

TAB 4

# **Impact of the Family Law Rules on Support Applications in Superior Court**

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## **New Developments in Child and Spousal Support**



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# **THE IMPACT OF THE FAMILY LAW RULES ON SUPPORT APPLICATIONS IN SUPERIOR COURT**

ANNE C. TROUSDALE

As of July 1, 2004, the Family Law Rules apply across Ontario to all family law cases in the Superior Court of Justice, as well as continuing to apply to all family law cases in the Family Court of the Superior Court of Justice, and in the Ontario Court of Justice. Family Law cases in the Superior Court of Justice are governed by the Standard Track Rules of the Family Law Rules.

The primary objective of the Family Law Rules is to enable the Court to deal with cases justly. Dealing with a case justly includes ensuring that the procedure is fair to all parties, saving expense and time, and dealing with the case in ways that are appropriate to its importance and complexity.

This paper will highlight some of the Family Law Rules which may impact support applications in the Superior Court.

## **RULE 9 : CONTINUING RECORD**

A party starting an application for support will need to create a Continuing Record pursuant to Rule 9 of the Family Law Rules. The Continuing Record must comply with the requirements of the document entitled “Formal Requirements of the Continuing Record under the Family Law Rules”, dated March 1, 2004, published by the Family Law Rules Committee.

This document is available through the web site [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca). It is also attached at the end of this paper. I would recommend that you and your staff read that document thoroughly to familiarize yourself with the requirements for the Continuing Record.

Part I of the Continuing Record consists of four sections, which must be tabbed with labels as follows:

Table of Contents

Endorsements

Pleadings

Financial Statements

Part II of the Continuing Record, which is a second separately bound part of the Continuing Record contains all documents other than pleadings and financial statements. Accordingly, any motions and affidavits for temporary support (formerly “interim support”) will be filed in Part II of the Continuing Record.

The cover of each volume of the Continuing Record is red (unless there are an Applicant’s Record and a Respondent’s Record, as discussed in the next paragraph). The pages within the tabs must be numbered within the tab, although the Table of Contents needs only refer to the Tab where the document is located. Affidavits of service are not filed in the Continuing Record, but rather are filed in a separate sleeve in the Court File labelled “Affidavits of Service”.

Any party in a standard track case (all family law cases in Superior Court non-Family Branch sites are standard track cases) can elect on filing their first document in the case to have separate records. The Court may also order that the continuing record be separated or that a separated record be combined. In the event that the record is separated, there will be an Applicant's Record which shall have a red cover, and a Respondent's Record, which shall have a blue cover. If there are separate records, the endorsements section is only in the Applicant's Record.

A motion to change a final Order or a Separation Agreement pursuant to Rule 15 of the Family Law Rules will also require starting a new Continuing Record for the purpose of that motion.

Each of the parties is responsible, under the supervision of the Court Clerk, for maintaining the Continuing Record, or his or her own separate Record if the Records have been separated. This responsibility entails filing documents in chronological order, and serving an updated cumulative table of contents with each new document served and filed.

### **RULE 13 : FINANCIAL STATEMENTS**

A key component of an application for support is the financial statement. The Family Law Rules require full and frank disclosure in the financial statement. The parties have an ongoing duty to correct and update their financial statements throughout the case, and particularly prior to a case conference, settlement conference, motion, or trial. This is to ensure that the parties have all the relevant information at all times, and to make the Court



attendances more useful and cost-effective by having updated financial information available to the Court and the parties at each Court appearance.

Pursuant to Rule 13, a party claiming support, or making a property claim, or claiming exclusive possession of the matrimonial home, must serve a financial statement with the document containing the claim (clause 13.(1)(a) ), except in the following exceptions:

- (i) if the claim only requests child support guideline support, and there is no property or exclusive possession claim; (sub-rule 13.(1.3) )
- (ii) if the claim is for spousal support under the Divorce Act and the parties file a consent not to serve and file financial statements, or agree to a specified amount of support or to no support; (sub-rule 13.(8) )
- (iii) in a consent motion for a change in support where the parties file a consent agreeing not to serve and file financial statements. (sub-rule 13.(9) )

The party against whom a support or property claim is made must serve and file a financial statement within the time limits, whether the party intends to respond to the claim or motion or not. (clause 13.(1)(b) )

There are two different financial statements. Where there is a support claim that contains no claim for property or for exclusive possession of the matrimonial home and contents, the parties use the financial statement in Form 13. Where there is a property claim, with or without a support claim, the parties use the financial statement in Form 13.1.

In a financial statement, a party shall make full and frank disclosure of the party's financial situation and attach any required documents to prove that party's income, such as a pay cheque stub or a pension stub, as well as fully completing all portions of the form required by the instructions on the form. In the event a party makes a claim for undue hardship or for spousal support, Part 6 of the financial statement requires that party to disclose whether they live alone or with a spouse, same sex partner, roommate, tenant, etc. and to advise of the income of that person, and the percentage contribution of that person towards the household expenses.

Financial statements won't be accepted for filing by the clerk unless the party attaches copies of the party's notices of assessment for the previous three taxation years, or the financial statement contains the party's signed direction to Canada Customs and Revenue Agency (Form 13A) for disclosure of the party's income and deduction printouts. (sub-rule 13.7) ) Although a party is required to serve the last three years income tax returns and notices of assessment on the other party, only the notices of assessment need be filed in the Continuing Record, unless the Court orders otherwise. ( sub-rule 13.(7.1) ) This reduces the bulk of the Continuing Record in most cases.

If a party believes the other party's financial statement does not contain enough information for a full understanding of the party's financial circumstances, the party can ask for necessary additional financial information by request to the other party (no prescribed form). If the other party does not provide the information within 7 days, the Court may order the other party to give the information or to serve and file a new financial statement. (sub-rule 13.(11) )

A party may be questioned (formerly “cross-examined” or “discovered” under the Rules of Civil Procedure) under Rule 20 on a financial statement if the three conditions in sub-rule 20.5 have been met, but only after a request for information has been made under clause 13.(11)(a). Accordingly, questioning on financial statements will no longer be available as a matter of course, unless the parties consent to the questioning, or the Court orders the questioning to take place, and only after the party has requested production of the necessary additional information and it has not been produced.

At least 7 days, or 4 days before a case conference, motion, settlement conference or trial, (see sub-rule 13.(12.2) for the timetable for each party), each party must update any financial statement that is more than 30 days old by serving and filing a new financial statement or an affidavit that the information in the last statement has not changed and is still true. (sub-rule 13.(12) ) If only minor changes have occurred, the party may serve and file an affidavit with details of the changes. (sub-rule 13.(12.1) )

Each party has a continuing duty to immediately correct or complete that party’s financial statement upon discovering errors or omissions therein, and to advise of any material change in the information previously provided, by serving and filing the correct information or a new statement containing the correct information, together with any supporting documents. (sub-rule 13.(15) )

If a party fails to file a financial statement or a net family property statement or other information required, the Court may, on motion without notice, order the party to serve and file

the document or information and the Court shall order costs against that party if the Order is made. (sub-rule 13.(16) )

If a party does not obey an Order made under sub-rule 13.(16), the Court may dismiss the party's case, strike out the party's documents, make a contempt Order, prevent the use of the information at trial, or make any other appropriate Order. (sub-rule 13.(17) )

#### **RULE 14 : MOTIONS FOR TEMPORARY ORDERS**

A major change under the Family Law Rules affecting support applications in Superior Court is that a motion for interim support (now "temporary support") is no longer the usual first step in an application for support. Sub-rule 14.(4) provides that no motion or supporting evidence may be served and no motion may be heard before a case conference dealing with the substantive issues in the case has been completed. One of the goals of the case conference is the possibility of resolving interim issues without the necessity of the parties commencing a motion for temporary relief.

The prohibition against bringing a motion for temporary relief prior to a case conference is fairly strictly observed. However, sub-rule 14.(4.2) allows a motion to be brought before a case conference is held if the Court is of the opinion that there is a situation of urgency or hardship or that a case conference is not required for some other reason in the interest of justice. The wording of that sub-rule seems to suggest that leave would have to be asked of the Court to allow the motion to proceed without a case conference being held. In some jurisdictions, the

practice has developed where the leave is requested as part of the motion for temporary relief. However, it is possible that in some jurisdictions, the Court may insist that the request for leave has to be brought and argued in a separate motion, prior to the motion for temporary relief being brought and argued.

Thorough consideration of whether the matter will likely be found by the Court to be urgent or a hardship, should be given prior to bringing such a motion. The possible consequences of bringing such a motion and the Court finding that the matter is not urgent or a hardship, is the risk of having costs awarded against your client. Sub-rule 24.(1) of the Family Law Rules provides that promptly after each step in the case, the Judge or other person who dealt with that step shall decide in a summary manner who, if anyone, is entitled to costs and set the amount of costs. Sub-rule 24.(1) provides that the successful party is presumed to be entitled to costs.

If the matter is not urgent and you must wait for a case conference to proceed with a motion for support, you may want to try to work out some voluntary without prejudice support arrangements for support, pending the holding of the case conference and a subsequent motion for temporary support, if not resolved at the case conference.

If a case conference is held and temporary support has not been resolved at the case conference, Counsel should request the case conference Justice to endorse the Record that leave is granted to proceed with a motion for temporary support and whatever other temporary relief is required.

A motion for temporary support requires a notice of motion (Form 14) and an affidavit (Form 14A). The documents must be served on the other party not later than four days prior to the motion date and the documents must be filed not later than 2:00 p.m. two days before the motion date. A confirmation (Form 14C) must be filed not later than 2:00 p.m. two days before the motion date. (Sub-rule 14.(11) ) There is a prohibition against any documents for use on the motion being served or filed after 2:00 p.m. two days before the motion. (Sub-rule 14. (11.1) )

There are restrictions on evidence for use on a motion, unless the Court orders otherwise. The party making the motion is to serve all the evidence in support of the motion with the notice of motion. The party responding to the motion shall then serve all the evidence in response. The party making the motion may then serve evidence replying to any new matters raised by the evidence served by the party responding to the motion. No other evidence may be used. (Sub-rule 14.(20) ) This is an attempt to avoid the situation of the parties filing endless responding affidavits on motions.

### **RULE 15 : MOTIONS TO CHANGE A FINAL ORDER OR AGREEMENT**

Rule 15 applies to motions to change an agreement filed under Section 35 of the Family Law Act ( filing of domestic contract) and to motions to change a final Order. A party wishing to change support provisions in a domestic contract or to vary support provisions in a final Order, may serve a notice of motion and supporting evidence, but the motion may not be heard before a case conference has been completed. (sub-rule 15.(2.1) ) It is not necessary to have a settlement conference prior to the motion being heard, although some Justices may insist on a settlement

conference being held before the motion is heard.

Sub-rule 15.(7) sets out the information which is required in an affidavit for use on a motion to change an Order or agreement. Sub-rule 15.(8) provides that the existing Order or agreement must be attached as an exhibit to the Affidavit. Sub-rule 15.(10) provides for what material is to be filed to change child support on consent.

Rule 14 (Motion for Temporary Orders) applies with necessary modifications to a motion to change a final Order or agreement. (sub-rule 15. (15) ) Sub-rule 15.(16) provides that a motion under Rule 14 may be made on a motion to change a final Order or agreement. However, such a motion could not be served and filed before a case conference has been held, unless the motion were urgent.

### **RULE 17 : CONFERENCES**

The case conference is a central component of the Family Law Rules. The case conference is an opportunity to explore chances of settling the case, obtain disclosure of relevant evidence, and set a specific timetable for steps to be taken in the case, including the bringing of a motion for temporary relief, if not resolved at the case conference.

If a party files an answer, a case conference will be set by the Court. (sub-rule 17.(1) )  
Either party may also at any time request a case conference by serving and filing a case conference notice in Form 17 C. (sub-rule 17. (4.1) )

On the direction of a Justice, part or all of a case conference, settlement conference and trial management conference may be combined. (sub-rule 17. (7) )

At a case conference, settlement conference, or trial management conference, the Justice may make an Order for document disclosure (Rule 19), and questioning (Rule 20). The Justice may also make an unopposed Order or an Order on consent. If notice has been served prior to the conference, the Justice may also make a temporary or final Order at the conference. (sub-rule 17. (8) ) However, Justices are generally reluctant to make Orders on substantive issues at case conferences if the Order is not on consent.

A case will not be scheduled for trial unless a Justice has conducted a settlement conference or a Justice has ordered that the case be scheduled for trial. (sub-rule 17. (10) )

For each conference, each party shall serve and file a case conference brief, settlement conference brief, or trial management conference brief, as appropriate. (sub-rule 17. (13) ) The timetable for the service of briefs for each party is set out in sub-rule 17. (13.1) Each party must serve a confirmation not later than 2:00 p.m., two days before the date scheduled for the conference. (sub-rule 17. (14) )

No conference brief or other document for use at the conference may be served or filed after 2:00 p.m. two days before the date scheduled for the conference. (sub-rule 17. (14.1) )

The parties must personally attend each conference, unless the Court orders otherwise. (sub-rule 17. (15) ) With permission obtained in advance from the Justice who is to conduct a



conference, a party or a lawyer may participate in the conference by telephone or video conference. (sub-rule 17. (16) )

Case conference briefs do not form part of the Continuing Record, unless the Court orders otherwise. They are to be returned to the parties who filed them or be destroyed by the Court staff immediately after the conference. (sub-rule 17. (22) )

Settlement conferences briefs do not form part of the Continuing Record and are to be returned at that the end of the conference to the parties who filed them or be destroyed by the Court staff immediately after the conference. (sub-rule 17. (22.2) )

### **RULE 18 : OFFERS TO SETTLE**

Rule 18 regarding Offers to Settle applies to an offer made at any time, even before the case is started. (sub-rule 18. (2) ) Accordingly, prior to commencing an application for support, you may wish to make an Offer to Settle pursuant to Rule 18 of the Family Law Rules.

An Offer to Settle shall be signed personally by the party making it and also by the party's lawyer, if any. (sub-rule 18. (4) )

An offer, once made, remains open for acceptance despite the rejection of the offer by the other party or the making of a counter-offer by the other party. (sub-rule 18. (10) ) This makes it important to regularly review outstanding offers to see if they should still be left open for acceptance, or if they should be withdrawn because of a change in circumstances or for other

reasons.

### **RULE 19 : DOCUMENT DISCLOSURE**

There is an emphasis in the Family Law Rules on voluntary disclosure, and on disclosure and production of documents in response to requests for relevant information by the other party. The intent is to avoid undue expense and delay during the litigation process, and to try to identify the issues at an early stage of the process. Full disclosure early in the process also helps facilitate settlement at an earlier stage in the proceedings.

A party can request from the other party, on 10 days notice, an affidavit listing every document that is relevant to any issue in the case, and that is in the party's control, or available to the party on request. (sub-rule 19. (1) )

A party can request a copy of documents mentioned in a party's pleadings or financial statement or net family property statement or affidavit of documents at the requesting party's cost at the legal aid rate, and examine any such documents, unless the party claims the document is protected by legal privilege. (sub-rules 19.(1) and 19.(2) )

If a party claims a document is privileged, the Court may decide the issue on motion (sub-rule 19.(4)) and if a document is found to be privileged, it can only be subsequently used at trial by the party claiming privilege under certain circumstances. (sub-rule 19.(5) )

The Court may, on motion, order a party to provide an affidavit listing relevant documents that are in the control of or available on request to a corporation or to a subsidiary or affiliated corporation controlled directly or indirectly by the party. (sub-rule 19.(6) ) The other party can then examine the documents and get copies of them at the party's expense at legal aid rates. (sub-rule 19.(7) )

There is a continuing obligation on a party to immediately serve a new correct affidavit of documents upon finding that the original affidavit of documents was not correct or was incomplete. (sub-rule 19.(8) )

If a party fails to obey Rule 19 or a Court Order made under Rule 19, the Court may, on motion, order production, prevent use of a document at trial, dismiss a party's case, or strike out the party's answer, award costs, make a contempt Order, or make any other appropriate Order. (sub-rule 19.(10) )

If a document, not protected by privilege, is in a non-party's control or is only available to a non-party, and it would be unfair to a party to go on with the case without the document, the Court may on motion (served on all parties, and on the non-party by special service (sub-rule 6.(3) ) order the non-party to let the party examine the document, and receive a copy at the legal aid rate, which copy shall then be used in the case instead of the original. (sub-rule 19.(11) )

## **RULE 20 : QUESTIONING A WITNESS AND DISCLOSURE**

The Family Law Rules limit the use of questioning (formerly “discovery”) to child protection cases, cases where the parties agree to have questioning, or where the Court orders that questioning may take place only if three conditions are met. The result of this Rule is that questioning will no longer be a matter of course in many cases. The intent of this Rule is to avoid the cost and delay of carrying out questioning when other less expensive methods of obtaining disclosure are available.

Questioning takes place under oath or affirmation and includes the right to cross-examine. (sub-rules 20.(1) and 20. (2) )

Except for child protection cases, questioning or disclosure by an Affidavit or other method is only available with the other party’s consent, or by Court Order if the following three conditions are met:

1. It would be unfair to the party who wants the questioning or disclosure to carry on the case without it.
2. The information is not easily available by any other method.
3. The questioning or disclosure will not cause unacceptable delay or undue expense. (sub-rules 20.(5) and 20. (7) )

Other preconditions for questioning or disclosure are that the party must have served and filed any answer, financial statement or net family property statement required by the Rules, and must promise in writing not to serve or file any further material for the next step in the case, except in reply to the answers or information obtained. (sub-rule 20.(8) )

Pursuant to sub-rule 20.(9), the Court may order a non-party to be questioned or to disclose information by affidavit if the non-party has been served with the notice of motion, a summons to witness (Form 23) and the witness fee by special service.

Questioning shall take place in the municipality in which the person to be questioned lives, unless that person and the party wanting to do the questioning otherwise agree. (sub-rule 20.(11) )

Disputes regarding arrangements for questioning can be determined by the Court on motion. (sub-rule 20.(12) )

All parties are to be served not less than 3 days before questioning with a notice of the name of the person to be questioned, and the address, date and time of questioning. (sub-rule 20.(13) )

If a person residing outside Ontario refuses to come to Ontario for questioning, the Court may decide all the arrangements for the examination outside Ontario, including authorizing a commissioner to supervise the questioning outside Ontario. (sub-rules 20.(14) and 20.(15) )

An Order for questioning and a summons to a witness may also require the person to bring relevant documents in the person's control or available to the person on request, and sub-rules 19.(2), (4) and (5) re examining, copying and privileged documents apply to such documents produced. (sub-rule 20.(17) )

If a party refuses to answer a question, the Court may, on motion, decide whether the question is proper, may order the person's return to questioning, make a contempt Order, or refuse to allow the refused information to be used at Court without permission under Rule 20.(20). (sub-rule 20.(19) )

There is a duty on a person who is questioned or who has given disclosure by affidavit to immediately update or correct answers in writing to all parties. (sub-rule 20. (21) )

A lawyer can answer for the person questioned if there is no objection, but the answer given is taken as the person's own answer, unless the person corrects or changes it prior to the end of questioning. (sub-rule 20.(22) )

**RULE 41 : CASE MANAGEMENT IN THE SUPERIOR COURT OF JUSTICE  
(OTHER THAN THE FAMILY COURT OF THE SUPERIOR COURT OF  
JUSTICE)**

Rule 41 provides for case management of cases in the Superior Court of Justice started on or after July 1, 2004.

A time set out in Rule 41 may be lengthened only by Court Order, and may not be lengthened by the parties on consent. (sub-rule 41. (3) )

If a case has not been scheduled for trial within 200 days after it was started, the Clerk shall serve a notice (Form 39) on the parties saying the case will be dismissed without further notice unless one of the parties, within 30 days after the notice is served, files an agreement signed by all parties and their lawyers for a final Order, or arranges a case conference or settlement conference for the first available date. (sub-rule 41. (5) )

If none of these steps are taken within 30 days after the notice is served, the Clerk shall sign an Order dismissing the case with no costs payable by any party. (sub-rule 41. (6) )

### **CONCLUSION**

The main differences between the Rules of Civil Procedure and the Family Law Rules in the conduct of a support application in the Superior Court of Justice, can be summarized as follows:

- (1) No motion can be brought for temporary relief prior to a Case Conference being held, except in the event of urgency or hardship;
- (2) All documents are filed in a Continuing Record. The Continuing Record may be separated into an Applicant's Record and a Respondent's Record;

- (3) Questioning of a witness, (formerly “discovery”) is only available on consent of the parties or by Court Order;
- (4) The matter must be settled or set for Trial within 230 days of the commencement of the action. If that is not the case, the parties must have a case conference or settlement conference with a Justice.



# Formal Requirements of the Continuing Record under the Family Law Rules

Published by: The Family Rules Committee

Dated: March 1, 2004

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## **I. Introduction**

The “Formal Requirements of the Continuing Record under the Family Law Rules” is published by the Family Rules Committee and available at the Ontario Court of Justice website at: [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca). These requirements must be followed in all cases governed by the Family Law Rules. The Family Rules Committee has the authority to make court rules for the practice and procedure in family cases, subject to the approval of the Lieutenant Governor in Council.

The Family Law Rules provide for a continuing record to be established and maintained by both parties in every case. The Family Rules Committee has approved the following changes to the continuing record to broaden its format and to permit it to be tailored to the case type:

**Separate records** – The record may be separated into an Applicant’s Record and Respondent’s Record. Any party in a standard track case can elect, on filing their first document in the case, to have separate records. In all cases, a party may request that the continuing record be separated, and the court may order that the continuing record be separated or that a separated record be combined.

**Distinct records** – There are distinct records for certain types of cases: child protection; status review; support enforcement; and a motion to change a final order. A party may request or the court may order at any time that a record in these cases be separated.

The substantive requirements of the continuing record are set out in Rule 9. There are provisions in Rules 13 and 17 that set out the types of documents that may be excluded from the record. The formal requirements for the preparation and maintenance of the continuing record, including separate and distinct records, are set out in this document, and in the following appendices:

Appendix A – Summary of Contents

Appendix B – Sample Cover

Appendix C – Sample Table of Contents

## **II. Formal Requirements**

### **1. Contents of the record**

Unless otherwise indicated, the continuing record consists of four sections, which comprise Part I of the record: table of contents, endorsements, pleadings (documents starting or answering a case), and financial statements.

Documents other than pleadings and financial statements must be filed in a second, separately bound part of the record (Part II). If a continuing record has been separated into an applicant’s record and a respondent’s record, the endorsements section must appear in the applicant’s record only.

A child protection continuing record does not have a financial statements section.

A status review continuing record includes a table of contents, and a documents section only. There is no option to create a Part II.

A support enforcement continuing record includes a table of contents, an endorsements section and a documents section only. There is no option to create a Part II.

The formal requirements for a continuing record also apply to a new record made where there is a motion to change a final order.

If the Children's Lawyer prepares a separate record, the record will consist of a table of contents and documents section only.

A summary of the contents of each record is set out in a chart at Appendix A.

## **2. Preparation of the Record**

### **(a) Record Cover**

A sample record cover is attached at Appendix B. All elements of the sample cover must appear on a party's record cover. The title of the record (e.g. "Continuing Record") must appear in bold, font size 20, or an equivalent size, below the names of the parties to the case. The cover must identify the Part of the record and volume number, if applicable. Please see section (e), below, for additional information about further volumes.

### **(b) Filing Documents**

Documents must be filed in chronological order, with the most recently filed document at the back. All documents filed in the record must be punched in standard three-hole format.

Other than in a support enforcement continuing record, each document filed must be identified by a numbered tab. Tabs within sections must be in sequential order. A new section must start with a new tab sequence starting with tab 1. For example, if there are three documents in the pleadings section and three documents in the financial statements section, the tabs in the pleadings section must be labelled 1 to 3, and the tabs in the financial statements section must be labelled 1 to 3. If there is a Part II to the continuing record, it must start with a new tab sequence. For example, the first tab in Part II must be labelled 1.

Pages between numbered tabs shall be numbered consecutively. Page numbers are not required to appear in the table of contents.

### **(c) Contents of sections**

It is not necessary to create any of the sections referred to in Appendix A unless there is a document to be filed in it.

Each section, other than the table of contents, must be identified by a tab showing the name of the section.

*(i) Table of Contents*

A sample table of contents is attached at Appendix C. The table of contents must list documents in the order in which they are filed, indicate the tab that locates the document, the kind of document, which party filed it, and the date it was filed. For an affidavit or transcript of evidence, the name of the person who gave the affidavit or the evidence must also be shown.

The table of contents must be updated every time a document is filed.

*(ii) Endorsements*

The endorsements section must contain three (3) blank sheets (or more if necessary), on which the judge dealing with any step in the case will note the disposition of that step and the date. The court's file copy of each order made in the case must be put into the endorsement section after the endorsement pages.

*(iii) Pleadings*

The pleadings section must contain all documents which start or answer the case.

*(iv) Financial Statements*

The financial statements section must include all financial statements and documents that are required by the Family Law Rules to be attached to it (three years of notices of assessment and Form 13A: Directions to Canada Customs and Revenue Agency, if applicable).

*(v) Other Documents*

If there are other documents filed in the case, they must be filed in Part II. This part will contain documents such as reports ordered by the court, motions documents (including motions to enforce orders other than a support order), documents to enforce a payment order other than a support order, and trial management conference briefs.

If there is an applicant's record and a respondent's record, a report ordered by the court must be filed in Part II of the applicant's record. A report requested by a party must be filed in the record of the party who requested it.

**(d) Affidavits of Service**

Other than in a support enforcement record, affidavits of service must be filed in a separate section of the court file labelled "affidavits of service". However, in a support enforcement continuing record, affidavits of service are filed in the documents section.

#### **(e) Further volumes**

If the clerk determines that a part of a continuing record needs to be continued in another volume, then the party filing the next document must create a new volume. A new volume of Part I consists of a table of contents, pleadings section and a financial statements section.

#### **(f) Separate or combined records**

Where the court orders that the continuing record be separated, or that separate court records be combined,

court staff must supervise the separation or the combination of separate records;

the clerk must destroy the table of contents that existed just before the record is separated or combined;

if the record is separated, each party must prepare and update a table of contents reflecting the contents of their record; and

if separated records are combined, the party directed to combine the record shall prepare and update a table of contents that reflects the contents of the combined record.

### **3. Additional requirements for distinct records**

#### **(a) Child protection continuing record**

The cover must identify the children who are the subject of the case. Below the title of the record state: "Child Protection Record with respect to the child(ren) ....."

Part II of the record must include documents other than pleadings, including plans of care (other than Form 33B.1: Answer and Plan of Care (Parties other than Children's Aid Society)), motions, reports, assessments, agreed statements of fact, and financial statements.

#### **(b) Status review continuing record**

The cover must identify the children who are the subject of the status review and the relevant child protection order. Below the title of the record state: "Status Review Record with respect to the child(ren) ..... and the order of Mr./Madam Justice ..... dated ....."

The documents section of the record must contain each document filed in the case, including pleadings, plans of care (other than Form 33B.1: Answer and Plan of Care (Parties other than Children's Aid Society)), motions, reports, assessments, agreed statements of fact, and financial statements.

If the status review application is started at the court office where the child protection order was

made, the endorsements in the status review application must be noted in the endorsements section of the child protection record. If not, the status review record must include an endorsements section.

### **(c) Support enforcement continuing record**

The documents section must be separated from the endorsements section by a labelled tab. The documents section must contain each document filed in the case, numbered consecutively and arranged in order, with the most recently filed document at the back. All affidavits of service must be filed in this section.

### **(d) New record where motion to change made**

The cover must identify the order that is the subject of the motion. Below the title of the record state: "Motion to Change Final Order of Mr./Madam Justice ....., dated ....., with respect to ....."

A motion for an order to refrain under s. 35(1) of the Family Responsibility and Support Arrears Enforcement Act, 1996 must be filed in Part II of a motion to change final order record.

### **(e) Children's Lawyer record**

Documents filed in the documents section of a Children's Lawyer record will include Children's Lawyer reports and any Children's Lawyer motion documents.

## **APPENDIX A – SUMMARY OF CONTENTS**

### **CONTINUING RECORD SINGLE RECORD SEPARATE RECORDS**

<b>SINGLE RECORD</b>	<b>SEPARATE RECORDS</b>		
<b>Continuing Record</b>	<b>Applicant's Record</b>	<b>Respondent's Record</b>	<b>Children's Lawyer Record</b>
- red cover	- red cover	- blue cover	- red cover
Part I	Part I	Part I	
- Table of contents	- Table of contents	- Table of contents	
- Endorsements (only in 1st volume)	- Endorsements (only in 1st volume)	- Pleadings	Part I
- Pleadings	- Pleadings	- Financial statements	- Table of contents
- Financial statements	- Financial statements	Part II	- Documents
Part II	Part II	- Respondent's other documents	
- All other documents	- Applicant's other documents		

### **CHILD PROTECTION CONTINUING RECORD**

#### **SINGLE RECORD**

#### **SEPARATE RECORDS**

<b>Continuing Record</b>	<b>Applicant's Record</b>	<b>Respondent's Record</b>	<b>Children's Lawyer Record</b>
- red cover	- red cover	- blue cover	- red cover
Part I	Part I	Part I	
- Table of contents	- Table of contents	- Table of contents	
- Endorsements (only in 1st volume)	- Endorsements (only in 1st volume)	- Pleadings	Part I
- Pleadings	- Pleadings	Part II	- Table of contents
Part II	Part II	- Respondent's other documents	- Documents
- All other documents	- Applicant's other documents		

### **STATUS REVIEW CONTINUING RECORD**

#### **SINGLE RECORD**

#### **SEPARATE RECORDS**

<b>Continuing Record</b>	<b>Applicant's Record</b>	<b>Respondent's Record</b>	<b>Children's Lawyer Record</b>
- red cover	- red cover	- blue cover	- red cover
- Table of contents	- Table of contents	- Table of contents	- Table of contents
- Documents	- Documents	- Documents	- Documents

### **SUPPORT ENFORCEMENT CONTINUING RECORD**

#### **SINGLE RECORD**

#### **SEPARATE RECORDS**

<b>Support Enforcement Record</b>	<b>Director's Enforcement Record</b>	<b>Payor's Enforcement Record</b>
- green cover	- green cover	- green cover
- Table of contents	- Table of contents	- Table of contents
- Endorsements (only in 1st volume)	- Endorsements (only in 1st volume)	- Documents (incl. affidavits of service)
- Documents (incl. affidavits of service)	- Documents (incl. affidavits of service)	

## NEW RECORD: MOTION TO CHANGE

### SINGLE RECORD

### SEPARATE RECORDS

#### Continuing Record

- red cover

#### Part I

- Table of contents
- Endorsements (only in 1st volume)
- Pleadings
- Financial statements

#### Part II

- All other documents

#### Applicant's Record

- red cover

#### Part I

- Table of contents
- Endorsements (only in 1st volume)
- Pleadings
- Financial statements

#### Part II

- Applicant's other documents

#### Respondent's Record

- blue cover

#### Part I

- Table of contents
- Pleadings
- Financial statements

#### Part II

- Respondent's other documents

#### Children's Lawyer Record

- red cover

#### Part I

- Table of contents
- Documents

## **APPENDIX B – SAMPLE COVER (PDF ONLY)**

## **APPENDIX C – SAMPLE TABLE OF CONTENTS (PDF ONLY)**