

**FAMILY**  
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**UNDEFENDED FAMILY LAW CASES**

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## Chapter 7

### Undefended Family Law Cases<sup>1</sup>

This chapter will use the terminology and procedure mandated by the Supreme Court Family Rules, B.C. Reg. 169/2009 (the “SCFR”), which take effect on July 1, 2010.

#### [§7.01] Undefended Family Law Cases

If a notice of family claim has been properly served and the time has elapsed for the filing of a response to family claim and no response has been filed, it is possible to obtain judgment, including an order for divorce, on an undefended basis. This can be accomplished using a requisition procedure, or what is often referred to as a “desk order”—in other words, without a formal hearing before a judge.

A party may apply for a final order on an undefended basis when:

1. a proceeding is undefended from the outset (SCFR 4-3 (2));
2. a respondent wholly withdraws his or her response (SCFR 11-4 (6));
3. a claimant discontinues their case and the matter proceeds on the counterclaim (SCFR 1-1 definition “undefended family law case” paragraph (d)); or
4. the divorce is not contested and all other claims have been settled, struck out, discontinued or dismissed (SCFR 1-1 definition “undefended family law case”).

The pleadings must be in order, and affidavits properly sworn and filed. The court registry staff review the documents and then put them before a judge who reviews the material in private chambers.

The following sections of the SCCR provide instructions on how to proceed with an undefended family law case.

#### 1. Other Proceedings

A divorce order will not be granted until the court is satisfied that no earlier divorce proceeding is ongoing elsewhere in Canada (SCFR 15-2 (1)).

In all family law cases in which a divorce is sought the claimant must file a registration of divorce proceeding form. This form is then transmitted to the Central Divorce Registry in Ottawa to ensure that divorce proceedings have not already been instituted or concluded in another province. No divorce order will be granted until the registry has received confirmation that no other proceeding has been commenced in which a divorce order is sought.

#### 2. Definition (SCFR 1-1 (1))

An undefended family law case is defined as a family law case in which one of the following is true:

- (a) the family law case is a joint family law case and no party has filed a notice of withdrawal;
- (b) no response to family claim has been filed;
- (c) a response to family claim has been filed but the response to family claim has been
  - (i) withdrawn, or
  - (ii) struck out, discontinued or dismissed;
- (d) a response to family claim and a counterclaim have been filed but the notice of family claim and any response to counterclaim have been
  - (i) withdrawn, or
  - (ii) struck out, discontinued or dismissed;
- (e) all claims other than a claim for divorce, if any, have been settled, the parties have filed a statement to that effect signed by the parties or their lawyers, and the claim for divorce, if any, is not contested.

#### 3. Registrar’s Certificate (called a Certificate of Pleadings under the former Rules)

Before a party can obtain an order for divorce, the party must file the pleadings with the registrar of the family registry, who will either provide a certificate indicating that all pleadings are correct and in order (SCFR Form F36), or will require that any irregularity in the pleadings or proceedings be corrected (SCFR 14-4 (5)).

<sup>1</sup> **Trudy Macdonald** of Peterson Stark Scott, Surrey, kindly revised this chapter in January 2010, March 2006 and March 2005. Revised in July 2002 and July 2003 by Jeremy S. Sheppard, Hayward Sheppard, Vancouver. Revised in February 1997 and February 2001 by Cindy J. Lombard, Kelowna, BC. Reviewed and revised in January 1995 with the assistance of Frank Kraemer of PLTC and Jodie Werier then of Davis & Company, Vancouver; reviewed and revised in March 1996 by Catherine M. Greenall, Greenall & Co., Vancouver.

#### 4. What to File

Supreme Court Family Rule 10-10 (2) sets out the documents that a party must file when applying for judgment in an undefended family law case. They are

- (a) a requisition in Form F35 setting out the order sought;
- (b) a draft of the proposed order or orders;
- (c) proof that the case is an undefended family law case;
- (d) a certificate of the registrar in Form F36 certifying that the pleadings and proceedings in the family law case are in order;
- (e) if necessary, proof of service of the notice of family claim or counterclaim under which judgment is sought;
- (f) if appropriate, a Child Support Affidavit in Form F37 (see §7.02 below);
- (g) if a divorce is sought, an affidavit in Form F38.

When there are no children of the marriage involved, obtaining an order for divorce in an undefended family law case is quite simple. A party must provide the information specified in the affidavit to the court.

When there is something unusual contained in the pleadings, a party may need to appear before a judge to provide further information to the court in order to obtain the divorce order.

When a party to an undefended family law case does not apply for judgment by way of the requisition procedure, an undefended family law case may either be set for trial (SCFR 10-10 (1)) or in any manner the Chief Justice directs, and evidence and other information the court requires may then be given orally.

#### 5. The Order

An order for divorce or any order made in an undefended family law case must be in Form F52.

In a family law case in which a claim is made for a divorce together with one or more other claims, the court may, subject to s. 11(1) of the *Divorce Act*, grant the divorce and direct that the order for divorce alone be entered. The court may then adjourn the hearing of all other claims or grant judgment on the other claims and direct that a separate order dealing with them be entered at a later time (SCFR 15-2 (2)).

Unless the court otherwise orders, the party entering an order for divorce must, immediately after the order is granted, serve a copy of the entered order on each of the other parties that have an address for service, and if any of the parties does not have an address for service, mail a copy of the entered order to that party's last known address (SCFR 15-2 (4)).

#### [§7.02] Child Support in Undefended Family Laws Cases

In British Columbia, the courts have taken their duties under s. 11(1)(b) of the *Divorce Act* very seriously. This section provides that the court has a duty, before granting a divorce, to satisfy itself that reasonable arrangements have been made for the support of the children of the marriage.

If such arrangements have not been made, the court has a duty to refuse to grant a divorce order until suitable arrangements for support of the children are made.

The judge hearing the application for divorce ultimately must approve the support arrangements even if parties have been represented by counsel in prior *FRA* proceedings in which support was awarded, and careful consideration was given then to financial arrangements that have been entered into between the parties.

When seeking a divorce order where children are involved, a party must comply strictly with the court's requirement for financial disclosure as set out in SCFR 5-1. A trial judge must be satisfied that the support arrangements entered into between the parties comply with the Child Support Guidelines and are reasonable. The party must provide details.

Where there are children of the marriage, a party is specifically required to provide

- (a) a completed child support affidavit in Form F37 (if the amount of child support sought differs from the applicable Guidelines table amount, an explanation must be provided); and
- (b) an affidavit in Form F38 setting out the required information and providing sufficient detail to satisfy the court.