

Notices to the Profession

Family Division

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Fees

There is an amended fees schedule correcting the mediation fees and fees for court ordered reports. It is being posted on the Courts of Nova Scotia website and the correct schedule may also be found in the regulations under *Cost and Fees Act* posted in the Nova Scotia Registry of Regulations website.

Transition Rules

The amended Rule 92 was approved by the Justices of the Supreme Court on May 13, 2010 and posted in the Royal Gazette on June 16, 2010. It has also been posted on both the Courts of Nova Scotia website and the Nova Scotia Barristers' Society website.

There has been some confusion regarding the application of the transition provisions of Rule 92, in particular, the provisions regarding interlocutory steps. Rule 92.04 states:

Outstanding interlocutory steps

92.04 Each of the following steps that is outstanding in a family proceeding on June 30, 2010, ... must be completed under the *Nova Scotia Civil Procedure Rules (1972)*, unless the parties agree or a judge orders otherwise:

...

(b) an interlocutory or interim application;

...

(I) all steps in an undefended or uncontested divorce proceeding.

During the training sessions, interlocutory or interim applications were discussed with the conclusion that very little would change in the proceeding because the matter would simply continue to a hearing resulting in an order.

For uncontested divorces, I advised in the training sessions that I had obtained the judicial directive from the Justices of the Family Division (prior to the Transition Rule amendments being finalized) that **completed** uncontested divorce packages filed before June 30, 2010 would be processed under the old Rules, even if processed in July or later. This same directive was confirmed again on June 25, 2010 as follows:

Divorce Packages

Family Division Judicial Directive: June 25, 2010

A specific exemption to the Transition Rule has been established for complete divorce packages that were filed before June 30, but will not be processed until after June 30, 2010. This means that the parties will not have to re-file a divorce order and CRO in place of the existing divorce judgment and CRJ.

The following principles apply under this directive:

- If the Application for Judgment, all required supporting evidentiary documents, the draft divorce judgment, and draft corollary relief judgment were all filed before June 30, 2010, the divorce file would be reviewed, and if acceptable to the judge, the judgments would be granted and issued without the requirement of any new Forms being filed under the new Rules.
- If an Application for Judgment was filed before June 30th, but the supporting documentation was incomplete, then instructions would be provided and the matter will be processed using the old Rules.
- This **does not** mean that an Application for Judgment can be filed on or after June 30, 2010.
- The only method for the court to differentiate between a petition for divorce which may go to trial and a case proceeding as an uncontested divorce, is by the filing of the document which starts that uncontested process.
 - Before June 30th, that document was the Application for Judgment.
 - Now, the Uncontested Motion for Divorce [Form 59.44] coupled with the affidavit supporting an uncontested divorce [Form FD 12] must be filed.
- Filing the document that starts the uncontested process for a divorce is a new step in the proceeding: it is not the continuation of an interlocutory process. This is true regardless of the parties' intentions or any understanding between counsel.
 - Note that for starting the uncontested process, the date that a document was completed and signed is not relevant to the court: the filing date is the only relevant date.

Personal Service of Petition filed before June 30, 2010

Family Division Judicial Directive: June 25, 2010

Rule 92 has been interpreted to mean that a petition that is filed before June 30th, is taken to have been filed under Rule 59 as of June 30 onward. It is therefore subject to the new provisions for timelines on personal service, namely that the petitioner has 6 months to serve or apply for an extension. Further, Form 31.05 for the Affidavit of Service should be used if filed on or after June 30.

Amendments to Documents

Family Division Judicial Directive: June 25, 2010

The Family Division Justices give permission to court staff to continue to administer the amending and correcting of application notices and divorce petitions as they have done in the past.

Rule 83.11(1) states, "A judge may give permission to amend a court document at any time."

Once the matter is transferred to a court proceeding, any amendments requested at that stage would require permission from a judge.

Contradiction between Rules 59.21(3) and 59.47(3) regarding when a Waiver of Financial Statements may be filed

Family Division Judicial Directive: June 25, 2010

Rule 59.47(3)(b) will be amended in October 2010 to read as follows:

- (b) the parties agree in writing on corollary relief for spousal support;

Court staff can rely on the provisions of *Rule 59.21(3)* for all proceedings including uncontested divorces until the amendment is made in the fall.

Delivery of documents

Please note the comments of the Prothonotary - Registrar, Annette Boucher, Q.C., in the June 16th edition of "Hints and Tips":

The court has asked that I remind counsel of their notification obligations to other parties when documents are filed with the court. Rule 31.15 requires a party who files a document with the court to deliver a copy of the document to each other party **IMMEDIATELY BEFORE OR IMMEDIATELY AFTER** it is filed with the court. It is clear that many of the filing issues which have arisen over the last several months are as a result of counsel not providing court files documents to the other parties in a timely fashion as required by the rule. **It has been noted that counsel are, in particular, filing the Request for Date Assignment Conference with the court but are omitting to provide it to opposing counsel.**

Reference to Rules/Legislation in Motions

Reminder that in the Family Division, the requirement to cite the applicable Rules and legislation, including the applicable section number(s), applies to Motions.

I am continuing to work on further materials for circulation which will be posted as soon as they are approved.