or required under the Child Support Guidelines, or an agreement as to income:
- Spousal support the party must submit a Financial Statement (Form 4), or an agreement as to income.
- Guardianship the party must file a consent for child protection record check and request in the form provided by the registry, to search the protection order registry and certify on the application that the party has initiated a criminal record check **see s. 51 Guardianship Applications.**

The clerk:

- Check for completeness of application and that all relevant schedules are attached (as per the issues):
 - Name(s)
 - Email addresses
 - Contact information
 - Issues
 - Child(ren)'s names and date(s) of birth/details
- Files the application
- Provides party with a copy of their filed application including any attachments, Financial Statement, or agreement to income if applicable and any other copies provided
- Provides party with a copy of the Instructions for filing a Reply information sheet (produced by the registry) and Certificate of Service (Form 7)(PFA 714)

Provides party with information:

- any pre court requirements depending on your registry designation
 - in a Family Justice Registry refer to Family Justice or Justice Access Centre and advise they need to contact them to book needs assessment and information to participate and complete a parenting education program see Family Justice Registry Requirements

- in a Parenting Education Registry give party information to participate and complete a parenting education program see Parenting Education Requirements
- Regarding service: application and any applicable additional documents must be personally served on the other party
- Reply period is 30 days
- Refer party to instructions on the Application About a Family Law matter regarding what to expect if a reply is filed, or if the party does not file a reply within 30 days of being served, must file a certificate of service
- In accordance with FMEA 7(2), if the application is to change, cancel, set aside or replace an order or written agreement that is filed with FMEP, the party must serve a copy of the application on the Director of Maintenance Enforcement (by mail)

Clerk

- Opens file if none exists or adds to existing file and enters the document(s) in CEIS
- Scan documents into CEIS
- In a Family Justice Registry emails the Application About a Family Law Matter to the Family Justice/Justice Access Centre, see Emailing documents through CEIS
- Documents can be placed in file and file can be filed

FMEA 7(2)

On making an application for variation of a maintenance order or written agreement that is filed with the FMEP, the party applying for variation must serve a copy of the Application on the FMEP.

If the maintenance recipient has assigned their maintenance rights to the FMP (Minister under the Employment and Assistance Act and the Employment and Assistance for Persons with Disabilities Act), and the payor wants to change or cancel a maintenance order, the payor must serve the Family Maintenance Worker on behalf of the maintenance recipient. Documents to be served are a filed copy of the Application and filed copies of any required financial information. The Family Maintenance Worker will file a Reply on behalf of the maintenance recipient.

FLA s. 213

If a party fails to submit the necessary financial information, the judge may order the party to pay an amount up to \$5,000. This money will go to the spouse, parent, or child on whose behalf the request was made.

FLA s. 214, 215

If a party wishes to change, suspend or terminate a written agreement, the party may apply to the court using an Application About a Family Law Matter. See **Application About A Family Law Matter** for detailed procedures.) If both parties consent to the change, they can also file a new agreement.

PCFR r. 7

A party must file an application to change or cancel an order in the court registry where the order was made or transferred to. However, a party may apply to transfer the file to another registry for hearing. See **Transferring Files to Other Locations** for detailed business procedures.

PCFR 37, 38, 39 and 40

A family management conference is not set until the other party(ies) files a reply regarding contested issues, or until more than 30 days elapse since the Application About a Family Law Matter was served on the other party.

- If a reply has been filed and all requirements have been met for Early Resolution, Family Justice or Parenting Education Registries the registry must provide the parties with information about the procedure for scheduling a Family Management conference.

If no reply has been filed and based on the Certificate of Service 30 days have passed since the Application About a Family Law Matter was served, if applicable the party has met the Early Resolution Requirements or in a Family Justice Registry a party has filed a Referral Request (Form 21)(PFA 741) and either a certificate of completion or notice of exemption of a parenting education program or in a Parenting Education Registry the party has filed either a certificate of completion or notice of exemption of a parenting registry must provide the parties with information about the procedure for scheduling a Family Management conference education program.

PCFR 64 and 65

If the matter is urgent or special circumstances exist, a party may wish to file an application without notice by filing an Application for Case Management Order Without Notice or Attendance (Form 11) (PFA 718). A judge may hear the matter immediately without notice to the other party and may make an order (usually an interim order only).

PCFR 64

If the party does not wish to file an application without notice, yet there is still some urgency and they would like to give less notice than the Rules require, the applicant should file an Application for Case Management Order (Form 10) (PFA 717) the order be made on short notice. This Application for Case Management order should be served on the other party along with the application.

If an applicant is granted an interim order, and the other party subsequently wishes to have the order changed, the other party must file an Application for Case Management Order



A party **cannot** apply to change or cancel a Supreme Court order in the Provincial Court.

S. 51 Guardianship Applications

Background

Section 51 (2) of the Family Law Act (FLA) says that an applicant for guardianship of a child under the FLA must provide evidence to the court respecting the best interests of the child in accordance with the applicable Provincial Court Family Rules.

The section was created as a result of recommendations made by the Representative for Children and Youth (RCY) that any non-guardian (which includes non-guardian parents) applying for an order for guardianship of a child, including applications made by consent, is required to provide an affidavit which includes:

- The person's plan for the child's care and upbringing
- A criminal record check
- Information about the person's involvement in any family, child protection or criminal cases;
- A report from the Ministry of Children and Family Development (MCFD) indicating whether the person has been the subject of a child protection investigation or received other services from MCFD; and
- a search of the Protection Order Registry (POR) to determine if there any orders involving the applicant.

Rules 25, 26, 50, 51, 52, 121 of the Provincial Court Family Rules set out the rules governing guardianship applications.

If there is an existing guardianship order regarding a child, then any subsequent application seeking a change to the guardianship of that child is treated as an application under Rule 24 for a change or cancellation of an existing final order **about a family law matter or to set aside or replace all or part of an agreement about a family law matter**. The application may be made by an applicant who was not a party to the existing order (such as a grandparent or other family member). Practice Direction FAM 05, Guardianship Applications When There is an Existing Order provides clarification when there is an existing order in place, including access to the file.

If there is no existing guardianship order regarding a child but there is an ongoing court matter for the family, a non-party wishing to apply for guardianship may choose to open a file with the new application or file the application on the existing court file. If they file their application on the existing court file, they are not automatically a party to the action and do not have access to

the court file, including their own documents once filed. If they wish to be added as a party, they must make an application under Rule 174(1)(d) seeking authorization from a judge.

All applicants for guardianship must complete a Consent for Child Protection Record Check (Consent) and their identity must be verified either by a lawyer or by registry staff. Applicants must also complete and provide a Protection Order Registry Search (Search) form. Both of these forms are to be filed at the Court Registry along with an Application About a Family Law Matter or Application for a Family Law Matter Consent Order.

Applicants must also obtain a criminal record check through their local police department to later attach to their affidavit in support of the guardianship application.

Registry staff will then forward the forms to the MCFD and POR. After performing checks of the applicant, MCFD and POR will fax back to the registry search results. The applicant can return as instructed by the registry to obtain their search results. Unless current wait times would suggest otherwise, the usual standard is to have the applicant to return in seven days. One copy of the results remains on the court file and one copy is provided to the applicant, upon verification of identity. For detailed information and resources see Appendix C BC Family Law Act Transition Guide.

The applicant will attach their copy of the results as exhibits to the Guardianship Affidavit (Form 5) (PFA 733) in support of their guardianship application. The Criminal Record check is attached to the Affidavit as an exhibit. Registry staff should accept Affidavits for filing even if they do not have all of their Exhibits attached. The applicant can file further Affidavits if they wish to attach additional results.

The Affidavit must be sworn. This can be done by a lawyer or by court registry staff. The Affidavit can then be filed at the court registry. This Affidavit should be filed before the hearing date, but it is up to the applicant to ensure that this happens. Staff should not be waiting for an Affidavit to be filed to schedule a date. Although it is up to the Applicant to comply with service rules, it may be useful to know that Rule 177 apply to service of the Application for Guardianship and rule 176 applies to the service of the Form 5 Affidavit. The Affidavit should be served at least 7 days before the hearing of the application and 7 days before the date of the trial prep conference, if a trial preparation conference is scheduled. A hearing will be scheduled only after any applicable reply times, and Early Resolution, Family Justice or Parenting Education requirements have been complied with.

The record checks **must be dated within 60 days** before the date that the record check is filed as exhibits to the Guardianship Affidavit



- The Guardianship Affidavit must be sworn or affirmed no more than 7 days before it is filed to ensure the evidence contained in the affidavit is current
- The Guardianship Affidavit must be filed

Interim orders for Guardianship **PCFR 50 and 51**

A judge or family justice manager at a family management conference may make interim order about guardianship of a child. They may make an interim order for guardianship without a Guardianship Affidavit if the judge or family justice manager is satisfied that it is in the best interests of the child that an interim order for guardianship be made before the affidavit is filed.



- An interim order for guardianship unless renewed by a judge or family justice manager, may not exceed a term of 90 days after the order is made and will expire 90 days after the date the order is made if no term is specified

Consent Orders **PCFR 52**

A judge or family justice manager at a family management conference may make an order with consent of the parties for guardianship of a child

A family justice manager may **not** make a final order about guardianship of a child

Consent Orders in Provincial Court

The applicant may attempt to apply for Guardianship by Consent and not be required to attend at a Hearing. To do this, they must submit the following documents to the provincial Court Registry for filing:

- Application for a Family Law Matter Consent Order (Form 17)(PFA 723)
- Draft Consent Order (Form 18) (PFA 739)
- Guardianship Affidavit (Form 5) (PFA 744)
- MCFD Consent for Child Protection Record Check (Form 5 in regulations)
- Request for Protection Order Registry Search form.

They then follow the rest of the steps detailed for this process. A judge will determine whether to grant the Application for Guardianship without requiring a hearing. If a judge determines that a hearing will be required, registry staff should schedule the hearing as they normally would.

Stand-By Guardianship or Appointment of Guardian in Case of Death

Sections 53 and 55 of the FLA allow a child's guardian to appoint a person to become the child's guardian upon their death or incapacity. The party will need to draft their own form based on the prescribed form 2 in the Family Law Act Regulation. This form is not a court form and was not intended to be filed at the court registry. Parties should be strongly discouraged from filing this form; however, if they insist then the registry should file it.

The appointment of a standby guardian is most like an appointment of guardian in a will. Just like a will, it grants authority without the need for judicial approval. Also, like an appointment of a guardian in a will, the authority of the guardian only begins if he or she accepts the authority. That is usually evidenced by taking action as the guardian. Once that is done, the guardian has the authority granted by the document. If someone disagrees that the document is legitimate or in the best interests of the subject children, then they may request that a court revoke guardianship and appoint a different guardian using the same or similar process to revoke guardianship regardless of how it was obtained.

Procedures

1. S. 51



ERP Registries

To comply with Rule 26 and allow adequate time for the search results to be returned, the guardianship record check documents (*Consent for Child Protection Record Check* and *Request for Protection Order Registry Search*) may be filed at the time of filing the Notice to Resolve where guardianship is identified as one of the issues.

Data Entry Clerk should process these record check documents so long as there is a Notice to Resolve on the file. Clerks should ensure a Notice to Resolve is on file before filing or processing these documents.

Guardianship Application Process

1. Applicant comes to counter wishing to file a S. 51 guardianship application and files Application About a Family Law Matter or if there is an existing guardianship order regarding the child they would file the Application About a Family Law Matter with the existing order attached to the MCFD Consent form (Form 5 in regulations), and the Request for Protection Order Registry Search form.
 - a. Registry checks to see if there is an existing guardianship order regarding the child.
 - b. If there is no existing order, the registry checks to see if there is an existing file.
 - c. If there is no existing file, clerk opens new file.
 - d. If there is an existing file without a guardianship order, but the applicant is not a party, the registry staff seeks the direction of the party regarding whether to open a new file or file the application on the existing file.
 - e. Registry staff checks ID of person filing Consent for Child Protection Record Check and writes 'ID checked' under the ID number on the form (Section 1 of Form). If this form is being filed by a representative for the applicant, registry staff check to ensure that the sworn declaration was completed. ID does not need to be checked or recorded for Request for Protection Order Registry Search.
 - f. Registry confirms that correct court file number and location and court level are recorded on forms (Section 3 on Consent Form and top right-hand corner of POR Request form).
 - g. Registry files and date stamps documents.
 - h. Registry informs applicant they can return in one week to collect their records.

- i. Registry fills out bottom of Request for Protection Order Registry Search form.
 - j. Registry scans Consent and Request form and enters all documents in CEIS.
2. Registry faxes Consent for Child Protection Record Check form to MCFD.
 - a. Registry records the fax number of the registry on the bottom of the form.
 - b. Registry faxes form to MCFD 250 387-7756. This is the Vancouver Island Centralized Services Hub.
 - c. Prints off fax confirmation page and attaches that to Consent form.
 - d. Registry places Consent form back in file.
3. Registry sends Request for Protection Order Registry Search form to POR directly from CEIS via email distribution. Refer to **CEISmail instructions.**
4. Registry receives the completed search results back from POR and MCFD.
 - a. Registry receives search results either by fax or email, makes one copy of each, date stamps the file copy and places the date stamped version in the court file and holds the other copy for pick up.
 - b. Registry scans the Results and enters the documents in CEIS.
 - c. If registry receives search results back via email
 - i. From OUTLOOK INBOX folder, delete the email with attachment sent to s.15; s.17 **@gov.bc.ca.**
 - ii. From OUTLOOK DELETED ITEMS folder, delete the with attachment sent to s.15; s.17 **@gov.bc.ca.**
5. The applicant returns to get their search results.
 - a. Registry follows normal procedures with regards to parties/lawyers accessing family court files (check ID etc)
 - b. Registry pull file and give applicant their search results ensuring original date stamped copy remains in the court file.
 - c. Registry makes a notation on court copies of the Record Check Result forms "Applicant picked up results on ____date".
6. The applicant files their Guardianship Affidavit (Form 7)(PFA 714) with records attached (including a Criminal Record check provided by the police) as exhibits. The applicant may need to get the Affidavit sworn at the registry if it is not sworn already. The Affidavit should be filed even if it is missing exhibits. The applicant can file further Affidavits if they wish to attach additional results.
7. After the time limit to file a reply has passed as well as any Family Justice or Parenting Education registry requirements have been complied with (where applicable), the matter is scheduled for a Family Management Conference. This may occur before the Guardianship Affidavit (Form 5)(PFA 733) is filed by the applicant.



The Guardianship Affidavit **must be sworn no more than 7 days** before the date the affidavit is filed

The record checks **must be dated within 60 days** before the date that the record check is filed

An **interim order** for guardianship unless **renewed by a judge or family justice manager, may** not exceed a term of 90 days after the order is made and will expire 90 days after the date the order is made if no term is specified

2. S.51 Guardianship Application - Desk Order Process

1. Applicant comes to counter wishing to file a guardianship application by desk order (consent) and files:
 - i. Application for a Family Law Matter Consent Order (Form 17)(PFA 723) and copy of any existing orders or agreements
 - ii. Draft Consent Order (Form 18)(PFA 739)
 - iii. MCFD Consent for Child Protection Record Check (Form 5 in regulations)
 - iv. Request for Protection Order Registry Search form
2. Registry checks to see if there is an existing guardianship order regarding the child.
3. If there is no existing order, the registry checks to see if there is an existing file.
4. If there is no existing file, clerk opens new file.
5. If there is an existing file without a guardianship order, but the applicant is not a party, the registry staff seeks the direction of the party regarding whether to open a new file or file the application on the existing file.
6. Registry staff checks photo ID of person filing Consent for Child Protection Record Check and writes 'ID checked' under the ID number on the form (Section 1 of form). If this form is being filed by a representative for the applicant, registry staff check to ensure that the sworn declaration was completed. ID does not need to be checked for Request for Protection Order Registry Search.
7. Registry confirms that correct court file number and location and court level are recorded on forms (Section 3 on Consent form).
8. Registry files and date stamps documents.
9. Registry informs applicant they can return in one week to collect their records.
10. Registry fills out bottom of Request for Protection Order Registry Search form.
11. Registry scans the Request and the Consent form and enters documents in CEIS.
12. Registry faxes Consent for Child Protection Record Check form to MCFD.
 - i. Registry records fax number of the registry on the bottom of the form b. Registry faxes form to MCFD (250 387-7756). This is the Vancouver Island Centralized Services Hub.
 - ii. Prints off fax confirmation page and attaches that to Consent form.
 - iii. Registry places Consent form back in file.
13. Registry sends Request for Protection Order Registry Search form to POR directly from CEIS via email distribution. Refer to **CEISmail instructions**.
14. Registry follows desk order procedures and sends application for desk order consideration by a judge
15. Registry will wait for decision to come back from judge and then follow the appropriate steps in desk order process:
 - o Judge may make an interim order for guardianship
 - o Judge may adjourn to a future court appearance
16. Registry receives the completed checks back from POR and MCFD.
 - i. Once checks are faxed back the registry, makes one copy of each, date stamps the file copy and places the date stamped version in the court file and holds the other copy for pick up.

- ii. Registry scans and enters the documents in CEIS.
17. The applicant returns to get their search results.
- i. Registry follows normal procedures with regards to parties/lawyers accessing family court files (check ID etc.).
 - ii. Registry pull file and give applicant their search results ensuring original date stamped copy remains in the court file.
 - iii. Registry notes on court copies of Record Check Result forms that applicant has picked up results on ____ date.
18. The applicant files the Guardianship Affidavit (Form 5)(PFA 733) with records (including a Criminal Record check provided by the police) attached as exhibits. The applicant may need to get the Affidavit sworn if it is not sworn already. The Affidavit should be filed even if it is missing exhibits. The applicant can file further Affidavits if they wish to attach additional results.

Resources

MCFD Centralized Hub Contact:

Phone: 250 356-6058

Email: CSH.GeneralEnquiries@gov.bc.ca

Reply to an Application About a Family Law Matter

Background

PCFR 28(1)(2)

After an Application About a Family Law Matter is filed by a party and served on the other party, if the other party chooses to respond they must file a *Reply to an Application About a Family Law Matter* (with a Counter Application if desired) and if the application is about child support or spousal support, file a Financial Statement (Form 4)(PFA 713) within thirty days of being served.

PCFR 28(3)

If an Application About a Family Law Matter was filed in an Early Resolution Registry a party must:

- Meet the early resolution requirements, described in rule 11 unless being granted an exemption, before filing their reply
 - Participate in a needs assessment
 - Complete a parenting education program
 - Participate in at least one consensual dispute resolution

PCFR 27 In addition to the Application about a Family Law Matter being personally served on the other party they must also be provided with Instructions in the form provided by the registry. This gives the other party information about

- How to file a reply
- How to obtain a Reply to An Application About a Family Law Matter (with Counter Application) for filing a reply

If a reply is not filed within 30 days of service of an Application About a Family Law Matter, the party applying for an order about a family law matter must file a Certificate of Service (Form 7)(PFA717).

The Reply to An Application About a Family Law Matter enables the parties and the court to know, *in advance* of any court appearance, whether the case is contested, and which matters are at issue in each case.

PCFR 38 and **PCFR 39**

A court date is not set until the Reply has been filed or until the applicant requests a family management conference (if the other party has not filed a Reply and more than 30 days have elapsed since the Application was served). In locations with Family Justice Registries, a Referral Request must also be filed before the first appearance can be scheduled.

PCFR 28 and **PCFR 62**

If the other party wants to file a reply later than 30 days after being served, and a certificate of service has been filed, the other party must file an Application for a Case Management Order Without Notice or Attendance (Form 11) (PFA 718) to request permission from the court to waive or modify the time to file a reply. If an order has already been made, the other party must also file an Application for Case Management Order (Form 10)(PFA 717) to change, suspend or cancel an order made in their absence. If a family management conference has already been set, it should not be rescheduled for a later date, just because the Reply was filed late.

PCFR 31

A party who fails to file a Reply within 30 days is not entitled to receive notice of any part of the proceedings including any court appearance and a judge or family justice manager may make orders in their absence.

PCFR 29

In the Reply to An Application About A Family Law Matter, the other party can:

- Agree with one or more of the orders applied for
- Disagree with one or more of the orders applied for
- Include a counter application in accordance with Rule 30

PCFR 28

- If the application relates to child or spousal support, or extraordinary expenses the other party must file with the Reply a completed Financial Statement and applicable financial documents, or an agreement as to income. If the reply has been filed in an early resolution registry a party must meet the early resolution requirements
- file the materials referred to in Rule 11 (a) (b) as applicable

PCFR 30

A party may include a counter application to apply for an order about a different family law matter that was not included in the other party's application. If a party's counter application is about

- An existing order or agreement (attach a copy of that order or agreement)
- Child support (attach a Financial Statement and any attachments required, or an agreement as to income)
- Appointment as a guardian (attach a consent for child protection record check and a request in the form provided by the registry to search the protection order registry and certify on the application that the party has initiated a criminal record check)

PCFR 33

The registry must serve a copy of the Reply to an Application About a Family Law Matter (including a Reply with Counter Application) and any accompanying documents on the applicant within 21 days after it has been filed even if the *Reply* is filed after the 30-day time deadline. The registry may email this if there is an email address for service on file. If no email address for service on file, the registry should mail a copy of the *reply* to the applicant using regular mail. This means that it must be mailed within seven days of being filed, since documents are considered to be served 14 days after mailing. The *reply* may be faxed if the applicants address for service includes a fax number. The registry will enclose a copy of the other party's *Financial Statement*, if one has been filed and any other attachments or documents filed.



If the other party is granted permission by the court to file the *Financial Statement* later than the Reply, it is the other party's responsibility to serve the *Financial Statement* on the applicant, and this should be done as soon as possible.

If a Reply without an application (counter application) is filed by a party and they subsequently decide they want to make a counter application, they should amend their Reply to an Application About A Family Law Matter to include the counter application. The registry will send a copy of the amended reply with Counter application to the applicant.

PCFR 34

If the other party's *reply* includes a counter application, the applicant must file a *Reply* to the counter application, in the same registry where the initiating *Application* was filed, within 30 days of being served. The applicant must also serve a filed copy of his or her *Reply* on the other party. If the counter application relates to child or spousal support, the applicant must file a *Financial Statement* and applicable financial documents along with the *reply*, unless they have already been filed.

If the other party wishes to reply to an application after an order has already been made, the only available option is to file an Application for Case Management Order requesting permission to file a late reply and to set aside the order made in their absence.

Procedures in-Early Resolution Registries

Registry Counter:

1. Before filing the Reply to an Application About a Family Law Matter (Form 3), check CEIS to confirm that a File Summary Sheet has been received from FJSD/JAC, for the other party, or File Summary Sheet Addendum, and if necessary, check mailbox.
 - c) If the party replying has not engaged with FJSD, **do not file the reply**.
Provide the party with a copy of the previously filed Notice to Resolve and direct the party to attend the JAC.
If the reply has been received in the mail, and there has been no engagement with FJSD by the other party, return the reply together with a rejection document advising them of the requirement to comply with early resolution requirements.'
 - d) If the other Party has participated with the requirements (Needs Assessment and PAS), proceed to step 2.
2. Review the issues on the claim to ensure that the relevant schedules have been attached. If the reply includes a counterclaim, a Financial Statement (Form 4) must also be filed, if any of the following issues are being claimed:
 - Child support
 - Spousal support
 - Special/ extraordinary expenses.
3. Advise party that they will receive scheduling instructions within seven days.
4. Return filed copy to the client.
5. Refer to data entry clerk for processing.

Data Entry Clerk:

6. Enter reply (and counter application, if applicable) into CEIS.
7. Scan document (and counter application, if applicable) into CEIS.
8. Update party names and contact information.
9. If the reply includes a counter application, enter document (issue #) (and Financial Statement if applicable).

10. Send reply, counter application and financial statement (if applicable) by email to the party who filed the Application About a Family Law Matter, and counsel (if applicable).
11. Send Scheduling Instructions (produced in CEIS; PFA 728) to all parties, including the JCMs via email through CEIS (see “Emailing Documents” in CEISmail).
12. If no email address available, produce scheduling instructions, mail to parties and provide a copy to the JCM's.
13. Send a follow up email to JCM to advise which document #s are to be scheduled:
 - Victoria - copy JCM at Vic.Scheduling@provincialcourt.bc.ca
 - Surrey - copy JCM at SurreyFMCScheduling@provincialcourt.bc.ca

The subject line of the email should read:

“Reply Filed, FMC to be set, file #, document # and party names.”



If a party contacts the registry indicating they **do not have access to email**

- Confirm the party's contact information in CEIS is correct and matches the pleadings;
- Transfer the call to the JCM office (Advise the person to leave a message with the JCM office if the call goes to voice mail); and
- Send an email to the JCM advising that the party contacted the registry indicating they **do not have email** and the contact information on the pleadings (or change of address document) is confirmed to be current/correct.

Go to Notice of Family Management Conference

Procedures in non-Early Resolution Registries

1. Court registry receives Reply to an Application About a Family Law Matter

A party submits:

- Reply to an Application About a Family Law Matter (Form 6)(PFA 715)
- Review the issues on the claim to ensure that the relevant schedules have been attached. If the application included a claim for child or spousal support or special/extraordinary expenses a Financial Statement (Form 4)(PFA 713) must be filed or If the reply includes a counter application that includes a claim for child support, spousal support or special/extraordinary expenses a Financial Statement must be filed

The clerk:

- Enters reply,(and counterclaim, if applicable) and scan into CEIS

- Update party names and contact information
- If the reply includes a counter application, enter document issues and Financial Statement if applicable
- Send reply, counter application, and Financial Statement (if applicable) by email to the party and counsel (if applicable) see **emailing documents through CEIS**
- **May set a Family Management Conference if:**
- In a family justice registry
 - Party has filed a Certificate of Completion of a parenting education program or Notice of Exemption from parenting education program (Form 20)(PFA 740) and
 - Filed a Referral Request in (Form 21)(PFA 741)
- In a Parenting Education Registry
 - Party has filed a Certificate of Completion of a parenting education program or Notice of Exemption from Parenting Education Program
-



The appearance date may be scheduled later, depending on local circumstances. It need not be set when the reply is filed eg: registry is waiting for any pre court requirements to be met.

- if any other document is filed at the same time as the Reply to an Application About a Family Law Matter and *Financial Statement* (for example, an Application for Case Management Order), follow the procedures for that document and schedules the appearances for the same time unless it is urgent that the other issue be heard before the Family Management Conference
-
- emails a copy of the other party's Reply to an Application About a Family Law Matter (with Counter Application, if applicable) to the party who filed the Application About a Family Law Matter, enclosing a copy of each document filed along with the reply. If the party does not have an email address for service, mails the reply and notes the date of mailing on the court file copy.

See **Emailing documents through CEIS**

If a fax number has been provided by the recipient party in their address for service, the materials may be faxed **Go to Notice of Family Management Conference**.

Tracking Replies

Functionality has been created in CEIS which assists registries in tracking dates when a reply has been filed. The **Certificate of Service Bring Forward Dates** screen will display the files for which 30 days have passed from the date of service (which is entered when the Certificate of Service is filed) where no scheduling information has been entered. Once scheduling information has been received, the files will no longer appear on the list.

Go to **CEISmail** for detailed procedures.

Reply to Counter Application

Background

PCFR 34

A party who is replying to a counter application must file and serve on each other party within 30 days after the date that the party receives the reply with counter application

- Reply to counter application
- If applicable, a financial statement

The Reply to a Counter Application is used to:

- Agree with one or more of the orders requested in the counter application; and
- Disagree with any order requested in the counter application, state reason(s) for disagreeing, and ask that a different order be made

If the party requires more time to prepare their reply, they can ask the court for an extension of the time by filing an Application for Case Management Order without Notice or Attendance

Procedure

Court Registry receives Reply to Counter Application

A party submits:

- Reply to Counter Application (Form 8)(PFA 716)
- Ensures relevant schedules are attached

The clerk:

- Ensures the Reply to Counter Application is being filed within 30 days of receiving a Reply to an Application About a Family Law Matter
 - If it is after the 30 days advises party to file an Application for Case Management Order Without Notice or Attendance
- Files the Reply to Counter Application
- Enters Reply to a Counter Application in CEIS and scan
- Send to applicant Party who filed the Reply to Family Law Matter with Counter Application via email
- Place all documents on file

Notice of Intention to Proceed

Background

PCFR 15

The parties are required to file a Notice of Intention to Proceed and return to a needs assessment if at least a year has passed without further steps being taken since the latest of

- Filing the notice to resolve
- attendance at an assessment
- participation in consensual dispute resolution
- completion of parenting education program

This requirement, outlined in Part 2 PCFR means that if the parties pause in activity on their file and after a year decide to recommence court proceedings, they must tell the other party they are resuming the process and repeat the assessment to refresh the information and referrals and receive assistance in how to re-enter the process. Once the Notice of Intention to proceed

PCFR 42

Pursuant to rule 42 the parties are required to file a Notice of Intention to Proceed if

- a party has filed an Application About a Family Law Matter
- no final orders have been made in respect of the application
- more than one year has passed since the parties have taken any steps

This requirement also applies as outlined in Part 4 PCFR if more than one year has passed since the parties have taken any action after filing an Application About a Family Law Matter and no final orders have been made. To refresh the process, a notice of Intention to Proceed must be filed and served on the other party. Once the Certificate of Service has been filed the party(ies) may schedule a family management conference

If the last step taken by the party was:

- **Scenario A** - filing of the Notice to Resolve a Family Law Matter, participation in a needs assessment, completion of a parenting education program or participation in a consensual dispute resolution session, the case will be re-started by participating in a needs assessment. The needs assessment will help to identify the next steps and what requirements need to be met for the party to continue their case.
- **Scenario B** - filing of an Application About a Family Law Matter or another step under the rules including the filing of an Application to Obtain an Order, Application Respecting Existing Orders or Agreements or a Notice of Motion, and no final order

has been made on the application, the party's case will be re-started by attending a family management conference. At the family management conference, the judge will help to determine the appropriate next steps for their case.

If more than one year has elapsed since a step was taken on the file (including Application to Obtain an Order or Applications About an Existing Order or Written Agreement that were filed but not served or no activity on the court file), a party wishing to continue with the court proceedings should file and serve a Notice of Intention to Proceed to advise the other party that they are resuming the court process. A FMC is scheduled to determine the next steps in the process.

For example, where a party wishes to proceed on an old application (where original application was dormant for over a year), a filed Notice of Intention to Proceed must be served on the other party(ies). It is recommended that a copy of the original application be provided at the time of serving. If applicable, provide a copy of the original application. All parties should participate in the FMC. At the FMC, the judge may determine that the original application may continue to be used, or the original application should be struck and direct the party to re-start by filing a Notice to Resolve (in an early resolution registry) or Application About a Family Law Matter (in all other registries) and complete the early resolution requirements (early resolution registry) or any pre court requirements in all other registries. If applicable, the judge may address any outstanding Rule 5 or Rule 21 requirements that must be met.

A party may choose to abandon or withdraw their original Application to Obtain an Order (old form) and recommence the proceedings by filing a Notice to Resolve (in an early resolution registry) to move through the early resolution process or Application About a Family Law Matter.

There may be circumstances where proceedings were initiated with a Notice to Resolve (in an early resolution registry) and the party took no further activity for over a year (whether the original issues were resolved or not). The correct form would be the Notice of Intention to Proceed.



In an **early resolution registry**, if a party identifies new issues and wishes to proceed with filing a new Notice to Resolve, accept it for filing and process as per usual business procedures. The registry should ask if these are new issues identified. If parties indicate they are, file and process as usual.

It is possible to have more than one Notice to Resolve on file.

Procedures

Registry clerk

1. Check CEIS to determine the last action completed on the file is as indicated on the Notice of Intention to Proceed (section 3 Form 2 – see image below), and that it has been over one year.

3. The last step completed in my case, by any party, was:

Select only one of the options below and complete the required information

☐ filing of the Notice to Resolve a Family Law Matter on _____
(mm/dd/yyyy)

☐ completion of a needs assessment on _____
(mm/dd/yyyy)

☐ completion of a parenting education program on _____
(mm/dd/yyyy)

☐ completion of consensual dispute resolution on _____
(mm/dd/yyyy)

☐ filing of the Application about a Family Law Matter on _____
(mm/dd/yyyy)

☐ other (specify) _____ on _____
(mm/dd/yyyy)



To JAC

To Data Clerk

2. Follow the matrix below:

STEPS:	Scenario A (Rule 15) <i>(Early Resolution Registry)</i>	Scenario B (Rule 42) <i>(ERP and non-ERP registries)</i>
If the last step completed (over a year ago) is noted on Form 2 as ...	One of the first four items in Section 3 of Form 2: - Filing of the Notice to Resolve a Family Law Matter (Form 1) - Completion of a needs assessment - Completion of a parenting education program - Completion of consensual dispute resolution	One of the last two items in Section 3 of Form 2: - Filing of the Application about a Family Law Matter - Other
Then the following rule of PCFR applies...	Rule 15 – <u>Intention to proceed in certain cases after one year</u>	Rule 42 – <u>Intention to Proceed – family management conference</u>

And the matter will be restarted by the party(ies)...	Participating in a needs assessment to determine next steps and what requirements must be met by the party to continue their case.	Attending a family management conference where the judge will help determine the next steps.
To proceed, the filing party must file a Notice of Intention to Proceed (Form 2) and....	Provide a copy of the filed Notice of Intention to Proceed to the other party by: ○ Giving them a copy in person; ○ Sending a copy by email, text message, instant message, or mail; or ○ Having a third party (friend or other person) give them a copy.	Serve a copy of the filed Notice of Intention to Proceed and a copy of the original application on the other party by: ○ By leaving the documents at the party's address for service; ○ By mailing the documents by ordinary mail to the party's address for service; ○ By mailing the documents by registered mail to the party's address for service; ○ If the party's address for service include an email address, by emailing the document(s) to that email address; or ○ If the party's email address for service includes a fax number, by faxing the documents to that fax number.
The person accepting the Form 2 must	✓ Enter, scan and send the document through CEIS to the JAC (just as you would with the Notice to Resolve) at the time of filing. ✓ Refer the Form 2 to the data entry clerk for further processing and checking.	✓ Provide filing party with a blank Certificate of Service (Form 7) ✓ Advise the party that they must serve the other party with the Form 2 and file the Certificate of Service to provide proof of service. The party may also provide a copy of the original application to the other party at the time of serving the Form 2. (Note - Form 2 is not forwarded to JAC/FJC)

		✓ Refer the Form 2 to the data entry clerk for further processing and checking.
Data entry clerk will...	✓ Check and ensure data entry is complete and accurate. ✓ Ensure the Form 2 was emailed to the JAC/FJS. ✓ Place Form 2 on file to wait for a File Summary Sheet from the JAC.	✓ Fully enter document, including scanning into CEIS. ✓ Place Form 2 on file to wait for a Certificate of Service (Form 7) from the filing party
The Family Management Conference can be set when...	✓ JAC forwards a File Summary Sheet to the registry to advise that the party has completed all steps of the front-end process. ✓ The filing party files their Application for a Family Law Matter and serves the other party. ✓ The FMC can be set when a) REPLY FILED: The other party files a reply. The registry prepares and sends the Scheduling Instructions with Reply to the parties. <i>OR</i> b) NO REPLY FILED: The other party does not file a reply and 30 days have passed since the date of service noted on the filed Certificate of Service (Form E). The registry prepares and sends the Scheduling Instructions	The Certificate of Service (Form 7) is filed and... 1) REPLY TO THE ORIGINAL APPLICATION WAS FILED: If a reply to the original application was previously filed by the responding party or if a reply to the original application is filed within 30 days of the Notice of Intention being served, the registry, in an early resolution registry, a. prepares and sends the Scheduling Instructions with Reply to the parties or b. in all other registry, schedules the documents for a Family Management Conference and sends Notice of Family Management Conference to all parties and new reply if applicable <i>OR</i> c) NO REPLY TO THE ORIGINAL APPLICATION WAS FILED: If no reply (to the original application) was filed by the responding party, and after 30 days from the date of

	no Reply to the filing party.	service noted on the Certificate of Service, (ERP) the registry prepares and sends the Scheduling Instructions no Reply to the filing party (non-ERP) registry schedules new FMC and sends to party who filed Form 2.
REMINDER: ✓ (ERP) Party has the option of withdrawing the original application to obtain an order (or application respecting an existing order) and filing a Notice to Resolve to proceed through the early resolution process OR (non-ERP) in all other registries, withdraw original application and file Application About a Family Law Matter and follow procedures depending on what requirements are in the filing registry ✓ (ERP Registry) If the party withdraws their original application and proceeds with filing a Notice to Resolve, the party is not required to serve a Notice of Intention to Proceed. ✓ (ERP) A party with an existing Notice to Resolve <i>may</i> file a new Notice to Resolve if more than a year has passed since the latest ERP step was taken and they are identifying new issues.		

To Schedule a new FMC (non ERP registries) the clerk will

- File stamp, enter into CEIS, making sure to associate it to the document that is being proceeded on and scan the Notice of Intention to Proceed
- The clerk will then proceed the same way they schedule an Application About a Family Law Matter by scheduling a Notice of Family Management Conference according to local practice and sending the out to the party(ies)

Affidavit

Background

An *Affidavit* is a written statement of fact, sworn or affirmed before a Commissioner for Taking Affidavits.

Unless a rule provides otherwise, an affidavit must be in Form 45 [Affidavit General] and unless required by a rule or ordered by a judge, the use of Affidavits is optional.

PCFR 171(2)

An affidavit must

- be expressed in the first person and include the name, address and occupation of the person swearing or affirming
- state whether the person swearing or affirming the affidavit is a party or the lawyer, agent, director, officer or employee of a party
- be divided into paragraphs numbered consecutively and have page number
- have page numbers for the exhibits, if applicable

PCFR 171(3) to (6)

An affidavit is made when

- the person swearing or affirming the affidavit
 - signs the affidavit
 - if the person is unable to sign, places that person's mark on it
- the person who swears or affirms the affidavit completes and signs a statement confirming that the affidavit was sworn or affirmed in the person's presence

(4) The person swearing or affirming an Affidavit must identify each exhibit by signing a certificate placed on or attached to the exhibit

(5) Subject to sub rule (6) An Affidavit must not contain statements that would be impermissible to state in evidence at a trial

(6) An Affidavit may contain statements as to the information and belief of the person swearing or affirming, if the source of the information and belief is given

PCFR 172

A party may file an unsworn affidavit in Form 45 (PFA 762) if the person has signed the document and it is not practicable for the person to swear or affirm the contents of the document before the document is filed. If an unsworn affidavit is filed the person who made the affidavit must be available to swear or affirm that the contents of the document are true, as required by a judge or family justice manager, including at a subsequent court appearance.

PCFR 193

An Affidavit or other signed document that is being filed for evidentiary purposes, if submitting for filing electronically, must clearly identify the signatory and must be accompanied by an Electronic Filing Statement (Form 51) (PFA 768), of either the lawyer acting for a party or by a statement of that person indicating

- The original paper version of the document appears to bear an original signature of the persona identified as the signatory
- The version of the document that is being submitted for filing electronically appears to be a true copy of the original paper version

The person submitting the document electronically must keep the original document until the earliest of

- the proceeding, including any appeals, is finally disposed of
- the appeal period for the proceeding has expired, if no notice of appeal is filed within that period
- a judge orders that the original paper version be filed

if an order is made under file the original paper version promptly after that order is made.

Procedures

1. Court registry receives Affidavit

A party submits:

- Affidavit (Form 45) (PFA 762)



A party may file an unsworn affidavit if it is not practicable for the person to swear/affirm it before it is filed. If an unsworn affidavit is filed the person who made the affidavit must swear/affirm it if required by a judge or family justice manager, including at a subsequent court appearance

The clerk:

- checks document;
- if *Affidavit* is not sworn or affirmed, has person swear *Affidavit* before a Commissioner for Taking Affidavits. If the affidavit is sworn at the registry, there is no fee for swearing.
- files *Affidavit* by date-stamping.

2. Clerk files and distributes documents

The clerk:

- keeps one original and returns documents to party filing Affidavit, since party is responsible for serving it.

Go to Serving Family Court Documents Under FLA the and FMEA in this Chapter.

Written Response to Application

Background

Replying to Applications for other orders and enforcement

PCFR 86 and PCFR 137

If a party is served with an application and chooses to reply the party

- must attend court on the date and time referred to in the application for the court appearance
- may file a Written Response to Application (Form 19) (PFA 731) in reply to the application

If a party chooses to file a Written Response in reply, the party must file and serve it on each other party before the date referred to in the application for the court appearance

A party served with an application must attend court on the date and time indicated in the application. Although a written response is not necessary, a party may choose to file and serve a Written Response to Application on each party before the date of the court appearance. The written response is optional and may be used in addition to, but not in place of attending the court appearance. There is no requirement to file a certificate of service. However, it may be beneficial to have one done.

The Written Response to Application may be used if any of the following applications have been served on them:

- Application for Case Management Order
- Application About a Protection Order
- Application About Priority Parenting Matter
- Application for Order Prohibiting Relocation of a Child
- Application About Enforcement

Procedures

Registry Clerk

1. Ensure Written Response to Application is complete:
 - Name of party(ies)
 - Contact information
 - Email address
 - Counsel
 - Type of application that party is responding to
2. Check CEIS to confirm application was filed and court appearance has not passed
3. File and return copy to party
4. Advise party that they must serve the other party(ies) with filed copy before the court appearance
5. Remind the party that they are required to attend the scheduled court appearance and the written response is issued in addition to the court appearance
6. Data enter document
7. Scan document into CEIS

Certificate of Service

Background

The Certificate of Service replaces, in part, the Affidavit of Service in the PCFR. The Certificate of Service is intended to make proof of service easier for self-represented litigants who would otherwise be required to take an extra step to have an Affidavit of Service sworn or affirmed

PCFR 183

Service of a document may be proved by filing a Certificate of Service (Form 7) (PFA 714) and attaching a copy of the document served.

When the document code CSV (Certificate of Service) is entered, 2 new fields, Service Date and BF Date will appear.

Service Date: The Certificate contains the date the document(s) was served. Enter that date in this field. Press Tab.

BF Date: CEIS will then automatically calculate 30 days for the other party to file a reply and display that date in the BF Date field.

Issuing Process

If the other party files a reply, or the party files a request for hearing at least 30 days after serving the other party, registry staff must notify the party, and the other party if a reply has been filed, of the hearing or trial date.

The procedures for notifying the parties of a court appearance, serving Family Court documents, and issuing a Warrant for Arrest follow

Effective January 4, 2022:

- **FAM 11 Default Method of Attendance for Certain Court Appearances** sets out the default method for certain court appearances under the Provincial Court Family Rules, B.C. Reg. 120/2020.

Scheduling Family Management Conference (in non-ERP registries)

Procedures

Scheduling FMC if reply filed

Clerk:

- if applicable ensures any Family Justice Registry requirements have been met
 - Certificate of Completion filed or Notice of Exemption from Parenting Education Program (Form 20) (PFA 740) filed
 - Referral Request (Form 21)(PFA 741) filed, ensure that the “Family ID” number for FJSD is entered into the FIS2 field in CEIS
- If applicable, ensures Parenting Education Registry requirements have been met
 - Certificate of completion filed, or Notice of Exemption from Parenting Education Program filed
- Produce Notice of Family Management Conference in CEIS and email to parties with Information about virtual appearance (IRA)



If the Notice of Family Management Conference is sent via regular mail to any of the parties the clerk should set the date for the FMC to allow at minimum 14 clear days after the date of mailing



If the matter is adjourned by the Court to a new FMC date, the registry **must** send a new Notice of Family Management Conference and appearance details (IRA) to the parties. Unless the matter was scheduled by the JCM (PCSS Scheduling memo), then the registry will send the PCSS Scheduling memo and the IRA to the party(ies) and scan both into CEIS.

Scheduling FMC if no reply filed

Clerk:

- Checks to see if Certificate of Service (Form 7) (PFA 714) has been filed and 30 days has passed since other party was served
- If applicable ensures Family Justice Registry requirements have been met
 - Certificate of Completion or Notice of Exemption from Parenting Education Program filed
 - Referral Request filed ensure that the “Family ID” number for FJSD is entered into the FIS2 field in CEIS
- If applicable, ensures Parenting Education Registry requirements have been met
 - Certificate of completion filed, or Notice of Exemption from Parenting Education Program filed
- Produce Notice of Family Management Conference in CEIS and email to parties with Information about virtual appearance (IRA)

Go to CEImailS **Scheduling FMC - Non ERP Registry** for detailed CEIS procedures

Effective January 4, 2022:

- **FAM 11 Default Method of Attendance for Certain Court Appearances** sets out the default method for certain court appearances under the Provincial Court Family Rules, B.C. Reg. 120/2020.

Scheduling Family Management Conference (in ERP registries)

Procedures

Scheduling FMC if reply filed

Clerk

- Send Scheduling Instructions – with reply (produced in CEIS) to all parties including the JCMs via email through CEIS
- If no email address available, produce scheduling instructions -with reply mail to parties and provide a copy to the JCM's
- Send follow up email to JCM to advise which document #'s are to be scheduled:
 - Victoria – copy JCM at Vic.Scheduling@provinciacourt.bc.ca
 - Surrey – copy JCM at ^{s.15; s.17} @provinciacourt.bc.ca



Scheduling Instructions should be produced from CEIS

However, a fillable PDF version of Scheduling Instructions – No Reply (PFA 729) or with Reply (PFA 728) has been created and posted to the CSB intranet as *backup* for situations when the document will not produce properly from CEIS. If the fillable PDF version is used, the completed document must be uploaded to CEIS immediately after and distributed by way of CEIS email.

The subject line of the email should read:

“Reply filed, FMC to be set, file #, document # and party names”

NOTE - If a party contacts the registry indicating they do not have access to email, the registry should:

- Confirm the party’s contact information in CEIS is correct and matches the pleadings;
- Transfer the call to the JCM office (Advise the person to leave a message with the JCM office if the call goes to voice mail); and
- Send an email to the JCM advising that the party contacted the registry indicating they **do not have email** and the contact information on the pleadings (or change of address document) is confirmed to be current/correct.



Where the JCM has been unable to provide notice to the party(ies) of the Family Management Conference due to the lack of email address, the registry must produce the Notice of Family Management Conference and mail it along with the scheduling memo received from the JCM and the applicable IRA

Go to [CEImailS Scheduling FMC - ERP Registry](#) for detailed CEIS procedures

Adjourning a Family Management Conference

As FMC dates set by the registry are assigned without consultation of the party and/or counsel’s availability, it is anticipated that we will receive requests to adjourn the FMC date

- Counsel – If one or both parties have counsel and the adjournment is by consent, counsel may file a Consent Adjournment form by email to the applicable court registry to adjourn the FMC date at least two clear business days before the scheduled appearance.
 - Prior to filing the form, counsel will contact the registry to obtain available FMC dates and canvas those dates with all other parties or their counsel.
 - Counsel filing the form is required to confirm that they have obtained the consent of all parties or their counsel and will be responsible for providing all other parties or their counsel with a copy of the filed form with the new court date and appearance details obtained from the registry.

- Practice Direction FAM09 and the Consent Adjournment form (PFA 920) will be revised to reflect the new PCFR.
- No parties have counsel – Parties may use the Application for Case Management Order (Form 10) to request to change the appearance date:
 - The registry will write the date of the court appearance on the application and the filing party will have it served on the other party(ies)
 - If the adjournment is by consent of all parties, the filing party should indicate that in section 5 of the application and attach the draft Consent Order in Form 18 signed by all parties.
 - The judge will review the desk order application and determine if the adjournment will be granted.

Notice of Family Management Conference and Summons

Background

The Notice of Family Management Conference is used to notify parties regarding dates of Family Management Conferences, unless a judge has directed that a *Summons* must be used. If at a Family Management Conference, the matter is adjourned to another Family Management Conference the registry must send the party(ies) a new Notice of Family Management Conference and IRA.

Unlike the Notice of Family Management Conference, a Summons is only issued upon the direction of a judge. It is not routinely used to notify parties regarding a trial or hearing.

PCFR 37, PCFR 38, PCFR 39 and PCFR 40

After a Reply to an Application About a Family Law Matter has been filed by the other party (see **Reply to Application About a Family Law Matter** in this Chapter), and if applicable all pre court requirements have been met, the clerk sets a date for a Family Management Conference and serves both the party and the other party(ies) with a Notice of Family Management Conference.

If **no** Reply to an Application About a Family Law Matter is filed, the registry serves the filing party with a Notice of Family Management Conference once a date has been set but is not required to notify the other party.

PCFR 32, PCFR 148, PCFR 178 and PCFR 182

If a judge orders a Summons to be issued to a party who has failed to file a reply or who has failed to appear at a court appearance, the summons must be personally served at least 7 days before the next court date. The Summons may be served by a peace officer upon the request of the applicant.

PCFR 140 ,PCFR 144, and PCFR 178

If a Summons to a default hearing or to a committal hearing is issued to a debtor after an applicant has filed an Application for Garnishment, Summons or Warrant under the FMEA, the Summons to a Default Hearing (Form 33) (PFA 752) or Summons to a Committal Hearing (Form 34)(PFA 753) the party who applied for the summon must arrange for the personal service of the summons unless the documents are served in accordance with Rule 140 (3) or (b)

- A clerk may have the documents served personally by a peace officer
- A judge orders another method of service

Unless other wise ordered a summons must be served at least 7 days before the next court date.

See Summons – General workflow

Procedures

See Enforcement in Chapter 4 for detailed information Procedures

- **If a Notice of Family Management Conference is issued, go to Step 1. If a Summons is issued, go to Step 3.**

1. Clerk prepares Notice of Family Management Conference

The clerk prepares:

- Notice of Family Management Conference in CEIS.

2. Clerk distributes documents

The clerk:

- distributes documents as follows by email, if party(ies) have provided an email address for service, mail, or by fax if the party has included a fax number in the address for service:

Document	Applicant	Respondent	Court file
<i>Notice of Family Management Conference</i>	Copy	Copy (if respondent has filed a reply	Original

Document	Applicant	Respondent	Court file
Respondents <i>Financial Statement</i> (if any)	Copy	-	Original
Respondents financial documents, if any*	Copy	-	Copy
Reply to an Application About a Family Law Matter	Copy	-	Original



If the application is to change or cancel a maintenance order that is enrolled with the FMEP, the FMEP will also be sent a copy of the Notice of Family Management Conference.



If you request from FMEP an address of a party they have flagged as confidential, FMEP is required to contact that party and have them provide an **address for service**, so that we should never have that confidential address on our files.

Go to Serving Family Court Documents Under the FLA and FMEA in this Chapter.

If the respondent is being summoned to a default hearing or a committal hearing, go to Default Hearing or Committal Hearing, as applicable, in Chapter 4.

3. Clerk prepares Summons

If a judge has ordered that a Summons must be issued, the clerk prepares:

- Summons (Form 31) (PFA 750)

The clerk:

- presents *Summons* to judge or justice of the peace for signature, or if the judge has delegated the authority to a clerk of the court, a clerk may sign on behalf of the judge.

4. Clerk distributes documents

The clerk:

- distributes documents to the sheriff for service.



If a Judge at a Family Management Conference orders a Summons General- (Form 31) be served on the other party then the clerk prepares the Summons – General and forwards it to the Sheriffs for personal service on the other party.



The *Summons* and accompanying documents should normally be served by Sheriff, unless there appear to be substantial difficulties in effecting personal service, in which case the documents may be served by mail, or by fax if the respondent has provided a fax number as part of the address for service. It is also permissible for the applicant to arrange for personal service if they wish.

Subpoena to a Witness

Background

PCFR 118

A Subpoena is issued to compel a witness to attend court and give evidence. The witness must appear in court on the date, time, and place stated on the *Subpoena*, and must bring any records or other things the Subpoena specifies.

To issue a *Subpoena*, a party **must do all of the following**:

- complete a Subpoena (Form 23) (PFA 748);
- arrange for the *Subpoena* to be personally served on the witness at least seven days before the court date;
- provide the witness reasonable travel expenses to attend the hearing or trial.

A witness who is served with a subpoena may, with 2 days' notice to each party, apply to a judge for a Case Management Order to cancel the subpoena if the witness believes that

- their attendance should not be required
- it would be a hardship to attend the hearing or trial



A Subpoena does not have to be filed with the court registry. It may be refused or discarded, if received by mail or if a party insists on filing one. The registry may also file the *Subpoena* in the court file, applying local discretion whether to do so.

Application related to reports under Section 211 of the Family Law Act

PCFR 117

To call as a witness a person who has prepared a report under section 211 a party must:

- apply by filing an Application for Case Management Order under Rule 62,[case management orders – judge] to seek permission, that person must be served with the application and supporting documents

- To assist the trial judge's consideration of the application the party who prepared the section 211 report may
 - Attend the court appearance
 - file submissions on availability for a trial, or
 - file any other information relevant to their attendance

The party who required the report writer to attend the trial may be required to pay costs associated with that person's attendance if the trial judge determines that it was not necessary to call that person as a witness **PCFR 120(2)**

A party may call an expert witness to give opinion evidence if the following occurs:

- the party serves a written summary of the expert's evidence on all other parties **at least** 60 days before the expert is called to give evidence or
- within a shorter period if the trial judge grants permission to shorten the time requirement

PCFR 120(3)

An expert's report stating the opinions of the expert may be used only if:

- the party serves the report on all parties **at least** 60 days before the report is introduced or
- within a shorter period if the trial judge grants permission to shorten the time requirement

PCFR 120(4)

An expert report may be introduced in court without proof of the expert's signature **PCFR 120(5)**

If a party wants to cross-examine the other party's expert, 30 days before the trial date, the party must serve the other party with a notice requiring the expert to attend the trial. The party requesting the cross-examination is responsible to prepare and serve the notice.

Warrant for Arrest - party or witness

Background

A Warrant for Arrest gives a peace officer the legal authority to take the person named in the Warrant into custody.

A judge may issue a Warrant for Arrest of a party when:

PCFR 149

- A party has been served with a *Summons* and does not appear in court; or

- A party was present in court when the date for the court appearances was set

The Warrant remains in effect until one of the following:

- The party appears in court voluntarily or under the warrant
- A judge cancels the Warrant.

PCFR 119

If a witness has been served and does not obey the Subpoena, the judge may issue a Warrant for Arrest of the witness. The Warrant remains in effect until one of the following:

- The witness appears in court voluntarily or under the warrant
- A judge cancels the Warrant.

If the **Warrant for Arrest** is issued under s. 20.1 (Summons to **Committal** Hearing) FMEA, the **Offence Act** applies, see **Committal Hearing** in Chapter 4.

Procedures

1. Judge issues Warrant for Arrest

The clerk:

- prepares Warrant for Arrest (Form 32) (PFA 751) if warrant being issued for
 - a party who has been served with a Summons and does not appear in court
 - a party who was present in court when the date for the court appearance was set
- presents Warrant for Arrest to judge for signature, or a clerk of the court or justice of the peace if designated may sign on behalf of the judge.
- Prepares Warrant for Arrest After Subpoena (Form 24)(PFA 742) if warrant being issued for
 - A witness who does not obey a Subpoena served on them

2. Clerk distributes document

The clerk distributes document as follows:

Document	Police	FMEP, if necessary	Court File
Warrant for Arrest	Original and Copy	Copy	Copy

- If party or witness is arrested and is released, go to Release of a Party or Witness in this Chapter.
- If a witness is arrested and ordered to be detained in custody, go to Warrant for Committal of a Witness in this Chapter.
- If justice cancels *Warrant*, go to Warrant Cancellation in this Chapter.
-

Release of a Party or Witness

Background

PCFR 149(3)

When a party is arrested, the party is brought before a **justice** as soon as possible. The justice issues a Release from Custody requiring the party to appear in court at the date, time, and place specified.

PCFR 119(3)(5)

When a witness is arrested, the witness is brought before the trial judge who issued the warrant as soon as possible. If the witness cannot be brought before the trial judge in a timely manner, they must be brought before a different judge who may release them with a requirement to appear on a specified date or detain them until they appear before the trial judge. If the trial judge determines that the witness's evidence is still required, the judge may release the witness or detain the witness in custody until they are no longer required. The judge issues a *Release from Custody* requiring the witness to appear in court on the date, time, and place specified.



Only a witness, not a party, may be detained in custody. See Warrant for Committal of a Witness in this chapter

Procedures

If party or witness is released at this court location, go to step 1.

If party or witness is released at another location or police station, go to step 3.

1. Release is prepared at this court location

The clerk:

- prepares **Release from Custody (Form 25) (PFA 743)** if party or witness is brought before Court;
- presents prepared Release to justice for signature. (Party or witness must sign Release in presence of justice);
- notifies all other party(ies)/FMEP of next appearance date as set out in the release order
- enters new court date in CEIS.

2. Clerk distributes document

The clerk distributes document as follows:

Document	Person being released	Court file
<i>Release</i>	Copy	Original

- Notify police if applicable and **see Warrant Cancellation in this Chapter.**

3. Release is received from another location or police station

If a party has been brought before a justice at another location, or police station you may not be made aware of the release, until you receive a copy of the *Release*. Upon receipt of a *Release* from another location,

The clerk:

- enters next court appearance date recorded on the Release in CEIS ;
- notifies all other party(ies)/FMEP of next court appearance date;
- if original warrant was not returned with the Release, ensures a Warrant Cancellation form (ADM 307) has been completed.
- **See Warrant Cancellation in this Chapter.**

Warrant for Committal of a Witness

Background

If a witness has been arrested for evasion of service of a Subpoena or for failing to appear in court, a judge may either release the witness or may order that the witness be held in custody.

If a witness is to be held in custody until a future court appearance, the judge issues a Warrant for Committal of a Witness.

Procedures

1. Clerk prepares Warrant for Committal of a Witness

The clerk:

- prepares a Warrant for Committal of a Witness (**PFA 801**) which specifies that the witness is remanded to a court date (generally, this will be the date when the witness is required to testify);
- presents Warrant for Committal of a Witness to judge for signature or if designated a clerk of the court or a justice of the peace may sign.

2. Clerk distributes document

The clerk: distributes document as follows:

Document	Sheriff or peace officer	Court file
<i>Warrant for Committal of a Witness</i>	Original and copy	Copy

Warrant Cancellation

Background

A party or a witness against whom a Warrant for Arrest has issued, may appear voluntarily at a court location after the Warrant has been sent to the police. If the party has appeared in court, the judge or justice may cancel the warrant.

PCFR 149(2) and PCFR 119(2)

A Warrant remains in force until:

- party or witness appears voluntarily or under the *Warrant*;
- a justice cancels the warrant (party);
- a judge cancels the warrant (witness).

When the warrant is executed, a *Warrant Cancellation* (ADM 307) form should be completed.

Procedures

1. A Warrant for Arrest Has Been Cancelled

Upon receipt of a justice or judge's instructions to cancel a warrant,

The clerk either:

- completes and signs *Warrant Cancellation* (ADM 307);
- telephones police to notify them that *Warrant for Arrest* is to be cancelled;
- records the details of the conversation (name of person called, date and time of call) on *Warrant Cancellation*
- distributes form as follows:

Document	Police	Court file
<i>Warrant Cancellation (if any)</i>	Original	Copy



If the original Warrant for Arrest was issued in another location, the registry responsible for cancelling the Warrant is the location where the party has made a voluntary appearance and warrant is cancelled. Civil eDocs will show the police agency where the warrant was sent to so that the registry may contact the correction location. However, locations that do not yet have Civil eDocs may need to contact the originating registry location to identify the police agency.

Request for Scheduling

PCFR 156

Background

Rule 156 formalizes the process for rescheduling a court appearance. It sets out the process and notice requirements for a party to get before a judge in circumstances other than an application, adjournment to a specific date or court appearance. This section also provides the process for applying for an interim order on a family law matter. Under these rules, the need for interim orders is addressed as part of the Family Management Conference (FMC). If, following a FMC, an interim order is required, the parties may apply using the Request for Scheduling (Form 39) (PFA 732) to ask the court for an interim order, or to change an interim order that was made at the FMC and the issue cannot wait until the hearing or trial.

A party requesting a court appearance be scheduled must serve the Form 39 on each other party at least 7 days before the court date referred to in the Request for Scheduling.



Except in the case of a review, if **more than one year** has passed since the parties took their last step, the party must file a Notice of Intention to Proceed (Form 2).

The request for scheduling form is **required** when:

- a matter was adjourned by the court without setting a new date
- the matter was struck from the court list by the court
- a party was referred to a program, professional or resource, or required to attend, participate or complete a requirement, by the court
- a party was required by the court to address a deficiency under the PCFR
- a review of the terms of the order was provided for in the order
- a party is applying to change, suspend or cancel an interim order under section 216(3) of the *Family Law Act*
- a party is applying for an interim order under section 216 or 217 of the *Family Law Act* after attendance at a family management conference

The Request for Scheduling form is **not required** if there is a direction or order on a file from a Judge indicating that the party may have another FMC or FCC for any reason.

In ERP registries:

- Direct the party(ies) to the JCM to arrange a date via email or by phone.

In non ERP registries:

- Enter the date for the court appearance according to local practice, ensuring enough time for the party to serve the other party(ies) allowing for at least 7 days notice

Procedures

Clerk:

1. Ensure Request for Scheduling (Form 39) (PFA 732) is complete:
 - a) Name of parties
 - b) Reason for requesting a court appearance selected
2. Check CEIS to confirm that not more than one year has passed since the last step was taken. (If more than one year has passed, advise the party they must file a Notice of Intention to Proceed (Form 2), except in the case of a review, and attend a FMC to determine the next steps in the case.)
3. File Request for Scheduling
4. Enter appearance date at bottom of Request for Scheduling:
 - ERP registry - Indicate the appearance date as provided by the JCM on the Request for Scheduling. (*Registry to liaise with the JCM to arrange date*)

- Non ERP registry – enter the date for the next court appearance according to local practice, ensuring enough time for the party to serve the other party allowing for at least 7 days notice
5. Provide filed copy to the filing party with Information for Virtual Appearance (IRA) and advise party they must serve the other party with the filed Request for Scheduling and IRA (see instruction sheet attached to Form 39)
 6. Refer to data entry clerk for further processing and checking.

Data Entry Clerk

1. Ensure data entry is complete and accurate or fully enter document.
2. Scan document into CEIS
3. Schedule as indicated on form by front counter staff.

Application for Case Management Orders Without Notice or Attendance

Background

PCFR 65 and 78 set out the subset of case management orders that can be requested without notice to the other party(ies) or without attending before the court. The application can be reviewed by a judge in chambers. A party who receives a case management order made without notice must serve a copy on the other party(ies) after the order is made.

An Application for Case Management Order without Notice or Attendance (Form I) can be used for:

- Allowing a person to attend a court appearance using another method of attendance;
- Waiving or modifying requirements related to service or giving notice to a person, including alternate methods of service;
- Waiving or modifying any other requirements under these rules, including early resolution requirements, or time limits set under these rules or set by an order or direction of a judge, even after the time limit has expired;
- Requiring access to information in accordance with section 242 [orders respecting searchable information] of the FLA; or
- Recognizing an extraprovincial order other than a support order.

PCFR 65

A party may apply for case management order either to judge (PCFR 62 (g) to (j)) or to a family justice manager (PCFR 63 (2) (a) or (b)).

A party who is asking to proceed without notice may file an Application for Case Management Order (Application for Case Management Order Without Notice or Attendance in (Form 11) (PFA 718)

A judge or family justice manager may do any of the following:

- Approve and sign the order without the attendance of the parties
- Give directions to obtain further information or evidence, including a direction requiring the parties attend court
- Require that notice be given to any other parties
- Reject the application with reasons

If a case management order is made without notice the party who applied for the order must serve on each other party the following:

- The case management order that is made
- The Application for Case Management Order Without Notice or Attendance

PCFR 78

A party may apply for an order to waive or modify the requirement under rule 77 [priority parenting matters – notifying other party] to serve another party by filing an Application for Case Management Order Without Notice or Attendance

If a judge determines that notice should be given to a party, the judge may make any directions the judge considers appropriate, including:

- The date for the hearing
- The amount of notice

- How much notice must be given

ERP Registries

When a party is using an Application for Case Management Order Without Notice or Attendance to apply to waive the Early Resolution Requirements, the party's application should clearly explain the rational/reasoning as to why they should be exempt from these requirements. To help support the application for exemption the party may wish to provide a copy of the Application About a Family Law Matter as a supporting document. **IF** the party has completed the Application About a Family Law Matter, the front counter can take the document, however the Application About a Family Law Matter should **NOT** be filed.

- The Application About a Family Law Matter should only be taken with the Application for Case Management Order Without Notice or Attendance if the party has the Application About a Family Law Matter completed when filing the application for the exemption.
- If the party does not have the Application About a Family Law Matter complete at time of filing the without notice application **do not make the party fill out the Form 3**. You may suggest however, if the without notice application looks to be lacking information that providing an Application About a Family Law Matter Claim support may be beneficial and leave that decision up to the filing party.

Registry Counter:

1. Ensure the Application for Case Management Order without Notice or Attendance is complete:
 - Name
 - Contact Information
 - Email
 - Counsel
 - Relevant Schedule(s) attached per issue and financial statement or agreement as to income, if required.
2. Advise client that if the matter is deemed urgent, they may be scheduled into court that day. They may choose to wait to find out if it is going to be heard that day or they can leave contact information for the registry to follow up.
3. File Application Case Management Order Without Notice or Attendance.
4. Refer to data entry clerk for processing and to send it to chambers.

Data Entry Clerk: See Desk Order Process below

DESK ORDER PROCESS

PROVINCIAL COURT FAMILY RULES – DESK ORDER PROCESS



IMPORTANT

- All desk order applications for a judge are to be sent via email to the JCM or JAA (from the registry's generic email) on the same day that they are received.
- Before the end of each business day, all materials that **have been processed** must be deleted from OUTLOOK folders (In-box, Sent, and Deleted).
- If a party is waiting at the registry, the registry must indicate that in the subject line using the naming convention outlined below, indicating "**Applicant Waiting**" and **follow up with the judge the same day**.
- When an application is to apply to change the method of attendance, the naming convention below should be followed with the addition of "*Alternate attendance desk order*", if the application is being submitted within two (2) business days of the court appearance, indicate "**URGENT**" in the subject line of the email

1. The registry receives desk order application, files application, and enters information into CEIS. Also enters and files any other applicable corresponding documents.
 - If a draft order is submitted by parties, the registry clerk scans/emails the draft order to themselves as a separate document but **does not enter or scan into CEIS**. (This scanned draft order will be attached to an email in Paragraph 4.) A notation should be made in CEIS (comment field of application) that draft order submitted.
 - If a party has provided the document that they are seeking leave from the Court to file (i.e., late reply, incomplete financial, etc.), **do not enter or scan the unfiled document into CEIS**. Advise the client that the unfiled document is not yet filed. Follow the same scanning procedures in the bullet above and attach a scan of the **unfiled** document to the email in Paragraph 4.
2. The registry scans the filed application and any other filed documents into CEIS.
3. The registry schedules the appearance for APP in Chambers (CHB)

4.^{s.15}

5. JCM forwards the email with application (and draft order, if applicable) to an assigned judge who is available to deal with the application and cc's the registry.
6. The judge reviews the application attached to the email and views additional corresponding documents in PCSS.
7. The judge completes the "Application for Case Management Order Without Notice or Attendance – Reasons for Rejection/Directions/Terms of Order" (*Reasons for Rejection/Directions/Terms of Order*) form. This form is internal to judiciary and not available on the CSB intranet.
 - a. When making an order, the judge may type out the terms of the order or insert the terms from the picklists.
 - b. If a draft order was attached, the judge will sign the draft order before returning the package to the registry. (see Paragraph 9)
 - c. If the application is not approved, the judge must include their reasons on the rejection form. (see Paragraph 10)
 - d. If a draft consent order requires modifications, the judge will reject the draft order and indicate the required changes on the rejection form. To resubmit with changes, the party(ies) should submit
 - a letter addressed to the registry advising that a revised draft consent order is resubmitted as per direction of the judge,

- a copy of the “*Reasons for Rejection/Directions/Terms of Order*” form showing the direction(s), and
 - a revised draft consent order with the required changes.
- A new application is not required. The resubmitted draft consent order should be forwarded directly to the original judge. (see Paragraphs 10 and 11)
- e. If the matter requires a court appearance, the judge will direct the registry to notify the parties to attend a court appearance. (See Paragraph 12)
8. The judge emails the completed “*Reasons for Rejection/Directions/Terms of Order*” form to the registry using the same subject line.

9. If application is approved (order made):

- a. The registry stamps the “*Directions and Rejection Reasons*” form as “filed” and results the appearance previously scheduled (in CHB) in CEIS.
 - If a draft order was provided, judge will sign the draft order before returning the package to the registry. No “*Reasons for Rejection/Directions/Terms of Order*” form will be provided. Registry enters the signed order, and then skips to step 9(i) below.
- b. The registry enters the document code **RRDT** into CEIS, converts the document to PDF, uploads the electronic document attached to the email into CEIS and prints a copy for the file.
- c. Once the document is successfully uploaded to CEIS, delete the document from the folder on the PC and the email inbox. Empty the delete folder.
- d. Include the order terms when resulting the appearance.
- e. The registry drafts the order by copying and pasting from the form emailed by the judge into the order terms within CEIS.
- f. Print the Court Summary Sheet and place the CSS onto the court file.
- g. The registry emails the completed order back to the judge.
- h. The judge will make any changes needed and then insert their electronic signature and email the signed order to the registry.
- i. The registry provides a copy of the filed application, filed supporting documents, and the signed order to the filing party.



We have received direction from the Court that if the only order sought is to change the method of attendance, the registry is not required to produce a formal order. Skip steps 9 e, g, and h above. A copy of the RRDT is provided to the party. Place the filed RRDT with the filed Orders in the file. Upload/ Scan the RRDT into the Order -ORNA.

10. If the application is rejected:

- a. The registry stamps the “*Reasons for Rejection/Directions/Terms of Order*” form as “filed” and results the appearance previously scheduled (in CHB) in CEIS.
- b. When resulting the appearance includes in the comment field the reasons for rejection.
- c. Print the Court Summary Sheet and place the CSS onto the court file.

- d. Enter the document code **RRDT** into CEIS, converts the document to PDF, upload the electronic document attached to the email into CEIS and print a copy for the file.
- e. Once the document is successfully uploaded to CEIS, delete the document from the folder on the PC and the email inbox. Empty the delete folder.
- f. The registry provides a copy of the filed application, filed supporting documents, and the reasons for rejection form to the filing party.
 - If the judge rejected a draft consent order and provided directions for counsel or the parties to make modifications before resubmitting, the registry should advise counsel or the parties that the resubmitted package should include a letter addressed to the registry advising that a revised consent draft order is resubmitted as per direction of Judge <name>, a copy of the “*Reasons for Rejection/Directions/Terms of Order*” form showing the direction(s), and the revised draft consent order with the required changes.

11.If a consent order application was rejected (for modifications) and parties are resubmitting the draft consent order:

- a. If a draft consent order is rejected for modifications to be made, the judge will indicate the required changes on the rejection form.
- b. When resubmitting their draft consent order with the required changes, a new application is not required. Parties should submit the following:
 - a letter addressed to the registry advising that a revised draft consent order is resubmitted as per direction of Judge <name>,
 - a copy of the “*Reasons for Rejection/Directions/Terms of Order*” form showing the direction(s), and
 - a revised draft consent order with the required changes.
- c. The registry receives the letter and attachments and files the letter.
- d. The registry enters and scans the filed letter into CEIS as Correspondence.
- e. The registry clerk scans/emails the resubmitted draft consent order to themselves as separate document but **does not enter or scan into CEIS**. (This scanned draft consent order will be attached to an email in step 11 i) A notation should be made in CEIS comment field of letter) that draft consent order was resubmitted.
- f. Once the scanned draft consent order is successfully attached to the email, the registry clerk must delete it from their email inbox and empty their delete folder
- g. The resubmitted draft consent order should be forwarded directly to the judge that directed the modifications.
- h. The registry will mirror the previously concluded issues (step 10), by adding the same issues as the next sequential issues #s to the application, and schedules the appearance for APP in Chambers (CHB)
- i. The registry attaches the filed resubmission letter and scanned draft consent order to an email and forwards the email to the judge that directed the modifications with the following information:
 - Subject line: Registry must use the follow subject line naming convention:

Desk order Resubmission - [location - file number] - [Applicant Waiting – if

applicable]

For example, **Desk order Resubmission - KEL 1234 – Applicant Waiting**

- Body of email: Registry will indicate the email address the judge should use when sending their signed draft order or reasons for rejection/directions back to the registry.

Include the applicable corresponding document numbers for the original application, “*Reasons for Rejection/Directions/Terms of Order*” form, and any other supporting materials that were associated to the original application and the resubmitted draft consent order being referred.

12. If the matter is to be set for court:

- a. The registry stamps the “*Reasons for Rejection/Directions/Terms of Order*” form as “filed” and results the appearance previously scheduled (in CHB) in CEIS.
- b. Print the Court Summary Sheet and place the CSS onto the court file.
- c. The registry enters the document code **RRDT** into CEIS, converts the document to PDF, uploads the electronic document attached to the email into CEIS and prints a copy for the file.
- d. Once the document is successfully uploaded to CEIS, delete the document from the folder on the PC and the email inbox. Empty the delete folder.
- e. The registry schedules the appearance in a courtroom to the next available date (FMC or family list, as applicable) or as indicated by the judge and includes any relevant information in the comments field.
 - If the matter is urgent (cannot wait for the next available FMC or family list date), registry contacts JCM to arrange an earlier court date.
- f. The registry emails the party to advise that the matter has been set for court and provide date, time, and place of court appearance (including MS Teams link if appearing virtually) and any other directions noted by the Judge. A copy of the filed application and any filed supporting documents are sent to the party
 - If counsel is unavailable and obtains consent of all parties, they may use the consent adjournment form, as applicable, and in accordance with Practice Direction FAM09.
- g. If the party does not have email, registry to mail a copy and call the party.

13. For desk orders marked as “**Applicant Waiting**”, follow up with the judge the **same day**.

14. If desk order application is not returned same day

The registry must track using the exceptions report:

- a. Each morning, the registry must run the session exception report for room CHB.
- b. If desk order application has not been returned within **two** business days, follow up with the judge.
- c. If judge is off, registry to contact JCM for assistance.

***Sample of Application for Case Management Order Without Notice or Attendance –
Reasons for Rejection/Directions/Terms of Order***

s.15; s.3

Application for Case Management Order

Background

PCFR 54, PCFR 55, PCFR 64, PCFR 83 and PCFR 159

This application can be used for:

- transferring the court file to another registry for all purposes or specific purposes
- relating to the management of a court record, file or document, including access to a court file
- correcting or amending a filed document, including the correction of a name or date of birth
- setting a specified period for the filing and exchanging of information or evidence, including a financial statement in Form 4 *[Financial Statement]*
- specifying or requiring information that must be disclosed by a person who is not a party to the case
- requiring that a parentage test be taken under section 33 *[parentage tests]* of the *Family Law Act*
- requiring access to information in accordance with section 242 *[orders respecting searchable information]* of the *Family Law Act*
- recognizing an extra provincial order other than a support order
- waiving or modifying any requirement related to service or giving notice to a person, including allowing an alternative method for the service of a document
- waiving or modifying any other requirement under these rules, including a time limit set under these rules or a time limit set by an order or direction, even after the time limit has expired
- allowing a person to attend a conference or hearing using electronic communication, including by telephone or video
- adjourning a court appearance
- respecting the conduct of a party or management of a case
- relating to a report under section 211 *[orders respecting reports]* of the *Family Law Act*, including requiring that a person who prepared the report attend a trial as a witness
- adding or removing a party to the case, including leave to intervene under section 204 (2) *[intervention by Attorney General or other person]* of the *Family Law Act*
- respecting the appointment of a lawyer to represent:
 - i) the interests of a child, or
 - ii) a party
- settling or correcting the terms of an order made under the rules
- cancelling a subpoena
- changing, suspending, or cancelling an order made in my absence

Registry Counter:

1. Ensure Application for Case Management Order is complete
 - Name
 - Contact
 - Email
 - Counsel
 - Part 7/8 filled out
2. Check CEIS to determine if an existing FMC or other family court appearance is already scheduled:
 - a. If yes and the application does not require an appearance before the existing FMC or scheduled family court appearance, schedule to the date of FMC or scheduled family court appearance
 - b. If no, follow your local practice and schedule in CEIS to the designated courtroom/time for PPA/Case Mgt Applications
 - c. If there is some *urgency* to the application and it cannot wait until the next family list day, the registry should contact the JCM to find time in a courtroom to hear the urgent application. As long as appropriate notice has been provided, the urgent application may be scheduled on any day where there is court time available.
3. Indicate appearance date on application
4. Advise party of the necessity to provide notice to the other party at least seven (7) days before the date and time of the court appearance
5. Provide party with the filed application and Information for Virtual Appearance (IRA) for service on the other party. Provide party a Certificate of Service (form 7) and advise the party about the necessity to file the CSV prior to the court appearance. (notice can be found in the instructions guide of the application form)
6. Refer to data entry clerk for processing

Data Entry Clerk

1. Ensure information is accurate, name, email contact etc.
2. Scan documents into CEIS
3. Schedule as indicated on application form by front counter staff

Application About Priority Parenting Matter

Background

Priority parenting matters are closed list of matters as defined in PCFR 2. Application About Priority Parenting Matter (Form 15) (PFA 722) lists out the options that a party may apply for using this form. The process to apply for orders about priority parenting matters requires only seven days' notice. These applications can be made before complying with early resolution, family justice or parenting education registry requirements and in ERP registries before a Notice to Resolve is filed.

These applications may include:

- Health-related treatments for a child where delay will result in risk to child
- Applications for passports, license, or other things for a child, if delay will result in risk to child
- Travel or participation in activity for a child where consent is alleged to have been wrongfully denied
- Change in location of a child's residence (if no agreement/order in place and could have significant impact on child's relationship)
- Orders to prevent removal of a child from BC (FLA, section 64)
- Orders about wrongful removal of a child to BC (FLA, section 77(2))
- Interjurisdictional matters (FLA, section 74(2)(c))
- Hague Convention Matters

PCFR 76

A party who is applying for, or applying to change a term or condition of or to cancel, an order about a priority parenting matter must file and serve (unless applying without notice) on each other party the Application About Priority Parenting Matter and any supporting evidence or documents

PCFR 77.1

A party who is apply for an order about parenting arrangements, or guardianship under the following circumstances:

- a child to whom the order relates was removed under S. 30, 36, or 42 of the *Child Family and Community Services Act (CFCSA)*, and a director has advised that an order will allow the child to be returned to the person applying, or
- a director has advised that the child to whom the order relates will be removed under S 30, 36 or 42 of that Act unless an order is made,

must get the director to complete Schedule 1 before filing the application and must file and serve the application on the director, and if applicable the Nisga'a Lismis Government or Treaty First nations.

Procedures

Registry Counter

1. Ensure Application About Priority Parenting Matter (Form 15)(PFA 722) is complete:
 - Name
 - Contact
 - Email
 - Counsel
 - Child's name/DOB
2. Check CEIS to determine if an existing FMC or other family court appearance is already scheduled:
 - a) If yes and the application does not require an appearance before the existing FMC or scheduled family court appearance, schedule to the date of FMC or the scheduled family court appearance.
 - b) If no, follow your local practice and schedule in CEIS to the designated courtroom/time for PPA/Case Mgt Applications
 - c) If there is some *urgency* to the application and it cannot wait until the next family list day, the registry should contact the JCM to find time in a courtroom to hear the urgent application. As long as appropriate notice has been provided, the urgent application may be scheduled on any day where there is court time available.
3. Indicate appearance date on application form.
4. Advise party of necessity to provide notice to other party at least seven (7) days before the date and time of the court appearance.
5. Provide party with the filed application and Information for Virtual Appearance (IRA) for service on the other party. Provide party a Certificate of Service (Form 7) and advise the party about the necessity to file the CSV prior to the court appearance. (notice can be found in the instructions guide of the application form)
6. Refer to data entry clerk for processing.

Data Entry Clerk

7. Ensure information is accurate, name, email, contact etc.
8. Scan document to CEIS.

9. Schedule “APP” as indicated on application form by front counter staff.



Under special circumstances, an Application About a Priority Parenting Matter may be made without notice to the other party. The filing party would file an Application for Case Management Order Without Notice or Attendance (Form 11). A party may also make application to be heard in another registry R 7(3) see below

Process for filing urgent applications away from home registry

Protection Order/Priority Parenting Applications – AT A DIFFERENT LOCATION

PCFR 7(3) – A party seeking an order about a protection order or a priority parenting matter may do so in any registry, with permission of the court

Protection Order

1. The “host” registry receives an Application About a Protection Order (Form 12)
2. If a party is asking permission to be heard outside the home registry they must also file an Application for Case Management Order Without Notice or Attendance (Form 11) to request permission from the court to file at a court registry other than the court registry required by Rule 7 and complete schedule 3.
 - a. The host registry will contact the home location and advise them they are filing an Application for Case Management Order Without Notice or Attendance on their file for the purposes of an Application About a Protection Order, if permission is granted.
 - b. The host registry will enter the document in CEIS and follow the procedures for scheduling desk order application (schedule for chambers noting applicant is waiting) and send email to JCM if in non-ERP Registry or send to JCM/JAA (according to local practice) if filing in an ERP registry
 - c. If the court grants permission for the file to be heard outside the home location the host registry files the Application About A Protection Order, schedules the appearance and provides the applicant party of the court appearance details
 - d. If the court makes a Protection Order the host registry will follow the usual business procedures when a protection order is made: ie prepare order and send to POR the same day and provide copy to protected party.

OR

- e. If denied or judge makes other order follows usual business procedures and provide the client with a copy of Directions and Rejection Reasons or prepares the order, has judge sign and distribute to parties accordingly
- f. The host registry will send any originally signed order to the home registry by mail

Priority Parenting Matter

1. The “host” registry receives an Application About a Priority Parenting Matter (Form 15)
2. If a party is asking permission for this to be heard outside the home registry they must also file an Application for Case Management Order Without Notice or Attendance (Form 11) to request permission from the court to file at a court registry other than the court registry required by Rule 7 and complete schedule 3
 - a. The host registry will contact the home location and advise them they will be filing an Application for Case Management Order Without Notice or Attendance on their file for the purposes of an Application About a Priority Parenting Matter if permission is granted.
 - b. The host registry will enter the document in CEIS and follow the procedures for scheduling desk order application (schedule for chambers noting applicant is waiting) and send email to JCM if in non-ERP Registry or send to JCM/JAA (according to local practice) if filing in an ERP registry
 - c. If the court grants permission for the file to be heard outside the home location the host registry schedules the appearance and advises the applicant party of the court appearance details
 - d. If the court makes an order the host registry will follow usual business procedures and prepare the order, have it signed and distribute to parties accordingly

OR

- e. If denied or judge makes other order follows usual business procedures and provide the client with a copy of Directions and Rejection Reasons or prepares the order, has judge sign and distribute to parties accordingly
- f. The host registry will send any original ink signed orders via mail to the home registry

Application for Order Prohibiting the Relocation of a Child

Background

Rule 80 PCFR sets out the process for applying for an order prohibiting the relocation of a child under section 69 [*orders respecting relocation*] of the FLA if there is an existing order or agreement concerning parenting arrangements or contact with a child in place. The

Application for Order Prohibiting the Relocation of a Child (Form 16)(724) must be filed within 30 days after receiving written notice that the guardian plans to relocate the child.

These applications can be made before an Application About a Family Law Matter, after an Application About a Family Law Matter and can also initiate a file and in ERP registries, prior to the Notice to Resolve being filed.

Required documents:

- Application for Order Prohibiting the Relocation of a Child (Form 16)
- Copy of applicable written agreement or order referred to in section 65 of the FLA
- Copy of, or details about, the notice of relocation described in section 66 of the FLA

A party must file and serve the application and supporting documents (including a copy of the written agreement and notice of relocation) with at least seven (7) days' notice.

NOTE - If there is no written agreement or court order about parenting arrangements for the child, an application for an order can be made using an Application About a Priority Parenting Matter (Form 15) or an Application About a Family Law Matter (Form 3) to determine parenting arrangements for the child including the location of the child's residence.

Procedures

Registry Counter

1. Ensure Application for Order Prohibiting the Relocation of a Child (Form 16)(PFA 724) is complete:
 - Name(s)
 - Contact information
 - Email
 - Counsel
 - Child's name/DOB
 - Copy of written agreement attached
 - Copy of, or details about, notice of relocation
2. If there is no written agreement or court order about parenting arrangements for the child, the party should be filing an Application About a Priority Parenting Matter (Form 15) applying for an order under s. 46 [changes to child's residence if no agreement or order] of the FLA, OR an Application About a Family Law Matter (Form 3) to determine the parenting arrangements for the child including the location of the child's residence.

3. Check CEIS to determine if an existing FMC or other family court appearance is already scheduled:
 - a) If yes and the application does not require an appearance before the existing FMC or scheduled family court appearance, schedule to the date of FMC or the scheduled family court appearance.
 - b) If no, follow your local practice and schedule in CEIS to the designated courtroom/time for PPA/Case Management Applications
 - c) If there is some *urgency* to the application and it cannot wait until the next family list day, the registry should contact the JCM to find time in a courtroom to hear the urgent application. As long as appropriate notice has been provided, the urgent application may be scheduled on any day where there is court time available.
4. Indicate appearance date on application form.
5. Advise party of necessity to serve the other party at least seven (7) days before the date and time of the court appearance.
6. Provide the party with the filed application and Information for Virtual Appearance (IRA) for service on the other party. Provide party a Certificate of Service (Form 7) and advise the party about the necessity to file the CSV prior to the court appearance. (notice can be found in the instructions guide of the application form)
7. Refer to data entry clerk for processing.

Data Entry Clerk

8. Ensure information is accurate, name, email, contact etc.
9. Scan document to CEIS.
10. Schedule "APP" as indicated on application form by front counter staff.



Under special circumstances, an Application for Order Prohibiting the Relocation of a Child may be made without notice to the other party. The filing party would file an Application for Case Management Order Without Notice or Attendance (Form 11, PFA 718)

Application About Enforcement

Background

To apply for an order about enforcement or remedies relating to pre-existing agreements or orders, parties must apply using the Application About Enforcement (Form 29)(PFA 725) .

This application can be made prior to the early resolution process and prior to filing a Notice to Resolve.

This application can be used for:

- Enforcing a written agreement or order;
- Enforcing, changing or setting aside a determination of a parenting coordinator;
- Setting reasonable and necessarily incurred expenses under section 61, 63, 212, 213, 228 and 230 of the FLA; or
- Determining whether arrears are owing under a support order.
- To set aside the registration of a foreign order under section 19(3) of the Interjurisdictional Support Orders Act see Chapter 5 ISO procedures

Procedures

Registry Counter:

1. Ensure Application About Enforcement (Form 29) (PFA 725) is complete:
 - Name of party(s)
 - Contact
 - Email
 - Counsel
 - Order attached. Agreement attached or determination attached that is to be enforced
 - Child's name/DOB
2. Check CEIS to determine if an existing FMC or other family court appearance is already scheduled:
 - b) follow your local practice and schedule in CEIS to the designated courtroom/time for PPA/Case Management Applications
 - c) If there is some *urgency* to the application and it cannot wait until the next family list day, the registry should contact the JCM to find time in a courtroom to hear the urgent application. As long as appropriate

notice has been provided, the urgent application may be scheduled on any day where there is court time available.

3. Indicate appearance date on application form.
4. Advise party of necessity to provide notice to other party at least seven (7) days before the date and time of the court appearance.
5. Provide the party with the filed application and Information for Virtual Appearance (IRA) for service on the other party. Provide party with a Certificate of Service (Form 7) and advise the party about the necessity to file the CSV prior tot the court appearance. (Notice can be found in the instructions guide of the application form)
6. Certificate of Service (Form 7) and the necessity to bring to court appearance or file with the court before hand.



Under special circumstances, an Application About Enforcement may be made without notice to the other party. The filing party would file an Application for Case Management Order Without Notice or Attendance (Form 11, PFA 718)

To enforce a written agreement, court order or a determination of a parenting coordinator, you must file the written agreement, court order or determination using the appropriate form below:

- To file a written agreement for enforcement in Provincial Court, use the [Request to File an Agreement Form 26](#)
- To file a determination for enforcement in Provincial Court, use the [Request to File a Determination of Parenting Coordinator Form 27](#)
- To file an order from the BC Supreme Court for enforcement in Provincial Court use the [Request to File an Order Form 28](#)
- To apply to the Provincial Court to recognize an extraprovincial order (other than an order about support) for enforcement under the *Family Law Act* in Provincial Court, use the [Application for Case Management Order Without Notice or Attendance Form 11](#)
- To register a support order from an extraprovincial or foreign jurisdiction under the *Interjurisdictional Support Orders Act* for enforcement in the BC Provincial Court, contact the designated authority: See [Chapter 5 ISO procedures](#)

Interjurisdictional Support Services

www.isoforms.bc.ca

Vancouver Main Office Boxes

P.O. Box 2074

Vancouver, BC V6B 3S3

Phone: 604-660-2528

Toll-free: 1-866-660-2684

Notice of Lawyer for Child/Notice of Removal of Lawyer for Child

Background

Pursuant to section 203(1) of the Family Law Act, the court may at any time appoint a lawyer to represent the interests of a child in a proceeding.

A lawyer for a child, or a parent/guardian of a child may make an application under Part 5 Division 2 Case Management Orders if they require an order respecting the appointment of a lawyer for a child, for example, the parent/guardian would like a lawyer appointed for a child, there needs to be an order about who is paying for the lawyer, etc. If the child has obtained a lawyer and the fees are covered, there may never need to be an order made with respect to the lawyer for a child.

Rule 162 sets out the procedural requirements and entitlements for lawyers representing children. This rule clarifies the role and obligations of children's lawyers and the information they are entitled to receive.

PCFR 162

If a case involves a child and the child is represented by a lawyer, the lawyer for the child must:

- File and serve on the parties (Form 40) (PFA 758) when the lawyer starts representing the child and
- File and serve on the parties Notice of Removal of Lawyer for Child (Form 41) (PFA 759) when the stops representing the child

A lawyer for a child must be notified of all hearings, conferences and trial dates relating to the case.

A lawyer for a child must be served all documents that the parties are served

A lawyer for a child may attend all hearings, conferences and trial dates relating to the case

Procedures

Appointment of a child's lawyer may be initiated in two ways:

- A) Party files an application, or
- B) Court's own motion.

A) Party files an application

To seek an order appointing a lawyer for the child(ren), the party applying for the order must

- a. File an Application for Case Management Order respecting the appointment of a lawyer to represent the interests of a child (Rule 62(p)(i)), any supporting documents in the form of an affidavit, and an Information Form for Appointment of Lawyer for Child.
- b. Serve the filed Application for Case Management Order and supporting affidavits on the other party(ies).

When an Information Form for Appointment of Lawyer for Child (PFA 923) is filed:

1. Stamp the Information Form as "Filed"
2. Enter Information Form in CEIS as a document using CEIS code: **INFO**.
3. Scan or upload filed Information Form to CEIS.
4. If order is made, fax the documents noted below to the Child and Youth Legal Centre.

When an order is made granting the application for the child(ren) to be represented by counsel appointed by the Child and Youth Legal Centre:

1. **The Registry emails (cylc@scyofbc.org) or faxes (778) 657-5544** the following documents to the Child and Youth Legal Centre:
 - a. The filed *Information Form for Appointment of Lawyer for Child*,
 - b. a copy of the filed application, and
 - c. a copy of the entered Order or of the clerk's notes reflecting the order for appointment of counsel.
2. The lawyer appointed to represent the child(ren) must file a *Notice of Lawyer for Child* (Form 40) with the appropriate court registry and serve the parties to the file.
3. The registry checks and processes Form 40 following standard business practices, including uploading/scanning document to CEIS.

B) Court's own motion – no application or motion filed.

When an order is made for the child(ren) to be represented by counsel appointed by the Child and Youth Legal Centre:

1. **The Court directs** the parties to complete the *Information Form for Appointment of Lawyer for Child* and submit the completed form to the registry after the hearing.
2. **The Court Clerk provides** parties with a copy of the blank *Information Form for Appointment of Lawyer for Child* to complete and submit to the registry. If parties are not attending in person, the form can be shared in MS Teams as well as being available on the court forms website.
3. The registry results the court file following standard business procedures, including drafting the Order for the judge's signature if none of the parties are represented by counsel.
4. The party(ies) submit the completed *Information Form for Appointment of Lawyer for Child* to the registry.
5. The registry files the completed *Information Form for Appointment of Lawyer for Child*.
6. The registry emails or faxes the following documents to the Child and Youth Legal Centre:
 - a. filed *Information Form for Appointment of Lawyer for Child*,
 - b. a copy of the filed application, and
 - c. a copy of the signed Order or of the clerk's notes reflecting the order for

appointment of counsel.

7. The lawyer appointed to represent the child(ren) must file a *Notice of Lawyer for Child* (Form 40) with the appropriate court registry and serve the parties to the file.
8. The registry checks and processes Form 40 following standard business practices, including uploading/scanning document to CEIS.



If the court, on its own motion, orders a child lawyer be appointed and directs the entered order be sent to CYLC forthwith before the parties have filed the Information form for Appointment of Lawyer for Child, the registry will send the entered order with a filed copy of the application with a notation to advise CYLC that upon receipt of the Information Form the registry will forward it immediately

Child Lawyer's access to the court file and entitlement to receive information

Although the child is not considered a party to the file, after Form 40 has been filed and while representing the child(ren), the lawyer for the child(ren) is permitted access to the court file and to copies of any documents as though they represent a party to the proceeding. All documents that parties are served must be served on the lawyer for a child.

- Access to the court file –
 - When seeking access to the court file, the lawyer representing the child must advise the registry that they are counsel for the child(ren) and provide identification.
 - The registry will view the filed Form 40 to confirm counsel's access, confirm that no Form 41 has been filed by counsel, and provide the appropriate access in accordance with the Provincial Court Family Rules and the Provincial Court's Access to Court Records (Access Policy).
- Hearing dates - The Judicial Case Managers must ensure:
 - Child's lawyer is consulted about all hearing dates before they are set; and,
 - Child's lawyer is advised about any hearing dates that were scheduled prior to their appointment.

When a lawyer ceases representing the child(ren):

1. The lawyer must file a Notice of Removal of Lawyer for Child (Form 41) with the appropriate court registry and serve the parties to the file.

2. The registry checks and processes Form 41 following standard business practices, including uploading/scanning document to CEIS.

The Notice of Lawyer for Child can be filed at any time and does not require permission or leave of the court.



Once the Notice of Removal of Lawyer for Child is filed, the lawyer no longer represents the child(ren) and is not entitled to access the file or be notified of any future hearings.

Notice of Lawyer for Party/Notice of Removal of Lawyer for Party

Background

A Lawyer may represent a party for all issues in a case or for one or more limited purposes. To communicate this information to the courts and all parties A Lawyer or party may file a Notice of Lawyer for Party or Notice of Removal of Lawyer for Party

PCFR 163

A lawyer may start representing a party in a case by a party or the lawyer

- Providing the lawyer's contact information and address for service of documents on an application or reply or
- Filing and serving on each party a Notice of Lawyer for Party (Form 42)(PFA 760)

A lawyer stops representing a party in a case if

- The party or lawyer files and serves on each other party a Notice of Removal of Lawyer for Party (Form 43) (PFA 761)
- The party or a new lawyer for the party files and serves a Notice of Lawyer for Party
- The limited purpose for which the lawyer was representing the party, as described in Form 42 has ended

Procedures

The Clerk

1. Receives a Notice of Lawyer for Party or Notice of Removal of Lawyer for Party
2. Checks all information is complete
3. Updates CEIS ensuring to include or remove lawyers name from party(ies) details

Filing Unsworn Documents

Background

PCFR 172

An unsworn document means any of the following that have not been sworn or affirmed

- Financial Statement (Form 4) (PFA 713)
- Guardianship Affidavit (Form 5) (PFA 733)
- Application About a Protection Order (Form 12) (PFA 720)
- Affidavit – General (Form 45) (PFA 762)

An unsworn document may be filed if

- The person has signed the document
- It is not practicable for the person to swear or affirm to the contents before the document is filed

The person who made the unsworn document must be available to swear or affirm that the contents of the document are true if required by a judge or family justice manager, including at a subsequent court appearance

Procedures

If a party submits any of the above unsworn documents the clerk shall file, enter and scan into CEIS as per usual business practice

Serving Family Court Documents Under the FLA and FMEA

Background

The PCFR set out how parties and court registries must serve, and prove they have served, all Family Court documents issued under the FLA and some documents issued under the FMEA. The PCFR include the following methods of service:

- regular mail;
- registered mail;
- by fax;
- by e-mail;
- personal service by the applicant;
- personal service by any adult other than the applicant;
- personal service by a sheriff or peace officer;
- an alternate method of service ordered by a judge.

Each party who files an application or reply must provide an address for service where the party can receive notice or service of documents.

Parties should be informed of their obligation to serve or arrange service of their own documents. An *Application* About a Family Law Matter, summons or subpoena, Application About a Protection Order, Protection Order, if the person against whom the protection order is made was not present in court, a request for court enforcement under the Family Maintenance Enforcement Act, any document the court has determined requires personal service and any application that is to be served on a party who has not provided an address for service must be personally served by an adult who is not a party unless the court grants permission to use another method of service.

A party who is replying to a counter application must file and serve on their Reply to a Counter Application and any other applicable documents on each other party within 30 days after the date the party receives the Reply with Counter Application by

- leaving it at the party's address for service
- registered mail
- ordinary mail
- email if there is an email address for service
- fax if there is a fax number for service
- leaving it with the party's lawyer
- having it personally served by an adult who is not a party

Permission must be obtained from a judge to serve a document by an alternate method, if it is not possible to serve it by one of the methods allowed under the PCFR.

If the court registry needs an updated address of a maintenance recipient who is enrolled with the Family Maintenance Enforcement Program, the clerk will request this information from the FMEP. The FMEP will not supply the court with new addresses unless requested, or unless the court is receiving payments. The FMEP must also obtain the maintenance recipient's consent to release the information to the registry.



This also applies if the FMEP has the payor's address, and the recipient needs it for serving documents

The FMEP will usually suggest that their client can arrange to pick up the documents from the Sheriffs' Office or court registry counter if there is a serious security concern and they do not wish to provide an address. The maintenance recipient (or the FMEP on their behalf) can phone the court registry to find out exactly where the documents can be picked up, as not all

locations have Sheriffs' Offices, and some locations may prefer one pick-up option over the other.



If the maintenance recipient is totally uncooperative, the FMEP will advise the payor to apply for an order for substitutional service, allowing them to serve the recipient by serving the FMEP. The FMEP usually uses registered mail to forward the documents to the maintenance recipient, so they ask the payor to allow them at least three weeks to do so and obtain the signature copy from Canada Post. In urgent circumstances, the FMEP may forward the documents by courier.

Also see *Attempted Service* and *Application for Case Management Orders Without Notice or Attendance* or *Application for Case Management Order* in this chapter.

Address for Service

PCFR 175(1) (2) (3) (5)

Each party who files an Application or Reply must provide an address for service where the party can receive notice or service of documents. An address for service may be an address other than the party's home address. Each party is responsible for checking, on a regular basis, for the receipt of notice or service of documents at that party's address for service, including any email address or fax number that was provided for service



If a party's address for service is outside British Columbia, the party must provide an email address for service

PCFR 175(4)

If a party's address for service changes, the party must file a *Notice of Address Change* (Form 46)(PFA 763) with the registry and serve a copy of the notice on each other party as soon as possible.

After serving the Notice of Change of Address, the party shall complete a Certificate of Service and shall file it with the registry.

Appearance in court by a party (following a Notice of Family Management Conference mailed by a clerk) proves the party received notice of the court proceeding. Appearance generally eliminates the need to submit proof of service. There may still be a need to prove receipt of any additional documents required to be served. If proof of service of these documents is required, it could be proved by admission in court or by preparing and filing an *Affidavit of Service* or Certificate of Service, if directed by the judge.

PCFR 184 and PCFR 185

The court may allow a person to prove service of a document by swearing or affirming to the court orally that they have served a document. This does not restrict the admissibility of any other evidence of service that the court may consider appropriate in the circumstances

PCFR 187

Despite any requirement about service under this part, service of a document is deemed to be effective if the party who was served gives written acknowledgement of receiving the document method

Methods of proving service are specific to each method of serving documents. These are also described in the following paragraphs.

A separate form of *Certificate of Service* (PFA059; Form 14) is available for use by Sheriffs or other peace officers.

Service Completed

PCFR 179

A document is deemed to have been served on a person as follows:

- if served by leaving a copy at an address for service
 - at or before 4 pm on a day that is not a Saturday or holiday, the document is deemed to be served on the day of service or
 - on a Saturday or holiday or after 4pm on any other day, the document is deemed to be served on the next day that is not a Saturday or holiday
- if served by ordinary mail, on the 14th day after it is mailed
- if served by email or fax
 - at or before 4pm on a day that is not a Saturday or holiday, the document is deemed to be served on the day of transmission or
 - on a Saturday or holiday or after 4pm on any other day, the document is deemed to be served on the next day that is not a Saturday or holiday
- if served by personal service
 - at or before 4pm on a day that is not a Saturday or holiday, the document is deemed to be served on the day of service
 - on a Saturday or holiday or after 4pm on any other day, the document is deemed to be served on the next day that is not a Saturday or holiday

Service outside BC

PCFR 186

An application or other document may be served on a person outside British Columbia if the

order sought in the application is within the jurisdiction of the court under section 10 of *Court Jurisdiction and Proceedings Transfer Act* or *Extraprovincial Matters Respecting Parenting Arrangements* or 8 *International Child Abduction* of Part 4 of the *Family Law Act*

Ordinary Service

Background

PCFR 176

Except when a document must be provided to another party using personal service a document may be provided using any of the addresses for service a party has given in their documents

- leaving the document at the person's address for service
- by registered mail
- ordinary mail
- emailing to party's email address for service
- fax to party's fax number for service

Personal service of certain documents

PCFR 177

There are specific documents that require personal service by an adult who is not a party on the person to be served

- Application About a Family Law Matter
- Summons or subpoena
- Application About a Protection Order
- Protection Order, if the person against whom the protection order application is made was not present in court
- A request for Court Enforcement under the *Family Maintenance Enforcement Act*
- Any document that the court has determined requires personal service
- Any application to be served on a party who has not provided an address for service

PCFR 178

A summons must be served at least 7 days before the date set in the summons for the court appearance

Procedures

1. Registry serves documents by regular mail

The clerk:

- mails documents to all parties.



If the recipient is the Director of Maintenance Enforcement, the Directors post office box may be used.

- **If Canada Post returns documents before court date, go to step 2.**

2. Registry receives unserved documents before court date

The clerk:

- files returned envelope;
- notifies applicant, requesting new address information;
- if new address information is available, and time permits, applicant or clerk arranges to re-serve party personally;
- if no address information is available, begins Family Search.

Service by Registered Mail

Background

A clerk may use registered mail to serve any document that the registry may serve by mail under the PCFR. In situations where regular mail may be used, the registry will normally only use registered mail if directed by a judge to do so, as there is a charge for obtaining a signature copy to prove service. A party may use registered mail to serve any document that the party may serve by mail.

Procedures

- **If registry is arranging service by registered mail go to step 1.**
- **If party is arranging service by registered mail go to step 4.**

1. Registry serves documents by registered mail

The clerk:

- prepares an envelope with correct address information;
 - places documents to be served in envelope;
 - arranges for registered mail of the documents, according to House Mail or Canada Post procedures, as applicable in the location.
- **If registry receives a signature copy from Canada Post, go to step 2.**
 - **If registry receives unserved envelope from Canada Post, go to step 3.**

2. Registry receives signature copy from Canada Post

The clerk:

- prepares Certificate of Service;
- attaches signature copy to Certificate;

3. Registry receives unserved document before court date

To be valid proof of service, the returned document must remain in its unopened envelope and be stamped *Address Unknown*, *Unclaimed*, *Refused*, or have any other writing on it indicating that service has been attempted to the address shown.

The clerk:

- completes an Affidavit of Attempted Service (PFA 120);

- attaches the returned envelope to the *Affidavit*;
 - files returned envelope and *Affidavit* in the court file;
 - notifies applicant, requesting new address information;
 - if new address information is available, and if time permits, re-issues process and repeats step 1.
 - if no new address information, is available begins Family Search.
- **If party requests personal service go to Personal service by adult other than applicant in this Chapter.**
 - **If party requests alternate method of service, go to Application for Case Management Orders Without Notice or Attendance or Application for Case Management Order in this Chapter.**

4. Party arranges service by registered mail

A party arranging service by registered mail is responsible to:

- make arrangements with registry for pick-up of documents;
 - know proper procedures and timelines for type of document to be served;
 - make arrangements to send document by registered mail;
 - pay cost of serving document;
 - prove service by filing an *Affidavit of Service* with signature copy attached or returned document, or by presenting documents in court.
- **If party files proof the service is successful, go to step 5.**
 - **If party files returned documents, indicating that service is not successful, go to step 6.**

5. Registry receives proof that service is successful

The party submits:

- Certificate of Service with the document(s) served attached;
- Signature copy received from Canada Post.

The clerk:

- checks that:
 - server has completed and signed Certificate of Service;
 - signature copy is attached;
- files Certificate of Service by date-stamping;

6. Registry receives unserved documents returned by Canada Post

The party submits:

- envelope returned by Canada Post unopened.

The clerk:

- notifies applicant requesting new address information;
- If new address information is available, removes documents from envelope and returns to party for re-serving;
- If new address information is unavailable the party may request Family Search or apply to Court for permission to use alternate method of service.
- **If party applies for permission to use another method of service, go to Application For Case Management Orders Without Notice or Attendance or Application for Case Management Orders in this Chapter.**
- **If the party wishes to arrange for personal service, go to Personal service in this Chapter.**

Procedures

1. Party serves documents

A party who will be serving their own documents is responsible to:

- make arrangement with registry for pick-up of documents;
- know proper procedures and timelines for type of document to be served;
- prove service by filing a Certificate of Service by stating the type of service or if applicable Affidavit of Personal Service
- **If party files proof that service is successful, go to step 2.**
- **If service is not successful, go to Attempted Service.**

2. Registry receives proof that service is successful

The party submits:

- Certificate of Service.

The clerk:

- Files Certificate of Service by date-stamping.



There are no fees for swearing Affidavits, including affidavits of service, in Provincial Family Court.

Personal service by adult other than applicant

Background

A party must have a person who is at least 19 years of age other than a party to the file serve a Summons, application and any documents accompanying them.

A party may use a process server to serve documents that must be served by another adult. (Process servers are listed in the yellow pages of the telephone directory). If a party uses a process server, the party must make the arrangements and pay the costs.

Personal service by an adult other than the applicant may be proved:

- by filing an Affidavit of Personal Service or Certificate of Service, *as applicable* with the court registry;
- other evidence that the judge may consider appropriate.

If the person to be served refuses to accept the document, the party should include a statement in the Certificate of Service indicating:

"The person whose name is on this document refused service, and I dropped the document in front of _____ (name of person)."

Procedures

1. Party arranges personal service by a person who is at least 19 years of age

A party who arranges personal service by another adult is responsible to:

- make arrangements with registry for pick-up of documents;
- know proper procedures and timelines for type of document to be served;
- prove service by filing an *Affidavit of Personal Service* by stating the type of service.
- **If party files proof that service is successful, go to step 2.**
- **If service is not successful, go to Attempted service.**

2. Registry receives proof that service is successful

The server submits:

- Affidavit of Personal Service or Certificate of Service.

The clerk:

- checks that server has completed and if necessary sworn *Affidavit*;

- files Affidavit or Certificate by date-stamping.



There are no fees for swearing Affidavits, including affidavits of service, in Provincial Family Court.

Personal service by sheriff or peace officer

Background

PCFR 140(3), 144 PCFR and PCFR 182(1)(a)

A clerk, upon a request of a party, may refer certain documents to a sheriff or a peace officer for service.

Documents a clerk may refer to sheriff or peace officer to serve without a court order include:

- Summons - General (Form 31)
- Garnishing Order
- Summons to a Default Hearing (Form 33)
- Warrant for Arrest (Form 32)
- Summons to a Committal Hearing (Form 34)
- Warrant of Execution (S 27 FMEA)

Warrants of arrest are sent to the local police agency for execution, the other documents are referred to the sheriff location closest to the person or company to be served.

Warrants of execution are sent to the court bailiff responsible for civil executions in the area where the assets are to be seized from.

In the event the person or company to be served is in a remote area, the Registry Manager/Supervisor should connect with the police detachment in that community to determine if they are able to assist and facilitate service. If so, the police detachment needs to be provided with clear instruction on completing and returning the Affidavit or Certificate of Service.

Personal service by a sheriff or peace officer may be proved by the sheriff filing a Certificate of Service (Form 7) with the court registry, except in the case of service of Summons or subpoena which require an Affidavit of Personal Service (Form 48)

Procedures

1. Registry arranges personal service by a sheriff or peace officer

If a court order is required, the applicant may make an application by:

- filing a Case Management Order without Notice or Attendance (Form 11)

Clerk

- follows procedures in **Case management Order without Notice or Attendance**

If a court order has been granted, or the document is one that the clerk may refer without a court order, a party submits document(s) to be served, and

- *Request for Service of Documents* (PFA 110).

The clerk:

- prepares two separate service packages for sheriff or peace officer (one for service on party, one for returning proof of service);
- completes package of documents to be served;
- determines which sheriff's office is nearest to address where party must be served. (If necessary, see the **Gazetteer**)
- sends document to be served to appropriate Sheriffs' office along with original Request for Service of Documents;
- files copy of Request for Service of Documents in court file.
- **If sheriff files proof that service is successful, go to step 2.**
- **If service is not successful, go to Attempted service.**

2. Registry receives proof that service is successful

The sheriff or peace officer submits:

- Certificate of Service or Affidavit of Service;
- returned service package.

The clerk:

- files the *Certificate of Service* by date-stamping;

Alternate Methods of Service

Background

PCFR 182

If it is not practicable to serve a document as provided in the PCFR, a party may apply to a judge or family justice manager for an order that the document

- be served by a peace officer
- be served using an alternative method of service if the court is satisfied that the person to be served
 - cannot be found after a diligent search
 - is evading service of the document
 - is temporarily outside of British Columbia

The judge may permit another method of service and direct how service is to be proved. If an order is made that permits an alternative method of service of a document a copy of that order, the application for alternate service and any supporting documents must be served with the document, unless the permitted method of service is to be given by advertisement. It is the party's responsibility to pay for and arrange for publication of a Notice by Advertisement (Form 47)(PFA 764).

If a party is not able to serve a document in time, the party may apply to the court for a case management order to shorten or extend the time limit.

PCFR 157

A judge may waive or modify a period of time for doing anything required under the PCFR, even though it has expired.

PCFR 183

Service of a document may be proved by filing a Certificate of Service (Form 7) (PFA 714) and attaching a copy of the document served.

Service of the following documents may be proved by filing the applicable affidavit

- Summons or Subpoena – an Affidavit of Personal Service (Form 48) (PFA 765)
- Protection Order – Affidavit of Personal Service of Protection Order (Form 49) (PFA 766)

Service of a document(s) on a lawyer or articled student may be proved by filing a copy of the document signed by the lawyer or articled student or by a partner or employee of the firm

Procedures

1. Judge orders alternate method of service

The clerk:

- enters judge's disposition in CEIS;
 - if party who requested order was not represented by counsel, prepares Court Order;
 - if party who requested the order was represented by counsel, checks order prepared by counsel when submitted.
- **See Court Order in Chapter 3 for procedures**



If the Court has granted permission to serve a notice by advertisement, the party is responsible for preparing the advertisement, and for paying for and arranging for its publication.

2. Registry receives proof that service is successful

The party submits:

- Certificate of Service or Affidavit of Personal Service with copy of order directing method of service attached;
- If party served notice by advertisement, copy of advertisement attached to proof of service document.

The clerk:

- checks that party has completed and signed proof of service document;
- files proof of service document by date-stamping.



The registry will not charge a fee for swearing an Affidavit of Personal Service.

Attempted Service

Also see Serving Family Court Documents under the FLA and FMEA" in this chapter.

Procedures

1. Unserved Service Package is returned to registry

The server submits:

- returned service package.

The clerk:

- asks the server why the documents could not be served, and makes a note on the service package unless a note is already attached;
- suggests to the server that he or she complete an Affidavit of Attempted Service (PFA 120)



This form is optional. It will most often be useful if a party will be applying for substitutional service, but it may be used by anyone in any situation where personal service, registered mail service or substitutional service could not be successfully effected.

- does not take the matter off court list;
 - contacts FMEP, if creditor is enrolled in FMEP, to request creditors address (which may only be released to the registry if FMEP obtain the creditor's consent);
 - otherwise, contacts applicant to see if new address information is available;
 - if applicable, initiates Family Search;
 - files service package in court file, to be used if an address is obtained.
-
- **If party to be served appears to be evading service, go to step 2.**
 - **If party to be served could not be served at address provided, go to step 3.**
 - **If party to be served no longer resides in BC go to step 4.**



The court registry should advise the Sheriff's Office that the Affidavit of Attempted Service (PFA 120) is available either from the Intranet or from the registry.

2. Party to be served appears to be evading service

The applicant or counsel decides whether to apply for permission to use another service method or to request a *Warrant of Arrest*. **Do not** take case off the court list.

If party applies for permission to use an alternate method of service, go to Application for Case Management Orders without Notice or Attendance or Application for Case Management Order in this Chapter.

3. Party could not be served at address provided

The clerk:

- places returned documents in court file;
- notifies FMEP, applicant, or counsel, whichever is appropriate, requesting new address information;
- if no new address information is available, begins Family Search. (If FMEP filed application, FMEP is responsible to request search).

4. Party no longer resides in BC

The clerk:

Prepares an advisory letter to applicant, counsel or FMEP;

If no new address information is available, begins Family Search. (If FMEP filed application, FMEP is responsible to request search.)



Family Search may request search of Federal Data Banks if application is to enforce maintenance.

Service by Fax or Email

Procedures

1. Registry serves documents by fax or email

The clerk:

- faxes documents, using Fax Cover Sheet (PFA 113).
- Emails document through CEIS following CEIS process

2. Party serves documents by fax or email

A party serving documents by fax or email is responsible to:

- make arrangements with registry for pickup of documents;
- know proper procedures for timelines for type of document to be served;
- make arrangements to send documents by fax or email, including using *Fax Cover Sheet* (PFA 113);
- prove service by fax or email by filing a Certificate of Service

PCFR 181

Documents other than a summons or subpoena may be served on a person who is not a party by leaving the document with the person or by mailing by ordinary mail to that person's postal address

Proving Service

PCFR 183

Service of a document may be proved by filing a certificate of service (Form 7) and attaching a copy of the document served

Service of

- summons or subpoena may be proved by filing Affidavit of Personal Service (Form 48)
- on Order about a Protections order may be proved by filing an Affidavit of Personal Service of Protection Order (Form 49)

Scheduling a Court Appearance

Court appearances may be scheduled for any of the following:

- **Family Management Conference (First Appearance)** can be set after any pre court requirements, if applicable have been met. The purpose of a family management conference is to provide an informal and time-limited process in which the judge or family justice manager assists parties applying for certain types of orders, increasing trial readiness and helping to move cases forward for adjudication and to set dates for hearing, conference, or trial. The judge or family justice manager assist parties to identify issues to be resolved, explore options to resolve can hear evidence and make directions, a consent order, an interim or final order relating to the substantive issues in the application. The judge or family justice manager can also make an order related to procedures. The parties may be referred to services such as private mediation. This is similar to remand court in the criminal courts.

- Applications for other family orders – Application for Case Management Order, Application for Case Management Order Without Notice or Attendance, Application about a Protection Order, Application About Priority Parenting Matter Application for Order to Prohibit Relocation and Application About Enforcement. These are issue-specific applications that do not require the party(ies) to meet the pre court requirements before attending in front of a judge or family justice manager. These matters may include
- **Family Settlement Conference** may be heard by a judge. The purpose of the family case conference is to provide a process in which a judge helps the parties try to resolve any issues in dispute by agreement. A judge may mediate disputed issues, make any orders with consent of the parties, make conduct orders, adjourn the family settlement conference to allow parties to comply with any orders made to decide any issues not requiring evidence, to clarify and narrow issues that must be set for trial. The date may be set for a trial preparation conference or for trial. Interim, final and consent orders may be made on both substantive and procedural issues.
- **Trial Preparation Conference** may be scheduled at the request of a judge. The purpose of the trial preparation conference is to ensure the parties are ready to proceed to trial, that they know what evidence to provide and what evidence to expect from the other party, that they have an opportunity to inspect and copy records, and to confirm the amount of time originally set aside to hear the matter. The judge may set a trial date and may order the parties to produce a summary of proposed evidence or a statement of agreed facts.
- **Hearings and Trials** are both presided over by a judge. The main differences between the two are the amount of time required, and type of applications. Trials are lengthier and generally deal with substantive issues that require the hearing of evidence.

If the other party does not reply to an Application About A Family Law Matter, the party must file a Certificate of Service and meet any pre court requirements, if applicable. Before the registry can schedule a first appearance.

The clerk serves a Notice of Family Management Conference for the first appearance either:

1. on both parties after the other party's Reply to an Application About a Family Law Matter filed and all pre court requirements have been met, if applicable; or
2. on the party only, after the time for filing the Reply to an Application About a Family Law Matter has passed and the party has filed proof of service of the application and all pre court requirements have been met.

Service by email and fax is also an option, if the recipient party has provided an email or fax number in their address for service.

If the other party's *reply* includes a counter application this does not affect when the registry can set the first appearance; it is not necessary to wait 30 days to see if the party files a *Reply* to the counter application.

If there are multiple other parties and only one other party has filed a *Reply*, the registry does not need to wait for any of the other parties to file Replies before setting a Family Management Conference. Other parties are notified of the appearance date only if they file Replies of their own.

See Scheduling Family Management Conference in this chapter.

Teleconferences and Videoconferences

Local practice and the decisions of individual judges determine the types of appearances that may be heard by teleconference or videoconference.

PCFR 111

provides that a party who is represented by a lawyer need not attend the trial preparation conference in person if the party is readily available and immediately accessible for consultation during the trial preparation conference, either in person or by telephone.

Requesting to be heard by telephone or video conference

To be heard by way of teleconference or video conference, an Application for Case Management Order Without Notice or Attendance (Form 11) or Application for Case Management Order (Form 10) is to be completed and filed at the court registry. Staff are to ensure that suitable telephone equipment is available if hearing is at a circuit court location.

If the judge or family justice manager does not approve a telephone or video appearance, the registry will notify the party to attend in person, arrange for an agent to attend on their behalf, or follow any directions provided by the judge.

Procedures

See Desk Order Process in this chapter

Requesting a Videoconference

PCFR Rule 62(k)

An Application for Case Management Order (Form 10) must be filed to request a videoconference. The party must also submit a Court Videoconference Request form (ADM 509). A court appearance or teleconference is required for the *Notice of Motion* unless local practice or the judge directs otherwise.

If the judge does not approve a videoconference, the party must either attend in person, arrange for an agent to attend on their behalf, or follow any directions provided by the judge. If the videoconference was requested for a party's witness to present evidence, the party's only

options are to arrange for the witness to attend in person, or to file an affidavit containing the witness' evidence if permitted to do so by the judge.

First Family Management Conference

Background

PCFR 36

The purpose of a family Management Conference is to provide an informal and time-limited process in which the judge or family justice manager

- assist the parties to identify the issues to be resolved
- explores options to resolve the issues
- is able to make orders and directions under Division 2 [Case Management Orders] of Part 5 [Applying for Other Orders] based on information provided by or on behalf of the parties to ensure that a file is ready to proceed to the next step in the process
- is able to make interim orders under rule 50 [interim orders] to address needs until the parties resolve their family law matters
- is able to make orders under
 - if a party does not file a reply
 - by consent of the parties
 - in the absence of a party

A judge at a family management conference may make any other orders or directions as appropriate

PCRF 43 and PCFR 44

All parties must attend the family management conference even if that party is represented by a lawyer. The Lawyer does not have to attend

PCFR 31, PCFR 32, PCFR 54, and PCFR 55

If the other party fails to file a Reply to an Application About a Family Law Matter or does not appear in court as directed by a judge, the judge's options include:

- Adjourning the first family management conference (FMC) appearance to another date
- Direct that the other party receive notice of and attend a FMC
- Issuing a summons
- Making an order including a final order

To apply to change, suspend or cancel an order made in the party's absence that party must file and serve on the other party(ies) at least 7 day before the date in the application for the court appearance:

- Application for Case Management Order
- Any supporting evidence or documents

A judge or family justice manager may change suspend or cancel an order made in the absence of a party if the judge determines that

- The absent party applied in a reasonable time
- Either of the following apply
 - The absent party did not receive notice of the application or Family Management Conference
 - There is a good reason

PCFR 32 and PCFR 148

- Issuing a Summons (**see Notice of Family Management Conference and Summons in this Chapter**);
- Issuing a *Warrant for Arrest* (if the respondent has already been served a Summons or was present in court when the appearance date was set. **See Warrant for Arrest in this Chapter**);
- Making an interim order. **See Court Order in this Chapter**;
- Making a final order. **See Court Order in this Chapter**.

If the applicant does not appear at the first appearance, the judge may:

- Dismiss cancel or proceed the application
- Draw any inference from the failure to attend
- Grant some or all of the orders
- Issue a summons

If no party attends - strike the case off the list;

Practice Direction – FAM 09

When adjourning matters by consent under the FLA or FMEA from one family list day to another or to adjourn generally, counsel may complete and file a *Consent Adjournment* (PFA 920) form by email to the applicable court registry. The *Consent Adjournment* form may be used where

- at least one party is represented by counsel;
- the filing counsel is required to confirm that they have obtained the consent of all parties or their counsel and will be responsible for providing all other parties or their counsel with a copy of the filed form with the new court date and appearance details obtained from the registry
- the matter is adjourned from one list date to another with the same time estimate (or less) or as approved by the JCM if it was previously scheduled by the JCM or adjourned generally; and

- the Consent Adjournment form is submitted **at least two clear business** days in advance of the scheduled appearance.
-

Procedures

- If family management conference is adjourned to another date, go to step 1.
- If application is struck off list, go to step 2.
- If application is dismissed, go to step 3.
- If application is adjourned by consent before appearance date, go to step 4.

1. Family Management Conference is adjourned to another date

The clerk:

- enters the new date on CEIS;
- if applicable notifies the "non-attending" party as per judge's instructions (e.g. mail, phone, issue Summons or *Warrant for Arrest*).

2. Case is struck off list

The clerk:

- enters the disposition on CEIS;
- if the party requests an appearance on the application the clerk:
 - gives the applicant a Request for Scheduling (Form 39) (PFA 732) to complete

When the Request for Scheduling is filed, the clerk:

- sets a new Family Management Conference date,
- enters the date in CEIS. (**See Request for Scheduling procedures in this Chapter**).
- files original of *Application to Re-Set Court Date* in court file.

3. Application is dismissed

The clerk:

- enters the disposition on CEIS.

The registry will not schedule another Family Management Conference on the application at the party's request. To bring the matter back to court a new Application About a Family Law Matter would have to be filed.

- If party files new application, see Starting the Process in this Chapter.

4. Counsel submits a Consent Adjournment form

Counsel submits, by email, **at least two clear business days in advance** of the scheduled appearance:

- A Consent Adjournment (PFA 920) form, pursuant to FAM 09



To use form, at least one party is represented by counsel and the filing counsel has obtained the consent of all other parties or their counsel.

The Consent Adjournment form cannot be used to adjourn trials. To adjourn a trial by consent, see **Consent to or Applying for a Court Date** in this Chapter.

If none of the parties are represented by counsel, parties may use the Application for Case Management Order Without Notice or Attendance form to adjourn the family management conference date, see **Consent to or Applying for a Court Date** in this Chapter.

The clerk:

- Opens Consent Adjournment form attached in the email
- Checks document meets filing standards
- Checks for adjourned to dates and schedules, as appropriate:
 - If counsel selects "Adjourned to one of the following two ..." and provides two requested dates/times, clerk to check family list for first date/time,
 - if date is available, confirm first date/time for scheduling
 - if list is full, check second date/time. Confirm second date for scheduling if list available
 - if both dates/times listed are full, contact counsel and advise that both requested dates are full.
 - If counsel selects "Adjourned to date/time", confirm new date indicated. (Counsel obtained date from JCM)
 - If counsel selects "Adjourned to JCM" or "Adjourned generally", no new date is scheduled in CEIS
- Completes Notice of Hearing at the bottom of PFA 920 to indicate new family court date, time, and provide appropriate appearance details, Information for Virtual Appearance (IRA)
 - If file is adjourned by consent to JCM to reschedule or adjourned generally, do not complete the Notice of Hearing section.
- Prints document from email
- Files by date-stamping
 - Enters document in CEIS. See CEIS instructions
- Scans document into CEIS

- **Immediately** after processing form, sends reply email to filing counsel attaching filed document.
- If interpreter(s) was(were) ordered for one or more parties on the original appearance date, cancels interpreter(s) immediately. Schedule interpreter(s) for new date and time, unless counsel indicates interpreter(s) are not required.
- Places filed document in court file.



Registry is not required to provide a copy of the form to the JCM. If the matter is adjourned to the JCM to reset, the JCM will access the scanned image on PCSS.



Filing counsel is responsible for providing all other parties or their counsel with a copy of the filed Form with the new family management conference date and appearance details provided by the registry.

If a hearing has been adjourned generally, a party may file a Request for Scheduling.

Consent to or Applying for a Court Date

Background

PCFR 114

If the parties agree to change a court date or a trial date, they can file an Application for Case Management Order (Form 10)(PFA 717) and a draft Consent Order (Form 18)(PFA 739), signed by all parties. See **Desk order Process** in this Chapter If they are filing by consent. T

The parties:

- (for family list date) may request from the registry any available court dates and put that in the draft order
- (for a trial) file an Application for Case Management Order at least 7 days before the trial

If the parties cannot consent to a new court date, or if a party wants to adjourn a trial

- and trial date is more than 45 days away or
- if special circumstances apply, and party is applying as soon as is practicable before the scheduled trial date

the party may apply to change the trial date by filing an Application for Case Management Order (Form 10) (PFA 717) (**See "Application for Case Management Order" in this Chapter.**)

If a hearing has been adjourned generally, and the consent of both parties is not required to re-set a court date, a party may file a Request for Scheduling. The bottom of the form accommodates a Notice of Hearing which is completed by the registry.

Procedures

If a court date has already been set, and both parties (no counsel) consent to changing the date, **go to step 1**.

If a hearing has been adjourned generally, and the party or parties wish to have the hearing re-set on an agreed date, **go to step 2**.

If a hearing has been adjourned generally, and both parties' consent is not needed to reschedule the hearing, **go to step 2**.

1. If court registry receives an Application for Case Management Order

A party submits:

- Application for Case Management Order, and draft Consent Order signed by both parties

The clerk:

- checks document;
- files by date-stamping;
- enters it in CEIS
- follow **Desk Order Process** in this chapter
-

Go to step 3.

2. If court registry receives a Request for Scheduling

A party submits:

- a Request for Scheduling .

The clerk:

- checks document;
- files by date-stamping;
- enters it on CEIS.
- completes the Notice of Hearing on the bottom of the Request for Scheduling and makes a copy for each party and each person who must be notified.

3. Clerk distributes document

The clerk:

- distributes document and IRA to party(ies) or counsel as applicable

Request to Adjourn Generally or Withdraw Application

Background

If parties wish to have their court date adjourned generally, rather than to a specific date, they may file an Application for Case Management Order (Form 10) If all parties agree to the adjournment the party would indicate that on Form 10 and include a draft Consent Order (Form 18) signed by all parties and follow the **Desk Order Process**.

A Notice of Discontinuance (Form 50) (PFA 767) must be filed if a party wishes to withdraw their application, reply or counter application and serve on each other party before the earlier of:

- 14 days after the party filed the notice
- The date of the next scheduled court appearance

If a trial preparation conference is scheduled a Notice of Discontinuance may be filed

- Before the trial preparation conference or
- After the trial preparation conference, with the consent of the other parties or permission of the court

If a trial preparation is not scheduled, a notice of discontinuance may be filed

- At least 30 days before the trial date or
- Less than 30 days before trial date with consent of the other parties or permission of the court

A party may only discontinue a document that they filed, and a discontinuation of an application, reply or counter application does not affect any application or reply made by another party

If a party discontinues an application it does not prevent the party from filing an application about the same matter at a later date.

The party filing the notice of discontinuance is responsible for serving it on the other party.

Procedures

If a court date has already been set, and both parties' consent to adjourning the date generally, **go to step 1.**

If the adjournment sought is not by consent, **go to Application for Case Management Order procedures in this chapter.**

If a party seeks to withdraw all or part of an application, reply or counter application **go to step 2.**

1. If both parties seek a general adjournment, by consent

A party submits a *Application for Case Management order* (PFA 717) along with a draft *Consent Order* (PFA 739) signed by both parties.

The clerk:

- Checks Application for Case Management Order and draft Consent Order if applicable and follows procedures for **Desk Order Process**;
 -
 - If the parties wish to reschedule the court date right away, they may put that date in the draft Consent Order
 - Otherwise, no further action until the parties seek to reschedule the court date.

2. If a party seeks to withdraw an Application

A party submits a Notice of Discontinuance (Form 50) (PFA 767)

The clerk:

- Checks the Notice of Discontinuance
- Checks the other party's reply to ensure that there is no counter application.
- Advises the filing party that a copy of the notice must be served on the other party(ies);
- File stamps the notice and gives party their copy(ies)
 - Original filed in court file
 - All other copy(ies) to filing party
 - Provide party with a Certificate of Service

The clerk:

- Enters the document in CEIS and scans it
- Removes the presently scheduled court date from CEIS.
- Files the documents in the court file.

Family Settlement Conference

Background

PCFR 105 and PCFR 106

A family settlement conference must be conducted by a judge. A judge who conducts a family settlement conference may conduct the trial only if there are no other judges to conduct the trial
PCFR 107

If the parties are directed or ordered to attend a family settlement conference they must attend and may be accompanied by a lawyer. On request the judge may allow a person who is not a party to attend the FMC.

PCFR 108

At the family settlement conference, a judge may:

- Mediate any issues in dispute
- Make any order with the consent of the parties
- Make a conduct order under Division 5 of Part 10 of the FLA including an order requiring the parties to participate in family dispute resolution within the meaning of the FLA;
- Adjourn the family settlement conference for a period or generally to allow parties to comply with an order
- Direct the parties
 - To participate in consensual dispute resolution
 - attend further FMC
 - attend trial preparation conference
 - attend a court appearance
- make an order for disclosure of information including financial information
- give a nonbinding opinion of outcome of a hearing or trial

If evidence is not required, the judge may make any order that may assist the parties to resolve any issue in dispute by agreement or that may assist in readiness for a trial or hearing

Whenever possible, family settlement conferences should be held in settlement conference rooms (or the rooms used for CFCSA case conferences). While no audio recording is made of the proceedings, a court clerk will attend and will keep a record in the court file of all orders, directions, agreements and undertakings resulting from the conference. The clerk will also make note of all referrals, adjournments, and court dates set.

Procedures

1. Judge orders a family settlement conference

If a judge orders a family settlement conference in the presence of both parties or their lawyers, the clerk records the conference date and enters it in CEIS. The court registry prepares a Notice of Family Settlement Conference and IRA and sends to the parties.

If the judge orders a family settlement conference and one or both of the parties are not present, The court registry prepares a Notice of Family Settlement Conference and IRA and sends to the parties.

The clerk:

- prepares the Notice of Family Settlement and IRA and sends it according to an address for delivery on the file
- mails Notices to party(s) and anyone else who requires notification of conference.

At the conference, the clerk:

- records any orders made in CCD and may print the Order using CCD and distributes the Order to all parties



If FLA and CFCSA matters were joined for the case conference, only a CFCSA *Case Conference Record* (PFA 885) needs to be completed, but it must be filed in both court files.

Trial Preparation Conference

Background

A trial preparation conference helps a trial proceed more efficiently by ensuring that parties are ready to proceed to trial on the scheduled date and by clarifying issues. A party may request a pre-trial conference by filing an Application for Case Management Order, or a judge may order one when he or she feels it is necessary.

PCFR 111

When directed or ordered to attend a trial preparation conference the parties or their lawyer must attend. If a party is not represented by a lawyer they must attend or if a party is represented by a lawyer, the party must attend with the lawyer or be available for consultation. If a child will be represented by a lawyer at trial the lawyer must attend the trial preparation conference.

PCFR 112

At the trial preparation conference, the judge may make an order or give direction about :

- The time required for the trial and trial date
- the evidence to be required at the trial
- the procedure to be followed at the trial
- how views of a child will be heard
- expert witnesses, including persons who are appointed to make assessments under section 211 [*orders respecting reports*] of the *Family Law Act*;
- the filing and exchange of lists of documents
- if any applications relating to the case have not yet been heard, requiring that those applications be heard
 - at the trial preparation conference
 - within a period, or by a date, specified by the judge
- requiring that the parties file a statement of agreed facts within a period, or by a date, specified by the judge
- requiring that a party
 - disclose information including financial information, that may assist in readiness for trial
 - allow for inspection or copying of, or bring to trial, specified records that are or have been in party's possession, power or control
 - submit evidence by affidavit at the trial in accordance with any specific directions given by the judge
 - serve on each other party a written summary of proposed evidence of a witness within a period, or by a date, specified by judge
- any other directions the judge considers appropriate to expedite the trial

A judge may determine at a trial preparation conference whether the trial will include any of the following alternative trial processes

- the setting of time for the trial or parts of the trial
- types of evidence
- number of witnesses
- alternative ways to examine/cross examine parties if family violence is an issue

A judge at a trial preparation conference may adjourn the trial

A trial preparation conference may be held at the same time as a family settlement conference, or a separate time may be scheduled.



The judge who conducts the trial preparation conference is to conduct the trial if possible, if the judge at a trial preparation conference makes an order, direction or determination about an alternative trial process or asks a party to submit evidence by affidavit, the same judge must also conduct the trial

Procedures

1. Judge orders a trial preparation conference

If a judge orders a trial preparation conference in the presence of both parties or their lawyers, the clerk records the trial preparation conference date in CCD. The judge may adjourn the file/parties to the Judicial Case Manager to set the trial preparation conference date

The clerk:

Will send the PCSS Scheduling memo (set by the JCM) and the Information for Virtual Appearance (IRA) to the parties using the address for service on file



Each party must file and serve a Trial Readiness Statement in (Form 22)(PFA 735) at least 7 days before the date of the trial preparation conference or if no trial preparation conference is scheduled at least 30 days before the first date of the trial

Hearing or Trial

Background

If matters are not resolved by consent or after a family management conference or a family settlement conference, a trial date is set. At the trial the judge may make an order in favour of either party or dismiss the application. The judge may also make orders on a number of secondary issues, including other applications (Application About Priority Parenting Matter, Application for Order Prohibiting the Relocation of a Child)

A matter may be set for a family management conference and then may be set for a family settlement conference or a trial preparation conference or may be adjourned to a trial date.

Child's evidence

PCFR 115

A judge may admit a child's evidence about a family law dispute, including hearsay evidence, in accordance with section 202 of the *Family Law Act*, in the manner the trial judge considers appropriate

Requirements for expert's report

PCFR 120 (1)

An expert's report that is to be introduced as evidence at a trial must be signed by the expert and must include

- The expert's name, address, and area of expertise
- The expert's qualifications, employment and educational experienced in the expert's area of expertise
- instructions provided to the expert about the case
- the nature of the opinion being sought and the issues in the case to which the opinion relates
- expert's opinion respecting those issues
- expert's reasons for the opinion, including
 - description of the factual assumptions on which the opinion is based
 - description of any research conducted by the expert that led to the formation of the opinion
 - list of documents, if any, relied on by the expert in forming the opinion

PCFR 149

If the other party does not appear at the scheduled hearing date, the judge may:

- • Issue a Warrant for the arrest of the respondent if the respondent was served with a summons or was present in court when the date for the court appearance was set;
- Make an interim order under section 216 and 217 of the FLA;
- Make a final order;
- Issue a summons to be served on the respondent.

If the applicant does not appear at the trial, the judge may dismiss the application or adjourn it to another date.

Obtaining guardianship orders at trial

PCFR 121

If there is a material change in any of the information contained in a party's affidavit relating to guardianship of a child under section 51 of the *Family Law Act* between the date the affidavit was sworn and the date of the trial the party must ensure the affidavit is current as of the trial date. If there is a material change in the information contained in a record check attached to an affidavit, the party must obtain a new record check and file a new affidavit with new record checks and serve on each party. If the material change is not contained in a record check attached to an affidavit, then the party must file a new affidavit describing the material change and serve it on each other party.

Judicial Practice Direction - FAM 03

There is a Provincial Court Practice Direction indicating that:

"When a scheduled trial or hearing has not been completed in the time provided it will be scheduled to conclude within **30 days** unless otherwise approved by the relevant Regional Administrative Judge or Local Liaison Judge (where applicable) on advice of the local Judicial Case Manager."



Trial scheduling is a judicial function performed by judicial case managers, but this practice direction is shared with court registry staff for information purposes.

PCFR 114

A judge may adjourn a trial before the scheduled trial date if:

- a consent to the adjournment, signed by all parties, is filed more than 7 days before the scheduled trial date; or
- an application for adjournment is filed by one of the parties by case management order more than 45 days before the scheduled trial date (if all parties cannot consent to the adjournment).
- If special circumstances apply as soon as is practicable before the scheduled trial date

A trial may be adjourned **less** than 45 days before the scheduled trial date only on application by case management order to a judge to explain why the adjournment is necessary.

PCFR 122

At any point during the trial, a judge may refer calculation of child maintenance to a person designated by the Attorney General to provide such assistance and require that the calculation be referred back to the judge

Procedures

- **If both parties appear in court, go to step 1.**
- **If the respondent does not appear or send a representative, go to step 2.**
- **If the applicant does not appear in court or send a representative, to step 3.**

1. Both parties appear in court

The judge may:

- make an order;
- adjourn the matter generally or to another date;

- set a date for a family settlement conference or a trial preparation conference.
- If the judge makes an order, go to step 4.
- If the judge adjourns the matter to another date, go to step 6.
- If the judge adjourns the matter generally, go to step 7.
- If the judge orders one of the parties to surrender a passport, see Chapter 3.8 of the Criminal Case Processing Manual - Prohibition from Obtaining or Surrender of Passport.

2. The other party does not appear or send a representative to court

The judge may:

- issue a Warrant for Arrest (See "Warrant for Arrest" procedures in this Chapter)
- issue a Summons to be served on the other party
- make an interim order under s. 216 of the FLA (See "Court Order" in this Chapter)
- make a final order (See "Court Order" in this Chapter).

3. The party does not appear or send a representative to court

The judge may:

- dismiss the application;
- strike the matter off the list;
- adjourn it generally or to another court date.
- If the judge dismissed the application, go to step 5.
- If the judge adjourns the matter to another date, go to step 6.
- If the judge adjourns the matter generally, go to step 7.
- If the judge strikes the matter off the trial list, go to step 8.

4. Judge makes an order

The clerk:

- enters the disposition in CEIS
- if a party on the file is represented by counsel, counsel will prepare the order;
- if there is no counsel for any party the clerk will prepare the order.
- See "Court Order" in this Chapter.

5. Judge dismisses the application

The clerk:

- enters disposition in CEIS

The party may not request the matter be placed back on the court list. To have the matter brought back before the court, a new application will have to be filed if there has been a change in circumstances; otherwise, an appeal must be filed if the applicant wishes to have the matter reconsidered.

- If the applicant files a new application, go to "**Starting the Process**" in this Chapter.
- If the applicant files an appeal, go to "**Appeal**" in this Chapter.

6. Judge adjourns matter to another court date or sets a date for a family settlement conference or a trial preparation conference

The clerk:

- enters the disposition in CEIS.

If a matter is adjourned to a family settlement conference the registry clerk will send a notice of family settlement conference and IRA to the party(ies) or if the matter is adjourned to a trial preparation conference the registry clerk will send the party(ies) the PCSS form, received from the JCM and the IRA to the address for service on file. If the matter is adjourned in order to obtain a report, the clerk:

- forwards any existing court order for guardianship, parenting time or contact, along with the *Request for a s. 211 Report* (PFA 807) and other applicable documentation to one of two Family Justice Report Services Managers, depending on the geographic location of the child(ren)s residence according to the chart in the Address List. This *Request for a s. 211 Report* form should be scanned and entered into CEIS.



A copy of the Application relating to guardianship, parenting time or contact must be attached, if the section describing the children on the Request for s. 211 Report is left blank.

7. Judge adjourns the matter generally (not a Trial)

The clerk:

- enters the disposition in CEIS;
- at the request of either party, places matter back on court list.

If both parties consent to a date, an Application for Case Management Order Without Notice or Attendance

The clerk:

- obtains a new court date;
- enters court date in CEIS;

- prepares a Notice of Family Management Conference and provides it along with the IRAt to both parties at an address for service provided by that party (if the other party has not filed a *Reply*, only the party(ies notified), attaching a copy of the *Application to Re-Set Court Date*, if any. See "**Notice of Family Management Conference and Summons**" in this Chapter.

8. Judge orders matter struck off list

The clerk:

- enters disposition in CEIS.

The applicant may request that the matter be placed back on the court list.

If so, the clerk:

- obtains a new court date;
- enters court date in CEIS;
- prepares a *Notice of Family Management Conference* and sends it to both parties to an address for service on file (if the other party has not filed a *reply*, only the party is notified). See "**Notice of Family Management Conference and Summons**" in this Chapter.

Court Orders and Written Reasons

Background

An order is a judgement or direction that a judge gives during or at the end of a court proceeding. In most cases the judgment will be given orally in court, however the judge may also reserve their judgment and provide their written reasons (or judgment) on a later date.

A "protection order" is an order containing a condition that affords safety and security to a specified person or persons. It must include a provision that restricts the activities of a party to prevent harassment, harm, or communication with another person. Orders must be made under s. 183 of the FLA to be called a protection order under the FLA. Protection or restraining orders may also be made in family court under the *Child Family and Community Service Act*, the *Family Maintenance Enforcement Act* and the *Adult Guardianship Act*.

The following terms of an order are not considered protection orders:

- protection of non-personal objects such as property or assets;
- protection of the community in general (i.e. not to attend at any playground);
- non-removal of a child from a geographical location under s. 64 of the FLA unless the judge makes the order within the context of family violence;
- supervised access order; or
- keep the peace and be of good behaviour.

If a court clerk is unsure whether a term is a protection order, please confirm with the Judge.

For more information on Protection Orders, see [Chapter 9](#).

Conduct Orders

As per Part 10, Division 5 of the FLA, conduct orders can be used to manage the behaviour of parties, and are enforced in court by the parties. As per section 228 of the FLA, if a party fails to comply with an order made under section 225, the court must consider if it would be appropriate to make an order under Part 9 (protection orders) instead.

Conduct orders regarding communication restrictions or supervised removal of personal belongings under Division 10 may sound like protection orders, but they are not.

Types of Conduct Orders

- Order to follow an existing order;
- Dismiss part or all of a claim;
- Limit or instruct parties' applications to the court;
- Attend counselling or dispute resolution outside the court;
- Restrict communication (not a protection order);
- Require a specific person to supervise the removal of personal belongings from a residence (not a protection order); or
- Judge reserves themselves for future applications.

FLA s. 228(1)

If a party fails to comply with a conduct order, the judge may order the party to pay an amount up to \$5,000. This money will go to the spouse, parent, or child on whose behalf the request was made. The payment cheque should be made out to the person who will benefit, and should be paid directly, rather than paid to the court in trust, unless the judge orders otherwise.

PCFR 167

An order takes effect on the date that the judge makes it, unless the judge orders otherwise.

PCFR 168 (1)

If one or more parties is represented by a lawyer, any one of the lawyers must prepare an order made at a court appearance (Form 44) (PFA 719) Order-general unless another form is required under the PCFR, and provide it to any other lawyers for the other parties or, if the other parties are unrepresented, to the registry

- Within 14 days of the date the order is made, or
- Within the period permitted by the court

PCFR 168 (2) (3)

unless the court orders otherwise, an order that is prepared by a party's lawyer and is not made by consent must be approved and signed

- By the party's lawyer and
- If any other party is represented by a lawyer, by the party's lawyer

If the other party's lawyer does not approve and sign an order, reasons for not signing must be provided to whoever prepare the order

- Within 14 days of the date the order was provided to that other party or
- Within the period permitted by the court

PCFR 168 (4)

A party who is not represented by a lawyer is not required to sign an order unless

- Ordered otherwise by the court or
- Required otherwise under the rules

PCFR 168 (5)

If no party is represented by a lawyer, a clerk must prepare an order made at a court appearance

- Within 14 days or
- Within the period permitted by the court the party in whose favour the order is made is not represented by a lawyer, the registry clerk prepares the order.

It is not permissible to file a single order document incorporating both a Protection Order and other relief, as they must be prepared as separate documents.



A party, or their lawyer, may wish to consult a court clerk's notes or conference records, to assist in preparation of the order. On request, registry staff will provide them with copies of the court summary sheet or conference records.

PCFR 168 (6) and PCFR 170

After an order is signed as approved, it must be delivered to the court registry to be signed by the judge and filed with the court. The parties must also deliver for filing any document that a judge requires to be filed with the order, or the order does not have effect.

Any judge may correct, at any time, a clerical mistake or omission in an order. There is no need for parties to appear in court to correct a clerical error.

PCFR 168 (7)

The registry must provide a filed copy of the order to the parties or their lawyers, who has provided an address for service, unless the judge orders otherwise.

In a case where an issue is to be reviewed later, a party or their lawyer (not the court registry) is responsible for rescheduling a hearing, unless the judge orders otherwise.

Written Reasons

Reasons for judgment are the court's explanation of why it has chosen to make a particular decision, finding or order. They may be written or oral. When the court advises the parties that they will be providing written reasons, the proceedings are often adjourned generally and not to a specific date. This is referred to as a reserved judgment.

When the judge provides the written reasons (or judgment) to the Court Registry clerk, within one business day of receiving the written reasons the registry clerk must file and distributed the written reasons to counsel and/or the parties.

Procedures

1. Clerk prepares or checks Court Order



Procedures in this section apply to orders unless otherwise noted.

If any party is represented by a lawyer, the party's lawyer prepares the order, unless a judge orders otherwise.

The clerk:

- checks that court file number and court location are correct;
- prepares the order (if applicable) and checks the prepared order against the clerk notes/CCD;

For Protection Orders, Restraining Orders and Protective Intervention Orders, see Chapter 9.

If a judge has ordered that the FLA file is to be joined with a CFCSA file for all purposes, the order should be drafted using the style of proceedings shown in Appendix A of Chapter 7.

- checks that the name of judge is correct;
- checks that the date of order is date matter was before the court;
- if order is made without notice, that this is indicated in the order;
- if order is a provisional order, that this is indicated on the order;
- checks that the names of parties, counsel, children and other persons are correct;
- checks that the dates of children's births correspond to those written on application submitted, unless date has been corrected in court;
- checks that the terms of order are correct and do not exceed those made in court. (If order prepared by counsel is not correct, clerk sends it back to counsel to make any corrections, keeping a record on the court file explaining the corrections required);
- if order is a *Consent Order*, order check that the order is signed by both parties or by counsel;
- if order is prepared by counsel, it must be signed as approved by counsel for the other party, if any;
- if the order is correct, the clerk initials the order as being checked;
- refers the order to the judge for signature.

2. Clerk distributes document

Document	Party filing application or their lawyer	Other party or their lawyer	Court file
Court Order	Copy	Copy	Original

If the order was made without notice being given to the other party ("ex parte") it is unnecessary to order a transcript (of either the entire proceeding or oral reasons for judgment), as the non-attending party is only entitled to be sent a copy of the order.

If order is a support order, the clerk:

- encloses a Family Maintenance Enforcement Program general information brochure with copy of Support Order sent to creditor (or to creditor's lawyer, if applicable).
- **If parties dispute terms of order, they may apply to settle terms of the order, go to "Application for Case Management Order in this Chapter.**
- **If party applies to enforce order, go to Chapter 4 Enforcement Procedures. Breaches of Protection Orders are enforceable under the *Criminal Code*.**
- **If party applies to change or cancel order, go to "Application About A Family Law Matter" in this Chapter.**
- **If party appeals order, go to "Appeal" procedures in this Chapter.**
- **If the judge has ordered one of the parties to surrender a passport, see procedures in Chapter 3.6 of the Criminal Case Processing Manual - Canada Passport Office.**

3. Clerk receives written reasons (for judgment)

Upon receiving written reasons from judge or JAA, within **one business day**

The clerk:

- Files the Written Reasons by date stamping
- Makes one copy of the Written Reasons for each counsel of record and unrepresented party(ies) and one copy for the judge.
- Places original Written Reasons in the court file.
- Places a copy of the Written Reasons in counsel's mail box (pick up) folder and mail a copy to any unrepresented party. [NOTE: If a fax number has been provided for counsel or an unrepresented party, a copy may be faxed to ensure timely receipt of the reasons as the appeal period begins on the day after the date on which the written reasons are filed.]
- Forwards one copy to the judge.
- Updates CEIS .
- If a protection order was made, follow procedures set out in Chapter 9.

Appeal

Background

A final decision/order that the Court made at the conclusion of a hearing, including a dismissal, can be appealed to the Supreme Court.

If a decision/order was made in the absence of a person or because the person failed to file a reply, that person can apply by Application For Case Management Order to change, suspend or terminate the order. (See "Application for Case Management Order").

FLA 233

A party who feels that the Provincial Family Court made an incorrect or unfair order, except an interim order, may appeal the matter to the Supreme Court within 40 days. A *Notice of Appeal* may be filed in any Supreme Court registry.

Practice Direction 2010/07/01

When the party files a *Notice of Appeal* in Supreme Court, the party must also file a copy in the Provincial Court registry where the order was made according to the Supreme Court Practice Direction issued by Chief Justice Bauman.

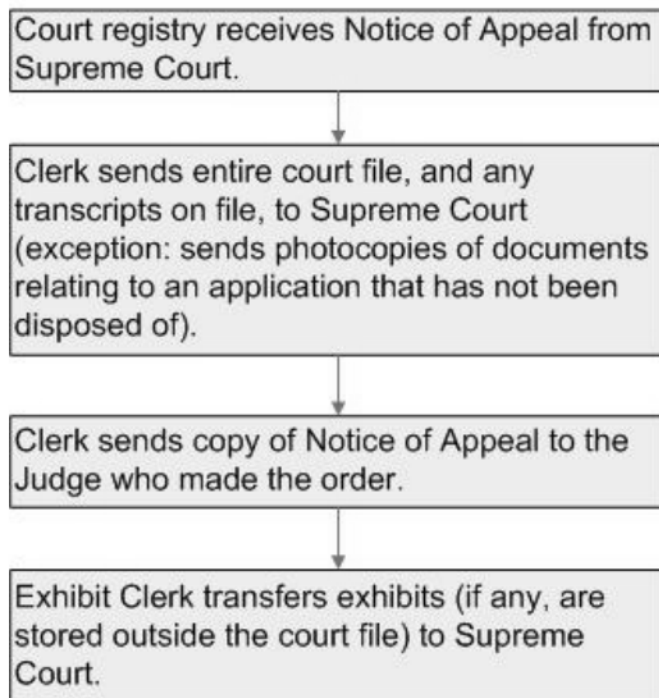
FLA s. 234

While the order made under the FLA is under appeal, it remains in effect.

Part 10 Division 7 of the FLA governs appeals of Provincial (Family) Court orders.

Appeals flowchart:

Appeals



Procedures

1. Court registry receives Notice of Appeal form letter

When the Provincial Court registry receives a *Notice of Appeal form letter* (SUP 818) from the Supreme Court, the clerk:

- sends to the Supreme Court certified copies of;
 - the originating *Application*;
 - the order being appealed;
 - any other documents specified on the form letter.
- advises Exhibit Clerk to arrange for transfer of any exhibits that were entered at a hearing that led to the order being appealed;
- sends copy of *Notice of Appeal form letter* to Provincial Court Judge who made order.



It is the responsibility of the party who filed the appeal to order the necessary transcripts and provide a copy to the Supreme Court.

The registry will usually already have received a copy of the *Notice of Appeal*, but the Supreme Court may enclose a copy with the form letter.

- **If Supreme Court remits matter back to Provincial court, go to step 2.**

2. Supreme Court remits matter back to Provincial Court

The Supreme Court submits:

- copy of Remittal Order to Provincial Court;
- returns all documents and exhibits back to Provincial Court.

The clerk:

- files Remittal Order by date-stamping;
 - sets hearing date;
 - records hearing date CEIS;
 - returns documents to court file and exhibits (if any) to Exhibit Clerk.
- **Go to "Notice of Family Management Conference and Summons" in this Chapter.**

Chapter 4 - Enforcement

Chapter Overview

If a party does not obey the provisions in a Court Order or Written Agreement, the other party may take steps to enforce it. Chapter 4 describes the procedures used to enforce a Court Order or Written Agreement.

If the order contains provisions for maintenance or support, the applicant may enroll it with the Family Maintenance Enforcement Program (FMEP). The FMEP will enforce the order for the applicant. This Chapter also describes the procedures used to enroll with the FMEP.

Common procedures are not repeated in this Chapter, and links to other chapters are identified, for example substitutional service or hearings, which are found in Chapter 3.

Enrolling with the Family Maintenance Enforcement Program (FMEP)

Background

To enforce an order for maintenance or support, a creditor may file the order with the Director of Maintenance Enforcement or act on his or her own behalf. The Director of Maintenance Enforcement has delegated filing and enforcement powers and duties to the Family Maintenance Enforcement Program (FMEP). The FMEP will monitor payments and initiate enforcement when payments are in default.

FMEA s. 3

If the creditor and debtor both reside in B.C., a creditor may file a Maintenance or Support Order with the FMEP if the order was made by a B.C. court or if an order was made under the *Divorce Act* by a court outside B.C.

When a debtor lives in B.C. and the Maintenance or Support Order was made in a reciprocating jurisdiction, or when the creditor lives in a reciprocating jurisdiction, the FMEP automatically enrolls the creditor.

FMEA s. 5(1)

While an order is filed with the FMEP, only the FMEP can enforce it.

FMEA s. 6(1)

To withdraw from the FMEP, the creditor must file a written notice with the FMEP stating that he or she does not wish the FMEP to enforce the Maintenance or Support Order.

After a Maintenance or Support Order has been filed with or withdrawn from the FMEP, the FMEP will provide notice of the filing or withdrawal to all the parties named in the order.

There is no legal requirement for FMEP to file notice that a client has withdrawn, it is filed with the court as a courtesy. Administrative correspondence can be faxed between the FMEP and Court Services if it is urgent or if it is more efficient to fax than to mail. However, certified copies of the orders must be mailed back.

Filing of the maintenance or support order is considered to have taken place as soon as the FMEP receives the enrollment package (including a copy of the order) from the creditor. Starting then, the Director of Maintenance Enforcement becomes qualified, as a party to the proceedings, to search documents in the family court file. Registries will comply with all FMEP requests for copies of maintenance or support orders (or subsequent requests for other court file documents relating to maintenance and support, in conjunction with FMEP's enforcement activities), as they can assume that enrollment packages have been received by the FMEP.

Procedures

1. Creditor/FMEP requests documents necessary to file with FMEP

The creditor/FMEP requests:

- one copy (some must be certified, some not) of each Maintenance or Support Order to be enforced.
- If FMEP requests the order(s), see procedures in **Requests for Maintenance Orders by FMEP, FMP and Reciprocals Office** in this chapter.

If the creditor requests the order(s):

The clerk:

- makes a photocopy of the creditor's referral form.

2. Clerk prepares documents requested by Creditor

The Clerk:

- notes date documents were sent on court file or on letter requesting documents, if any;
- separates and distributes documents as follows:

Document	FMEP	Court file
Maintenance Order(s) to be enforced	one certified copy of each Maintenance Order	Original
FMEP Referral form	photocopy	

3. Clerk prepares documents requested by FMEP

If the FMEP requests the maintenance or support order, see procedures in **Request for Maintenance Orders by FMEP, FMP and Reciprocity Office**, in this chapter.

4. Court registry receives FMEP Notice of Filing Letter

The FMEP sends *Notice of Filing* to court registry.

The clerk:

- files *Notice of Filing* by date-stamping;
- if order to be enforced is Supreme Court Order, and Provincial Court file does not exist, opens new file;
- places *Notice of Filing* in court file;
- updates CEIS External Agency/File#.

5. Court registry receives FMEP Notice of Withdrawal

The FMEP sends *Notice of Withdrawal* to court registry.

The clerk:

- date stamps the document;
- scans the document into CEIS;
- updates CEIS External Agency/File# Details to reflect withdrawn;
- updates any stamp or notations on the front of the file as “withdrawn” (if file is onsite).

There is no requirement under the rules to retain a copy of the *Notice of Withdrawal* in the physical file. After the above steps have been completed the *Notice of Withdrawal* should be placed into secure shredding.

Assignment of Maintenance Rights to Family Maintenance

Background

The Family Maintenance Program (FMP) is administered by the Minister under the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* (the Ministry of Social Development). If a client receives income assistance, the FMP helps the client to get spousal or child Support Orders, or to vary such an order. The client signs a document called an Assignment that authorizes the FMP to do so, and the Assignment is filed with the court.

Once maintenance/support rights are assigned, the FMP, rather than the client, makes all contact with the court, attends hearings, and prepares and files any necessary documents. The

FMP must be served or notified instead of the client, and the registry provides the FMP, not the client, with copies of documents.

Exceptions to early resolution, family justice, parenting education requirements
PCFR12(a), PCFR 90 and PCFR 100

The requirements that must be met does not apply if the application is for child support and the party has assigned their rights to the government under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*.

Procedures

FMP must follow the processes for making an application which pertain to the type of registry the documents will be filed in, as set out in Chapter 3. The FMP is responsible for having a copy of each document personally served on the respondent, and for filing proof of service. A respondent applying to change or cancel maintenance/support must serve the documents on the FMP.

In addition to the required documents, the registry may also receive the Notice of Assignment.

Requests for Maintenance/Support Orders by FMEP, FMP and Reciprocals Office

Background

FMEP or FMP may request certified copies of a maintenance or support order from the Registry, in order to pursue enforcement activities. FMEP will request certified copies of orders for certain proceedings including:

1. *Interjurisdictional Support Orders Act* (ISO) cases where the order will be registered in another jurisdiction for enforcement;
 - a. 3 certified copies for any Canadian jurisdiction except Alberta;
 - b. 2 certified copies for Alberta or any reciprocal jurisdiction outside Canada.
2. Cases where an order is made in Supreme Court, but is then registered in Provincial Court for the purposes of enforcement;
 - a. 1 certified copy
3. Cases where FMEP is seeking a federal pension intercept under federal *Garnishment, Attachment and Pension Diversion Act* legislation.

The majority of requests for orders will be for a photocopy although requests for certified copies may still be made. One photocopy of an order is to be provided.

If certified copies of orders are requested, the number required varies with the purpose for which they are needed and is specified on the form. The Reciprocity Office makes similar requests but uses the Interagency Routing form to do so.

If the registry is unable to comply with a request right away because the maintenance/support order has not yet been filed, the registry will retain the original request and will use it as a 'trigger' to send the requesting agency copies of the maintenance/support order as soon as it is filed. If the Registry has not provided the copies after two months elapse from the date of the previous request, a follow-up request will be sent. The follow-up status will be clearly indicated on the request form.

The FMEP and FMP coordinate their systems to reduce the likelihood that both will request copies of orders. In the event that FMEP does request an order subsequent to an initial request from the FMP, any outstanding request from the FMP is to be disregarded and copies are to be provided to the FMEP only.

Normally only copies of maintenance/support orders and/or court clerk's notes relating to maintenance will be requested. If the FMEP or FMP require copies of another type of document, they will attach a cover letter to the request form. If no cover letter is attached regarding an unusual request, Registry staff should make copies of maintenance/support orders (and/or court clerk's notes referring to maintenance and support) only and will disregard other documents requested.

Court Services Branch and FMEP agree that additional copies of file documents will no longer be provided to the FMEP solely because a party has moved to a different FMEP catchment area. In such instances, it is the FMEP office's responsibility to transfer their client's file internally.

Procedures

1. Court registry receives a request for a maintenance or support order...

If the court registry receives a request from the FMEP, FMP or Reciprocity Office for a copy or certified copies of a maintenance/support order, the clerk:

- Pulls the court file;
- Determines whether the requested order is in the file.

If the order is not in the file, go to step 2.

If the order is in the file, go to step 4.

2. If the requested maintenance/support order has not yet been filed...

If it is not possible to immediately satisfy a request from the FMEP, FMP or the Reciprocals Office for a copy or certified copies of a maintenance/support order because it has not yet been filed:

If this is the first request, the clerk:

- makes a copy of the request form;
- makes a notation on the copy of the request that the order has not yet been filed, including the date;
- returns the copy of the request form to the requesting office.
- files the original request form in the court file.

If this is a follow-up request, the clerk:

- makes a notation on the follow-up request form that the order has still not been filed, including the date;
- returns a copy of the follow-up request form to the requesting office;
- files the follow-up request form and the original request form in the court file.

3. When a maintenance/support order is filed...

When a maintenance/support order is filed and has been signed by the judge, the clerk:

- Pulls the court file;
- Determines whether there is an outstanding request for the order in the file.
- **If there is a request, go to step 4.**

If there is no request, the clerk files the maintenance/support order in the court file.

No further action.

4. Clerk makes a copy/certified copies of the maintenance/support order...

If an outstanding request for a maintenance/support order is in the court file, the clerk:

- Makes the number of requested copies including certifying if required,
- Files the original of the order in the court file;
- Sends the copy/certified copies to the requesting office, along with the original of the initial/follow-up request form;
- Returns court file to filing system.



The original request form is returned as it is unnecessary to keep a copy on file once the request is complied with. However, if a Registry prefers to retain a copy of the request for their records, a notation must be made on the copy retained in the file which indicates the date the copies were sent.

Maintenance/Support Payments

Background

FMEA s.10(1)

When a Maintenance/Support Order is filed with the FMEP, the other party must send payments to the director. The payment must be payable to the director, or if specified by the director, to the applicant or reciprocating jurisdiction. Only with written approval of the director, can payments be made directly to the applicant.

If the party is enrolled with FMEP, the Registry must immediately notify the Director of the payment by faxing a completed *Payment to Court – Notice to FMEP* to the appropriate FMEP Client Office (see *Financial Operations Manual Chapter 4.3 Maintenance/Support* and *Financial Operations Manual Chapter 8 Forms*).

In order for any Maintenance/Support to be paid out to FMEP or to a applicant, a requisition for payment out must be submitted to the Registry. The only time that a requisition is not required is when the other party is in custody on a Warrant of Committal and arrears are paid; the monies are automatically paid to FMEP.

FMEA s.10 (2)

If the debtor is required to make payments under a *Divorce Act* order that specifies payment through the Court, the debtor must make the cheque or money order payable to the creditor, and deliver it to the court.

FMEA s.10(3)

The court must forward to the party entitled to receive them, all payments received in accordance with a maintenance order made under the *Divorce Act*; and

If the party is enrolled with FMEP, the Registry must immediately notify the Director of the payment by faxing a completed *Payment to Court – Notice to FMEP* to the appropriate FMEP Client Office (see *Financial Operations Manual Chapter 4.3 Maintenance/Support* and *Financial Operations Manual Chapter 8 Forms*).

Procedures

1. Court registry receives maintenance/support payment

If a payment is received by the court registry (as specified in a court order or to release a debtor held on a warrant of committal), the clerk must:

- Receipt the payment
- If the maintenance/support order is filed with FMEP, notify the Director of the payment by faxing a completed Payment to Court - Notice to FMEP to the appropriate Client Office (See Financial Operations Manual Chapter 4.3 Maintenance/Support and Financial Operations Manual Chapter 8 Forms).
- If a Divorce Act order payment is received, the clerk forwards the payment to the entitled party.

Garnishing Orders

- Payments made into Court in accordance with a Garnishing Order may be paid out once the required conditions have been met.
- **Go to Garnishing Orders in this chapter.**

The Registry does not accept support payments except in the above noted instances.

If the other party continues to send payments to the court other than *Divorce Act* or Garnishing Order payments, the registry clerk receives and processes payment in usual manner and forwards the payment to the applicant. If the order is filed with FMEP, the clerk notifies FMEP of payment.

2. Payment Out

In order for any Maintenance/Support to be paid out to FMEP or to an applicant, a requisition for payment out must be submitted to the Registry. The only time that a requisition is not required is when the other party is in custody on a Warrant of Committal and arrears are paid; the monies are automatically paid to FMEP.

Payments in and out of maintenance/support require an audit trail. Refer to the detailed information outlined in the *Financial Operations Manual* Chapter 4.3 Maintenance/Support, Receiving Payment and Chapter 4.3 Maintenance/Support, Making Payment.

Notice of Attachment

Background

FMEAR s. 3(b)

A *Notice of Attachment* is an administrative tool that the FMEP uses to enforce Maintenance/Support Orders filed with the Director of Maintenance Enforcement. The *Notice of Attachment* form is prescribed by the FMEAR. When the FMEP thinks it is necessary, it may issue a *Notice of Attachment* to anyone who owes money to a debtor. The Notice allows the FMEP to collect all or part of any arrears and regular payments owed under a Maintenance/Support Order.

FMEA s. 15(1)

The FMEP shall serve the *Notice of Attachment* on the person who owes money to the debtor.

FMEA s. 15(2) [Repealed 2011-5-18]

Section 15(2) was repealed on May 18th, 2011 and as a result, as of that date FMEP was no longer required to file the Notice of Attachment and any accompanying documents with the Court, unless court action is being taken. If FMEP sends a Notice of Attachment to the Registry which does not relate to a court action, it should be destroyed.

FMEA s. 16(4)

If the director refuses to withdraw a notice of attachment, an attachee or debtor may make application to the court in accordance with the regulations. S. 9 of the regulations say such an application shall be made within 10 days after the director's refusal, at the court location where the maintenance/support order was filed.

FMEA s. 16(6)

If the court determines that the attachee is liable for failing to pay, the Court shall make a Payment Order.

FMEA s. 16(7)

If the attachee fails to comply with Payment Order, it can be enforced in the same way a maintenance/support order would be enforced. Forms must be amended to indicate that the attachee is the subject of the enforcement.

FMEA s. 16

If the attachee or debtor disputes the *Notice of Attachment*, registry staff inform them that they must first apply to the FMEP to have it withdrawn. If the FMEP refuses to withdraw the *Notice of Attachment*, the attachee or debtor may then apply to the court to have it withdrawn.

FMEA s. 17(1)

The director may serve a *Notice of Attachment* if the maintenance/support order was made outside the province by a court of competent authority.

On rare occasions, the court may be the attachee. For example, there is the circumstance where a plaintiff in a small claims action obtains default judgment and the defendant pays monies into court when applying to set the default judgment aside. If the defendant is unsuccessful in setting aside the default judgment, the Director of Maintenance Enforcement may file a *Notice of Attachment* attaching the funds that were paid into court. Court Services has received a legal opinion advising that the court registry is obliged to pay the funds to the Director.

Another legal opinion provided to Court Services Branch indicates that bail monies cannot be attached.

PCFR 142

Applications made under the FMEA, are made in Form 35 upon giving 7 days notice o the other party(ies).

PCFR 144(2)

Applications made under the FMEA, if the other party has provided an address, email address or fax number, can be served by:

- Leaving the documents at the person's address for service
- By mailing the document by ordinary mail to the person's address for service
- By emailing the document to the email address
- By faxing the document to the fax number

Proof of service is made by filing a Certificate of Service (Form 7) (**PFA 714**).



If it is not practical for FMEP or a party to serve an Application for an Order under the FMEA and they are asking that they be served by a sheriff, , they must file an Application for a Case Management Order asking for an order be made permitting this service.. See **Application for Case Management Order** in Chapter 3.

If the party or FMEP request, a clerk may have a sheriff serve:

- Summons - General (Form 31) requiring the debtor to attend court or failure to report

- Warrant for Arrest (Form 32)
- Garnishing Order
- Summons to a Default Hearing (Form 33)
- Summons to a Committal Hearing (Form 34)
- Warrant for Execution

The clerk will be provided with a Request for Service.

PCFR 182(1)(a).

PCFR 145

Evidence at the hearing may be provided orally, or by affidavit.

If a party does not attend the hearing, the judge may proceed without that party.

A party who wants to transfer the court file so it can be heard at another location, must file an Application for Case Management Order.

Procedures

1. Attachee or other party applies to Registry to challenge, set aside or change the exemption on a Notice of Attachment

If either attachee or other party want to apply to challenge or set aside Notice of Attachment, clerk informs the attachee or other party that he or she should first approach the FMEP.

If FMEP has been approached, and the matter is not resolved by consent, the following procedures apply.

The attachee or other party submits:

- Application for Order under the *Family Maintenance Enforcement Act* (Form 35) (PFA 754) requesting that the Notice of Attachment be set aside and a copy of the order, written agreement, or determination with the application

The clerk:

- Check to ensure that the application is being filed at the court location where the maintenance/support order was filed, and that the correct parties' names and court file number are indicated.
- Enters a date for the hearing of the application. The applicant must arrange for service of the documents by email, fax, ordinary mail or leaving at the person's address for service. The date selected needs to consider how the other parties will be served.
- See **PCFR 179**, which sets out when a document is deemed to have been served.

- Files the application by date-stamping.
- Retains the original and provides copies to the applicant to effect service.
- Provides the applicant a blank Certificate of Service (Form 7) (**PFA 714**)
- Enters the application in CEIS.



If the other party is requesting the application be heard in another location, they must file an Application for a Case Management Order asking that the matter be transferred for hearing. See **Application for Case Management Order** in Chapter 3.

2. Attachee fails to pay on Notice of Attachment

The FMEP monitors payments on a *Notice of Attachment*.

PCFR 142(1)(f)

FMEP may file an Application for Order under Family Maintenance Enforcement Act (Form 35) (PFA754) when an attachee has failed to pay on a Notice of Attachment and FMEP is asking that the attachee be required to pay the unpaid amount (**s. 16(3) FMEA**).

PCFR 140

If an attachee was ordered to pay an amount, and they fail to comply with that order, FMEP may file an Application for Garnishment, Summons or Warrant (Form 30) (PFA 749) asking for a summons to bring the attachee to court for a default hearing, or take any other action which is available to enforce a maintenance order (**s. 16(7) FMEA**).

Garnishing Order

Background

A Garnishing Order is an order that an applicant can apply for to enforce a Maintenance/Support Order. It allows the applicant to collect (or **capture**) money that is owed to the other party from a third party called the **garnishee**. Examples of money that can be garnished are wages, rent owing to the other party, contracts, and bank accounts. The Garnishing Order may be issued by the court on the basis of an affidavit by the applicant, without a court appearance by the other party.

A Garnishing Order can only collect arrears. It cannot collect regular maintenance/support payments that become due while the Garnishing Order is in force.

COEA s. 3

A Garnishing Order cannot collect all of the other party's wages. The *Court Order Enforcement Act* specifies a percentage exemption.

FMEA s. 18

Section 18 of the FMEA allows the applicant to make an **application without notice** for a Garnishing Order made under section 4 of the COEA. The judge may then sign the application as a desk order, and the applicant and other party do not have to appear in court.

FMEA s. 18(3)

A Garnishing Order specifies the period during which the order remains in force. However, the period cannot be longer than twelve months. If all of the money owing is collected before the time that the Garnishing Order specifies (if the Order is **satisfied**), the court may discharge the order.

If the other party is a provincial or federal government employee, registry clerks follow special procedures. **See Garnishing a Provincial Government Employee's Wages and Garnishing a Federal Government Employee's Wages in this chapter.**

PCFR r. 12(2)

To apply for a Garnishing Order, the applicant must submit an Application for Garnishment, Summons or Warrant (Form 30) (PFA 749) as well as the other necessary documents.

COEA s. 3(2)

The applicant must swear an Affidavit in Support of Garnishing Order. If the Garnishing Order is to collect wages, the applicant must file the Affidavit within seven days before the pay day on which the wages are to be collected.

FMEA s. 18(6)

After the Garnishing Order has been served to both the other party and the garnishee, they have 10 days from the date that the *Order* was served to dispute it. To do so, they must file a Notice of Intention to Dispute a Garnishing Order. **See Disputing a Garnishing Order in this chapter.**

When the Registry has proof that the *Garnishing Order* has been served successfully to the other party and the garnishee, and the 10-day dispute period has elapsed, the first payment goes to the applicant or director. After that, the court may make all future payments directly to the applicant, without further notice to the other party or garnishee.

Procedures

1. Registry receives documents from applicant

The applicant submits:

- Application for Garnishment, Summons or Warrant (Form 30) (PFA 749)
- Copy of order, agreement, or determination
- Affidavit in Support of Garnishing Order (PFA 078);

The clerk:

- checks documents;
- files documents by date-stamping;
- prepares Garnishing Order (PFA 904);
- presents following to judge for signature:
 - Application for Garnishment, Summons or Warrant (Form 30) (PFA 749)
 - Affidavit in Support of Garnishing Order;
 - prepared *Garnishing Order*;
- date-stamp Garnishing Order **after** judge signs it;
- ensures Garnishing Order is dated after it is signed by the judge;

2. Clerk distributes *Garnishing Order* and supporting documents

The clerk distributes documents as follows:

Document	Applicant	Service Package*			Court file
		Garnishee	Other party	Server	
<i>Request for Service of Documents (if applicable)</i>	Copy			Copy	Original
<i>Application for Garnishment, Summons or Warrant</i>	Copy				Original
<i>Garnishing Order</i>	Copy	Copy	Copy	Copy	Original
<i>Affidavit in Support of Garnishing Order</i>	Copy		Copy		Original

- Garnishee is served first.
- Documents may be served on a party personally, or by registered mail to the last address for service given on a document filed by that party in a current application;
- If the garnishee is a limited company the documents may be served by registered mail to the registered office.

The clerk:

- if requested, arranges for service by sheriff and provides them with a service package;
or
- if applicant is serving, provides them with the service package.

If the Provincial Government is the garnishee and the Garnishing Order relates to either a member of the public at large (such as a supplier or contractor) or to a public servant, the server serves a copy of Garnishing Order on the Ministry of Finance in Victoria at the Legal Encumbrances Office.

3. Service of Garnishing Order is successful

The clerk determines:

- if Garnishing Order is served by checking for Certificate of Service (Form 7) (**PFA 714**)
- if personal service by Sheriff or other person, completed Certificate of Service (Form 7) (**PFA 714**) or
- if service is by registered mail, Certificate of Service must have attached the signature copy received from Canada Post or print-out of delivery confirmation made available on the Internet by Canada Post; and
- copy of document served.

The clerk:

- files Certificate of Service by date-stamping;
- places all returned documents in court file.

4. Response from garnishee

If the registry receives a letter from a garnishee that the other party is no longer employed or has no funds due:

The clerk:

- files letter by date-stamping;
- forwards copy of letter to applicant;
- places letter in court file.
- **If service on other party is not successful, see Attempted Service procedures in Chapter 3.**
- **For Payment Out, go to Financial Operations Manual.**

- If **Garnishing Order** is disputed, go to Disputing a Garnishing Order in this chapter.
- If **Garnishing Order** is served successfully and garnishee has not responded to the *Garnishing Order*, applicant applies for a **Garnishing Order Absolute**. Go to Garnishing Order Absolute in this Chapter.

Garnishing a Provincial Government Employee's Wages

Background

This section describes the procedures to follow when preparing and processing a *Garnishing Order* if the other party is a provincial government employee. **For background information on Garnishing Orders see Garnishing Order in this chapter.**

COEA s. 6(2)

A Garnishing Order may attach money that the provincial government owes to any other party who is a public servant.

When the other party named in a *Garnishing Order* is a provincial government employee, the garnishee is "**His Majesty the King in the Right of the Province of British Columbia.**"

The garnishee is served by serving the documents on the **Deputy Minister of Finance** or leaving them at the **Legal Encumbrances Office** of the **Office of the Deputy Minister of Finance and Corporate Relations** in Victoria.

COEA s. 6(3)

If the other party is paid from another location, registry staff serve the Garnishing Order to the board, commission, government agent, or officer at that location.

Procedures

1. Registry receives documents from applicant

The applicant submits:

- Application for Garnishment, Summons or Warrant (Form 30) (PFA 749)
- Copy of order, agreement, or determination
- Affidavit in Support of Garnishing Order (PFA 078);

The clerk:

- checks documents;
- files documents by date-stamping;
- prepares Garnishing Order (PFA 904);

- presents following to judge for signature:
 - Application for Garnishment, Summons or Warrant (Form 30) (PFA 749)
 - Affidavit in Support of Garnishing Order;
 - prepared *Garnishing Order*;
- date-stamp Garnishing Order **after** judge signs it;
- ensures Garnishing Order is dated after it is signed by the judge;

2. Clerk distributes *Garnishing Order* and supporting documents

The clerk distributes the Garnishing Order as follows:

Document	Applicant	Service Package			Court file
		Deputy Minister of Finance	Other party	Server	
<i>Request for Service of Documents (if applicable)</i>	Copy			Copy	Original
<i>Application for Garnishment, Summons or Warrant</i>	Copy				Original
<i>Garnishing Order</i>	Copy	Copy	Copy	Copy	Original
<i>Affidavit in Support of Garnishing Order</i>	Copy				Original

- Documents may be served on a party by personal service or by mailing a copy of it by registered mail to the last address for service given on a document filed by that party in a current application.
- If public servant is paid from another location, Garnishing Order is served on board, commission, government agent, or officer where public servant is usually paid.

The clerk:

- if requested, arranges for service by sheriff and provides them with a service package; or
- if applicant is serving, provides them with the service package.

3. Registry receives proof that service is successful

The server submits:

- if personal service by Sheriff or other person, completed Certificate of Service (Form 7) (**PFA 714**) or
- if service is by registered mail, Certificate of Service must have attached the signature copy received from Canada Post or print-out of delivery confirmation made available on the Internet by Canada Post; and

- copy of document served.

The clerk:

- files proof of service document by date-stamping;
- places all returned documents in court file.
- **If service is not successful, see Attempted Service procedures in Chapter 3.**
- **For Payment Out, go to Financial Operations Manual.**
- **If response from garnishee, go to step 4.**
- **If party disputes Garnishing Order, Disputing a Garnishing Order in this chapter.**
- **If party applies to vary the wage exemption, go to Variation of Wage Exemption in this chapter.**
- **If Garnishing Order is served successfully and garnishee has not notified Court why monies cannot be paid, nor made payments into court, applicant can apply for Garnishing Order Absolute. See Garnishing Order Absolute in this chapter.**

4. Response from garnishee

If the registry receives a letter from a garnishee that the debtor is no longer employed or has no funds due.

The clerk:

- files letter by date-stamping;
- forwards copy of letter to the creditor;
- places letter in court file.

4. Response from garnishee

If the registry receives a letter from a garnishee that the other party is no longer employed or has no funds due.

The clerk:

- files letter by date-stamping;
- forwards copy of letter to the applicant;
- places letter in court file.

Garnishing a Federal Government Employee's Wages

Background

This section describes the procedures to follow when preparing and processing a *Garnishing Order* if the other party is a federal government employee. **For background information on Garnishing Orders see Garnishing Order in this chapter.**

Employees of the federal government include civil servants, senators, members of Parliament, judges, members of the RCMP, or employees. The applicable corporations have been set out in s. 6 of the *Garnishment and Attachment Regulations* (GAR) as follows:

- Canada Post Corporation;
- Canada Dairy Commission;
- Telefilm Canada;
- Royal Canadian Mint.

If the applicant is uncertain whether a specific department is subject to the provisions of the federal Act, the applicant should contact the Garnishment Registry at (604) 666-2061 for advice.

The Department of Justice has a checklist to help guide applicants through the garnishment process under Part 1 of the federal *Garnishment, Attachment and Pension Diversion Act* (GAPDA). You can refer clients to the Ministry of Justice website at www.justice.gc.ca. The information can be found under the Family Law tab – Enforcing Support.

GAPDA s. 5

In matters of salaries and other remuneration, His Majesty is governed by the *Garnishment, Attachment and Pension Diversion Act* (GAPDA) and Regulations made under the GAR, and by provincial garnishment law.

GAPDA s. 27

Although this Act overrides some of the provisions of the provincial *Court Order Enforcement Act*, the Federal Crown is generally bound by most provisions of the COEA in respect of salaries and enumeration payable to federal employees.

The creditor prepares the *Affidavit in Support of a Garnishing Order After Judgment* and the *Garnishing Order* identifying the garnishee as "His Majesty the Queen in right of Canada".

GAPDA s. 6(1)

A federal form called a *Garnishment Application* must be prepared by the creditor and served along with the *Garnishing Order After Judgment* and a copy of the judgment or order. The style of the form is prescribed in the *Garnishment and Attachment Regulations*.

Court Services has developed a copy of this form that an applicant can obtain from the Registry, the electronic version of the Garnishment Applicant is found in the Small Claims forms on the intranet ([SCL 816](#)), or the applicant can obtain a bilingual form from the Department of Justice website at <http://www.justice.gc.ca/eng/fl-df/enforce-execution/jus578.html> or in person at the Garnishment Registry of the Department of Justice at the address noted below.

GAPDA s. 6(2)
GAPDA s. 6(1)
GAPDA s. 8

A *Garnishing Order* for service on the crown is valid for 30 days from the day it is issued and the service of the documents is binding on the Crown 15 days after service is made. However, when the funds are actually attached is determined by the provisions of Section 8 of the Act, and this may take up to two months from the date of service. It may take up to an additional 15 days for the funds to be paid into court.

GAPDA s. 7(1)

When documents are to be served to His Majesty, service of documents must be made at the place specified in s. 4 of the Regulations [GAPDA s. 7(1)] Subject to subsection (2) and (3) of the Regulations, for British Columbia this address is:

Attn: Garnishment Registry
Department of Justice
British Columbia Regional Office
Suite 900 - 840 Howe Street
Vancouver, BC V6Z 2S9

If the garnishment proceedings are in respect of a debtor who receives salary or remuneration from a Crown corporation listed in s. 6 of the Regulations, service of the documents must be effected at the head office of the corporation [*Garnishment and Attachment Regulations* s. 4(3)].

GAPDA s. 7(2)
COEA s.11(2.1)

There are three options for service to the place specified in the regulations:

- by personal service;
- by registered mail. If this option is used, the document is deemed to be served on the day it is received;
- by any method of service permitted by the law of a province. In British Columbia, this is registered mail.

GAPDA s. 10

His Majesty has 15 days to respond to a *Garnishing Order*:

- in the case of a salary, 15 days after the last day of the second pay period after the pay period in which her Majesty is bound by the *Garnishing Order*;
- in the case of fees or honoraria, 15 days after the day when the fee or honorarium is garnished.

GAPDA s. 11(2)

Generally, when the Garnishment Registry receives the documents, they send a letter acknowledging receipt to the sender. This letter may be used as an attachment to the proof of service document when proof of service is required.

Procedures

1. Registry receives documents from applicant

The applicant submits:

- Application for Garnishment, Summons or Warrant (Form 30) (PFA 749)
- Copy of order, agreement, or determination
- Affidavit in Support of Garnishing Order (PFA 078)
- Garnishment Application (SCL 816)

The clerk:

- checks documents;
- files documents by date-stamping;
- prepares Garnishing Order (PFA 904);
- presents following to judge for signature:
 - Application for Garnishment, Summons or Warrant (Form 30) (PFA 749)
 - Affidavit in Support of Garnishing Order;
 - prepared *Garnishing Order*;
- date-stamp Garnishing Order **after** judge signs it;
- ensures Garnishing Order is dated after it is signed by the judge;



The Garnishment Application, Notice of Intention to Garnishee and supporting Affidavit are not filed in Registry. It is up to federal government to refuse to honour order if correct steps have not been taken.

2. Clerk distributes *Garnishing Order* and supporting documents

The clerk distributes the documents as follows:

Document	Applicant	Service Package			Court file
		Dep. of Justice (Van.)	Other party	Server	
<i>Request for Service of Documents (if applicable)</i>	Copy			Copy	Original
<i>Application for Garnishment, Summons or Warrant</i>	Copy				Original
<i>Garnishing Order</i>	Copy	Copy	Copy	Copy	Original
<i>Affidavit in Support of Garnishing Order</i>	Copy	Copy	Copy (if available)		Original
<i>Garnishment Application</i>	Copy	Copy	Copy		Original

- The Garnishing Order is served on garnishee first.

The clerk:

- if requested, arranges for service by sheriff and provides them with a service package;
or
- if applicant is serving, provides them with the service package.

3. Registry receives proof that service is successful

3. Registry receives proof that service is successful

The server submits:

- if personal service by Sheriff or other person, completed Certificate of Service (Form 7) (**PFA 714**) and attaching the Garnishment Registry's letter which acknowledges receipt;
or
- if service is by registered mail, Certificate of Service must have attached the signature copy received from Canada Post or print-out of delivery confirmation made available on the Internet by Canada Post; and
- copy of document served.

The clerk:

- files proof of service document by date-stamping;
- places all returned documents in court file.
- **If service is not successful, see Attempted Service procedures in Chapter 3.**

- For Payment Out, go to Financial Operations Manual.
- If response from garnishee, go to step 4.
- If party disputes Garnishing Order, Disputing a Garnishing Order in this chapter
- If party applies to vary the wage exemption, go to Variation of Wage Exemption in this chapter.
- If Garnishing Order is served successfully and garnishee has not notified Court why monies cannot be paid, nor made payments into court, applicant can apply for Garnishing Order Absolute. See Garnishing Order Absolute in this chapter.

4. Response from Garnishee

If the registry receives a letter from a garnishee that the debtor is no longer employed or has no funds due:

The clerk:

- files letter by date-stamping;
- forwards copy of letter to the creditor;
- places letter in court file.

Intercepting Federal Funds

Background

A creditor or the FMEP may garnish or attach federal funds with the help of the Family Orders and Agreements Enforcement Assistance (FOAEA) Unit in Ottawa. The Department of Justice established the Unit under the *Family Orders and Agreements Enforcement Assistance Act* (FOAEAA) to help provincial and FOAEAA, Part II territorial maintenance enforcement programs garnish federal funds. Part II of the FOAEAA allows the garnishment of certain federal funds to enforce support orders or provisions.

Federal funds that can be garnished include:

- Employment Insurance benefits;
- Income tax returns;
- Canada Pension Plan benefits;
- Old Age Security benefits;
- Interest on unmatrued Canada Savings Bonds;
- GST rebates.

FOAEAA s. 23

Because the ability to garnish funds includes the ability to attach them, either a Garnishing Order or a Notice of Attachment can be used to intercept (collect) federal funds. An Attachment

Order cannot be used; section 21(1), of the FMEA only allows Attachment Orders to be directed to employers, and the federal government cannot be considered the employer for these funds.

An applicant not enrolled with the FMEP use Garnishing Orders, and the FMEP uses a Notice of Attachment.

FOAEAA s. 28

To intercept federal funds, the following documents must be served on the Federal Minister of Justice at the Family Order and Agreements Enforcement Assistance Unit.

- a *Notice of Attachment* or a *Garnishing Order* (called a *Garnishee Summons* in the FOAEAA);
- a copy of the *Maintenance/Support Order* or *Written Agreement* that contains the support provision to be enforced;
- an application in the form prescribed by the FOAEAA Regulations.

FOAEAA s. 32

FOAEAA s. 34

FOAEAA s. 35

A Garnishing Order must be served on the Minister of Justice within 30 days of the day the judge signed it. The documents may be served by registered mail. The date the documents are considered served is the day on which the FOAEA Unit receives them.

FOAEAA s. 41

The FOAEA Unit must respond to the *Garnishing Order* within 30 days of the day they receive it.

No holdbacks (exemptions) apply to the amount of federal monies that may be garnished when an applicant's maintenance order is not enrolled with the FMEP. There are some holdbacks when the Director of Maintenance Enforcement applies on behalf of its clients, but the FMEP submits these applications directly to Justice Canada rather than via the court registry.

Procedures

- **For procedures relating to FMEP, see Notice of Attachment procedures in this chapter.**

1. Registry receives documents from applicant

If applicant **is not enrolled** with FMEP, the applicant submits:

- Application: Interception of Federal Moneys under Part II of the Family Orders and Agreements Enforcement Assistance Act (Federal form - JUS 578);
- Application for Garnishment, Summons or Warrant (Form 30) (PFA 749)
- Copy of order, agreement, or determination
- Affidavit in Support of Garnishing Order (PFA 078);

The clerk:

- checks documents;
- completes section 1 of Application (Court number in Section 1 is **NOT** court location number. It is a specific number assigned to each court for intercepts only);
- files documents by date-stamping;
- prepares Garnishing Order;
- makes certified copy of Maintenance/Support Order and refiles original order;
- presents prepared Garnishing Order and supporting documents to judge for signature;
- ensures Garnishing Order is dated after the judge signs it.

2. Clerk separates and distributes documents

The clerk distributes the documents as follows:

Document	Applicant	FOAEA Unit Dept of Justice (Ottawa)	Service Package		Court file
			Other party	Server	
<i>Request for Service of Documents (if applicable)</i>	Copy			Copy	Original
<i>Application: Interception of Federal Moneys for Family Orders and Agreements Enforcement</i>		Original			Copy
<i>Application for Garnishment, Summons or Warrant</i>	Copy				Original
<i>Maintenance Order</i>		Certified copy			Return original to court file
<i>Garnishing Order</i>	Copy	Copy	Copy	Copy	Original
<i>Affidavit in Support of Garnishing Order</i>	Copy				Original

- The *Garnishing Order* is served on garnishee first.

- The garnishing order and application may be served on the FOAEA unit by registered mail.
- Service on a party may be served personally, or by registered mail to the last address for service given on a document filed by that party in a current application.
- **If service on the FOAEA Unit and the garnishee is successful, go to step 3.**
- **If service is not successful, go to Attempted Service procedures in Chapter 3.**
- **If Registry receives *Payment Advice Detail Reports*, go to step 4.**

3. Service on FOAEA Unit and garnishee is successful

The server submits:

- if personal service by Sheriff or other person, completed Certificate of Service (Form 7) (**PFA 714**) and attaching the Garnishment Registry's letter which acknowledges receipt; or
- if service is by registered mail, Certificate of Service must have attached the signature copy received from Canada Post or print-out of delivery confirmation made available on the Internet by Canada Post; and
- copy of document served.

The clerk:

- files proof of service document by date-stamping;
- places all returned documents in court file.

4. Court registry receives Payment Advice Detail Report

Supply and Services Canada sends Payment Advice Detail Report to advise the Registry of amount garnished. A cheque representing total amount on Report follows shortly thereafter. Payment Advice Detail Report may contain more than one other party's name.

The clerk:

- gives Payment Advice Detail Report to Accounting Clerk, who files Report until cheque is received.

When registry receives payment from Supply and Services Canada, Accounting Clerk processes payment and discards Payment Advice Detail Report.

- **For Payment Out, go to Financial Operations Manual.**
- **If party disputes Garnishing Order go to Disputing Garnishing Order in this chapter.**



The exemption for federal government payments to other party (i.e. E.I.C., C.P.P. etc) is fixed at 50% and cannot be varied.

Disputing a Garnishing Order

Background

FMEA s. 18(6)

The garnishee or other party can dispute a Garnishing Order but must do so within 10 days of the day it was served. If the Garnishing Order is not disputed during this 10-day period, the money may be paid out to the applicant or Director of Maintenance Enforcement. Subsequent payments received on the Garnishing Order are paid out to the applicant or director without further notice to the other party or garnishee.

A person wishing to dispute a Garnishing Order must file a Notice of Intention to Dispute Monies Paid into Court with the Registry.

Procedures

1. Registry receives Notice of Dispute to Monies Paid into Court by Garnishee

The other party submits:

- Notice of Dispute to Monies Paid into Court by Garnishee (**PFA 803**).

The clerk:

- checks documents;
- files Notice of Dispute to Monies Paid into Court by Garnishee (**PFA 803**) by date-stamping;
- advises accounting clerk a dispute has been filed to ensure that payment to applicant is not made before matter is determined in Court;
- sets hearing date;
- prepares Notice of Hearing or Conference (**PFA 906**)
- scans the document into CEIS; and
- schedules the matter in CEIS.

2. Clerk separates and distributes documents

The clerk:

- separates and distributes documents as follows:

Documents	Applicant	Other Party	File
<i>Notice of Dispute to Monies Paid into Court</i>	Copy	Copy	Original
<i>Notice of Hearing</i>	Copy	Copy	Original

- "Notifies" parties or other party may arrange service.
- **Go to Hearing or Trial in Chapter 3.**

3. Matter is resolved in court

The judge may:

- dismiss application;
- discharge order;
- vary amount owing;
- vary wage exemption.

The clerk:

- if court dismisses application Garnishing Order stands;
- if court discharges or varies order, or varies wage exemption, prepares order, if other party is not represented by counsel. See **Court Order** in Chapter 3;
- notifies garnishee by telephone that order has been discharged or varied and advises order will follow by mail;
- notifies accounting clerk of the outcome of the proceedings; and
- separates and distributes prepared order as follows:

Document	Garnishee	Applicant	Other Party	Court file
Court Order	Copy	Copy	Copy	Original

Variation of Wage Exemption

Background

The party whose wages are attached or garnished can apply to **increase** the amount of wages that cannot be deducted.

An applicant can apply to **decrease** the amount of wages that cannot be deducted.

Both do this by filing an Application for Order Under Maintenance Enforcement Act (Form 35) (PFA 754).

Exemptions for Garnishing Orders are stated in the *Court Order Enforcement Act*.

COEA s. 3(5) & 3(7)

A Garnishing Order cannot collect all of the other party's wages. The *Court Order Enforcement Act* specifies a percentage exemption. When the other party or the applicant makes an application for variation of wage exemption, they apply to change these percentages.

However, no matter how little money the other party makes, the other party must have at least \$100 a month exempted from being attached or garnished. That amount may be pro-rated to apply to a shorter period.

COEA s. 4(1)

If the proceedings are in the Supreme Court, the other party applies for a variation of wage exemption to the Registrar. If the proceedings are in Provincial Court, the other party applies to a judge by filing with the Registry.

COEA s. 4(2)

The hearing date must be set within three days of receiving the application. The hearing must occur within seven days of the date the registry received the application.

After the judge has made an order on the matter, the other party, applicant, or FMEP may appeal the order to the Supreme Court. The party appealing must do so within 14 days of the date that the order was made.

Exemptions for *Notices of Attachment and Attachment Orders* are stated under the FMEA Regulations.

FMEAR s.13

FMEAR s.13 provides the exemption amounts from attachment.

FMEAR s. 13.1

FMEAR s. 13.1 provides for the power to increase or decrease exemption amounts from attachments.

Procedures

1. Applicant or Other party comes to Registry for Variation of Exemption in a Notice of Attachment or Attachment Order.

If enrolled with FMEP, party may approach FMEP before filing application with the court.

The applicant, other party or FMEP:

- Application for Order Under the Family Maintenance Enforcement Act (Form 35) (PFA 754); Selects the “changing the amount exempt from attachment under an attachment order or notice or attachment” option
- Affidavit - General (Form 45) (PFA 762), optional.

2. Clerk sets hearing date

- Checks to ensure that the application is being filed at the court location where the maintenance/support order was filed, and that the correct parties’ names and court file number are indicated.
- Enters a date for the hearing of the application. The applicant must arrange for service of the documents by email, fax, ordinary mail or leaving at the person’s address for service. The date selected needs to consider how the other parties will be served. See **PCFR 179**, which sets out when a document is deemed to have been served, and **Service** in Chapter 4.
- Files the application by date-stamping.
- Retains the original and provides copies to the applicant to effect service.
- Provides a blank Certificate of Service (Form 7) (**PFA 714**)
- Enters the application in CEIS.



If the other party is requesting the application be heard in another location, they must file an Application for a Case Management Order asking that the matter be transferred for hearing. See **Application for Case Management Order** in Chapter 3.

4. Matter is resolved in court

The judge may:

- dismiss the application, or
- vary wage exemption.

The clerk:

- if judge dismisses the application and the exemption amounts as set out on the Notice of Attachment/Attachment Order stands;

- if judge varies wage exemption, and party is not represented by counsel, prepares order. **See Court Order in Chapter 3,**
- notifies attachee by telephone that wage exemption has been varied and advises order will follow by mail;
- separates and distributes document as follows:

Document	Garnishee	Applicant or FMEP	Other party	Court file
Court Order	Copy	Copy	Copy	Original

Garnishing Order Absolute

Background

After a Garnishing Order has been served on the garnishee, and the garnishee has not responded, the applicant or the FMEP can decide whether to proceed against the garnishee. If the applicant or FMEP decides not to proceed, no further action is taken. If the applicant or FMEP decide to proceed, they make an application to the court for a Garnishing Order Absolute.

A Garnishing Order Absolute is an order enforceable against the garnishee for the whole amount owing on the Garnishing Order. Unlike a Garnishing Order, which a judge signs as a desk order, an application for a Garnishing Order Absolute is heard in court, and the garnishee has the opportunity to appear.

COEA s. 13

The judge may make an order if the garnishee fails to do any one of the following after the garnishee is served with notice of the application:

- pay into court the amount owing for the debts, obligations, and liabilities attached;
- pay into court the amount limited by the Garnishing Order;
- dispute the debts, obligation and liabilities;
- appear after they have been served with an Application for an Order Under Maintenance Enforcement Act

The judge may order the garnishee to pay into court any one of the following:

- the amount that appears due from the garnishee;
- as much money as will cover the amount named in the principal judgment or order, plus the cost of the garnishing proceedings;
- an amount estimated to be enough to discharge the judgment expected to be recovered the costs, plus the costs of the garnishing proceedings.

Procedures

1. Applicant or FMEP apply for Garnishing Order Absolute

The applicant or FMEP submits:

- Application for Order Under the Family Maintenance Enforcement Act (Form 35)(PFA 754);
- Selects “requiring payment by attachee who failed to pay in accordance with a notice of attachment or to respond in accordance with regulation”;
- Affidavit - General (Form 45) (PFA 762), optional.

The clerk:

- Checks to ensure that the application is being filed at the court location where the maintenance/support order was filed, and that the correct parties’ names and court file number are indicated.
- Enters a date for the hearing of the application. The applicant must arrange for service of the documents by email, fax, ordinary mail or leaving at the person’s address for service. The date selected needs to consider how the other parties will be served. See **PCFR 179**, which sets out when a document is deemed to have been served, and **Service** in Chapter 4.
- Files the application by date-stamping.
- Retains the original and provides copies to the applicant to effect service.
- Provides a blank copy of the Certificate of Service (Form 7) (**PFA 714**).
- Enters the application in CEIS.



If the other party is requesting the application be heard in another location, they must file an Application for a Case Management Order asking that the matter be transferred for hearing. See **Application for Case Management Order** in Chapter 3.

2. Clerk separates and distributes documents

The clerk distributes documents as follows:

Documents	Party filing <i>Application</i>	Court file
<i>Application for an Order Under Maintenance Enforcement Act</i>	3 copies	Original
<i>Affidavit, if filed</i>	3 copies	Original

- if garnishee, is a limited company, party may serve by registered mail to the company's registered office.

3. Service is successful

The server submits:

- if personal service by Sheriff or other person, completed Certificate of Service and attaching the Garnishment Registry's letter which acknowledges receipt; or
- if service is by registered mail, Certificate of Service must have attached the signature copy received from Canada Post or print-out of delivery confirmation made available on the Internet by Canada Post; and
- copy of document served.



Proof of service document may be submitted to the Registry before the hearing date or in court at the hearing date.

The clerk:

- files document by date-stamping.
- **If service is not successful, go to Attempted Service procedures in Chapter 3.**
- **See Hearing or Trial in Chapter 3.**

4. Matter is resolved in court

The judge may:

- dismiss application;
- make an order.

The clerk:

- if judge dismisses application, original Garnishing Order stands;
- if judge makes an order, an order is prepared if the winning party is not represented by counsel. See **Court Order** in Chapter 3;
- separates and distributes prepared order as follows:

Document	Garnishee	Applicant or FMEP	Other party	Court file
Court Order	Copy	Copy	Copy	Original

Default Hearing

Background

FMEA s.5(1)

While a Maintenance Order is filed with FMEP, no person may enforce the Order except FMEP or the applicant, if FMEP authorizes in writing for the applicant to do so.

FMEA s. 16(7) and s. 24(7)

When an attachee fails to pay in accordance with a *Payment Order*, the *Payment Order* can be enforced by the Director in any manner that a maintenance/support order may be enforced. Forms must be amended to indicate that the attachee is the subject of the enforcement. The following information regarding the default hearing also applies where an attachee, rather than a other party, is involved.

FMEA s. 19

PCFR 140, PCFR 142, PCFR 144 and PCFR 183

When a party fails to make the payments required by a Maintenance/Support Order, the applicant or the FMEP may file an Application for Garnishment, Summons or Warrant (Form 30), asking that a Summons to a Default Hearing (Form 33) be issued that requires the other party to appear for a hearing. At the hearing, the other party must show cause why the Maintenance/Support Order should not be enforced.

The Summons to a Default Hearing must be personally served by an adult who is not party, and proof of service is made by filing an Affidavit of Personal Service (Form 48).

If the applicant or FMEP request, the clerk will arrange to have the documents served by the sheriff. If the applicant or FMEP are looking for an order permitting another method of service, they must file an Application for a Case Management Order asking that the matter be transferred for hearing. See **Application for Case Management Order** in Chapter 3.

If a Summons to a Default Hearing is being re-issued because a previous service attempt was unsuccessful, it may or may not be necessary for the FMEP or Applicant to file a new Summons. Where the new date is more than three months after the Affidavit of Arrears was sworn, an updated Affidavit of Arrears should be filed.

PCFR 141

When a party fails to appear in court at the time and place set out by the Summons, the judge may do either or both of the following:

FMEA s. 20

FMEA s. 21(5)

- issue a Warrant for the other party's arrest;
- make an order in the other party's absence.

The judge may also make an order in the other party's absence if the other party was arrested and fails to appear in court.

FMEA s.22

PCFR 140(1(d))

Where the other party fails to file a Statement of Income and Expenses, as ordered by the Court, the applicant /FMEP may make application to the Court for a summons or warrant to bring the other party to court to show cause why they have not complied with the Order.

FMEA s. 21(1)

At the end of a Default Hearing, a judge may do one of the following:

- order that the other party report as directed by filing a Statement of Income and Expenses:
 - with the Court;
 - if the order is filed with the Director of Maintenance Enforcement, to the Director;
 - to a person designated by the Court.
- order that the other party provide any change of their residential address, place of employment or business address:
 - to the Court;
 - if the order is filed with the Director of Maintenance Enforcement, to the Director;
 - to a person designated by the court.
- order that the other party either:
 - pay an amount specified by the court immediately;
 - be imprisoned for up to 30 days.
- set the amount of arrears owing and make a Default Order setting out how the arrears are to be discharged.
- make an Attachment Order under section 24 of the FMEA.
- order that the other party be imprisoned for up to 30 days each time the other party fails to make a payment on a Default Order, subject to s.23 FMEA (committal hearing).
- order that the other party provide security for the payments in arrears.

FMEA s. 21(3)

If the judge is satisfied that the other party is unable to pay the arrears, the judge may:

- order the other party to make periodic payments at a reduced amount for a specified term with the amount by which the payments are reduced being added to the arrears.

FMEA s.21(8)
PCFR 142

If the judge is satisfied that there has been a change in circumstances of the other party since a default order was made, and the change has improved the other party's ability to pay the arrears, the judge may:

- vary the default order upon application by the applicant or the other party.

PCFR 142.1

If a party served with an application under this Division chooses to reply the party,

- must attend court on the date and time referred to in the application for the court appearance, and
- may file a Written Response to Application (Form 19) (PFA 731).

If a party chooses to file a written response in reply, the party must file and serve the written response on each other party before the date referred to in the application for the court appearance.

The filing of a written response does not omit attendance at the appearance.

Procedures

1. Registry receives documents from applicant /FMEP

If the applicant is not enrolled with the FMEP, the applicant submits:

- Application Garnishment, Summons or Warrant (Form 30)(PFA 749);
- Summons to Default Hearing (Form 33)
- Statement of Arrears (**PFA 820**);
- Copy of the order, written agreement, or determination

If the applicant is enrolled with FMEP, FMEP submits:

- Application Garnishment, Summons or Warrant (Form 30)(PFA 749;
- Statement of Arrears (**PFA 820**);
- Notice to Debtor (**PFA 821**);
- Copy of the order, written agreement, or determination
- if applicable, Notice of Filing;
- envelope with return address.

- If party is being requested to file a Statement of Finance (under sections 12 and 13 of the FMEA) blank Statement of Finances and a Application for an Order Under Family Maintenance Enforcement Act (Form 35);

The clerk:

- checks documents;
- files following documents by date-stamping;
 - Statement of Arrears;
 - Application for an Order under FMEA;
- Copy of order, written agreement or determination;
- if applicable, *Notice of Filing*;
- if applicable, *Notice to Debtor*;



If FMEP submits Statement of Finances under s. 12 of the FMEA, clerk does not date-stamp documents or file them in Registry file. Clerk includes with Default Hearing service package.

- if *Notice to Other party* is filed, registry will also receive a blank *Statement of Finances*;
- sets a Default Hearing date;
- Enters and documents in CEIS, and schedules date for hearing
- prepares:
 - Summons to Default Hearing (Form 33) unless submitted by FMEP
 - Enters hearing date on Summons;
 - presents Summons to justice of the peace for signature.

2. Clerk separates and distributes documents

The clerk: separates and distributes documents as follows:

Document	Applicant/ FMEP	Service Package*		Court File
		Other party/ Attachee	Server	
<i>Request for Service of Documents (if any) * this is completed to ask the Sheriff to serve the summons</i>	Copy		Copy	Original
<i>Application for Garnishment, Summons or Warrant</i>	Copy	Copy	Copy	Original
<i>Summons to a</i>	Copy	Copy	Copy	Original

Default Hearing				
Notice to Other party		Copy	Copy	Original
Blank Statement of Finances		Original (other party only)		
Affidavit/Statement of Arrears	Copy	Copy	Copy	Original
Return address Envelope, if any			Envelope	

* The applicant or FMEP may arrange for service by a person other than a sheriff to serve the summons, the application, and any supporting documents. In this case, applicant or FMEP is responsible to arrange service and pay any fees charged. The applicant or FMEP are responsible to arrange service of all other filed documents in accordance with PCFR 143 and 142 when a Request for Service (PFA 110) is not filed.

3. Service is successful

The server returns:

- If personal service by Sheriff or other person, completed Affidavit of Personal Service (Form 48)

The clerk:

- files date-stamped Affidavit of Personal Service;

If the Summons package was successfully served by a Sheriff:

The clerk or Sheriff (according to local practice):

- faxes a copy of the Certificate to the **FMEP legal department**.
- places all returned documents in court file.
- **If service was not successful, go to Attempted service in Chapter 3.**
- **If necessary, Hearing or Trial in Chapter 3.**

4. Matter is resolved in court

The judge may make an order:

- **If a *Default Order*, go to step 5.**
- **If a *Attachment Order*, go to Attachment Order in this Chapter.**
- **If a *Garnishing Order*, go to Garnishing Order in this Chapter.**

- If any other order provided for under the FMEA, go to step 6.

5. Court orders a Default Order

The clerk:

- prepares order if applicant is unrepresented by counsel. **See Court Order in Chapter 3.**
- separates and distributes document as follows:

Document	Other party/ Attachee	Applicant/ FMEP	Court file
Default Order	Copy	Copy	Original

6. Any order provided for under FMEA

- If applicant is unrepresented by counsel, prepares order. **See procedures for Court Order in Chapter 3.)**
- separates and distributes documents as follows:

Document	Other party/ Attachee	Applicant or FMEP	Court file
Court Order	Copy	Copy	Original

7. Statement of Income and Expenses (Reporting Order)

- At the end of a default hearing, the court may order the other party to submit as directed a Statement of Income and Expenses. If the Maintenance Order is enrolled with FMEP, FMEP may request that the Statements be sent directly to them by the other party. If not enrolled, the other party may be required to submit the statements to the Registry.

The clerk:

- upon receipt of the Statement of Income and Expenses, shall mail a copy to the applicant and place the original on file.

Committal Hearing

Background

The following information regarding the committal hearing also applies if an attachee, rather than another party, is the subject of the committal hearing. Forms must be amended to indicate that the attachee is the subject of the enforcement proceedings.

FMEA s. 23(1)

PCFR 140(1)(e)

If a other party fails to pay the full amount required by a Default Order by a date specified on it, the FMEP or Applicant (if not enrolled with FMEP) may make an application to the Court for the issuance of a summons requiring the other party to appear at a committal hearing. A committal hearing is held to determine whether the other party should be imprisoned. A Summons to a Committal Hearing (Form 34) (PFA 753) with accompanying documents is served on the other party.

The Summons to a Committal Hearing must be personally served by an adult who is not party, and proof of service is made by filing an Affidavit of Personal Service (Form 48).

If the applicant or FMEP request, the clerk will arrange to have the document served by the sheriff. If the applicant or FMEP are looking for an order permitting another method of service, they must file an Application for a Case Management Order asking that the matter be transferred for hearing. See [Application for Case Management Order](#) in Chapter 3.

If a Summons to a Committal Hearing is being re-issued because a previous service attempt was unsuccessful, it may or may not be necessary for the FMEP or Applicant to file a new Summons. Where the new date is more than three months after the Affidavit of Arrears was sworn, an updated Affidavit of Arrears should be filed.

FMEA s. 23(2)

If a other party fails to appear in court on the date and time specified on the Summons, or if the judge believes the other party is evading service, the judge may order that a Warrant for Arrest be issued to bring the other party to court for the committal hearing.

FMEA s. 23(3)

When the other party is summoned to a committal hearing, or when a committal hearing is set after a Warrant for Arrest has been issued, the registry staff notify the applicant or the FMEP of the time and place of the hearing.

Unless the judge is satisfied that:

FMEA s. 23(4)

- the other party has paid the amount required by the Default Order;
- the other party's circumstances have changed so that the other party can no longer pay the amount required;
- it would be a grave injustice to imprison the other party, the judge will imprison the other party according to the terms in the Default Order.

the judge will imprison the other party according to the terms in the Default Order.

FMEA s. 21(1)(d)

FMEA s. 23(7)

The Default Order may order the other party to discharge (pay) the arrears in one payment made by a specified date, or in periodic payments made on specified dates. If the judge is satisfied at the committal hearing that the other party's circumstances have changed, or that it would be a grave injustice to imprison the other party, the judge may change the Default Order without cancelling the arrears, or may set a date to hear an application to change the order.

FMEA s. 23(5)

A party may not be imprisoned for more than 90 consecutive days.

FMEA s. 23(6)

A party who is imprisoned after failing to show cause at the committal hearing must be released on payment of the full amount required by the default order.

When a party is imprisoned, payment for arrears may be made at a Registry, to Corrections or to FMEP.

The *Offence Act* applies to:

- the service of summons to a committal hearing;
- the service and execution of a warrant for arrest when a party fails to appear at a committal hearing or is evading service of a summons to a committal hearing;
- the service and execution of a committal order made at a committal hearing.

As a result, the service and warrant provisions of the Provincial Court Family Rules do not apply.

Procedures

The Registry may receive documents from FMEP or from an applicant (i.e. that is not enrolled with FMEP).

1. Registry receives documents from FMEP

If applicant is **enrolled** with FMEP, the FMEP submits:

- Application for Garnishment, Summons or Warrant (Form 30) (PFA 749);
- Statement of Arrears (PFA 071) with the following documents attached as exhibits to the Statement;
 - copy of order; written agreement, or determination
 - copy of default order;
 - copy of payment record;
- Summons to a Committal Hearing (Form 34) (PFA 753) (leaving the hearing date blank).



FMEP may also file, Notice to Debtor (**PFA 821**)

If the applicant is **not enrolled** with FMEP:

The applicant submits:

- Application for Garnishment, Summons or Warrant (Form 30) (PFA753);
- Affidavit of Arrears (PFA 060) with the following documents attached as exhibits to the Statement;
 - copy of order; written agreement, or determination
 - copy of default order;
 - copy of payment record.

The clerk:

- checks documents;
- ensures that, if enforcement is against an attachee rather than a other party, that the forms have been amended accordingly;
- files following documents by date stamping;
 - Application for Garnishment, Summons or Warrant
 - Affidavit/Statement of Arrears;
- sets committal hearing date;
- records hearing date and time in trial diary and enters it on CEIS ensuring date assigned is suitable to FMEP counsel, if applicable.
- prepares:
 - Summons to a Committal Hearing (Form 34) (PFA 753) (unless submitted by FMEP;
 - if Summons was submitted by FMEP, enters hearing date on Summons;
 - obtains the signature of a judge or a justice of the peace on the summons.



A copy of Summons must be sent to FMEP/Applicant.

2. Clerk separates and distributes documents

The clerk distributes documents as follows:

Document	Applicant or FMEP	Sheriff Package*		Court file
		Other party/ Attachee	Sheriff	
<i>Application for Garnishment, Summons or Warrant</i>	Copy	Copy	Copy	Original
<i>Affidavit/Statement of Arrears</i>	Copy	Copy	Copy	Original
<i>Summons to a Committal Hearing</i>	Copy	Copy	Copy	Original
<i>Request for Service of Documents (if applicable)</i>	Copy		Original	Copy
<i>Notice to Debtor (if filled)</i>	Copy	Copy	Copy	Original

- A *Summons to a Committal Hearing* must be served by a peace officer.

3. Service is successful

The Sheriff submits:

- completed Certificate of Service (Form 7) (**PFA 714**).

The clerk or Sheriff (according to local practice):

- faxes a copy of the *Certificate* to the **FMEP legal department**;
- places all returned documents in court file.
- **If service not successful, go to Attempted Service in Chapter 3.**
- **If applicant or FMEP request substitutional service, go to Alternate Methods of Service in Chapter 3.**

4. Scheduled Committal Hearing

- **If other party/attachee appears at Committal Hearing, go to step 9.**

- If other party/attachee fails to appear at Committal Hearing after being personally served and applicant/FMEP obtain a Warrant for Arrest, go to step 5.

5. Request for Warrant for Arrest

Judge issues a warrant.

The clerk:

- prepares Warrant for Arrest (Form 32) (PFA 751)
 - include date of birth;
 - FMEP case number;
- obtains signature of judge.



Court clerk or justice of the peace may sign on behalf of the judge if designated by a judge to do so.

- Separates and distributes Warrant as follows:

Document	Police	Court File
<i>Warrant for Arrest</i>	Original and copy (part 2)	Copy (part 3)

- Enters Warrant for Arrest in warrant log (if any).

6. Other party/attachee is arrested - bail hearing held

If the Police arrest the other party/attachee on a Warrant for Arrest, they will bring that person before a judge at the location where he was arrested. Or if the person is arrested after hours, on weekends or a statutory holiday, the police will arrange for a bail hearing before a judicial justice by way of video link or telephone.

Bail Hearing will be held before a provincial court judge or a judicial justice.

Before the bail hearing, the clerk in the location where the other party/attachee is arrested telephones the originating Registry for available dates for the committal hearing (in particular, dates when FMEP counsel will be available, if the FMEP is involved.) The Committal Hearing may take place on this date if all parties can be notified and time is available. If not, matter is adjourned to new Committal Hearing date.



Ensure original Warrant is returned to the originating registry.

If bail is granted

The clerk (in the location where party/attachee is arrested):

- prepares Release from Custody (Form 25) (PFA 743)
- obtains signature of other party/attachee being released.

The other party/attachee is released from custody once they have satisfied the conditions of the release order or has signed the Release.

Party/attachee is not released

The clerk (in the location where the other party is arrested):

- prepares a Warrant Remanding a Prisoner (PCR 930 (was PCR 008)) specifying that other party/attachee is remanded to a court date in the originating court location;
- prepares a Warrant for Committal (PCR 931 (was PCR 015)) See form completion instructions in the Criminal Case Processing Manual;
- sends fax copies of the Warrant Remanding a Prisoner and the Warrant for Committal to the originating Registry;
- gives the originals of the Warrant Remanding a Prisoner and the Warrant for Committal to the sheriff's office.

Party/attachee is unable to meet the conditions of the Release from Custody order

The clerk in the location where the party/attachee is arrested:

- prepares the Release from Custody (Form 25) (PFA 743) , marks as unperfected, and forwards to the justice of the peace
- justice of the peace enters the other party/attachee into the recognizance
- prepares a Warrant Remanding a Prisoner (PCR 930 (was PCR 008)) indicating in the "Offence" section the nature of the application for which the other party/attachee was arrested and select in Note section the option that states "The accused/offender has been granted bail but has not yet complied with the order and may be released when an Order for Discharge is received";
- prepares a Warrant for Committal (PCR 931 (was PCR 015)) including
 - selecting the option which states "An order has been made that the accused/offender be released upon (giving an undertaking or entering into a recognizance) but the accused/offender has not yet complied with the order; and
 - in the section **AND TO the Keeper of the Prison**, placing a tick mark in the box which authorizes the release of the accused/offender if the person complies with the terms of the order.

- faxes copies of the Warrant Remanding a Prisoner, the Warrant for Committal and the Release from Custody order to the originating Registry;
- gives the originals of the Warrant Remanding a Prisoner, the Warrant for Committal and a copy of the Release from Custody order to the sheriff's office.

When party/attachee is able to meet the condition of Release from Custody order

A party/attachee may make the payment required under s. 21(1)(e) at any Registry, for detailed procedures, refer to *Financial Operations Manual*.

When the party/attachee has made the payment set out in the release order

The clerk:

- prepares an *Order for Discharge of a Person in Custody* (PCR 811 (was PCR 036)).
- presents prepared order to justice of the peace for signature;
- justice of the peace phones the Correctional Centre where the other party/attachee is being held to advise that the other party/attachee has perfected the release order, faxes a copy of the *Order for Discharge of a Person in Custody* to the Correctional Centre where the party/attachee is being held along with a copy of the release order which has been marked as Perfected.

The Correctional Centre will release the other party/attachee from custody once the *Order for Discharge* has been received.

The clerk:

- records the date and time of the new date for the committal hearing in CEIS;
- if the FMEP is involved, sends a fax copy of the release or remand document(s) to the FMEP Regional Office, indicating whether it is a committal hearing date or a fix date, and ensuring that the FMEP case number is recorded on the document(s);
- if the applicant is not enrolled with the FMEP;
 - prepares a Notice of Hearing or Conference (PFA 906) indicating whether it is a committal hearing date or a fixed date;
 - distributes the Notice of Hearing as follows:

Document	Applicant	Court file
<i>Notice of Hearing</i>	Original	Copy

- If the applicant is not enrolled with the FMEP and the other party/attachee is in custody, telephones the applicant to advise of the date of the committal hearing, and notes the call in the court file.

9. Matter is resolved in court

The judge may:

- make order to imprison other party/attachee;
- make Variation Order.
- **If judge makes an order to imprison other party/attachee, go to step 10.**
- **If judge makes Variation Order, go to Court Order in Chapter 3.**

10. Judge makes Order to imprison other party/attachee

The clerk:

- prepares Warrant of Committal (PFA 903);
- if the warrant is issued against an attachee rather than a party, amends the Warrant of Committal accordingly.

(If FMEP involved, counsel will bring a completed Warrant of Committal to court with them).

- presents Warrant of Committal to judge or clerk of the court on behalf of the judge for signature;
- separates and distributes Warrant of Committal as follows:

Document	Police	Sheriff	Court file
<i>Warrant of Committal</i>	Original, if other party is not present in court	Original, if other party/attachee is present in court	Copy

- if the other party/attachee was not present in court (failed to appear) and the warrant of committal was issued in the other party's/attachee's absence, the Warrant of Committal should be sent to the municipal police agency or RCMP detachment in the location where the other party/attachee resides. The exception is that Sheriffs will execute Warrants of Committal issued by the Supreme Court.
- **Go to Payments section, Chapter 4.**

11. Receiving payment on a Warrant of Committal or upon a Judge setting aside.

A payment on the Warrant of Committal may be made at a Registry, to Corrections or to FMEP (if they are enrolled with FMEP).

- when payment in full is made to the court, the Registry will accept payment, then prepare and send a completed Order for Discharge to Corrections. The Registry will

automatically pay the funds to FMEP or to the party; a requisition for payment out is not required.

- when payment in full is made to Corrections Branch, Corrections must immediately notify courts and the Registry will complete a Order for Discharge, if requested. When the funds are received from Corrections, the Registry will automatically pay the funds to FMEP or to the party; a requisition is not required.
- when payment in full is made directly to FMEP, FMEP will notify the courts and the courts will prepare and send a completed Order for Discharge to Corrections.

If the Registry receives payment while the other party/attachée is lodged in custody at police or sheriff cells, or has been transported to the correctional institution, or the Judge sets aside the Warrant of Committal the clerk:

- prepares *Order for Discharge of a Person in Custody (Offence Act - Form 22)* (PFA 922);
- presents prepared order to justice of the peace for signature;
- distributes copy of the order to the appropriate enforcement agency(ies) where the person is being held;
- enter the *Order for Discharge* into CEIS:
 - add document code: **OFD** - Order for Discharge of a Person in Custody
 - filed by: Registry
 - scan document and save image



Where the person is in custody in sheriff cells, practice may vary depending on the size of the court location whether the Order for Discharge is required. In some locations, a verbal communication to the Sheriffs may be sufficient.



FMEP may apply by filing a Application for Order Under Family Maintenance Enforcement Act (Form 35) (PFA 754) to seek relief to suspend, change, or cancel under section 23(7.1) or (7.3) of the *Family Maintenance Enforcement Act* (FMEA) an order to imprison a debtor, which was made at a hearing in the debtor's absence.

Attachment Order

Background

FMEA s. 24(1)
FMEA s. 25

At a *Default Hearing* or other court proceeding, where the court finds that a other party has defaulted in a payment required under a *Maintenance/Support Order*, a judge may make an *Attachment Order* unless it would be unfair to the other party. An *Attachment Order* instructs any person who employs a other party to deduct an amount from the other party's wages, salary, or other remuneration. Any payments or benefits owing to the other party from the Crown or a government corporation may also be attached.

FMEAR s. 13

The percentages set out determine the amount of the other party's wages or payment that is exempt from being attached under section 21 of the FMEA.

More than one Attachment Order can be issued. For example, if a other party is employed at more than one place, an Attachment Order may be issued to all employers.

FMEA s. S.21(3) (b)&(c)

The attachee (employer) either pays the amount deducted from the other party's pay:

- directly to the person specified in the order within five days after it is deducted; or
- if a Maintenance/Support Order is filed with the FMEP, to the FMEP, within five days after it is deducted.

FMEA s. 24(4)

Any time an attachee makes a payment, the attachee' s obligation to the other party decreases under the Maintenance/Support Order by the amount the attachee has paid.

FMEA s. 24(4)

An *Attachment Order* follows the other party. If the other party changes employers, a new *Attachment Order* is prepared specifying the new attachee. The matter does not have to return to court.

If an attachee informs the Registry that the other party is no longer employed with him or her, registry staff request the applicant or FMEP to provide a new business address for the other party. If no address is available, registry staff begin a Family Search.

FMEA s. 21(5)

An *Attachment Order* remains in effect until one of the following:

- the date specified in the order;
- the court otherwise orders, on the other party or the attachee' s application.

FMEA s. 24(6)

On an application by the applicant or the other party, the court may order an attachee who fails to comply with an *Attachment Order*, to pay the amount the attachee has failed to pay.

FMEA s. 24 (7)

A payment order made under subsection (3.1) may be enforced in any manner that a maintenance/support order would be enforced. Forms must be amended to indicate that the attachee is the subject of enforcement.

Procedures

1. Attachment Order is ordered in court

- If maintenance/support order is **enrolled** with FMEP, FMEP will prepare Attachment order and may request that the Sheriffs serve the order.
- If maintenance/support order is **not enrolled** with FMEP, the Registry should prepare and serve the order, providing the applicant is unrepresented.
- See Attachment order precedent following Procedures.

FMEP or applicant submits:

- Request for Service of Documents (PFA 110), if documents are to be served by Sheriff

The clerk:

- prepares or checks Attachment Order (**PFA 834** may be used. See **Court Order** in Chapter 3);
- presents Attachment Order to judge for signature;
- date-stamp Attachment Order **after** judge signs it.

2. Clerk distributes Attachment Order

- distributes Attachment Order as follows:

			Service Package		
Document	Applicant/ FMEP	Other party	Attachee	Server	Court file
Attachment Order	Copy	Copy	Copy	Copy	Original
Request for Service of Documents (if any)	Copy			Copy	Original

* Attachee is served first. Once service on attachee is successful, Attachment Order is mailed to other party.

- documents are served on the attachee and mailed to other party to the last address for service given on a document filed by a party in a **current** application.
- if the attachee is a limited company the documents may be served by registered mail to the registered office.

The clerk:

- if applicable, arranges for service by sheriff;
- if applicant arranges for service by person other than sheriff, gives service package to applicant.

3. Service of Attachment Order is successful

The clerk:

- determines if Attachment Order is served by checking for proof of service document.

The server returns:

- if personal service by Sheriff or other person, completed Certificate of Service (Form 7) (**PFA 714**)
- if service is by registered mail, Certificate of Service must have attached the signature copy received from Canada Post or print-out of delivery confirmation made available on the Internet by Canada Post; and
- copy of document served.

The clerk:

- files proof of service document by date-stamping;
- places all returned documents in court file.

Warrant of Execution

Background

FMEA s. 27(2)

A Warrant of Execution is used only by the Provincial Court. It directs the court bailiffs to seize goods from the other party equal to the value of the judgment on a Maintenance/Support Order, plus the costs of seizing and selling the goods.

Sheriff Act s. 3(1)

The Attorney General, or a person delegated by the Attorney General, appoints court bailiffs, delegating to them the powers of a sheriff for the sole purpose of executing (carrying out) writs and warrants in civil proceedings.

FMEA s. 27(1)

A applicant or the FMEP applies for *the* Warrant of Execution, which is then signed by a judge as a desk order and forwarded to the Court Bailiffs' Office. The applicant or the FMEP should then check with the Court Bailiffs' Office to determine whether a deposit is required to have the Warrant carried out.

COEA s. 71

The other party may set aside personal property that a Warrant of Execution may not attach or seize. The court bailiff must inform the other party of this exemption.

The other party can claim:

- \$4000 exemption for household furnishings, appliances, clothing, medical and dental aids;
- \$2000 exemption for a motor vehicle;
- \$10,000 exemption for tools and other personal property;
- used in the other party's occupation.

If an asset is worth more than the exemption, the bailiff can sell it, and the other party receives the exemption amount in cash. There are also restrictions on execution (to satisfy maintenance/support arrears) against a principle residence (including mobile homes, boats and houseboats). Refer to the *Court Order Enforcement Act* for details.

The court bailiff may also give the other party the option of paying the judgment immediately or having the property seized. Any amount collected to pay the arrears must include any court bailiff's fees and commission.

If the other party fails to pay the arrears and the court bailiff's fees, the court bailiff seizes and sells the other party's goods. Any money raised through the sale pays the court bailiff's fees, then the arrears on the Maintenance/Support Order. These take priority over any other unsecured judgment debt the other party may owe. However, this priority does not apply to arrears on a Maintenance/Support Order that the other party owed more than one year before the date on which the applicant began the court proceedings to enforce the Maintenance/Support Order.

Procedures

1. Registry receives Request for Court Enforcement

The applicant or FMEP submits:

- Application for Garnishment, Summons or Warrant (Form 30) (PFA 749) requesting a warrant of execution;
- if FMEP, Statement of Arrears (PFA 070);
- if applicant, Statement of Arrears (PFA 071);
- information Letter describing assets that other party has (optional);
- if applicant is enrolled with FMEP, Warrant of Execution (PFA 802).

The clerk:

- checks documents;
- if applicant is not enrolled with FMEP, clerk prepares Warrant of Execution;
- presents Warrant of Execution and supporting documents to judge for signature as desk order;
- ensures Warrant of Execution is dated after judge signs it.

2. Clerk separates and distributes documents

The clerk:

- files by date-stamping Warrant of Execution;
- distributes documents as follows:

Document	Service Package			
	Applicant or FMEP	Other party	Court Bailiff	Court file
<i>Application for Garnishment, Summons or Warrant</i>	Copy	Copy	Copy	Original
<i>Warrant of Execution</i>			Original	Copy

Statement of Arrears	Copy	Copy	Copy	Original
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- if the support/maintenance order is enrolled with the FMEP, gives service package to FMEP to forward to Court Bailiff;
- if the support/maintenance order is not enrolled with FMEP, forwards service package directly to Court Bailiff.



Applicant **must** not be given the Warrant of Execution.

The Sheriff will be able to provide the FMEP with a contract Court Bailiff's name and address.

Once documents are sent out, the clerk should not communicate with the Court Bailiff. It is not the clerk's responsibility to be liaison between the applicant and Court Bailiff.

Registration in Land Title Office

Background

FMEA s. 26

Under the FMEA, a *Maintenance/Support Order* can be registered against land owned by the person against whom the Order was made. An Order against land is much the same as a charge or lien against land.

An applicant or the FMEP can apply to the Land Title Office to have the *Maintenance/Support Order* registered if it is deemed to be a judgment as defined in section 81 of the COEA. The Order must be filed against a particular piece of property. Therefore, the applicant or the FMEP must have a legal description of the property.

If a applicant comes to the Registry wishing to register a *Maintenance/Support Order* against land, registry staff:

- give the applicant or FMEP a certified copy of the Maintenance/Support Order;
- instruct the applicant to go to the Land Title Office to register the Order (or to the Access Centre, in locations where there is no local Land Title Office);
- inform the applicant that the applicant must pay a fee to register the Order.

FMEA s. 26(7)

The Registrar of Land Titles cannot register a discharge or postponement of a *Maintenance/Support Order* that is registered unless it is signed by the person who registered the Order or if the Order was registered by the FMEP, then FMEP must sign and send notice to the applicant of their intention to do so.

FMEA s. 26(10)

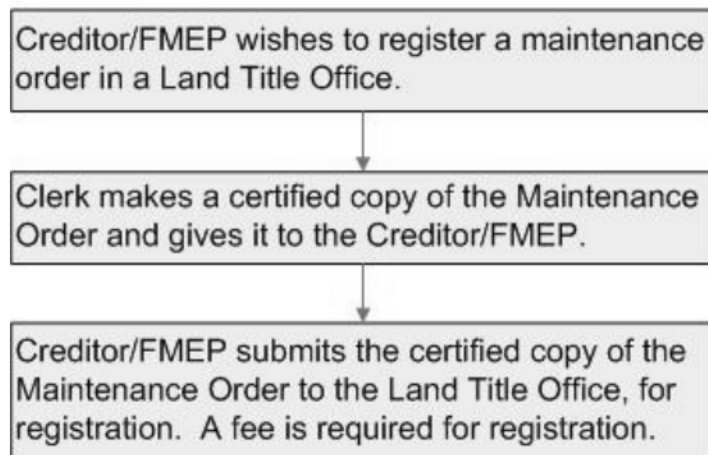
The applicant or other party may apply to the court for an order discharging or partially discharging the *Registered Order* or an order postponing the *Registered Order*.

FMEA s. 26(11)

A registration against land never ends. To have the order against the land discharged or postponed, the court may require the other party to pay a security deposit or may impose other conditions.

Registration in Land Title Office flowchart:

Registration in Land Title Office



Restraining Order Against Land

Background

A *Restraining Order* against land prevents the other party from disposing of or wasting any property to avoid making payments on a *Maintenance/Support Order*.

FMEA s. 30

Under the FMEA, the applicant or the FMEP may apply only to the Supreme Court for a Restraining Order. If a applicant comes to the Registry wishing to apply for a Restraining Order against land, registry staff inform the applicant that he or she must apply to the Supreme Court.

Parenting Time and Contact

Background

FLA s. 61, 231

PCFR 7(3) and PCFR 135

If a party is unable to exercise his or her right to parenting time or contact with a child as awarded by a Court order or filed Written Agreement, the party may make an application without notice to the other party to have the order enforced. The party may also seek permission of the court to file this application in another registry.

The remedies include moderate sanctions or tools (e.g., an order for mediation or counselling), but also provide for the potential that some situations will require an escalation in sanctions. Some different remedies are proposed for denial and failure to exercise access to recognize the different circumstances in which such problems arise.

Section 61 establishes an enforcement regime for judges to ensure parties respect each other's parenting time and contact arrangements. This section provides a limit to ensure that applications are made with regard to recent denials only by requiring applications to be brought within 12 months of the denial. It provides a range of remedies, from preventative to punitive, that a judge can order when there is a denial of parenting time or contact, including:

- requiring parties or their children or both to attend family dispute resolution, counselling or other services;
 - compensatory time;
 - reimbursement of expenses incurred as a result of the denial, which could include, for example, payment to the other parent for their wasted travel costs or daycare costs where the parent does not fulfill their parenting time commitments; and
 - requiring the offending party to provide security or pay a fine of up to \$5,000.
- This section gives judges the discretion to allocate the cost, if any, of family dispute resolution, counselling or supervised transfer of children to facilitate parenting time or contact.

Section 231 allows for the limited use of two extraordinary remedies: police apprehension of a child and imprisonment. These two remedies may only be used when there is no other less severe remedy under the Act sufficient to secure compliance. Police apprehension of a child may only be ordered where a person who has parenting time or contact with a child has wrongfully withheld a child and the court determines that no other remedy (under Part 4 Division 5- Compliance Respecting Parenting Time of Contact with a Child) will be sufficient to force compliance.

Imprisonment may only be ordered after the person has had an opportunity to be heard. This approach balances the need to have more severe remedies available, with the recognition that other remedies are usually more appropriate in family law cases. Although these extraordinary remedies should not be regularly used, because they have such a negative impact on children, there are rare cases where a court may require them.

A party wishing to enforce a parenting time or contact order must file an Application about Enforcement (Form 29) and a copy of the order. The party must have the application served on each other party, at least 7 days before the date set for the court appearance.

PCFR r. 16(3)

To apply for enforcement of an order respecting guardianship, parenting arrangements or contact made by a tribunal outside British Columbia, the applicant should file an Application for Case Management Order in Form 10 if notice to the other party is to be given, or in Form 11 if the applicant wants to proceed without notice to the other party. The party must also file any supporting evidence including a certified copy of the extraprovincial order. The Application About Enforcement (Form 29) should also be filed.

A requirement to surrender passports or travel documents to the Registry by a specific date may be made as part of an order respecting guardianship, parenting arrangements or contact with a child. Passports may be Canadian or foreign, and some individuals may hold both Canadian and foreign passports. Only current passports or travel documents need to be surrendered.

If a Canadian passport is ordered to be surrendered, a copy of the order is faxed to the Passport Office in Gatineau, Quebec, together with a copy of the passport if it has been surrendered to the court. Surrendered Canadian and foreign passports are retained in a secure location in the Registry. The Manager/Court Administrator will determine the storage location, which may be in the registry financial safe, a vault or the exhibit storage room. All staff should be advised of the designated storage area to ensure consistency.

If a Canadian passport is not surrendered, a copy of the order is faxed to the Passport Office on the day it is filed by counsel (or prepared by the Registry, if the requesting party is self-represented), if the date of birth is recorded on the order.

Procedures

1. Party submits Application for a Case Management Order asking to enforce parenting time or contact

If the party is seeking to have the application filed at a different location, the party submits:

- Application about Enforcement (Form 29)
- Application for Case Management Order (Form 11) which requests permission to transfer the file to another registry for all purposes or for a specific purpose, and complete schedule 3
- Certified copy of order;
- Affidavit - General (Form 45) (PFA 762) optional.

1. The “host” registry will:

- i) contact the home location and advise them they are filing an application on their file as a party is seeking and order to enforce parenting time or contact;
- ii) enter the document in CEIS and follow the procedures for scheduling desk order application (schedule for chambers noting applicant is waiting) and send email to JCM
- iii) If the court grants permission to hear the application, files the Application About Enforcement, schedules the appearance and provides the applicant party of the court appearance details, and follows the procedures set out below including preparing and filing of the signed order, and mailing the original order and filed materials back to the home registry.
- iv) If court does not grant permission to hear the application, provide the party with a copy of Directions and Rejection Reasons following standard business procedures.
- v) Mails to the home location any materials filed, entered order or direction/rejection

If the party is seeking to have the application filed at the home location, the party submits:

- Application about Enforcement (Form 29)
- Certified copy of order;
- Affidavit - General (Form 45) (PFA 762) optional.



If the order was made outside of British Columbia see procedures in **“Extrajurisdictional Matters Respecting Guardianship, Parenting Arrangements or Contact with a Child”**.

The clerk:

- checks documents;

- sets hearing date and records it on Application for Enforcement (and if applicable Application for Case Management Order and/or Request to File an Order)
- files documents by date-stamping;
- enters hearing date in CEIS.

2. Clerk separates and distributes documents

Document	Party Filing Application	Court file
<i>Application about Enforcement</i>	3 Copies	Original
copy of Order		Copy
<i>Affidavit, if filed</i>	3 Copies	Original
<i>Application for Case Management Order (if applicable)</i>	Copy	Original

- returns documents to party filing to arrange for service, if proceeding with notice
- Provides a blank Certificate of Service (Form 7) (**PFA 714**)
- See **Service** procedures in Chapter 3.

3. Judge makes Order to apprehend child(ren)

The clerk

- prepares or checks prepared order. See **Court Order** procedures in Chapter 3.

If the court has included an order to surrender any passport or travel document, perform the procedures in step 4 as well as those in step 3.

Document	Party filing Enforcement of Order	Court file
<i>Order to Apprehend</i>	3 copies	Original

- Returns documents to party filing as the party must take two copies to the police agency nearest to where the child is to be apprehended.
- If the order was made without notice, the party must comply with any directions of the court with respect to serving the application, supporting materials and the resulting court order.

4. Judge makes order to surrender passport

A. Orders to Surrender Passports or Travel Documents

If the court has included an order to surrender any passport or travel document in an order respecting guardianship, parenting arrangements or contact with a child, the court clerk on the day the order is made:

- endorses the order on the clerk's notes or record of proceedings identifying if the person subject to the order holds a Canadian passport or a foreign passport along with the name of the country; and
- makes a notation on the cover of the court file that a passport order has been made.

When the order is submitted for filing by counsel (or prepared by court staff for an unrepresented party), the clerk:

- checks the order against the clerk's notes or record of proceedings and **ensures that the passport holder's date of birth appears on the order;**



The Registry prepares the order if the requesting party is self-represented.

- checks the file to see if the passport has been surrendered and makes a notation on the order to indicate whether or not the passport has been surrendered;
- if the passport has not been surrendered, advises counsel (or self-represented party) that they are responsible for monitoring the file to ensure the passport is submitted;
- if the person who is the subject of the order is a Canadian, advises counsel or the party that a copy of the order will be sent to the Canadian Passport Office only if the date of birth is available; and
- advises counsel or the party where the passport will be stored.

B. Notification to the Passport Office

The Passport Office is to be notified only if the person required to surrender a passport or prohibited from obtaining a passport is a Canadian and the date of birth is on the order. The Passport Office will enter the person on a Passport Control List which is available to all Canadian passport offices.

The clerk:

- on the day the order is received or prepared, sends a copy of the order and a copy of the first page of the passport if it has been surrendered, by fax to the Passport Office, Security Division.



The Passport Office has no process to monitor foreign passports.

C. Monitoring Files for Compliance

If the court allowed the party time to surrender the passport to the Registry, it is the responsibility of counsel or the party to check with the registry to see if the passport has been surrendered and to take any further enforcement steps if there has been non-compliance.

D. Storage, Return or Disposal of Passports and Travel Documents

Storage

The Manager/Court Administrator will determine the storage location within the Registry for any passport surrendered under an order respecting guardianship, parenting arrangements or contact with a child. This includes both Canadian and foreign passports. All staff should be advised of the designated storage area to ensure consistency. The storage location must be secure and may be the registry financial safe, a vault or the exhibit storage room.

A copy of the order will be kept with the passport or travel documents and a notation made in the file to indicate where it is located.

Any passport or travel document will be stored in an envelope with the holder's name, file number and expiry date of the passport on the envelope.

Return

When a person attends at the Registry to request the return of their passport or travel documents, the clerk:

- checks the file to determine if there is an order authorizing the return to the owner;
- asks the owner to produce identification containing a signature for comparison with the passport or other documents;
- returns the passport and makes a notation on the original order indicating the item was returned, the clerk's name and the date.

Disposal

If a **Canadian** passport has expired, or a Canadian passport or a foreign passport has not been claimed, and at least 30 days have passed since the date the order authorizing the return to the owner was made, the clerk:

- mails the passport with a covering letter explaining why it is being sent to the appropriate agency or embassy office. Refer to the Chapter 7 [Disposition of Exhibits Table] in the *Exhibit Control Manual*.
- Attaches a copy of the covering letter to the order requiring surrender of the passport and returns the order to the court file.

Non-Renewal of Other party's Driver's License

Background

FMEA 29.1

If a maintenance order is filed with the Director of Maintenance Enforcement, if the other party is in default, and if the arrears total \$3,000 or more, the Director may send notice to the Insurance Corporation of British Columbia (ICBC) stating that the other party is in default.

On receipt of such a notice, ICBC will not renew the other party's driver's licence (or issue a new one) or they will not issue or renew the licence and corresponding number plates for any motor vehicle or trailer owned by a other party until:

- ICBC is advised that the maintenance order has been withdrawn under Section 6 of the FMEA;
- ICBC is advised that the maintenance order is no longer in arrears; or
- direction is given under 29.2 of the FMEA to disregard the notice (see below).

FMEA 29.2

If the notice to ICBC is later found to be based on a factual error, the Director of Maintenance Enforcement must direct ICBC to disregard it. If the Director refuses to do so, the other party may apply to the court (by *Application for an Order Under the Family Maintenance Enforcement Act*) to order the Director to act.

Procedures

1. Registry receives Application for an Order Under Maintenance Enforcement Proceedings requesting FMEA to advise ICBC to disregard notice

Other party submits:

- Application for Order Under the Family Maintenance Enforcement Act (Form 35) (PFA 754)
- **Follow the same "Procedures – 1. Attachee or other party applies to Registry to challenge, set aside or change the exemption on a Notice of Attachment" in Chapter 4.**

Annual Default Fee

Background

FMEA 14.4

If a party is in default on a payment under a maintenance order which has been filed with the Director of Maintenance Enforcement, the Director may give notice of intention to impose an annual default fee.

The notice must state that, if the other party defaults in payment further in the calendar year on the dates and in the amounts specified in the maintenance order, the annual default fee will be imposed for the calendar year.

If a further default (as described above) occurs after notice is given, the other party is liable to pay the annual default fee for the calendar year.

If the court, in some later proceeding, reduces or cancels the arrears under a maintenance order that is filed with the Director of Maintenance Enforcement, the court may order that the annual default fee also be reduced or cancelled.

A certificate signed by the Director of Maintenance Enforcement stating the amount of a party's liability may be filed with the court and payment may be enforced as if the certificate were an order of the court. It is sometimes referred to as a "default fee certificate".

FMEA 1(1)(j)

After July 22, 2004, when the amended definition of "maintenance" in FMEA s. 1(1)(j) came into force by OIC 758, to include:

1(1)(j) - any annual default fee that is imposed under s. 15.4

default fee certificates need to be filed with the court to enforce a default fee only if a recipient withdraws from the FMEP. Otherwise, a default fee may be enforced along with other types of maintenance, without filing a certificate.

Procedures

1. Registry receives Notice of Intention to Impose An Annual Default Fee

The clerk:

- files notice in court file.

2. Registry receives Certificate

If the registry receives a certificate stating the amount of the other party's liability, the clerk either:

- files the certificate in the court file; or
- files the certificate along with other default fee certificates, separate from court files, in year-file order.

If there is a backlog of certificates received before July 22, 2004, that have not been placed in court files, the second option may be preferable. Most of these older certificates may be enforced without a certificate, so ensuring ready access is not a primary consideration.

Chapter 5 – Interjurisdictional Support Orders (ISO)

Introduction

In British Columbia, the *Interjurisdictional Support Orders Act* (ISO) is the Act that creates and recognizes reciprocal agreements with all the Canadian provinces and territories, and with many foreign countries, pertaining to family support orders and agreements made in BC and in those other jurisdictions.

This legislation allows for a court order or written agreement that was made in one place, to be enforced in another. There are; however, specific procedures that must be followed in order for these orders and agreements to be officially recognized in BC or the other jurisdiction.

Distinguishing Features of Canada's ISO Legislation

The *Interjurisdictional Support Orders Act* (ISO) and regulations set out the means to register, vary or enforce an extra-provincial or a foreign support order.

British Columbia's legislation about reciprocity is the *Interjurisdictional Support Orders Act*. The ISO Act has been implemented in all Canadian provinces and territories. Differences between the individual acts are minor and procedural. The principle common features of the ISO acts are that:

- They use a streamlined process for obtaining a support order or a support variation order, as the application is heard by the court of one jurisdiction only. It is necessary for the courts in both jurisdictions to hear an application only if the legislation in the reciprocating jurisdiction requires a provisional hearing/confirmation hearing process;
- The respondent has the opportunity to dispute a Notice of Registration only if the order being registered was made by a court outside of Canada;
- In determining a child's entitlement to support the BC court must apply the law of BC unless there is no entitlement under BC law. If there is no entitlement under BC law, the court must apply the law of the jurisdiction in which the child habitually resides. In determining the entitlement to and amount of support for a claimant, i.e. 'spousal' support, the BC court must apply the law of BC and, if the claimant is not entitled to support under the law of BC, apply the law of the reciprocating jurisdiction in which the claimant and the respondent last maintained a common habitual residence.

To further improve efficiency and enhance clarity of information being transferred to reciprocal jurisdictions, the provinces and territories have adopted a common set of forms. Each of these standard forms is accompanied by a detailed Form Support Guide that explains to the party how to complete the form, and describes the procedures associated with it.



The United States, and certain other countries, use reciprocals systems that are similar to ISO, in that they do not require a provisional order to be made.

The British Columbia ISO Act

The British Columbia *ISO Act* applies to support orders received from, or sent to, reciprocating jurisdictions with which British Columbia has agreements to enforce support orders. These reciprocating jurisdictions include all Canadian provinces and territories, all of the United States and its territories, and some countries. The Interjurisdictional Support Orders Regulation contains a complete list of the reciprocating jurisdictions.

Before a reciprocal agreement is made, both British Columbia and the jurisdiction with which it reciprocates must demonstrate that they have “substantially similar” legislative procedures to deal with reciprocal support enforcement. Some resemble British Columbia’s *ISO Act*, in that a provisional order is not required, whereas others do require a provisional order to be made.

The *ISO Act* is divided into three main processes:

1. Making a claim for a support order, where one does not already exist;
2. Registering an order made outside of British Columbia; and
3. Applying to vary a support order.

Types of Orders

The following types of orders are dealt with under the *ISO Act*:

ISOA s. 1(1)

- **Support Order.** An order or an interim order, made by a court or by an administrative body, that requires the payment of support. It includes the provisions of a written agreement requiring the payment of support if those provisions are enforceable in the jurisdiction in which the agreement was made. If a provisional order is confirmed (or confirmed with variation) by a reciprocating jurisdiction, the resulting order is a support order.
- **Support Variation Order.** The same process applies to variation of a support order, which can be applied for by either party;

ISOA s.1(1)

- **Provisional Order.** An order made by the court in the originating jurisdiction, based on the applicant’s written information or oral evidence, without notice to the respondent in a reciprocating jurisdiction. A provisional order has no effect until confirmed in the jurisdiction where the respondent lives. The BC Court hears an application for this type of order only if the reciprocating jurisdiction requires a provisional order to be made.
- **Provisional Variation Order.** The same process applies to provisional variation of a support order, which can be applied for by either party;

ISOA s. 16(1)

- **Extra-Provincial (Final) Order.** A support order or a support variation order made in a Canadian reciprocating jurisdiction. It does not include a provisional order or a provisional variation order.

ISOA s. 16(1)

- **Foreign (Final) Order.** A support order or a support variation order made in a reciprocating jurisdiction outside Canada. It does not include a provisional order or a provisional variation order.

Role of the Interjurisdictional Support Services (IJSS) and the Director of Maintenance Enforcement

FMEA s. 3(2)

The *Family Maintenance Enforcement Act* permits that all final orders requiring payment of maintenance that are registered by a court may be filed with the Director of Maintenance Enforcement.

The processing of reciprocal traffic into and out of BC, as mandated by the *ISO Act* and *Divorce Act*, has been delegated by the Attorney General to the Director of Maintenance Enforcement at Maintenance Enforcement and Locate Services. That authority and related duties have, in turn, been delegated to the staff of IJSS.

Because most applications for support orders and support variation orders originating in BC will not require a hearing in this province BC applicants send their applications directly to IJSS.

IJSS, acting on behalf of the designated authority under the ISO Act, performs many functions and duties that may include:

- processes incoming and outgoing applications and orders as mandated by specific sections of the *ISO Act* (and *Divorce Act*);
- checks that outgoing application packages are complete before forwarding them to the appropriate reciprocating jurisdictions;
 - where a reciprocating jurisdiction requires a provisional BC order, sends outgoing application packages to BC court registry to obtain a provisional order;
- checks that incoming application packages are complete before forwarding them to the appropriate court registry;
- provides information and assistance (but not legal advice) to applicants and respondents regarding their ISO applications;
- mails ISO forms requested by applicants and claimants through the ISO Forms website (www.isoforms.bc.ca);



Court registries do not supply ISO application forms.

- designates the court which registers an incoming order for variation and/or enforcement;
- serves the BC respondent with a copy of the notice of hearing, the application and response package;
- provides central services in obtaining translations of outgoing orders to non-English speaking reciprocating jurisdictions, and in obtaining currency conversion of maintenance amounts of incoming orders expressed in non-Canadian currency;



If the court registry receives an *Inter-agency Routing Form* from IJSS, seeking copies of an order that has not yet been filed, see Chapter 4 – Request for Maintenance Orders by FMEP, FMP and IJSS.

Alternative to Using the Reciprocal (ISO) Process to Obtain or Change an Order

Although this method is rarely pursued, a person who lives outside of British Columbia has an alternative to the reciprocal (ISO) process for obtaining or changing a support order in British Columbia: they may apply under the **usual FLA process** for an order. This is the case even though the other jurisdiction has a reciprocal agreement with British Columbia. If the person chooses this option:

- they must file their application with the BC court;
- the Provincial Court Family Rules apply; and
- the application is heard by the BC court, and not by the court of the other jurisdiction.

This option may be fairly popular with Alberta or Washington residents who reside near the BC border.

An Application About a Family Law Matter (Form 3) (PFA 712) is filed, as applicable. **BC's IJSS is not involved at any stage, nor is their counterpart in the other jurisdiction.** Consequently, if a BC court registry receives one of these FLA forms from an applicant who specifies an address outside of BC, it should **not** be automatically assumed that they intend the reciprocal process to be used (and therefore should be filing an ISO application form in their own jurisdiction, rather than using an FLA form). If the party at the registry counter, staff should briefly explain the difference between the ISO process and the FLA process, and the implications of each regarding the hearing location, to make sure that the party makes an informed decision before taking the step of filing documents. If the application was received by mail, the registry may telephone the applicant to verify their intent. Unless instructed to do so by the party, the FLA application should not be returned, and it should be filed without delay.

Similarly, a BC resident has the option of bringing an application to obtain or change a support order in another jurisdiction (including a reciprocating jurisdiction) without using the reciprocal (ISO) process. A BC resident choosing this option must use the forms and court procedures of the other jurisdiction, must file the application there, and must be prepared to attend a court hearing there.

Communication with Interjurisdictional Support Services (IJSS)

A shared drive folder “drop box” has been approved for the purpose of transmitting ISO documents between IJSS and CSB, on behalf of the parties, for filing in Provincial Court.

Court registry staff can communicate with IJSS staff by email to notify each other of documents that are ready for retrieval in the drop box but should not attach any documents to the email itself or include personal information about the parties in the email.

Email addresses for court registry staff and IJSS staff are located in an excel spreadsheet in the shared drive folder. Each registry is responsible for updating and maintaining their own contact information, including noting the date the contact information was last updated. IJSS will send an email to each CSB staff member listed in the document, including the manager, when there are documents ready for retrieval in the drop box.

IJSS as part of Maintenance Enforcement and Locate Services has a legislated mandate to receive and transmit reciprocal packages. The IJSS staff are not able to advise parties of actions they should take, or to give them legal advice; however, they can assist by providing information about the ISO process or the client's ISO application. Registry staff may refer clients to IJSS or the ISO forms website for information concerning the ISO process.

Mailing Address:
PO Box 2074 Stn Main
Vancouver BC V6B 3S3

Telephone: 1 866 660-2684
Website: ISO Forms website: <https://www.isoforms.bc.ca/>

Use of the Drop Box

Overview

IJSS case managers will upload documents to the drop box and notify the court registry by email, to the identified registry contacts, that there are documents for retrieval.

Court registry staff will retrieve the documents, process the documents, and file them as appropriate in Provincial Court.

Once filed, court registry staff will upload a scanned copy of the document to the drop box and notify IJSS by reply email that the documents are ready for retrieval.

IJSS case managers will retrieve the filed documents from the drop box.

The drop box is intended for the transmittal of documents and is not a storage repository for the documents. IJSS staff will be responsible for deleting documents from the drop box.

IJSS is required to retain the original paper version of any document they submit for filing and,

if a request is made for the original, they are to make it available.
See [instructions](#) for how to send and retrieve documents using the drop box.

Documents

The drop box is to be used for Provincial Court ISO related documents only, including orders, applications, responses, financial statements, notice of hearing and other relevant documents.

Certified copies of orders and copies of transcripts cannot be sent to IJSS using the drop box and must continue to be mailed. IJSS may also request an original stamped copy of an order be sent to them by mail when required.

Questions relating to the use of the drop box can be directed to AskPolicy@gov.bc.ca.

Getting Access to the Drop Box

Local court managers must submit an Account Access Form to their Regional Manager of Finance and Administration, following local practice, to provide or delete access to the AG_CSB_IJSS shared drive for their staff.

Security

Any suspected or identified security incident or privacy breach that pertains to court records and the use of the drop box must be reported according to the [Court Record Incident Policy](#).

Registration of Orders Made Outside BC

What is a Final Order?

An incoming final order is an order of a reciprocating jurisdiction, made in a proceeding of which the claimant and respondent had proper notice, and in which they had an opportunity to be present or represented. It includes:

- the support provisions in a written agreement between the claimant and a respondent if those provisions are enforceable in the jurisdiction in which the agreement was made as if contained in an order of a court of that jurisdiction;
- a support order or a support variation order, other than a provisional order or a provisional variation order; and a confirmation order.



The court makes this determination, based on the content of the document.

The following final orders are defined under the *ISO Act*:

ISOA s. 16(1)

- **Extra-Provincial (Final) Order.** A support order or a support variation order made in a Canadian reciprocating jurisdiction. It does not include a provisional order or a provisional variation order.

ISOA s. 16(1)

- **Foreign (Final) Order.** A support order or a support variation order made in a reciprocating jurisdiction outside Canada. It does not include a provisional order or a provisional variation order.

Designation

ISOA s. 2

ISOA s. 37

Pursuant to Section 2 of the *ISO Act* the Minister has designated the provincial courts in BC for the purpose of proceedings under the *ISO Act*. IJSS acts on behalf of the designated authority responsible for sending extraprovincial and foreign final orders to the BC courts for registration purposes.

IJSS:

- where an order or other document is received in a language other than English, ensures the order or document is translated into English;
- where a foreign support order is not express in Canadian currency, converts the support amount into Canadian currency;
- attempts to confirm the address of the BC party, using public sources;
- requests a Family Search, if necessary, to confirm or obtain an address;
- searches IJSS and CEIS databases to identify whether a court file already exists for the two parties; and/or
- determines the Provincial Court registry closest to the BC party's location.

IJSS will send the package to the court closest to the BC party's location for registration, variation, and enforcement, or where a court file exists, attaching an *Inter-agency Routing Form* (IRF). In the 'Purpose' column of the IRF the word 'designation' will be checked by IJSS staff.

Registration

The final order will, in the majority of cases, have come to IJSS from an equivalent agency, or maintenance enforcement program, in a reciprocating jurisdiction. The sender will ask for registration of the order, and enforcement. IJSS will indicate the request on the IRF, by checking the appropriate boxes (Registration (Canadian) (*ISO Act*) or Registration and Notice (Foreign) (*ISO Act*)), and by sending a copy of the letter or form provided by the sender. Note that registration can be requested when either the respondent or claimant is presumed to be in BC.



If a reciprocating jurisdiction varies an order that was previously registered in British Columbia, it's not necessary to re-register the varied order, (s. 23 ISOA). As a result, FMEP will file a copy of the varied order directly with the court registry unless FMEP has determined that the varied order must be registered.

ISOA s.19

The *Notice of Registration of a Foreign Order*, required for foreign orders (outside of Canada) only, explains that the BC party has an opportunity to apply to set aside registration. Extraprovincial orders (i.e., orders made by Courts in other Canadian provinces and territories) cannot be set aside and do not require notice of registration in BC.

ISOA s. 38

An order or other document that is received by the designated authority that is written in a language other than English must be translated into English. The translation must be certified by the translator as being an accurate translation.

ISOA s. 39

If a foreign support order is received by the designated authority in not expressed in Canadian currency must convert the foreign support amount into Canadian currency. The designated authority may from time to time revise the conversion to reflect current conversion rates.

Registration of Extraprovincial (Final) Orders

Procedures

When the court registry receives the **IRF indicating “Registration (Canadian) (ISO Act)”** and accompanying documents, the clerk will:

1. Date stamp the IRF where indicated on the form, and note what is requested (see ‘Purpose’ and ‘Additional Notes’ on the IRF for instructions other than registration);
2. Confirm that the documents listed on the IRF are provided, and date stamp all documents to file (including order);
3. Check CEIS to see whether a court file exists. If not, open one;
4. Enter file information on CEIS (Participant Role: CRD & DBT; Doc Type: ORO; Act: Interjurisdictional Support Orders; Issue Type: CS (Child Support), SS (Spousal Support), or VSO (Vary support order registered in British Columbia – s. 35 ISO);
5. Send to FMEP:
 - completed *Inter-Agency Routing Form* (IRF) (PFA 824) addressed to the FMEP Enrollment Office;
 - indicate the registry’s location;
 - check-mark that the purpose is Enrollment and Enforcement;
 - 1 copy of registered extraprovincial final order; and

6. File IRF and court copies of documents in court file.(Use CEIS code “IRF” for interagency routing form.)



IJSS has sent FMEP the transmittal form or letter from the sending agency, any arrears statement, and other material provided which will assist FMEP in enrolling and enforcing the order. FMEP will be awaiting the copy of the registered order from the registry.

Registration of Foreign (Final) Orders

Procedures

When the court registry receives the **IRF indicating “Registration and Notice (Foreign) (ISO Act)”** and accompanying documents, the clerk will:

1. Date stamp the IRF where indicated on the form and note what is requested (see ‘Purpose’ and ‘Additional Notes:’ on the IRF for instructions other than registration and notice);
2. Confirm that the documents listed on the IRF, including translated order or documents, certificate of translation and the currency certificate if applicable, are provided, and date stamp all documents to file (including the order);
3. Check CEIS to see whether a court file exists. If not, open one;
4. Enter file information on CEIS and scan order and other filed documents (Participant Role: CRD and DBT; Doc Type: NRG and ORO plus CUR, if any; Act: Interjurisdictional Support Orders; Issue Type: CS (Child Support), SS (Spousal Support), or VSO (Vary support order registered in British Columbia – s. 35 ISO);



If an order or document was written in another language and was translated into English, the translated order or document, the order or document in the other language, and the certificate of translation must be scanned into CEIS. The package is the full order.

5. Complete and sign:
 - *Notice of Registration of a Foreign Order (PFA 887);*
6. Mail to BC party:
 - *Notice of Registration of a Foreign Order*
 - copy of registered foreign final order (where the final order has been translated into English, the party should be sent a copy of the translated order, the order or document in the other language, and certificate of translation)
 - currency *Certificate*, if any
7. Note mailing date in CEIS;
8. Send to IJSS:
 - completed *Inter-Agency Routing Form (IRF) (PFA 824)* addressed to IJSS;
 - indicate the registry’s location;
 - check-mark that the purpose is Enrollment and Enforcement;

- note the date of mailing the *Notice of Registration of Foreign Order* to the party in the 'additional notes' section at the bottom of the IRF;
 - copy of registered foreign final order
 - filed currency certificate (if any)
 - copy of *Notice of Registration of a Foreign Order*
- 9. File IRF and court copies of documents in the court file. (Use CEIS code "IRF" for interagency routing form.)



IJSS will forward to FMEP a copy of the order, the transmittal form or letter from the sending agency, any arrears statement, and other material provided which will assist FMEP in enrolling and enforcing the order.

IJSS may request a search for a party in BC through Locate Services. If Locate Services provides an address for the BC party, IJSS will forward the order for registration and the Locate Services report to the registry. The address found through Locate Services is to be kept confidential. It is the responsibility of the court registry to maintain confidentiality of information provided by Family Search by enclosing it in envelope PFA 119. [see [Chapter 2 Using Family Search Services](#) for more information].

After the BC party's package is mailed:

1. No response from BC Party

If no response, the BC party is assumed to have received the Notice of Registration of Foreign Order package.

In due course, the registry will receive a *Notice of Filing* (from FMEP).

All subsequent correspondence or supporting documents relating to enforcement should be referred to the appropriate FMEP regional office while the order remains enrolled, enclosing an IRF.

2. Notice package is returned

The BC party may have moved. The clerk will:

- confirm the mailing address matches the address provided by IJSS;
- if the envelope shows a new address or the address was incorrect, re-mail package and note in court file;
- if not, notify IJSS that the notice was returned noting the service address, that mail was returned and the date of return, and hold documents in file;

NOTE: IJSS will issue a Family Search Request and/or request if further info is available from reciprocating court/agency.

- re-mail package when address provided by IJSS.



If party is in BC, but resides closer to another court location, include information on how to transfer the file when re-mailing the package.

3. Application to Set Aside Registration

The BC party may, within 30 days of receiving the Notice of Registration of Foreign Order, apply to the BC court to set it aside.

If more than 30 days have passed, the application should still be accepted.

See specific procedures below.

Setting Aside Registration of a Foreign (Final) Order

Grounds to Set Aside Registration

ISOA s. 19(3)(b)

The grounds on which registration of a foreign order can be set aside are:

- a party to the foreign order did not have proper notice or a reasonable opportunity to be heard in the proceeding in which the foreign order was made;
- the foreign order is contrary to the public policy of British Columbia; or
- the court or administrative body that made the foreign order did not have jurisdiction to make the order. (The court or administrative body has jurisdiction if both parties lived in the jurisdiction that made the foreign order, or if a party did not live there but was subject to the jurisdiction of the foreign court or tribunal at the time the order was made.)

Effect of ISO Regulation 3

ISO Reg. 3

ISO Regulation 3 says that the person applying to set aside registration of the foreign order must include:

- which of the grounds are being relied upon in the application; and
- the evidence which supports the application.

The BC party (usually the respondent, but registration may also be requested where the claimant is the BC party) will file an Application About Enforcement (Form 29) (PFA 725) asking the court to set aside the registration and may also file an optional Affidavit (Form 45) (PFA 762) in support of the *application*. The party must serve notice of the *application* on IJSS (the 'designated authority' for this purpose) by registered mail at least 30 days

before the date the application will be heard who will notify the other party of the application. The party must then file a Certificate of Service (Form 7) (PFA 714) at least 10 days before the hearing.

Procedures

When the Application About Enforcement is filed, the clerk will:

1. Check the *application* and *affidavit* (if any) for required information;
2. File *application* and *affidavit* by date-stamping
3. Enter documents in CEIS and scan
4. Set a hearing date at least 40 days in the future, and record on the application and in CEIS
5. Send the filed Application About Enforcement (with court date filled in) and Information for Virtual Appearance (IRA) to the party who filed the application at an address for service on file
6. Send copy to IJSS. (Note: IJSS will inform the reciprocating jurisdiction which requested registration and FMEP (to prevent enforcement pending hearing), if applicable, and may arrange for amicus to attend hearing date).

Two results are possible at the hearing of the application to set aside the registration:

1. Application to Set Aside Registration is Dismissed

If the Court dismisses the application and confirms the registration:

- clerk enters disposition in CEIS
- counsel (if any) or amicus prepares the order, or
- clerk prepares the order if applicant is not represented
- clerk checks order against court clerk's notes, presents to Judge for signature, files by date stamping
- mails certified copy of filed order to:
 - BC party,
 - IJSS – 3 certified copies (IJSS will forward a certified copy to the reciprocating court/agency and FMEP, if applicable)

2. Registration Set Aside

If the Court sets aside the registration of the final order, the clerk will:

- enter disposition in CEIS
- notify the FMEP, by fax (to prevent enforcement activity)
- prepare and file the order, as in #1, and then mail a certified copy of filed order to:
 - BC party,
 - IJSS – 3 certified copies

Note: IJSS will prepare and mail an advisory letter to the reciprocating court/agency.

- order original + three copies of a **transcript** of oral reasons for the decision
- when transcript received, date stamp front cover of each transcript
- prepare covering letter to IJSS and mail, together with three copies of transcript and three certified copies of filed order and any exhibits

IJSS will mail a copy of the transcript to the reciprocating court/agency and Legal Services Branch in Victoria (so that an appeal can be considered), together with a copy of the filed order and any exhibits

- retain originals of documents on file



If the judge has prepared written reasons for the decision, copies of this may be provided to IJSS, rather than a transcript.



If registration is set aside, the foreign order must be treated as if it were a document corresponding to a support application, or a support variation application. If the order does not contain the information necessary to treat it in this way, court registry staff must contact the 'designated authority' (IJSS) to request the information from the reciprocating jurisdiction. Until the court receives the information, it takes no further steps.

Enforcement of BC Orders Outside BC

What is a Final Order?

A final order is an order made in a proceeding of which the claimant and respondent had proper notice and in which they had an opportunity to be present or represented and includes:

- the support provisions in a written agreement between the claimant and a respondent if those provisions are enforceable in the jurisdiction in which the agreement was made as if contained in an order of a court of that jurisdiction; and
- a support order or a support variation order, other than a provisional order or a provisional variation order.

When to Use this Section

The procedures in this section are used when a claimant wants to enforce a BC final order, and the respondent lives in a reciprocating jurisdiction. The party, their counsel, or FMEP collects the documents and information necessary to allow for registration in the reciprocating jurisdiction (and notice to the respondent, if a jurisdiction outside of Canada is involved), and sufficient information to facilitate enrollment in the jurisdiction's agency for support enforcement. As reciprocal legislation is "substantially similar", an outgoing final order is supported by the same materials BC requires for an incoming final order.



Where FMEP has enrolled the final order, it processes requests for enforcement for claimants, and provides liaison, document preparation, communication, payment monitoring and distribution services for the BC claimant. It will also begin enforcement (such as a federal interception) pending registration in the reciprocating jurisdiction and enforce against any assets in BC.

BC Claimant's Requirements for Registration

All Canadian provinces and territories have reciprocity agreements with each other and with certain other countries. These arrangements allow a party to establish, change or enforce a support order in the reciprocating province, territory, or country.

Each province, territory or country makes its own reciprocity arrangements. This means that each reciprocating jurisdiction may have different requirements for what they need from the BC court in order to establish, change or enforce the BC order in their jurisdiction.

It is up to the party, their lawyer, or FMEP to determine what is required to register the BC order in the reciprocating jurisdiction.



The clerk may endorse any copies of court documents required by the party with “Certified to be a true copy of a document on file in the Provincial Court of British Columbia.”

Procedures

When the claimant or FMEP must register a BC order in a reciprocating jurisdiction, the clerk may be required to:

1. Complete *Certificate of Filing* (PFA 833) and attach to a certified copy of the original agreement, if the final order is a written agreement properly filed in BC;
2. Complete a *Certificate of Enforceability and Arrears* (PFA 832), if required by the reciprocating jurisdiction.

The registry will complete the form and retain a copy for the court file. The original certificate is returned to the party, their lawyer or FMEP.

Next Steps

The party, their lawyer or FMEP will forward the documents to the reciprocating court registry or maintenance enforcement agency responsible for registration and/or enforcement of the final order. Any routine correspondence will be exchanged between the BC court and reciprocating court or enforcement agency.

The Court May Receive:

1. Correspondence

The clerk will review and reply where appropriate, sending a copy to the BC claimant.

2. Cheques for Claimant

Refer to the Payment Out procedures in *Financial Operations Manual*.

3. Information Requests

If a request is made for an updated Statement of Arrears or other evidence, the clerk will contact the BC claimant, who must provide requested documents. The court sends documents directly to the reciprocating jurisdiction.

Claimant/Applicant in BC (Outgoing) Support and Support Variation Applications

Introduction

Using ISO procedures, a party can apply for a support order in one of the reciprocating jurisdictions without having to go there. A party can also apply to change an existing support order.

ISOA s. 5 and s. 25

ISOA s. 7 and s. 27

The *ISO Act* requires that a support application be used to apply for a support order, and that a support variation application be used to apply for a support variation order. If the reciprocating jurisdiction still uses the provisional and confirmation system, a provisional order is required as well as the application. In most cases the court registry will not be involved in applications originating in BC that will be heard in a reciprocating jurisdiction as provisional orders are rarely required for outgoing applications.

The following terminology is used for the parties:

ISOA s. 3 and s. 21

Claimant:

- a person applying under the *ISO Act* for support

Applicant:

- a person applying to vary a support order (whether the recipient or the payor)

Respondent:

- a person from whom support is sought if no support order exists yet
- a person responding to an application to vary a support order (whether the support recipient or the payor)

ISOA s. 5(2) and (3)
s. 6(2), s. 25(2) and (3),
and s. 27(2)

All ISO applications made by BC parties must use the ISO forms, regardless of whether the reciprocating jurisdiction requires a provisional order to be made. There are several forms available for applications. Not all of the forms are needed for every application. The claimant or applicant uses the FormSelect feature of the ISO forms website to identify the forms which are appropriate for the circumstances of the particular application. If the claimant or applicant is unable to access the website, Court registries stock a FormSelect form to provide to people who make inquiries about starting a support application involving another jurisdiction. Applicants can also be referred to the ISO Forms website at <https://www.isoforms.bc.ca/>. This is the only service that registry staff provide to BC claimants and applicants; otherwise, the BC parties interact only with IJSS.

Application forms chosen can be printed from the ISO forms website or obtained from IJSS. Each form has a guide that explains how to fill out the form. The party may either request the forms in writing from IJSS, print the forms from the Internet, or request through the ISO forms website that the forms be mailed by IJSS. The FormSelect includes the mailing address, the telephone number of IJSS and the Internet address of the ISO page of the Family Justice Website where the forms are located. The party has the option of completing and printing most of the forms online but the completed forms can't be submitted to IJSS on-line.

Court registry staff may **not** assist claimants and applicants with completing their forms. IJSS staff can provide information and assistance to the public, but they cannot provide legal advice. If a party indicates that they require more assistance than is provided by the FormSupport Guides, registry staff should suggest that they seek the advice of a lawyer.

ISOA s. 6(1) and s. 26(1)

After the application forms are completed, and sworn or affirmed, they are mailed to IJSS by the claimant/applicant. **Application forms from BC parties for filing in another jurisdiction are not filed with BC court registries.** The outgoing ISO forms should also not be sworn or affirmed at court registries, as they are not required by the BC court, so parties making inquiries in this regard should be informed to seek the service of a lawyer or a notary public.

ISOA s. 6(2) and s. 26(2)

IJSS checks to ensure that the application package is complete, then sends a copy of it to the reciprocating jurisdiction, where the support hearing or support variation hearing will be held. IJSS is responsible for these functions because it is the "designated authority" for this purpose.

ISOA s. 6(2) and s. 27(2)



IJSS also provides an intake function for support applications where a provisional order is required, although the ISO Act does not specify that it is responsible for

doing so. At the time of applying, the claimant/applicant does not need to know whether a provisional order is required, because the same application forms must be used, regardless of whether the reciprocating jurisdiction requires a provisional order. IJSS determines whether this is the case.

ISOA s. 7(1) and s. 27(1)

After checking the contents of the application package for completeness, if the reciprocating jurisdiction requires a provisional or provisional variation order, IJSS will send the application package to the Court and request that the application go before a judge, without notice being given to the respondent. This may be done either as a desk order or as a court hearing, according to local judicial preference. If a court hearing is set, IJSS will provide amicus at the hearing.

IJSS sends the application package (including provisional order, if required) to the reciprocating jurisdiction.

ISOA s. 6(3) and s. 26(3)

In some cases, IJSS may be notified by the reciprocating jurisdiction that additional information or documents are required. IJSS will communicate this to the claimant or applicant. The court registry is not involved in this process.

Important Note:

IJSS of Maintenance Enforcement and Locate Services has a legislated mandate to receive and transmit reciprocal packages. The IJSS staff are not able to advise claimants, applicants, and respondents of actions they should take, or to give them legal advice, however, they can assist by providing information about the ISO process or the client's ISO application. Registry staff may refer clients to IJSS or the ISO forms website for information concerning the ISO process.

Telephone: 1-866-660-2684

Website: ISO Forms website: <https://www.isoforms.bc.ca/>

Mailing Address:

PO Box 2074 Stn Main
Vancouver BC V6B 3S3

ISOA s. 6(4) and s. 26(4)

If the court in the reciprocating jurisdiction makes a support order or a support variation order regarding an application by a party residing in BC, IJSS must send a copy of the order and reasons, if any, to the claimant/applicant. The BC court registry will receive a certified copy of

the order from IJSS and may also receive the court's reasons for making the order. The BC court registry will file the documents.

ISOA s. 6(5) and (6)

Once the support order or support variation order is filed with the BC court, it has the same effect as an order of that court, and the court has the same control and jurisdiction over it.

Procedures

1. BC claimant/applicant seeks a support order or a support variation order

When a claimant who resides in BC comes to the court registry and indicates that they wish to obtain a support order, or when an applicant indicates that they wish to vary an existing support order, and that the other person resides outside of BC, the clerk:

- Provides the claimant or applicant with a blank *FormSelect – Choosing which Form to Use* (PFA 886) or directs them to the IJSS website.
- Informs the claimant or applicant that:
 - the *FormSelect* is used to identify the forms required by the person;
 - application forms are available only from IJSS, not from the court registry (and points out the mailing address, telephone number, and Internet site in the *FormSelect*);
 - the registry cannot help with completing the application forms, or answer questions about them, but that each form is accompanied by a *FormSupport Guide* that explains in detail how to complete the form and what to do with it after it is completed; and
 - applications, once completed, must be mailed to IJSS; they are **not** filed with the court registry and cannot be sworn or affirmed at court registries, as they are not required by the BC court. Parties making inquiries in this regard should be informed to seek the service of a lawyer or a notary public.

The following next steps are possible depending on the requirements of the reciprocal jurisdiction:

- If a Provisional Order is required by the reciprocal jurisdiction go to Step 2
- If further evidence is required by the reciprocal jurisdiction go to Step 3
- If BC Court receives a copy of order from court in reciprocal jurisdiction go to Step 4

2. If the reciprocating jurisdiction requires a provisional order or provisional variation order

A provisional order means:

- A support order of a court in British Columbia that has no effect until confirmed by a court in a reciprocating jurisdiction.

A provisional variation order means:

- A variation of a support order of a court in British Columbia that has no effect until confirmed by a court in a reciprocating jurisdiction.

The requirement for a provisional order means that applicants would have to first get a decision from a Court in their own jurisdiction before sending the matter to a Court in the other jurisdiction for confirmation, recognition and/or enforcement.

If IJSS sends an application package to the BC court registry, accompanied by an **IRF that indicates “Provisional Hearing in BC to Establish/Vary Support (ISO Act)”**, the clerk will:

- Date stamp the *IRF* where indicated on the form, and note what is requested;
- Confirm that the documents listed are provided, and date stamp all documents to file;
- Check CEIS to see whether a court file exists. If not, open one;
- Enter file information on CEIS (Participant Role: CLA or APP and RES; Doc Type: one or more of PVO, APO, APC, ORO; Act: Interjurisdictional Support Orders; Issue Type: PROV), including the IRF using CEIS code “IRF”; and
- Return to IJSS:
 - Stamped copy of:
 - support application or support variation application, including if applicable:
 - any application filed;
 - transcript, if filed;
 - any exhibits filed;
 - other applicable documents filed (translation, currency certificate, legislation of reciprocating jurisdiction etc.);
 - Retain originals of submitted documents in the court file.

Next Steps

IJSS will arrange a date for hearing and prepare a *Notice of Hearing* (PFA 889). The BC court receives 3 copies of the *Notice of Hearing* from IJSS.

The clerk will:

1. Review the *Notice of Hearing* for completion;
2. Check that the date recorded is available and set the hearing (if the JCM has not already scheduled the appearance);
3. Enter document in CEIS (Doc Type: NOH Appearance Reason: HR);
4. File *Notice of Hearing* by date-stamping;
5. Retain original on court file;
6. Return copies to IJSS as they are responsible for providing the documents to the BC party.

At the hearing, the Judge may dismiss the application for an order, or make a provisional order (or provisional variation order) for support.

After the hearing:

- order original + three copies of transcript, if a court hearing was held
- Amicus prepares the order
Note: IJSS has an arrangement with amicus that he/she will draft all ISO orders unless the court orders otherwise or they make other arrangements with party's counsel. From time to time, IJSS may ask the registry for a copy of the court summary sheet if amicus requests a copy to assist with drafting.
- The clerk:
 - checks order against Court Clerk's notes (if applicable), presents to Judge for signature, files by date stamping
 - prepares certified copies of order as follows:

BC claimant/applicant	1 certified copy
IJSS	3 certified copies
FMEP (if current support order is enrolled with FMEP)	1 certified copy
 - sends certified copy of filed order to BC claimant/applicant and FMEP, if applicable
 - files original order on court file and enters on CEIS (Doc Result: END; Issue Result for Dismissal: DIS; Issue Result for Provisional Order: OM; Issue Result for Provisional Variation Order: OM)

If a court hearing was held and the clerk **ordered a transcript**, the clerk waits for the transcript to arrive before performing the following steps. **Otherwise** the clerk performs them immediately after the order is filed.

The clerk will then:

- When transcript arrives, date-stamps covers;
- Pull the three certified copies of the order from the court file, (and the copies of the transcripts, if any);
- Prepare a copy of the filed application and supporting affidavits;
- Prepare, and certify, three copies of any exhibits filed;
- Send to IJSS:
 - completed *Inter-Agency Routing Form* (IRF) (PFA 824) addressed to the IJSS;
 - indicate the registry's location;
 - check-mark that the purpose is Application in BC to Establish/Change Support (ISO Act);
 - note the documents you are sending in the 'additional notes' section at the bottom of the IRF;
 - certified copies of order;
 - filed copy of application and transcripts/evidence, as applicable; and

- Retain on court file the original transcript (if any) and one copy of all documents and enter on CEIS (Doc Type: TRN).

No further action until after the hearing in the reciprocating jurisdiction.

Go to step 3 if further evidence is required by the reciprocating jurisdiction.

Go to step 4 if the reciprocating court makes an order.

Most Canadian provinces or territories do not require certified copies of transcripts. In some foreign cases where certified copies of transcripts may be required, IJSS will request them from the registry. If IJSS advises the registry of such requirements, provide certified copies of the transcripts.

3. Court in reciprocating jurisdiction requires further evidence

The reciprocating court may require additional evidence before making an order. It may adjourn and send the matter back to the BC court for further evidence. IJSS will require a certified copy of any order made, a transcript or written reasons, and exhibits to forward to the reciprocal jurisdiction. The clerk will:

- Check, file, and enter in CEIS (Doc Type: ORD or ORO, TRN; Act: Interjurisdictional Support Orders Issue Type: DIS, ORDP);
- Set hearing date in CEIS (Appearance Reason: HR or CNT);
- Prepare *Notice of Hearing* (PFA889) and enter on CEIS (Doc Type: NOH); and
- File *Notice of Hearing* by date-stamping;
- Retain original on court file; and
- Return copies to IJSS as they are responsible for providing the documents to the BC party and arranging for amicus to attend the hearing.

The order or request for further evidence from the BC party is often sent to the ISO designated authority in the reciprocating jurisdiction and they, in turn, forward the order/request to IJSS. IJSS will contact the BC party and forward sworn evidence directly to the reciprocating jurisdiction without involving the BC courts, unless a hearing is required.

After the Hearing:

- Order original + three copies of transcript, if a court hearing was held
- Amicus prepares the order
Note: IJSS has an arrangement with amicus that he/she will draft all ISO orders unless the court orders otherwise or they make other arrangements with party's counsel. From time to time, IJSS may ask the registry for a copy of the court summary sheet if amicus requests a copy to assist with drafting.
- The clerk:

- checks order against Court Clerk's notes (if applicable), presents to Judge for signature, files by date stamping
- prepares certified copies of order as follows:

BC claimant/applicant	1 certified copy
IJSS	3 certified copies
FMEP (if current support order is enrolled in FMEP)	1 certified copy

- sends certified copy of filed order to BC claimant/applicant and FMEP, if applicable
- files original order on court file and enters on CEIS (Doc Result: END; Issue Result for Dismissal: DIS; Issue Result for Provisional Order: OM; Issue Result for Provisional Variation Order: OM)

When the transcript is received, the clerk will:

- Date stamp covers of transcripts;
- Make three certified copies of any exhibits or affidavits;
- Send *Remittal Form Letter* ([PFA 837](#)), 3 copies of transcript, three certified copies of exhibits and three certified copies of any order made to IJSS;
- Enter transcript on CEIS (Doc Type: TRN).

The reciprocating court will re-convene and make an order.

Most Canadian provinces or territories do not require certified copies of transcripts. In some foreign cases where certified copies of transcripts may be required, IJSS will request them from the registry. If IJSS advises the registry of such requirements, provide certified copies of the transcripts.

4. BC court registry receives order made by court in reciprocating jurisdiction

If the court registry receives an *IRF* from IJSS and a certified copy of a support order, a support variation order or an order refusing to make a support order or support variation order (possibly accompanied by reasons) made by a court in a reciprocating jurisdiction, the clerk will:

- Date stamp the *IRF* where indicated on the form, and notes what is requested;
- Confirm that the documents listed are provided, and date stamps to file (including the order);
- Check CEIS to see whether a court file exists. If not, opens one;
- Enter file information on CEIS (Doc Type: ORO (and RFJ, if any); Act: Interjurisdictional Support Orders; Issue Type: CONM or DISL) including the *IRF* using CEIS code "IRF" ;
- Return a filed copy of the document(s) to IJSS.



If the court registry receives a certified copy of a support order, a support variation order or an order refusing to make a support order or support variation order directly from the reciprocating jurisdiction, contact IJSS to seek direction on next steps.

Claimant/Applicant outside BC (Incoming) - Support and Support Variation Applications

Introduction

A support application (or support variation application) is a document received from a reciprocating jurisdiction which is either similar to the ISO application forms **or** is a provisional order (or provisional variation order) received for confirmation. All are handled the same way by the receiving BC Court.

ISOA s. 1(1)



A provisional or provisional variation order has no effect, and cannot be enforced, until confirmed by a court in BC.

ISOA s. 3 and s. 21k

The following terminology is used for the parties:

Claimant:

- a person applying under the *ISO Act* for support

Applicant:

- a person applying to vary a support order (whether the recipient or the payor)

Respondent:

- a person from whom support is sought, if no support order exists yet
- a person responding to an application to vary a support order (whether the support recipient or the payor)

ISOA s. 9(1) and s. 29(1)

IJSS receives the support application package – including sworn evidence - from the reciprocating jurisdiction and sends it to the BC Court for a hearing after reviewing the package contents for completeness and conducting a Family Search. IJSS is responsible for these functions because it is the “designated authority” for this purpose.

ISOA s. 9(1)(b) and s. 29(1)(b)

IJSS, as the designated authority, must serve the respondent (in BC) with the support application or support variation application and a notice requiring the respondent to appear at a place and time set out in the notice and to provide the information or documents required by the regulations, such as blank copies of a *Respondent's Answer to Application and Financial Statement*.

Procedures

IJSS reviews the documents for completeness before forwarding them to the BC court registry.



Applications for Variation

- If the incoming application is to vary a support order, the order must first be registered, unless it was previously registered. If the order was made by a court outside of Canada, a *Notice of Registration of Foreign Order* must be given to the BC party, who has an opportunity to set aside registration. **See procedures for Registration of a Foreign (Final) Order.**
- If the order being varied is made under the *Divorce Act*, the claimant must apply to Supreme Court to vary the order.
- If the child support order being varied was made on a divorce file, but was made as a separate order rather than as part of the Divorce Order, it should be treated as though it were made under the *Divorce Act*. The assumption is that this is the case, even if the child support order contains no reference to the *Divorce Act*.

The BC court receives an application package from IJSS that may include:

1. *Inter-Agency Routing Form* (IRF) indicating “**Application in BC to Establish/Change Support (ISO Act)**”;
2. A copy of the support application, support variation application or provisional order for confirmation;
3. A copy of the legislation of the reciprocating jurisdiction;
4. If for variation, a certified copy of the order being varied (if the order is a non-BC order);
5. Certified or sworn evidence, transcript and exhibits, if any (only applicable if there has been a provisional hearing in the reciprocating jurisdiction);
6. If the order is from a non-English speaking reciprocating jurisdiction, a translation of the order into English;
7. A currency certificate, if the order is expressed in non-Canadian dollars;
8. *Notice of Hearing* (may be filed now or once file has been initiated);

After receiving the document package, the clerk will:

1. Date stamp the *IRF* where indicated on the form, and note what is requested;

2. Confirm that the documents listed are provided, and date stamp all documents (including the order) to file;
3. Check CEIS to see whether a court file exists. If not, open one;
4. Enter file information on CEIS (Participant Role: APP or CLA and RES; Doc Type: one or more of SAP (Issue type: CS or SS), SVA (Issue type: VSO), NRG, ORO, TRN, CRT or CUR; Act: Interjurisdictional Support Orders);
5. Enter and scan/upload IRF received from IJSS using CEIS code "IRF".

Go to Step 5 if an unregistered foreign (final) order is being varied.

Go to Step 8.

5. Complete and sign:
 - *Notice of Registration of Foreign Order* (PFA 887);
6. Mail to BC party:
 - *Notice of Registration of Foreign Order*
 - registered foreign final order
 - currency *Certificate*, if any
7. Note mailing date in CEIS;
8. Return to IJSS:
 - Stamped copy of:
 - *Notice of Registration of Foreign Order*, if any;
 - support application or support variation application, including if applicable:
 - registered (extraprovincial or foreign) order, if any;
 - provisional or provisional variation order, if any;
 - any application filed;
 - transcript, if filed;
 - any exhibits filed;
 - other applicable documents filed (translation, currency certificate, legislation of reciprocating jurisdiction etc.);
9. Retain originals of submitted documents and *Notice of Registration of Foreign Order* (if any) in the court file.



On recommendation of the PCWG, a CEIS code has been created for the Inter-Agency ISO Routing Form (IRF). Use CEIS code "IRF" when entering and uploading the interagency routing form received from IJSS.

Next Steps

IJSS will arrange a date for hearing and prepare a *Notice of Hearing*. The BC court receives 3 copies of the *Notice of Hearing* from IJSS.

The clerk will:

1. Review the *Notice of Hearing* for completion;

2. Check that the date recorded is available and set the hearing (if the JCM has not already scheduled the appearance);
3. Sign and date all copies of the *Notice of Hearing*;
4. Enter document in CEIS (Doc Type: NOH Appearance Reason: HR);
5. File *Notice of Hearing* by date-stamping;
6. Retain original on court file;
7. Return copies to IJSS as they are responsible for serving the documents on the BC party.



IJSS may request a search for a party in BC through Locate Services. If Locate Services provides an address for the BC party, IJSS will forward the Notice of Hearing and/or Affidavit of Service and the Locate Services report to the registry. The address found through Locate Services is to be kept confidential. It is the responsibility of the court registry to maintain confidentiality of information provided by Family Search by enclosing it in envelope PFA 119. [see [Chapter 2 Using Family Search Services](#) for more information]

Three events may occur after the *Notice of Hearing* package is returned to IJSS:

1. BC respondent is successfully served

IJSS will file proof of service with the registry.

Filing the respondent's documents

ISOA s. 14 and s. 33

The *Notice of Hearing* instructs the respondent to file a *Financial Statement* and a *Respondent's Answer to Application* with IJSS who will then forward the documents to the court.

If the required documents are not filed by the respondent, or if the respondent fails to appear, the support hearing (or support variation hearing) may nevertheless proceed in the respondent's absence or in the absence of information or documents.



The incoming ISO forms can be sworn or affirmed at court registries, as they are required by the BC court. This may include the *Respondent's Response to Application* and an affidavit. The ISO Financial Statement is not a sworn document.

The hearing will proceed as scheduled.

See procedures below.



If the respondent asks to file their documents directly with the court registry, please refer to the Notice of Hearing for the date on or before which the documents must be filed.

Example:	What documents are you required to file?	To hear the attached Application to Establish Support You must file with the Interjurisdictional Support Services at PO Box 2074, Vancouver, BC V6B 3S3 on or before date September 20, 2017, 3 copies of: ▪ a completed Respondent's answer to Application in Form N (see attached form) ▪ a completed Financial Statement in Form K (see attached form) ▪ your three most recent income tax returns ▪ your three most recent notice of assessment and reassessment issued by Revenue Canada ▪ the most recent assessment notice from the British Columbia Assessment Authority for any property that you own in whole or in part; and
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If the date has not passed, refer the respondent to IJSS to file the documents. IJSS will check the documents for completion prior to filing them with the court and they will forward a copy to amicus in preparation of the hearing.

If the date has passed, please accept the documents at the registry and provide a copy to IJSS. It is better for the documents to be available for the court than to be in transit between the respondent, IJSS, and the court. The documents should be forwarded to IJSS without filing. IJSS will provide further instruction regarding whether to file the documents or just to have them on file for the court.

If IJSS sends an application package to the BC court registry, accompanied by an **IRF that indicates "Application in BC to Establish/Vary Support (ISO Act)"** which includes the *Respondent's Answer to Application* and a completed *Financial Statement* (and attachments), the clerk will:

- Date stamp the *IRF* where indicated on the form, and note what is requested;
- Confirm that the documents listed are provided, and date stamp all documents to file;
- Enter documents on CEIS (Doc Type: RSR and FS);
- Retain originals of submitted documents in the court file; and
- Return copies to IJSS.

2. Application to Set Aside Registration (if applicable)

The respondent may, within 30 days of receiving the *Notice of Registration of Foreign Order* (if any), apply to the court to set it aside.

If more than 30 days have passed, the application should still be accepted.

See specific procedures in Registration of Foreign (Final) Order.

3. IJSS Requests to Adjourn Generally or Withdraw an Application

If IJSS is unable to successfully serve the other party, or requires additional time in order for the party or amicus to attend, they may request to adjourn generally or withdraw an application.

IJSS will submit a *Request to Adjourn IJSS* (PFA917) form providing instruction to the registry to either adjourn the hearing generally or that the application be withdrawn.

If the application is adjourned, IJSS may file a new Notice of Hearing at any time to set a new hearing date. See procedures for Notice of Hearing earlier in this section.

If IJSS files a *Request to Adjourn IJSS*, the clerk will:

- Review the *Request to Adjourn IJSS* for completion;
- File the document by date-stamping;
- Enter the document in CEIS (Doc Type: RGW) and adjourn generally/cancel the scheduled appearance;
- Retain original on court file;

Return copy to IJSS.

Support Hearing / Support Variation Hearing

Introduction

ISOA s. 14 and s. 33

The *Notice of Hearing* instructs the respondent to file a *Financial Statement* and a *Respondent's Answer to Application*. If the required documents are not filed by the respondent, or if the respondent fails to appear, the support hearing (or support variation hearing) may nevertheless proceed in the respondent's absence or in the absence of information or documents. The Court may make any inference it considers appropriate when making an order in these circumstances. A copy of the order must be sent to the respondent who fails to appear.



In most court locations, arrangements have been made for Interjurisdictional Support Services (IJSS) to provide counsel (in person or by telephone) to assist the judge at *ISO Act* hearings. This counsel is referred to as *amicus curiae* (amicus) or friend of the court. They are not a party to the case but can offer information regarding the case to assist the court. They do not represent either party, but will prepare any order that is made at the hearing.

IJSS will seek the court's approval for amicus to appear by telephone and may additionally seek the court's approval for amicus to be provided by IJSS.

ISOA s. 13(1) and s. 32(1)
ISOA s. 11

The Court must consider the evidence provided to it by the respondent, as well as the documents received from the reciprocating jurisdiction before making a determination. If parentage of a child is an issue (and has not previously been determined), the Court may decide the issue for the purposes of proceedings related to child support.

ISOA s. 13(2) and s. 32(2)

A support order (or support variation order) can include one or more of the following:

- payment periodically, annually, or otherwise, and either for an indefinite or limited period or until the happening of a specified event;
- payment of a lump sum directly or in trust on terms provided;
- charging of property with payment under the order;
- payment of support in respect of any period before the order is made;
- payment for expenses arising from and incidental to the prenatal care of the mother or child, or the birth of a child.

ISOA s. 12 and s. 31

The Court applies the following factors when determining support entitlement and amount:

- In determining a child's entitlement to support the BC court must apply the law of BC unless there is no entitlement under BC law. If there is no entitlement under BC law, the court must apply the law of the jurisdiction in which the child habitually resides. In determining the entitlement to and amount of support for a claimant, i.e. 'spousal' support, the BC court must apply the law of BC and, if the claimant is not entitled to support under the law of BC, apply the law of the reciprocating jurisdiction in which the claimant and the respondent last maintained a common habitual residence.

ISOA s. 15 and s. 34

The court registry must send a certified copy of the order, to the reciprocating jurisdiction (via BC's IJSS) as soon as practicable. If the court refused to make a support order, the court registry must also send the reasons for the court's refusal. This is done by sending the document package to BC's IJSS, which will forward the package to the reciprocating jurisdiction.

At a hearing of a support application or support variation application, the Judge may:

ISOA s. 13(1) and s. 32(1)

- make a support order (or support variation order);
- make an interim support order, with adjournment to a specific date;

- adjourn to a specific date (with no interim support order); or
- refuse to grant a support order.

Judicial Practice Direction FAM 03

"When a scheduled trial or hearing has not been completed in the time provided it will be scheduled to conclude within **30 days** unless otherwise approved by the relevant Regional Administrative Judge or Local Liaison Judge (where applicable) on advice of the local Judicial Case Manager."



Trial scheduling is a judicial function performed by judicial case managers, but this practice direction is shared with court registry staff for information purposes.

However, if the hearing was adjourned to remit the application to the originating jurisdiction to obtain further evidence, it will likely be impossible to comply with the 30 day limit because of the BC Court has no control over the proceedings in the other jurisdiction.

ISOA s. 10(2) and s. 30(2)

A common reason for adjournment is to remit the matter back to the court in the reciprocating jurisdiction for further evidence from the claimant/applicant (with or without an interim order).

Procedures for each of these results are outlined in the chart below.

Procedures

Results of Support Hearing, Support Variation Hearing or Confirmation Hearing in BC

At a hearing, the judge may do any one of the following:

- make a support order (or support variation order)
- confirm a provisional order (or provisional variation order)
- deny the application
- request further information from the reciprocating jurisdiction before making an order (the judge may make an interim order)

1. Support Order Made or Varied

If the court makes or varies a support order, amicus prepares the order.



IJSS has an arrangement with amicus that he/she will draft all ISO orders unless the court orders otherwise or they make other arrangements with party's counsel. From time to time, IJSS may ask the registry for a copy of the court summary sheet if amicus requests a copy to assist with drafting.

The clerk will:

- enter disposition in CEIS (Doc Type: ORD; Issue Result: OM or DIS;
- prepare the order (unless the order has been drafted by counsel provided by IJSS);
- check order against Court Clerk's notes;
- present order to Judge for signature;
- file order by date-stamping;
- prepare certified copies of order as follows:

BC Respondent	1 certified copy
IJSS	3 certified copies

- - Send BC respondent - one certified copy of order;
 - Send IJSS the following:
 - completed *Inter-Agency Routing Form* (IRF) (PFA 824) addressed to the IJSS;
 - indicate the registry's location;
 - check-mark that the purpose is Application in BC to Establish/Change Support (*ISO Act*);
 - One copy of order (uncertified) and three certified copies for the reciprocating jurisdiction. Note: Unless requested by the reciprocating jurisdiction or IJSS, no transcript of the proceedings or reasons are required.

IJSS will forward a copy of the order to FMEP if FMEP has an active file or there has been a request by the reciprocating jurisdiction or the claimant/applicant for enforcement in BC. When the order is enrolled with FMEP, the court will receive a *Notice of Filing*.

2. Provisional Order or Provisional Variation Order Confirmed (Same or Different \$)

If the provisional order (or provisional variation order) was confirmed by the BC court, the clerk will follow the procedures outlined in #1, but will enter the disposition in CEIS (Doc Type: ORD; Issue Result: CONM).

If the amount specified in the provisional order (or provisional variation order) stayed the same, no transcript of the proceedings or reasons are required.

If the amount specified in the provisional order (or provisional variation order) was changed at the confirmation hearing, a copy of the reasons for the decision must be sent to the reciprocating jurisdiction (via BC's IJSS) along with the certified copies of the order. The court clerk will:

- order original plus two copies of the transcript of the oral reasons for judgment;

- update CEIS (Doc Type: RFJ);
- send the two copies of the transcript to IJSS, along with the IRF and certified copies of the order; and
- file original of transcript.



If the judge has prepared written reasons for the decision, copies of this may be provided to the reciprocating court/agency (via IJSS), rather than a transcript.

3. Support Order or Confirmation Denied

If the BC court refuses to make a support order (or support variation order) or to confirm a provisional order (or provisional variation order), it must record the reasons for its refusal. This includes instances where the case is struck off the list, is dismissed, or is adjourned without a court date being set. The clerk will:

- enter disposition on CEIS (Doc Type: ORD; Issue Result: DISL, ADJH or ADJT);
- prepare the order (unless the order has been drafted by counsel provided by IJSS);
- check order against Court Clerk's notes;
- present order to Judge for signature;
- file order by date-stamping;
- prepare certified copies of order as follows:

BC respondent	1 certified copy
IJSS	3 certified copies

If an order was made or refused, or if the hearing is adjourned without a date:

- order original plus two copies of transcript of the entire proceedings.

When the transcripts arrive, the clerk will:

- update CEIS (Doc Type: TRN);
- send respondent – one certified copy of order;
- send IJSS
 - IRF (on IRF for IJSS, tick the purpose as "Forward to reciprocating jurisdiction", and tick the documents attached)
 - one copy of order (uncertified) and three certified copies for the reciprocating jurisdiction.
 - two certified copies of any exhibits filed; and
 - two copies of transcript.
- file the originals of the transcript and order.

4. SBC requires further evidence from the Reciprocating Jurisdiction

The BC court may require additional evidence from the claimant, via IJSS, before making, varying or confirming an order. It adjourns to a date within 12 months, or as directed by the Court, and sends the matter back to the reciprocating jurisdiction requesting further information or documents. Amicus will draft the order unless the court orders otherwise or they make other arrangements with party's counsel. The clerk will:

- enter disposition in CEIS (Doc Type: ORD; Document Result: END; Issue Result: ADD);
- enter next hearing date, if set, and update CEIS (Appearance Reason: CNT);
- prepare order (unless counsel provided by IJSS prepares the order). Note: The order may contain details of the information or document(s) required;
- check order against Court Clerk's notes;
- present order to Judge for signature;
- file order by date stamping;
- prepare certified copies of order as follows;

BC respondent	1 certified copy
IJSS	3 certified copies

- order original + two copies of a transcript of the entire proceedings; and
- when the transcript is filed, update CEIS (Doc Type: TRN).

Unless a confirmation hearing was adjourned:

- send one certified copy of order to respondent;
- send marked 'urgent', to IJSS:
 - IRF
 - three certified copies of order and one copy (uncertified); and/or
 - two copies of transcripts of the entire proceedings.
- file the originals of the transcript and order.

If a confirmation hearing was adjourned:

- send one certified copy of order to respondent;
- send, marked 'urgent', to IJSS, IRF, three certified copies of order and one copy (uncertified), and/or two copies of transcripts of the entire proceedings;
- files the originals of the transcript and order;
- if an interim support order was made, see procedures below;
- if the requested information is not received from IJSS or the reciprocating jurisdiction before the specified date, the BC court may dismiss the support application, and terminate any interim support order. (See Procedures in [#3](#) above);

- if an interim support order is terminated, update CEIS (Issue Result: MACC or MASC).

After Hearing in Reciprocating Jurisdiction:

The reciprocating court will send the BC court registry a transcript or affidavit, exhibits, and any order made. When they are received by the registry, the clerk will:

- file documents and update CEIS (Doc Type: one or more of TRN, AFF or ORD);
- re-convene support hearing or confirmation hearing and prepare a new *Notice of Hearing*, if date was not scheduled in the courtroom;
- update CEIS (Doc Type: NOH or NOT; Appearance Reason: CNT);
- send the respondent a copy of the documents provided by the IJSS (reciprocating court), and a copy of new *Notice of Hearing*, if any;
- send a copy of the *Notice of Hearing* to IJSS.



Interim Support Orders and Adjournments

If the court adjourns the hearing to a specific date, with or without making an interim support order, the next hearing date must be entered in CEIS, in addition to the applicable procedures above. If the judge indicates, the reciprocating jurisdiction must be advised of the next hearing date, via IJSS.

If the BC court adjourns the hearing and remits to the reciprocating court for further evidence, it may make an interim support order. This order is enforceable until the BC court makes a final disposition. The clerk will:

- prepare the Interim Support Order (unless prepared by counsel provided by IJSS);
- enter disposition in CEIS (Doc Type: ORD; Document Result: END; Issue Result: OMI);
- check order against Court Clerk's notes in court file, present to Judge for signature, file by date-stamping;
- prepare certified copies of order as follows:

BC respondent	1 certified copy
IJSS	3 certified copies

- send Interim Support Order to the BC respondent (1 certified copy);
- send IJSS 3 certified copies. IJSS will forward copies to the reciprocating jurisdiction.

Payments

If, during the process of applying for a support order or a support variation order, the BC court registry receives payments, refer to the Payment Out procedures in the *Financial Operations Manual*. If an order is enrolled with FMEP, and being varied, payments will be received by FMEP. Update CEIS (Issue Type: PAYO).

Glossary

Applicant

A party applying to vary a support order (whether the recipient or the payor).

Certified Copy

For court documents, a certified copy is the original or a copy of a court document that a proper officer of the court or administrative body that made the order has certified to be a true copy by signing it or using a facsimile (stamped) signature. A document certified by a judge, officer of a court, or public officer from a reciprocating jurisdiction is presumed to be proper and authorized, without proof of the authority.

Claimant

A party applying under the *ISO Act* for support.

Confirmation Order

A confirmation order is the second part of a two-step process to obtain or change an order between two reciprocating jurisdictions, in cases where the legislation of one of the jurisdictions requires a provisional order to be made. In the first (provisional) step, a court in one reciprocating jurisdiction makes an order after hearing only one party. The provisional order is sent to the reciprocating jurisdiction where the other party lives, along with a transcript of the provisional hearing and any documents filed. The court in the second reciprocating jurisdiction holds a confirmation hearing to hear evidence from the other party. The order made at the second hearing is a confirmation order.



1. The order made at the first (provisional) step has no force and effect until confirmed;
2. The confirmation order may be in amount that is higher or lower than the provisional order, or may dismiss the application for support;
3. The court may require more information before making an order and send the matter back (remit) to the first reciprocating jurisdiction to obtain additional evidence. It may make an interim order in the meantime. When the additional evidence is received, the confirmation hearing continues;
4. Any periodic support payments ordered at a confirmation hearing must not begin before the date of the first (provisional) order.

Court

For reciprocal purposes, it is the court that has authority or jurisdiction to make an order. In BC, the court is generally the Provincial Court. There are some exceptions: an order made

under a federal law (the *Divorce Act*) cannot be varied or rescinded by a provincial court. Please see sections 13 and 32 of the *ISO Act* for details of the powers of a court.

Currency

A support order that is to be registered in Canada for variation or enforcement must be in Canadian currency. When a reciprocating jurisdiction sends an order to BC, IJSS obtains a currency conversion rate. The conversion to Canadian dollars is put on a certificate and forwarded to the court registry with the order is to be registered, and the maintenance amount is thereafter dealt with in Canadian dollars. Similarly, when a Canadian order is sent to a Foreign reciprocating jurisdictions the Canadian currency is converted to that of the foreign reciprocating jurisdiction.

IJSS provides the initial currency certificate with the IRF requesting registration. From time to time, FMEP may revise the conversion to reflect current conversion rates and provide a copy of the certificate to the court registry for filing.

Designation

The Minister has designated provincial court for the purpose of the registration of orders received from a reciprocating jurisdiction for variation, enforcement, or confirmation. When it receives an order, IJSS will review its own records, and CEIS to determine if the parties already have a file in a BC Provincial Court. If they do, the court will be 'designated' for reciprocal purposes, and the documents sent to the registry that has a file. If no BC court file exists, IJSS will first attempt to confirm an address for the BC party, and will then send the documents to the Provincial Court registry nearest to the BC party's location.

Extra-Provincial (Final) Order

A support order or a support variation order made in a Canadian reciprocating jurisdiction. It does not include a provisional order or a provisional variation order.

Final Order

An order made in a proceeding of which the claimant and respondent had proper notice and in which they had an opportunity to be present or represented and includes:

- the support provisions in a written agreement between the claimant and a respondent if those provisions are enforceable in the jurisdiction in which the agreement was made as if contained in an order of a court of that jurisdiction;
- a support order or a support variation order, other than a provisional order or a provisional variation order; and
- a confirmation order made in a reciprocating jurisdiction.

Foreign (Final) Order

A support order or a support variation order made in a reciprocating jurisdiction outside Canada. It does not include a provisional order or a provisional variation order.

Jurisdiction

The *Interjurisdictional Support Orders Regulation* lists the reciprocating jurisdictions with which

BC has arrangements to reciprocate. “Jurisdiction” has a broader meaning, including a political subdivision of a jurisdiction and an official agency of a jurisdiction. For example, BC reciprocates with California (the reciprocating jurisdiction), but California has many political subdivisions (counties) which act independently in submitting final orders etc. All Canadian provinces and territories are reciprocating jurisdictions. In this manual the term “reciprocating jurisdiction” is used.

Provisional Order

An order made by the court in the originating jurisdiction, based on the applicant’s written information or oral evidence, without notice to the respondent in a reciprocating jurisdiction. A provisional order has no effect until confirmed in the jurisdiction where the respondent lives. The BC Court hears an application for this type of order only if the reciprocating jurisdiction requires a provisional order to be made.

The court making a provisional order is basing its decision on the information it has. That information, together with a transcript and the provisional order, is sent to the reciprocating jurisdiction where the other party lives. There, additional information is received, and the court may confirm the provisional order.

Provisional Variation Order

A provisional variation order is made where a support order already exists, and a party in one reciprocating jurisdiction applies to vary it. Either party may apply for a provisional variation order. The order which is to be varied must be registered before the provisional variation hearing can be held. The BC court hears an application for this type of order only if the reciprocating jurisdiction requires a provisional variation order to be made.

Reciprocating Jurisdiction

For two jurisdictions to reciprocate with respect to the variation and enforcement of support orders they must have substantially similar reciprocal enforcement of support order legislation. They must also agree to recognize and enforce the orders made by the other. All Canadian provinces and territories reciprocate with each other. British Columbia has reciprocal agreements with a number of US and other foreign jurisdictions, listed in a schedule to the *Interjurisdictional Support Orders Regulation*.

Registration

Before a final order from a reciprocating jurisdiction can be varied or enforced it must be recognized by the court in BC which will deal with it. That is done by registration. The process involves filing the order with the court, which registers all incoming final orders. If the final order was made by a “foreign” (i.e. non-Canadian) jurisdiction, the BC party must be provided with notice of registration, as in this instance the BC party is given an opportunity to apply to set the registration aside.

Respondent

A party responding to an application (whether the recipient or the payor).

Support

Same thing as support or alimony. These terms include both child and spousal support payable by one person to another.

Support Order

An order or an interim order, made by a court or by an administrative body, that requires the payment of support for children or a former spouse. It is the same thing as a maintenance order. It includes the provisions of a written agreement requiring the payment of support if those provisions are enforceable in the jurisdiction in which the agreement was made. If a provisional order is confirmed (or confirmed with variation) by a reciprocating jurisdiction, the resulting order is a support order.

In the ISO Act, the term “support order” is used in the sense of an original order for support, whereas a “support variation order” is used to describe an order which varies a support order.

Support Variation Order

A support variation order is made in cases where a support order already exists, and a party in one reciprocating jurisdiction applies to vary it. Either party can apply for a support variation order.

The order which is to be varied must be registered before the support variation hearing can be held. If a provisional variation order is confirmed (or confirmed with variation) by a reciprocating jurisdiction, the resulting order is a support variation order.

Supporting Documentation:

- [How to Process Incoming ISO Documents \(checklist\)](#)
- [Interjurisdictional Support Orders Act \(ISO\) Transmission of Documents in BC \(work flow\)](#)

Chapter 6 – ExtraProvincial Matters Respecting Guardianship, Parenting Arrangements or Contact with a Child

Overview

This chapter sets out the procedures under Part 4, Division 7 of the *Family Law Act* relating to Extraprovincial Matters Respecting Parenting Arrangements. It describes the processes to obtain an Order recognizing and superseding an Extraprovincial Order respecting Parenting Arrangements.

Extraprovincial Orders Respecting Parenting Arrangements

Background

Part 4, Division 7 Legislation governing Extraprovincial Orders Respecting Parenting Arrangements is contained in Part 4, Division 7 of the FLA. The legislation allows a party to apply to a court in B.C. to recognize an Extraprovincial Order Respecting Parenting Arrangements so that it may be enforced as if the order was made by a B.C. Court. The legislation also allows a party to apply to a court in B.C. to obtain an order superseding an Extraprovincial Order Respecting Parenting Arrangements when there has been a material change in circumstances that affects the best interest of the child, or when the child would suffer serious harm.

There are no "reciprocating states" in Part 4, Division 7. The Extraprovincial Order need only be made by a court or tribunal outside B.C. that has jurisdiction to determine parenting arrangements. Consequently, there is no need, or means, to centrally register the Extraprovincial Order before filing an application in any court registry location in the province.

Many applications made under Part 4, Division 7 of the FLA may also include an application to exempt the party from the requirement to serve notice on the other party.

The Attorney General does not provide legal representation to a party making application under this legislation.

Here is how the "Interpretations" section of Part 4, Division 7 of the FLA defines some important terms:

Extraprovincial Order

Means an order of an extraprovincial tribunal that is similar in nature to an order respecting guardianship, parenting arrangements or contact with a child;

Extraprovincial Tribunal

Means a court or tribunal, outside British Columbia, having authority to make an extraprovincial order.

Habitually Resident

For the purposes of this Division, a child is habitually resident in the place where the child most recently resided

- a. with his or her parents,
- b. if the parents are living separate and apart, with one parent
 - i. under an agreement,
 - ii. with the implied consent of the other parent, or
 - iii. under an order of a court or tribunal, or
- c. with a person other than a parent on a permanent basis for a significant period of time.

The removal or withholding of a child without the consent of a guardian does not affect the child's habitual residence unless the guardian from whom the child is being removed or withheld acquiesces or delays in applying for an order of a court or an extraprovincial tribunal.

Orders Respecting Guardianship, Parenting Arrangements or Contact with a Child

Background

Before an order made outside of British Columbia may be enforced in this province, the British Columbia court must make an order recognizing the extraprovincial order.

PCFR 62(h), PCFR 63(a), PCFR 64 or PCFR 65
FLA s. 75

To apply to the court under s. 75 FLA for an order recognizing a custody or access order a party must file an Application for Case Management Order (Form 11) (PFA 717) made by an Extraprovincial Tribunal. The application is heard after the party has the other party personally served (unless the judge grants another method of service). However, the application may be heard without notice if the matter is urgent or special circumstances exist by filing an Application for Case Management Order Without Notice or Attendance (Form 11) (PFA 718).

Additional steps must be taken to have a guardianship, parenting arrangement or contact order enforced once it is recognized, as described in the "Custody Order" section of Chapter 4 and "Access Order" section of this chapter. Those procedures also apply to enforcement of orders respecting guardianship, parenting arrangements and contact with a child made in British Columbia.

Procedures

1. Extraprovincial Order for Guardianship, Parenting Arrangements or Contact

A party submits:

- original plus at least 2 copies of the Application for Case Management Order (Form 10) **or** Application for Case Management order Without Notice or Attendance (Form 11; and
- certified copy of order to be recognized plus 2 additional copies

The clerk:

- checks documents;
- files Form 10 or 11 as applicable and certified copy of order by date-stamping;
- checks CEIS to see if a file exists in registry where this application is submitted; if not, asks party whether a file exists in another court registry;
- if applicable, opens a new court file;
- If party files Form 11, follow Desk Order procedures
- enters hearing date in CEIS.

2. Clerk distributes documents

The clerk:

If party files Form 10

- provides party with their filed copies of the application and certified copy of Order to be recognized
- provides party with a Certificate of Service and Information for Virtual Appearance (IRA)
- Advises party they must serve the other party with IRA and the Application for Case Management Order either by serving them at an address for service on file or if no address on file having them served personally unless a judge has granted another method of service

If party files Form 11

- Follows Desk Order procedures

3. Judge hears application to recognize extraprovincial order

If the other party does not appear after being served, the judge may:

- proceed with application in absence of other party; or
- order that the other party be given notice of the proceedings.

The judge may:

- recognize the order for guardianship, parenting arrangements or contact order made by the extraprovincial tribunal; or
- dismiss the application.

If the judge makes an order recognizing the extraprovincial order for guardianship, parenting arrangements or contact, the clerk:

- prepares or checks prepared order (see “Court Order” procedures in Chapter 3);



The wording of the order should be simple: that the terms of the order dated _____ are confirmed and enforceable as an order made in British Columbia.

- enters disposition in CEIS.
- **If the court makes an order recognizing an extraprovincial order, and the applicant wishes to have it enforced, see Chapter 4.**

If the court dismisses the application, the clerk:

- enters disposition in CEIS;
- if party is not represented by counsel, prepares order.
- **Go to “Court Orders” in Chapter 3 for further procedures.**

Order Superseding an Extraprovincial Order

Background

FLA s. 76, and 74(2)(c)

PCFR 76, PCFR 77 and PCFR 78

This application may be made ex-parte (without notice to the other party). Section 78(1) of the Rules allows a judge to hear the application without notice to the other party.

Procedures

1. B.C. court registry receives application for order superseding Extraprovincial Order

The party submits:

- *Application for Case Management Order Without Notice or Attendance (Form 11)(PFA 718)* indicating application is being made without notice to any other party and if the extra provincial order has not been recognized in B.C. ticking off question 5. Recognizing an extraprovincial order other than a support order, and completing schedule 5

- *Application About Priority Parenting Matter (Form 15)(PFA 722)* checking off question 4 determining matters relating to interjurisdictional issues under section 74(2)(c) Certified copy of *Extrajurisdictional Order* (if not recognized)

The clerk:

- checks documents;
- files documents by date-stamping;
- checks CEIS to see whether court file exists;
- if no court file exists, opens new file;
- follows Desk Order procedures;
- prepares *Notice of Hearing or Conference* (PFA 906).

2. Clerk distributes documents

- provides and distributes documents as follows:

Document	Applicant	Respondent	Court file
Application for Case Management Order	Copy	Copy	Original
Certified copy of Custody			Certified copy
Notice of Hearing	Copy	Copy (unless ex parte)	Original

- mails documents to parties.

3. Matter is resolved in B.C. Court

The judge may:

- proceed with application in absence of other party;
- order that other party is to be given notice of proceeding;
- make order superseding Extrajurisdictional Custody or Access Order;
- dismiss application.

If Court makes order superseding *Extrajurisdictional Custody or Access Order*, the clerk:

- enters disposition in CEIS;
- if the party is not represented by counsel, prepares order.

Go to "Court Orders" in Chapter 3 for further procedures.

If Court dismisses application, the clerk:

- enters disposition in CEIS;
- if party is not represented by counsel, prepares order.

Go to "Court Orders" in Chapter 3 for further procedures.

Chapter 7 – CFCSA Procedures

Overview

Chapter 7 describes the procedures governed by the *Child, Family and Community Service Act* (CFCSA). It begins by describing the purpose of the CFCSA, the definitions of terms used under the CFCSA, and the roles of the people involved in CFCSA matters. The procedures in the chapter describe the Court's involvement after the removal of a child, issuing Interim, Temporary and Continuing Custody Orders, applications that can be made to the Court and the appeal process.

The Provincial Court website provides useful [CFCSA flowcharts](#).

Purpose of the CFCSA

The *Child, Family and Community Service Act* (CFCSA) deals with the province's responsibility for the protection of children. The guiding principles behind the Act are stated in section 2.

"This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:

- a. children are entitled to be protected from abuse, neglect and harm or threat of harm;
- b. a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
- b.1 Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children;
- c. if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- d. the child's views should be taken into account when decisions relating to a child are made;
- e. kinship ties and a child's attachment to the extended family should be preserved if possible;
- f. Indigenous children are entitled to
 - i. learn about and practise their Indigenous traditions, customs and languages; and
 - ii. belong to their Indigenous communities;
- g. decisions relating to children should be made and implemented in a timely manner."

Further to the principal that 'decisions relating to children should be made and implemented in a timely manner', there is a [Provincial Court Practice Direction](#) (FAM03) indicating that:

"When a scheduled trial or hearing has not been completed in the time provided it will be scheduled to conclude within **30 days** unless otherwise approved by the relevant Regional Administrative Judge or Local Liaison Judge (where applicable) on advice of the local Judicial Case Manager."

The *CFCSA* is administered by the Ministry of Children and Family Development. The Act allows the Minister to designate one or more persons as directors who, in turn, can delegate any or all of the director's powers, duties or functions under the Act to a person or class of person (i.e. social workers).

The director can make agreements regarding the care of children which may include:

- providing services to a family;
- providing temporary care of a child;
- providing services to a youth who has no parent or other person willing or able to assist.

A person who believes that a child needs protection under section 13 *CFCSA* must promptly report the matter to the director. The duty to report takes priority over a person's claim of confidentiality based on professional privilege, except a claim based on a solicitor-client relationship. No legal action may be taken against a person making a report unless the person knowingly reported false information.

If there are reasonable grounds to believe a child needs protection, that child may be removed by the director. No later than seven days after the day a child is removed, the director must attend the court for a presentation hearing and may also return the child to the parent. The director also has discretion to bring a case to court by summons, instead of removing the child. At the presentation hearing the court must make an interim order and set the earliest possible date for a protection hearing. The protection hearing must commence not more than 45 days after the conclusion of the presentation hearing. At the protection hearing, the court must determine whether the child needs protection. If the court finds that the child

- does not need protection, it must order the child returned to the parent apparently entitled to custody;
- needs protection, it must consider the plan of care presented by the director and must make one of the following orders;
- that the child be returned to the parent and be under the director's supervision;
- that the child be placed in the custody of a person other than the parent and be under the Director's supervision;
- that the child remain in the temporary custody of the director;
- that the child be placed in the continuing custody of the director.

A temporary custody order must not exceed:

- a. three months, if the child is under five years of age;
- b. six months, if the child is between five and 12 years;
- c. 12 months, if the child is 12 years or over and may be extended if the circumstances that led to the child being removed are likely to improve within a reasonable time.

If the parent is unable to meet the child's needs or if there is no significant likelihood that the circumstances will improve, the court may make a continuing custody order. When a continuing

custody order is made, the director becomes the sole guardian of the person of the child and the Public Trustee becomes the sole guardian of the estate of the child.

CFCSA flowcharts are available on the Provincial Court website.

Handling Matters Under the CFCSA

Rules

The *Provincial Court (Child, Family and Community Service Act) Rules* (PC(CFCSA) Rules) are legislation that regulate matters under the CFCSA. They prescribe the procedures and forms for the Act.

Forms

There are 15 forms prescribed by the Rules for use in CFCSA matters. Rule 8(18) states that:

“Forms generated by the user must:

- a. be in substantial compliance with the prescribed forms; and
- b. show the applicable words of the prescribed form in regular type and the words supplied by the user in bold face type.

In addition, the Director has a series of forms that are commonly used to present information required by the Act to the court.

Proceedings

Section 66(1) CFCSA states that:

“A hearing under this Act

- a. is civil in nature;
- b. may be as informal as a judge may allow; and
- c. must be held at a different time or at a different place from the usual time or place for sittings of the court relating to criminal matters.”

The CFCSA does not have a general reference stating that the *Offence Act* applies where the CFCSA or the PC (CFCSA) Rules do not specify procedure. However, since proceedings under the CFCSA appear to fall within the definition and scope of sections 1 and 3(1) of the *Offence Act*, registry staff may refer to that Act in the absence of any other legislative guide. The one exception is CFCSA sec. 102(3) which specifically states that section 5 of the *Offence Act* does not apply.

Case Conferences

Rule 2 of the *Provincial Court (Child, Family & Community Service Act) Rules* directs the scheduling of case conferences. Rule 2 (2) states that:

“A judge may at any time direct the parties and their lawyers to attend a case conference

- a. if a party requests it, or
- b. the judge considers that it may promote a fair and efficient resolution of the issues.”

Case conferences are held in a room such as a small claims settlement conference room and their purpose is to give the parties an expeditious way to resolve any contentious issues and hopefully reach a consent or early decision.

Generally, persons who attend a case conference are the parent(s), parent(s) counsel, counsel for the director and the social worker. A judge facilitates with a court clerk present. For security purposes, a deputy sheriff must be available, but not present in the conference room unless requested by the case conference judge.

There is no recording equipment operated at a case conference. If the judge makes an order at the conclusion of the conference, it is recorded by the court clerk on the Case Conference Record form.

If FLA and CFCSA matters are joined for a case conference, only CFCSA Case Conference Record (PFA 885) needs to be completed.

At the conclusion of the case conference, one of three events will occur:

- the judge may require a second case conference if resolution is close;
- the judge may refer the unresolved issues to be scheduled for a mini-hearing; or
- the judge may order the matter to be set for a full hearing.

The judge may make an order about the method of attendance of a person at a further case conference. Rule 2 (5) (p.1)

The chief judge may direct that case conferences set at one place be conducted at another place. Rule 2 (9)

Mini-Hearings

Rule 2(5)(m) states that at a case conference, a judge may "with the consent of the parties, direct the parties to attend a mini-hearing if:

- i. the matter can be resolved on the basis of limited evidence and submissions; and
- ii. a mini-hearing can be held earlier than the matter could be set for a full hearing.

Mini-hearings are the next step following an unsuccessful resolution at a case conference. Mini-hearings allow a judge to hear abbreviated evidence and make the decision required in

the case. Mini-hearings are requested and planned at the case conference and will normally be set before the case conference judge. Mini-hearings are held in a courtroom and recorded as any other proceeding before the court.

Confidentiality of Information

Many child and family matters in Provincial Court take place in open court. Section 3(6) of the Provincial Court Act states:

“A person shall not, in relation to family or children's matters before the Court, publish at any time anything that would reasonably be likely to disclose to members of the public the identity of the child or party.”

Court clerks, judges, and others involved in the judicial process may refer to a child's name or identity when calling a list, examining a witness and so on. However, copies of the court lists posted in the courthouse for public access (Attendance Lists) must disclose neither the child's name nor the section of the Act. Publicly accessible copies of CFCSA court lists must use the parent's surname instead.

In order to do this, after the Presentation Form is filed, registry staff must enter on CEIS the surnames of each child's parents (and/or other caregiver, if applicable). If this information has not been provided by the director on the Presentation Form (or on a covering letter), registry staff must request it from the social worker or from counsel for the director. CEIS will de-select children's names automatically so that only the parents'/other caregivers' names are printed on the Attendance List and the court list. Only the Attendance List may be posted in the public area of the courthouse. The Daily Court List must not be posted in a public area.

Rule 8(15) of the Provincial Court (*Child, Family and Community Service Act*) Rules states that:

“Unless a judge orders otherwise, no person other than the following may search a registry file respecting a matter under the Act:

- a. a party;
- b. a party's lawyer of record;
- c. a person authorized in writing by a party or by a party's lawyer of record.

Part 5 of the CFCSA also deals with confidentiality and disclosure of information obtained under the Act.

Section 96 CFCSA provides the director of CFCSA with the right to access any information that is necessary to enable the director to exercise his or her powers or perform duties and functions under the CFCSA. However, this is limited to information that is in the custody and control of a public body as defined in the *Freedom of Information and Protection of Privacy Act*, and court file documents are exempt from this Act.

Access to court files is governed by Rule 20(1) of the Provincial Court Family Rules which provide that a lawyer, whether or not a lawyer of a party, may search a file in respect of a *Family Law Act* proceeding. If the director requests access to a provincial court family file, it is not necessary for the director to apply to the court for an order authorizing access as the director, being a lawyer, may access the court file.

An MCFD social worker is authorized to access CFCSA files when they have been given delegated authority under section 91 of the CFCSA. MCFD Director delegated social workers are provided with a letter they can show to prove they are delegates of the Director and privy to CFCSA file access. Delegation letters will say a social worker is delegated "C6" duties, powers and functions, or "C3", or similar. For anything related to court record access, a CFCSA social worker must have "C6" delegated duties, powers, and functions under Part 3 of the CFCSA. A social worker does not have to apply to the court for access to a file if they advise, and have proof, that they have been delegated the authority by Part 3 of the CFCSA, or "C6", of CFCSA. Any other social worker unable to provide proof of Part 3, "C6", delegation is required to either apply for an order from a judge to access a CFCSA file, or obtain a letter of permission from one authorized by Rule 8(15) of the Provincial Court (Child, Family and Community Service Act) Rules:

- a. a party;
- b. a party's lawyer of record;
- c. a person authorized in writing by a party or by a party's lawyer of record.

The Office of the Chief Judge has directed that registries must distribute internal family court lists, including CFCSA matters to counsel, either by providing a printed list in person to counsel attending at the registry or by fax to a number provided by counsel. The CFCSA remand lists must be faxed one business day before the scheduling of family remand/first appearance list.

These lists do not need to be redacted. Court registry staff should remind counsel of their obligations under S. 3(6) of the *Provincial Court Act* (6):

In relation to family or children's matters before the court, a person must not publish at any time anything that would reasonably be likely to disclose to members of the public the identity of the child or party.

If registry staff have doubts about a search request or a document to be searched, they should refer the matter to their manager for direction. The manager may in turn refer the matter to the Court.

Orders

PC(CFCSA) Rule 7 deals with Orders. Orders take effect on the day they are made by a judge unless ordered otherwise and must be prepared by director's lawyer of record as soon as practicable. An order must be signed as approved by the lawyer of record for each party who was represented unless, order is a protection order made under S.28 of the CFCSA, or a S restraining order under s. 98 of the CFCSA, unless a judge orders otherwise. After an order is

signed by the judge and filed with the court, a clerk must provide a copy of the order to the lawyer of record for each party who was represented and to every other party upon request.

Correcting Orders

Any judge may correct, at any time, a clerical mistake in an order or a mistake arising from an accidental slip or omission.

Consent Orders

Under CFCSA section 60, the court may, after the presentation hearing, make any custody or supervision order, including a continuing custody order, with the written consent of:

- the director;
- the child, if 12 years of age or over;
- each parent of the child;
- if the child is to be placed for a specified period in the custody of a person other than the director, that person;
- if the child is an Indigenous child, the person who is or would have been entitled to notice of any protection hearing concerning the child;
- Any person who has been made a party under CFCSA section 39(4).

The court must be satisfied that each person whose consent is required has been advised to consult with independent legal counsel, understands the nature and consequences of the consent and has given their consent voluntarily. The court may also dispense with a required consent if the court considers it in the child's best interest to do so.

Joining CFCSA and FLA Files

Sometimes a CFCSA case involves one or more children who are also the subject of an application under the *Family Law Act*. **The two files may only be joined by an order of the court.** The clerk will draw the existence of the other file to the judge's attention. The judge will generally indicate whether the cases are joined for all purposes or for a single hearing. If the judge does not, the clerk should seek clarification in court when the order is made. See **Appendix A** at the end of this chapter for the standard style of cause to be used when cases are joined for all purposes or for a single hearing.

If the cases are joined for all purposes, the contents of the two files should be held in the same court file, with CFCSA documents kept separate from FLA documents. The other, now empty, court file folder must be cross-referenced to the joined file. If the cases are joined for a single hearing, the CFCSA and FLA documents should be retained in their original files. However, the files must be cross-referenced and both files shall be provided to the judge if the hearing is adjourned.

Transfer of Proceedings

PC(CFCSA) Rule 8(12) states that a judge may order a file transferred to another registry, for the purposes of one application or for all purposes.

PC(CFCSA) Rule 8(13) allows the parties to agree to the transfer of a file to another registry, for the purposes of one application or for all purposes, if the parties sign and file a consent to the transfer in the registry where the file is located.

Court Interpreters

If the court registry is notified in sufficient time before the initial hearing of an originating application that an interpreter will be required, the registry's interpreter contact person will make the necessary arrangements. Otherwise, the applicant (either the director or the other party, as the case may be) is responsible for doing so.

If an interpreter will be required to attend subsequent proceedings, counsel asks the Court to make an order for an interpreter. After the order is made, the interpreter contact person is responsible to make the interpreter arrangements for appearances that follow.

Witness

PC(CFCSA) Rule 3 sets out how a party can subpoena a witness. The subpoena must be in Form 4 and served on the witness personally at least seven days before the date the witness is required to attend. Reasonable estimated travelling expenses to appear in person, or when required to appear by another method of attendance other than in person, the reasonable estimated cost of the telephone call, video conference or other method of attendance, must be offered to the witness at the time the subpoena is served. There is not requirement to have the subpoena signed by a Justice of the Peace or filed in the court registry.

How to Change a Witness's Method of Attendance

A witness may apply to a judge under Rule 9(6) to change the method of attendance. The judge may order a witness to attend court by any method of attendance that the judge considers appropriate in the circumstances.

Subpoena may be Cancelled or Varied

A person who is served with a subpoena may apply under Rule 1(2) to a judge who may cancel the subpoena if

- (i) The person is not needed as a witness,
- (ii) It would be a hardship for the person to appear in court as required by the subpoena, or
- (iii) In the case of a child witness, the judge considers that it would not be in the child's best interests to require the child to testify, or

Vary the subpoena to allow the witness to attend court by another method of attendance.

If a Judge Changes a Witness's Method of Attendance

If a judge changes a witness's method of attendance, the judge must direct the witness

- (h) How, and by what date, to submit and serve any records or other things, if the witness will not be attending in person, and
- (i) Where or how to attend, including by providing a telephone number or video conferencing information, if applicable, and

May order the return of money that was provided for the witnesses travelling expenses, telephone call, video conference or other reasonable estimated costs of the method of attendance.

If a witness does not appear in the method ordered at court, a judge may issue a warrant in Form 5 if the judge is satisfied that the subpoena was served on the witness and reasonable travelling costs were offered to the witness. The warrant remains in force until the witness appears in court voluntarily or a judge cancels the warrant. If the witness is arrested, the judge may release the witness on a release in Form 6 and may make the release subject to conditions.

Faxed Documents

PC(CFCSA) Rule 8(17) allows any document to be filed in a registry by facsimile transmission to that registry, but a judge may require that the original of a document be filed later.

Service and Proving Service

Party Must Give Address

A party must give a mailing address, an email address or a facsimile number for service either

- (a) On the face of the document filed by the party, or
- (b) By filing a notice of address for service (Form 8).

Lawyer of Record

A lawyer must provide notification to the other parties that the lawyer is the lawyer of record for a party by:

- (i) Completing and filing with the court a Notice of Lawyer of Party (Form 10.3) and serving on each part the form, and
- (ii) A lawyer must advise the court, when appearing in court, that the lawyer is the lawyer of record

Ceasing to be Lawyer of Record

A lawyer must provide notification to the other parties that the lawyer not longer is the lawyer of record for a party by:

- (i) Completing and filing with the court a Notice of Removal of Lawyer for a Party (Form

- 10.4) and serving on each party the form, and
- (ii) A lawyer must advise the court, when appearing in court, that the lawyer no longer is the lawyer of record for a party.

Judge May Waive or Modify Process in Respect of Notification of Lawyer of Record

A judge may, at any time, waive or modify these processes for notice and removal of Lawyer of Record.

PC(CFCSA) Rule 6 sets out service requirements and how to prove service. Applications must be served at least 2 days before the date set for hearing unless the Act or Rules provide otherwise.

Subrule 4 states how documents are to be served on:

- a. an individual; if the individual is a party, by registered mail, by email or fax to the last address for service given, or if the individual is a party with a lawyer or record, by leaving a copy at the lawyer's office, or by email or fax to the lawyer's office
- b. on a designated representative of a First Nation, an Indigenous community, a Treaty First Nation or the Nisga'a Lisims Government by email to the email address or facsimile transmission to the facsimile number for service provided by the First Nation, Indigenous community, Treaty First Nation or Nisga's Lisims Government or by leaving a copy with the designated representative;
- c. a society; by registered mail to the mailing address of the society's registered office, by leaving a copy at the delivery address of the society, each listed on file with the Registrar of Companies, or by emailing to the email address of the society, if the society has provided an email address on an address for service
- d. a company; within the meaning of the *Business Corporation Act* by registered mail to the mailing address of the company's registered office, leaving a copy at the delivery address of the company's registered office, or with a receptionist or a person at the company's delivery place of business who appears to manage the company's business there, each listed on file with the Registrar of Companies, or by email to the email address provided on an address for service
- e. an unincorporated association; by registered mail to the registered office of the association, leaving a copy with an officer of the association, emailing to the email address of the association, if the association has provide an email on an address for service,
- f. the director; by leaving, emailing, or faxing to the director's lawyer of record, or by leaving a copy at, or by facsimile transmission to, the district office with conduct of the file.

Subrule 11 sets out what must be filed to prove service:

- a. personal service - a certificate of service in Form 9;
- b. service by registered mail - a certificate of service in Form 9, attached to one of the following: a copy of the signatures obtained by Canada Post at the time the document was delivered, a printout of the delivery confirmation made available by Canada Post;
- c. personal service on a lawyer of record - a copy of the document signed by the lawyer of record, an articulated student, a partner, or an employee of the firm;

- d. service by facsimile transmission - a certificate of service in Form 9 with the transmission report generated by the sending machine attached.
- e. For service by email- a certificate of service in Form 9, with the following attached to the certificate:
 - a. A printout of the first page of the email message that includes the sender's name, the recipient's email address, the date the email was sent and the time the email was sent;
 - b. If the printout of the first page of the email does not list the name of the documents as an attachment to the email, a copy of the document served

It is only necessary to attach a copy of the served documents to the certificate of service, if required by the judge, or if the first page of the email does not list the name of the documents as attachments.

When Service by Email is Deemed to be Completed

A document transmitted for service by email is deemed to be served as follows:

- (a) If the document is transmitted before 4:00 pm on a day that is not a business day, the document is deemed to be served on the day of transmission.
- (b) If the document is transmitted on a day that is not a business day, or after 4:00 pm on any other day, the document is deemed to be served on the next business day.

If a Document Does Not Reach a Person

If a document was served in accordance with Rule 6(4), a person may show, on an application, that the document did not come to the persons notice, came to the persons notice later than when it was served or effectively served, or was incomplete or illegible. The judge may make orders or give directions to serve the document in accordance with a specified manner or give any other order or direction that the judge considers appropriate.

Transition – Form 9

A person may, until January 17, 2023, file with the registry a certificate of service using Form 9 as it read on December 18, 2022.

Parties are responsible for serving their own documents, however, there occasionally will be circumstances where it will be appropriate for Sheriff Services to serve a document (e.g., history of family violence).

Offences and Penalties

Section 102 of the CFCSA sets out offences and penalties that apply.

Contravention of a protective intervention order or a restraining order may bring a fine of not more than \$25,000 or imprisonment for not more than 24 months, or both.

The following offences may bring a fine of not more than \$10,000 or imprisonment for not more than six months, or both:

- Contravention of :
 - an access order under s. 55 or 56 CFCSA;
 - s. 63(2) CFCSA (preventing a police officer from enforcing an order under s. 63);
 - an order under s. 65 CFCSA for production of a record;
 - s. 75 CFCSA (disclosure of information);
 - s. 101.1(1) or (2) CFCSA (reprisals against a child or other person who requests or assists a review);
- Failure to comply with conditions of a promise to appear on release under s. 28(3.6)(b) or 98(4.6)(b).

Roles of People in CFCSA Matters

The Director

The Minister for Children and Families may designate one or more person as directors for the purposes of Parts 1 to 8 of the CFCSA. Subject to the Regulations, the director may delegate to any person or class of person such as social workers, any or all of the director's powers, duties or functions under this Act.

Voluntary Services or Support for Families

Part 2 of the CFCSA provides for the director to make written agreements with:

- a parent to provide services to support and assist a family to care for a child (CFCSA s. 5);
- a parent who has custody of a child and is temporarily unable to look after the child in the home (CFCSA s. 6);
- a parent who has custody of a child with special needs (CFCSA s. 7);
- a person who has a relationship or a cultural responsibility toward a child and is given care of the child by the child's parent (CFCSA s. 8).

An agreement does not limit the court's power to hear an application and make an order about a child.

Child Protection Services

CFCSA s. 13 sets out the circumstances in which a child needs protection. These include if the child has been, or is likely to be, physically harmed, sexually abused or exploited, encouraged or coerced into engaging in prostitution, emotionally harmed, deprived of necessary health care, abandoned or the parent is unable or unwilling to care for the child. The Act requires that a person who has reason to believe that a child needs protection must report the matter to the director who must then assess the information in the report. After the assessment, the director may offer support services to the child and family or refer them to a community agency or

investigate the child's need for protection. If the director has reasonable grounds to believe that the child needs protection and that the child's health or safety is in immediate danger or no other less disruptive measure that is available is adequate to protect the child, the director may remove the child without a court order. Once a child has been removed the director must, within 7 days, present to the court a written report on why the child was removed, any less disruptive measures that were considered, and an interim plan of care. Instead of removing a child, the director also has discretion to bring a case to a presentation hearing by means of a summons.

Social Workers

The director may delegate any or all of the director's powers, duties or functions under the CFCSA to social workers. This gives social workers the authority to offer support to children and families, enter into agreements, investigate the need for protection and remove children.

Director's Lawyer of Record

Through the Attorney General's department, the Ministry of Children and Family Development contracts with legal counsel to provide legal advice to the director, the director's representatives, and any Ministry of Children and Family Development employee involved in the removal of children in BC. director's lawyer of record represents the director before the Court in all CFCSA cases and prepares Court Orders. When appropriate, director's lawyer of record also conducts or participates in settlement negotiations and alternate dispute resolution involving CFCSA matters.

Justices of the Peace

The Chief Judge of the Provincial Court authorizes Court Services Branch justices of the peace to deal with certain aspects of the CFCSA through a Letter of Authority and Designation. As Letters of Authority may vary, justices should check with their Letter to ensure that they have the authority before they carry out any action. The Letter may include authority to carry out any of the following procedures:

- Order in writing the attendance of a prisoner pursuant to s.40 of the *Offence Act*;
- Issue process for enforcement and variation of maintenance pursuant to s.97(4) and s.97(8)(b) of the CFCSA;
- Grant adjournments.



Only a judge may:

1. Receive a report pursuant to s.33(3)(a) and s.48(2) of the CFCSA;
2. Issue a warrant pursuant to s.18(1) of the CFCSA;

Only a judicial justice, justice of the peace or a judge may issue an order pursuant to s.19(2) and s.63(1) of the CFCSA;

CFCSA Definitions

The following definitions give registry staff a general understanding of what the terms listed mean. Refer to the "Definitions" section of the CFCSA for a full list of specific definitions.

Business Day

Means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a holiday

Case Conference

A mandatory conference session required under Rule 2 PC(CFCSA) Rules, facilitated by a judge and generally attended by the parent(s), their counsel, counsel for the director and a social worker.

Child

A person under 19 years of age and includes a youth.

Clerk

A member of the registry staff.

Continuing Custody Order

A continuing custody order under section 41(1)(d), 42.2(4)(d), 49(5) or s. 49(10).

Court

The Provincial Court except where the Act or the Rules provide otherwise.

Custody

Includes care and guardianship of a child.

Designated Representative

When used in relation to a First Nation, the Nisga'a Lisims Government, a Treaty First Nation or another Indigenous community.

- | | |
|---------------------|---|
| First Nation: | <ul style="list-style-type: none">• a band as defined in the <i>Indian Act</i> (Canada);• an Indigenous legal entity prescribed by regulation; |
| First Nation child: | <ul style="list-style-type: none">• a child who is a member or is entitled to be a member of a First Nation; |
| First Nation land: | <ul style="list-style-type: none">• an area of land within which a First Nation has law-making authority. |

Director

A person designated by the minister under section 91 of the CFCSA and includes for the purposes of sections 84 to 86 the director of adoption.

Guardianship

Includes all the rights, duties and responsibilities of a parent.

Indigenous child

A First Nation child, a Nisga'a child, a Treaty First Nation child, a child who is under 12 years of age and has a biological parent who is of Indigenous Ancestry, including Metis and Inuit or who is 12 years of age or over and is of Indigenous ancestry, including Metis and Inuit, and considers him/herself to be Indigenous.

Interim Order

A temporary custody order placing a child in the custody of a person other than a parent (under section 41(1)(b) or s. 42.2(4)(c) of the CFCSA).

Lawyer of Record

In relation to a party, means a lawyer who has provided notification or advised the court in accordance with Rule 8 (20)

Method of Attendance

In relation to a case conference, mini-hearing and hearing, includes

- (a) attendance in person
- (b) attending by telephone, video conference or other means of electronic communication

Mini- Hearing

An abbreviated hearing directed by a judge at a case conference with the consent of the parties as required under Rule 2(5)(n) PC(CFCSA) Rules.

Parent

Includes:

- a. a person to whom guardianship or custody of a child has been granted by a court of competent jurisdiction or by an agreement, and
- b. a person with whom a child resides and who stands in place of the child's parent or guardian but does not include a caregiver or director.

Party

With respect to a proceeding under the Act, means a person who, under the Act, is a party to that proceeding.

Presentation hearing

A hearing that the director is required by section 33.1(1), 34(1), 36(2)(b) or 42.1(1) of the CFCSA to attend after the removal of a child.

Protective intervention order

An order made under section 28(3) of the CFCSA.

Registry

A registry of the court.

Remove

To take a child into the care of the director under section 30, 36 or 42 of the CFCSA.

Restraining order

An order made under s. 98 or s. 98(3) of the CFCSA.

Supervision order

An order made under s. 41(1)(a), 41(2.1), 42.2(4)(a) or s. 46(3) of the CFCSA.

Temporary custody order

A temporary custody order placing a child in custody of the director (under s. 41(1)(c) or s. 42.2(4)(b)).

A temporary custody order placing a child in the custody of a person other than a parent (under s. 41(1)(b) or s. 42.2(4)(c)).

Youth

A person who is 16 years of age or over but is under 19 years of age.

Presentation Hearing***Background***

CFCSA s. 30(1)

The director may, without a court order, remove a child if the director has reasonable grounds to believe that a child needs protection and that:

- a. the child's health or safety is in immediate danger; or
- b. no other less disruptive measure that is available is adequate to protect the child.

CFCSA s.31

The director must promptly make all reasonable efforts to notify each parent, orally or in writing, of the child's removal.

CFCSA s.33(1)

Before a presentation hearing, or before the conclusion of a presentation hearing, relating to the removal of a child under section 30, the Director may return a child to the parent apparently entitled to custody if:

- a. the Director makes an agreement with the parent that the Director considers adequate to protect the child;
- b. the Director considers that circumstances have changed so that the child no longer needs protection;
- c. the Director receives information that causes the Director to believe the child does not need protection;
- d. a less disruptive means of protecting the child becomes available.

CFCSA s.33(1.1)

Before a presentation hearing, or before the conclusion of a presentation hearing, relating to the removal of a child under section 36 or 42, the director may return the child to the parent or other person who, at the time of the removal, was caring for the child under the director's supervision, if:

- a. the director is satisfied that circumstances have changes so that the order in force at the time of the removal is adequate to protect the child; or
- b. the director is, as a result of new information received after the removal, satisfied that the order in force at the time of the removal is adequate to protect the child.

CFCSA s. 33(2)

When the child is returned, the director must inform the parent whether the director intends to withdraw from a proceeding under this Part or to take further steps under this Part.

CFCSA s. 33(3)

If the director does not intend to take further steps under this Part, the director must, within seven days after the child's removal:

- a. present to the court a written report on the director's reasons for removing and returning the child (in Form B); and
- b. provide a copy of the report to the child's parent and any person notified of the presentation hearing.



Either a judge or a justice of the peace may receive the report.

CFCSA 33(4)

If the director returns a child under subsection (1.1) and withdraws from a hearing referred to in that subsection, the order that was in force when the child was removed continues to apply.

CFCSA s. 33.01(1)

Before a presentation hearing, or before conclusion of a presentation hearing, relating to the removal of a child under section 30, 36 or 42, the director may withdraw from the hearing if

- a. the child is an Indigenous child and the parent apparently entitled to custody makes an agreement that the director considers adequate to protect the child;
- b. the parent apparently entitled to custody is not a resident of BC and the director makes an agreement, that the director feels is adequate to protect the child;
- c. the director makes an agreement under section 8 respecting the child.

CFCSA s. 33.01(2)

The director who withdraws from a hearing under subsection (1) must promptly

- a. present to the court a written report;
- b. provide a copy of the report the child's parent.

CFCSA s. 33.01(3)

If the director withdraws from a hearing under subsection (1), any interim order, supervision order, temporary custody order or order under section 97(5) that is in effect when the director withdraws is cancelled.

CFCSA s. 33.01(4)

If an order under section 97(5) is cancelled under subsection (3), any arrears owing in respect of that order are not cancelled.

CFCSA s.33.1

1. No later than 10 days after the date of applying under section 29.1 for a supervision order, the director must attend court for a presentation hearing unless the court is notified that the director does not intend to proceed with the application.
2. At least seven days before the date set for the presentation hearing, notice of the date, time and place of the hearing must be served on:
 - a. the child, if 12 years of age or over; and
 - b. the person with care of the child.
3. The notice must be in the form of a written report described in section 33.2(1)
4. In addition, the director must, if practicable, inform the following of the date, time and place of the presentation hearing:

- a. each parent, if not already served under subsection (2);
 - b. the Public Trustee, if the parent entitled to custody of the child is under 19 years of age;
 - c. the applicable Indigenous community prescribed in the regulations for the purposes of this section, if the child is an Indigenous child;
 - d. the Nisga'a Lisims Government, if the child is a Nisga'a child;
 - e. the Treaty First Nation, if the child is a Treaty First Nation child.
5. The director need not inform a person under subsection (4) if that would, in the director's opinion, cause physical or emotional harm to any person or endanger the child's safety.
 6. If a person referred to in subsection (2)(b) or (4)(a) or (c) to (e) appears at the commencement of the presentation hearing, that person is entitled to be a party at the hearing

CFCSA s. 33.2

1. At a presentation hearing relating to an application under section 29.1 for a supervision order, the director must present to the court a written report [in Form F] that includes:
 - a. the grounds for making the application; and
 - b. an interim plan of care for the child, including the director's recommendations about the terms and conditions to be included in the supervision order.
2. If satisfied that there are reasonable grounds to support the director's concerns regarding the child, the court must make at the conclusion of the presentation hearing an interim order that the director supervise the child's care.

CFCSA s. 34(1)

No later than seven days after the day a child is removed under section 30, the director must attend the court for a presentation hearing.

CFCSA s. 34(2)

Subsection (1) does not apply if the director has withdrawn under section 33 or 33.01 from the presentation hearing.

CFCSA s. 34(3)

The director must, if practicable, inform the following of the time, date and place of the hearing:

- a. the child, if 12 years of age or over;
- b. each parent;
- c. the Public Guardian and Trustee, if the parent apparently entitled to custody is under 19 years of age;
- d. the applicable Indigenous community prescribed in the regulations for the purpose of this section, if the child is an Indigenous child, other than a Nisga'a child or a Treaty First Nation child;
- e. the Nisga'a Lisims Government, if the child is a Nisga'a child;

- f. the Treaty First Nation, if the child is a Treaty First Nation child.

CFCSA s. 35(1)

At a presentation hearing relating to the removal of a child under Section 30, the director must present to the court the following:

- a. the circumstances that caused the director to remove the child;
- b. an interim plan of care for the child, including in the case of an Indigenous child, to support the child to learn about and practise the child's Indigenous traditions, customs and language and to belong to the child's Indigenous community;
- c. information about any less disruptive measures considered by the director before removing the child.

CFCSA s. 35(2)

At the conclusion of the hearing, the court must make:

- a. an interim order that the child be in the custody of the director;
- b. an interim order that the child be returned to or remain with the parent apparently entitled to custody, under the supervision of the director; or
- c. an order that the child be returned to or remain with the parent apparently entitled to custody; or
- d. an interim order that the child be placed in the custody of a person other than a parent, with the consent of the other person, and under the director's supervision.

CFCSA Rule 1(1), Rule 8(17)

To initiate a presentation hearing the director must complete and file with the court a *Presentation Form* in Form 1. This form may be submitted by fax. If submitted by fax, CSB will treat the faxed version as the filed original. It is the responsibility of the Lawyer of Record for the director to retain the original signed version to satisfy Rule 8(17):

Faxed documents

(17) Any document may be filed in a registry by facsimile transmission to that registry, but a judge may require that the original of a document be filed later.

CFCSA Rule 1(5)

A *Presentation Form* must be filed in the registry closest to the child's habitual residence or in the registry closest to where the child was removed or taken into care unless a judge permits otherwise.

Procedures

1. Court registry receives a Presentation Form

The Director submits:

- *Presentation Form* - This may be submitted by fax. If so, it is to be treated as the original filed copy.

The clerk:

- checks CEIS to see if a court file exists for child removed or for one of the other children in the family
- if court file does not exist, opens new file;
- enters new file information on CEIS (see CEIS Best Practices – Parties (including address for the Director Lawyer or Record, and email, if included) - Roles and ID's - Family-CFCSA,),
- files *Presentation Form* by date-stamping



The *Presentation Form* may have a Report on Reasons for Returning a Child attached with an indication that the Director intends to withdraw from the proceeding. In this case the Director will also file a Withdrawal by Director and no presentation hearing date is set.

- sets presentation hearing date no later than seven days after the day the child was removed and records date on the *Presentation Form*. In many cases, the date will have been filled in prior to filing. Check that the date they have recorded is available and set the hearing;
- records hearing date in the trial diary and enters it on CEIS;
- enters the parents as parties on CEIS (this also applies to stepparent, guardian or other caregiver, as applicable);
- requests these names from the social worker or counsel for the Director, if not provided by the Director on the *Presentation Form* or a covering letter; and
- distributes documents as follows:

Document	Director	Court file
Application	All Copies	Original

- returns documents to Director as the Director is responsible for notifying the parties.



If the Director chooses to summons the parties to the presentation hearing, rather than removing the child, the Director will prepare and serve the summons.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters disposition and next court date on CEIS.

Director's lawyer of record:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

Removal After Interim Order Made

Background

CFCSA sec. 36(1)(a)

If the director has reasonable ground to believe that an interim order under section 33.2(2), 35(2)(b) or (d) or 36(3) no longer protects the child, the director must remove the child without any further court order.

CFCSA sec. 36(1)(b)

A child must be removed without any further court order if the director has reasonable grounds to believe that a person has not complied with a term or condition of the order, and the director is required by the order to do so for non-compliance.

CFCSA sec. 36(2)

If the child is removed under subsection (1) or (2) the director must attend a supervision hearing and inform others of the hearing.

CFCSA sec. 36(3)(a)

If the director does not satisfy the court that the child was removed in accordance with subsection (1), the court may make an interim order returning the child.

CFCSA sec. 36(3)(b)

If the director satisfies the court that the child was removed in accordance with subsection (1), the court may make an interim order either returning the child under the director's supervision, or that the child be in the custody of the director.

Procedures

1. Court Registry receives a Presentation Form

The director submits:

- *Presentation Form* - This may be submitted by fax. If so, it is to be treated as the original filed copy.

The clerk:

- sets presentation hearing date no later than seven days after the day the child was removed and records date on the *Presentation Form*. In many cases, the date will have

been filled in prior to filing. Check that the date they have recorded is available and set the hearing;

- enters the date on CEIS;
- enters the parents as parties on CEIS (this also applies to stepparent, guardian or other caregiver, as applicable);
- requests these names from the social worker or counsel for the director, if not provided by the Director on the Presentation Form or a covering letter; and
- distributes documents as follows:

Document	Director	Court file
<i>Presentation Form</i>	All Copies	Original

- returns documents to director as the director is responsible for notifying the parties.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters disposition and next court date on CEIS.

Director's lawyer of record:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer or Record for each party	Court file
Court Order	Copy	Copy	Original

Case Conferences

Background

If at the commencement of a protection hearing under section 40 of the Act:

- a consent order is not made; and
- the judge determines that the matter cannot be heard that day, the judge must direct the parties and their lawyers to attend a case conference.

CFCSA Rule 2(2)

A judge may at any other time direct the parties and their lawyers to attend a case conference:

- a. if a party requests it; or
- b. if the judge considers that it may promote a fair and efficient resolution of the issues.

CFCSA Rule 2(5)

At a case conference, a judge may do one or more of the following:

- a. facilitate the resolution of any issues in dispute;
- b. mediate any issues in dispute other than the issue of whether the child needs protection;
- c. with the consent of the parties, refer any issue, other than the issue of whether a child needs protection, to mediation under section 22 of the Act or to another dispute resolution process
- d. decide any issues that do not require evidence or that can be decided on the basis of facts agreed to by the parties;
- e. make any order in the terms the parties agree to, subject to section 60 of the Act;
- f. review the adequacy of disclosure by the parties, including responses to requests for disclosure under section 64 of the Act;
- g. order that a party provide to another party, within a set time, a summary of the intended evidence of a potential witness;
- h. order a party to allow another party to inspect and copy specific documents or records to the extent permitted by the Act;
- i. order that those applications that cannot be made at the case conference be brought within a set time;
- j. order that a statement of agreed facts be filed within a set time;
- k. give directions about any evidence that will be required, how it will be received and the procedure that will be followed, if a hearing is necessary or a mini hearing is directed;
- l. order a party to produce anything as evidence at a hearing;
- m. direct that any further case conference be held before the same judge;
- n. with the consent of the parties, direct the parties to attend a mini hearing if;
 - i. the matter can be resolved on the basis of limited evidence and submissions; and
 - ii. a mini hearing can be held earlier than the matter could be set for full hearing.
- o. without hearing witnesses, give a non-binding opinion on the probable outcome of a hearing;
- p. set a date for a hearing or mini hearing;
- q. make an order about the method of attendance of a person to a future case conference;
- r. make any other order or give any direction for the fair and efficient resolution of the issues.

CFCSA Rule 2(8)

The following persons may attend case conferences:

- a. the parties and their lawyers; and
- b. any other person the judge allows.

Procedures

1. Judge directs a Case Conference

The clerk:

- schedules a case conference within approximately thirty (30) days.



Case conferences should be scheduled for 1½ hours each. (Suggestion - two conferences in the morning and two conferences in the afternoon.)

2. Court Clerk's duties and responsibilities at the Case conference

The clerk will:

- ensure the judge has the case conference files and a list on their desk well in advance of the court starting time;
- arrange chairs in the case conference room placing the judge's chair nearest the secure exit and ensuring the judge's chair is at least one chair width apart on either side of the judge to give the judge space from the parties;
- check to ensure there is an exhibit stamp, exhibit card and filing stamp in the room as well as water and tissues;
- call the case into the case conference room and seat the following persons at the table:
 - the parents and their lawyers;
 - the director's lawyer;
 - the social worker;
 - the band representative;

ensuring that any conflicting parties are not seated next to each other. Other persons such as psychologists, alcohol counsellors, foster parents, etc. should sit away from the table to be invited to participate by the judge when appropriate.

- on a blank piece of paper (not the Case Conference Record form), write the names of all the persons attending the case conference and their relationship to the child(ren);



The purpose of writing the names on a blank piece of paper is so the judge may review the list and decide who shall attend aside from the parties and counsel.

- present the list of persons attending to the judge prior to the commencement of the case conference;

- take the judge into the conference room. There is no requirement to announce the judge or bring the court to order;
- as the conference commences, record on the *Case Conference Record* (PFA 885), the names and roles of the persons attending;
- if the judge wishes the parties to speak privately with their lawyers or with each other, direct them to another room or usher the judge out of the conference room ensuring the judge's door is secure and leave the parties for the period of time the judge allows;
- record on the *Case Conference Record* form, any orders made;
- if the judge so directs, photocopy the *Case Conference Record* form and distribute as follows:

Document	Director's Lawyer of Record	Party's Lawyer of Record and/or parties	Court file
Case Conference Record	Copy	Copy	Original



If FLA and CFCSA matters were joined for the case conference, only a CFCSA Case Conference Record (PFA 885) needs to be prepared, but it must be filed in both court files.

Mini-Hearings

CFCSA Rule 2(5)(n)

At a case conference, a judge may with the consent of the parties, direct the parties to attend a mini-hearing if:

- the matter can be resolved on the basis of limited evidence and submissions; and
- a mini-hearing can be held earlier than the matter could be set for a full hearing.

CFCSA Rule 2(7)

At a mini-hearing, the parties will attend before a judge who may:

- hear submissions and evidence as directed at the case conference; and
- make any order that could be made after a full hearing

CFCSA Rule 2(6)

If a judge directs the parties to attend a mini hearing, a court must notify them of the date, time and place, unless the date was set when the parties or their lawyer of record were present.

Procedures

1. Judge directs a Mini-Hearing at the Case Conference

The clerk:

- completes the required information on the *Case Conference Record* form as directed by the judge (see page 2 of form);
- sends out a *Notice of Mini-Hearing* to any party the judge directs.



At the time of printing this manual amendment, the above-noted *Notice of Mini-Hearing* form has not been designed - It is anticipated there will be minimal need for Notices, as mini-hearings are scheduled at the case conference and usually all parties will be present.

2. Court Clerk's duties and responsibilities at a mini-hearing

The clerk will:

- ensure the judge has the Record of Case Conference from the court file;
- perform in court duties and responsibilities which are the same as any hearing.

Protection Hearing

Background

CFCSA s. 37(1)

At the conclusion of a presentation hearing under section 33.2, 35 or 36(2), the court must set the earliest possible date for a hearing to determine if the child needs protection or confirm any date previously set for the protection hearing, unless the court made:

- a. no order under section 33.2(2);
- b. an order under section 35(2)(c); or
- c. a consent order under section 60.

CFCSA s. 37(2)

The date for commencing the protection hearing must not be more than 45 days after the conclusion of the presentation hearing, and the protection hearing must be concluded as soon as possible.

CFCSA s. 38(1)

At least 10 days before the date set for a protection hearing, notice of the time, date and place of the hearing must be served as follows:

- a. on the child, if 12 years of age or over;
- b. on each parent;
- c. if the child is First Nation child, of the First Nation;
- c. 1 if the child is a Nisga'a child, on a designated representative of the Nisga'a Lisims Government;
- c. 2 if the child is a Treaty First Nation child, on a designated representative of the Treaty First Nation;
- d. if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation but is an Indigenous child, on a designated representative of an Indigenous community that has been identified by
 - i. the child, if 12 years of age or over, or
 - ii. the parent who at the time of the child's removal was apparently entitled to custody, if the child is under 12 years of age.
- d. 1 on any party to the proceeding in which the court made the existing order about the child.
- d. 2 on a person who has an interim order for custody of the child under section 35(2)(d);
- e. on any other person the court considers appropriate.

CFCSA s. 38(2)

The notice must specify the order the director intends to request and include a copy of any plan of care the director plans to present to the court, unless the parent and any other person entitled to notice agree the wait until a later date for that information.

CFCSA s. 40(1)

At the protection hearing the court must determine whether the child needs protection.

CFCSA s. 40(2)

If the court finds that the child does not need protection, it must order the director to return the child as soon as possible to the parent apparently entitled to custody unless the child has already been returned and terminate any interim order made under section 33.2(2), 35(2) and 36(3).

CFCSA s. 40(3)

If the court finds that the child needs protection, it:

- a. must consider the plan of care presented by the director; and
- b. may hear any more evidence the court considers necessary to help it determine which order should be made under section 41.

CFCSA s. 41(1)

Subject to subsection (2.1), if the court finds that the child needs protection, it must make one of the following orders in the child's best interests:

- a. that the child be returned to or remain in the custody of the parent and be under the director's supervision for a specified period of up to six months;
- b. that the child be placed in the custody of a person other than the parent with the consent of the other person and under the director's supervision, for a specified period in accordance with section 43;
- c. that the child remains or be placed in the custody of the director for a specified period in accordance with section 43;
- d. that the child be placed in the continuing custody of the director.

CFCSA s.41(2.1)

If an order was made under section 33.2(2), the child has not been removed since that order was made and the court finds that the child needs protection, the court must order that the director supervise the child's care for a specified period of up to six months.

CFCSA s. 43

If a temporary custody order is made, the term of the order must not exceed:

- a. three months, if the child or the youngest child who is the subject of the hearing is under five years of age when the order is made;
- b. six months, if the child or the youngest child who is the subject of the hearing is five years of age or over but under 12 years of age when the order is made; or
- c. 12 months, if the child or the youngest child who is the subject of the hearing is 12 years of age or over when the order is made.

Procedures

1. Court registry receives a Notice of Protection Hearing

The Director submits:

- *Notice of Protection Hearing.*

The clerk:

- sets protection hearing date if it has not already been set at the presentation hearing and records date on the *Notice of Protection Hearing*;
- files *Notice of Protection Hearing* by date-stamping;
- enters the date on CEIS;
- distributes documents as follows:

Document	Director Lawyer of Record	Court file
Notice	All Copies	Original

- returns documents to director as the director is responsible for serving the parties.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters disposition and next court date (if applicable) on CEIS.

Director's counsel:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

Removal After Supervision Order Made Under s. 41, 49 OR 60

Background

CFCSA s. 42.1

If the child is removed under section 42(1), the director must:

- a. attend the court within seven days after the removal for a presentation hearing unless the director returns the child, and notify persons who are entitled to notice of the presentation hearing.

CFCSA s. 42.1(6)

At the conclusion of the presentation hearing, the court must make:

- a. an interim order that the child be in the custody of the director; or
- b. an interim order that:
 - i. the child be returned to the person who had custody of the child when the child was removed under the supervision order; and
 - ii. any order that was in force when the child was removed continue to apply.

Procedures

1. Court registry receives Notice of Protection Hearing

The director submits:

- *Application for an Order.*

The clerk:

- sets protection hearing date and records date on the *Application for an Order*;
- files *Application for an Order* by date-stamping;
- enters the date on CEIS;
- distributes documents as follows:

Document	Director Lawyer of Record	Court file
Application	All Copies	Original

- returns documents to director as the director is responsible for serving the parties.

Extension of Orders

Background

CFCSA s. 44(1)

Before a supervision order (other than one made at a continuing custody hearing) or temporary custody order expires, the director may apply to the court for an extension of the order if the circumstances that caused the child to need protection are likely to improve within a reasonable time.

CFCSA s. 44(2)

At least 10 days before the date set for hearing the application, notice of the time, date and place of hearing must be served on:

- a. the child, if 12 years of age or over;
- b. the persons who under section 39 are entitled to notice;
- c. the Public Guardian and Trustee, if appointed guardian of the child's estate under section 58;
- d. if the application is for an extension of a temporary custody order, the persons listed in Section 38(1)(b) to (d) who are not already entitled to notice under paragraph (b) of this subsection, and,

(2.1) If a person referred to in subsection (2)(d) appears at the commencement of the hearing, that person is entitled to

- a. Be a party at the hearing, and
- b. Notice of a hearing under section 44.1, 46 or 57(1)(b) relating to the child.

CFCSA s. 44(3)

If satisfied that the circumstances that caused the child to need protection are likely to improve within a reasonable time, the court may, in the child's best interests:

- a. extend the term of the supervision order, but not beyond 12 months including the periods, if any, during which the child was under the director's supervision before being removed under section 42(1); or
- b. extend the term of the temporary custody order, but not beyond the period permitted under section 45.

CFCSA s. 45(1.1)

On application, the court may extend, by a specified period, a time limit in subsection (1) [total period during which a child is in temporary custody] if the court considers it in the child's best interests to do so.

CFCSA s. 46(1)

Before a temporary custody order expires, the director may apply to the court for an order that the director supervise the child's care for a specified period of up to six months after the child is returned to the parent entitled to custody.

CFCSA s. 46(2)

At least 10 days before the date set for hearing the application, notice of the hearing must be served on the following:

- a. the child, if 12 years of age or over;
- b. the persons who under section 39 are entitled to notice;
- c. any person who has custody of the child under the temporary custody order;
- d. any party to the proceeding in which the court made the temporary custody order;
- e. any person listed in section 38(1)(b) to (d) who is not already entitled to notice under paragraph (b) or (d) of this subsection; and

(2.1) If a person referred to in subsection (2)(d) or (e) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

CFCSA s. 46(3)

The court may, in the child's best interests order the director to supervise the child's care for a specified period of up to six months.

CFCSA Rule 1(2)

To apply to the court for an order other than an order under section 33.2, 35, 36 or 42.1 of the Act a person must complete and file with the court an *Application for an Order* (Form 2) unless a judge permits otherwise.

CFCSA Rule 1(6)

An application in Form 2, Form 3, or Form 10.5 must be filed in the registry where the file is located, unless Rule 8(12) or (13) applies, if there is now file, then as required under Rule 2 (5), as if the application were a Presentation Form.

Procedures

1. Court registry receives Application to Extend an Order

The director submits:

- *Application for an Order*.

The clerk:

- sets hearing date and records date on the *Application for an Order*;
- files *Application for an Order* by date-stamping;
- enters the date on CEIS;
- distributes documents as follows:

Document	Director Lawyer of Record	Court file
Application	All Copies	Original

- returns documents to director as the director is responsible for serving the parties.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters the disposition and next court date (if applicable) on CEIS.

Director's counsel:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

Withdrawing from Proceeding

Background

CFCSA s. 48(1)

At any time after the presentation hearing, the director may return a child to the parent apparently entitled to custody and withdraw from a proceeding if the director:

- a. makes an agreement with the parent that the director considers adequate to protect the child; or
- b. considers that circumstance have changed so that the child no longer needs protection.

CFSCA s. 48(1.1)

(1.1) At any time after the presentation hearing, the director may withdraw from a proceeding if

- a. the child is an Indigenous child and the parent apparently entitled to custody makes an agreement, that the director considers adequate to protect the child, with,
 - i. if the child is a First Nation child, the First Nation,
 - ii. if the child is a Nisga'a child, the Nisga'a Nation or the child's Nisga'a Village,
 - iii. if the child is a Treaty First Nation child, the Treaty First Nation, or
 - iv. if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child, the legal entity representing the child's Indigenous community,
- b. the parent apparently entitled to custody is not a resident of British Columbia and the director makes an agreement, that the director considers adequate to protect the child, with the government or child welfare agency of the jurisdiction where the parent apparently entitled to custody resides, or
- c. the director makes an agreement under section 8 respecting the child.

CFCSA s. 48(2)

The director who withdraws from a proceeding must present to the court a written report on the director's reasons, as applicable, for:

- a. returning the child under subsection (1), or
- b. considering that an agreement referred to in subsection (1.1) is adequate to protect the child.



Either a judge or a justice of the peace may receive the report.

CFCSA s. 48(3)

When the director withdraws from a proceeding, under subsection (1) or (1.1), any interim order, supervision order, temporary custody order or order under section 97(5) that is in effect when the director withdraws is cancelled.

Procedures

1. Court registry receives Notice of Withdrawal

The director submits:

- *Withdrawal by Director.*

The clerk:

- files *Withdrawal by Director* by date-stamping;
- distributes documents as follows:

Document	Director Lawyer of Record	Court file
Withdrawal by Director	Copy	Original

- returns documents to director as the director is responsible for providing copies to the parties.



the proceeding ends without an order being made.

Continuing Custody Hearing

Background

CFCSA s. 49(1)

Not sooner than 60 days before a temporary custody order expires, the director may apply to the court for a continuing custody order.

CFCSA s. 49(2)

At least 10 days before the date set for hearing the application, notice of the time, date and place of the continuing custody hearing must be served as follows:

- a. on the child, if 12 years of age or over;
- b. on each parent;
- c. if the child is a First Nation child, on a designated representative of the First Nation;
- d. if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child, but is an Indigenous child, on a designated representative of another Indigenous community that has been identified by:
 - i. the child, if 12 years of age or over; or
 - ii. the parent, if the child is under 12 years of age;

- d.1 any person who has been made a party under section 39(4);
- d.2 any person who has custody of the child under section 41(1)(b) or 42.2(4)(c);
- e. on the Public Guardian and Trustee, if appointed guardian of the child's estate under section 58.

CFCSA s. 49(3)

- 3. If a person referred to in subsection (2)(b) to (d.2) appears at the commencement of the continuing custody hearing, that person is entitled
 - a. to be a party at the hearing, and
 - b. to notice of a hearing under section 42.2, 54, 56 or 57 and, if the person appears at the commencement of the hearing, to be a party at that hearing.

CFCSA s. 49 (4)

The court must order that the child be placed in the continuing custody of the director if:

- a. the identity or location of a parent of the child has not been found after a diligent search and is not likely to be found; or
- b. a parent is unable or unwilling to resume custody of the child.

CFCSA s. 49(5)

The court may order that the child be placed in the continuing custody of the director if there is no significant likelihood that:

- a. the circumstances that led to the child's removal will improve within a reasonable time; or
- b. the parent will be able to meet the child's needs.

CFCSA s. 49(7)

If the court does not make a continuing custody order, it must make one of the following orders:

- a. that the child be returned to the custody of the parent apparently entitled to custody;
- b. that the child remain in the temporary custody of the director or a person other than the parent for a specified period of up to six months.

CFCSA s. 49(8)

If the court orders that the child be returned to the parent's custody or remain in the custody of a person other than the parent, it may order that the Director supervise the child's care for a specified period of up to six months.

CFCSA s. 50(1)

When an order is made placing a child in the continuing custody of the director:

- a. the director becomes the sole guardian of the person of the child and may consent to the child's adoption;
- b. the Public Guardian and Trustee becomes the sole guardian of the estate of the child; and
- c. the order does not affect the child's rights respecting inheritance or succession to property.

CFCSA s. 50.01

50.01 The director, in respect of planning for the needs of an Indigenous child in the continuing custody of the director, must,

- a. if the director makes an agreement under section 92.1 (2) (a) (v), conduct the planning in accordance with the agreement, or
- b. if there is no agreement as referred to in paragraph (a), make reasonable efforts to involve, at least on an annual basis, the following:
 - i. if the child is a First Nation child, the designated representative of the First Nation;
 - ii. if the child is a Nisga'a child, the designated representative of the Nisga'a Lisims Government;
 - iii. if the child is a Treaty First Nation child, the designated representative of the Treaty First Nation;
 - iv. if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child, the designated representative of another Indigenous community that has been identified by
 - A. the child, if 12 years of age or over, or
 - B. the parent, if the child is under 12 years of age.

CFCSA Rule 1(2)

To apply for an order other than an order under section 32.2, 35, 36 or 42.1 of the Act a person must complete and file with the court an *Application for an Order* (Form 2), unless a judge permits otherwise.

CFCSA Rule 1(6)

An application in Form 2, Form 3, or Form 10.5 must be filed in the registry where the file is located, unless Rule 8(12) or (13) applies, if there is now file, then as required under Rule 2 (5), as if the application were a Presentation Form.

Procedures

1. Court registry receives Application for Continuing Custody Order

The Director submits:

- *Application for an Order.*

The clerk:

- sets hearing date and records date on the *Application for an Order*;
- files *Application for an Order* by date-stamping;
- enters the date on CEIS;
- distributes documents as follows:

Document	Director Lawyer of Record	Court file
Application	All Copies	Original

- returns documents to Director as the Director is responsible for serving the parties.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters the disposition and next court date (if applicable) on CEIS.

Director's counsel:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

Changing or Cancelling an Order

Background

CFCSA Rule 1(2)

To apply for an order changing or cancelling another order, a person must complete and file with the court an *Application to Change or Cancel an Order* (Form 3) unless a judge permits otherwise.

CFCSA Rule 1(4)

An application in Form 2 or Form 3 must be filed in the registry where the file is located, unless Rule 8(12) or (13) applies.

Changing or Cancelling a Protective Intervention Order

CFCSA s. 28(4)

Before the protective intervention order [made under CFCSA s. 28(3)] expires, the director or the person against whom the order was made may apply to the court and the court may do one or more of the following:

- a. change the order;
- b. include an order under subsection (3.1);
- c. cancel the order;
- d. shorten the term of the order;
- e. extend the term of the order for one period of up to six months.

Cancelling a Continuing Custody Order

CFCSA s. 53(1)

A continuing custody order terminates when:

- a. the child reaches 19 years of age;
- b. the child is adopted;
- c. the child marries; or
- d. the court cancels the continuing custody order; or
- e. custody of the child is transferred under section 54.1.

CFCSA s. 54(1)

With the permission of the court, a party to a proceeding in which a continuing custody order was made may apply to the court for the cancellation of the order if the circumstances that caused the court to make the order have changed significantly.

CFCSA s. 54(2) and (2.1)

At least 10 days before the date set for hearing the application for permission to apply for cancellation of the continuing custody order, notice of the application must be served on the following:

- a. the child, if 12 years of age or over;
- b. the persons who under section 49(3) are entitled to notice;
- c. the Public Trustee;
- d. the director;
- e. the parties to the proceeding in which the continuing custody order was granted;
- f. any persons listed in section 49(2)(b) to (d) who is not already entitled to notice under paragraph (b) or (e) of this subsection; and

(2.1) If a person referred to in subsection (2)(d) to (f) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

CFCSA s. 54(3)

If permission is granted, the court must set a date for hearing the application for cancellation of the continuing custody order.

CFCSA s. 54(4)

After considering the importance of continuity in the child's care and the effect of maintaining a relationship the child has with any person, the court may cancel the continuing custody order, but only if it is satisfied that:

- a. the circumstances that caused the court to make the order have changed significantly;
and
- b. cancelling the order is in the child's best interests.

Transfer of Custody to a Person who is not a Parent

CFCSA 54.1(1)

The director may apply to the court to permanently transfer the custody of a child who is currently in the custody of the director under a continuing custody order to a person who is not the child's parent.

CFCSA 54.1(2) and (2.1)

At least 10 days before the date set for hearing the application, notice of the hearing must be served on the following:

- a. each person to whom the court has been requested to transfer custody;

- b. the child, if 12 years of age or older;
 - c. if the child is a First Nation child, a designated representative of the First Nation;
 - d. if the child is a Nisga'a child a designated representative of the Nisga'a Lisims Government;
 - d. 1 if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;
 - e. if the child is not a First Nation child, a Nisga'a child nor a designated representative or another Indigenous community that has been identified by:
 - i. the child, if 12 years of age or over, or
 - ii. the parent, if the child is under 12 years of age;
 - f. the Public Guardian and Trustee;
 - g. each person who has access to the child under an order made under a s. 56(3).
- (2.1) If a person referred to in subsection (2)(a) or (c) to (e) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

CFCSA 54.1(3)

Transfer of the child may be permanent.

CFCSA 54.2(1)

The person to whom custody is granted becomes the guardian of the person and the guardian of the estate of the child.

CFCSA 54.2(2)

To enforce, confirm, modify or cancel an order made under s. 54.1, it is necessary to make an application under the *Family Law Act*, as the CFCSA does not apply.

CFCSA 54.2(3)

FLA 35(5)

An access order that has been made under s. 56 CFCSA automatically becomes an order respecting contact or parenting time under s. 45 of the FLA between the person who is granted custody and the person who is granted access under the s. 56 order. To confirm, modify or cancel the access order, it is necessary to make an application under the *Family Law Act*, as the CFCSA does not apply once custody is transferred.

Changing or Cancelling a Supervision, Temporary Custody or Access Order

CFCSA s. 57(1)

If circumstances have changed significantly since the order was made, any party may apply to the court for a change to:

- a. a supervision order other than one that is an interim order;
- b. a temporary custody order; or
- c. an access order.

CFCSA s. 57(2) and (2.1)

At least 10 days before the date set for hearing the application, notice of the hearing must be served on:

- a. the child, if 12 years of age or older;
- b. the director;
- c. the Public Guardian and Trustee, if the order is a temporary custody order and the Public Guardian and Trustee has been appointed guardian of the child's estate under section 58; and
- d. in addition:
 - i. if the application is for an access order and is made before the protection hearing, the persons mentioned in section 34(3)(b) and (d);
 - ii. if the application is for any order referred to in subsection (1) of this section and is made after the protection hearing, the persons who under section 39 or 49 (3) are entitled to notice.
 - iii. if the application is for a change to a temporary custody order, the persons listed in section 38(1)(b) to (d) who are not already entitled to notice under subparagraph (ii) of this paragraph, and

- (2.1) If a person referred to in subsection (2)(b) or (d)(i) or (iii) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

CFCSA s.57(3)

If the court finds that circumstances have changed significantly since the order was made, the court, in the child's best interests, may cancel the order and make no other order or may cancel the order and do one of the following:

- a. if the order was made under section 42.2, 44 or 46, make an order under section 41;
- b. in any other case, make any order provided for at the hearing where the order was made.

CFCSA s. 57(4)

If the court finds that circumstances have not changed significantly since the order was made, the court may confirm the order.

CFCSA s.57(5)

The provisions of s.57 do not apply to changing or cancelling a custody or access order, if the change of circumstances relates to an application to transfer custody to a person who is not the child's parent. It does not matter whether the application is granted.

Changing or Cancelling an Access Order made under s.54.1

CFCSA 57.1(1)

If an application is made under s. 54.1 to transfer custody of a child to a person who is not a parent, a party to an access order made under s. 56 may apply to the court for a change of the access order.

CFCSA 57.1(2) and (2.1)

At least 10 days before the date set for hearing the application, notice of the hearing must be served on the following:

- h. the child, if 12 years of age or older;
- i. the director;
- j. each person to whom the court has been requested to transfer custody under a s. 54.1;
- k. the parties to the s. 56 access order proceeding.

(2.1) If a person referred to in subsection (2)(b) to (d) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

CFCSA 57.1(3)

At the hearing, the court may either confirm change or cancel the existing access order.

CFCSA 57.1(5)

An order changing, confirming or cancelling the access order takes effect when custody of the child is transferred to the person who is not the child's parent.

Changing or Cancelling an Order made in the Absence of a Party

CFCSA Rule 8(6)

A judge may change or cancel an order made in the absence of a party who received notice of a hearing if:

- a. that party applies within a reasonable time;
- b. the party had a good reason for failing to attend when the order was made;
- c. there is a good reason for changing or cancelling the order; and
- d. the change or cancellation would be in the best interest of the child.

Procedures

1. Court registry receives Application to change or cancel an order

A party submits:

- *Application to Change or Cancel an Order.*

The clerk:

- sets hearing date and records date on the *Application to Change or Cancel an Order*;
- files *Application to Change or Cancel an Order* by date-stamping;
- enters the date on CEIS;
- distributes documents as follows:

Document	Party filing application	Court file
Application	All Copies	Original

- returns documents to party as the party is responsible for serving the documents.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters the disposition and next court date (if applicable) on CEIS.

Director's lawyer of record:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;

- presents order to judge for signature;
- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

Access to Child by Director Prior to Removal

Background

CFCSA s. 17(1)

On application by the director, the court may make an order under this section if:

- a. there are reasonable grounds to believe a child needs protection;
- b. a person refuses
 - i. to give the director access to the child; or
 - ii. to provide the director with all information known to the person that may assist the director in locating the child; and
- c. access to the child is necessary to determine if the child needs protection.

CFCSA s. 17(2)

In an order under this section, the court may do one or more of the following:

- a. authorize the director, a police officer, or a person specified in the order to, by force if necessary, enter the premises or vehicle or board the vessel specified in the order and to search for the child;
- b. require a person to disclose all the information known to the person that may assist the director in locating the child;
- c. require a person to allow the director or another person to interview or to visually examine the child, or to do both;
- d. authorize the director to take the child away from the premises, vehicle or vessel for an interview or medical examination;
- e. authorize a medical practitioner or other health care provider to examine the child.

CFCSA s. 17(3)

The court may attach any terms or conditions to an order under this section.

CFCSA s. 18(1)

If a person does not comply with an order under section 17(2)(b) or (c) requiring the person to disclose the location of a child, the court may issue a warrant for the person's arrest to bring him or her before the court to explain why the order should not be enforced.



Only a judicial justice of the peace, a stipendiary justice of the peace or a judge may issue such a warrant.

CFCSA s. 18(2)

Unless the court is satisfied when the person appears before the court that he or she is for valid reasons unable to comply with the order, the court may order that the person be imprisoned for the shorter of the following periods:

- a. until the person complies with the order;
- b. 30 days.

CFCSA s. 19(1)

The director may apply to a judge of the court in person, by telephone or by any other means of telecommunication for an order under section 17 or 63 or warrant under section 28(3.3) or 98(4.3).

CFCSA s. 19(2)

If a judge of the court is not available, the director may apply to a justice of the peace designated for the purpose by the chief judge, in person, by telephone or by other means of telecommunication for an order under section 17 or 63 or warrant under section 28(3.3) or 98(4.3) and the justice may make the order or issue the warrant.

CFCSA Rule 1(2)

To apply for an order other than an order under section 33.2, 35, 36 or 42.1 of the Act a person must complete and file with the court an *Application for an Order* (Form 2) or an *Application to Change Method Attendance* (Form 10.5), as applicable, unless a judge permits otherwise.

CFCSA Rule 1(5)

A *Presentation Form* must be filed:

- a. in the registry closest to the child's habitual residence; or
- b. in the registry closest to where the child was removed or taken into care unless a judge permits otherwise.

CFCSA Rule 1(6)

An application in Form 2, Form 3, or Form 10.5 must be filed in the registry where the file is located, unless Rule 8(12) or (13) applies, if there is now file, then as required under Rule 2 (5), as if the application were a *Presentation Form*.

Procedures

1. Court registry receives Application for Access by the director



CFCSA section 19 allows the Director to apply in person, by telephone or by any other means of telecommunication for an order under section 17 or 63. These procedures apply to an in person application.

The director submits:

- *Application for an Order.*

The clerk:

- sets hearing date and records date on the *Application for an Order*;
- files *Application for an Order* by date-stamping;
- enters the date on CEIS;
- distributes documents as follows:

Document	Director Lawyer of Record	Court file
Application	All Copies	Original

- returns documents to director as there is no requirement to serve or notify the parties.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters the disposition on CEIS.

Director's counsel:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- files signed order by date-stamping;
- distribute order as follows:

Document	Director's Lawyer of Record	Court file
Court Order	Copy	Original

Access to Child in Temporary or Continuing Custody

Background

CFCSA s. 55(1)

At the time an order, other than a continuing custody order or an order made under s.54.1, is made under this Part, the parent who had custody when the child was removed may apply to the court for access to the child.

CFCSA s. 55(2)

After an order, other than a continuing custody order or an order made under s.54.1, is made under this Part, any person may apply to the court for access to the child.

CFCSA s. 55(3) and (3.1)

At least 10 days before the date set for hearing an application under subsection (2), notice of the hearing must be served on:

- a. the child, if 12 years of age or over;
- b. the director; and
- c. in addition:
 - i. if the application is made before the protection hearing, the persons mentioned in section 34(3)(b) and (d); and
 - ii. if the application is made after the protection hearing, the persons who under section 39 are entitled to notice.

(3.1) If a person referred to in subsection (2)(b) or (c) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

CFCSA s. 55(4)

If the parent who had custody when the child was removed applies under subsection (1) or (2), the court must order that the parent be given access to the child unless the court is satisfied access is not in the child's best interests.

CFCSA s. 55(5)

If a person, other than the parent who had custody when the child was removed, applies under subsection (2), the court may order that the person be given access to the child unless the court is satisfied access is not in the child's best interests.

CFCSA s. 55(6)

The court may attach to an access order under this section or section 56 any reasonable terms or conditions.

CFCSA s. 56(1)

After a continuing custody order is made, a parent or any other person may apply to the court for access to the child.

CFCSA s. 56(2) and (2.1)

At least 10 days before the date set for hearing the application, notice of the hearing must be served on:

- a. the child, if 12 years of age or over;
- b. the director; and
- c. the parties to the proceeding in which the continuing custody order was made.

(2.1) If a person referred to in subsection (2)(b) or (c) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

CFCSA s. 56(3)

The court may order that the applicant be given access to the child if access:

- a. is in the child's best interest;
- b. is consistent with the plan of care, and
- c. is consistent with the wishes of the child, if 12 years of age or over.

Procedures

1. Court Registry receives Application for an Order

A party submits:

- *Application for an Order.*

The clerk:

- sets hearing date and records date on the *Application for an Order*;
- files *Application for an Order* by date-stamping;
- enters the date on CEIS;
- distributes documents as follows:

Document	Party filing application	Court file
Application	All Copies	Original

- returns documents to party as the party is responsible for serving the documents.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters the disposition and next court date (if applicable) on CEIS.

Director's counsel:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

Written Agreements

Background

CFCSA s. 8(1)

The director may make a written agreement with a person who:

- a. has established a relationship with a child or has a cultural or traditional responsibility toward a child, and
- b. is given care of the child by the child's parent.

CFCSA s. 8(2)

The agreement may provide for the director to contribute to the child's support while the child is in the care of the person referred to in subsection (1).

Section 8 agreements will not be registered with the Court. However, the court registry might receive a copy of a section 8 agreement if the director withdraws from an order (for example, a temporary custody order) in order to enter into an agreement under section 8. In that case the director might attach a copy of the agreement to the application to cancel the original order, for the court's information rather than due to any statutory requirement.

CFCSA s. 8(3)

3. If a director makes an agreement under subsection (1), the following may be included as a party to the agreement:
 - a. the child's parent;
 - b. in the case of the child being an Indigenous child,
 - i. if the child is a First Nation child, the First Nation,
 - ii. if the child is a Nisga'a child, the Nisga'a Nation or the child's Nisga'a Village,
 - iii. if the child is a Treaty First Nation child, the Treaty First Nation, or
 - iv. if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child, the legal entity representing the child's Indigenous community.

CFCSA s. 8(4)

4. If, under subsection (3), a party is included in an agreement,
 - a. the agreement must include
 - i. a description of the party's role in the agreement, and
 - ii. in the case of a party referred to in subsection (1) (b), conditions on the use, disclosure and security of information provided under the agreement to the party, and
 - b. a withdrawal from the agreement by the party does not have the effect of terminating the agreement.

CFCSA s. 97(2)

The director may make a written agreement with a parent for contributions by a parent to the maintenance of

- a child in care; or
- a youth who has made an agreement with a director under CFCSA s. 12.2

CFCSA s. 97(4)

A written agreement made under CFCSA section 97(2) with regard to maintenance may be filed with the court and enforced, varied or cancelled in the same manner as a support order made under the FLA.

Appeals

Background

CFCSA s. 81(1)

A party may appeal to the Supreme Court from an order of the Provincial Court made under this Act.

CFCSA s. 81(2)

The time limit for bringing an appeal under subsection (1) is 30 days, beginning on the day after the order of the Provincial Court is made.

CFCSA s. 81(3)

An appeal is brought by:

- a. filing a notice of appeal in a registry of the Supreme Court; and
- b. serving a copy of the notice of appeal on:
 - i. the parties to the proceeding in which the order of the Provincial Court was made; and
 - ii. the Public Trustee, if guardian of the child's estate.

CFCSA s. 81(7)

After hearing the appeal, the Supreme Court may do one or more of the following:

- a. confirm the order of the Provincial Court;
- b. set aside the order of the Provincial Court;
- c. make any order that the Provincial Court could have made;
- d. direct the Provincial Court to conduct a new hearing.

Procedures

1. Court registry receives Notice of Appeal

The Supreme Court registry submits:

- filed copy of *Notice of Appeal*.

The clerk:

- photocopies;
 - order under appeal;
 - any applications and documents related to order under appeal;

- original *Presentation Form*;
- certifies copies of documents;
- places certified copies in Provincial Court file;
- arranges for original documents requested to be sent to Supreme Court;
- sends copy of *Notice of Appeal* to Provincial Court judge who made order;
- if necessary, gives file to Exhibit Clerk to arrange for transfer of any exhibits.



See **Exhibit Control Manual** for procedures on transfer of exhibits

- **If Supreme Court directs Provincial Court to conduct a new hearing, go to step 2**
- **If Supreme Court makes an order, go to step 4**

2. Supreme Court directs Provincial Court to conduct new hearing

The Supreme Court registry submits:

- certified copy of Order;
- returns all original documents and exhibits.

The clerk:

- checks documents and place in Provincial Court file;
- requests Supreme Court to send any documents not returned.

Director's counsel or appellant's counsel:

- requests court date to resume hearing.

The clerk:

- sets hearing date within time period requested, and notifies Director's lawyer of record;
- records hearing date in trial diary and enters it on CEIS;

3. Matter is resolved in court

After the judge makes the order, the clerk:

- enters disposition on CEIS.

Director's counsel:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

4. Supreme Court makes an order

Director's counsel:

- prepares and submits court order to Supreme Court.

Supreme Court registry:

- forwards copy of filed court order to Provincial Court registry.

The clerk:

- places order in court file;
- when applicable, informs Provincial Court judge of decision.

Other Orders That May Be Applied For

Background

Applications Under the Rules

Applications for Other Orders

CFCSA Rule 1(2)

To apply for an order other than an order under section 33.2, 35, 36 or 42.1 of the Act a person must complete and file with the court an *Application for an Order* (Form 2) or an *Application to Change Method Attendance* (Form 10.5), as applicable, unless a judge permits otherwise.

Applications to Change Or Cancel An Order

CFCSA Rules 1(3)

To apply for an order changing or cancelling another order, a person must complete and file with the court an *Application to Change or Cancel an Order* (Form 3) unless a judge permits otherwise

Applications May Be Made Orally

CFCSA Rules 1(4)

At a hearing or a case conference, a judge may permit an application to be made orally in court, without the filing of a form.

Where an Application Must Be Filed

CFCSA Rule 1(6)

An application in Form 2, Form 3, or Form 10.5 must be filed in the registry where the file is located, unless Rule 8(12) or (13) applies, if there is now file, then as required under Rule 2 (5), as if the application were a Presentation Form.

Conduct of Hearings

CFCSA Rule 1(7)

A judge may conduct a hearing or part of a hearing with one or more persons attending by telephone, video conference or other means of electronic communication.

Some Applications May Be Granted Without A Hearing

CFCSA Rule 1(8)

A judge may make the following orders without a hearing:

- a. an order under Rule 6(10), permitting the use of another service method;
- b. an order under Rule 8(2), shortening or extending a time period;
 - b.1 an order under rule 9(4), changing the method of attendance unless the order is in relation to a hearing at which sworn oral evidence is given;
- c. a consent order or an order dispensing with consent, under section 60 of the Act;
- d. an order under section 69 of the Act, shortening or extending the time for serving notice or dispensing with notice.

How to Apply For An Order Without A Hearing

CFCSA Rule 1(9)

To apply for an order to be made under subrule (8) (a), (b), (c) or (d) a person must file:

- a. an affidavit setting out the facts on which the application is based; and

- b. the application form (See Rule 1(2) and (3)).

How to Apply for an Order Changing Method of Attendance Without a Hearing

CFCSA Rule 1(10)

To apply for an order under rule 1 (8) (b.1), a person must file the Application to Change Method of Attendance (Form 10.5).

Case Conferences May Be Directed

CFCSA Rule 2(2)

A judge may at any time direct the parties and their lawyers to attend a case conference:

- a. if a party requests it; or
- b. if the judge considers that it may promote a fair and efficient resolution of the issues.

Subpoena May Be Cancelled or Varied

CFCSA Rule 3(4)

A person who is served with a subpoena may apply under Rule 1(2) to a Judge, who may cancel the subpoena if:

- a. the person is not needed as a witness,
- b. it would be a hardship for the person to appear in court as required by the subpoena, or
- c. in the case of a child witness, the judge considers that it would not be in the child's best interest to require the child to testify, or
- d. vary the subpoena to allow the witness to attend court by another method of attendance.

Permission to Use Other Service Methods

CFCSA Rule 6(10)

If a document cannot be served as provided in these Rules or if the person to be served is temporarily outside the Province, a party may apply to a judge who may:

- a. permit another method of service to be used; and
- b. direct how service is to be proved.

Settling the Order

CFCSA Rule 7(5)

A party may apply to a judge to settle the terms of an order when there is a dispute about the terms. (See Rule 1(2))

Judges' Permission Necessary For Adjournment

CFCSA Rule 8(4)

A hearing may be adjourned only with the permission of a judge, or in the case of a hearing where sworn oral evidence will not be given, if the director's lawyer of record files with the court a Consent Adjournment Form (Form 10.2) after obtaining consent of all parties or their lawyers of record, as applicable.

Applications Under the Act

Order Adjourning Court Proceeding Pending Family Conference

CFCSA s. 23(1)

On application the court may adjourn a proceeding under this Part one or more times, for a total period of up to three months, so that a family conference or mediation can proceed.

Protective Intervention Order

CFCSA s. 28(1)

If there are reasonable grounds to believe that contact between a child and another person would cause the child to need protection under section 13(1)(a) to (e) or (i), the director may apply to the court for a protective intervention order.

CFCSA s. 28(3.1)

In a protective intervention order, the court may include an order authorizing a police officer to arrest, without a warrant, the person against whom the protective intervention order is made if the police officer has reasonable grounds to believe that the person has contravened or is contravening the protective intervention order.

CFCSA s. 28(3.2)

An order under subsection (3.1) does not authorize entry into a dwelling for the purpose of arresting a person.

CFCSA s. 28(3.3)

On application by the director, the court may issue a warrant authorizing a police officer, subject to subsection (3.4) and by force if necessary, to enter any dwelling specified in the warrant for the purpose of arresting a person against whom a protective intervention order has been made if there are reasonable grounds to believe that that person:

- a. has contravened or is contravening the order; and
- b. is or will be present in the dwelling.

CFCSA s. 28(5.1)

If the court adjourns the hearing, an interim protective intervention order may be made that is in effect until the hearing concludes.

Order Authorizing Health Care

CFCSA s. 29(1)

If a child or a parent of a child refuses to give consent to health care that, in the opinion of two medical practitioners, is necessary to preserve the child's life or to prevent serious or permanent impairment of the child's health, the director may apply to the court for an order under this section.

Order Appointing Public Trustee

CFCSA s. 58(1)

When a temporary custody order is made or at any time during the term of that order, the director may apply to the court for an order appointing the Public Trustee as guardian of the child's estate.

Order For Psychiatric Or Medical Examination

CFCSA s. 59(1)

On application the court may order that a child or a parent of a child undergo a medical, psychiatric or other examination if the court considers the examination is likely to assist it:

- a. in determining whether the child needs protection; or
- b. in making an order relating to the child.

Order Enforcing Custody Order

CFCSA s. 63(1)

If the director has care of a child or custody of a child is given to the director or another person by an order made or enforceable under this Act and the Director or other person is denied care or custody of the child, as the case may be, a court may, on application, order that a police officer take charge of the child and take the child to the Director or person entitled to other care or custody under this Act.



Only a judge, a judicial justice or justice of the peace may make such an order.

Order For Producing Records

CFCSA s. 65(1)

On application at any time by the director, the court may order a person or organization to produce a record, or a certified copy of the record, for inspection by the director if:

- a. there are reasonable grounds to believe the record contains information necessary for determining whether the child needs protection;
- b. there are reasonable grounds to believe the person or organization has custody or control of the record; and
- c. the person or organization has neglected or refused to produce the record to the director.

Order Varying Notice Requirements

CFCSA s. 69(1)

The Supreme Court or the Provincial Court may:

- a. shorten the time period for serving a notice under this Act or extend the period even though it has expired; or
- b. dispense with a requirement that notice of a proceeding or of all proceedings in relation to a child be served on a party or other person.

Order For Maintenance

CFCSA s. 97(5)

On application by the director, the court may order a parent who is responsible to contribute under subsection (1) to pay to the director or to a person designated in the order an amount the court considers reasonable for the maintenance of a child or youth.

Restraining Orders

CFCSA s. 98(1)

On application, the court may make a restraining order if there are reasonable grounds to believe that a person:

- a. has encouraged or helped, or is likely to encourage or help, any of the following to engage in prostitution:
 - i. a child in care;
 - ii. a child in the custody of a person under a temporary custody order;
 - iii. a youth who has made an agreement with the director under section 12.2;
- b. has inveigled or coerced, or is likely to inveigle or coerce, a child or youth mentioned in subparagraph (i), (ii) or (iii) of paragraph (a) into engaging in prostitution; or
- c. has otherwise exploited, abused or intimidated, or is likely to otherwise exploit, abuse or intimidate, a child or youth mentioned in subparagraph (i), (ii) or (iii) of paragraph (a).

CFCSA s. 98(3)

On application, the court may make a restraining order if there are reasonable grounds to believe that a person is likely to molest, harass or annoy:

- a. a caregiver; or
- b. a person who has custody of a child under a temporary custody order;
- c. the director or any person to whom the director has delegated under section 92 any or all of the director's powers, duties or functions; or
- d. a person providing residential, educational or other support services to the child or youth.

CFCSA s. 98(4.1)

In a restraining order, the court may include an order authorizing a police officer to arrest, without a warrant, the person against whom the restraining order is made if the police officer has reasonable grounds to believe that the person has contravened or is contravening the restraining order.

CFCSA s. 98(4.2)

An order under subsection (4.1) does not authorize entry into a dwelling for the purpose of arresting a person.

CFCSA s. 98(4.3)

On application by the director, the court may issue a warrant authorizing a police officer, subject to subsection (4.4) and by force if necessary, to enter any dwelling specified in the

warrant, for the purpose of arresting a person against whom a restraining order has been made if there are reasonable grounds to believe that that person:

- a. has contravened or is contravening the order; and
- b. is or will be present in the dwelling.

CFCSA s.98(7.1)

If the court has adjourned the hearing, an interim restraining order may be made that is in effect until the hearing concludes.

Procedures

1. Court registry receives Application for an Order

A party submits:

- *Application for an order.*

The clerk:

- sets hearing date and records date on the *Application for an order*;
- files *Application for an order* by date-stamping;
- records hearing date in the trial diary and enters it on CEIS;
- distributes documents as follows:

Document	Party filing application	Court file
Application	All Copies	Original

- returns documents to party as the party is responsible for serving the documents.

2. Matter is resolved in court

After the judge makes the order, the clerk:

- enters the disposition and next court date (if applicable) on CEIS.

Director's counsel:

- prepares and submits court order.

The clerk:

- checks order against Court Clerk's notes in court file;
- presents order to judge for signature;

- files signed order by date-stamping;
- distributes order as follows:

Document	Director's Lawyer of Record	Lawyer of Record for each party	Court file
Court Order	Copy	Copy	Original

3. Desk Order Process - Flowchart

1. The registry receives Form 10.5 Application to Change Method of Attendance, files application, and enters information into CEIS. Also enters and files any other applicable corresponding documents.
2. The registry scans the filed application and any other filed documents into CEIS, using code APM.

s.3

5. JCM forwards the email with application to an assigned judge who is available to deal with the application and cc's the registry.
6. The judge reviews the application attached to the email and views additional corresponding documents in PCSS.
7. The judge completes the "For Court Use Only" portion of the form.
 - a. When making an order, the judge may type out further directions or attach an additional page with further information if needed.

- b. If the application is not approved, the judge must include their reasons on the form.
 - c. If rejected and circumstances change a new application is required; the process starts again.
 - When emailing an application to a judge for review that was previously denied indicate in the body of the email the corresponding document numbers for the prior application and resulting desk order. When possible, the JCM/JAA may forward the application directly to the original judge.
 - d. If the matter requires a court appearance, the judge will indicate that on the form and may provide further directions; including service and when/how to attend or submit documents for the hearing. The registry is to notify the parties to attend a court appearance.
8. The judge emails the completed and electronically signed form to the registry using the same subject line.

4. If application is approved or denied (Desk Order made):

1. The registry stamps the applicable area of the form as “filed” using the Dynamic Stamp and results the appearance previously scheduled (in CHB) with CEIS code **End** and **DOR**.
2. Uploads the electronic document attached to the email into CEIS and prints a copy for the file.
3. Once the document is successfully uploaded to CEIS, delete the document from the folder on the PC and the email inbox. Empty the delete folder.
4. Include the order terms when resulting the appearance.
5. The registry is not required to draft any further order.
6. Print the Court Summary Sheet and place the CSS onto the court file.
7. The registry provides a copy of the filed application and the signed order to the filing party.

5. If the matter is to be set for court:

1. The registry stamps the applicable area on the form as “filed” using the Dynamic Stamp and results the appearance previously scheduled (in CHB) with CEIS code **ADD** and **DOR**.
2. Print the Court Summary Sheet and place the CSS onto the court file.
3. uploads the electronic document attached to the email into CEIS and prints a copy for the file.
4. Once the document is successfully uploaded to CEIS, delete the document from the folder on the PC and the email inbox. Empty the delete folder.
5. The registry schedules the appearance in a courtroom to the next available date (CFCSA list day, as applicable) or as indicated by the judge and includes any relevant information in the comments field.
 - i. If the matter is urgent (cannot wait for the next available CFCSA list date), registry contacts JCM to arrange an earlier court date.
6. The registry advises the party by email, telephone call or at the counter if the party was waiting advise that the matter has been set for court and provide date, time, and place of

court appearance (including MS Teams link if appearing by another method of attendance that in person) and any other directions noted by the Judge. A copy of the filed application and the desk order directing the matter to a hearing are sent to the party

- i. If directors lawyer is unavailable and obtains consent of all parties or their lawyers of record, they may use the consent adjournment form (Form 10.2), as applicable, and in accordance with rule 8(4)(b).
7. If the party does not have email, registry to mail a copy and call the party.

6. For desk orders marked as “Applicant Waiting”:

- follow up with the judge the same day.

7. If desk order application is not returned same day:

The registry must track using the exceptions report:

1. Each morning, the registry must run the session exception report for room CHB.
2. If desk order application has not been returned within **two** business days, follow up with the judge.
3. If judge is off, registry to contact JCM for assistance.

Appendix A

Citation:

Date:
Docket:
Registry:

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
IN THE MATTER OF
THE *CHILD FAMILY AND COMMUNITY SERVICE ACT*, R.S.B.C. 1996 c. 46
AND THE CHILD:
, born

BETWEEN:

DIRECTOR OF FAMILY AND CHILD SERVICES

AND:

APPLICANT
PARENT

Docket:
Registry:

AND IN THE MATTER OF
THE *FAMILY RELATIONS ACT*, R.S.B.C. 1996 C. 128

BETWEEN:

APPLICANT

AND:

RESPONDENT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE

Counsel for the Director:

Counsel for:

Place of Hearing:

, B.C.

Date of Hearing:

Date of Judgment:

Table of CFCSA Orders

Presentati on Hearing	Supervisi on Hearing (followin g removal after interim order)	Protecti on Hearing Finding: S 40(2) Child Does Not Need Protectio n	Protectio n Hearing Finding: S 40(1) Child in Need of Protection	Continuin g Custody Hearing	Access	Service	Extensio n Order	Other Orders
S 33.2(2) Director's supervisio n without removal (interim order)	S 36(3)(a)(i)) interim order returning child	S 40(2) return to parents (no protectiv e order made)	S 41(1)(a) (or 41(2.1), following S 33.2(2) order, return to / remain with parent, under Director's supervisio n with terms	S 49(4) continuing custody order to Director (mandator y order)	S 55(4) access/ reasona ble access to child by parent, supervis ed at discretio n of Director	Rule 6(10) substitutio nal service	S 44(3)(a) extend supervisi on order not more than 12 months from date of original order	S 60 consent order
S 35(2)(a) interim custody to Director	S 36(3)(a)(i) i) continuati on of order in force at time of removal		S 41(1)(b) placement in interim custody of person other than a parent with consent of that person, under Director's supervisio n	S 49(5) continuing custody order to Director (discretion ary order)	S 55(5) access to child by other person	S 69(1)(a) shorten / extend time of service	S 44(3)(b) extend temporar y custody order, not beyond: - 12 months (child under 5 yrs) - 18 months (child	S 59 psychiatric / medical examinatio n/ assessment

							under 5-11 yrs) - 24 months (child 12+ yrs)	
S 35(2)(b) Interim return to/remain with parent under Director's supervision	S 36(3)(b)(i)) interim order returning child under Director's supervision		S 41(1)(c) Remain or be placed in temporary care of Director	S 49(7)(a) return to the custody of the parent entitled to custody	S 56(3) access to child by parent or other person, after continuing custody order	S 69(1)(b) dispense with service	S 45(1.1) extend total time of temporary custody order beyond normal limit	S 39(4) add party to proceeding
S 35(2)(c) Interim return to / remain with parent	S 36(3)(b)(i) i) Interim custody to Director		S 41(1)(d) continuing custody order to Director	S 49(7)(b) temporary custody to Director or person other than parent for up to 6 months			S 46(3) supervision order for up to 6 months, after a temporary order	Rule 8 transfer file
S 35(2)(d) placement in interim custody of person other than a parent with consent of that person and under Director's supervision			S 42.2(4)(a) (i) return to or remain with parent or person who had custody at time of the removal	S 49(8) Supervision by Director for up to 6 months				S 54(4) cancel continuing custody order
S 42.1(6)(a) interim			S 42.2(4)(a) (ii) be	S 49(10)(a) continuing				S 54.1 Transfer custody to

custody order to Director, (re-removal after supervision order)			under Director's supervision	custody order to Director				person not a parent
S 42.1(6)(b)(i) interim order: return to person who had custody when child was removed (removal after supervision order)			S 42.2(4)(b) remain or placed in the custody of the Director	S 49(10)(b) return child to parent				S 57(3) change an order for supervision, temporary custody or access order
S 42.1(6)(b)(ii) order in force at time of removal continues to apply			S 42.2(4)(d) continuing custody to Director unless conflict with S 41(2)					S 57(4) confirm order
			S 41.1 sets terms of supervision					S 57.1(3) Confirm, change or cancel access order made under S 54.1
								S 58(1) order appointing Public

								Guardian and Trustee
								S 59(1) order for psychiatric or medical examination
								S 63(1) order for police to enforce custody order (issue warrant)
								S 65(1) order to produce records
								S 97(5) order for maintenance
								S 98(1) restraining order
								S 98(4.3) order for police to enforce restraining order (issue warrant)
								S 98(7.1) interim restraining order
								S 17(2) access to

								child by Director prior to removal
								S 18(2) order of imprisonm ent for failure to comply with S 17(2) order
								S 28(1) protective interventio n order
								S 28(3.1) order to arrest without warrant, to enforce a protective interventio n order
								S 28(3.3) warrant to enter, to enforce a protective interventio n order
								S 28(4) order to change or cancel a protective interventio n order
								S 29(1) order authorizing health care

Chapter 8 - Procedures - Adult Guardianship Act

Overview

This chapter describes the series of procedures necessary to obtain a court order under Part 3 (Abuse and Neglect) of the Adult Guardianship Act. This Act provides protection for vulnerable adults, such as seniors and disabled adults, and is under the auspices of the Public Guardian and Trustee of British Columbia. The purpose of Part 3 is to provide for support and assistance for adults who are abused or neglected and who are unable to seek support and assistance because of

- a. physical restraint,
- b. a physical handicap that limits their ability to seek help, or
- c. an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.

The "court" in Part 3 is defined as the Provincial Court of British Columbia.

An agency (designated by the Public Guardian and Trustee of British Columbia) that is conducting an investigation into suspected abuse or neglect can apply to the court for an order authorizing someone to interview the adult and/or authorizing a health care provider to enter the premises to determine whether health care should be provided (this will be called an access order).

If access to the adult is denied, a judge may issue an access order for someone from the designated agency to enter the premises to interview the adult. If application for an access order would cause a delay that could result in harm to the adult, a Justice of the Peace may issue a warrant for this purpose. These judicial procedures are not described in this manual.



The Provincial Court (Adult Guardianship) Rules prescribe a *Warrant to Enter for the Purposes of Interview* (FORM 18), although the Rules do not set out the procedures associated with this warrant. This form has been assigned form number PFA 858 by Court Services Branch.

Following the investigation, the agency may apply to the court for either:

- an interim (30 day) restraining order; or
- for support to be paid to the adult (spousal support).

The designated agency may apply to the court for an order authorizing the provision of services to the adult, including:

- support and assistance to the adult (such as hospital admission or provision of health or social services);
- support of the adult; or
- a restraining/protection order, against a person who has abused the adult.

Most of the procedures described are governed by the *Provincial Court (Adult Guardianship) Rules*. The court process begins with a designated agency filing an application with regard to a specified adult. This starts an action. The court registry issues a notice to appear, and the designated agency arranges for the application and notice to appear to be served on the adult and on the person against whom the order is sought.

The next step is appearance at one or more hearings, which may result in a court order. The filing of a consent by the parties will also result in a court order.

The Rules do not specify the number of copies of documents to file. Generally, if the document being filed requires service, four copies plus the original should be filed; if service is not required, then three copies plus the original should be filed.

The chapter ends with procedures for appealing a court order. Each procedure ends with a reference to the next appropriate procedure.

Starting the Process

Background

This section of the chapter describes documents that require the registry clerk to create a new court file. The procedures for these documents include filing instructions and notification to the party(ies) that their order has been filed. Once opened, an action may be commenced at any time by the filing of a subsequent application.

It also describes documents that are submitted which require the clerk to open a court file and to begin the process of bringing the parties to court to deal with the application submitted. The procedures are described for these applications, including checking and filing of documents, setting a hearing date and recording the hearing date on CEIS. When completed, reference is made to the next appropriate procedure.

An Adult Guardianship Act file may be opened in Provincial (Family) Court by:

- filing an *Application to Obtain an Order* (PFA 842, Form 1 AGA);
- filing an *Application for a Consent Order* (PFA 845, Form 5, AGA);
- receiving a transferred—in file, see **Receiving file from other locations** in Chapter 2

PCAGR. 9(16)

Any document may be filed by faxing it to the registry, but a judge may require that the original document be filed at any time.

PCAGR 9(18)

Forms filed under AGA must comply with prescribed wording. The user must prepare for form using regular type for the prescribed wording and the words supplied in **bold** type.

Consent Order

Background

Instead of proceeding to a full hearing on an application filed, parties may file an *Application for a Consent Order* when they agree to the terms of the order. One party prepares the form and both the designated agency, and the respondent sign it.

Parties may also file an *Application for a Consent Order* to agree to change an existing order. The same materials must be filed in this circumstance as when parties consent to an original order.

PCAGR 2(11)

An *Affidavit* and a draft *Consent Order* stating the terms the parties agreed to are filed along with the *Application*.

PCAGR 2(12)

A clerk places the *Application*, *Affidavit* and *Consent Order* before a judge in chambers. The judge may:

- direct that the parties and any other person specified by the judge attend before the judge to explain why the order should be made; or
- sign the *Consent Order* as a desk order, without the parties having to attend.

Procedures

1. Court registry receives documents

A party submits an original and two copies of:

- *Application for Consent Order* (PFA 845) – PCAGR Form 5;
- prepared *Consent Order* (PFA 846) – PCAGR Form 6;
- *Affidavit* (PFA 850) in support of the consent order.

The clerk:

- checks documents;
- checks CEIS to see whether court file exists;
- if court file does not exist, opens new file;
- returns copies of the documents to the filing party;
- files the originals of the documents in the court file;
- places the court file before a judge.

- **If the Consent Order is signed as a desk order**, see Court Order and Protection Order for detailed procedures.
- **If the judge requires the parties and any other specified persons to appear before court, the clerk**
 - prepares a *Notice of Hearing* (PFA 862);
 - determines hearing date and time and enters them on *Notice of Hearing*, trial diary and CEIS;
 - enters the application on CEIS so that it appears on the court list;
 - mails each party a copy of the *Notice of Hearing*;
 - files originals of documents in the court file.
 - See Hearing of Application for detailed procedures.

Application to Obtain an Order

Background

A public body, organization or person may be designated as a “designated agency” under the *Designated Agencies Regulation*, B.C. Reg. 76/2000 for the purposes of Part 3 of the *Adult Guardianship Act*.

A designated agency files an *Application to Obtain an Order* for:

- an access order under s. 49(2) AGA, authorizing either or both of the following:
 - someone from the designated agency to enter premises and to interview an adult;
 - a health care provider to enter premises to examine an adult, to determine whether health care should be provided;
- a support and assistance order (which may include maintenance) with respect to an adult, under s. 56(3)(a), (d) or (e) AGA;
- an interim restraining order with respect to an adult, under s. 51(1)(e) AGA;
- a restraining order with respect to an adult, under s. 56(3)(c) AGA.

PCAGR 2(4)

An application for one of these orders must be filed in the registry closest to the adult’s habitual residence, unless a judge permits otherwise.

PCAGR 2(5)(6)

A party may also submit an application to renew, change or cancel a support and assistance order or to change or cancel a restraining order. See Application to Renew, Change or Cancel an Order for detailed procedures.

PCAGR 2(1)

If the application is for an access order, an *Affidavit* must accompany the *Application*.

PCAGR 2(2)

If the application is for an interim restraining order, the *Application* must be filed with an *Affidavit* and a draft *Notice to Appear*.

PCAGR 2(3)

If the application is for a support and assistance order, the *Application* must be filed with a support and assistance plan, the assessment particulars, and an assessment report.

PCAGR 2(3)

If the application is for a restraining order, the *Application* must be filed with a support and assistance plan, the assessment particulars, an assessment report and a draft *Notice to Appear*.

PCAGR 3(1)

For applications where a hearing is required, the clerk schedules the hearing and enters the time, date and place of the hearing on the *Application* before it is accepted for filing.

PCAGR 3(2)

If the application is for an interim restraining order or a restraining order, the clerk issues a *Notice to Appear*.

PCAGR 7(1), 7(3)

If a designated agency files an application that requires a hearing, the designated agency must serve the other necessary parties with a filed copy of the *Application* and supporting documents at least seven days before the date set for the hearing. If assessment particulars are filed, copies of these do not have to be served.

PCAGR 7(4)

Service of an *Application* is not required if a judge so orders, or if a procedural order specified in PCAGR r 2(9) is being made without a hearing.

Procedures

1. Court registry receives Application to Obtain an Order

If the designated agency is applying for an access order, they file an original and four copies of:

- *Application to Obtain an Order* (PFA 842) – PCAGR Form 1;
- *Affidavit* (PFA 850) - PCAGR Form 10.

If the application is for an interim restraining order, the designated agency files an original and four copies of:

- *Application to Obtain an Order* (PFA 842) - PCAGR Form 1;
- *Affidavit* (PFA 850) - PCAGR Form 10;
- *Draft Notice to Appear* (PFA 847) - PCAGR Form 2.

If the application is for a support and assistance order, the designated agency files an original and four copies of:

- *Application to Obtain an Order* (PFA 842) - PCAGR Form 1;
- Support and assistance plan;
- Assessment particulars;
- Assessment report.

If the application is for a restraining order, the designated agency files an original and four copies of:

- *Application to Obtain an Order* (PFA 842) - PCAGR Form 1;
- Support and assistance plan;
- Assessment particulars;
- Assessment report.
- *Draft Notice to Appear* (PFA 847) - PCAGR Form 2.

The clerk:

- enters the application on CEIS so that it appears on the court list.
- checks documents;
- files documents by date-stamping;
- checks CEIS to see whether court file exists;
- if court file does not exist, opens new file;
- separates and distributes documents as follows:

Document	Designated agency	Court file
<i>Application to Obtain an Order</i>	four copies	Original
<i>Notice to appear</i> (if any)	four copies	Original
Support and assistance plan (if any)	four copies	Original
Assessment particulars (if any)	three copies	Original

Assessment report (if any)	four copies	Original
Affidavit (if any)	four copies	Original

The designated agency is responsible for serving a copy of each document (other than assessment particulars) on the respondent and on the adult, and for filing proof of service.

- See **Serving Court Documents under the AGA** for detailed procedures.

Application to Renew, Change or Cancel an Order

Background

AGA s.57(2), 57(3)

A designated agency may file an application to renew, change or cancel a support and assistance order, and must do so if there has been a review demonstrating that an adult's needs or ability to make decisions about support and assistance have changed significantly since the Court made an order under the AGA.

PCAGR 2(5)

If the need for the existing order was reviewed, the designated agency must file a report on the review, in addition to the *Application to Renew, Change or Cancel an Order*.

AGA s. 57(4). 57(5)

The judge hearing the application may either:

- change or cancel the support and assistance order, or
- one time only, renew the order for a further period of up to six months.

AGA s. 58(1)

A person against whom a restraining order has been made may apply to the court to change or cancel the order.

AGA s. 58(2)

The judge hearing the application may change or cancel the restraining order or make any other order it considers to be in the best interests of the adult who has been found to be abused or neglected.

PCAGR r. 2(7), 9(11), 9(12)

A party must file an application to renew, change or cancel an order in the court registry where the file is located. However, a judge may make an order to transfer the file to another registry for the purposes of one application or for all purposes. The registry may also transfer a file for the purposes of one application or for all purposes if the parties file a signed consent in the registry where the file is located. See **Transferring Files to Other Locations** in Chapter 2.

PCAGR r. 3(1)

For applications where a hearing is required, the clerk schedules the hearing and enters the time, date and place of the hearing on the *Application* before it is accepted for filing.

PCAGR r. 7(1), 7(3)

If an application requires a hearing, the party filing the application must serve the other necessary parties with a filed copy of the *Application* and supporting documents at least seven days before the date set for the hearing.

PCAGR r. 7(4), 9(5)

Service of an *Application* is not required if a judge so orders or if a procedural order specified in PCAGR r 2(9) is being made without a hearing. An order may also be made without notice if a matter is urgent or special circumstances exist.

Procedures

1. Court registry receives Application to Renew, Change or Cancel an Order

A party submits an original and four copies of:

- *Application to Renew, Change or Cancel an Order* (PFA 843) – PCAGR Form 3, with order to be changed or cancelled attached.
- Report of review, if applicable.

The clerk:

- checks documents;
- files documents by date-stamping;
- separates and distributes documents as follows:

Document	Applicant	Court file
<i>Application to Renew, Change or Cancel an</i>	four copies	Original

Order , with existing order attached		
Report of review , if filed	four copies	Original

The party filing the application is responsible for serving a copy of each document on the other necessary parties, and for filing proof of service.

- See **Serving Court Documents under the AGA** for detailed business procedures.

Application for Other Orders

Background

PCAGR r. 2(14)

A party files an *Application for Other Orders* to obtain an order **other than** a support and assistance order, access order, restraining order, interim restraining order or consent order. In particular, it is used to cancel a subpoena or to request a procedural order or direction, such as to modify time limits and service requirements.

PCAGR r. 2(9), 2(10), 2(14)

The *Application* may be accompanied by an *Affidavit* setting out the facts on which the application is based. An *Affidavit* is mandatory when applying for procedural orders under PCAGR r 2(9).

PCAGR r. 2(9), 3(1)

Once filed with the court, a date for the hearing is entered on the *Application for Other Orders*, if a hearing is required. A hearing is **not** required for an order:

- permitting another method of service, under PCAGR r. 2(9)(a);
- waiving or modifying a time limit set by a judge or by the *Provincial Court (Adult Guardianship) Rules*, under PCAGR r. 2(9)(b);
- waiving or modifying any service or notice requirement of the *Provincial Court (Adult Guardianship) Rules*, under PCAGR r. 2(9)(c).

PCAGR r. 7(1)

It is then returned to the filing party, who is responsible for arranging service on the other party or parties, if a hearing is required - thereby eliminating the need for the registry to notify the parties.

PCAGR r. 7(1), 7(2), 7(3)

The *Application* and *Affidavit* must be served at least seven days before the date set for hearing, if a hearing is required. If the application is for cancellation of a subpoena, these documents must be served on the party subpoenaing the witness, at least two days before the date the witness is to appear in court.

PCAGR r. 7(4)

Service of the *Application* and *Affidavit* is not required if no hearing of an application for a procedural order under PCAGR r. 2(9) has been scheduled or if a judge so orders.

Procedures

1. Court registry receives Application for Other Orders

A party submits:

- *Application for Other Orders* (PFA 844) – PCAGR Form 4;
- *Notice of Motion in Maintenance Enforcement Proceedings* (PFA 067);
- *Affidavit* (PFA 850) – PCAGR Form 10.

The clerk:

- checks documents;
- files documents by date-stamping;
- if a hearing is required:
 - sets hearing date
 - records it on *Application* and in trial diary;
 - enters it on CEIS.

2. Clerk separates and distributes documents

The clerk:

- separates and distributes documents as follows:

Document	Party filing <i>Application</i>	Court file
<i>Application for Other Orders</i>	four copies, if service required Otherwise, one copy	Original
<i>Affidavit</i>	four copies, if service required Otherwise, one copy	Original

- returns documents to party filing *Application*, since party is responsible for serving documents.
- If a hearing has been scheduled, see **Serving Court Documents under the AGA** for detailed procedures.

Affidavit

Background

An *Affidavit* is a written statement of fact, sworn or affirmed before a Commissioner for Taking Affidavits.

A person may use an *Affidavit* to:

- support an application;

PCAGR r. 5(1)

- give evidence at a hearing or trial, unless a judge otherwise orders.

PCAGR r. 2(1), 2(2), 2(10), 2(11), 2(14)

It is mandatory to file an *Affidavit* in support of an application, unless the application is for cancellation of a subpoena or for any procedural order or direction not mentioned in Rule 2, in which case filing an *Affidavit* is optional.

PCAGR r. 6(4)

If an *Affidavit* is used to give evidence at a hearing, at least seven days before the hearing date the party must:

- file the *Affidavit* in the registry; and
- serve copies on everyone who is entitled to notice of the hearing.

Court Services' policy is to charge no fee when registry staff swear affidavits and other types of sworn documents used in Family Court.

PCAGR r. 6(1), 6(3)

A party must file an *Affidavit* in the form prescribed by the PCAGR. However, if the party has the judge's permission, an *Affidavit* may be used as evidence even though it does not comply with the prescribed form.

PCAGR r. 6(2)

The party must attach any exhibits that the *Affidavit* refers to.

Procedures

1. Court registry receives Affidavit

A party submits:

- *Affidavit* (PFA 850) – PCAGR Form 10.

The clerk:

- Checks the document;
- if *Affidavit* is not sworn or affirmed, has party swear *Affidavit* before a Commissioner for Taking Affidavits. There is no fee payable if the *Affidavit* is sworn at the registry.
- files *Affidavit* by date-stamping.
- files *Affidavit* by date-stamping.

2. Clerk separates and distributes documents

The clerk:

- separates and distributes document as follows:

Document	Party filing Affidavit	Court file
<i>Affidavit</i>	four copies	Original

- returns documents to party filing *Affidavit*, since party is responsible for serving it.
- See **Serving Court Documents under the AGA** for detailed procedures.

Issuing Process

The procedures for notifying the parties of a **court appearance**, **serving court documents**, and issuing a **Warrant for Arrest** follow.

Notice to Appear

Background

PCAGR r. 2(2), 2(3)

The *Notice to Appear* is used to notify parties regarding the hearing date of an application for an interim restraining order or a restraining order. It is prepared by the designated agency and filed with the *Application*.

PCAGR r. 3(3)

Unless permission is granted to use a different method of service, both the *Notice to Appear* issued under Rule 2(2) or 2(3) and the *Application* must be personally served on the person against whom the order is sought, within 72 hours after filing the *Application*. The designated agency must also have them served on the respondent within this time period, by a person who is at least 19 years of age.

PCRAGR r. 3(5)

The *Notice to Appear* may also be used to notify a respondent who failed to appear at a court hearing, if the judge so orders.

The PCAGR does not specify service requirements in this instance, so direction from the judge must be sought, if not given.

Procedures

- **If a designated agency is applying for an interim restraining order or a restraining order, go to step 1.**
- **If a judge has ordered that a *Notice to Appear* be used to notify a respondent who failed to appear at a court hearing, go to step 2.**

1. If Notice to Appear is filed with Application

If a designated agency is applying for an interim restraining order or a restraining order, the designated agency prepares the *Notice to Appear* (PFA 847) - PCAGR Form 2 (except for the date and time of the hearing) and files it with the court registry together with the *Application to Obtain an Order*.

The clerk:

- determines hearing date and time and enters them on *Notice to Appear*, trial diary and CEIS;
- signs *Notice to Appear*.

Go to step 3.

2. If respondent has failed to appear

If a *Notice to Appear* is being used to notify a respondent who failed to appear at a court hearing, the clerk:

- prepares and signs *Notice to Appear* (PFA 847) – PCAGR Form 2;
- enters date and time of hearing in trial diary and on CEIS.

3. Clerk separates and distributes documents

If the *Notice to Appear* is issued for an application for an interim restraining order or a restraining order, the applicant is responsible for having the document(s) served.

The clerk:

- separates and distributes documents as follows:

Document	Applicant	Court file
<i>Notice to Appear</i>	four copies	Original
<i>Application</i> , if any	four copies	Original

- See **Serving Court Documents Under the AGA** for detailed procedures.

If the *Notice to Appear* was ordered by a judge due to failure of a respondent to appear in court, direction regarding service requirements must be sought from the judge, if not given.

Subpoena to a Witness and Expert Evidence

Background

PCAGR r. 4(3)

A *Subpoena* is issued to compel a witness to attend court and give evidence. The witness must appear in court on the date, time, and place stated on the *Subpoena*, and must bring any documents or other evidence that the *Subpoena* specifies.

To issue a *Subpoena*, a party must do all of the following:

PCAGR r. 4(1)

- complete a *Subpoena*;
- arrange for the *Subpoena* to be personally served on the witness at least seven days before the court date;

PCAGR r. 4(2)

- offer the witness reasonable travel expense money to attend the hearing.



A *Subpoena* does not have to be filed with the court registry. It may be refused or discarded, if received by mail or if a party insists on filing one. The registry may also file the *Subpoena* in the court file, applying local discretion whether to do so.

PCAGR r. 4(5), 4(6)

If a witness has been served and does not obey the *Subpoena*, the judge may issue a *Warrant for Arrest* of the witness. The *Warrant* remains in effect until one of the following:

- the witness appears in court voluntarily or under arrest; or
- a judge cancels the *Warrant*.

PCAGR r. 4(4), 2(14)

The witness named in the *Subpoena* may apply to cancel the *Subpoena*. To do so, the witness must file an *Application for other Orders*, at the court registry where the *Subpoena* was filed, at least two days before the scheduled appearance.

PCAGR r. 2(14)

Although the use of affidavit evidence to support an *Application for other Orders* is optional, it may be helpful for the witness to file an *Affidavit* in this situation.

To cancel the *Subpoena*, a judge must be satisfied that:

PCAGR r. 4(4)

- the person is not needed as a witness;
- appearing in court would be a hardship for the person.

PCAGR r. 5(4)

A party may call an expert witness to give evidence if either of the following occurs:

- the party serves a summary of the expert's evidence on all other parties at least 30 days before the expert is called to give evidence; or
- the judge grants permission.

PCAGR r. 5(5)

An expert's report may be used instead of calling the expert to give evidence, if either of the following occurs:

- the party provides a copy of the report to all parties at least 30 days before the report is introduced; or
- the judge grants permission.

PCAGR r. 5(9)

If a party wants to cross-examine the other party's expert, at least 14 days before the trial date, the party requesting the cross-examination must prepare and serve the other party with a notice requiring the expert to attend the trial.

Warrant for Arrest

Background

A *Warrant for Arrest* gives a peace officer the legal authority to take the person named in the *Warrant* into custody.

A judge may issue a *Warrant for Arrest* of a respondent or witness when:

PCAGR r. 3(5)

- a respondent has been personally served with a *Notice to Appear* and does not appear in court;
- a respondent has been present in court when the judge set another court date and does not appear at that court date;

PCAGR r. 4(5)

- a witness has been served with a *Subpoena* and does not appear in court.

PCAGR r. 3(6), 4,(6)

A *Warrant for Arrest* remains in effect until

- the person named in the *Warrant* appears in court, either voluntarily or under arrest; or
- a judge (or a justice, in the case of a respondent) cancels the *Warrant*.

Procedures

1. Judge issues Warrant for Arrest

The clerk:

- prepares *Warrant for Arrest* (PFA 848) – PCAGR Form 7;
- presents *Warrant for Arrest* to judge for signature.



A court clerk or justice of the peace may sign on behalf of the judge.

2. Clerk separates and distributes document

The clerk:

- separates and distributes document as follows:

Document	Police	Court File
<i>Warrant for Arrest</i>	Original and copy	Copy

- enters *Warrant for Arrest* in Warrant log, if applicable;
- enters *Warrant* on CEIS.
- **If respondent or witness is arrested and is released**, see **Release of a Respondent or Witness** for detailed procedures.
- **If a witness is arrested and ordered to be detained in custody**, see **Warrant for Committal of a Witness** for detailed procedures.
- **If judge or justice cancels *Warrant***, see **Warrant Cancellation** for detailed procedures.

Release of a Respondent or Witness

Background

PCAGR r. 3(7), 3(8)

When a respondent is arrested, the respondent is brought before a **judge or justice of the peace**.

Note: The Office of the Chief Judge has authorized all justices of the peace, including Court Services Branch justices of the peace, to release a respondent under Rule 3(8). All justices of the peace are also authorized to grant adjournments.

PCAGR r. 4(7), 4(8)

The judge or justice of the peace issues a *Release* form requiring the respondent to appear in court at the date, time, and place specified.

When a witness is arrested, the witness is brought before a **judge**. The judge may issue a *Release* requiring the witness to appear in court on the date, time, and place specified, or may order that the witness be detained in custody until his or her presence is no longer required. **Only a witness, not a party**, may be detained in custody.

Procedures

- If respondent or witness is released at this court location, go to step 1.
- If respondent or witness is released at another location or police station, go to step 3.

1. Release is prepared at this court location

The clerk:

- prepares *Release* (PFA 849) – PCAGR Form 8 if respondent or witness is brought before Court;
- if it is a respondent, presents prepared *Release* to judge or justice of the peace for signature (Respondent must sign *Release* in presence of judge or justice of the peace.);
- if it is a witness, presents prepared *Release* to judge (Witness must sign *Release* in presence of judge.);
- notifies designated agency of release date
- enters new hearing date on CEIS.



If a witness is released, the respondent must also be notified.

2. Clerk separates and distributes document

The clerk:

- separates and distributes document as follows:

Document	Person being released	Court file
<i>Release</i>	Copy	Original

- notifies police if applicable.
- See **Warrant Cancellation** for detailed procedures.

3. Release is received from another location or police station

If a respondent or witness has been brought before a judge or justice of the peace at another location, or at a police station, the registry that issued the warrant may not be aware of the release until it receives a copy of the *Release*. After receiving a *Release* from another location, the clerk:

- enters next court appearance date (recorded on the *Release*) in the trial diary and on CEIS ;
 - notifies designated agency of next court appearance date;
 - if original *Warrant for Arrest* was not returned with the *Release*, ensures a *Warrant Cancellation* slip has been completed.
- See Warrant Cancellation for detailed procedures.

Warrant for Committal of a Witness

Background

PCAGR r. 4(8)

If a witness has been arrested for failing to appear in court, a judge may either release the witness (with or without conditions) or may order that the witness be held in custody.

If a witness is to be held in custody until a future court appearance, the judge issues a *Warrant for Committal of a Witness*.

Procedures

1. Clerk prepares Warrant for Committal of a Witness

The clerk:

- prepares a *Warrant for Committal of a Witness* (PFA 801) which specifies that the witness is remanded to a court date (generally, this will be the date when the witness is required to testify);
- presents *Warrant for Committal of a Witness* to judge for signature.



A court clerk or justice of the peace may sign on behalf of the judge.

2. Clerk separates and distributes document

The clerk:

- separates and distributes document as follows:

Document	Sheriff or peace officer	Court file
<i>Warrant for Committal of a Witness</i>	Original and copy	Copy

Warrant Cancellation

Background

A respondent or a witness against whom a *Warrant for Arrest* has been issued may appear voluntarily at a court location after the *Warrant* has been sent to the police. If the respondent has appeared in court, the judge may cancel the warrant.

A warrant remains in force until:

PCAGR r. 3(6), 4(6)

- respondent or witness appears voluntarily or under the warrant;
- a justice cancels the warrant (if a party); and
- a judge cancels the warrant (if a witness).

Procedures

1. A Warrant for Arrest Has Been Cancelled

Upon receipt of a judge's or JP's instructions to cancel a warrant, the clerk:

- completes and signs *Warrant Cancellation* (ADM 307);
- telephones police to notify them that *Warrant for Arrest* is to be cancelled;
- records the details of the conversation (name of person called, date and time of call) on *Warrant Cancellation*;
- distributes *Warrant Cancellation* as follows:

Document	Police	Court file
<i>Warrant Cancellation</i>	Original	Copy

Serving Court Documents under the AGA

Background

The *Provincial Court (Adult Guardianship) Rule 7* sets out service requirements and how to prove service for documents issued under the AGA. Subrule 5 of the PCAGR states how documents are to be served on:

PCAGR r. 7(5)

- a. an individual
- b. a designated agency
- c. a society
- d. any other person, including the Public Guardian and Trustee

Depending on who is being served, documents may be served personally, by registered mail, or by facsimile transmission.

PCAGR

- an alternate method of service ordered by a judge.
- **Exceptions:** These service methods do not apply to the notice to appear, application for an interim restraining order or restraining order, and subpoena. See the following topics in this chapter for the appropriate information: **Notice to Appear**, **Application to Obtain an Order**, **Subpoena to a Witness and Expert Evidence**.

Parties should be informed of their obligation to serve or arrange service of their own documents by another person.

PCAGR r. 7(8)

If a document cannot be served as provided in the PCAGR, or if the person to be served is temporarily outside BC, a party may apply to a judge for an alternate method of service. The judge may permit another method of service and direct how service is to be proved.

PCAGR r. 2(9), 2(10)

If a party is not able to serve a document in time, the party may apply to the court for an order to extend the time limit.

PCAGR r. 9(3)

A judge may waive or modify a period of time for doing anything required under the PCAGR, even though the time limit has expired.

Appearance in court by a party proves the party received notice of the court proceeding. Appearance generally eliminates the need to submit proof of service. There may still be a need to prove receipt of any additional documents required to be served, if directed by the judge.

PCAGR r. 7(9)

Service of a document can be proved by preparing and filing a *Certificate of Service*.

PCAGR r. 7(10)

A judge may require that a copy of the served document be attached to the *Certificate of Service*.

PCAGR r. 7(9)

To prove personal service on a lawyer, it is sufficient to file a copy of the document that has been signed by the lawyer, an articling student, partner or employee of the law firm.

PCAGR r. 7(11)

A judge or registrar may allow a person to prove by oral evidence that the person has personally served a document.

Methods of proving service are specific to each method of serving documents and the type of recipient. These are described in the following pages.

Service by Registered Mail

Background

Registered mail may be used by parties to serve documents and may also be used by the registry to send the *Notice to Appear*. The registry will normally only use registered mail if directed by a judge to do so, as there is a \$5.00 charge for obtaining a signature copy to prove service.

PCAGR r. 7(6)

A party may use registered mail to serve any document other than a notice to appear, subpoena, or application to obtain an interim restraining order or restraining order.

Service by registered mail may be proved by filing a *Certificate of Service* and attaching to it a copy of the document and either of the following:

PCAGR r. 7(9)

- the signature copy obtained by Canada Post when delivered; or
- a print-out of the delivery confirmation made available on the Internet by Canada Post.

Attempted service may be proved by filing an envelope, returned by Canada Post unopened, that contains a copy of the document, stamped (or with a card stamped) with *Address Unknown, Unclaimed, Refused*, or any other writing indicating that service has been attempted at the party's address for service.

Procedures

- If registry is arranging service by registered mail go to step 1.
- If party is arranging service by registered mail go to step 4.

1. Registry serves documents by registered mail

The clerk:

- prepares an envelope with correct address information;
- places documents to be served in envelope;
- arranges for registered mail of the documents, according to House Mail or Canada Post procedures, as applicable in the location.
- If registry receives a signature copy from Canada Post, go to step 2.



A signature copy is requested by telephoning 1-888-550-6333 and paying a \$5.00 fee.

- If registry receives unserved envelope from Canada Post, go to step 3.

2. If registry receives signature copy from Canada Post

The clerk:

- prepares *Certificate of Service* (PFA 853) – PCAGR Form 12;
- attaches signature copy to *Certificate*.

3. If registry receives unserved document before court date

To be valid proof of service, the returned document must remain in its unopened envelope and be stamped *Address Unknown, Unclaimed, Refused*, or have any other writing on it indicating that service has been attempted to the address shown.

The clerk:

- files returned envelope.

4. Party arranges service by registered mail

A party arranging service by registered mail is responsible to:

- make arrangements with registry for pick-up of documents;
 - know proper procedures and timelines for type of document to be served;
 - make arrangements to send document by registered mail;
 - pay cost of serving document;
 - prove service by filing a *Certificate of Service* (PFA 853) – PCAGR Form 12 with signature copy attached or returned document, or by presenting documents in court.
- **If party files proof that the service was successful, go to step 5.**
 - **If party files returned documents, indicating that service was not successful, go to step 6.**

5. If registry receives proof that service is successful

The party submits:

- *Certificate of Service* (PFA 853) – PCAGR Form 12;
- Signature copy received from Canada Post.

The clerk:

- checks that:
 - server has completed and signed *Certificate of Service*;
 - signature copy is attached;
- files *Certificate of Service* by date-stamping.
- **See Hearing of Application for detailed procedures.**

6. If registry receives unserved documents returned by Canada Post

The party submits:

- unopened envelope returned by Canada Post.
- **If party applies for permission to use another method of service, see Application for other Orders for detailed procedures.**
- **If the party wishes to arrange for personal service, see Personal Service for detailed procedures.**

Personal Service by Party

Background

PCAGR r. 7(5), 7(7), 3(3), 4(1)

Personal service is mandatory for the notice to appear, subpoena, and application for an interim restraining order or restraining order. It is optional for other documents that parties are required to serve.

A party may personally serve documents themselves or may choose to arrange for another adult to serve the documents on their behalf, because there is no provision in the PCAGR that limits these options.

PCAGR r. 7(9), 7(11)

Personal service by the applicant may be proved:

- by filing a *Certificate of Personal Service* with the registry;
- other evidence that the judge may consider appropriate, including oral evidence;

PCAGR r. 7(9)

- for personal service on a party's lawyer, a copy of the document that has been signed by the lawyer, an articulated student, partner or employee of the law firm.

If the person to be served refuses to accept the document, the party should indicate on the *Certificate of Service* that:

"The person whose name is on this document refused service, and I dropped the document in front of _____ (*name of person*)."

Procedures

1. Party serves documents

A party who will be serving their own documents is responsible to:

- make arrangement with registry for pick-up of documents;
- know proper procedures and timelines for type of document to be served;
- prove service by filing a *Certificate of Service* (PFA 853) – PCAGR Form 12 by stating the type of service.
- for personal service on a party's lawyer, a copy of the document that has been signed by the lawyer, an articulated student, partner or employee of the law firm.
- **If party files proof that service is successful, go to step 2.**

- If service is not successful, see Attempted service for detailed procedures.

2. Registry receives proof that service is successful

The party submits:

- *Certificate of Service* (PFA 853) – PCAGR Form 12.

The clerk:

- files *Certificate of Service* by date-stamping;
- See Hearing of Application for detailed procedures.

Personal Service by Adult other than Applicant

Background

A party may have an adult other than him or herself serve a document. A process server may be used for this purpose. (Process servers are listed in the yellow pages of the telephone directory). If a party uses a process server, the party must make the arrangements and pay the costs.

PCAGR r. 7(5), 7(8), 7(11)

Personal service by an adult other than the applicant may be proved:

- by filing a *Certificate of Service* with the court registry;
- other evidence that the judge may consider appropriate, including oral evidence.

PCAGR r. 7(9)

- for personal service on a party's lawyer, a copy of the document that has been signed by the lawyer, an articulated student, partner or employee of the law firm.

If the person to be served refuses to accept the document, the party should indicate on the *Certificate of Service* that:

"The person whose name is on this document refused service, and I dropped the document in front of _____ (*name of person*)."

Procedures

1. Party arranges personal service by another adult

A party who arranges personal service by another adult is responsible to:

- make arrangements with registry for pick-up of documents;
 - know proper procedures and timelines for type of document to be served;
 - prove service by filing a *Certificate of Service* (PFA 853) – PCAGR Form 12 by stating the type of service; or
 - for personal service on a party's lawyer, a copy of the document that has been signed by the lawyer, an articulated student, partner or employee of the law firm.
- **If party files proof that service is successful, go to step 2.**
 - **If service is not successful, see Attempted Service for detailed procedures.**

2. If registry receives proof that service is successful

The server submits:

- *Certificate of Service* (PFA 853) – PCAGR Form 12.

The clerk:

- files *Certificate* by date-stamping.
- See Hearing of Application for detailed procedures.

Alternate Methods of Service

Background

PCAGR r. 7(8)

When a document cannot be served as required by the *Provincial Court (Adult Guardianship) Rules*, or the party to be served is temporarily outside BC, a party may apply to the court for permission to use an alternate method of service (sometimes called **substitutional service**).

PCAGR r. 2(10), 7(8)

To apply for an alternate method of service the party must file an *Application for Other Orders* and an *Affidavit*. After hearing the matter, the judge may:

- permit another method of service to be used;
- direct how the party must prove the document has been served.

Service by an alternate method may be proved by filing a *Certificate of Service*.

Procedures

1. Judge orders alternate method of service

The clerk:

- enters judge's disposition on CEIS;
 - if party who requested order was not represented by counsel, prepares *Order* (PFA 856) – PCAGR Form 17;
 - if party who requested the order was represented by counsel, checks order prepared by counsel when submitted.
- See **Court Order and Protection Order** in this chapter for procedures

2. If registry receives proof that service is successful

The party submits:

- *Certificate of Service* (PFA 853) – PCAGR Form 12.

The clerk:

- files proof of service document by date-stamping.
- See **Hearing of Application** for detailed procedures.

Attempted Service

Procedures

1. Unserved service package is returned to registry

The server submits:

- returned service package.

The clerk:

- asks the server why the documents could not be served, and makes a note on the service package unless a note is already attached;
 - does not take the matter off court list.
- **If party to be served appears to be evading service, go to step 2.**
- **If party to be served could not be served at address provided, go to step 3.**

- If party to be served no longer resides in BC, go to step 4.

2. If party to be served appears to be evading service

The designated agency decides whether to apply for permission to use another service method. **Do not** take case off the court list.

- If designated agency applies for permission to use an alternate method of service, see Application for other Orders for detailed procedures.

3. If party could not be served at address provided

The clerk:

- places returned documents in court file.
- If designated agency wishes to apply for permission to use an alternate method of service, see Application for other Orders for detailed procedures.

4. If party no longer resides in BC

- If designated agency wishes to apply for permission to use an alternate method of service, see Application for other Orders for detailed procedures.

Service by Fax

Background

PCAGR r. 7(5)

All documents other than the notice to appear, application for an interim restraining order or restraining order, and subpoena may be served by fax if the recipient's address for service includes a fax number. If an individual is represented by a lawyer, the lawyer may be faxed.

Procedures

1. If registry serves documents by fax

The clerk:

- faxes documents, using *Fax Cover Page* (PFA 852) – PCAGR Form 11.

See Hearing of Application for detailed procedures.

2. If a party serves documents by fax

A party serving documents by fax is responsible to:

- make arrangements with registry for pickup of documents;
- know proper procedures and timelines for type of document to be served;
- make arrangements to send documents by fax, including using *Fax Cover Page* (PFA 852);
- prove service by fax by filing a *Certificate of Service* (PFA 853) – PCAGR Form 12
- See **Hearing of Application** for detailed procedures

Hearing of Application

Background

PCAGR r. 2(12), 2(13), 3(1)

If matters are not resolved by consent, or if the judge wishes the parties to be present before granting a consent order, a hearing date is set. At the hearing the judge may make an order or dismiss the application. The judge may also make orders on a number of secondary issues, including *Applications for Other Orders* that have been filed by the parties.

PCAGR r. 5(1), 6(4)

Evidence may be given at the hearing orally, or by affidavit or by a statement of facts agreed to by the parties, unless the judge orders otherwise. A party wishing to give evidence by affidavit must file it with the court registry and serve a copy on the other party at least seven days before the court date.

PCAGR r. 3(4)

A judge's options at the first appearance or any subsequent appearance include one or more of the following:

- Ordering production of documents to the other party;
- Hearing evidence and making the order sought in the application:
 - A consent order;
 - An access order, for a person from the designated agency to enter premises to interview the adult, or for a health care provider to enter premises to examine the adult;
 - A support and assistance order, which may include an order for maintenance of the adult, for a period of up to six months;
 - An interim restraining order, for a period of up to 30 days;
 - A restraining order, for a period of up to six months;
 - A variation order;
 - An order on procedural matters, such as to lengthen a time period or to modify service requirements;

- A renewal order for a further period of up to six months.
- Any other order or direction that the judge considers appropriate.

If the respondent does not appear in court as directed by a judge or as specified on a document that was served, the judge's options include:

PCAGR r. 3(5)

- Making the order sought in the application;
- Adjourning the hearing and issuing a notice to appear to be served on the respondent;
- Issuing a warrant for arrest (if the respondent has already been served with a *Notice to Appear* or was present in court when the appearance date was set).

PCAGR r. 9(1)

Whether or not the parties consent, a judge may adjourn a hearing to a specific date or without specifying a date.

PCAGR r. 9(2)

A hearing may be adjourned only with the permission of a judge.

Some judges may be willing to entertain a chambers application for a consent adjournment, but granting such an application is always at the judge's discretion. Consequently, some judges may require a hearing in court to determine a consent application for an adjournment.

Procedures

- **If first appearance is adjourned to another date, go to step 1.**
- **If warrant for arrest is issued, go to step 2.**
- **If application is dismissed, go to step 3.**
- **If an order is made, go to step 4.**

1. If first appearance is adjourned to another date

The clerk:

- enters the new date on CEIS;
- notifies the designated agency of the new date, unless the date was set in the courtroom;
- prepares a *Notice to Appear* (PFA 847) – PCAGR Form 2, to be served on the respondent by the designated agency unless the judge specifies otherwise.

See **Notice to Appear** in this chapter for detailed procedures.

2. If a warrant for arrest is issued

The clerk:

- enters the disposition on CEIS;
- prepares a *Warrant for Arrest* (PFA 848) – PCAGR Form 7.

See **Warrant for Arrest** in this chapter for detailed procedures.

3. If application is dismissed

The clerk:

- enters the disposition on CEIS.

The registry will not schedule another appearance on the application at the applicant's request. To bring the matter back to court a new application would have to be filed.

- **If party files new application**, see **Starting the Process** in this chapter for detailed procedures.

4. If an order is made

The clerk:

- enters the disposition on CEIS;
- prepares the order if the applicant is not represented by counsel (otherwise, counsel prepares the order).

See **Court Order and Protection Order** in this chapter for detailed business procedures.

Court Order and Protection Order

Background

An **order** is a judgement or direction that a judge gives during or at the end of a court proceeding.

A **protection order** is an order containing a condition that affords safety and security to a specified (named) person or persons. Orders must contain a no contact, limited contact, or other protective condition to be considered protection orders. Inclusion of a condition that protects non-personal objects such as property or assets, or that protects the community in general, does **not** make an order a protection order. An order whose only condition is to “keep the peace and be of good behaviour” is not a protection order. Protection order policy and

procedures are necessary to improve public safety by ensuring that the Protection Order Registry is informed of all relevant protection orders that are in effect, and therefore that police have access to these orders.

There are **two types of protection orders** that may be made under the *Adult Guardianship Act*, in conjunction with an application for support and assistance:

AGA s. 51(1)(e)

- An interim restraining order under s. 51(1)(e) AGA, which may be made after the designated agency has conducted an investigation but before a support and assistance plan is filed;

AGA s.56(3)

- A restraining order under s. 56(3) AGA, which may be made at the hearing of the application for the provision of services to the adult (which takes place after a support and assistance plan is filed).

An interim restraining order or restraining order may contain provisions that a person:

- Stop residing at and stay away from the premises where the adult lives, unless the person is the owner or lessee of the premises;
- Not visit, communicate with, harass or interfere with the adult;
- Not have any contact or association with the adult or the adult's assets, business or financial affairs;
- Comply with any other restriction of relations with the adult.

PCAGR r. 8(1)

An order (including an interim restraining order or a restraining order) takes effect on the date that the judge makes it, unless the judge orders otherwise.

AGA s. 56(7), 57(4)

A support and assistance order or a restraining order terminates six months after it is made or on an earlier date specified by the court. It may be renewed for a further period of up to six months if the judge is satisfied that the adult still needs the support and assistance.

PCAGR r. 8(4), 8(5)

The applicant must prepare the order unless:

- the judge orders otherwise; or
- the order is made under AGA s. 58 (review of a restraining order), and the applicant is not represented by a lawyer, in which case the court registry prepares the order.

PCAGR r. 8(3)

It is not permissible to file a single order document incorporating both a protection order and other relief, as they must be prepared as separate documents.

PCAGR r. 8(6)

If the order is prepared by counsel, it must be approved and signed:

- by the counsel who prepared it;
- if any other party is represented by counsel, by the other party's counsel.

Only counsel are required to approve and sign orders before they are filed. Self-represented parties are never required to sign orders before filing unless the judge has expressly made an order that they must do so. It is never necessary for a court clerk to seek a judge's permission to dispense with a requirement that a self-represented party approve and sign an order.

The only exception to this rule is consent orders made under Rule 2(12) PCAGR. In this case the parties themselves or their lawyers must approve and sign the draft *Consent Order* before it is filed.

PCAGR 8(7)

If the parties dispute the terms of an order, a party may apply to the Court to settle the terms.

PCAGR r. 8(8)

Once the order is approved and signed by counsel, it must be delivered to the court registry to be signed by the judge and filed with the court. The party who prepared the order must also deliver for filing any document that a judge requires to be filed with the order, or the order ceases to have effect.

PCAGR r. 8(2)

If a clerical error, or a mistake rising from an accidental slip or omission, has been made in an order, the correction may be made at any time by recording the correction on the original of the order, and having it initialled by the judge. It is unnecessary to redraft the order unless directed to do so by the judge. There is no need for parties to appear in court to correct a clerical error.

PCAGR r. 8(9)

A clerk must provide a signed and filed copy of the order to the parties or their lawyers unless the judge orders otherwise.

In a case where a support and assistance order is to be reviewed by the court later, the designated agency (not the court registry) is responsible for rescheduling a hearing, unless the judge orders otherwise.

The **Protection Order Registry** is part of the Security Programs Division of the Public Safety and Regulatory Branch of the Ministry. Information registered with the Protection Order Registry is used by their staff to answer telephoned inquiries from police and others regarding the status and contents of protection orders. Police immediately have information with which to enforce breaches of protection orders.

A clerk must fax the interim restraining order or restraining order to the Protection Order Registry on the same day as the order is signed by the Judge and date-stamped as entered. As an alternative to faxing, registries capable of forwarding orders by other electronic means may do so if arrangements have been made with Security Programs Division to do so.



It may not be possible, in some instances, for circuit courts or court locations staffed by one person to fax the order until the day after it is made. Only under rare circumstances should a delay exceed one working day after the protection order is made.

In the courtroom, court clerks must clearly flag files that contain protection orders, including recording the date of issuance, and/or must enter protection orders on the concluded court lists. They must also record the protection order on the minute sheet or clerk's notes. In order to maintain an audit trail, a control log system must keep track of all protection orders made, and whether they have been faxed to the Protection Order Registry.

When a file is transferred, the sending location must notify the receiving location that it contains an outstanding protection order that has been sent to the Protection Order Registry. If a protection order is made after a file has been transferred, the receiving location must notify the originating location that the protection order has been faxed to the Protection Order Registry.

Procedures

1. Clerk prepares or checks Court Order



Procedures in this section apply to all types of orders, including interim restraining orders and restraining orders, unless otherwise noted.

If the party in whose favour the order is made is represented by counsel, counsel prepares the order, unless a judge otherwise orders. If the party in whose favour the order is made is not represented by counsel, the clerk prepares the order.

The clerk:

- checks the prepared order or prepares the order, ensuring that, Court file number and court location are correct;
- checks that the name of judge is correct;
- checks that the date of order is date matter was before court;
- checks that the names of parties, counsel, and other persons are correct;
- checks that the adult's date of birth on an interim restraining order or restraining order corresponds to that written on application submitted, unless date has been corrected in court;
- checks that the terms of order are correct and do not exceed those made in court. (If order prepared by counsel is not correct, clerk sends it back to counsel to make any corrections, keeping copy in court file with note explaining why order was sent back);
- if order is Consent Order (PFA 846) – PCAGR Form 6, order is signed by both parties or their counsel;
- if order is prepared by counsel, it must be signed as approved by counsel for the other party, if any;
- initials order as being checked;
- presents order to judge for signature.

2. Clerk separates and distributes document

After the order has been signed by the judge, the clerk distributes the documents as follows:

Document	Party filing application or counsel	Other party or counsel	Court file
Court Order (includes all types)	Copy	Copy	Original

If a support and assistance order includes a maintenance order, the clerk:

- encloses a Family Maintenance Enforcement Program general information brochure with copy of *Support and Assistance Order* sent to the designated agency.
- **If parties dispute terms of order**, they may apply to settle terms of the order. See **Applications for other Orders** in this chapter for additional business procedures.
- **If party applies to change or cancel order**, see **Application to Renew, Change or Cancel an Order** in this chapter for additional business procedures.

- **If party appeals order**, see **Appeal** procedures in this chapter for additional business procedures.

3. If Order is a Restraining Order

If the order is one of the following types of protection orders:

- an interim restraining order under s. 51(1)(e) AGA;
- a restraining order under s. 56(3) AGA.

the following procedures apply, in addition to those in steps 1 and 2 above.

Unless the judge has ordered otherwise, the designated agency prepares and files:

- *Interim Restraining Order or Restraining Order* (PFA 855) – PCAGR Form 14.



The exception is if the applicant is the person who is subject to the restraining order and has successfully obtained an order varying the original restraining order. In this case, the court registry prepares the order.

After receiving the protection order, the clerk:

- checks the protection order (unless it was signed in court) to ensure that it agrees with the minute sheet or clerk's notes.



a separate restraining order must be prepared using the form prescribed in the PCAGR, such as PFA 855 or an automated form macro that complies with the prescribed form. It may not be combined in the same document with other orders.

- if the protection order has been filed (ideally this should be on the same day as the hearing), obtains the judge's signature on the protection order on the day it is filed (unless the order was signed in court) and date-stamps the order as entered;
- if a protection order is being ended or varied, makes a photocopy of the original order, draws a line across the copy, or the varied portion of the order, and records the date and a notation along the line to indicate that the order has been ended or varied. If a protection order is varied, a new order may be drafted to reflect the revised conditions, instead of endorsing the change on the original order;
- on the day of the hearing, faxes copies of the following documents to the Protection Order Registry:

○ s.15

○

- if any of these is available, enclosing the following:
 - *Control Log/Fax Cover Sheet*(PCR 820);
 - Backing sheet (or name of counsel recorded on the *Control Log/Fax Cover Sheet* in the comments column) if date(s) of birth are not included on the order.
- records “POR” on the protection order, or varied/ended protection order, to indicate that it has been faxed;
- records on the *Control Log/Fax Cover Sheet* that the fax has been sent (including date and clerk’s initials);
- makes a copy of the protection order and attaches it to the *Control Log/Fax Cover Sheet*, to await confirmation from the Protection Order Registry;
- files original of order in court file.

Staff at the Protection Order Registry will receive the fax, confirm receipt of each order, initial the *Control Log/Fax Cover Sheet* beside each entry, and fax the *Control Log/Fax Cover Sheet* back to the originating registry.

After the Protection Order Registry faxes back an initialed copy of the *Control Log/Fax Cover Sheet*, the clerk:

- checks to see if any of the entries on the *Control Log/Fax Cover Sheet* have not been initialed by Security Programs Division staff;
- re-sends any order if necessary;
- endorses the *Control Log/Fax Cover Sheet* by initialling the “Confirmed by POR/PFR” column for each item that Security Programs Division has initialed;
- destroys the original (registry copy) of the *Control Log/Fax Cover Sheet* and copy of each order where confirmation has been received;
- files SPD copy of *Control Log/Fax Cover Sheet* in a separate filing system OR re-use it to add and fax more orders until the form is full, before filing the *Control Log/Fax Cover Sheet*.

The Supervisor reconciles:

- *Control Log/Fax Cover Sheet* against the completed courtlist on the next working day after the hearing to ensure that all protection orders have been entered on the *Control Log/Fax Cover Sheet*, as follows:
 - reviews court lists to identify all protection orders that have been made, varied or ended;
 - reconciles court lists to *Control Log/Fax Cover Sheets* to ensure that all protection orders have been listed and faxed;
 - enters initials on *Control Log/Fax Cover Sheet*;
 - files completed *Control Log/Fax Cover Sheets* in a separate filing system.

The Manager/Court Administrator:

- ensures that all Control Logs/Fax Cover Sheets are monitored to ensure completeness;
- ensures completed Control Log/Fax Cover Sheets are retained for review purposes in a separate filing system.

In instances where a restraining order may be incorporated in a reserved judgement, it is not possible to record the order on the concluded court list and there will be no record to check the *Control Log/Fax Cover Sheet* against. In-court procedures will not apply.

The clerk will:

- read every reserved Reasons for Judgment with care, to determine whether it contains a protection order;
- follow the post-court procedures;
- excluding reconciling the *Control Log/Fax Cover Sheet*.

When a hearing where a protection order is issued takes place at a location other than where the court file resides, the clerk in the host court location where the protection order is made will:

- be responsible for faxing the protection order to the Protection Order Registry;
- return the file documents to the originating location with a clear notation that the protection order was made and sent to the Protection Order Registry.

Where a case containing a protection order has been transferred to another court location, the originating registry will ensure the file transfer memo indicates that there is a protection order on the file.

- **If a party requests registration on the Protection Order Registry of a BC protection order which has not been automatically registered, go to step 4.**

4. If BC protection order has not been automatically registered:

If a person requests registration on the Protection Order Registry of a BC Provincial Court protection order (or order changing or cancelling a protection order) which was not automatically registered, it is necessary for the person to either identify the restraining order to be registered, if it is already filed with that registry, or file a copy of the restraining order to be registered, if the order was obtained elsewhere in British Columbia. The clerk:

- asks party whether it is the most recent active restraining order;
- checks file for more recent orders.

If there is no indication that there is a more recent active restraining order, the clerk:

- records the order on a *Control Log/Fax Cover Sheet* faxes the restraining order and *Control Log/Fax Cover Sheet* to the Protection Order Registry, following the usual procedures for faxing and confirming receipt by the Protection Order Registry, and other follow-up procedures.

Appeal

Background

AGA s. 60(1), 60(2)

A party, who feels that the Provincial Court made an incorrect or unfair order, may appeal the matter to the Supreme Court within 40 days.

AGA s. 60(3)

An appeal is brought by filing a notice of appeal in a Supreme Court registry and serving a copy of the notice of appeal on the parties to the Provincial Court proceeding.

AGA s. 60(5)

While the order made under the AGA is under appeal, its effect is suspended.

Procedures

1. Court registry receives Notice of Appeal

When the Provincial Court registry receives a *Notice of Appeal form letter* (SUP 812) from the Supreme Court, the clerk:

- sends to the Supreme Court;
 - the entire Provincial Court file, unless certain documents are specified in the form letter (Exception: the Provincial Court should retain the original documents for any application that has not yet been disposed, and send photocopies of these documents to the Supreme Court);
 - any transcripts on file.



It is the responsibility of the party who filed the appeal to order the necessary transcripts.

- advises Exhibit Clerk to arrange for transfer of any exhibits stored outside the court file that were entered at a hearing that led to the order being appealed;
- sends copy of *Notice of Appeal* to Provincial Court judge who made order.
- **If Supreme Court remits matter back to Provincial court, go to step 2.**

2. If Supreme Court remits matter back to Provincial Court

The Supreme Court submits:

- copy of Remittal Order to Provincial Court;
- returns all documents and exhibits back to Provincial Court.

The clerk:

- files Remittal Order by date-stamping;
- sets hearing date;
- records hearing date in trial diary and enters it on CEIS;
- returns documents to court file and exhibits (if any) to Exhibit Clerk.
- See **Notice of Appearance** for additional business procedures in this chapter for additional business procedures.

Chapter 9 - Protection Orders, Restraining Orders and Protective Intervention Orders

Protection Orders



Please read this important [CEImails](#) regarding Protection Order policy and procedures

Background

A "**protection order**" is an order containing a condition that affords safety and security to a specified person or persons. It must include a provision that restricts the activities of a party to prevent harassment, harm, or communication with another person. Orders must be made under s. 183 of the FLA to be called a protection order under the FLA. Protection or restraining orders may also be made in family court under the *Child Family and Community Service Act*, the *Family Maintenance Enforcement Act* and the *Adult Guardianship Act*.

A protection order must be made, varied or cancelled on one of the following forms in Provincial Family Court:

1. Protection Order ([PCFR Form 13 PFA 737](#))
2. Order Terminating a Protection Order ([PCFR Form 14 PFA 738](#))
3. Protection Order ([PC\(CFCSA\) Form 10.1](#))
4. Restraining Order ([PCFR Form 37 PFA 756](#))
5. Restraining Order ([PCAGR Form 14 PFA 855](#))

To ensure there is a consistent and effective approach in cases where safety is at risk, breaches of protection orders under the *Family Law Act* and the *Child, Family and Community Services Act* can be pursued as a criminal offence.

There are various types of protection orders that may be made in Provincial Family Court:

Family Law Act

- A protection order under s. 183 of the *Family Law Act*, will limit contact and communication between family members in circumstances where there is a safety risk.
- Part 9 of the *Family Law Act* (FLA) deals with protection from family violence. An application for a protection order can be made by a family member, who is defined as:
 - a. The person's spouse or former spouse;
 - b. A person with whom the person is living, or has lived, in a marriage-like relationship;
 - c. A parent or guardian of the person's child;
 - d. A person who lives with, and is related to;
 - The person, or
 - A person referred to in any of paragraphs (a) to (c); or
 - e. the person's child,

and includes a child who is living with, or whose parent or gPSuardian is, a person referred to in any of paragraphs (a) to (e).



Registry staff should accept any application for protection order for filing. It will be up to the Court to determine if the person meets the definition of a family member under the FLA.

- These orders would be made on the Protection Order (PCFR Form 13 (PFA 737)).
- S. 183 (3)(a)(iv) of the *Family Law Act* further allows the court to make an order restraining a family member from possessing a weapon or firearm. In the event such an order is made, it will be a term included on the protection order form.
- In addition to transmitting the protection order to the Protection Order Registry, if a CFC condition is made, the term must be clearly marked and sent to the CFC. When an order is varied or cancelled, an Order Terminating a Protection Order (PCFR Form 14 (PFA 738)) must be made and sent to the protection order registry.

Enforcement of FLA Protection Orders

- If no expiry date is ordered in relation to a protection order, the order expires one year after the date it is made.
- Any police officer, having reasonable and probable grounds to believe that the person against whom the order is made has contravened a term of the order, may take action to enforce the order, whether or not there is proof that the order has been served on the person under s. 188(2) of the FLA.
- Enforcement action may include arresting the person against whom the order is made.
- The person against whom the order is made can be charged under s. 127 of the *Criminal Code* with disobeying a court order if they breach the terms of the order.
- In order to prosecute an offender for breach of the protection order, Crown must be able to prove that the accused knew about the order.

Service of FLA Protection Orders (see workflow, process servers service flowchart)

- Protection orders should be personally served.
- CSB will facilitate service of all FLA protection orders, on behalf of the applicant, where the following apply:
 - the order is made or varied without the restrained party present in court;
 - service can be affected within BC;
 - a subservice order was not granted by the Court.
- Mutual protection orders are included if the protection order was made without one of the restrained parties present in court.
- Varied protection orders are also included if made without the respondent present in court.
- Ended/cancelled protection orders are not protective orders on their own and are, therefore, not required to be served by a process server.
- For service of FLA Protection Orders issued after hours through the Justice Centre, please see the Provincial Court Practice Direction.

- The contracted process server distributes the protection orders to process servers throughout the province, including sub-contractors, as required.
- The process server will make the first attempt to serve the protection order within 24 hours of receiving it. There are no timelines for further attempts; however, it is expected that further attempts will take place within 5 days after the first attempt.
- Upon successful service, the Affidavit of Personal Service of Protection Order (Form 49) (PFA 766), as required under PCFR 183(2)(b), should be completed and filed. If the protection order is served by a peace officer, including a sheriff, a Certificate of Service (PCFR Form 7 (PFA714) may be completed and filed.

Family Maintenance Enforcement Act

- A restraining order under s. 46 of the *Family Maintenance Enforcement Act*, in circumstances where there are maintenance enforcement proceedings.
- These would be made on the Restraining Order under the FMEA (PCFR Form 37 PFA 756).
- An order may be made restraining harassment against the creditor, the Director of Maintenance Enforcement, or the Directors employee.

Child Family and Community Service Act

- A protective intervention order under s. 28 of the *Child, Family and Community Service Act*, if there are reasonable grounds to believe that contact between the child and another person would cause the child to need protection under section 13 (1) (a) to (e) CFCSA.
- A restraining order under s. 98 of the *Child, Family and Community Service Act*; if there are reasonable grounds to believe that a person is likely to exploit, abuse or intimidate any of the following:
 - a child in care;
 - a child in the custody of a person under a temporary custody order;
 - a youth who has made an agreement with a director under section 9 CFCSA.
- The CFCSA s.28 Protective Intervention Order and s. 98 Restraining Order would both be made on the Protection Order (Form 10.1 PC(CFCSA) Rules).

Adult Guardianship Act

- An interim restraining order under s. 51(1)(e) of the *Adult Guardianship Act*, which may be made after the designated agency has conducted an investigation but before a support and assistance plan is filed;
- A restraining order under s. 56(3) of the *Adult Guardianship Act*, which may be made at the hearing of the application for the provision of services to the adult (which takes place after a support and assistance plan is filed).
- The AGA interim restraining order and restraining order would both be made on the Interim Restraining Order or Restraining Order (Form 14 PCAGR).

Rules for Protection Orders made under the Provincial Court Family Rules, Family Law

Act and Family Maintenance Enforcement Act

PCFR 7(3)

A party seeking an order about a protection order may do so in any registry, with permission of the court

PCFR 167

An order or protection order takes effect on the date that the judge makes it unless the judge orders otherwise.

PCFR 71

If a judge changes a term or condition of an existing protection order, including an extension of the protection order, the judge must terminate the existing protection order and make a new protection order. using form, Order Terminating a Protection Order (PCFR Form 14 (PFA 738))

PCFR 72(1)(a) to (d)

Unless the judge orders otherwise, when a protection order is made or varied, a clerk must:

- prepare a protection order
- provide a copy of the protection order to the Protection Order Registry
- provide a copy of the protection order to the protected party
- arrange for service on the restrained party by:
 - providing a copy if the restrained party was in court when the order was made or changed;
 - arrange for personal service if the restrained party is within British Columbia and if the restrained person is not in BC, or is evading service, notify the person who obtained the order and they are then responsible for service.

PCFR 72(2)

If the restrained party needs to be served with the protection order, the protected party must provide the registry with information about the location of the restrained party for the purposes of arranging service.

PCFR 73

If a judge terminates a protection order, a clerk must, as soon as possible,

- prepare the order terminating a protection order in Form 14 [*Order Terminating a Protection Order*], unless the judge directs otherwise,
- provide a copy of the termination order to the protection order registry, and
- provide a copy of the termination order to the parties.

PCFR 70

A protection order made under Part 9 of the *Family Law Act* must be in Form 13 and does not need to be signed by the parties or their lawyers.

Even if a lawyer is drafting, Protection Orders made under Part 9 of the FLA do not need to be signed by a party's lawyer but must be signed by a judge or by a person designated by a judge for this purpose.

PCFR 142(3)

A restraining order made under section 46 of the *Family Maintenance Enforcement Act* must be in Form 37.

PCFR 169

The judge or family justice manager may designate a person to sign the order on behalf of the judge or family justice manager.

It is not permissible to file a single order document incorporating both a Protection Order and other relief, as they must be prepared as separate documents.

The following terms of an order are **not** considered protection orders:

- protection of non-personal objects such as property or assets;
- protection of the community in general (i.e. not to attend at any playground);
- non-removal of a child from a geographical location under s. 64 of the FLA unless the judge makes the order within the context of family violence;
- supervised access order; or
- keep the peace and be of good behaviour.

Orders made under Division 5 of the FLA – Orders Respecting Conduct, are not considered protection orders and therefore are not to be sent to the Protection Order Registry.

Conduct Orders

As per Part 10, Division 5 of the FLA, conduct orders can be used to manage the behaviour of parties, and are enforced in court by the parties. As per section 228 of the FLA, if a party fails to comply with an order made under section 225, the court must consider if it would be appropriate to make an order under Part 9 (protection orders) instead.

Conduct orders regarding communication restrictions or supervised removal of personal belongings under Division 10 may sound like protection orders, but they are not.

Types of Conduct Orders

- Order to follow an existing order;
- Dismiss part or all of a claim;
- Limit or instruct parties' applications to the court;
- Attend counselling or dispute resolution outside the court;
- Restrict communication (not a protection order);
- Require a specific person to supervise the removal of personal belongings from a residence (not a protection order); or
- Judge reserves themselves for future applications.

See Orders in Chapter 3

PCFR 170

If a clerical error has been made in an order, the correction may be made on the original of the order, and initialled by the judge. It is unnecessary to redraft the order unless directed to do so by the judge. There is no need for parties to appear in court to correct a clerical error.

Rules for Protective Intervention Orders and Restraining Orders made under the Child Family and Community Service Act

PC(CFCSA) r. 7(1)

An order takes effect on the day it was made by a judge unless the judge orders otherwise.

PC(CFCSA) r. 7(2)

The director's lawyer prepares the order as soon as practicable, unless the judge orders otherwise.

PC(CFCSA) r. 7(3)

Orders must be prepared in Form 10, or, in the case of a protective intervention order under section 28 of the Act or a restraining order under section 98 of the Act, in Form 10.1.

PC(CFCSA) r. 7(4)

An order must be signed as approved by the lawyer for each party who was represented, unless the judge orders otherwise.

PC(CFCSA) r. 7(5)

A party may apply to a judge to settle the terms of an order when there is a dispute about the terms.

PC(CFCSA) r. 7(6)

After an order is signed as approved in accordance with subrule (4), it must be delivered to the registry to be signed by a judge, filed with the court and date stamped with the registry stamp.

PC(CFCSA) r. 7(7)

After an order is signed by the judge and filed with the court, a clerk must provide a copy

- a. to the lawyer for each party who was represented, and
- b. to every other party on request

unless the judge orders otherwise.

PC(CFCSA) r. 7(8)

Any judge may correct, at any time, a clerical mistake in an order or a mistake arising from an accidental slip or omission.

Rules for Protection Orders made under the Adult Guardianship Act (AGA)

AGA s. 56(7), 57(4)

A support and assistance order or a restraining order terminates one year after it is made or on an earlier date specified by the court. It may be renewed for a further period of up to one year if the judge is satisfied that the adult still needs the support and assistance.

PCAGR r. 8(1)

An order takes effect on the day it was made by a judge unless the judge orders otherwise.

PCAGR r. 8(3), 8(4), 8(5)

The applicant must prepare the interim restraining order or restraining order in Form 14 unless:

- the judge orders otherwise; or
- the order is made under AGA s. 58 (review of a restraining order), and the applicant is not represented by a lawyer, in which case the court registry prepares the order.

PCAGR r. 8(6)

If the order is prepared by a party's lawyer, it must be signed as approved:

- by the counsel who prepared it;
- if any other party is represented by a lawyer, by the other party's lawyer.

PCAGR 8(7)

If the parties dispute the terms of an order, a party may apply to the Court to settle the terms.

PCAGR r. 8(8)

Once the order is approved and signed by counsel, it must be delivered to the court registry to be signed by the judge and filed with the court. The party who prepared the order must also deliver for filing any document that a judge requires to be filed with the order, or the order ceases to have effect.

PCAGR r. 8(2)

If a clerical error, or a mistake rising from an accidental slip or omission, has been made in an order, the correction may be made at any time by recording the correction on the original of the order, and having it initialled by the judge. It is unnecessary to redraft the order unless directed to do so by the judge. There is no need for parties to appear in court to correct a clerical error.

PCAGR r. 8(9)

A clerk must provide a signed and filed copy of the order to the parties or their lawyers unless the judge orders otherwise.

In a case where a support and assistance order is to be reviewed by the court later, the designated agency (not the court registry) is responsible for rescheduling a hearing, unless the judge orders otherwise.

The Protection Order Registry is a confidential database containing all civil and criminal protection orders issued in British Columbia. Information sent to the POR is available 24 hours per day, seven days per week to users including police and others approved for public safety purposes including Victim Services. The Protection Order Registry is part of the Security Programs Division of the Public Safety and Regulatory Branch of the Ministry. Information registered with the Protection Order Registry is used by their staff to answer telephone inquiries from police and others regarding the status and contents of protection orders. Police immediately have information with which to enforce breaches of protection orders. All after hours search inquiries to the POR are managed by Emergency Management BC (EMBC).

Protection order policy and procedures are necessary to improve public safety by ensuring that the Protection Order Registry is informed of all relevant protection orders that are in effect, and therefore that police have access to these orders.

If a protection order is made, it is very important to follow the policies and procedures set out for transmitting the order to the Protection Order Registry. Ministry policy governs the operations of the POR and requires Court Services staff to provide copies of the orders to the POR.

If the order is:

- a protection order under the FLA;
- a restraining order under the FMEA, CFCSA or AGA;
- a protective intervention order under the CFCSA; or
- an order that changes or ends one of these orders,

a clerk must transmit it to the Protection Order Registry on the same day as the order is signed by the Judge and date-stamped as entered. As an alternative to faxing, registries capable of forwarding orders by other electronic means may do so if arrangements have been made with Security Programs Division to do so.

Firearms Orders

An order that contains a term restraining a party from possessing a firearm or weapon must be faxed to the Centre Firearms Officer on the same day as the order is signed by the judge and entered. A written log needs to be maintained of documents faxed to the CFC.



The clerk may either send the documents to the Chief Firearm Officer by fax **or** by email through CEIS.

Protection Orders made prior to July 10, 1995

Provincial Court protection orders made prior to July 10, 1995 have not been registered (in the case of Supreme Court protection orders, prior to October 10, 1995) with the Protection Order Registry. If a party wishes to have an older order registered, that party must submit a sworn declaration requesting registration. If the protection order was issued in another province, that party must apply to the court in British Columbia for an order authorizing enforcement of the other province's order. Once the British Columbia protection order is signed and entered, the registry will fax both orders to the Protection Order Registry.

Victim Notification Program – Victim Safety Unit

On a voluntary basis, parties applying for protection orders, or their lawyers, or MCFD social workers may file Victim Safety Unit (VSU) Notification Applications with the Victim Safety Unit.

They can file these applications by fax, mail, or email. The individual may download the application from the [VSU website](#) or they may phone Victimlinkbc at 1-800-563-0808 and request that they be sent the application form. Court registries may wish to have a printed supply available for individuals who may want one.

The VSU offers services that may be of value to protected parties such as confirmation that their protection order has been received by the POR and that it is still valid, reminders regarding when the current protection order is expiring and they can also provide connection to support services. VSU collects contact information as part of their Victim Notification Program

which notifies protected parties of the release of other parties from custody following conviction on charges which may or may not be related to the restraining/protection order.

Court Clerk

In the courtroom, court clerks must recognize when a Protection Order (or Restraining Order) is made and clearly flag files that contain protection orders. A Protection Order must be captured separately using the POR/Restraining Order process in CCD.

When a file is transferred, the sending location must notify the receiving location that it contains an outstanding protection order that has been sent to the Protection Order Registry.

For FLA protections orders made without the other party in court, the court clerk may want to have the Request for Service (RFS) forms nearby to hand to the applying party, in the event the applicant has not completed the form.

See [Protection Order flowchart](#), [process servers service flowchart](#).

Procedures

Procedures relating to Protection Orders and Restraining Orders

Protection Order CEIS Codes

Code	Long Description	When to use it	Level
POR	Protection Order	Orders made under s.183 FLA <u>These involve:</u> a risk of family violence.	Provincial
		Form 10.1 - made under s.28 or s.98 CFCSA <u>These involve:</u> a child who needs to be protected from contact with someone.	Provincial
		Form 54 - made under Rule 15-1(1) <u>These involve:</u> a risk of family violence.	Supreme
OTP	Order Terminating a Protection Order	Orders terminated or varied under s. 187 FLA	Provincial
CPOR	Change of Protection Order	Form 54.1 - Orders made under Rule 15.1(1) <u>These involve:</u> changes made to Supreme Court Protection Orders.	Supreme
ROR	Restraining Order	Form 54.2 - Orders made under s.46 FMEA <u>These involve:</u> harassment and restrict	Supreme

		communication with a creditor, debtor or the director.	
		Orders made under s.46 FMEA These involve: harassment and restrict communication with a creditor, debtor or the director.	Provincial
		Orders made under Part 3 Adult Guardianship Act. These involve: the outcome of an investigation where an adult requires assistance. They are interim orders that do not exceed 90 days.	Provincial
NRP	Notice of Protection/Restraining Order	Produced by the Registry and sent to the Protection Order Registry when the Protection Order will not be sent to POR the <u>same day</u> it is made because it has not been signed. Acts as a place holder until the Protection Order has been signed and sent to the POR. If the Protection Order is sent to the POR the same day it is made, a Notice of Protection/Restraining Order is not required.	Provincial

A protection order must contain a no contact, limited contact or other condition that offers protection in order to be considered a protection order.

An order is not a protection order if it does not name an individual and if its only condition is to protect property, assets or the community.

Rule 15-1 (2): A protection order under section 183 or 187 of the Family Law Act, or a restraining order under section 46 of the Family Maintenance Enforcement Act, must not include any provisions respecting matters that are not directly related to the matters set out in those sections.



See Civil eDoc - POR: How to Produce, Send and Reconcile POR orders electronically for detailed CEIS procedures.

Procedure - Application for protection order filed at a different court location

If a party attends at a different location and is asking for a protection order and that the application be heard there, the party must file:

- Application about a Protection Order (Form 12)
- Application for Case Management Order (Form 11) which requests permission to transfer the file to another registry for all purposes or for a specific purpose, and complete schedule 3

2. The “host” registry will:

- vi) contact the home location and advise them they are filing an application on their file as a party is seeking a protection order;
- vii) enter the document in CEIS and follow the procedures for scheduling desk order application (schedule for chambers noting applicant is waiting) and send email to JCM
- viii) If the court grants permission to hear the application, files the Application About A Protection Order, schedules the appearance and provides the applicant party of the court appearance details, and follows the procedures set out below including preparing and filing of the signed order, sending the order to the POR, and mailing the original order and filed materials back to the home registry.
- ix) If court does not grant permission to hear the application, provide the party with a copy of Directions and Rejection Reasons following standard business procedures.
- x) Mails to the home location any materials filed, entered order or direction/rejection.

Procedure - Application for protection order filed at the originating court location with or without notice

- If a party wants to make an application for a protection order they file an Application About a Protection Order (Form 12) (PFA 720) and have the other party personally served with at least 7 days’ notice of the court appearance
 - The clerk will file stamp the Application About a Protection Order and enter the date for the court appearance in the registry use only section of the form
 - Provide the party with their filed copy(ies) as well as the information for virtual appearance (IRA) for each party to be personally served on the other party
 - The clerk will provide the filing party a blank certificate of service and advise that this must be completed by the adult who serves the Application About a Protection Order and provided back to the filing party or filed at the court registry
- If a party wants to make an application for a protection order with a reduction to the 7

days' notice for service on the other party they would, in addition to filing the Application About a Protection Order, file an Application for Case Management Order Without Notice or Attendance (Form 11) (PFA 718) and the clerk would follow the procedures for scheduling desk order application

- If a party is applying for a protection order **without notice** to the other party they must complete no. 2 in Form 12 explaining the reasons they are asking to have the order made without notice to the other party
 - The clerk will contact the JCM to get the date, time and courtroom the Application About a Protection Order is to be scheduled in
 - The clerk will write the date given by the JCM on the Application About a Protection Order, file, schedule and scan it into CEIS and provide the party with the IRA

1. Clerk prepares the Order or Notice of Protection/Restraining Order and Order Terminating a Protection Order, if applicable

If the order is an FLA Protection Order, the clerk always prepares the order unless otherwise directed by the Court. If it is an FMEA Restraining Order, an AGA Restraining Order or a Protection Order under the CFCSA, the party's, FMEP's, or the director's lawyer should draft the order. If the party does not have a lawyer, the registry clerk will prepare the order.

If there was an Order made to vary an existing Protection Order the clerk must

- prepare the new Protection Order
 - provide a copy of the new Protection Order to the Protection Order Registry via CEIS
 - provide a copy of the Protection Order to the party, and if the restrained party was not present provide the Protection Order Registry the Request for Service so they can arrange to have the restrained party personally served
- prepare the Order Terminating a Protection Order
 - provide a copy of the termination Order to the Protection Order Registry, and
 - provide a copy of the termination order to the parties



If a Protection Order is being ended, the clerk prepares an Order Terminating a Protection Order. This is sent to the Protection Order Registry via CEIS. This will also be sent to both parties by the registry at an address for service on file if an address other than a postal address has been provided. If no email address for service this can be mailed. If a Protection Order is being varied, the clerk also

prepares a new order to reflect the conditions. The new Protection Order will be sent via CEIS to the Protection Order Registry, if the restrained party was not in court then the Protection Order Registry will arrange for service on that party..

The clerk:

- prepares the FLA protection order using Protection Order (Form 13) or the FMEA Protection/Restraining Order using *Restraining Order Under Family Maintenance Enforcement Act* (Form 37), if the party does not have a lawyer;



If the restrained party was not present in court when a FLA Protection Order was made or varied, service is to be effected in BC, and the Court did not grant a subservice order, the applicant will need to complete a Request for Service of Family Protection Order (PFA 916) and submit it to the registry. If a Request for Service is not already on file, the clerk should ask the applicant to complete and file it while the protection order is being prepared.

The Request for Service of FLA Protection Order form should be completed to the best of the applicant's ability and include any known information such as their place of employment and other locations they might frequent such as gym, coffee shop, or school. It is also helpful for the process server if the applicant can provide a photo. If the applicant does not have any information as to the respondent's whereabouts, the applicant can still complete the description of the restrained party and complete a Search Request, if applicable, to attempt to locate the individual following the usual process. The results of the Search Request can be forwarded to the process servers as an attachment to the Request for Service or by fax if contact has already been established between the registry contact and the process servers with clear indication that the address cannot be disclosed to the applicant.

Submission of the Request for Service to the Protection Order Registry should not be delayed for the sole purpose of awaiting the results of the Search Request if some information as to the whereabouts of a party are known.

If the applicant does not submit a Request for Service form, please contact the applicant, and advise that the Registry cannot arranged for service of the FLA Protection Order until the Request for Service has been completed and provided to the Registry.

- If the registry clerk is responsible for data entry of court results into CEIS, will record all order terms in CEIS, and activate the CFC and/or POR check boxes.
- Upon receipt of an order that contains any term that makes, cancels or varies a CFC and/or POR order, flag the order, according to local practice, and enter the order terms. When a prior protection order is being cancelled or varied, enters the order term to include the date the initial order was made, the judges name that made the order and if the order is varied or cancelled. Sends the order to the protection order registry.

- If the applicant will be providing the RFS at a later date, the registry clerk is to note this in the Distribution to POR 'comment' field under the POR Details Tab.
- If a protection order/restraining order under the FMEA, CFCSA or AGA is not being filed by counsel on the day of the hearing, prepares and signs a *Notice of Protection/Restraining Order* (PFA 806);

The following forms must be used, according to the type of order:



- FLA Protection Order (PCFR Form 13 PFA 737)
- FLA Order Terminating a Protection Order (PCFR Form 14 PFA 738)
- CFCSA Protection Order (PC(CFCSA) Form 10.1)
- FMEA Restraining Order (PCFR Form 37 PFA 756)
- Adult Guardianship Restraining Order (AGR Form 14 PFA 855)



Protection Orders are not to be combined with general order terms. If a party files a general order which contains protective order terms, instruct the party to file a new order with only the non-protective conditions and a separate order with the protective terms, if applicable.

2. Clerk Checks and Enters the Order

The clerk:

- checks that the court file number and location are correct;
- checks that the name of judge is correct;
- checks that the date of order is date matter was before court;
- if the order is made without notice, that this is indicated in the order;
- checks that the names of parties, counsel, children and other persons are correct;
- checks that the birthdates of the children correspond to those written on the application submitted, unless date has been corrected in court;



Dates of birth of all protected parties and the restrained party must be recorded on a protection order if they are available (in the format MMM/DD/YYYY). If date(s) of birth are unavailable, ask the applicant or their lawyer for the necessary birthdate.

- checks that the terms of order are correct and do not exceed those made in court. (If order prepared by the party's lawyer is not correct, clerk sends it back to the lawyer to make any corrections, keeping copy in court file with note explaining why order was sent back);
- if order is prepared by a lawyer, unless it is an FLA Protection Order, it must be signed as approved by the lawyer for the other party, if any;
- if the order is correct, initials the order as being checked;

- obtains the judges signature on the Protection Order and date-stamps the order as entered.

3. Clerk separates and distributes document

Document	Party filing application or lawyer	Other party or lawyer	Court file
Protection Order	Copy	Copy	Original



Unless otherwise ordered by the court, if the order was made without notice being given to the other party ("ex parte") it is unnecessary to order a transcript (of either the entire proceeding or oral reasons for judgment), as the non-attending party is only entitled to be sent a copy of the order.

4. Clerk sends documents to Agencies

Sending documents to the Protection Order Registry **Completing the Request for Service of Family Protection Order**

If the Protection order contains a term restraining a person from possessing a firearm or weapon

- **Sending the protection order by fax**
- **Sending the protection order by email through CEIS**

Sending documents to the Protection Order Registry

The clerk:

- on the day of the hearing, faxes or electronically distributes through Civil eDocs, a copy of the following documents to the Protection Order Registry:
 - a. a protection order under the FLA or an order which changes or ends a protection order;
 - b. a restraining order under the FMEA, CFCSA or an order which changes or ends a restraining order;
 - c. a protective intervention order under the CFCSA, or an order which changes or ends a protective intervention order.
 - d. Notice of Protection or Restraining Order, if applicable
 - e. Request for Service of Family Protection Order, and any additional documents for service, if applicable
- if a Protection Order is being varied or ended, completion of the 'varied date' or 'ended date' in CEIS will cause the file to be automatically sent to POR and added to the POR Reconciliation log. Registries must produce and send an order terminating a protection order to the protection order registry.

Completing the Request for Service of Family Protection Order

The clerk:

- checks that the information provided by the applicant is legible;
- checks that the address and/or city of location of respondent is noted (if available);
- checks that the "Additional Information which may assist in locating the party to be served" section is completed including address and city locations. This information could be the respondent's friend's address or address of somewhere the respondent may frequent;
- completes the "For Registry Use Only" portion of the form by:
 - checking all applicable documents to be served;
 - indicating the **Registry Contact** and Phone Number;
 - indicating the email/telephone number for confirmation of successful service, if provided;
 - providing the mailing address for the registry; and
 - if applicable, indicating the expiry date of the Protection Order (if less than 90 days from issuance).
- if the protection order is to be served on a rush basis (within seven calendar days), indicates "RUSH" at the top of the form, includes the date service must be completed in the For Registry Use Only portion of the form and sends an email to the POR's generic email account s.15; s.17 @gov.bc.ca advising them of the incoming rush request and the reason for the rush, the court file # and the name of the restrained party. The subject line of the email should indicate URGENT RFS and the registry location.
- scans the Protection Order and Request for Service of Family Protection Order into CEIS. Note: Additional documents for service should be scanned against the Request for Service in order to facilitate their transmission to the Protection Order Registry.
- distributes the Protection Order and Request for Service to the Protection Order Registry.
- checks to determine if there is more than one restrained party on the Protection Order. If this is the case, scan in the Protection Order and the RFS (and any other documents that are to be served) for the first restrained party. The Protection Order Registry will then create the first work order for the process server. Note in the comment field that a second (and third, if applicable) RFS is being faxed or emailed (your choice) to give the Protection Order Registry a heads up.
- faxes or emails the RFS(s) for the other restrained party(ies) to the Protection Order Registry at 250-356-2185 (fax) or s.15; s.17 @gov.bc.ca (email) with a cover note indicating that the additional RFS(s) in the fax/email pertains to the [name of other restrained party] that was scanned and transmitted via CEIS to Protection Order Registry earlier. The Protection Order Registry will create another work order(s) for the process servers based on the fax/email.



The process server will automatically send the applicant a confirmation email upon successful service if they have provided an email address. If the applicant does not have an email address, and wishes to receive confirmation of service, they can provide a telephone number for this purpose. The applicant can also register with the Victim Services Unit (VSU). The VSU has access to the Protection Order Registry and can provide the applicant a number of additional services.



If the applicant provides a photo after the RFS and Protection Order have been scanned in CEIS, the clerk can email the photo to the process serving company at s.15; s.17

Ensure the subject line includes the court file number and the names of the applicant and restrained party.

If the Protection order contains a term restraining a person from possessing a firearm or weapon:

Sending the Protection Order by fax

The clerk:

On the same business day as the Protection Order is made, faxes a copy of the entered order to the Chief Firearms Officer:

- faxes a copy of the entered order to the CFC by:
 - completing a Fax cover sheet to the attention of the British Columbia Chief Firearms Officer (BCCFO);
 - in the Subject line of the fax, put FLA Court Order.
 - Fax both documents to 778-290-6174.
 - Record that the CFC order has been faxed (including clerk's initial and the date faxed) on the Control Log/Fax Cover Sheet.
 - Attaches a copy of the order to the Control Log/Fax Cover Sheet, to await confirmation on the transmission report printed by the fax machine.



A Control Log/Fax Cover Sheet does not need to be maintained for documents transmitted to the Protection Order Registry as there is an electronic record available in Civil eDocs. Documents faxed to the CFC, however are still recorded on the Control Log/Fax Cover Sheet.

- files original of order/Notice in court file.
- Occasionally, Sheriffs may be ordered to serve a Protection Order upon a non-appearing Respondent. If this occurs, the Sheriffs should fax the Certificate of Service to the Protection Order Registry and a copy of the Certificate should also be placed on the court file.

Before the end of the day when the order was faxed, the clerk:

- checks the transmission report printed by the fax machine, to see if any orders failed to be transmitted;
- re-sends any order if necessary;
- endorses the Control Log/Fax Cover Sheet by initialling the "Confirmed by Transmission Report" column for each item on the transmission report that was successfully transmitted;
- destroys the copy of each order/Notice when confirmation has been printed on the transmission report;
- attaches the fax transmission report to the Control Log/Fax Cover Sheet;
- files original Control Log/Fax Cover Sheet in a separate filing system.

Sending the Protection Order by email through CEIS

The clerk:

On the same business day as the Protection Order is made, emails a copy of the entered order to the Chief Firearms Officer through CEIS by:

s.15; s.17

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When a Sheriff has been ordered to serve a Protection Order upon a party who has not appeared, the Sheriff must complete a Certificate of Service and fax a copy to the Protection Order Registry before providing the original Certificate to the registry for filing in the court file.

On the same day on which the confirmation of delivery email received from Microsoft Outlook:

- From the command toolbar on the top of the screen, select **FILE**, and from the drop down menu, **PRINT**
- For audit purposes, retain the printout of the sent email, and confirmed delivery report email in a separate filing system
- From **OUTLOOK INBOX** folder, delete:
 - Confirmed Delivery email from Microsoft Office
- From **OUTLOOK SENT** folder, delete:
 - Email with attachment sent to BCYTCFP@rcmp-grc.gc.ca
- From **OUTLOOK DELETED ITEMS** folder, delete
 - Confirmed Delivery email from Microsoft Office
 - Email with attachment sent to BCYTCFP@rcmp-grc.gc.ca

How to re-send a document that has already been received by POR

5. Reconciliation

The Supervisor reconciles:

- Civil eDocs transmission record and Control Log/Fax Cover Sheet and/or Confirmed delivery report email (for CFC) and sent email with attached order against the completed courtlist, fax transmission report (for CFC only) and CEIS Order Report on the next working day after the hearing (to ensure that all protection orders have been entered on CEIS, and have been sent to POR as follows:
 - reviews court lists to identify all protection orders that have been made, varied or ended;
 - reconciles the court list to:
 - the Control Log/Fax Cover Sheet (PCR 820) or Confirmed Delivery report and sent email with attached order where necessary;
 - the fax transmission report where necessary;
 - the Civil eDocs transmission record; and
 - the CEIS Order Report;
 - enters initials on Control Log/Fax Cover Sheet;
 - files completed Control Log/Fax Cover Sheets and Confirmed Delivery report in a separate filing system.



The SENT email and the attached order do not need to be retained for audit purpose. It is to enable the Supervisor to validate that the correct document was emailed to CFC.

The Manager/Court Administrator:

- ensures that Civil eDocs logs are monitored for completeness;
- ensures that all Control Logs/Fax Cover Sheets are monitored for completeness;

- ensures completed Control Log/Fax Cover Sheets and Confirmed Delivery reports are retained for review purposes in a separate filing system.

In instances where a protection or restraining order may be incorporated in a reserved judgement, it is not possible to record the order on the concluded court list and there will be no record to check the Civil eDocs transmission report against. In-court procedures will not apply.

The clerk will:

- read every reserved Reasons for Judgment with care, to determine whether it contains a protection order or a varied or cancelled protection order;
- follow the post-court procedures;
- prepare and send the Protection or Restraining Order in the case of a FLA Protection Order, Order Terminating a Protection Order in the case of a varied or cancelled order or FMEA restraining order.

When a hearing where a protection order is issued takes place at a location other than where the court file resides, the clerk in the host court location where the protection order is made will:

- be responsible for sending the protection order or order terminating a protection order to the Protection Order Registry and CFC;
- return the file documents to the originating location with a clear notation that the protection order was made and sent to the Protection Order Registry/CFC.

Where a case containing a protection order has been transferred to another court location, the originating registry will ensure the file transfer memo indicates that there is a protection order on the file.

6. If protection order has been made in another province

If a person wishes registration with the Protection Order Registry of a protection order made by a court in another province, the person must apply to the British Columbia court for an order authorizing enforcement of the order in British Columbia.

If the court grants the order authorizing enforcement, the same day the order is signed and entered, the clerk faxes both the BC order and the out of province protection order to the Protection Order Registry.



An application is necessary if the person seeks enforcement of the order, regardless of whether registration is specifically requested. Registration on the Protection Order Registry automatically follows the signing of the BC order authorizing enforcement.

Chapter 10 – Deleted June 1, 2021 (incorporated into Chapter 3)

Appendix A - Forms

ADM 869	<u>Application for an Order without Notice to the Respondent (Ex-parte)</u>
CF4064	<u>Protection Order</u> (Ministry of Children and Family Development)
CF0624	<u>Record Check Results - s. 51</u> (Ministry of Children and Family Development)
CPD 003	<u>Search Request</u> (available electronically only)
JUS 578	<u>Application: Interception of Federal Moneys</u>
PCR 820	<u>Control Log/Fax Cover Sheet</u>
PFA 059a	<u>Certificate of Service</u> (Personal Service by Sheriff)
PFA 060	<u>Affidavit of Arrears</u>
PFA 073	<u>Statement of Finances</u>
PFA 078	<u>Affidavit in Support of Garnishing Order</u>
PFA 110	<u>Request for Service of Documents</u>
PFA 119	Family Search Envelope (no sample available)
PFA 120	<u>Affidavit of Attempted Service</u>
PFA710	<u>Notice to Resolve a Family Law Matter</u> (Form 1)
PFA711	<u>Notice of Intention to Proceed</u> (Form 2)
PFA712	<u>Application About a Family Law Matter</u> (Form 3)
PFA713	<u>Financial Statement</u> (Form 4)
PFA 733	<u>Guardianship Affidavit</u> (Form 5)
PFA714	<u>Certificate of Service</u> (Form 7)
PFA715	<u>Reply to an Application About a Family Law Matter (with counter application)</u> (Form 6)
PFA716	<u>Reply to a Counter Application</u> (Form 8)
PFA 746	<u>Application for Permission and Review of Family Justice manager Order or Direction</u> (Form 9)
PFA717	<u>Application for Case Management Order</u> (Form 10)
PFA718	<u>Application for Case Management Order without Notice or Attendance</u> (Form 11)
PFA719	<u>Order - General</u>
PFA720	<u>Application about a Protection Order</u> (Form 12)
PFA 737	<u>Protection Order</u> (Form 13)
PFA721	<u>Order Terminating a Protection Order</u> (Form 14)
PFA722	<u>Application about Priority Parenting Matter</u> (Form 15)
PFA723	<u>Application for Family Law Matter Consent Order</u> (Form 17)
PFA724	<u>Application for Order Prohibiting the Relocation of a Child</u> (Form 16)
PFA725	<u>Application About Enforcement</u>
PFA728	<u>Scheduling Instructions - with Reply</u> (backup form)

PFA729	<u>Scheduling Instructions - no Reply (backup form)</u>
PFA731	<u>Written Response to Application (Form 19)</u>
PFA732	<u>Request for Scheduling</u>
PFA 739	<u>Consent Order (Form 18)</u>
PFA 740	<u>Notice of Exemption from Parenting Education Program (Form 20)</u>
PFA 741	<u>Referral Request (Form 21)</u>
PFA 735	<u>Trial Readiness Statement (Form 22)</u>
PFA 748	<u>Subpoena to Witness (Form 23)</u>
PFA 742	<u>Warrant for Arrest after Subpoena (Form 24)</u>
PFA 743	<u>Release from Custody (Form 25)</u>
PFA 736	<u>Request to File an Agreement (Form 26)</u>
PFA 744	<u>Request to File Determination of Parenting Coordinator (Form 27)</u>
PFA 745	<u>Request to file an Order (Form 28)</u>
PFA 725	<u>Application about Enforcement (Form 29)</u>
PFA 749	<u>Application for Garnishment, Summons or Warrant (Form 30)</u>
PFA 750	<u>Summons - General (Form 31)</u>
PFA 751	<u>Warrant for Arrest (Form 32)</u>
PFA 752	<u>Summons to a Default Hearing (Form 33)</u>
PFA 753	<u>Summons to Committal Hearing (Form 34)</u>
PFA 754	<u>Application for Order Under the FMEA (Form 35)</u>
PFA 755	<u>Recognizance - FMEA</u>
PFA 756	<u>Restraining Order - FMEA</u>
PFA 757	<u>Order for Imprisonment</u>
PFA 758	<u>Notice of Lawyer for Child</u>
PFA 759	<u>Notice of Removal of Lawyer for Child</u>
PFA 760	<u>Notice of Lawyer for Party</u>
PFA 761	<u>Notice of Removal of Lawyer for Party</u>
PFA 762	<u>Affidavit - General</u>
PFA 763	<u>Notice of Address Change</u>
PFA 764	<u>Notice by Advertisement</u>
PFA 765	<u>Affidavit of Personal Service</u>
PFA 766	<u>Affidavit of Personal Service of Protection Order</u>
PFA 767	<u>Notice of Discontinuance</u>
PFA 768	<u>Electronic Filing Statement</u>
PFA 734	<u>Fax Filing Cover Page - Provincial Court Family</u>
PFA 747	<u>Notice of Participation</u>
PFA 800	<u>Warrant of Committal after Default Hearing</u>
PFA 801	<u>Warrant for Committal of a Witness</u>

PFA 803	<u>Notice of Dispute of Monies Paid into Court by Garnishee</u>
PFA 806	<u>Notice of Protection or Restraining Order</u>
PFA 807	<u>Request for S. 211 Report</u>
PFA 808	<u>Referral Request</u>
PFA 819	<u>Statement of Arrears (FMEA - Filed by FMEP)</u>
PFA 820	<u>Statement of Arrears (FMEA - Sworn)</u>
PFA 821	<u>Notice to Debtor</u>
PFA 822	<u>Statement of Income and Expenses (FMEA)</u>
PFA 824	<u>Inter-Agency REMO Routing Form</u>
PFA 825	<u>Transmittal Form</u>
PFA 826	<u>Case Information Form</u>
PFA 832	<u>Certificate of Enforceability and Arrears</u>
PFA 833	<u>Certificate of Filing</u>
PFA 834	<u>Attachment Order</u>
PFA 836	<u>REMO Letter - Provisional Order Confirmed</u> (Form only)
PFA 837	<u>REMO Letter - Resume Confirmation Hearing</u> (Form only)
PFA 841	<u>Application to Re-Set Court Date</u>
PFA 842	<u>Application to Obtain an Order</u> (Adult Guardianship Act Form 1) (Form only)
PFA 843	<u>Application to Review, Change or Cancel an Order</u> (Adult Guardianship Act Form 3) (Form only)
PFA 844	<u>Application for Other Orders</u> (Adult Guardianship Act Form 4) (Form only)
PFA 845	<u>Application for Consent Order</u> (Adult Guardianship Act Form 5) (Form only)
PFA 846	<u>Consent Order</u> (Adult Guardianship Act Form 6) (Form only)
PFA 847	<u>Notice to Appear</u> (Adult Guardianship Act Form 2) (Form only)
PFA 848	<u>Warrant for Arrest</u> (Adult Guardianship Act Form 7) (Form only)
PFA 849	<u>Release</u> (Adult Guardianship Act Form 8) (Form only)
PFA 850	<u>Affidavit</u> (Adult Guardianship Act Form 10) (Form only)
PFA 853	<u>Certificate of Service</u> (AGA Form 12) (Form only)
PFA 855	<u>Restraining Order</u> (Adult Guardianship Act Form 14) (Form only)
PFA 856	<u>Order</u> (Adult Guardianship Form 17) (Form Only)
PFA 858	<u>Warrant to Enter for Purpose of Interview</u> (AGA Form 18) (Form only)
PFA 860	<u>Request for New Address Information</u> (Form only)
PFA 861	<u>Order Renewing, Changing or Canceling an Order</u> (Form only)
PFA 862	<u>Notice of Hearing</u> (Adult Guardianship Act) (Form only)
PFA 876	<u>Order for Attendance of a Prisoner in a Civil or Family Matter</u> (Form only)
PFA 883	<u>Consent to Court Date</u>
PFA 887	<u>Notice of Registration of a Foreign Order</u> (Form only)
PFA 889	<u>Notice of Hearing - ISO</u>

PFA 893	<u>Request to be Heard by Teleconference (Form only)</u>
PFA 894	<u>Notice of Registration of an Extraprovincial Order (Form only)</u>
PFA 897	<u>Warrant (CFCSA) (Form 5)</u>
PFA 898	<u>Release (CFCSA) (Form 6)</u>
PFA 901	<u>Certificate of Service (CFCSA Form 9) (Form only)</u>
PFA 902	<u>Written Consent (CFCSA) Form 11</u>
PFA 903	<u>Warrant of Committal (FMEA)</u>
PFA 904	<u>Garnishing Order (FMEA)</u>
PFA 906	<u>Notice of Hearing or Conference</u>
PFA 912	<u>Contact Information for Section 211 Full Reports and Section 211 Views of the Child Reports (attachment to PFA807)</u>
PFA 914	<u>Request for Protection Order Registry Search - pursuant to s. 51 FLA</u>
PFA 916	<u>Request for Service of Family Protection Order</u>
PFA920	<u>Consent Adjournment</u>
PFA 922	<u>Order for Discharge of a Person in Custody (Offence Act - Form 22)</u>
PFA 923	<u>Information form for appointment of lawyer for children</u>
PSC 801	<u>Affidavit for Notice of Intention to Garnishee</u>
PSSG 05016	<u>Victim Safety Unit Notification Application Form</u>
SCL 816	<u>Garnishment Application</u>
FORM 5	<u>S. 51 - Consent for Child Protection Record Check</u>
SUP 818	<u>Notice of Appeal Form Letter</u>

Legislation

Current copies of legislation can be found on the [BC Laws](#) website. Legislation reference in the *Family Court Manual* include:

- *Family Law Act*
- *Provincial Court Family Rules*
- *Family Maintenance Enforcement Act*
- *Family Maintenance Enforcement Act Regulation*
- *Child, Family and Community Service Act*
- *Child, Family and Community Service Regulation*
- *Provincial Court (CFCSA) Rules*
- *Adult Guardianship Act*
- *Provincial Court (Adult Guardianship) Rules*
- *Adult Guardianship (Abuse and Neglect) Regulation*
- *Adult Guardianship Act Designated Agencies Regulation*
- *Interjurisdictional Support Orders Act*
- *Interjurisdictional Support Orders Regulation*

Appendix B - Contact Information

For registry use only and must not be disclosed to the public

Family Justice Services Division (FJSD)	FJSD: Toll-free: 1-844-747-3963 (BC wide) Telephone: 250-356-7012 (Victoria)
Interjurisdictional Support Services (IJSS)	https://www.isoforms.bc.ca/contact-us/
BC Family Maintenance Enforcement Program (FMEP) For: • enrolment questions • regional offices contact addresses & phone numbers • payment information	https://www.fmep.gov.bc.ca/contact-us/
For Faxing copy of Certificate of Service or Affidavit of Personal Service to FMEP legal department	Kamloops (Northern and Interior Client Office) Fax: (250) 434-6036 Victoria Client Office Fax: (250) 220-4052 Lower Mainland Client Office Fax: (604) 678-5680
Direct contact numbers for FMEP Managers during business hours For Registry Use Only	Colin Millar, Acting Director of Enforcement Services: s.15; s.17 Cathi Bashi, Acting Senior Manager: s.15; s.17 s.15; s.17 (Victoria Client Office and Lower

	Mainland Client Office, Burnaby) Nicole Huppe, Senior Manager: ^{s.17} (Northern and Interior Client Office, Kamloops) Please ensure that these numbers are only released to CSB staff and not the general public.
Locate Services For Registry Use Only	Maintenance Enforcement and Locate Services 203-865 Hornby Street Vancouver, BC V6Z 2G3 Tel: (604) 660-2528 Fax: (604) 660-3728
For Interception of Federal Funds	Family Order and Agreements Enforcement Assistance Unit Department of Justice PO Box 2730 Ottawa, ON K1P 5W7 ^{s.15; s.16} Tel: _____ (ask to speak to Karen Vallieres, the officer responsible for BC)
For Garnishment of Federal Government Employees	Department of Justice British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9 Attn: Garnishment Registry
For Garnishment of Provincial Government Employees	Legal Encumbrances Office Office of the Deputy Minister of Finance and Corporate Relations Ministry of Finance Room 219, 2nd Floor, 617 Government Street Victoria, BC V8V 4R8

	Tel: s.15; s.17
For Sending a Copy of a Permanent Order made under the CFCSA	Public Guardian and Trustee 600 – 808 West Hastings Street Vancouver, BC V6C 3L3
For Fax Filing an Order with the Protection Order Registry	Protection Order Registry Security Programs Division Ministry of Public Safety & Solicitor General Tel: s.15; s.17 Fax: (250) 356-2185 Email: s.15; s.17 @gov.bc.ca If sending an email, please type in the subject line: _____ Registry Query (indicate registry location)
For Fax Filing a <u>Victim Safety Unit Notification Application Form</u>	Victim Safety Unit Victim Services and Community Programs Division Ministry of Public Safety & Solicitor General Fax: (604) 660-0335
For Requesting a S. 211 Report	Family Justice Report Service #301 – 32555 Simon Avenue Abbotsford, BC V2T 4Y2 Tel: (778) 360-2052 Fax: (604) 851-7062 Toll-free: 1-888-288-8249 All Regions will send to this address
For surrender of or prohibition from obtaining a Passport	Passport Office, Security Division 70 Cremazie Street, 3rd Floor Gatineau, Quebec K1A 0G3 Attn: Lost & Found Section Fax: (819) 953-5856

Appendix C - Additional Resources

[Access to Provincial Family and Supreme Court Family files](#)

[Applying for Guardianship of a Child in Provincial Court](#)

[BC Family Law Act Transition Guide](#) - Appendix C: *Family Law Act* section 51(2) Affidavit Process

[CFCSA Flowcharts](#)

[Records Access Policies](#)

[Section 51 Application Checklists - Provincial Family - Process for s. 51 FLA Guardianship Applications](#)

Appendix D - Deleted June 1, 2021

Appendix E – Gazetteer

This [Gazetteer](#) is an alphabetical listing of place names in British Columbia (for the most part, it includes all places with a post office), and the corresponding Family Court Registries and Sheriffs Offices that serve Family documents.

**APPENDIX F - Registry Contact’s Guide: Service of FLA
Protection Orders**

Registry Contact’s Guide
Service of *Family Law Act* Protection Orders

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Background

A restrained party must know of a *Family Law Act (FLA)* protection for Crown to successfully prosecute a breach charge under s. 127 of the *Criminal Code*.

If a restrained party was not present in court when a *FLA* protection order was made or varied, they should be served personally, and service must be proved by affidavit or solemn declaration, or by oral evidence.

CSB is facilitating personal service in BC on behalf of the applicant, when the restrained party is not present in court, to:

- Reduce the risk to the applicant in arranging service
- Provide timely service on the restrained party, and
- Ensure proof of service is obtained in every instance.

Sheriff Services and the police do not have the capacity or resources to serve all of these *FLA* protection orders; therefore, CSB has contracted private process servers to assist.

The default method of service for all new or varied *FLA* protection orders, where

- the restrained party is not present in court
- service can be affected in BC; and
- a subservice order was not granted by the Court, will be to forward the documents, via the Protection Order Registry, to the contracted process server to facilitate service.

A Judge may order/direct service by the sheriffs, police, or another party, or another method as arranged by the applicant/counsel. If this occurs, all documents are to be forwarded following local practice and no Request for Service of Family Protection Order is to be forwarded to the Protection Order Registry.

Upon successful service, the process server will complete and submit an Affidavit of Personal Service (of Protection Order) electronically to the Protection Order Registry and the original to the court registry to be filed on the court file.

The Protection Order and proof of service will be accessible to the police and victim services through the Protection Order Registry.

Registry Contact's Role

The registry contact will be expected to provide oversight and spending approval to the contracted process servers, as and when required.

The registry contact is required to be a spending authority (or delegate).

The Contractor is required to contact the registry contact, at any time during their service attempts, if they require more information about the person to be served or if they anticipate any abnormal delays in effecting service.

The Contractor will also be required to seek authorization prior to additional expenditures under the contract.

Expenditures

Under the contract with process servers, negotiated rates include up to 3 attempts at service, mileage within 20 kilometers of the nearest court location/process server office, completion and return of the proof of service to the Protection Order Registry (electronically) and the Court Registry. The process servers have approval to additionally charge for mileage exceeding 20 kilometers as required by the service.

The process servers will be required to seek authorization prior to expenditure for the following expenses:

- Additional attempt of service (after 1st three attempts)
- Written Report/Statement to be submitted to the Protection Order Registry in lieu of a commissioned affidavit of personal service (this is submitted by the process server via eTray to the Protection Order Registry)
- Rush Fee – where service attempt is required within 4 hours of receipt of order
- Copies of documents – first 50 pages at no charge
- Waiting time/hour – charged per ¼ hour after first 10 minutes
- Affidavit of attempted service (if required)
- Contractor attendance as a witness at trial to prove service

If authorization is granted, note in the Request for Service (RFS) Comments box in CEIS.

Procedural Guide

Restrained party cannot be located/Restrained party believed to have moved

If the process server is unable to locate the restrained party using the information provided by the applicant, or if in attempting service they suspect the restrained party has moved, the process server will inform the registry contact of their findings and seek further direction.

The registry contact will:

- log the history provided by the process server in the Request for Service (RFS) Comments box in CEIS (the process server or process server company agent will contact the registry contact noted on the bottom of the RFS by phone—no affidavit is required);
- contact the applicant/counsel to advise them the process server has been unable to effect service and request additional information;

If the applicant can provide more details about the restrained party, relay the information to the process server by fax to the nearest office:

- New West: fax s.15; s.17
- Vancouver: fax s.15; s.17
- Victoria: fax s.15; s.17
- Prince George: fax s.15; s.17

Note: Do not submit additional information through CEIS to the Protection Order Registry.

If the applicant does not know the whereabouts of the restrained party, ask the applicant to:

- provide further details able to assist in locating the restrained party, such as:
 - locations the restrained party frequents
 - restrained party family members/friends that are in frequent contact with the restrained party
 - shelters the restrained party is known to attend; place of employment; o any phone number of friends, family, employers, or co-workers who can help in locating the restrained party.
- complete a Search Request (if applicable)
 - Search Request should be marked at the top as follows:

“RUSH – SERVICE OF PROTECTION ORDER”

- if results of the search request come back and differ from the information already provided by the applicant, forward the new information to the process server by fax the nearest office (fax numbers noted above) ensuring to note that the address cannot be disclosed to the applicant.
 - Search results and any affidavit of personal service citing the confidential address must be sealed in the court file.
- if no information regarding the whereabouts of the restrained party can be located, seek further direction from your Regional Executive Director or the Court. If you need immediate assistance, please contact: AskPolicy@gov.bc.ca.
- Staff in the Policy, Legislation and Planning group, your Regional Executive Director or the Court can advise when CSB's role in the process is concluded. The decision will be made on a case-by case basis.

- if it is determined that CSB's role is concluded, call the applicant, and advise that based on the information provided, we were unable to successfully serve the protection order. Follow up with a letter advising the same. This sample letter that can be used for that purpose and can be revised as necessary.

Delay in effecting service

This scenario may present itself if the process server determines the restrained party is out-of-province or otherwise inaccessible for a period of time.

Additional attempts at service should be delayed only until such time as service attempts can reasonably be expected to result in successful personal service.

The registry contact will:

- log the history/reason, and suggested time-frame, for the delay provided by the process server in the RFS Comments box in CEIS;
- contact the applicant/counsel to advise them of the delay and expected time-frame for service attempts to be resumed;
- if the applicant/counsel suggest the reason for delay is unfounded, request further details from the applicant/counsel and relay the information to the process server by fax to the nearest office (fax numbers listed on page 4).

Contractor seeking authorization for additional expenditure

If the contractor requires authorization for any expenditure as outlined above, they will be required to contact the registry contact in advance.

The spending authority can provide approval for all additional expenses and should weigh approval based on the necessity of the services to facilitate timely service of the protection order.

A written summary of the service attempts or an affidavit of attempted service should be approved by the registry contact only if they are required by the Court to support an application permitting another method of service. The process server is not permitted to produce this documentation without prior approval and is not required to do so unless requested by the registry contact.

If the contractor is requesting attendance at a trial, please forward the request to CSB's Director of Legislation, Policy and Issues Management and your Regional Executive Director. They will liaise with Crown Counsel to ensure all required fees and expenses are accounted for.

NOTE: If at any time you are unsure of how to proceed, you may email AskPolicy@gov.bc.ca or seek direction from your Regional Executive Director, or the Court. The

AskPolicy@gov.bc.ca account is monitored by the Policy, Legislation and Planning group at Court Services Branch HQ in Victoria.

To update the Registry Contacts list, send an email to the AskPolicy@gov.bc.ca account and provide the following information: court location, contact name(s), phone number(s), email address(es), and indicate if change(s) is(are) to “Registry Contact” column and/or “Alternate Contact” column.

Sample letter in the event service of the PO is unsuccessful



Court File # ****

[Insert Date]

[Insert Applicant's Name]

[Insert Applicant's Address]

PLEASE USE YOUR COURT
LOCATION'S LETTER HEAD
WHICH HAS YOUR REGISTRY
CONTACT INFORMATION IN THE
FOOTER.

Dear [Insert Applicant's Name]:

Re: Protection Order

We are writing to advise you that we were unable to serve the protection order issued on [insert date] and Locate Services has been unable to locate the party.

You have options in proceeding with this matter. You may submit to the registry additional or alternate address information so that the process server may make another attempt at serving the protection order.

If you are unable to provide additional/alternate information, you may make an application to the court for a case management order to allow for the service of the protection order in an alternative way (substitutional service). The form for making an Application for Case Management Order Without Notice or Attendance (Form 11) can be found on our web site: <http://www.gov.bc.ca/courtforms/prov-family>

Please note that the Court Services Branch will not be facilitating any additional attempts of service of the protection order unless one of these conditions are met.

Best regards,

Family Clerk

Ministry of Attorney General
Court Services Branch

Name of Registry

Registry Address and Phone
Number

APPENDIX G – Innovation Sandbox

The Law Society of BC is piloting a project where individuals and organizations (known as proponents), who are normally not authorized to practice law, may submit a proposal to provide specific legal services. The goal of this project is to meet the need for expanded legal advice and assistance options in British Columbia. This pilot is called Innovation Sandbox. Letters issued upon an approved proposal through Innovation Sandbox are beginning to pop up at registries throughout the province.

What is Innovation Sandbox?

A sandbox is a "safe space" designed to test ideas in a controlled environment that are likely to benefit the public. The Law Society's Innovation Sandbox will allow approved projects by those not currently authorized to provide legal services and for existing firms to be piloted with regulatory oversight by the Law Society to protect the public interest. Proponents will submit a proposal outlining the services that they wish to provide that will first go before the Law Society for consideration. Any proposals deemed appropriate will then be considered by the Innovation Sandbox Advisory Group, and finally, by an Executive Committee. If the proposal is accepted, the proponent will be issued a "No Action Letter".

What is a No Action Letter?

A No Action Letter means that upon issuance, the Law Society will not prosecute or seek an injunction against the proponent for providing legal assistance/advice, so long as only the services set out in the No Action Letter are provided, and any conditions set out in the No Action Letter are complied with. After a No Action Letter is issued, it will be posted to the Law Society website, making it publicly accessible. The [directory](#) of Approved Participants provides a listing of the successful proponents, summaries of the services each proponent may provide, and a PDF copy of their No Action Letter, sometimes with the proposal attached.

What to do when a No Action Letter is presented at the court registry?

When a No Action Letter is presented at the court registry, the family registry clerk will:

1. Accept and date stamp the letter for filing
2. Enter the letter as a document in CEIS using code **NAL**
3. Scan/Upload the letter into CEIS
4. File the letter into the court file

For more information on the Innovation Sandbox, please visit the Law Society [website](#).