

COURT OF QUEEN'S BENCH OF ALBERTA

FAMILY LAW PRACTICE NOTE "2"

FAMILY LAW CHAMBERS

EFFECTIVE MARCH 1, 2011

A. General

1. This Practice Note applies to interim applications brought under the *Divorce Act*, the *Matrimonial Property Act* and the *Family Law Act* where child support, custody, access, parenting or contact is at issue. All other proceedings subject to Part 12 of the Alberta Rules of Court are not governed by this Practice Note.

2. Information Sheets

The Court from time to time may designate information sheets to be completed and presented to the presiding judge before an application will be heard. Counsel are to exchange these sheets at least 24 hours prior to any application.

3. Affidavits and Statements

- (a) *Divorce Act*

A party bringing an application under the *Divorce Act* will be entitled to file only one affidavit sworn by that party in support of the application. The Respondent to the application will be allowed one affidavit sworn by that Respondent in reply. The Applicant is entitled to one sworn affidavit in reply to matters raised by the Respondent. Any new matters raised by the Applicant in the reply affidavit will be disregarded; costs may be awarded against any Applicant attempting to raise new issues in any affidavit filed in reply.

An application may be made to strike out inflammatory and irrelevant material contained in an affidavit. However, notice must be given in advance in the letter required pursuant to paragraph 15 of this Practice Note.

- (b) *Family Law Act*

A party bringing an application under the *Family Law Act* will be entitled to file only one Statement sworn by that party for each request made and up to one contemporaneous supplemental affidavit. The Respondent to the application will be allowed only one Reply Statement and up to one contemporaneous affidavit sworn by that Respondent for each Statement filed by the Applicant.

The Applicant is entitled to respond to the Respondent's Reply Statement in an affidavit but is limited to matters raised by the Respondent. Any new matters raised by the Applicant will be disregarded; costs may be awarded against any Applicant attempting to raise new issues in an affidavit filed in reply.

If a Respondent wants relief from the Court, the Respondent is entitled to file only one statement for each request made in the Response and up to one contemporaneous affidavit. With respect to the relief being sought by the Respondent, the Respondent will follow instructions for the Applicant and the Applicant will follow instructions for the Respondent.

An application may be made to strike out inflammatory and irrelevant material contained in a Statement, affidavit, or reply statement. However, notice must be given in advance in the letter required pursuant to paragraph 15 of this Practice Note.

4. Evidence upon which the parties intend to rely during the application must be included in the affidavit or Statement referred to in paragraph 3. If a party wishes to rely upon evidence contained in a previously filed affidavit or Statement, such evidence must be repeated in the affidavit or Statement filed for the application. However, parties cannot attach a previously filed affidavit as an exhibit. If a party wishes to rely upon evidence contained in a cross-examination on an affidavit, the relevant pages of the transcript may be submitted with the letter; however, the entire transcript should not be included.
5. References in this Practice Note to the Chambers Clerk means
 - (a) in Calgary, the Justices' Chambers Clerk, with respect to matters to be heard in Special Family Law Chambers Applications and the Trial Coordinator with respect to matters to be heard on the Civil Trial List;
 - (b) in Edmonton, the Family Law Chambers Clerk with respect to Special Family Law Chambers Applications and the Trial Coordinator with respect to Special Family Law Chambers Applications requiring special leave and matters to be heard on the Civil Trial List
 - (c) in Red Deer and Lethbridge, the Trial Coordinator; and
 - (d) elsewhere, such court official as the Clerk of the Court shall designate.
6. Filing Orders

It is requested that orders granted in Family Law Chambers be filed on green paper, pale enough so that it can be photocopied. The purpose of having orders on coloured paper is so that they can be easily located on the court files. While

appreciated, the use of green paper is not mandatory as orders on white paper are acceptable.

B. Morning Chambers

7. Time Limits

No application that will take more than 20 minutes in its entirety may be heard in morning family law chambers without leave of the presiding judge. Contested applications for change of custody or substantial changes to a parenting arrangement may not be heard in morning chambers.

Longer applications that cannot conveniently be heard in morning chambers may be set down in special chambers, or for a short oral hearing and adjourned from morning chambers to the date given for the longer hearing.

C. Special Chambers

8. A Special Family Law Chambers Application is a contested chambers application in respect of a family law matter likely to take more than 20 minutes but not more than one hour to argue. Matters likely to require more than one hour for argument must have special leave of the Court obtained through the Chambers Clerk before they can be set down for Special Family Law Chambers. Applications likely to take more than a half day shall be placed on the Civil Trial List. The practice governing Special Family Law Chambers Applications shall apply to all Family Law Special Applications booked whether they appear on the Family Law Specials List or the Civil Trial List.
9. Oral evidence may be adduced on the hearing of a chambers application only with the prior leave of the presiding judge granted on notice, if appropriate, to the other parties involved.
10. An application shall indicate an estimate of the time required for argument.
11. A party applying for adjournment of applications from Morning Chambers to Special Family Law Chambers or to the Civil Trial List should first obtain a hearing date from the Chambers Clerk, and if the adjournment is granted should forthwith advise the Chambers Clerk.
12. If an application in respect of which a Family Application or Claim has been previously filed and served is adjourned to an assigned date, the Applicant's counsel shall forthwith notify the Chambers Clerk in writing and serve all interested parties with written notice of the assigned date. If an application is adjourned *sine die*, then if the Applicant again sets the matter to be heard on a specific date, the Applicant shall provide reasonable written notice to all

interested parties of the specific date. If a date for Special Family Law Chambers is booked and no previous Family Application or Claim has been served, the Applicant's counsel shall forthwith file a Family Application and supporting affidavit on all interested parties.

13. Instead of a brief, each of the parties shall provide to the Chambers Clerk and serve upon each other a concise letter (no more than four pages) setting out:
 - (a) the parties and their counsel (including a clear statement of which counsel is acting for each party),
 - (b) the relevant background information with respect to the parties,
 - (c) their current situation as verified by affidavits filed,
 - (d) the issues,
 - (e) each party's position with respect to those issues,

and citing all relevant authorities.

It is not necessary to provide highlighted copies of authorities unless there is an unusual point of law that will be argued. However, if counsel are going to rely upon authorities other than leading authorities (*Haisman, Moge*, etc.), then they shall provide at least the head note and highlighted copies of the passages in question.

14. Counsel shall attach the Materials to the letter referred to in paragraph 13. For the purpose of this Practice Note, Materials are the following:
 - (a) a copy of the filed Family Application, Claim or any Response,
 - (b) a copy of the filed affidavits and/or statements referred to in paragraph 3 of this Practice Note;
 - (c) a copy of all previous orders at issue on the application,
 - (d) a copy of any relevant portions of transcripts as described above
 - (e) any information sheets designated by the Court from time to time; and
 - (f) authorities referenced above.

15. Filing timelines

- (a) The Applicant's letter and Materials shall be filed with the Chambers Clerk and served on the Respondent before 4:30 p.m. on the 3rd Friday before the week in which the assigned hearing date falls.
- (b) The Respondent's letter Materials shall be filed with the Chambers Clerk and served on the Applicant before 4:30 p.m. on the 2nd Friday before the week in which the assigned hearing date falls.
- (c) An Applicant may file a reply letter to address any new issues raised by the Respondent's letter, and any reply Materials, by 4:30 pm on the Thursday before the week in which the assigned hearing date falls. If the

Applicant files a reply affidavit, the affidavit will clearly identify on its face that it is a Reply Affidavit filed in support of a Special Chambers Application in order to ensure that it is immediately directed to the judge hearing the application, so that it can be read before the hearing .

- (d) If the date on which Materials are required by this paragraph to be served is a holiday, the filing and service of the Materials shall be done on the day before the holiday.
16. To assist in the expeditious hearing of these applications, the practice of the Court concerning the mandatory filing of information sheets, including budgets (where spousal support is in issue), evidence and letters listing issues and authorities shall be strictly enforced.
17. In the event that an Applicant misses any of the time limits imposed in this Practice Note, the application will be struck by the Chambers Clerk. If an Applicant wishes to proceed even though the matter has been struck for failure to abide by the time limits, the Applicant must obtain a fiat permitting late filing from the to the presiding supervising judge or, if there is no supervising judge , a Family Law Duty judge. In the event that a Respondent misses any of the time limits imposed in this Practice Note, the Court may refuse to allow for late filing, or may grant a fiat for late filing and entertain an application for costs.
18. Any application for an adjournment
- (a) before the last day for filing and serving the Respondent's required letter may, with the agreement of all parties, be obtained by telephone from the Chambers Clerk; or
 - (b) on or after the last day for filing and service of the Respondent's required letter, shall be made to the judge assigned to hear the application, or in the absence of or failing the assignment of that person, to the presiding supervising judge or, if there is no supervising judge , a Family Law Duty judge;
 - (c) during the week of the hearing date shall be made to the judge assigned to hear the application.