

# The Top 10 Family Law Rules That Any Self-Represented Person Going Through A Contested Divorce Must Know

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## The Top 10 Family Law Rules That Any Self-Represented Person Going Through A Contested Divorce Must Know

### 1: APPLICATION MUST BE SERVED BY SPECIAL SERVICE

Rules 6(3) and 8(5): The Application must be served on the Respondent by "special service." This means that the Application needs to be served by using one of the following four methods:

- i) Someone, preferably not the Applicant, must personally hand the Respondent a copy of the issued Application. This is the most common method of service;
- ii) Serving two copies of the issued Application on the Respondent's Family Law Lawyer, provided his or her Lawyer has been asked and agreed to accept service of the Application. His or her Lawyer will need to accept service in writing on one copy of the Application and return that copy to you;
- iii) Mailing a copy of the Application to the Respondent at his or her last known address, together with an Acknowledgment of Service Card for the Respondent to sign and return. The Acknowledgment of Service Card is a document on which the Respondent acknowledges in writing that he or she has received the Application. The Respondent must also indicate an address where all other court documents can be mailed to him or her.

Note: Service is not valid unless the Acknowledgment of Service Card is returned to you and filed in the Continuing Record; or

- iv) Leaving a copy at the Respondent's place of residence, in an envelope addressed to the Respondent, with an adult person who appears to be residing at the same address, and on the same day or the next, mailing another copy of the Application to the Respondent at this address. The Application cannot be left with a child residing at that address.

### 2: NO MOTION BEFORE A CASE CONFERENCE IS HELD ON THE SUBSTANTIVE ISSUES

Rule 14(4): Unless there is a situation of urgency or hardship, you cannot serve Motion Materials requesting the Judge to make orders dealing with the substantive issues of your case; for example, with respect to custody and access of your children, child and spousal support, and division of property. In addition, a Motion cannot be heard before

a Case Conference has been held on these substantive issues.

A Motion is a court procedure that is used to request and obtain substantive and procedural orders from a Judge, such as temporary child and spousal support orders.

Motion Materials are the documents you submit to the court, for the Judge's review, in support of your Motion. They include a Notice of Motion, Affidavit(s) with accompanying Exhibits, and potentially a Factum. Exhibits are copies of documents, emails, and pictures etc., that are mentioned in an Affidavit and that you wish a Judge to review before he or she hears your Motion. A Factum is a court document which outlines what issues are being submitted to be determined by the Judge at the Motion, the facts that relate to those specific issues, what orders the Judge is being asked to make at the Motion, and any case law, Family Law Rules or Family Law Statutes that apply to those issues and support the orders being requested. The specific facts that you include in your Factum must be contained in either your supporting Affidavit(s) or in your spouse's Affidavit(s). You cannot raise new facts in the Factum.

Factums need to be served and filed by both parties for all Motions taking place at the court located at 393 University Avenue, Toronto. For all other courts, a Factum should be filed when the issues being put before the Motion's Judge are complex or if a Judge or Court Clerk has directed that Factums must be served and filed for all Motions.

A Case Conference is an informal attendance before a Judge to discuss your case. Depending on the court, the Case Conference may take place in the Judge's office or in a courtroom. Typically, a Case Conference is held within 2-3 months of the day the Application was filed. The goal of the first Case Conference is to narrow the issues and settle as many issues as possible so that contested litigation can be minimized. The Judge typically will not make any orders on substantive issues during the Case Conference. However, he or she has the authority to make procedural orders, such as an order requiring your spouse to provide certain financial disclosure.

### **3: YOU MAY ONLY BRING A MOTION PRIOR TO A CASE CONFERENCE IF THERE IS A SITUATION OF URGENCY, HARDSHIP, ETC.**

Rule 14(5): The exception to Rule 14(4) described above is that you can bring a Motion if there is a situation of urgency, hardship, or if a Judge considers a Case Conference is not required for some other reason "in the interest of justice."

The following have been considered situations of urgency by the courts:

- A parent has moved out of the matrimonial home with the children while the other parent was at work and his or her whereabouts are unknown;
- The parent with whom the children are currently living has threatened to move or leave the country with the children and never return;
- The parent with whom the children are currently living is prohibiting the other parent from having any contact with the children and there is a high likelihood that the proceedings will escalate into a high conflict case;
- There is concern that the children will be physically harmed if they remain in the care of one of the parents; and
- One of the spouses is in dire need of money and the other spouse is refusing to give that spouse any money or financial assistance.

#### 4: SERVE MOTION MATERIALS 4 DAYS IN ADVANCE OF MOTION IF YOU ARE BRINGING THE MOTION

Rules 3(4)1 and 14(11): If you are the person bringing the Motion (with notice) you must serve your Motion Materials on all the parties (i.e. your spouse), including your Notice of Motion and any supporting Affidavits and accompanying Exhibits, at least 4 days prior to the date your Motion is scheduled to be heard.

Rule 3(4)1 contains a chart which sets out when you must serve your Motion Materials if your Motion is to be heard on a particular day of the week:

Service on	Motion may be heard on
Monday	Friday
Tuesday	Monday
Wednesday	Tuesday
Thursday	Wednesday
Friday	Thursday
Saturday	Friday
Sunday	Friday

A Motion (with notice) means that you are notifying your spouse of the Motion you

intend to bring by serving him or her with a Notice of Motion. In the following limited circumstances you can bring a Motion without notice to your spouse:

i) The nature or circumstances of the Motion make notice unnecessary or not possible (for example; a Motion for substituted service of your Application because you do not know where your spouse is living);

ii) There is an immediate danger of a child's removal from Ontario and the delay involved in serving a Notice of Motion would probably have serious consequences;

iii) There is an immediate danger to the health or safety of a child or of the party making the Motion and the delay involved in serving a Notice of Motion would probably have serious consequences; or

iv) Service of a Notice of Motion would probably have serious consequences.

#### **5: SERVE RESPONDING MATERIALS 2 DAYS IN ADVANCE OF THE MOTION IF YOU ARE RESPONDING TO THE MOTION**

Rule 14(11.1): If you wish to respond to a Motion brought against you by your spouse, you must serve and file an Affidavit, together with all Exhibits, which responds to your spouse's Notice of Motion and any Affidavits he or she has filed, with the court at least 2 days prior to the date the Motion is scheduled to be heard.

However, if you wish to bring a Cross-Motion, in other words your own Motion seeking orders from the Judge, you must serve your Cross-Notice of Motion and supporting Affidavit (with accompanying Exhibits) at least 4 days prior to the date the Motion is scheduled to be heard [Rule 14(11)]. To turn a Notice of Motion into a Cross-Notice of Motion all you need to do is add the word "Cross" and a dash before the word "Notice" where it appears at the top right hand corner of the Notice of Motion form.

#### **6: FILE MATERIALS BY 2:00PM TWO DAYS BEFORE THE MOTION DATE**

Rule 14(11.1): All materials that you wish the Judge to review before he or she hears the Motion, including a Factum, as well as your Affidavit of Service evidencing the fact that you served your spouse with your Motion Materials, must be filed in the court by 2:00PM two days before the Motion date.

## **7: FAXING FORM 14C CONFIRMATION CONFIRMING MOTION**

Rules 14(11)(c): If you are the Party bringing the Motion (with notice) you must fax to the court a Form 14C Confirmation form, confirming the Motion is going ahead, by 2:00PM two days before the date scheduled for the Motion.

You will need to contact your spouse's Lawyer, if he or she has one, and if not, your spouse directly before completing the Form to find out what issues will be argued at the Motion, how much time your spouse will realistically require to present his or her case to the Judge, and what material your spouse wishes the Judge to read.

Before or immediately after you have faxed the Form to the Court, you need to fax a copy of the Form to your spouse's Lawyer. If your spouse does not have a Lawyer and does not have a fax machine, you could get away with emailing him or her a copy of the Form.

## **8: TIMELINE FOR SERVICE OF CONFERENCE BRIEFS**

Rule 17(13.1): If you are the Party requesting the Conference (or if the Conference is not requested by a Party, and you are the Applicant), you must serve and file your Conference Brief 7 days prior to the date scheduled for the Conference. Your spouse must serve and file his or her Brief 4 days prior to the date of the Conference.

## **9: FAXING FORM 14C CONFIRMATION CONFIRMING CONFERENCE**

Rules 17(14): Both Parties must fax to the court a Form 14C Confirmation form confirming the Conference is going ahead by 2:00PM two days before the date scheduled for the Conference.

You will need to contact your spouse's Lawyer, if he or she has one, and if not, your spouse directly before completing the Form to find out what issues will be discussed at the Conference and how much time your spouse will realistically require to discuss his or her case.

Before or immediately after you have faxed the Form to the Court, you need to fax a copy of the Form to your spouse's Lawyer. If your spouse does not have a Lawyer and does not have a fax machine, you could get away with emailing him or her a copy of the Form.

## 10: CASE CONFERENCE, SETTLEMENT BRIEFS, AND FACTUMS DO NOT FORM PART OF THE CONTINUING RECORD

Other than a few exceptions, all the court documents you file in your case will be filed in the Continuing Record. The exceptions include the Case Conference Brief [Rule 17(22)], Settlement Conference Brief [Rule 17(22.2)], and your Factum.

The Case Conference and Settlement Conference Briefs will be returned to the Parties after the Conference is held or they will be destroyed.

The Trial Management Conference Brief does form part of the Continuing Record [Rule 17(21)]. The Continuing Record is an organization tool. It is kept at the court and will contain, with the exception of the three above noted documents, all court documents you and your spouse will file with respect to your court case. The Brief is comprised of an Endorsements Volume and a Documents Volume.

A Case Conference Brief is a document in which you provide detailed and comprehensive information about the facts and issues in your case. It asks you to advise which issues have been settled and which have not and whether there are any temporary or procedural orders you would like the Judge to make. If being used for the first Case Conference, the Brief is typically a summary of your Application or Answer.

A Settlement Conference Brief is a document in which you provide the same information you provided in your Case Conference Brief. In addition, it asks you to outline what order(s) you wish a Judge to make in your case and to provide your proposal for settling the issues that remain in dispute between you and your spouse.

A Trial Management Conference Brief is a document which asks you to provide information on what issues have been resolved, what issues are for trial, and what procedural matters need to be addressed prior to trial. It also asks you to list the witnesses you plan to call at trial and an estimate of how long the trial will be.

## Glossary of Terms

The following is a list of terms used in this report:

**Acknowledgement of Service Card:** A document on which the Respondent acknowledges in writing that he or she has received the Application. The Respondent must also indicate an address where all other court documents can be mailed to him or her.

**Affidavit:** A written document signed by a person before a notary public or someone authorized to commission Affidavits. The person must swear under oath that the statements made in the Affidavit are true. The Affidavit is used by Parties to set out facts in support of their position with respect to a motion.

**Applicant:** The term used to describe the spouse commencing the divorce/separation proceeding.

**Application:** The document used to commence a court proceeding. There are three types of Applications: 1) General Application for Divorce- used when the spouses have unsettled issues and/or one of the spouses is contesting the divorce; 2) Simple Application- used when all that is sought is a divorce; and 3) Joint Application- used when both spouses are seeking a divorce and all issues have been resolved amicably.

**Case Conference:** An informal attendance, before a Judge, to discuss your case.

**Case Conference Brief:** A document which asks for detailed and comprehensive information about the facts and issues in your case, to advise which issues have been settled and which have not, and what order, if any, you wish the court to make.

**Child Support:** An amount of money paid by one parent to the other parent on either a monthly basis or as a lump sum payment. Child support is payable until a child is no longer defined as a "child of the marriage" in accordance with the *Divorce Act* or a "dependent" as defined by the *Family Law Act*. The amount of child support is determined by the Child Support Guidelines and is based on the income of the parent paying the support and the number of children for whom support is payable.

**Custody:** The word "custody" is broadly defined to include physical control over a child as well as the right to determine a child's education, healthcare, religion, and other matters concerning the child's well-being.

Section 2(1) of the *Divorce Act* specifically defines “custody” as including care, upbringing, and any other incident of custody.

There are three different types of custody:

1) Sole Custody: One parent has the authority to make all decisions with respect to the children, including important decisions affecting their education, healthcare, religion, and other matters concerning the children’s well-being. When a parent has sole custody, the children also typically reside primarily with that parent.

2) Joint Custody: Both parents have equal decision-making authority with respect to major decisions affecting the children, including important decisions affecting their education, healthcare, religion, and other matters concerning the child’s well-being. It does not matter which parent the children primarily live with.

3) Shared Custody: An arrangement whereby the children live with each parent greater than 40% of the time.

**Exhibits:** Copies of documents, emails, and pictures etc., that are mentioned in an Affidavit and that you wish a Judge to review before he or she hears your Motion.

**Factum:** A court document which outlines what issues are being submitted to be determined by the Judge at the Motion, the facts that relate to those specific issues, what orders the Judge is being asked to make at the Motion, and any case law, Family Law Rules or Family Law Statutes that apply to those issues and support the orders being requested.

**File (i.e. “filing” court documents):** Once you have served the other Party with your court document you will need to file the court document with the court.

**Matrimonial Home:** Where the married spouses and their family (if applicable) resided during their marriage. It is possible to have more than one matrimonial home. The term only applies to married spouses as common law spouses do not have any property rights in Ontario.

**Motion:** This is a hearing before a Judge whereby one or both of the Parties request a particular order pending trial, such as interim child support or interim access. If the relief being sought is not complex and procedural, the motion can be made in writing, meaning the Parties (and their Lawyers) do not have to appear before a Judge in court.

**Motion Materials:** Documents you submit to the court, for the Judge's review, in support of your Motion. They include a Notice of Motion, Affidavit(s) with accompanying Exhibits, and potentially a Factum.

**Notice of Motion:** A document used to bring a Motion which informs the other Party that you intend to bring a Motion, what order(s) you are asking the court to make, and the date you intend to have the Motion heard. It also informs the Judge of what documents he or she needs to review in the Continuing Record in order to deal with your Motion.

**Respondent:** The term used to describe the spouse responding to divorce/separation proceeding.

**Serve (i.e. "serving" court documents):** "Serving" court documents means providing copies of court documents to the other Party in the court case. By serving the other Party, you are notifying him or her of the step you are taking in the process and of the facts and information you will be presenting in court.

**Settlement Conference Brief:** A document in which you provide the same information you provided in your Case Conference Brief. In addition, it asks you to outline what order(s) you wish a Judge to make in your case and to provide your proposal for settling the issues that remain in dispute between you and your spouse.

**Trial Management Conference Brief:** Facilitates the orderly and expeditious conduct of the trial. This document asks for information on what issues have been resolved, what issues are for trial, what procedural matters need to be addressed prior to trial, and asks litigants to list the witnesses they plan to call at trial as well as the estimated length of the trial.