

NOTICE TO THE PROFESSION

Amendments to Rule 56A: changes to the family law rules relating to interim applications, financial statements, examinations for discovery and settlement conferences

The Rules Committee of the Supreme Court of Newfoundland and Labrador, Trial Division, recently approved amendments to Rule 56A of the *Rules of the Supreme Court, 1986*. The regulation was published in the March 21, 2014 edition of the *Newfoundland and Labrador Gazette* and is effective as of that date (NL Reg. 26/14). It includes amendments to the rules relating to interim applications, financial statements, examinations for discovery and settlement conferences in family matters.

Interim Applications

Under the amended rule 56A.16, no interim application may be brought in a family law matter before a case management meeting is held unless the applicant is granted leave of the Court (see rules 56A.16(1.1) and (1.3)). The leave application may be brought on an *ex parte* basis. Where the application relates to custody and access or child support, leave to bring the application may be granted where one of the circumstances in rule 56A.16(1.2) is present. Where the application does not relate to custody and access or child support, leave to bring the application may be granted where one of the circumstances in rule 56A.16(1.4) is present.

The timelines for serving interim applications have also been changed. Rule 56A.16(2) now requires that an interim application be served 10 days before the date set for the application. The respondent must then serve their affidavit in response 4 days before the date set for the application (rule 56A.16(4)). The applicant may then serve one additional affidavit in reply at least 2 days before the date set for the application (rule 56A.16(5)).

The amended rule 56A.16(4) provides that a respondent is limited to filing one affidavit in response to an interim application instead of “one or more”.

Financial Statements

The amendments relating to financial statements filed in family law matters include an amendment to rule 56A.27(a), an amendment to Form 56A.27A and the creation of Form 56A.27B.

Under the amended rule 56A.27(a), a financial statement must be in Form 56A.27A and, where appropriate, must be accompanied by an undertaking in Form 56A.27B. The amended Form 56A.27A lists more completely the financial disclosure which must be made in paragraph 2 of Schedule A.

If a person is required to file a financial statement with their response or with their reply and they do not have all of the required information set out in paragraph 2 of Schedule A at the time of filing their response or reply, they may still file the response with Form 56A.27A but they must additionally file Form 56A.27B. This Form is an undertaking that the respondent filing his or her

response or the applicant filing his or her reply will file the required financial information within 8 weeks. If they do not have the information within that time, they may come before the Court with an adequate explanation for the delay and request additional time to file the financial information. The form indicates that if the person cannot provide an adequate explanation for the delay in filing the required financial information the Court may make an order against them.

Examinations for Discovery

Under the amended rule 56A.35(4), Rule 30 (Examinations for Discovery) applies to family proceedings in certain specified situations. These situations include: where child, spousal, partner, parental or dependant support is in issue and the examination sought relates to the determination of income of a party who is self-employed, a beneficiary under a trust or a shareholder, director or officer of a corporation; or where the examination sought relates to a property claim to business assets. The Court may also make an order granting an examination for discovery where the applicant satisfies the Court that all of the requirements set out in rule 56A.35(4.1)(a) to (g) are satisfied.

Settlement Conferences

Under the amended rule 56A.72, a party must file a settlement conference brief at least 7 days before the settlement conference. The brief must contain a summary of the facts, issues and law and may be in Form 56A.72A (this form was also created by this amendment). The party must also deliver a copy of the brief to each other party at least 7 days before the settlement conference. The settlement conference brief and any other materials are not placed in the Court file or disclosed to the trial judge and are returned to the party following the settlement conference.

If you have any questions with respect to the above, please contact the Court's Legal Officer at 709-729-4743.

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of Newfoundland and Labrador,
Trial Division