

RULE 70
DIVORCE ACTIONS

APPLICATION OF RULES OF CIVIL PROCEDURE

70.01 All the Rules of Civil Procedure that apply in a proceeding apply in a divorce action, with necessary modifications, except where Rules 70.02 to 70.25 provide otherwise.

DEFINITIONS

70.02 In Rules 70.03 to 70.25,

- (a) "Act" means the *Divorce Act, 1985* (Canada);
- (b) "Court" means the Family Section of the Supreme Court or a judge thereof;
- (c) "Registrar" means the registrar of the court or a deputy registrar;
- (d) "Uncontested Action" means an action in which the respondent has failed to deliver an answer or the answer has been withdrawn or struck out;
- (e) "Child of the Marriage" has the same meaning as in section 2 of the Act.

PETITION

General

- 70.03** (1) The originating process for the commencement of a divorce action is a petition for divorce (Form 70A), varied as the circumstances of the proceeding require, except as provided by paragraph 70.09(6) (counterpetition against person not already a party (Form 70B)).
- (2) A certificate of the marriage from Vital Statistics (P.E.I.) or the equivalent thereof from another jurisdiction, shall be filed with the Petition for Divorce before a petition is issued, unless the Petition states that it is impossible to obtain the Certificate.
- (3) The party commencing the action is called the petitioner and the opposite party is called the respondent.

- (4) The petition shall be signed, sealed and dated by the registrar and shall then be deemed to be issued.
- (5) The original petition shall be filed with the registrar at the time of issuing.

Person Alleged to Have Been Involved in Adultery

- (6) In a petition in which it is alleged that the respondent spouse has committed adultery, it is not necessary to set out the name of the other person alleged to have been involved.

Joint Petition for Divorce

- (7) Spouses may commence a divorce action jointly without a respondent.

Claim for Relief

- (8) A petition that contains a claim for support or division of property shall set out the nature of relief claimed.

Joinder of Claim

- (10) Any claim for relief under the *Family Law Act*, the *Custody Jurisdiction and Enforcement Act* or under any Act, providing for alimony or maintenance may be joined with a proceeding for divorce provided that the claim is specifically pleaded.
- (11) Unless the court determines otherwise, a petition shall have the effect of raising all issues concerning or in any way relating to the matters for which relief is specifically sought notwithstanding that an issue is not specifically referred to in the petition and the court may make any judgment or order which the justice of the case may require.

SERVICE OF PETITION

Manner of Service

- 70.04** (1) A petition shall be served on the respondent personally or in accordance with subrules 16.03 (2) to (4) (acceptance of service by solicitor, service by mail with acknowledgement of receipt card), unless the court makes an order under Rule 16.04 for substituted service or dispensing with service.
- (2) A person who effects personal service of a petition shall:
 - (a) ask the respondent to complete and sign the acknowledgement of service on the back of the petition and shall sign as witness to the respondent's signature, or record the fact that the respondent declined to sign the

acknowledgement of service, as the case may be; or

- (b) file an affidavit of service in accordance with Rule 16.09(1).

Person Alleged to Have Been Involved in Adultery

- (3) If a petition sets out the name of a person alleged to have been involved in adultery with the respondent, it shall be served on the person, unless the court orders otherwise, by any method authorized by Rule 16 for service of an originating process, or by mailing a copy of the petition to the person at his or her last known address.

Petitioner not to Effect Personal Service

- (4) A petition that is served personally shall be served by someone other than the petitioner.

Service Outside Prince Edward Island

- (5) A petition may be served outside Prince Edward Island without a court order.

Substituted Service by Advertisement

- (6) Where substituted service of a petition by advertisement in a newspaper is ordered by the court, the advertisement shall be in Form 70C.

TIME FOR SERVICE OF PETITION

70.05 A petition shall be served within six months after it is issued or within such further time as the court may allow on an ex parte motion made before or after the expiration of the time for service.

PLEADINGS

- 70.06** (1) In a divorce action, pleadings shall consist of the petition (Form 70A), answer (Form 70D) and reply (Form 70E), if any.
- (2) In a counterpetition, pleadings shall consist of the counterpetition (Form 70B), answer to counterpetition (Form 70F) and reply to answer to counterpetition (Form 70G), if any.

ANSWER

Time for Delivery of Answer

- 70.07** (1) A respondent who wishes to oppose a claim made in the petition shall deliver an answer,
- (a) within twenty days after service of the petition, where the respondent is served in Prince Edward Island;

- (b) within forty day after service of the petition, where the respondent is served elsewhere in Canada or in the United States of America; or
 - (c) within sixty days after service of the petition, where the respondent is served anywhere else,
- except as provided in subrule (3), 19.01(5) (late delivery of defence) or 70.10(2) (counterpetition against petitioner and non-party).

Notice of Intent to Defend

- (2) A respondent served with a petition who intends to defend the action may deliver a notice of intent to defend (Form 70H) within the time prescribed for delivery of the answer.
- (3) A respondent who delivers a notice of intent to defend within the prescribed time is entitled to ten days, in addition to the time prescribed by subrule (1), within which to deliver an answer.

Discontinuance of Intent to Defend and/or Answer

- (4) A respondent who has delivered a notice of intent to defend or an answer may file a Notice of Discontinuance of Intent to Defend or a Notice of Discontinuance of Answer anytime before the date for trial and the action shall then continue as an uncontested action.

REPLY

70.08 A reply, if any, shall be delivered within ten days after service of the answer.

COUNTERPETITION

Where Available

- 70.09** (1) A respondent who claims any relief against the petitioner, other than dismissal of the action and costs, shall do so by way of counterpetition.
- (2) A respondent who counterpetitions against the petitioner may join as a respondent to the counterpetition any other person, whether a party to the main action or not, who is a necessary or proper party to the counterpetition.

Person Alleged to Have Been Involved in Adultery

- (3) Subrules 70.03(6) and 70.04(3) (naming and service of person alleged to have been involved in adultery) apply, with necessary modifications, to a counterpetition.

Counterpetition to be in Same Document as Answer

- (4) A respondent shall include the counterpetition (Form 70B) and the answer in a single document entitled an answer and counterpetition.

Claim for Relief

- (5) A counterpetition that contains a claim for support or division of property shall set out the nature of relief claimed.

Counterpetition to be Issued where Respondent to Counterpetition not Already Party to Main Action

- (6) Where a person who is not already a party to the main action is made a respondent to the counterpetition, the answer and counterpetition,
- (a) shall be issued,
 - (i) within the time prescribed by Rule 70.07 for the delivery of an answer in the main action, or at any time before the respondent is noted in default, or
 - (ii) subsequently with leave of the court; and
 - (b) shall contain a second title of proceeding showing who is petitioner by counterpetition and who are respondents to the counterpetition.

Service Outside Prince Edward Island

- (7) A counterpetition may be served outside Prince Edward Island without a court order.

TIME FOR DELIVERY OR SERVICE OF ANSWER AND COUNTERPETITION

Where all Parties are Parties to the Main Action

- 70.10** (1) Where a counterpetition is only against the petitioner, or only against the petitioner and another person who is already a party to the main action, the answer and counterpetition shall be delivered within the time prescribed by Rule 70.07 for the delivery of the answer in the main action, or at any time before the respondent has been noted in default.

Where New Party is Brought In

- (2) Where a counterpetition is against the petitioner and a respondent to the counterpetition who is not already a party to the main action, the answer and counterpetition shall be served, after it has been issued, on the parties to the main action and, together with all the pleadings previously delivered in the main

action, on the respondent to the counterpetition who is not already a party to the main action, and shall be filed with proof of service,

- (a) within thirty days after the answer and counterpetition is issued or at any time before the respondent is noted in default; or
 - (b) subsequently with leave of the court.
- (3) An answer and counterpetition need not be served personally on any person who is a party to the main action, except where a respondent to the counterpetition is also a respondent in the main action and has failed to deliver a notice of intent to defend or an answer in the main action, in which case the respondent shall be served in the manner prescribed by subrule 70.04(1), whether or not the respondent has been noted in default in the main action.

AMENDING ANSWER TO ADD COUNTERPETITION

- 70.11** (1) A respondent who has delivered an answer that does not contain a counterpetition and who wishes to counterpetition only against the petitioner, or only against the petitioner and another person who is already a party to the main action, may amend the answer in accordance with Rules 26.02 and 26.03 in order to add the counterpetition, and Rule 26.05 (responding to amended pleading) applies to the amended answer and counterpetition.
- (2) A respondent referred to in subrule (1) who wishes to counterpetition against the petitioner and another person who is not already a party to the main action may, with leave of the court, have the registrar issue an amended answer and counterpetition, and Rule 26.05 (responding to amended pleading) applies to the amended answer and counterpetition.

ANSWER TO COUNTERPETITION

By Petitioner and Other Party to Main Action

- 70.12** (1) The petitioner and any other respondent to a counterpetition who is already a party to the main action shall deliver an answer to counterpetition (Form 70F) within twenty days after service of the counterpetition.
- (2) Where the petitioner delivers a reply in the main action, the answer to counterpetition and the reply shall be included in a single document entitled a reply and answer to counterpetition.

By Respondent added by Counterpetition

- (3) A respondent to a counterpetition who is not already a party to

the main action shall deliver an answer to counterpetition (Form 70F),

- (a) within twenty days after service of the answer and counterpetition, where the respondent to the counterpetition is served in Prince Edward Island,
- (b) within forty days after service of the answer and counterpetition, where the respondent to the counterpetition is served elsewhere in Canada or in the United States of America; or
- (c) within sixty days after service of the answer and counterpetition, where the respondent to the counterpetition is served anywhere else,

except as provided in subrule (5) or 19.01 (5) (late delivery of defence).

- (4) Where a respondent to a counterpetition who is not already a party to the main action is served with a counterpetition and intends to defend the action, he or she may deliver a notice of intent to defend (Form 70H) within the time prescribed for delivery of the answer to counterpetition.
- (5) A respondent to a counterpetition who delivers a notice of intent to defend within the prescribed time is entitled to ten days, in addition to the time prescribed by subrule (3), within which to deliver an answer to counterpetition.

REPLY TO ANSWER TO COUNTERPETITION

70.13 A reply to answer to counterpetition (Form 70G), if any, shall be delivered within ten days after service of the answer to counterpetition.

FINANCIAL STATEMENTS

Where Required

- 70.14** (1) Where a petition contains a claim for support or division of property, the petitioner shall, unless otherwise ordered, file and serve a financial statement (Form 70I) within 21 days after a Notice of Intent to Defend or Answer has been delivered and the respondent spouse shall file and serve a financial statement within 14 days after the petitioner's financial statement has been filed.
- (2) Where no claim for support or division of property is made in the petition, but such a claim is made in the counterpetition, the respondent spouse shall deliver a financial statement, unless

ordered otherwise, with the answer and counterpetition and the petitioner shall deliver a financial statement with the answer to counterpetition.

Waiver of Financial Statements

- (3) Subrules (1) and (2) do not apply in respect of a claim for support under the Act if both spouses have filed a waiver of financial statements (Form 70J), but the spouses may not waive the obligation to deliver financial statements in respect of a claim under the *Family Law Act*.

Registrar to Refuse Documents Unless Accompanied by Financial Statements

- (4) Where a financial statement is required to be filed or delivered with a petition or counterpetition, or an answer to it, the registrar shall not accept the petition, counterpetition or answer for issuing or filing without the financial statement.

Respondent Must File Even When Not Defending

- (5) A respondent spouse who does not intend to defend a claim for support or division of property shall nevertheless deliver a financial statement within the time prescribed for delivery of an answer or answer to counterpetition, but the failure of the respondent spouse to do so does not prevent the petitioner from setting the action down for trial or moving for judgment.

Order to Require Delivery

- (6) Where a respondent spouse fails to deliver a financial statement within the time prescribed for delivery of the answer or answer to counterpetition, the court may, on motion without notice, make an order requiring the delivery of a financial statement within a specified time.
- (7) If a claim is made in the action for custody of a child, the court may order the parties to deliver financial statements (Form 70I) within a specified time.

Particulars of Financial Statement

- (8) Where a financial statement lacks particularity a spouse may demand particulars and if the other spouse fails to supply them within seven days the court may, on such terms as are just,
 - (a) order particulars to be delivered within a specified time; or
 - (b) strike out the financial statement and order that a new

financial statement be delivered within a specified time.

Sanctions for Failure to Deliver Financial Statement or to Give Particulars

- (9) Where a spouse fails to comply with an order to deliver a financial statement, a new financial statement or particulars,
 - (a) the court may dismiss the spouse's action or strike out his or her answer; and
 - (b) a judge may make a contempt order against the spouse.

Cross-examination on Financial Statement

- (10) A spouse may cross-examine the other spouse on his or her financial statement.
- (11) A cross-examination on a financial statement may be used,
 - (a) on a motion for interim relief; and
 - (b) at trial, in the same manner as an examination for discovery.
- (12) A spouse who has set the action down for trial or who has consented to the action being placed on a trial list may not cross-examine before trial on the other spouse's financial statement without leave of the court, but is not relieved of the obligation imposed by subrules (13) to (15).

Duty to Correct Financial Statement and Answers on Cross-examination

- (13) A spouse who has delivered a financial statement and subsequently discovers,
 - (a) that any information in the financial statement or answer on cross-examination on it was incorrect or incomplete when made; or
 - (b) that there has been a material change in any information contained in it,

shall forthwith provide information concerning the change or correction in writing to the other spouse, and subrules 31.09(2) and (3) (correcting answers and sanctions for failure to correct) apply, with necessary modifications.

- (14) A spouse who has delivered a financial statement shall deliver an updated financial statement, if there has been a material change, at least seven days before the commencement of the trial of the action, but may not be cross-examined before trial on the updated financial statement except with leave of the court.

Financial Statement

- (15) In an action in which a claim is made for support or a division of property, each spouse shall deliver a financial statement (Form 70I) at least seven days before the pre-trial conference.

INTERIM RELIEF

Notice of Motion

- 70.15** (1) A notice of motion for interim relief shall set out the precise relief sought.

- (1.1) Unless subrule (2.1) applies, the notice of motion shall state that the motion will be heard on a date and time to be fixed.

Pre-motion Conference

- (2) Prior to the hearing of the motion and prior to the filing of affidavits in support of the motion, a pre-motion conference shall be held before a judge of the court to consider whether any or all of the issues raised by the motion or the action can be settled or resolved on an interim or final basis.

- (2.1) Subrule (2) does not apply:

- (a) to applications and motions made pursuant to the *Victims of Family Violence Act*, unless the parties consent to a pre-motion conference; and
- (b) where the court, at the request of one or more of the parties, has waived the requirement for a pre-motion conference.

- (2.2) A notice of pre-motion conference (Form 41A) and a pre-motion conference memorandum (Form 41B) shall be served together with the notice of motion.

- (2.3) The party making the motion shall serve and file, with proof of service, a copy of the notice of motion, a copy of the notice of pre-motion conference (Form 41A), and a copy of the pre-motion conference memorandum (Form 41B) at least ten days before the hearing of the pre-motion conference. Where service is effected outside of Prince Edward Island, the material shall be served and

filed, with proof of service, at least twenty days before the hearing of the pre-motion conference.

- (2.4) The responding party shall serve and file, with proof of service, a copy of the responding party's pre-motion conference memorandum at least four days before the hearing of the pre-motion conference.
- (2.5) Where a party fails to file material required for the pre-motion conference, or files material late, or fails to appear at the hearing of the pre-motion conference, the court may grant all or part of the relief sought in the motion, costs, or such other relief as is just in the circumstances.
- (2.6) Statements made by the parties at the hearing of the pre-motion conference shall be confidential and shall not be disclosed to the judge hearing the motion.
- (3) Unless otherwise ordered at the hearing of the pre-motion conference, costs of a pre-motion conference shall be assessed as part of the costs of the motion of action.
- (4) A judge who conducts a pre-motion conference under subrule (2) shall not preside at a motion, trial, a reference in the action or a motion for judgment, except
 - (a) where the pre-motion conference has resolved all the issues and the parties consent to the judge presiding at a motion for judgment; or
 - (b) where the respondent party has failed to appear at the hearing of the pre-motion conference and the judge, after considering all of the circumstances, grants an order arising from the pre-motion conference on such terms as is just.

Written Proposal for Settlement and Costs of Interim Motion

- (5) In exercising his or her discretion concerning costs, the judge who hears a motion for interim relief shall take into account any written proposal for settlement of the motion or the failure to make such a proposal.

Failure to Comply with Interim Order

- (6) Where a party fails to comply with an order for interim relief and the court is satisfied that the party is able to comply with the

order, the court may postpone the trial of the action or strike out any pleading or affidavit of the party in default.

Setting Aside Varying or Amending Interim Orders

- (7) A person who is affected by an order for interim relief may, after the expiration of six months from the granting of the order for interim relief, move to set aside, vary or amend the order for interim relief.
- (8) On a motion under subrule (7), the court may set aside, vary or amend the order for interim relief on such terms as are just.

Counter-Motion for Interim Relief

- (9) Where a notice of motion has been served and the responding party also wishes to make a motion for interim relief, the responding party shall serve and file a notice of motion setting out the precise relief sought and the court may hear the motion at the same place and time.

CHILDREN AND DIRECTOR OF CHILD PROTECTION'S REPORT

Application of Rule

- 70.16** (1) Subrules (2) to (13) apply where there is a child of the marriage within the meaning of s. 2 of the Act.

Children to be Identified

- (2) The name and birth date of every child of the marriage shall be set out in the petition or counterpetition.

Service of Documents on Director of Child Protection

- (3) Where custody of or access to children is claimed, the petition or counterpetition shall be served on the Director of Child Protection in accordance with Rule 16, and the Director of Child Protection shall forward a letter to the registrar, with a copy to counsel for the petitioner indicating whether or not the Director intends to investigate the matter.

Notice of Intention to Investigate and Report

- (4) Where the Director of Child Protection intends to investigate and report to the court concerning custody of or access to a child, he or she shall serve notice of that intention (Form 70M) on the parties and shall file a copy of the notice with proof of service.
- (5) Service of the notice on a party who has been noted in default shall be effected by mail addressed to the party at his or her last

known address, unless the court orders otherwise.

Service of Documents on Director of Child Protection

- (6) Where the Director of Child Protection has served notice, a party who subsequently serves an answer, reply or notice of motion or any other document that relates to custody of or access to the child or relates to the child's support or education shall also serve it on the Director of Child Protection within the time prescribed for service on the parties.

Discovery by Director of Child Protection

- (7) Where the Director of Child Protection has served notice, he or she has the right to discovery in respect of any matter that relates to custody of or access to the child or relates to the child's support or education.

Service of Report

- (8) The Director of Child Protection shall serve his or her report on the parties interested in custody of or access to the child or in the child's support or education, within sixty days after serving notice under subrule (4), and shall then forthwith file a copy of the report and supporting affidavit, if any, with proof of service.
- (9) Subrule (5) applies, with necessary modifications, to service of the report.

Dispute of Report

- (10) A party on whom the report is served may dispute a statement in it or in any supporting affidavit by serving a concise statement of the nature of the dispute on every other party interested in custody of or access to the child or in the child's support or education, and on the Director of Child Protection, and filing the statement, with proof of service, within fifteen days after service of the report.
- (11) Where the Director of Child Protection has served notice under subrule (4), the action shall not be tried and no motion for judgment shall be heard until,
 - (a) all disputes have been filed or the time for filing disputes has expired; or
 - (b) every party interested in custody of or access to the child or in the child's support or education has filed a waiver (Form 70N) of the right to dispute the report.

Court Appointment of Child Advocate

- (12) On motion of the Director of Child Protection, a judge shall designate an attorney as a child advocate and direct that such child advocate may intervene for the purpose of protecting the interest of the children concerned.

Court Appointment of Queen's Proctor

- (13) An order may be made at any stage of the proceedings by the court or a judge thereof designating an attorney of the court as Queen's Proctor, or such person as the court shall deem proper, to intervene for the purpose of showing collusion or fraud or bringing any evidence before the court.

NAMING PLACE OF TRIAL

70.17 The petitioner shall name in the petition the place of trial and the trial shall be held at the place named in the petition unless an order is made to change the place of trial under Rule 46.02.

MARRIAGE CERTIFICATE AND CERTIFICATE RESPECTING PRIOR PENDING PROCEEDINGS

70.18 No divorce action shall be tried and no motion for judgment in a divorce action shall be heard until the registrar has received and attached to the trial or motion record,

- (a) a certificate of the marriage, or equivalent thereof from another jurisdiction, unless the petition states that it is impossible to obtain a certificate; and
- (b) a certificate or report with respect to prior pending proceedings commenced by either spouse, issued under the Divorce Regulations (Canada) after the petition was filed.

MOTION FOR JUDGMENT - UNCONTESTED PROCEEDING

Requisition and Notice of Motion

- 70.19** (1) Where a respondent fails to deliver an answer within the prescribed time, the petitioner may, on filing proof of service of the petition, request the registrar to note the respondent in default and file a notice of motion for judgment in a divorce action and thereafter the respondent shall not deliver an answer without the consent of the petitioner or leave of the court.
- (2) Where a respondent has been noted in default, it shall not be necessary to give him any notice of the date set for the hearing of the proceeding.
- (3) A requisition to note the respondent in default and a notice of motion for judgment in a divorce action shall be combined in

Form 70O.

- (4) The motion for judgment shall state whether the petitioner intends to present evidence to prove the claim by way of affidavit evidence or oral evidence.

Petitioner's Affidavit

- (5) The affidavit of the petitioner in support of the motion (Form 70P) shall,
- (a) contain sufficient information for the court to satisfy itself that there is no possibility of the reconciliation of the spouses, or that the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;
 - (b) confirm that all the information in the petition is correct, except as specified in the affidavit;
 - (c) if no certificate of marriage or equivalent thereof from another jurisdiction has been filed in the action, state,
 - (i) what efforts have been made to obtain a certificate and why it is impossible to obtain one,
 - (ii) the date and place of marriage, and
 - (iii) sufficient particulars to prove the marriage;
 - (d) set out particulars of the grounds for divorce;
 - (e) state that there has been no agreement, conspiracy, understanding or arrangement to which the petitioner is either directly or indirectly a party for the purpose of subverting the administration of justice, fabricating or suppressing evidence or deceiving the court;
 - (f) if the petitioner is relying on the respondent's adultery or cruelty, state that the petitioner has not condoned or connived at the act or conduct complained of, or if there has been condonation or connivance, set out the circumstances that indicate that the public interest would be better served by granting the divorce;
 - (g) provide particulars of the present and proposed custody and access arrangements in respect of each child of the marriage, if different from those set out in the petition;
 - (h) if the petitioner claims support, provide particulars of his or her and the children's needs and of the respondent's means, with reference to the financial statements filed in the action, and set out particulars of any change in

circumstances since the financial statements were filed;

- (i) if the petitioner does not claim a division of property, confirm that he or she does not wish to claim a division of property at this time and state that he or she is aware that a claim for a division of property may be barred after the divorce;
- (j) if the petitioner wishes to include in the judgment provisions of a consent, settlement, separation agreement or previous court order, refer to the document as an exhibit and refer to the specific provisions to be included;
- (k) if the petitioner claims costs, set out sufficient facts to enable the court to determine whether costs should be awarded;
- (l) if the petitioner seeks to have the divorce take effect earlier than thirty-one days after it is granted, set out the special circumstances that justify the earlier effective date, state that the spouses have agreed that no appeal will be taken from the judgment, and refer to the agreement as an exhibit;
- (m) provide the respondent spouse's last known address and state the means by which the address is known;
- (n) if a divorce is sought on the basis of separation, contain information that the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding;
- (o) where a divorce is sought on the basis of physical or mental cruelty, contain information that the conduct of the respondent spouse has rendered continued cohabitation intolerable; and
- (p) where the divorce is sought on the basis of adultery, refer to the affidavit of the respondent spouse admitting adultery, with particulars of it, or such other information as may satisfy the court that the respondent has committed adultery.

Respondent's Affidavit

- (6) An affidavit made by a respondent spouse in support of the motion (Form 70Q) shall,
 - (a) state that the respondent is the petitioner's spouse;

- (b) provide the respondent's address for service of the judgment;
- (c) if the petitioner is relying on the respondent's adultery and the respondent is prepared to admit the adultery, state that the respondent is aware that he or she is not obliged to give evidence that he or she has committed adultery, but that he or she is willing to give that evidence;
- (d) contain the matters referred to in clauses (5)(a), (b), (f), (g), (h) and (i); and
- (e) if the respondent does not claim a division of property, confirm that he or she does not wish to claim a division of property at this time and state that he or she is aware that a claim for a division of property may be barred after the divorce.

Where Counterpetitioner Moves for Judgment

- (7) If the motion for judgment is made by the counterpetitioner, subrules (5) and (6) (petitioner's and respondent's affidavits) apply and references to the petition and petitioner shall be deemed to be references to the counterpetition and counterpetitioner.

Affidavit of Person Involved in Adultery

- (8) Where a person with whom a respondent spouse is alleged to have committed adultery is prepared to admit the adultery and files an affidavit in support of the motion, the affidavit shall state that the person is aware that he or she is not obliged to give evidence that the respondent spouse committed adultery with him or her, but that he or she is willing to give that evidence.

Oral Evidence at Hearing of Motion

- (9) Instead of or in addition to filing an affidavit in support of the motion, the petitioner or counterpetitioner may examine witnesses at the hearing of the motion and subrule 39.03(3) (leave to examine witness at hearing) does not apply.

Presence of Counsel

- (10) In an uncontested proceeding, where the information is to be presented by affidavit, the judge may,
 - (a) grant a judgment without an appearance by counsel or the parties; or
 - (b) direct that counsel or the petitioner appear or that oral

evidence be presented at the hearing.

Registrar to Present Motion to Judge

- (11) The registrar shall present the notice of motion and the evidence filed in support to a judge.
- (12) Before presenting the motion to a judge, the registrar shall examine the notice of motion, the evidence filed in support and the draft divorce judgment and shall complete a registrar's certificate (Form 70R).

MOTION FOR JUDGMENT - CONTESTED PROCEEDING

Setting Down for Trial

- (13) (a) Where an answer has been delivered, a date for trial of a proceeding shall not be assigned until a pre-trial conference is held unless otherwise ordered by the court.
- (b) The provisions of Rule 48 shall apply to the setting down for trial of a proceeding.

Draft Judgment - Contested or Uncontested

- (14) The moving party shall file with the notice of motion four copies of the draft divorce judgment (Form 70S), a stamped envelope addressed to each of the parties and, where the Director of Child Protection has prepared a report in the action, a stamped envelope addressed to the Director of Child Protection.

Judgment

- (15) If judgment is granted on the motion in accordance with the draft filed, the registrar shall forthwith sign and enter judgment and mail a copy of it in each envelope provided under subrule (14).
- (16) If judgment is to be granted on the motion, but not in accordance with the draft filed, the judge shall hear submissions on behalf of the moving party or adjourn the motion for that purpose.

ADJOURNMENT OF TRIAL

Resumption after Adjournment

- 70.20** (1) Where a judge grants an adjournment of the trial under subsection 10(2) of the Act before hearing any evidence, a motion for resumption of the trial under subsection 10(3) of the Act may be made to any judge.
- (2) Where a judge grants an adjournment of the trial under subsection 10(2) of the Act after commencing the hearing of evidence, a motion for resumption of the trial under subsection

10(3) of the Act may be made only to the same judge.

Notice to Attorney General

- (3) The judge trying a divorce action may adjourn the trial for any reason to such time and place as is just and, in a proper case, may direct that the registrar forthwith give notice to the Attorney General of the proceeding, its state and the reasons of the judge for directing that notice be given.
- (4) Where notice is given, the Attorney General may appear by counsel on the adjourned trial and make submissions and otherwise participate in the proceeding to the extent that the judge allows.

REFERENCE TO A FAMILY MEDIATOR OR COUNSELLOR

- 70.21** (1) A judge may on his own motion or, on consent of the parties, refer any question or issue arising in the action relating to custody, support or access to a family mediator or counsellor for inquiry and report.
- (2) Where a reference is directed under subrule (1), the mediator or counsellor shall inquire into the question or issue referred and shall make a report.
 - (3) The report of the family mediator or counsellor shall be filed and upon an action either party may cross-examine the family mediator or counsellor on the contents of his or her report.
 - (4) The judge may require the mediator or counsellor to give reasons for his or her findings or conclusions and may confirm the report in whole or in part or make such other order as is just.

CERTIFICATE OF DIVORCE

- 70.22** The registrar in the office where a divorce action was commenced shall issue a certificate of divorce (Form 70T) when,
- (a) the divorce has taken effect;
 - (b) a requisition (Form 70 U) has been filed with the registrar, accompanied by an affidavit (Form 70 V) sworn after the divorce took effect and stating that,
 - (i) no appeal from the divorce is pending, or any such appeal has been abandoned or dismissed, and
 - (ii) no order has been made extending the time for appealing from the divorce, or if any such order has been made, the extended time has expired without an appeal being taken; and

- (c) the registrar has searched the court records and ascertained that there is no indication that the affidavit is incorrect.

VARIATION OF FINAL ORDER FOR COROLLARY RELIEF

By Application

- 70.23** (1) A person who wishes to vary, suspend or rescind a final order for support, custody or access under section 17 of the Act to obtain such an order after a divorce shall do so by notice of application.

Filing of Financial Statement

- (2) If an application under subrule (1) is in respect of support, the applicant shall file and serve a financial statement (Form 70I) and a notice to file financial statement (Form 70W) with the notice of application, and the respondent shall deliver a financial statement (Form 70I) with the notice of appearance.
- (3) A respondent who does not intend to defend the application shall nevertheless deliver a financial statement (Form 70I) within the time prescribed for delivery of a notice of appearance, but a respondent's failure to do so does not prevent the applicant from bringing the application on for hearing.
- (4) Where a respondent fails to comply with a notice to file financial statement, the applicant may move without notice for an order requiring the delivery of a financial statement within a specified time.
- (5) Where a financial statement is required to be filed or delivered under subrule (2) or (3), the registrar shall not accept the notice of application or notice of appearance for issuing or filing without the financial statement.
- (6) In an application in which a claim is made in relation to custody of a child, the court may order the parties to deliver financial statements within a specified time.

Assigned Support Order

- (6.1) In an application under subrule (1) in respect of a support order that has at any time been assigned in accordance with subsection 20.1(1) or its predecessor of the Act,
 - (a) the applicant shall also serve the assignee of the support order with the applicant's notice of application, affidavit in support and financial statement; and
 - (b) the respondent shall also serve the assignee with the respondent's notice of appearance, responding affidavit and

financial statement.

- (6.2) On delivering a notice of appearance, the assignee becomes a respondent to the extent of its financial interest.
- (6.3) The assignee is not required to serve a financial statement.
- (6.4) If the applicant does not serve the assignee as required by subrule (6.1), the court may at any time, on motion by the assignee on notice to the parties to the application, set aside an order made in the application so far as it deals with an issue in which the assignee has a financial interest.
- (6.5) On a motion referred to in subrule (6.4), the burden of proving that the order should not be set aside is on the party who asked for the variation order.
- (6.6) If the order made in the application is set aside, the assignee of the support order is entitled to solicitor and client costs of the motion to set aside, unless the court orders otherwise.

Contents of Affidavit in Support

- (7) An affidavit in support of the application shall set out,
 - (a) the place or ordinary residence of the parties and the children of the marriage;
 - (b) the current marital status of the parties;
 - (c) particulars of the change in circumstances relied on;
 - (d) particulars of current custody and access arrangements and of any proposed change;
 - (e) particulars of current support arrangements and any proposed change;
 - (f) particulars of any arrears of support under an order or agreement;
 - (f.1) in an application to vary a support order, whether the support order was assigned and any particulars of the assignment known to the applicant; and
 - (g) particulars of any efforts made to mediate the matters in issue or of any assessment made in relation to custody or access.

Interprovincial Variation

- (8) Evidence given by a person in Prince Edward Island in an application referred to in subsection 18(2) of the Act (provisional

order) shall be given by affidavit, unless the court orders otherwise.

- (9) The registrar shall serve a notice of confirmation hearing (Form 70X) under subsection 19(2) of the Act and the other documents referred to in that subsection,
 - (a) on the respondent, in the same manner as an originating process; and
 - (b) on the applicant, by mail.
- (10) A respondent in an application referred to in subsection 18(2) of the Act shall serve and file a financial statement (Form 70I) within ten days after service of the notice of confirmation hearing.
- (11) Where a court outside Prince Edward Island remits a variation proceeding to a court in Prince Edward Island for further evidence, the registrar shall serve a notice requiring further evidence (Form 70Y) on the parties by mail.
- (12) Where a court in Prince Edward Island receives further evidence from a court outside Prince Edward Island under subsection 18(6) or 19(6) of the Act, the registrar shall serve a notice of resumption of hearing (Form 70Z) on the parties by mail.
- (13) The registrar shall perform the duties imposed on the court or an officer of the court by subsections 18(3) and (6) and 19(3) and (12) of the Act (transmission and filing of documents).

REGISTRATION OF ORDERS FOR COROLLARY RELIEF FROM OTHER PROVINCES

- 70.24** (1) An order under sections 15, 16 or 17 of the Act that was made by a court outside Prince Edward Island may be registered under paragraph 20(3)(a) of the Act by filing a certified copy with the registrar and the order shall then be entered as an order of the court.
- (2) The certified copy of the order may be filed with the registrar by forwarding it to him or her by ordinary mail, accompanied by a written request that it be registered under paragraph 20(3)(a) of the Act.

COSTS

- 70.25** The costs of a divorce action shall be assessed in accordance with Tariff C, unless a judge orders otherwise.

Matthews v. Gallant 2015 PESC 12

In a case involving a claim for spousal support and retroactive spousal support, the Court reminded the parties of the necessity in filing timely and accurate financial statements. The Court cautioned that delays in the filing of sworn financial statements may result in the refusal to set a motion date, or in the case of a responding party, a much higher assessment of income than was earned. The Court denied the claim for spousal support.

A.C.H. v. L.R.H. 2010 PESC 28; [2010] P.E.I.J. No. 25

The petitioner named Wells Fargo as a third party in a divorce proceeding. The proceeding was dismissed because Rule 70.06, relating to divorce proceedings, does not provide for third party procedure.

TARIFF C
Solicitors' Fees in Divorce Actions
Allowable Under Rule 70.25

For all services in a divorce action up to obtaining a certificate of
divorce..... \$400