

Part 13 - Family Proceedings

Rule 59 - Family Division Rules

Definitions

59.01

In this Rule 59,

“application” means a proceeding started by filing a notice of application or notice of variation application;

“court officer” means a court official at an office of the Supreme Court (Family Division) who performs duties and provides services on behalf of the court such as reviewing statements and documents submitted for filing, conducting conciliation, directing and ordering disclosure, arranging and scheduling for parties to appear before a judge, and determining interim child support in some circumstances;

“*Guidelines*” means the *Federal Child Support Guidelines* or the provincial *Child Maintenance Guidelines* or both, as the context requires;

“judge” means a judge of the Supreme Court (Family Division) and any other judge of the Supreme Court determining or hearing a proceeding brought in the Supreme Court (Family Division);

“response” means either the response to application or response to variation application provided for in this Rule;

“statement” means any of the parenting statement, and the financial statements provided for in this Rule, and when reference is made to a document in the Rules outside Part 13 - Family Proceedings, it includes a statement under this Rule;

“support” means either support or maintenance, as the context or applicable legislation provides;

“written agreement” means an agreement in writing that is signed by the parties and witnessed.

Scope of Rule 59

- 59.02 (1)** This Rule applies to a proceeding in the Supreme Court (Family Division) that is within section 32A of the *Judicature Act* and is not transferred by a judge under section 32C of the *Act*, except a proceeding provided for in Rule 60A - Child and Adult Protection, Rule 60B - *Involuntary Psychiatric Treatment Act* and *Hospitals Act* Applications, or Rule 61 - Adoption.
- (2) The Rules outside Part 13 - Family Proceedings, with any necessary changes, apply to practice or procedure in the Supreme Court (Family Division) that is not governed by Part 13.
- (3) A judge who is satisfied that a procedure provided by a Rule outside this Rule 59 is better suited to a proceeding in the Supreme Court (Family Division) than those provided in this Rule may order that the Rule outside this Rule applies.
- (4) This Rule provides for an action that leads to a divorce and corollary relief, but an uncontested divorce proceeding and all other family proceedings in the Supreme Court (Family Division) may be started by application.
- (5) Rules applicable to an action apply to a divorce action as if the petitioner were a plaintiff, the respondent were a defendant, the petition were a notice of action, the answer were a notice of defence, and pleadings close when an answer is filed, unless this Rule 59 provides differently.

Where a proceeding is started and heard

- 59.03 (1)** A proceeding in the Supreme Court (Family Division) must be started, dealt with, and heard in the judicial district where the applicant resides.
- (2) An applicant who resides outside a judicial district, and who obtains permission of a judge or court officer in the judicial district, may start a proceeding in that judicial district.
- (3) A proceeding must be heard where it is started, unless a judge changes the place of the proceeding, changes the place of hearing, or adjourns a hearing from one place to another, under Rule 32 - Place of Proceeding or Rule 47 - Place of Trial or Hearing.
- (4) A judge may transfer a proceeding to an office of the court in one of the following judicial districts:
- (a) a district where a child, who is the subject of a custody, access, or parenting dispute in the proceeding, ordinarily resides;
 - (b) a district where it is substantially more convenient to deal with the proceeding or a step in the proceeding.

Starting a proceeding

- 59.04 (1)** A person who wishes to start a proceeding, must file all of the following:
- (a) a notice or petition referred to in Rule 59.06;
 - (b) documents, statements, and supporting disclosure required under Rules 59.20 to 59.23 or directed by a court officer to be filed.
- (2) The documents, statements, and disclosure must be filed at the same time as the notice or petition is filed, unless a court officer permits otherwise.
- (3) A person who wishes to start a proceeding must meet with a court officer to be informed of the filing and disclosure obligations and comply with them, unless the court officer is satisfied that all required information has been provided in the filed notice or petition, and all required documents, statements, and supporting disclosure have been filed.
- (4) The court officer may authorize a notice, petition, document, or statement to be filed.
- (5) No further step may be taken in an application until the court officer is satisfied that the notice or petition, documents, statements, and supporting disclosure required by this Rule have been filed.
- (6) The court officer must determine the next step to be taken on the basis of the information in the filed documents, statements, and supporting disclosure, and the next step may include any of the following:
- (a) a referral to an agency or service;
 - (b) a referral to a court officer for conciliation, case management, or both;
 - (c) an appearance before a judge.
- (7) A court officer, instead of the prothonotary, must instruct a party as required by Rule 34 - Acting on One's Own.

Parties and counsel

- 59.05 (1)** A person who files an application must be named as the applicant and if more than one person files the application, they each must be named as an applicant, and this Rule 59 applies as if “applicant” read “applicants”.
- (2) The person from whom relief is requested in an application must be named as the respondent, and if more than one person, they each must be named as a respondent, and this Rule 59 applies as if “respondent” read “respondents”.

- (3) A spouse who starts a divorce action must be named as the petitioner, and the other spouse must be named as the respondent.
- (4) No other person may be made a party to a divorce action, unless a judge permits otherwise.
- (5) A lawyer for a party becomes counsel of record as provided in Rule 33 - Counsel, and the lawyer who signs a certificate required by section 9 of the *Divorce Act* or an answer is counsel of record.

Types of proceeding

- 59.06** (1) An original proceeding, other than a divorce proceeding, is started by filing a notice of application.
- (2) A divorce proceeding is started by filing one of the following:
- (a) a petition for divorce to start a divorce action, in which a claim is made for a divorce and any corollary relief under the *Divorce Act*, or any other relief that a judge or court officer permits to be determined with a claim under the *Divorce Act*;
 - (b) an application for divorce by agreement, or a joint application for divorce, in which the parties consent to a divorce and any corollary relief, or other permitted relief.
- (3) A reference in this Rule 59 to a claim, or order, for corollary relief includes a claim, or order, for a remedy outside the *Divorce Act* that is permitted under Rule 59.06(2)(a).
- (4) A proceeding to vary, rescind, or suspend an order made under the *Divorce Act* or the *Maintenance and Custody Act* is treated as an original proceeding, and it is started by filing a notice of variation application.
- (5) A motion in a proceeding is started under Part 6 - Motions as modified by Rule 59.52.

Notice of application

- 59.07** (1) A notice of application must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Application", be dated and signed, and include all of the following:
- (a) notice that the applicant is applying for an order and describing the relief that is sought;

- (b) a reference to legislation or other law, including the relevant sections of legislation, relied on by the applicant;
- (c) a list of the documents and statements that are filed with the application and a statement that a copy of each document is to be delivered to the respondent with the notice;
- (d) notice of the respondent's right to file a response to application and that a judge or court officer will direct the respondent regarding the deadline for filing;
- (e) notice that there are requirements for the parties to file documents and statements, and that a judge or court officer may require the respondent to provide information;
- (f) notice of the circumstances in which the respondent may cease to be entitled to notice of steps in the proceeding;
- (g) a statement explaining how documents and statements are filed and stating the requirement for immediate delivery to the other party;
- (h) if there is only one applicant, a designation of an address for delivery of documents to the applicant and, if there is more than one applicant, a designation of one address for delivery to all applicants or a separate address for each applicant;
- (i) an acknowledgement of the effect of delivery to the designated address;
- (j) if there is only one respondent, the address of the respondent for delivery of documents to the respondent, until the respondent designates an address for delivery, and if there is more than one respondent, the address for delivery to all respondents or a separate address for each respondent.

(2) The notice of application may be in Form 59.07.

Response to application by respondent

59.08 (1) A respondent in a proceeding started by notice of application may apply for an order by filing a response to application.

(2) A respondent who seeks to obtain relief that is different from the types of order claimed in the notice of application must file a response to application.

- (3) A respondent must file a response to application no less than fifteen days before the day of the hearing, unless a court officer or judge directs otherwise.
- (4) The response to application must contain the standard heading, be entitled “Response to Application”, be dated and signed, and include all of the following:
 - (a) notice of the relief requested;
 - (b) a reference to legislation or other law, including the relevant sections of legislation, relied on by the respondent;
 - (c) a list of the documents and statements that are filed with the response to application and a statement that a copy of each document is to be delivered to the applicant with the response;
 - (d) a designation of an address for delivery of documents to the respondent;
 - (e) an acknowledgement of the effect of delivery to the designated address.
- (5) The response to application may be in Form 59.08.

Petition for divorce

- 59.09 (1)** A petition for divorce must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled “Petition for Divorce”, be dated and signed by the petitioner, and include all of the following:
- (a) notice that action has been started for a divorce and for the corollary relief described in the notice;
 - (b) notice of the deadlines in Rule 31 - Notice for filing an answer;
 - (c) notice that the court may grant a divorce order and an order for the other relief claimed, unless the respondent files an answer;
 - (d) a statement of the restrictions on remarriage and notice of when the court issues a certificate of divorce;
 - (e) the claim for a divorce, and each other claim made by the petitioner, with references to the applicable legislation, including the relevant sections of legislation;
 - (f) the ground for divorce and particulars, details of the marriage, facts establishing jurisdiction, details about each child of the marriage if any, and details about agreements and earlier proceedings between the parties;

- (g) a statement about the impossibility of reconciliation;
 - (h) a statement about the absence of collusion and when applicable, the absence of condonation and connivance;
 - (i) a list of the documents and statements that are filed with the petition for divorce and a statement that a copy of each document is to be delivered to the respondent with the petition;
 - (j) notice that there are requirements for the parties to file documents and statements, and that a judge or court officer may require the respondent to provide information;
 - (k) a statement explaining how documents are filed and stating the requirement for immediate delivery of a copy to the petitioner;
 - (l) a designation of an address for delivery of documents to the petitioner;
 - (m) an acknowledgement of the effect of delivery to the designated address;
 - (n) the designation of a place of trial under Rule 59.03 and Rule 47 - Place of Trial or Hearing;
 - (o) the petitioner's declaration verifying the statements in the notice;
 - (p) the address of the respondent for delivery of documents to the respondent, until the respondent designates an address for delivery.
- (2) The petition for divorce may be in Form 59.09.
- (3) The certificate of counsel for a petitioner required by section 9 of the *Divorce Act* may be placed after the signature of the party on the petition for divorce.
- (4) A certificate of the marriage sought to be dissolved must be attached to the notice, unless it is not possible to do so at that time.
- (5) Both of the following apply when a petition for divorce is filed without an attached certificate of the marriage:
- (a) the certificate must be filed as soon as possible and before divorce trial dates are assigned, or a motion for divorce is made, unless it cannot be obtained;
 - (b) the party who requests a divorce and cannot obtain a marriage certificate, must prove the marriage in a manner directed by a judge.

- (6) A spouse who files a petition for divorce is permitted to file a subsequent petition for divorce only if the first proceeding is discontinued and no other divorce proceeding has been started by the other spouse.
- (7) A petition for divorce may be amended without a judge's permission at any time to add an allegation of marriage breakdown under section 8(2)(a) of the *Divorce Act*.
- (8) A party claiming adultery is not required to name, in a petition or other filed documents, a person with whom the other party is alleged to have committed adultery, but a party who does name the person in the petition or documents must notify that person using the same means as a party is notified of a proceeding under Rule 31- Notice.
- (9) A proceeding started by application under this Rule 59, that is not a divorce proceeding, such as a proceeding under the *Maintenance and Custody Act*, is taken to be consolidated, under Rule 37 - Consolidation and Separation, with a subsequent divorce proceeding started by a party to the other proceeding, unless a judge orders otherwise.

Answer to petition for divorce

- 59.10 (1)** A respondent in a divorce action who wishes to contest a claim made by the petitioner, or to make a claim for a divorce or corollary relief, must file an answer.
- (2) A respondent must file an answer no more than the following number of days after the day the respondent is notified of the proceeding:
 - (a) fifteen days, if notification is by personal service in Nova Scotia or by other means completed entirely in Nova Scotia;
 - (b) thirty days, if the notification is by personal service elsewhere in Canada or by other means completed entirely in Canada;
 - (c) forty-five days, if the notification is by personal service elsewhere in the world or by other means completed elsewhere in the world.
 - (3) A respondent may not file an answer after the deadline for doing so, unless a judge permits otherwise.
 - (4) A respondent who does not file an answer is taken to have admitted the facts and allegations in the petition for divorce and consented to the granting of the relief claimed against the respondent, and the respondent is disentitled to further notice in the proceeding, unless a judge orders otherwise.

- (5) The answer must contain the standard heading, be entitled “Answer”, be dated and signed by the respondent, and include all of the following:
- (a) a statement of which of the claims in the petition for divorce are contested, or a statement that no claims are contested and the answer is only filed to make a claim;
 - (b) a statements of the facts pleaded in the petition for divorce that are admitted, and those that are not admitted with the respondent’s particulars in reply;
 - (c) details about any child of the marriage that are incorrect or not included in the petition for divorce;
 - (d) details about agreements, or earlier proceedings, between the parties that are incorrect or not included in the petition for divorce;
 - (e) other corrections to statements in the petition for divorce;
 - (f) each claim made by the respondent, with references to the applicable legislation, including the relevant sections of legislation;
 - (g) if the respondent seeks a divorce, all of the following must be included:
 - (i) the ground for divorce and particulars,
 - (ii) a statement about the impossibility of reconciliation,
 - (iii) a statement about the absence of collusion and when applicable, the absence of condonation and connivance;
 - (h) a list of the documents and statements that are filed with the answer and a statement that a copy of each document is to be delivered to the petitioner with the answer;
 - (i) a designation of an address for delivery of documents to the respondent;
 - (j) an acknowledgement of the effect of delivery to the designated address;
 - (k) the respondent’s declaration verifying the statements in the notice.
- (6) The answer may be in Form 59.10.

Demand for notice

- 59.11 (1)** A respondent who does not contest a claim made by the petitioner, and does not wish to make a claim, may demand notice of all steps in the divorce action by filing a demand for notice, referred to in Rules 59.11(2) and (3), by the filing deadline provided in Rule 31.12.
- (2)** The demand for notice must contain the standard heading, be entitled “Demand for Notice (Divorce Action)”, be dated and signed, and contain notice that the demand is made, a designation of an address for delivery of documents to the respondent, an acknowledgement of the effect of delivery to the designated address.
- (3)** The demand for notice may be in Form 59.11.

Notice of variation application

- 59.12 (1)** A notice of variation application must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled “Notice of Variation Application”, be dated and signed, and include all of the following:
- (a)** notice that the applicant is applying to vary or change an order;
 - (b)** a statement identifying the order sought to be varied, providing the date that the variation is sought to take effect, and providing notice that the applicant must present evidence to support this date;
 - (c)** a reference to legislation or other law, including the relevant sections of legislation, relied on by the applicant;
 - (d)** a summary of the variation or change that is sought;
 - (e)** a list of the documents and statements that are filed with the variation application and a statement that a copy of each document is to be delivered to the respondent with the notice;
 - (f)** notice of the respondent’s right to file a response to variation application and that a judge or court officer will direct the respondent regarding the deadline for filing;
 - (g)** everything required by Rules 59.07(1)(e) to (j).
- (2)** The notice of variation application may be in Form 59.12.

- (3) A court officer must deliver a certified copy of an order that varies an order made by another court, other than provisionally, to the court that made the original order, and to any other court that made an order varying the original order, as soon as possible after it is issued.

Response to variation application by respondent

- 59.13** (1) A respondent to a proceeding started by notice of variation application may apply for a variation of an order by filing a response to variation application.
- (2) A respondent who seeks to obtain relief that is different from the relief claimed in the notice of variation application must file a response to variation application.
 - (3) A respondent must file a response to variation application no less than fifteen days before the day of the hearing, unless a court officer or judge directs otherwise.
 - (4) The response to variation application must contain the standard heading, be entitled “Response to Variation Application”, be dated and signed, and include all of the following:
 - (a) notice that the respondent is applying to vary or change an order;
 - (b) a statement identifying the order sought to be varied, providing the date that the variation is sought to take effect, and providing notice that the respondent must present evidence to support this date;
 - (c) a reference to legislation or other law, including the relevant sections of legislation, relied on by the respondent;
 - (d) everything required by Rules 59.12(1)(d) and (e);
 - (e) a designation of an address for delivery of documents to the respondent;
 - (f) an acknowledgement of the effect of delivery to the designated address.
 - (5) The response to variation application may be in Form 59.13.

Notice and disentitlement to further notice

- 59.14** (1) Rules in Rule 31 - Notice, for giving notice of a proceeding, apply to an application made under this Rule 59, unless a court officer or a judge directs that another method be used.
- (2) Despite Rule 59.14(1), a person under the age of majority must be served personally, and Rule 31.03(1)(c) does not apply, in any of the following circumstances, unless a judge directs otherwise:

- (a) the person is a party in a divorce proceeding;
 - (b) the person is a respondent in a proceeding started under the *Maintenance and Custody Act*.
- (3) A court officer or a judge may direct that notice of a proceeding be given by mail to a respondent in a proceeding in which a conciliation meeting is scheduled.
- (4) A party may make a motion to a judge for an order for substitute notification under Rule 31.10.
- (5) In addition to the grounds in Rule 31.13, a judge who is satisfied that a respondent fails to comply with a direction, order, or notice made by a court officer or a judge requiring the respondent to appear, or to provide disclosure, may order that the respondent is disentitled to further notice.

Designated address

- 59.15 (1)** A party who starts or responds to a proceeding, or appears before a court officer or judge, must designate an address for delivery of documents to that party.
- (2) The Rules in Rule 31 - Notice, about maintaining an address for delivery, designating a new address, and delivery to the address, apply in a proceeding in the Supreme Court (Family Division), and delivery to that address is sufficient for notice of a proceeding, or a step in a proceeding, under this Rule.
- (3) The contact information required by Rule 82 - Administration of Civil Proceedings to be given to a prothonotary may be given to a court officer, and the court officer may direct what further information is required and the form in which it is to be given.
- (4) Rule 85.09, of Rule 85 - Access to Court Records, applies as if “the prothonotary” read “the prothonotary or a court officer”.
- (5) A court officer who is satisfied that a person may otherwise be at risk of harm may direct that contact information be kept confidential and may assist a party to designate a neutral address for delivery.

Expiry, discontinuance, and withdrawal

- 59.16 (1)** An application notice or a petition for divorce expires six months after the day it is filed, unless the respondent is notified of the proceeding under Rule 59.14 or a judge or court officer extends the time for notification within the six months.
- (2) A party may discontinue an application or petition, or withdraw a response or answer, as provided in Rule 9 - Discontinuance, unless this Rule 59.16 provides differently or a judge orders otherwise.

- (3) An applicant or petitioner may not discontinue an application or divorce action under Rule 9 - Discontinuance, after an order for interim relief is made, without the permission of a judge, and a judge may refuse to permit discontinuance until a claim in a response or an answer is determined.
- (4) Rule 4.22 which provides for motions by the prothonotary to dismiss a dormant action, and Rule 5.18 which provides for motions by the prothonotary to dismiss a dormant application, do not apply to an application or divorce proceeding under this Rule 59.
- (5) A party affected by a discontinuance may make a motion for costs in an amount to be fixed under Rule 77 - Costs, and Rule 9.06(1), which provides for automatic costs, does not apply under this Rule 59, unless a judge orders otherwise.
- (6) The notice of discontinuance must contain the standard heading, be entitled “Notice of Discontinuance (Family Proceeding)”, be dated and signed, and include all of the following:

 - (a) a statement that the party discontinues the proceeding;
 - (b) a statement that the respondent must file a notice continuing the response or answer within ten days to continue the proceeding for the purpose of the relief sought in the answer or response.
- (7) The notice of discontinuance may be in Form 59.16A.
- (8) A response or answer expires ten days after the day the applicant delivers a notice of discontinuance to the respondent, unless the respondent files a notice continuing the response or answer within the ten days.
- (9) The respondent may only seek the relief claimed in the response or answer when a notice of continuance is filed under this Rule 59.16.
- (10) The notice of continuance must contain the standard heading, be entitled “Notice of Continuance”, be dated and signed, and include a statement that the respondent continues the response or answer, and it may be in Form 59.16B.
- (11) A respondent may withdraw a response to application, an answer, or a response to variation application, by filing a notice of withdrawal of response or answer at any time before the day of the hearing.
- (12) The notice of withdrawal of response or answer must contain the standard heading, be entitled “Notice of Withdrawal of Response or Answer”, be dated and signed, and include a statement that the respondent withdraws the response or answer, and it may be in Form 59.16C.

Parent information program

- 59.17 (1)** A party to a proceeding that involves a child must attend the court's parent information program, unless the party is exempted from attending under Rule 59.17(5).
- (2)** One of the following must occur before a proceeding that involves a child may be heard by a judge:
- (a)** the party initiating the proceeding provides proof of attendance at the parent information program;
 - (b)** the party is exempted from attending under Rule 59.17(5);
 - (c)** a court officer or judge determines the hearing must be held so quickly that attendance in the program is not possible prior to the hearing.
- (3)** The following are examples of circumstances in which a hearing may be held quickly:
- (a)** a party alleges that a child has been, or is likely to be, kidnapped or abducted;
 - (b)** a party alleges that a unilateral change in the child's physical care and custody or principal residence has occurred, or is about to occur.
- (4)** A party who is permitted to attend the parent information program after a hearing, because the hearing is held quickly, must arrange to attend the program as soon as possible after the hearing.
- (5)** A court officer or judge may exempt a party from attending the parent information program in any of the following circumstances:
- (a)** before or at the first conciliation meeting, the parties make an agreement, or agree to a consent order, settling all issues that involve a child between them;
 - (b)** a party starts the proceeding only to register an agreement;
 - (c)** the parties attended the parent information program under this Rule no more than twelve months before the day the application is filed;
 - (d)** other exceptional circumstances.
- (6)** A judge may make any of the following orders against a party who fails to attend a parent information program and does not obtain an exemption:

- (a) costs;
- (b) dismissal of a claim made by the party or allowance of a claim made against the party;
- (c) an order restricting the party's participation in a hearing;
- (d) any other order the judge considers will achieve justice in the circumstance.

Mediation

- 59.18 (1)** A court officer or judge may, after a proceeding has been started and with the consent of the parties, refer the parties to a mediator.
- (2) The mediator may meet with the parties, a child of the parties, counsel for the parties, and other persons, as often as the mediator considers appropriate.
 - (3) The mediator, in a mediation in which the parties reach an agreement on all of the issues, must prepare a draft consent order that conforms with the agreement and advise the parties to obtain independent legal advice about the draft consent order.
 - (4) The mediator, in a mediation in which the parties are unable to reach an agreement on all issues but are able to reach an agreement on one or more of the issues, must do both of the following:
 - (a) prepare a draft consent order that conforms with the agreement reached by the parties on the agreed issues and advise the parties to obtain independent legal advice about the draft consent order;
 - (b) file a written report that the parties did not reach an agreement on the remaining issues.
 - (5) The mediator, in a mediation in which the parties are unable to reach an agreement on any issues, must file a written report about attendance and the failure to reach agreement, and the report may not contain any other information.
 - (6) A draft consent order signed by the parties must be referred to a judge for approval under Rule 78 - Order no less than ten days after the day the draft order is filed, unless a party files an objection in that time.
 - (7) When an objection to a draft consent order is filed within the required time, a court officer must refer the parties back to the mediator or, after consulting with the parties and counsel, determine the next step to be taken in the proceeding.

- (8) Evidence of a communication during a mediation in which the parties are unable to reach an agreement on one or more issues is not admissible in a proceeding to determine the unresolved issues, and a mediator is not a competent or compellable witness to testify about any unresolved issues.

Disclosure obligations and notice of documents filed

- 59.19** (1) Rules 59.19 to 59.24 provide for disclosure of relevant information through the preparation, filing, and delivery of statements and documents.
- (2) Rule 31.15 requiring delivery of a copy of a filed document to the other party applies in a proceeding under this Rule 59, and Rule 31.15(2) applies as if “judge” read “judge or court officer”.
 - (3) Each filed statement must be immediately delivered to the other party under Rule 59.19(2), unless a judge or court officer directs otherwise.
 - (4) Rule 15 - Disclosure of Documents and Rule 16 - Disclosure of Electronic Information do not apply under this Rule 59, unless a judge orders otherwise.

Disclosure by parenting statement and deadline for filing

- 59.20** (1) A party who makes a claim for custody, for access, or about parenting of a child must file a parenting statement with the notice by which the claim is made.
- (2) A party who responds to, or contests, a claim for custody, for access, or about parenting of a child must file a parenting statement no later than ten days after the day a direction to disclose is delivered to the party, unless a court officer gives directions for a different time.

Disclosure by financial statements

- 59.21** (1) A party who makes a claim for support, and the party against whom the claim is made, must make disclosure as required by the applicable legislation, including the *Guidelines*, and this Rule 59 is not intended to alter those requirements.
- (2) Required disclosure of information must be made in the following financial statements, which are further provided for in Rules 59.22 and 59.24:
 - (a) statement of income;
 - (b) statement of special or extraordinary expenses;
 - (c) statement of expenses;
 - (d) statement of undue hardship circumstances;
 - (e) statement of property.

- (3) Parties who agree on the terms of an order for support, or a variation order for support, are not required to file financial statements if all of the following apply, unless a judge orders otherwise:
- (a) the order does not affect support for a child;
 - (b) the agreement is in writing and signed by the parties or counsel on their behalf;
 - (c) the parties sign and file a waiver of financial statements.

Disclosure of financial information for child support and other claims

59.22 (1) A party who makes the following claim for child support, and the party against whom the claim is made, must file the following statement or statements:

<i>Claim</i>	<i>Statement</i>
child support in the table amount under the <i>Guidelines</i> and no other financial claim	by the party claiming, none by the party claimed against, a statement of income
special or extraordinary expenses under the <i>Guidelines</i>	by the party claiming, a statement of special or extraordinary expenses by both parties, a statement of income
if the child is able to contribute to the special or extraordinary expenses	by the party claiming, an additional statement of the child's income or ability to contribute
child support that is different from the table amount, or the table amount plus special or extraordinary expenses	by both parties, a statement of income and a statement of expenses
if child support is also for a child who is nineteen years of age or older	by the party claiming, an additional statement of the child's income and expenses

<p>a claim that child support should be increased from, or decreased from, the table amount on the basis that child support in the table amount would cause undue hardship</p>	<p>by both parties, a statement of income and a statement of expenses, and both parties must also obtain from the other members of their households, as defined in Schedule II of the <i>Guidelines</i>, the members' income tax return and notice of assessment for the most recent tax year and any other information required to compare household standards of living in accordance with Schedule II, and file a copy, and the party making the claim must file a statement of undue hardship circumstances and the party's calculation and comparison of the household standards of living, as provided in Schedule II, and the party against whom the claim is made may file a separate calculation and comparison of the household standards of living, as provided in Schedule II.</p>
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(2) A party who makes any of the following claims, and the party against whom the claim is made, must file the following statements:

Claim	Statement
division of assets	a statement of property
spousal support	<p>a statement of income, a statement of expenses and a statement of property, and a statement of income, a statement of expenses and a statement of property of a person to whom the party is married, or with whom the party lives and has lived for two years or more as a common law partner, or with whom the party is a registered domestic partner</p>

variation of an order for spousal support	a statement of income and a statement of expenses, and a statement of income and a statement of expenses by a person to whom the party is married, or with whom the party lives and has lived for two years or more as a common law partner, or with whom the party is a registered domestic partner.
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Disclosure by affidavit

59.23 An applicant or respondent in an application is required to file an affidavit by the deadlines provided in Rule 5 - Application, or a different deadline as directed by a judge or a court officer, unless a judge directs otherwise.

Deadlines for filing financial statements

59.24 (1) The following deadlines apply to the filing of statements or documents required by Rules 59.21 and 59.22:

- (a) a party who makes a financial claim must file the required statements with the notice that includes the financial claim;
 - (b) a party who responds to a financial claim must file the required statements before the following deadlines after delivery of a direction to disclose:
 - (i) not more than fifteen days after delivery in Nova Scotia,
 - (ii) not more than thirty days after delivery elsewhere in Canada,
 - (iii) not more than forty-five days after delivery outside Canada;
 - (c) a party who claims that child support should be increased from, or decreased from, the table amount under the *Guidelines* on the basis that the table amount would cause undue hardship to a party or a child, must file the required statements and documents when the party files a notice in which the claim is made or, if there is no such notice, fifteen days after the day the other party delivers a required statement;
 - (d) a party responding to an undue hardship claim who files calculations and comparison of the household standards of living, in accordance with Schedule II of *Guidelines*, must file them no more than fifteen days after the day the calculations and comparison of the party claiming undue hardship are delivered.
- (2)** Despite Rule 59.24(1), a judge or court officer may permit a party, or direct a party, to file a required statement, or a required copy of a document, before a different deadline.

Direction to disclose

- 59.25 (1)** A court officer may make a direction to disclose requiring a party to disclose relevant information by the applicable deadline in Rule 59.24 or a different deadline directed by a judge or a court officer.
- (2)** A court officer may order a party who fails to make disclosure to appear before a court officer or a judge and provide disclosure at that time, and a court officer who is satisfied that the party received actual notice of the direction to disclose may do any of the following:
- (a)** make an interim order for child support at the table amount under the *Guidelines*, under Rule 59.33;
 - (b)** make an order for costs against the party;
 - (c)** dismiss all or part of an application, motion, or claim or stay a proceeding.
- (3)** The direction to disclose must contain the standard heading, be entitled “Direction to Disclose”, be dated and signed, and include all of the following:
- (a)** the name of the party;
 - (b)** the address of the party, unless the court officer is satisfied that publication of the address may cause harm to a person;
 - (c)** a statement that disclosure is required, a description of a statement or document to be filed or a summary of the information to be disclosed, a deadline and method for filing and providing copies to the other party or parties;
 - (d)** a description of any document to be provided with the statement;
 - (e)** a warning that failure by the party to disclose information as required may result in a court officer or judge ordering remedies referred to in this Rule 59.25;
 - (f)** a notice to the party of the right to be represented by counsel.
- (4)** A direction to disclose may be in Form 59.25.
- (5)** The direction to disclose may be delivered by mail, or other means determined by the court officer.

Order to appear and disclose and order to disclose

- 59.26 (1)** A court officer, or a judge, may make an order to appear and disclose that requires a party to appear before the court officer, or judge, and do any of the following:
- (a) complete a required statement, file a required statement, or file a required document;
 - (b) file any other document that discloses relevant information;
 - (c) produce a document;
 - (d) answer a question that seeks relevant information, or otherwise provide relevant information.
- (2)** The order for a party to appear and disclose must contain the standard heading, be entitled “Order to Appear and Disclose” and contain all of the following:
- (a) the name of the party;
 - (b) a requirement that the party appear before a court officer or a judge including the time, date, and place for the appearance;
 - (c) a requirement that the party make disclosure by bringing to the appearance three copies of a statement or document described in the order, or other information summarized in the order;
 - (d) a warning that failure by the party to appear before a court officer or judge and disclose as required may result in the court officer or judge making an order provided for in Rules 59.26(8) or (9);
 - (e) a warning that such a failure may also cause contempt proceedings to be started against the party;
 - (f) notice to the party of the right to make a motion to appeal, set aside, or vary an order made by a court officer.
- (3)** The order to appear and disclose may be in Form 59.26A.
- (4)** A court officer, or a judge, may make an order to disclose that requires a party to do any of the following:
- (a) file a required statement or document;
 - (b) file any other document that discloses relevant information;

- (c) otherwise, provide relevant information.
- (5) The order to disclose must contain the standard heading, be entitled “Order to Disclose” and contain all of the following:
- (a) the name of the party;
 - (b) a requirement that the party, by a stated deadline, make disclosure by filing three copies of a statement or document described in the order, or other information summarized in the order;
 - (c) a statement that the party must appear before the court officer, if the party does not file a required statement or document, or other information that makes the disclosure, by the stated deadline;
 - (d) a time, date, and place when and where the party must appear, if the party does not file the statement, document, or other information by the stated deadline;
 - (e) a warning that failure by the party to obey the order may result in the court officer or judge making an order provided for in Rules 59.26(8) or (9);
 - (f) a warning that such a failure may also cause contempt proceedings to be started against the party;
 - (g) notice to the party of the right to make a motion to appeal, set aside, or vary an order made by a court officer.
- (6) The order to disclose may be in Form 59.26B.
- (7) A court officer must arrange for service of an order to appear and disclose, or an order to disclose, on a party by one of the following methods:
- (a) deliver the order to the party during a conciliation meeting referred to in Rule 59.30;
 - (b) direct one of the parties to arrange for personal service of the order by the same means as a party is notified of a proceeding under Rule 31- Notice and assist the party with the arrangements when the court officer is satisfied that assistance is required;
 - (c) direct one of the parties to arrange for service of the order under an order for substitute notification referred to in Rule 31.10.

- (8) A court officer, or a judge, who is satisfied that a party fails to comply with an order to appear and disclose, or an order to disclose, may do any of the following:
- (a) make an order for costs against the party;
 - (b) make an order under Rule 59.27 for disclosure by a person who is not a party;
 - (c) make an interim order for child support under Rule 59.33;
 - (d) dismiss all, or part, of an application, motion, or claim or stay the proceeding.
- (9) In addition to the remedies in Rule 59.26(8), a judge who is satisfied that a party fails to comply with an order to appear and disclose, or an order to disclose, may do any of the following:
- (a) make an order for costs against the party so as to fully or substantially indemnify the other party;
 - (b) grant an application or motion, in whole or in part, if it is the respondent who fails to appear or disclose;
 - (c) start contempt proceedings under Rule 89;
 - (d) make any other order the judge considers will achieve justice in the circumstance.

Order for disclosure by non-party

- 59.27 (1)** A court officer who is satisfied on all of the following, may order a person who is not a party to disclose relevant information that is not privileged:
- (a) the information is in the person's control;
 - (b) the information is about a party's income, expenses, employment, or contact information, such as the party's address or telephone number;
 - (c) the party fails to comply with an order to appear and disclose, or an order to disclose, or the party is evading service or cannot be located.
- (2) In addition to an order made under Rule 59.27(1), a court officer may make either of the following orders to obtain disclosure from a person who is not a party if the person does not file the documents as required under Rules 59.22 and 59.23:

- (a) an order that a member of a party's household, as defined in Schedule II of the *Guidelines*, disclose information or produce documents required to make a calculation and comparison of household standards of living for the purposes of an undue hardship claim, as provided in Schedule II of the *Guidelines*;
 - (b) an order that a person to whom a party is married, or with whom a party lives and has lived for two years or more as a common law partner, or with whom a party is a registered domestic partner, file a statement of income, a statement of expenses, and a statement of property or any one of these statements, or disclose information or produce documents required by these statements.
- (3) A court officer may permit a party to make an *ex parte* motion for an order for disclosure by a person who is not a party if a party fails to comply with an order to appear and disclose, or an order to disclose, or the party is evading service or cannot be located.
- (4) An order under this Rule 59.27 may include a deadline for filing a financial statement or a document.
- (5) The affidavit in support of a motion for disclosure by a person who is not a party must contain all of the following:
 - (a) a summary of the steps taken in the proceeding;
 - (b) information about the person who is not a party, including the name of the person, the name of the recognized agent of a corporation or partnership, and the address of the person or recognized agent;
 - (c) a statement of the reasons for the party's belief that the person has information relevant to the proceeding;
 - (d) a description of the information sought.
- (6) The order must contain the standard heading, be entitled "Order for Disclosure by a Non-Party", be dated and signed, and include all of the following:
 - (a) a summary of the particulars of the motion;
 - (b) the name of the non-party required to make disclosure;
 - (c) a description of the information required to be disclosed, a requirement that it be disclosed, direction on how it is to be disclosed, and a deadline for filing the document making the disclosure;

- (d) the name of the person, or of the recognized agent, and the person's address for personal service under Rule 59.27(8);
 - (e) the name, telephone number, and fax number of the court officer and the address of the office of the court for filing;
 - (f) notice of the person's right to make a motion to appeal, set aside, or vary the order made by a court officer.
- (7) The order for disclosure by a non-party may be in Form 59.27.
- (8) A court officer must arrange, or direct one of the parties to arrange, to personally serve a non-party with an order for disclosure by non-party using the same means as a party is notified of a proceeding under Rule 31- Notice.

Disclosure and discovery under Part 5

59.28 (1) Part 5 - Disclosure and Discovery applies in a proceeding in the Supreme Court (Family Division), with the following exceptions:

- (a) Rule 15 - Disclosure of Documents and Rule 16 - Disclosure of Electronic Information do not apply, unless a judge orders otherwise;
 - (b) Rule 18 - Discovery does not apply in a proceeding in which the only disputed claim is for child support, unless a judge orders otherwise;
 - (c) Part 5 - Disclosure and Discovery does not apply in a proceeding in which the only disputed claim is for child support at the table amount or at the table amount plus special or extraordinary expenses, unless a judge orders otherwise.
- (2) The fact that a discovery examination is scheduled is not a reason to delay the making or hearing of a motion for interim relief, unless the parties agree to the delay or a judge is satisfied that the delay is justified.
- (3) A child may not be examined for discovery, and a prothonotary or court officer may not issue a discovery subpoena that requires a child to be examined, unless a judge permits.
- (4) A judge who permits discovery of a child may give directions for the conduct of the examination, such as directions limiting the duration of the examination and the kinds of questions that may be asked.

- (5) A judge may order a person to file any statement, disclose information, or produce documents the judge sees fit, and this power does not diminish a power of a judge under Part 5 - Disclosure and Discovery.

Conciliation

59.29 (1) The conciliation process includes the following steps, and the court officer must proceed with a step to the extent that the court officer is satisfied that the step is necessary to promote the just resolution of the proceeding:

- (a) identify the issues involved;
 - (b) ensure proper disclosure by the parties concerning those issues;
 - (c) clarify the respective positions of the parties;
 - (d) facilitate negotiations between the parties;
 - (e) assist the parties to reach a resolution;
 - (f) determine the next steps required in the proceeding.
- (2) A court officer conducting the conciliation process has all the powers of a prothonotary.

Conciliation meeting and directions

59.30 (1) A court officer who is satisfied it may promote the just resolution of the proceeding must arrange a conciliation meeting or meetings and give directions for the time, place, and conduct of the meeting or meetings.

- (2) A court officer who arranges a conciliation meeting may require a party to appear, and to participate in, the meeting by delivering to the party a direction to appear.
- (3) A direction to appear must contain the standard heading, be entitled “Direction to Appear”, be dated and signed, and include all of the following:
- (a) the name of the party;
 - (b) the address of the party, unless the court officer is satisfied that publication of the address may cause harm to a person;
 - (c) notice of the time, date, and place of the conciliation meeting;
 - (d) a statement that the party is required to appear before a court officer for the meeting, make required disclosure as directed by the court officer or a judge, and discuss the issues;

- (e) notice of the party's right to be represented by counsel.
- (4) A direction to appear may be in Form 59.30.
- (5) The direction to appear may be delivered by mail, or other means determined by the court officer, and the court officer may cause a direction to disclose under Rule 59.25 to be delivered with it.

Conduct of conciliation

59.31 (1) A court officer may do any of the following during the conciliation process:

- (a) arrange a conciliation meeting or further conciliation meetings;
 - (b) adjourn a conciliation meeting;
 - (c) refer the parties to mediation;
 - (d) make an order to appear and disclose, or an order to disclose, against a party who fails to appear or disclose;
 - (e) prepare a draft consent order;
 - (f) prepare a conciliation record;
 - (g) make an order for costs under Rules 59.25 and 59.26;
 - (h) make an order under Rule 59.27 for disclosure by a person who is not a party;
 - (i) make an interim order for child support under Rule 59.33;
 - (j) arrange for the parties to appear before a judge for a conference, settlement conference, motion, hearing, or trial;
 - (k) refer the parties to a person or agency that provides a required service;
 - (l) recommend to a judge that the judge order a parenting assessment report;
 - (m) direct any other step that may lead to a resolution of the issues.
- (2) A court officer may require a party to provide particulars of a claim at any time in the proceeding.

- (3) The court officer, who becomes satisfied on all of the following during the conciliation process, may make an order for costs against the applicant, or dismiss all or part of an application, motion, or claim or stay the proceeding, under Rules 59.25 and 59.26:
 - (a) the applicant has received notice of a written request from the court officer to provide particulars of a claim or to confirm the intention to proceed with the application;
 - (b) six months have passed since the day the notice of the request was delivered to the applicant;
 - (c) no response is provided by the applicant.
- (4) Rule 22.10, of Rule 22 - General Provisions for Motions, applies as if “prothonotary” read “prothonotary or court officer”.
- (5) Rule 30 - Motion to Prothonotary, applies as if “prothonotary” read “prothonotary or court officer”.

Consent order in conciliation

- 59.32 (1)** A court officer who conducts a conciliation in which the parties reach an agreement on one or more of the issues must prepare a draft consent order that conforms with the agreement and advise each party to obtain independent legal advice about the draft consent order.
- (2) A draft consent order signed by the parties must be referred to a judge for approval under Rule 78 - Order no less than ten days after the day the draft order is filed, unless a party files an objection in that time.
 - (3) When an objection to a draft consent order is filed within the time provided in Rule 59.32(2), a court officer must either refer the issues back for conciliation or, after consulting with the parties and counsel, determine the next steps to be taken in the proceeding.

Interim order for child support

- 59.33 (1)** A court officer who is satisfied on both of the following, may make an interim order for child support in the table amount under the *Guidelines*, and no other amount:
- (a) the party against whom the order is sought has not already been ordered to pay support for the same child;

- (b) a direction to appear, direction to disclose, order to appear and disclose, or order to disclose was delivered to the party against whom the order is sought in the manner provided by a Rule, direction, or order.
- (2) The court officer may determine the income of, or attribute or impute income to, the party against whom the order is made on the basis of any of the following evidence:
- (a) a financial statement, document, or other information filed, or otherwise provided, by the party against whom the order is made;
 - (b) a document provided by a person who is not a party although that person does not give evidence or a document provided by the person who seeks the order, if the court officer is satisfied that the document is authentic and reliable;
 - (c) evidence based on information and belief, if the court officer is satisfied it is reliable;
 - (d) a document or other evidence that is otherwise admissible.

Variation of, or setting aside, a court officer's order

- 59.34 (1)** A party who fails to appear or disclose by mistake, because of insufficient notice, or for other good reason, may make a motion to a court officer to set aside or vary an order made under Rule 59.25, Rule 59.26, Rule 59.31, or Rule 59.33, no more than ten days after the day the order is delivered to the party.
- (2) A person affected by an order of a court officer made under Rule 59.27, may make a motion to the court officer who made the order, to set aside or vary the order, no more than ten days after the day the order is delivered to the person and the court officer may set aside or vary the order.
- (3) A court officer may set aside or vary an order made by that court officer.
- (4) A court officer may refer a proposed order to a judge, who may make such order as is just or refer it back to the court officer with directions.
- (5) A person affected by an order of a court officer, other than a consent order, may make a motion to a judge for a review of the court officer's order under Rule 30.04 of Rule 30 - Motion to Prothonotary, which applies as if "prothonotary" read "prothonotary or court officer".

Conciliation record

- 59.35 (1)** A court officer may file a conciliation record at any stage of the conciliation process.

- (2) A court officer must file a conciliation record when the court officer is satisfied that the conciliation process has concluded without all issues being settled, unless a judge directs otherwise.
- (3) The conciliation record must contain the standard heading, be entitled “Conciliation Record”, be dated and signed by the court officer, and include all of the following:
 - (a) a list of the issues identified in the proceeding;
 - (b) a summary of the steps taken in the conciliation process;
 - (c) a list of the documents filed by each party and the date of filing;
 - (d) a list of the orders and written agreements, if any, made during the conciliation process;
 - (e) the name of each party’s counsel or a statement that a party acts on their own;
 - (f) a summary of the relevant facts or issues which are agreed or are not in dispute;
 - (g) a summary of the positions of each of the parties on the issues to be resolved.
- (4) A conciliation record may be in Form 59.35.
- (5) The court officer who files a conciliation record must deliver a copy to each party at least four days before the day the parties are to appear before a judge.
- (6) A party may object to any part of a conciliation record by filing a document summarizing the objection no more than two days after the day the record is delivered to the party.
- (7) The conciliation record constitutes evidence at the hearing, except any part that is the subject of a written objection, and that part may be considered by a judge who rules against the objection.

Referral to court

- 59.36 (1)** A court officer who is satisfied on all of the following must arrange for the parties to appear before a judge:
- (a) the proceeding is not withdrawn or discontinued;
 - (b) the proceeding is not dismissed or stayed by a court officer;

- (c) the proceeding is not resolved by a consent order following mediation or conciliation;
 - (d) the proceeding is not resolved by a consent order or written agreement, including a separation agreement or minutes of settlement, filed by a party;
 - (e) the applicant has filed all affidavits, documents, statements, and supporting disclosure required by this Rule 59;
 - (f) the respondent has filed all affidavits, documents, statements, and supporting disclosure required by this Rule 59, or all reasonable steps have been taken to obtain the required information.
- (2) A court officer who arranges for the parties to appear before a judge may schedule a hearing, conference, date assignment conference, or other appearance, and the court officer must do one of the following:
- (a) deliver a notice to appear in court to the parties by a means required for notice of a step in a proceeding under Rule 31 - Notice;
 - (b) direct one of the parties to arrange for personal service of the notice to appear in court to another party, by the same means as a party is notified of a proceeding under Rule 31 - Notice and assist the party with the arrangements when the court officer is satisfied that assistance is required;
 - (c) direct one of the parties to arrange for service of the notice to appear in court on another party under an order for substitute notification under Rule 31.10.
- (3) The notice to appear in court must contain the standard heading, be entitled “Notice to Appear in Court”, and contain all of the following:
- (a) a requirement that the parties appear before a judge for the court proceeding;
 - (b) the type of court proceeding; for example, a trial, hearing, or conference;
 - (c) the time, date, and place of the hearing and the amount of time scheduled for it;
 - (d) a notice to the party of the right to be represented by counsel and a recommendation that the party obtain legal advice;
 - (e) a warning that a judge may do any of the following, if the party fails to appear as required by the notice:

- (i) order costs against the party,
 - (ii) order a person who is not a party to disclose information,
 - (iii) dismiss the proceeding or motion, strike a claim, response, or answer, or stay the proceeding,
 - (iv) make an interim or final order, such as an order for custody, access, child or spousal support, division of property, or any other order sought;
- (f) the names of the parties who are required to appear;
- (g) the addresses of the parties, unless a court officer is satisfied that publication of the address may cause harm to a person.
- (4)** The notice to appear in court may be in Form 59.36.
- (5)** In the Supreme Court (Family Division), a person may make an application in chambers under Rules 5.02 to 5.06 of Rule 5 - Application, except each of the following apply:
- (a) the person making the application must file a notice referred to in Rule 59.06 and not a notice under Rules 5.02 and 5.03;
 - (b) a person responding to an application must file a response referred to in Rules 59.08 and 59.13 and not a notice of contest under Rule 5.04;
 - (c) a judge or a court officer must appoint a time for the hearing of an application, including any application in chambers, and regardless of the duration of the hearing;
 - (d) notice of the time, date, and place for the application must be given by notice to appear in court and delivered as provided in Rule 59.36(2);
 - (e) a judge or court officer may extend or shorten a deadline in Rule 5.06;
 - (f) cross examination is not permitted at a hearing scheduled for less than a half-hour, unless a judge otherwise orders;
 - (g) a judge, or court officer, may direct the parties to appear for a conference to organize an application that is to be heard in more than a half-hour.

Motion for directions

- 59.37 (1)** A party who wishes to proceed to the hearing of an application may make a motion for directions, as provided in Rule 5 - Application, unless this Rule 59 provides otherwise.
- (2) The motion for directions must be supported by an affidavit that conforms with Rule 5.07(4) of Rule 5 - Application.
- (3) A court officer must determine whether the motion for directions is ready for hearing.
- (4) A court officer who is satisfied the motion is ready for hearing must set a time, date, and place for the hearing and give notice to the parties in a way a party is notified under Rule 59.36.
- (5) A court officer who is not satisfied the motion is ready for hearing must notify the parties of what steps need to be taken and set a schedule for their completion.
- (6) A court officer who files a conciliation report may set a time, date, and place for a conference with a judge for the judge to give directions on the conduct and hearing of the proceeding, and no affidavit need be filed.
- (7) A judge or court officer who is satisfied on either of the following may permit an application to proceed without directions:
- (a) the case management of the application during the process of conciliation is sufficient to allow the application to proceed directly to a hearing;
 - (b) the application is of sufficient urgency to waive the requirement.
- (8) The deadline in Rule 5.07(3) of Rule 5 - Application, for scheduling the hearing of a motion for directions does not apply to a motion for directions in the Supreme Court (Family Division).

Conference

- 59.38 (1)** A judge or a court officer may arrange a conference with a judge under Rule 26 - Conference.
- (2) Rules 5.09(2) and (3) of Rule 5 - Application, and the provisions about directions in Rule 26 - Conference, apply on a motion for directions made at a hearing or in a conference.
- (3) A judge may give directions for the conduct of a proceeding and, otherwise, provide case management.

- (4) Part 6 - Motions, and in particular Rule 26 - Conference, apply to case management of a proceeding, and the presiding judge may direct a party or counsel to prepare the record of a case management conference.
- (5) A judge who gives directions under the provisions of Rule 26 - Conference may do any of the following:
 - (a) appoint a time, date, and place for a settlement conference if all of the parties agree to participate;
 - (b) set a time, date, and place for a further conference to organize the hearing of the application;
 - (c) refer the parties to conciliation or mediation;
 - (d) order a parenting assessment report under Section 32F of the *Judicature Act* or Section 19 of the *Maintenance and Custody Act*;
 - (e) require a party to present direct evidence by calling a witness rather than presenting an affidavit from the witness;
 - (f) appoint a time, date, and place for the hearing of the application;
 - (g) do anything that may aid the disposition of the proceeding.
- (6) The Associate Chief Justice of the Supreme Court (Family Division) may designate a court officer to conduct conferences, or a particular conference, and authorize the court officer to give directions under the Rule 26 - Conference or make an order under Rule 59.38(5).
- (7) A judge who presides at a conference that a party fails to appear may do any of the following:
 - (a) make an interim or final order, such as an order for custody, access, or child support;
 - (b) order costs against the party;
 - (c) order a person who is not a party to disclose information;
 - (d) dismiss the proceeding or motion, strike a claim, response, or answer, or stay the proceeding;
 - (e) start contempt proceedings against the party.

- (8) A court officer who presides at a conference under a designation by the Associate Chief Justice of the Supreme Court (Family Division) may recommend to a judge that the judge do anything provided in Rule 59.38(7).

Settlement conference procedure

- 59.39 (1)** A judge or a court officer who is satisfied that holding a settlement conference may assist in resolving an issue in the proceeding may appoint a time, date, and place for a settlement conference, at any stage of a proceeding, if all of the parties agree to participate.
- (2) A judge who is assigned to conduct a settlement conference may give directions about preparation for, and conduct of, the conference.
 - (3) A court officer may do either of the following:
 - (a) give directions on filing requirements to the parties before a settlement conference;
 - (b) request the judge provide directions on filing requirements and communicate the judge's directions to the parties before the conference.
 - (4) The parties must file a settlement conference brief containing all of the following, unless a court officer or a judge directs otherwise:
 - (a) a brief statement of the relevant facts;
 - (b) a statement of the issues to be resolved;
 - (c) a summary of the proposals for settlement;
 - (d) any other information that will assist the judge, including a list of any financial statement, expert report, and parenting assessment report relied on, and summarized in, the statement of facts and summary of proposals.
 - (5) An applicant or petitioner must file the settlement conference brief at least ten days before the day of the settlement conference and a respondent must file the settlement conference brief at least five days before that day, unless a court officer or judge directs otherwise.
 - (6) A judge may cancel a settlement conference and may make an order for costs against a party who, after agreeing to participate in a settlement conference, fails to comply with all of the following:
 - (a) any directions provided under Rules 59.39(2) and (3);

- (b) the filing requirements and deadline for the settlement conference brief under Rules 59.39(4) and (5);
 - (c) the requirement to appear at the settlement conference at the appointed date and time.
- (7) Rules 10.05 to 10.10 of Rule 10 - Settlement, concerning formal offers, do not apply to a family proceeding.
- (8) Rules 10.11 to 10.15, concerning the conduct of a settlement conference, do not apply to a family proceeding, unless a judge directs otherwise.

Hearing

- 59.40 (1)** The provisions of Rule 5 - Application, and Part 11 - Trial and Hearing, about evidence at, and the conduct of, a hearing apply to the hearing of an application in the Supreme Court (Family Division), unless this Rule 59 provides differently.
- (2) The hearing judge may direct that the hearing be conducted on testimony rather than affidavit evidence, or that it be conducted partly on testimony.
- (3) An application in chambers proceeds under Rules 5.02 to 5.06 of Rule 5 - Application, except each of the following apply:
- (a) a judge or a court officer must appoint a time for the hearing of an application, including any application in chambers, and regardless of the duration of the hearing;
 - (b) a judge or court officer may extend or shorten a deadline in Rule 5.06;
 - (c) cross examination is not permitted at a hearing scheduled for less than a half-hour, unless a judge otherwise orders;
 - (d) a judge, or court officer, may direct the parties to appear for a conference to organize an application that is to be heard in more than a half-hour.
- (4) After an application is scheduled for hearing, no party may initiate or continue a motion or a discovery, unless a judge permits otherwise.
- (5) Rule 55 - Expert Opinion applies to a hearing in the Supreme Court (Family Division), except that a judge may make an order for the discovery of an expert.
- (6) A child who is under the age of majority may not testify, and a prothonotary or court officer may not issue a subpoena that requires a child to appear at a hearing, unless a judge permits.

- (7) A judge who permits a child to be a witness may give directions for the presentation of the evidence, such as directions limiting the duration of the testimony and the types of questions that may be asked.

Obtaining divorce trial dates

- 59.41 (1)** The provisions of Rule 4.13 to 4.21 about a date assignment conference, a trial readiness conference, and trial dates, apply to the hearing in Supreme Court (Family Division), unless this Rule 59 provides differently.
- (2) A party to a divorce action may request an appointment for a date assignment conference from the court officer after all of the following are done:
 - (a) the party requesting the appointment files all statements and documents to make disclosure as required by this Rule or the *Guidelines*;
 - (b) the other party files required statements or documents or the requesting party includes in the request an explanation of why this is not necessary or possible, and all steps taken to obtain the required information;
 - (c) the parties have prepared for trial sufficiently that there is little risk that the trial will be adjourned to allow further preparation or to permit a party to take a further step in the proceeding.
 - (3) The request for a date assignment conference must include the party's representation that the things required by Rule 59.41(2) have been done.
 - (4) A court officer who is satisfied the request is ready for a date assignment conference must notify the parties of the time, date, and place of the conference no more than twenty-five days after the day the request is filed and in the way a party is notified under Rule 59.36.
 - (5) A court officer who is not satisfied the request is ready for a date assignment conference must notify the parties of what steps need to be taken and set a schedule for their completion.
 - (6) After a divorce action is scheduled for trial, no party may initiate or continue a motion or a discovery, unless a judge permits otherwise.
 - (7) This Rule does not limit the power of a judge to appoint a time, date, and place for a trial at a conference or otherwise.

Divorce trial

- 59.42 (1)** A divorce trial may be conducted in accordance with Rule 51 - Conduct of Trial, with each of the following additional provisions:

- (a) the trial judge may direct that the trial be conducted on affidavit evidence rather than testimony, or that it be conducted partly on affidavit evidence;
 - (b) a document purporting to be official proof of a marriage in another jurisdiction proves the marriage, unless the contrary is established;
 - (c) all claims, including claims outside the *Divorce Act*, are tried together, with the case for the petitioner including the petitioner's evidence on all claims and the case for the respondent including the respondent's evidence on all claims, unless the trial judge directs otherwise;
 - (d) a statement filed or required by this Rule 59 or the *Guidelines*, and a filed document containing information required to be provided by the *Guidelines*, may be admitted and tendered as an exhibit without further proof, unless a judge orders otherwise.
 - (e) Rules 59.40(4) to (6) apply to the conduct of a trial.
- (2) Each party must, no less than twenty-five days before the day the trial is scheduled to start, review the statements or documents filed by the party in compliance with this Rule 59 or the *Guidelines*, and file an up-to-date statement or document to supercede a statement or document that does not contain the most current information, unless the trial judge orders otherwise.

Uncontested divorce

- 59.43 (1)** An uncontested divorce, and uncontested corollary relief, may be sought in any of the following ways:
- (a) by filing a notice of motion in a divorce action that is uncontested;
 - (b) by filing an application for a divorce by agreement;
 - (c) by filing a joint application for a divorce.
- (2) A judge may grant an uncontested divorce, and uncontested corollary relief, without a hearing, unless a court officer arranges a time, date, and place for a hearing.
- (3) A judge may direct that an uncontested divorce be determined by hearing and direct a court officer to set a time, date, and place for the hearing.
- (4) The certification of counsel for a petitioner required by section 9 of the *Divorce Act* may be placed after the signature of the party on the document that starts an application for a divorce.

Uncontested motion for divorce

- 59.44 (1)** A petitioner in a divorce action may make a motion for a divorce order and, if corollary relief is claimed in the petition for divorce, a corollary relief order when the respondent becomes disentitled to notice under Rule 31 - Notice, files a demand for notice, withdraws an answer, or consents to the order.
- (2)** A respondent in a divorce action, who files an answer making a claim for a divorce, may make a motion for a divorce order and, if corollary relief is claimed in the answer, a corollary relief order when the petitioner becomes disentitled to notice under Rule 31 - Notice, or consents to the order.
- (3)** The motion may be made under Part 6 - Motions, unless this Rule 59 provides or a judge directs otherwise, or it may be made without providing for a hearing.
- (4)** A motion for a divorce without a hearing must contain everything required in an *ex parte* motion under Rule 23 - Chambers Motion, with each of the following modifications:
- (a)** the motion must be entitled “Uncontested Motion for Divorce”;
 - (b)** it does not state a time, date, or place for the motion to be heard;
 - (c)** it must include a request that the motion be determined without a hearing;
 - (d)** in addition to the affidavits relied on, it must refer to the filed marriage certificate, and any statement or document required by this Rule 59.
- (5)** The motion for a divorce may be in Form 59.44.
- (6)** A copy of the motion for a divorce must be delivered immediately to a respondent who files a demand for notice.
- (7)** A court officer must deliver a motion for a divorce to a judge, and the judge must do one of the following:
- (a)** determine the motion;
 - (b)** direct the court officer to notify the party making the motion, and the responding party who is entitled to notice, of what further evidence or information the judge requires to determine the motion;
 - (c)** dismiss the motion, or part of it;
 - (d)** give directions for a hearing.

Application for divorce based on written agreement

- 59.45 (1)** A spouse who has all of the following may apply for a divorce order, and any corollary relief order, by filing an application for divorce, unless there is an outstanding divorce proceeding between the parties:
- (a) a written agreement covering the dissolution of the marriage by divorce order and the terms for any corollary relief;
 - (b) the respondent's written and signed designation of an address for delivery of documents;
 - (c) the respondent's written and signed consent to proceeding by application without an opportunity for a hearing or contest.
- (2)** An application for divorce based on a written agreement must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Application for Divorce by Agreement", be dated and signed by the applicant, and include all of the following:
- (a) notice the applicant applies for a divorce order and, if applicable, a corollary relief order;
 - (b) a statement that the applicant and the respondent have executed a written agreement that settles all issues between them concerning the divorce and corollary relief;
 - (c) notice the application is, in accordance with the written agreement, to be referred to a judge without opportunity for a contest or hearing;
 - (d) notice that the respondent must immediately notify a court officer in writing of any statement in the application with which the respondent disagrees and notice of the deadline in Rule 59.45(6);
 - (e) a motion that a judge grant a divorce order, and a corollary relief order that is consistent with the written agreement;
 - (f) a statement that the marriage certificate, or an affidavit if applicable, is filed with the application;
 - (g) a statement that a copy of the written agreement is attached as an exhibit to the affidavit filed in support of the application;
 - (h) a statement that the designated address for delivery of documents and consent to the proceeding, written and signed by the respondent, are attached as exhibits to the affidavit filed in support of the application;

- (i) a reference to the certificate, statements, documents, and affidavits required under this Rule 59;
 - (j) a designation of an address for delivery of documents to the applicant;
 - (k) a statement that the respondent is being notified of the application immediately.
- (3) An application for a divorce by agreement may be in Form 59.45.
- (4) A copy of the application must be delivered to the address designated by the respondent in the agreement immediately after the application is filed.
- (5) A judge may consider the application ten days after it is filed or after the respondent receives a copy of the filed application and consents in writing to the divorce order and any corollary relief order.
- (6) A respondent must immediately notify a court officer of any statement in the application with which the respondent disagrees, and no more than ten days after the application is delivered to the respondent.
- (7) A court officer must advise the judge of a notification from the respondent under Rule 59.45(6) and the judge may do one of the following:
- (a) determine the application and the notification;
 - (b) direct the court officer to notify the parties of what further evidence or information the judge requires to determine the application;
 - (c) dismiss the application, or part of it;
 - (d) give directions for a hearing.

Joint application for divorce

- 59.46 (1)** Spouses who agree in writing for a divorce and to the terms of any corollary relief, may apply for a divorce order, and a corollary relief order, by filing a joint application for divorce.
- (2) A joint application for divorce must contain everything required in an application for a divorce by agreement, with each of the following modifications:
- (a) there is no responding party and both parties sign the application as joint applicants;

- (b) it must include a statement that the parties apply for relief, instead of the notices required by Rules 59.45(2)(a) and (d);
 - (c) it must be entitled “Joint Application for Divorce”;
 - (d) each of the parties must designate an address for delivery of documents in the application;
 - (e) Rules 59.45(2)(h) and (k) do not apply.
- (3) A joint application for divorce may be in Form 59.46.

Information and evidence for uncontested divorce

- 59.47 (1)** A motion, application, or joint application for an uncontested divorce must be supported by each of the following:
- (a) a marriage certificate proving the marriage that is to be dissolved, or an affidavit proving the marriage and providing sufficient reasons for an order permitting proof by that means;
 - (b) any statement or document required by this Rule 59 to be filed by the petitioner or applicant;
 - (c) any financial statement or document required by this Rule 59 to be filed by the respondent or, on a motion for an uncontested divorce in an action in which the respondent fails to file a required statement or document, an affidavit proving that the filing cannot reasonably be compelled;
 - (d) any information about income required under the *Guidelines*;
 - (e) an affidavit proving further facts necessary to obtain the divorce and any corollary relief, unless a judge permits the facts to be proved by testimony;
 - (f) an affidavit proving the respondent has been notified of the proceeding under Rule 31 - Notice, unless the proceeding is started by joint application or the respondent consents to the divorce order and any corollary relief order.
- (2) A party who files a notice of motion or an application for a divorce order must provide a court officer with two stamped envelopes with the designated addresses of the party who files the notice or application and two stamped envelopes with the designated address of the respondent, or the ordinary address of a respondent who has not designated an address.

- (3) A party is not required to file financial statements in support of a motion for an uncontested divorce if all of the following apply, unless a judge orders otherwise:
 - (a) there are no children of the marriage;
 - (b) the parties agree in writing that no corollary relief for spousal support be ordered;
 - (c) the parties agree in writing on all other corollary relief;
 - (d) the parties file a waiver of financial statements signed by both of them.
- (4) A motion for an uncontested divorce that involves a child of the marriage, and in which a party has not filed a financial statement or document as required by this Rule 59 or the *Guidelines* in relation to the child, may not be referred to a judge until the statement or document is filed, unless a judge orders otherwise.
- (5) A party who relies on adultery to establish the ground for divorce in an uncontested divorce must prove the adultery by affidavit or by filing an extract from a discovery transcript certified by a court reporter and a copy of the certificate.

Divorce order and corollary relief order

- 59.48** (1) A judge who is satisfied that the ground for divorce, and other necessary facts, are proved, may grant a divorce and make a divorce order.
- (2) A judge who makes a divorce order may make a corollary relief order.
 - (3) Unless the judge who grants a divorce directs otherwise, a corollary relief order must be issued immediately after the divorce order.

Divorce certificate

- 59.49** (1) After the period for appealing an order under the *Divorce Act* in Rule 90 - Civil Appeal, a court officer must do all of the following:
- (a) determine whether the divorce order has been appealed;
 - (b) cause a certificate of divorce to be issued and sealed, if there is no appeal;
 - (c) mail a duplicate original certificate to both parties.
- (2) The certificate of divorce must be entitled “Certificate of Divorce”, contain the year, registry code, number of the action, and name of the court, provide the names of the parties and the date of the marriage that was the subject of the proceeding, certify the marriage was dissolved by a divorce order, and certify the date the order took effect.

- (3) The certificate of divorce may be in Form 59.49.

Registration of divorce order

59.50 An order made in accordance with section 20 of the *Divorce Act* may be registered by filing a certified copy of the order and a written request that the order be registered.

Preparation of order

59.51 A final order is to be prepared as provided in Rule 78 - Order, unless this Rule 59 provides differently or a judge directs otherwise.

Motion and interim relief

- 59.52 (1)** A motion may be made in the Supreme Court (Family Division) as provided in Part 6 - Motions, unless this Rule 59 provides otherwise.
- (2) A date, time, and place for the hearing of a motion for interim relief by a judge may be appointed only after a court officer is satisfied that an interim hearing is necessary and that the party making the motion has filed all of the following:
 - (a) a notice of motion and an affidavit in support of the motion;
 - (b) all statements, documents, and supporting disclosure, as required by Rules 59.20 to 59.22, that are necessary for the determination of the motion.
 - (3) A party who makes a motion on notice for any relief, including interim relief, may provide evidence by any of the following means:
 - (a) evidence as provided in Rule 23.08 of Rule 23 - Chambers Motion;
 - (b) a parenting statement or financial statement;
 - (c) a conciliation record filed before the notice of motion.
 - (4) A motion to be made on notice expires six months after the day the notice of motion is filed, unless notice of the motion is given to the other party in a manner provided in Rule 31 - Notice.

Emergency application and emergency motion

- 59.53 (1)** A party to a proceeding in the Supreme Court (Family Division) may make a motion as provided in Rule 28 - Emergency Motion except that Rules 59.52(2) and 59.53 apply, unless a judge orders otherwise.
- (2) A party who seeks the appointment of a time, date, and place for the hearing of a application or motion as an emergency must do all of the following:

- (a) file the notice that starts the application, or file the notice of motion;
 - (b) file an affidavit in support of the application or motion that must contain all relevant facts known to the party, whether or not the facts are adverse to the party;
 - (c) file the statements, documents, and supporting disclosure required by Rules 59.20 to 59.22 that are necessary to the determination of the application or motion;
 - (d) provide contact information under Rule 59.15(3) and Rule 82 - Administration of Civil Proceedings;
 - (e) provide a written statement that includes all of the following information:
 - (i) all contact information for a party who is to receive notice of the application and any information the applicant has about the availability of that party,
 - (ii) a summary of any evidence to be presented in addition to the affidavit filed in support of the application or motion,
 - (iii) the amount of time the hearing is likely to require,
 - (iv) the party's reasons for saying an emergency exists,
 - (v) the reasons that justify proceeding without notice, if the party files an *ex parte* notice.
- (3) The party must satisfy a court officer on all of the following:
- (a) an emergency exists of sufficient gravity to require a speedy hearing;
 - (b) it is possible for all parties who wish to be heard to be in attendance at the hearing;
 - (c) the gravity of the emergency outweighs any inconvenience to a party.
- (4) A court officer may give directions, or request that a judge give directions, for the emergency hearing, including directions for a shortened notice period and a speedy method of giving notice.

Litigation guardian

- 59.54 (1)** A judge may appoint a person to act as litigation guardian for a child who is under the age of majority, or a party who is not capable of managing their affairs under Rule 36 - Representative Party, if the person consents to act as litigation guardian and certifies that they are not a party, and that they have no interest in the proceeding adverse to the interests of the child or the party.
- (2)** A person under the age of majority is not required to start or respond to a proceeding by a litigation guardian unless a judge orders otherwise.

Paternity test

- 59.55** A court officer may make an order for a paternity test in a proceeding in which the paternity of a child is in issue, including a blood test under subsection 27(1) of the *Maintenance and Custody Act*, and a genetic test under section 11B of the *Vital Statistics Act*.

Provisional order under the *Divorce Act*

- 59.56 (1)** All of the following documents must be filed with a notice of variation application for a provisional order under section 18 of the *Divorce Act*:
- (a)** an affidavit of the applicant's evidence in support of the application;
 - (b)** a statement by the applicant providing all available information about the identification, location, income and assets of the respondent;
 - (c)** financial statements, documents, and information required by this Rule 59.
- (2)** A court officer who receives a provisional order for confirmation under section 19 of the *Divorce Act* must cause a notice to appear in court, and copies of the application and other documents received from the court that made the provisional order, to be personally served on the respondent no less than twenty-five days before the day of the hearing, by the same means as a party is notified of a proceeding under Rule 31 - Notice.
- (3)** The respondent must file all statements, documents, and information required under Rules 59.21 to 59.23 no more than fifteen days after the day the notice to appear in court and the other documents are personally served on the respondent, and a court officer may make a direction to disclose to the respondent under Rule 59.25.

Proceedings under the *Interjurisdictional Support Orders Act*

- 59.57** An application for a support order or a provisional order, including a variation order, under the *Interjurisdictional Support Orders Act* is made under the provisions of the *Act* and its regulations, including provisions about forms, notices, delivery or service of documents, disclosure from the respondent, evidence, proceedings, and orders.

Enforcement of support order

- 59.58 (1)** A party who files a document provided by the Director of Maintenance Enforcement confirming either of the following may obtain an execution order or periodic execution order to enforce a support order:
- (a) the Director received a written consent signed by the parties stating that they opted out of the enforcement program under subsection 10(1) of the *Maintenance Enforcement Act*, and neither party has given written notice to the Director to opt back into the program, under subsection 10(2) of the *Act*, since the date of receipt of the written consent;
 - (b) the Director decided not to enforce the order or part of the order under subsection 11(1) of the *Maintenance Enforcement Act* and the party may enforce the order or part of the order under subsection 11(2) of the *Act*.
- (2)** The Associate Chief Justice of the Supreme Court (Family Division) may designate a court officer to hold hearings and make orders under Section 37 of the *Maintenance Enforcement Act*.
- (3)** A court officer may not make an order of imprisonment under clauses 37(3)(j) or (k) of the *Maintenance Enforcement Act*.

Communicating with a judge or a court officer

- 59.59 (1)** A person may communicate directly with a judge about a proceeding, by means of correspondence, telephone, or e-mail, only if the judge expressly permits the communication.
- (2)** Communication about a proceeding must not be made to a court officer by email, unless directed by a judge.

Publication ban and access to information

- 59.60 (1)** A proceeding under this Rule 59 shall be held in public, except that a judge who is satisfied on either of the following may exclude members of the public from all or part of the proceeding:
- (a) the presence of the public could cause emotional harm to a child who is a witness or a participant in the hearing, or is the subject of the hearing;
 - (b) it is in the interest of the proper administration of justice.
- (2)** A judge may make an order prohibiting the publication of the identity of a child, or the name of a party or witness, or of any other information that would identify the child.

- (3) A judge may order that a court file or any part of the file or any document contained in the file be sealed, treated as confidential, and not made available to the public.
- (4) A person, other than a party or counsel for a party, who requests access to a court file must give written notice to the parties no less than twenty days before obtaining access.
- (5) A party may make a motion for an order sealing all or part of the court file after delivery of written notice of the request for access.
- (6) The person requesting access to the court file must be granted access, subject to any terms or conditions the judge specifies, unless a party makes a motion within the required time.