

RULE 7: PARTIES

WHO ARE PARTIES — CASE

7. (1) A person who makes a claim in a case or against whom a claim is made in a case is a party to the case. O. Reg. 114/99, r. 7 (1).

WHO ARE PARTIES — MOTION

(2) For purposes of a motion only, a person who is affected by a motion is also a party, but this does not apply to a child affected by a motion relating to custody, access, child protection, adoption or child support. O. Reg. 114/99, r. 7 (2).

PERSONS WHO MUST BE NAMED AS PARTIES

(3) A person starting a case shall name,

(a) as an applicant, every person who makes a claim;

(b) as a respondent,

(i) every person against whom a claim is made, and

(ii) every other person who should be a party to enable the court to decide all the issues in the case. O. Reg. 114/99, r. 7 (3).

PARTIES IN CASES INVOLVING CHILDREN

(4) In any of the following cases, every parent or other person who has care and control of the child involved, except a foster parent under the *Child and Family Services Act*, shall be named as a party, unless the court orders otherwise:

1. A case about custody of or access to a child.

2. A child protection case.

3. A secure treatment case (Part VI of the *Child and Family Services Act*). O. Reg. 114/99, r. 7 (4).

PARTY ADDED BY COURT ORDER

(5) The court may order that any person who should be a party shall be added as a party, and may give directions for service on that person. O. Reg. 114/99, r. 7 (5).

PERMANENT CASE NAME AND COURT FILE NUMBER

(6) The court file number given to a case and the description of the parties as applicants and respondents in the case shall remain the same on a motion to change an order, a status review application, an application (general) for *Child and Family Services Act* cases other than child protection and status review, an application for an openness order, an enforcement or an appeal, no matter who starts it, with the following exceptions:

1. In an enforcement of a payment order, the parties may be described instead as payors, recipients and garnishees.

2. In an appeal, the parties shall also be described as appellants and respondents.

3. When a case is transferred to another municipality, it may be given a new court file

number.

4. An application under section 153.1 of the *Child and Family Services Act* to change or terminate an openness order shall be given a new court file number.
5. A motion to change an order made under section 57.1 of the *Child and Family Services Act* shall be given a new court file number.
6. In an application brought under section 145.1.2 of the *Child and Family Services Act*, the person bringing the application shall be named as the applicant and the children's aid society and any other party entitled to notice shall be named as the respondents.
O. Reg. 519/06, s. 1; O. Reg. 383/11, s. 1.

Access order in effect**Application for openness order**

145.1.2 (1) A person described in paragraph 1 of subsection 145.1.1 (2) may, within 30 days after notice is received, apply to the court for an openness order. 2011, c. 12, s. 6.

Notice of application

(2) A person making an application for an openness order under this section shall give notice of the application to,

- (a) the society having care and custody of the child;
- (b) the child, except as otherwise provided under subsection 39 (4) or (5); and
- (c) if the child is bringing the application, the person who will be permitted to communicate with the child, if the child has a relationship with the child if the order is made. 2011, c. 12, s. 6.

Condition on placement

(3) A society shall not place a child for adoption before the time for applying for an openness order under subsection (1) has expired unless every person who is entitled to do so has made an application for an openness order under this section. 2011, c. 12, s. 6.

Information before placement

(4) Where an application for an openness order under this section has been made, a society shall, before placing the child for adoption, advise the person with whom it plans to place the child of the following:

1. The fact that such an application has been made.
2. The relationship of the applicant to the child.
3. The details of the openness arrangement requested. 2011, c. 12, s. 6.

Outcome of application

(5) Where an application for an openness order under this section has been made, a society shall advise the person with whom the society has placed or plans to place the child for adoption or, if an adoption order is made, the adoptive parent of the outcome of the application. 2011, c. 12, s. 6.

Openness order

(6) The court may make an openness order under this section in respect of a child if it is satisfied that,

- (a) the openness order is in the best interests of the child;
- (b) the openness order will permit the continuation of a relationship with a person that is meaningful and meaningful to the child; and
- (c) the child has consented to the order, if he or she is 12 years of age or older. 2011, c. 12, s. 6.

Same

(7) In deciding whether to make an openness order under this section, the court shall consider the ability of the person with whom the society has placed or plans to place the child for adoption or, if an adoption order is made, the adoptive parent to comply with the arrangement under the openness order. 2011, c. 12, s. 6.

Consent of society required

(8) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society. 2011, c. 12, s. 6.

Termination of openness order if Crown wardship terminates

(9) Any openness order made under this section in respect of a child terminates if the child ceases to be a Crown ward by reason of an order made under subsection 65.2 (1). 2011, c. 12, s. 6.

Temporary orders

(10) The court may make such temporary order relating to openness under this section as it considers to be in the child's best interests. 2011, c. 12, s. 6.

RULE 8.1: MANDATORY INFORMATION PROGRAM

APPLICATION OF RULE

8.1 (1) This rule applies to cases started after August 31, 2011 that deal with any of the following:

1. A claim for custody of or access to a child under the *Divorce Act* (Canada) or Part III of the *Children's Law Reform Act*.
2. A claim respecting net family property under Part I of the *Family Law Act*.
3. A claim respecting a matrimonial home under Part II of the *Family Law Act*.
4. A claim for support under the *Divorce Act* (Canada) or Part III of the *Family Law Act*.
5. A restraining order under the *Family Law Act* or the *Children's Law Reform Act*.
6. A motion to change a final order or agreement under rule 15, except motions that deal only with changing child or spousal support. O. Reg. 383/11, s. 2 (1).

EXCEPTION

(2) Subrules (4) to (7) do not apply to,

- (a) a person or agency referred to in subsection 33 (3) of the *Family Law Act*;
- (b) the Director of the Family Responsibility Office;
- (c) parties in cases that are proceeding on consent;
- (d) parties in cases in which the only claims made are for a divorce, costs or the incorporation of the terms of an agreement or prior court order; or
- (e) parties who have already attended a mandatory information program. O. Reg. 89/04, s. 3; O. Reg. 383/11, s. 2 (2).

CONTENT OF PROGRAM

(3) The program referred to in this rule shall provide parties to cases referred to in subrule (1) with information about separation and the legal process, and may include information on topics such as,

- (a) the options available for resolving differences, including alternatives to going to court;
- (b) the impact the separation of parents has on children; and
- (c) resources available to deal with problems arising from separation. O. Reg. 89/04, s. 3.

ATTENDANCE COMPULSORY

(4) Each party to a case shall attend the program no later than 45 days after the case is started. O. Reg. 89/04, s. 3.

APPOINTMENTS TO ATTEND

(5) The applicant shall arrange his or her own appointment to attend the program, obtain an appointment for the respondent from the person who conducts the program, and serve notice of the respondent's appointment with the application. O. Reg. 89/04, s. 3.

CERTIFICATE

(6) The person who conducts the program shall provide for each party who attends a certificate of attendance, which shall be filed as soon as possible, and in any event not later than 2 p.m. on the second day before the day of the case conference, if one is scheduled. O. Reg. 89/04, s. 3.

NO OTHER STEPS

(7) A party shall not take any step in the case before his or her certificate of attendance is filed, except that a respondent may serve and file an answer and a party may make an appointment for a case conference. O. Reg. 89/04, s. 3.

EXCEPTION

(8) The court may, on motion, order that any or all of subrules (4) to (7) do not apply to the party because of urgency or hardship or for some other reason in the interest of justice. O. Reg. 89/04, s. 3.

(9) Revoked: O. Reg. 561/07, s. 2.

RULE 14: MOTIONS FOR TEMPORARY ORDERS**WHEN TO MAKE MOTION**

14. (1) A person who wants any of the following may make a motion:

1. A temporary order for a claim made in an application.
2. Directions on how to carry on the case.
3. A change in a temporary order. O. Reg. 114/99, r. 14 (1); O. Reg. 544/99, s. 6; O. Reg. 89/04, s. 6 (2).

WHO MAY MAKE MOTION

(2) A motion may be made by a party to the case or by a person with an interest in the case. O. Reg. 114/99, r. 14 (2).

PARTIES TO MOTION

(3) A person who is affected by a motion is also a party, for purposes of the motion only, but this does not apply to a child affected by a motion relating to custody, access, child protection, adoption or child support. O. Reg. 114/99, r. 14 (3).

NO MOTION BEFORE CASE CONFERENCE ON SUBSTANTIVE ISSUES COMPLETED

(4) No notice of motion or supporting evidence may be served and no motion may be heard before a conference dealing with the substantive issues in the case has been completed. O. Reg. 89/04, s. 6 (3); O. Reg. 383/11, s. 3 (1).

(4.1) Revoked: O. Reg. 89/04, s. 6 (3).

URGENCY, HARDSHIP ETC.

(4.2) Subrule (4) does not apply 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. O. Reg. 202/01, s. 4 (1); O. Reg. 89/04, s. 6 (4).

(5) Revoked: O. Reg. 89/04, s. 6 (5).

OTHER MOTIONS

(6) Subrule (4) does not apply to a motion,

- (a) to change a temporary order under subrule 25 (19) (fraud, mistake, lack of notice);
- (b) for a contempt order under rule 31 or an order striking out a document under subrule (22);
- (c) for summary judgment under rule 16;
- (d) to require the Director of the Family Responsibility Office to refrain from suspending a licence;
- (e) to limit or suspend a support deduction order;
 - (e.1) in a child protection case;
 - (e.2) made without notice, made on consent, that is unopposed or that is limited to

- procedural, uncomplicated or unopposed matters (Form 14B);
- (e.3) made in an appeal;
- (f) for an oral hearing under subrule 37 (8) or 37.1 (8); or
- (g) to set aside the registration of an interjurisdictional support order made outside Canada. O. Reg. 114/99, r. 14 (6); O. Reg. 56/03, s. 2; O. Reg. 91/03, s. 4; O. Reg. 89/04, s. 6 (6); O. Reg. 151/08, s. 3.

MOTION INVOLVING COMPLICATED MATTERS

- (7) The judge who hears a motion involving complicated matters may,
- (a) order that the motion or any part of it be heard as a trial; and
 - (b) give any directions that are necessary. O. Reg. 114/99, r. 14 (7).

MOTION BY TELEPHONE OR VIDEO CONFERENCE

- (8) A party who wants a motion to be heard by telephone or video conference shall,
- (a) obtain an appointment from the clerk for the hearing of the motion;
 - (b) make the necessary arrangements;
 - (c) serve a notice of the appointment and arrangements on all other parties, and file it; and
 - (d) participate in the motion as the notice specifies. O. Reg. 114/99, r. 14 (8).

DOCUMENTS FOR A MOTION

- (9) A motion, whether made with or without notice,
- (a) requires a notice of motion (Form 14) and an affidavit (Form 14A); and
 - (b) may be supported by additional evidence. O. Reg. 114/99, r. 14 (9).

PROCEDURAL, UNCOMPLICATED OR UNOPPOSED MATTERS — MOTION FORM

(10) If a motion is limited to procedural, uncomplicated or unopposed matters, the party making the motion may use a motion form (Form 14B) instead of a notice of motion and affidavit. O. Reg. 114/99, r. 14 (10).

RESPONSE TO MOTION FORM

(10.1) If a party uses a motion form (Form 14B) and no person served with the motion form serves and files a response within four days after being served, the motion shall be dealt with by the court as an unopposed motion. O. Reg. 383/11, s. 3 (2).

WHERE NO REPLY PERMITTED

(10.2) A party who uses a motion form (Form 14B) and who is served with a response to it may not serve or file a reply. O. Reg. 383/11, s. 3 (2).

MOTION WITH NOTICE

- (11) A party making a motion with notice shall,
- (a) serve the documents mentioned in subrule (9) or (10) on all other parties, not later than four days before the motion date;

- (b) file the documents as soon as possible after service, but not later than two days before the motion date; and
- (c) file a confirmation (Form 14C) not later than 2 p.m. two days before the motion date. O. Reg. 114/99, r. 14 (11); O. Reg. 202/01, s. 4 (2).

NO LATE DOCUMENTS

(11.1) No documents for use on the motion may be served or filed after 2 p.m. two days before the motion date. O. Reg. 202/01, s. 4 (3).

MOTION WITHOUT NOTICE

(12) A motion may be made without notice if,

- (a) the nature or circumstances of the motion make notice unnecessary or not reasonably possible;
- (b) 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;
- (c) 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
- (d) service of a notice of motion would probably have serious consequences. O. Reg. 114/99, r. 14 (12).

FILING FOR MOTION WITHOUT NOTICE

(13) The documents for use on a motion without notice shall be filed on or before the motion date, unless the court orders otherwise. O. Reg. 114/99, r. 14 (13).

ORDER MADE ON MOTION WITHOUT NOTICE

(14) An order made on motion without notice (Form 14D) shall require the matter to come back to the court and, if possible, to the same judge, within 14 days or on a date chosen by the court. O. Reg. 114/99, r. 14 (14).

SERVICE OF ORDER MADE WITHOUT NOTICE

(15) An order made on motion without notice shall be served immediately on all parties affected, together with all documents used on the motion, unless the court orders otherwise. O. Reg. 114/99, r. 14 (15).

WITHDRAWING A MOTION

(16) A party making a motion may withdraw it in the same way as an application or answer is withdrawn under rule 12. O. Reg. 114/99, r. 14 (16).

EVIDENCE ON A MOTION

(17) Evidence on a motion may be given by any one or more of the following methods:

1. An affidavit or other admissible evidence in writing.
2. A transcript of the questions and answers on a questioning under rule 20.

3. With the court's permission, oral evidence. O. Reg. 114/99, r. 14 (17).

AFFIDAVIT BASED ON PERSONAL KNOWLEDGE

(18) An affidavit for use on a motion shall, as much as possible, contain only information within the personal knowledge of the person signing the affidavit. O. Reg. 114/99, r. 14 (18).

AFFIDAVIT BASED ON OTHER INFORMATION

(19) The affidavit may also contain information that the person learned from someone else, but only if,

- (a) the source of the information is identified by name and the affidavit states that the person signing it believes the information is true; and
- (b) in addition, if the motion is a contempt motion under rule 31, the information is not likely to be disputed. O. Reg. 114/99, r. 14 (19).

RESTRICTIONS ON EVIDENCE

(20) The following restrictions apply to evidence for use on a motion, unless the court orders otherwise:

1. The party making the motion shall serve all the evidence in support of the motion with the notice of motion.
2. The party responding to the motion shall then serve all the evidence in response.
3. 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.
4. No other evidence may be used. O. Reg. 114/99, r. 14 (20).

NO MOTIONS WITHOUT COURT'S PERMISSION

(21) If a party tries to delay the case or add to its costs or in any other way to abuse the court's process by making numerous motions without merit, the court may order the party not to make any other motions in the case without the court's permission. O. Reg. 114/99, r. 14 (21).

MOTION TO STRIKE OUT DOCUMENT

(22) The court may, on motion, strike out all or part of any document that may delay or make it difficult to have a fair trial or that is inflammatory, a waste of time, a nuisance or an abuse of the court process. O. Reg. 114/99, r. 14 (22).

FAILURE TO OBEY ORDER MADE ON MOTION

(23) A party who does not obey an order that was made on motion is not entitled to any further order from the court unless the court orders that this subrule does not apply, and the court may on motion, in addition to any other remedy allowed under these rules,

- (a) dismiss the party's case or strike out the party's answer or any other document filed by the party;
- (b) postpone the trial or any other step in the case;
- (c) make any other order that is appropriate, including an order for costs. O. Reg. 114/99, r. 14 (23); O. Reg. 89/04, s. 6 (7).

RULE 17: CONFERENCES**CONFERENCES IN DEFENDED CASES**

17. (1) Subject to subrule (1.1), in each case in which an answer is filed, a judge shall conduct at least one conference. O. Reg. 383/11, s. 4 (1).

EXCEPTION, CASE CONFERENCE OPTIONAL IN CHILD PROTECTION CASE

(1.1) In a child protection case, a case conference may be conducted if,

- (a) a party requests it; or
- (b) the court considers it appropriate. O. Reg. 91/03, s. 6 (1).

UNDEFENDED CASES

(2) If no answer is filed,

- (a) the clerk shall, on request, schedule a case conference or set a date for an uncontested trial or, in an uncontested divorce case, prepare the documents for a judge; and
- (b) a settlement conference or trial management conference shall be conducted only if the court orders it. O. Reg. 114/99, r. 17 (2); O. Reg. 544/99, s. 8 (1); O. Reg. 202/01, s. 5 (1).

MOTIONS TO CHANGE FINAL ORDER OR AGREEMENT

(3) Subrule (1) applies, with necessary changes, to a motion to change a final order or agreement under rule 15, unless the motion is proceeding on the consent of the parties and any assignee or is unopposed. O. Reg. 151/08, s. 5 (1).

PURPOSES OF CASE CONFERENCE

(4) The purposes of a case conference include,

- (a) exploring the chances of settling the case;
- (b) identifying the issues that are in dispute and those that are not in dispute;
- (c) exploring ways to resolve the issues that are in dispute;
- (d) ensuring disclosure of the relevant evidence;
- (d.1) identifying any issues relating to any expert evidence or reports on which the parties intend to rely at trial;
- (e) noting admissions that may simplify the case;
- (f) setting the date for the next step in the case;
- (g) setting a specific timetable for the steps to be taken in the case before it comes to trial;
- (h) organizing a settlement conference, or holding one if appropriate; and
- (i) giving directions with respect to any intended motion, including the preparation of a specific timetable for the exchange of material for the motion and ordering the filing of summaries of argument, if appropriate. O. Reg. 114/99, r. 17 (4); O. Reg. 89/04, s. 8 (1); O. Reg. 6/10, s. 7 (1, 2).

CASE CONFERENCE NOTICE

(4.1) A party who asks for a case conference shall serve and file a case conference notice (Form 17). O. Reg. 544/99, s. 8 (2); O. Reg. 202/01, s. 5 (2).

PURPOSES OF SETTLEMENT CONFERENCE

- (5) The purposes of a settlement conference include,
- (a) exploring the chances of settling the case;
 - (b) settling or narrowing the issues in dispute;
 - (c) ensuring disclosure of the relevant evidence;
 - (c.1) settling or narrowing any issues relating to any expert evidence or reports on which the parties intend to rely at trial;
 - (d) noting admissions that may simplify the case;
 - (e) if possible, obtaining a view of how the court might decide the case;
 - (f) considering any other matter that may help in a quick and just conclusion of the case;
 - (g) if the case is not settled, identifying the witnesses and other evidence to be presented at trial, estimating the time needed for trial and scheduling the case for trial; and
 - (h) organizing a trial management conference, or holding one if appropriate. O. Reg. 114/99, r. 17 (5); O. Reg. 6/10, s. 7 (3).

PURPOSES OF TRIAL MANAGEMENT CONFERENCE

- (6) The purposes of a trial management conference include,
- (a) exploring the chances of settling the case;
 - (b) arranging to receive evidence by a written report, an agreed statement of facts, an affidavit or another method, if appropriate;
 - (c) deciding how the trial will proceed;
 - (c.1) exploring the use of expert evidence or reports at trial, including the timing requirements for service and filing of experts' reports;
 - (d) ensuring that the parties know what witnesses will testify and what other evidence will be presented at trial;
 - (e) estimating the time needed for trial; and
 - (f) setting the trial date, if this has not already been done. O. Reg. 114/99, r. 17 (6); O. Reg. 6/10, s. 7 (4).

COMBINED CONFERENCE

(7) At any time on the direction of a judge, part or all of a case conference, settlement conference and trial management conference may be combined. O. Reg. 383/11, s. 4 (2).

ORDERS AT CONFERENCE

(8) At a case conference, settlement conference or trial management conference the judge may, if it is appropriate to do so,

- (a) make an order for document disclosure (rule 19), questioning (rule 20) or filing of summaries of argument on a motion, set the times for events in the case or give directions for the next step or steps in the case;
- (a.0.1) make an order respecting the use of expert witness evidence at trial or the service and filing of experts' reports;
- (a.1) order that the evidence of a witness at trial be given by affidavit;
- (b) make an order requiring one or more parties to attend,
 - (i) a mandatory information program,
 - (ii) a case conference or settlement conference conducted by a person named under subrule 17 (9),
 - (iii) an intake meeting with a court-affiliated mediation service, or
 - (iv) a program offered through any other available community service or resource;
- (b.1) if notice has been served, make a final order or any temporary order, including any of the following temporary orders to facilitate the preservation of the rights of the parties until a further agreement or order is made:
 - (i) an order relating to the designation of beneficiaries under a policy of life insurance, registered retirement savings plan, trust, pension, annuity or a similar financial instrument,
 - (ii) an order preserving assets generally or particularly,
 - (iii) an order prohibiting the concealment or destruction of documents or property,
 - (iv) an order requiring an accounting of funds under the control of one of the parties,
 - (v) an order preserving the health and medical insurance coverage for one of the parties and the children of the relationship, and
 - (vi) an order continuing the payment of periodic amounts required to preserve an asset or a benefit to one of the parties and the children;
- (c) make an unopposed order or an order on consent; and
- (d) on consent, refer any issue for alternative dispute resolution. O. Reg. 114/99, r. 17 (8); O. Reg. 202/01, s. 5 (3, 4); O. Reg. 89/04, s. 8 (3); O. Reg. 6/10, s. 7 (5); O. Reg. 383/11, s. 4 (3).

CONFERENCES WITH A NON-JUDGE

(9) A case conference or settlement conference may be conducted by a person who has been named by the appropriate senior judge, unless a party requests a conference with a judge. O. Reg. 114/99, r. 17 (9).

SETTLEMENT CONFERENCE WITH JUDGE BEFORE CASE SET FOR TRIAL

- (10) A case shall not be scheduled for trial unless,
- (a) a judge has conducted a settlement conference; or
 - (b) a judge has ordered that the case be scheduled for trial. O. Reg. 114/99, r. 17 (10).

(11) Revoked: O. Reg. 151/08, s. 5 (2).

ENFORCEMENT — CONFERENCES OPTIONAL

(12) In an enforcement, a case conference, settlement conference or trial management conference may be held at a party's request or on a judge's direction. O. Reg. 114/99, r. 17 (12).

PARTIES TO SERVE BRIEFS

(13) For each conference, each party shall serve and file a case conference brief (Form 17A or Form 17B), settlement conference brief (Form 17C or Form 17D) or trial management conference brief (Form 17E), as appropriate. O. Reg. 202/01, s. 5 (5).

CASE CONFERENCE BRIEF IN CHILD PROTECTION CASE

(13.0.1) In a child protection case, a case conference brief shall be served and filed only if a case conference is being held under subrule (1.1). O. Reg. 91/03, s. 6 (3).

TIME FOR SERVICE OF BRIEFS

(13.1) The party requesting the conference (or, if the conference is not requested by a party, the applicant) shall serve and file a brief not later than seven days before the date scheduled for the conference and the other party shall do so not later than four days before that date. O. Reg. 202/01, s. 5 (5).

PARTIES TO CONFIRM ATTENDANCE

(14) Not later than 2 p.m. two days before the date scheduled for the conference, each party shall file a confirmation (Form 14C). O. Reg. 114/99, r. 17 (14); O. Reg. 202/01, s. 5 (6).

NO LATE BRIEFS

(14.1) No brief or other document for use at the conference may be served or filed after 2 p.m. two days before the date scheduled for the conference. O. Reg. 202/01, s. 5 (7).

PARTIES AND LAWYERS TO COME TO CONFERENCE

(15) The following shall come to each conference:

1. The parties, unless the court orders otherwise.
2. For each represented party, the lawyer with full knowledge of and authority in the case.
O. Reg. 114/99, r. 17 (15).

PARTICIPATION BY TELEPHONE OR VIDEO CONFERENCE

(16) With permission obtained in advance from the judge who is to conduct a conference, a party or lawyer may participate in the conference by telephone or video conference. O. Reg. 114/99, r. 17 (16).

SETTING UP TELEPHONE OR VIDEO CONFERENCE

(17) A party or lawyer who has permission to participate by telephone or video conference shall,

- (a) make the necessary arrangements;
- (b) serve a notice of the arrangements on all other parties and file it; and

(c) participate in the conference as the notice specifies. O. Reg. 114/99, r. 17 (17).

COSTS OF ADJOURNED CONFERENCE

(18) If a conference is adjourned because a party is not prepared, has not served the required brief, has not made the required disclosure or has otherwise not followed these rules, the judge shall,

- (a) order the party to pay the costs of the conference immediately;
- (b) decide the amount of the costs; and
- (c) give any directions that are needed. O. Reg. 114/99, r. 17 (18).

CONFERENCE AGREEMENT

(19) No agreement reached at a conference is effective until it is signed by the parties, witnessed and, in a case involving a special party, approved by the court. O. Reg. 114/99, r. 17 (19).

AGREEMENT FILED IN CONTINUING RECORD

(20) The agreement shall be filed as part of the continuing record, unless the court orders otherwise. O. Reg. 114/99, r. 17 (20).

CONTINUING RECORD, TRIAL MANAGEMENT CONFERENCE BRIEFS

(21) Trial management conference briefs form part of the continuing record. O. Reg. 89/04, s. 8 (5).

CONTINUING RECORD, CASE CONFERENCE BRIEFS

(22) Case conference briefs do not form part of the continuing record unless the court orders otherwise and shall be returned at the end of the conference to the parties who filed them or be destroyed by court staff immediately after the conference. O. Reg. 89/04, s. 8 (5).

DELETIONS FROM CASE CONFERENCE BRIEF INCLUDED IN RECORD

(22.1) If the court orders that a case conference brief form part of the continuing record, that portion of the brief that deals with settlement of the case shall be deleted. O. Reg. 89/04, s. 8 (5).

CONTINUING RECORD, SETTLEMENT CONFERENCE BRIEFS

(22.2) Settlement conference briefs do not form part of the continuing record and shall be returned at the end of the conference to the parties who filed them or be destroyed by the court staff immediately after the conference. O. Reg. 89/04, s. 8 (5).

CONFIDENTIALITY OF SETTLEMENT CONFERENCE

(23) No brief or evidence prepared for a settlement conference and no statement made at a settlement conference shall be disclosed to any other judge, except in,

- (a) an agreement reached at a settlement conference; or
- (b) an order. O. Reg. 114/99, r. 17 (23).

SETTLEMENT CONFERENCE JUDGE CANNOT HEAR ISSUE

(24) A judge who conducts a settlement conference about an issue shall not hear the issue, except as subrule (25) provides. O. Reg. 91/03, s. 6 (4).

EXCEPTION, CHILD PROTECTION CASE

(25) In a child protection case, if a finding that the child is in need of protection is made without a trial and a trial is needed to determine which order should be made under section 57 of the *Child and Family Services Act*, any judge who has not conducted a settlement conference on that issue may conduct the trial. O. Reg. 91/03, s. 6 (4).

RULE 19: DOCUMENT DISCLOSURE

AFFIDAVIT LISTING DOCUMENTS

19. (1) Subject to subrule (1.1), every party shall, within 10 days after another party's request, give the other party an affidavit listing every document that is,

- (a) relevant to any issue in the case; and
- (b) in the party's control, or available to the party on request. O. Reg. 114/99, r. 19 (1); O. Reg. 383/11, s. 5 (1).

EXCEPTIONS

(1.1) Subrule (1) does not apply to the Office of the Children's Lawyer or to children's aid societies. O. Reg. 383/11, s. 5 (2).

ACCESS TO LISTED DOCUMENTS

- (2)** The other party is entitled, on request,
 - (a) to examine any document listed in the affidavit, unless it is protected by a legal privilege; and
 - (b) to receive, at the party's own expense at the legal aid rate, a copy of any document that the party is entitled to examine under clause (a). O. Reg. 114/99, r. 19 (2).

ACCESS TO DOCUMENTS MENTIONED IN COURT PAPERS

(3) Subrule (2) also applies, with necessary changes, to a document mentioned in a party's application, answer, reply, notice of motion, affidavit, financial statement or net family property statement. O. Reg. 114/99, r. 19 (3).

DOCUMENTS PROTECTED BY LEGAL PRIVILEGE

(4) If a party claims that a document is protected by a legal privilege, the court may, on motion, examine it and decide the issue. O. Reg. 114/99, r. 19 (4).

USE OF PRIVILEGED DOCUMENTS

- (5)** A party who claims that a document is protected by a legal privilege may use it at trial only,
 - (a) if the other party has been allowed to examine the document and been supplied with a copy, free of charge, at least 30 days before the settlement conference; or
 - (b) on the conditions the trial judge considers appropriate, including an adjournment if necessary. O. Reg. 114/99, r. 19 (5).

DOCUMENTS OF SUBSIDIARY OR AFFILIATED CORPORATION

(6) The court may, on motion, order a party to give another party an affidavit listing the documents that are,

- (a) relevant to any issue in the case; and
- (b) in the control of, or available on request to a corporation that is controlled, directly or indirectly, by the party or by another corporation that the party controls directly or

indirectly. O. Reg. 114/99, r. 19 (6).

DOCUMENTS OF OFFICE OF THE CHILDREN'S LAWYER OR CHILDREN'S AID SOCIETY

(6.1) The court may, on motion, order the Office of the Children's Lawyer or a children's aid society to give another party an affidavit listing the documents that are,

(a) relevant to any issue in the case; and

(b) in the control of, or available on request to, the Office of the Children's Lawyer or the children's aid society. O. Reg. 383/11, s. 5 (3).

ACCESS TO LISTED DOCUMENTS

(7) Subrule (2) also applies, with necessary changes, to any document listed in an affidavit ordered under subrule (6) or (6.1). O. Reg. 114/99, r. 19 (7); O. Reg. 383/11, s. 5 (4).

DOCUMENTS OMITTED FROM AFFIDAVIT OR FOUND LATER

(8) A party who, after serving an affidavit required under subrule (1), (6) or (6.1), finds a document that should have been listed in it, or finds that the list is not correct or not complete, shall immediately serve on the other party a new affidavit listing the correct information. O. Reg. 114/99, r. 19 (8); O. Reg. 383/11, s. 5 (5).

ACCESS TO ADDITIONAL DOCUMENTS

(9) The other party is entitled, on request,

(a) to examine any document listed in an affidavit served under subrule (8), unless it is protected by a legal privilege; and

(b) to receive, free of charge, a copy of any document that the party is entitled to examine under clause (a). O. Reg. 114/99, r. 19 (9).

FAILURE TO FOLLOW RULE OR OBEY ORDER

(10) If a party does not follow this rule or obey an order made under this rule, the court may, on motion, do one or more of the following:

1. Order the party to give another party an affidavit, let the other party examine a document or supply the other party with a copy free of charge.
2. Order that a document favourable to the party's case may not be used except with the court's permission.
3. Order that the party is not entitled to obtain disclosure under these rules until the party follows the rule or obeys the order.
4. Dismiss the party's case or strike out the party's answer.
5. Order the party to pay the other party's costs for the steps taken under this rule, and decide the amount of the costs.
6. Make a contempt order against the party.
7. Make any other order that is appropriate. O. Reg. 114/99, r. 19 (10).

DOCUMENT IN NON-PARTY'S CONTROL

(11) If a document is in a non-party's control, or is available only to the non-party, and is not protected by a legal privilege, and it would be unfair to a party to go on with the case without the document, the court may, on motion with notice served on every party and served on the non-party by special service,

- (a) order the non-party to let the party examine the document and to supply the party with a copy at the legal aid rate; and
- (b) order that a copy be prepared and used for all purposes of the case instead of the original. O. Reg. 114/99, r. 19 (11).

RULE 20.1: EXPERTS

DUTY OF EXPERT

20.1 (1) It is the duty of every expert who provides evidence in relation to a case under these rules,

- (a) to provide opinion evidence that is fair, objective and non-partisan;
- (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
- (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue. O. Reg. 383/11, s. 6.

DUTY PREVAILS

(2) In the case of an expert engaged by or on behalf of a party, the duty in subrule (1) prevails over any obligation owed by the expert to that party. O. Reg. 383/11, s. 6.

COURT APPOINTED EXPERTS

(3) The court may, on motion or on its own initiative, appoint one or more independent experts to inquire into and report on any question of fact or opinion relevant to an issue in a case. O. Reg. 383/11, s. 6.

EXPERT TO BE NAMED

(4) An order under subrule (3) appointing an expert shall name the expert and, where possible, the expert shall be a person agreed on by the parties. O. Reg. 383/11, s. 6.

INSTRUCTIONS

(5) An order under subrule (3) appointing an expert shall contain the instructions to be given to the expert, and the court may make any further orders that it considers necessary to enable the expert to carry out the instructions. O. Reg. 383/11, s. 6.

FEES AND EXPENSES

(6) The court shall require the parties to pay the fees and expenses of an expert appointed under subrule (3), and shall specify the proportions or amounts of the fees and expenses that each party is required to pay. O. Reg. 383/11, s. 6.

SECURITY

(7) If a motion by a party for the appointment of an expert under subrule (3) is opposed, the court may, as a condition of making the appointment, require the party seeking the appointment to give such security for the expert's fees and expenses as is just. O. Reg. 383/11, s. 6.

SERIOUS FINANCIAL HARDSHIP

(8) The court may relieve a party from responsibility for payment of any of the expert's fees and expenses, if the court is satisfied that payment would cause serious financial hardship to the party. O. Reg. 383/11, s. 6.

REPORT

- (9) The expert shall prepare a report of the results of his or her inquiry, and shall,
- (a) file the report with the clerk of the court; and
 - (b) provide a copy of the report to each of the parties. O. Reg. 383/11, s. 6.

CONTENT OF REPORT

- (10) A report provided by an expert shall contain the following information:
1. The expert's name, address and area of expertise.
 2. The expert's qualifications, including his or her employment and educational experiences in his or her area of expertise.
 3. The instructions provided to the expert in relation to the proceeding.
 4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
 5. The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
 6. The expert's reasons for his or her opinion, including,
 - i. a description of the factual assumptions on which the opinion is based,
 - ii. a description of any research conducted by the expert that led him or her to form the opinion, and
 - iii. a list of every document relied on by the expert in forming the opinion.
 7. An acknowledgement of expert's duty (Form 20.1) signed by the expert. O. Reg. 383/11, s. 6.

ADMISSIBILITY

- (11) The expert's report is admissible in evidence in the case. O. Reg. 383/11, s. 6.

CROSS-EXAMINATION

- (12) Any party may cross-examine the expert at the trial. O. Reg. 383/11, s. 6.

NON-APPLICATION

- (13) For greater certainty, subrules (3) to (12) do not apply in respect of,
- (a) appointments of persons by the court under subsection 54 (1.2) of the *Child and Family Services Act* or subsection 30 (1) of the *Children's Law Reform Act*; or
 - (b) requests by the court that the Children's Lawyer act under subsection 112 (1) of the *Courts of Justice Act*. O. Reg. 383/11, s. 6.

RULE 34: ADOPTION

CFSA DEFINITIONS APPLY

34. (1) The definitions in the *Child and Family Services Act* apply to this rule and, in particular,

“Director” means a Director within the meaning of the Act. O. Reg. 114/99, r. 34 (1).

MEANING OF “ACT”

(2) In this rule,

“Act” means the *Child and Family Services Act*. O. Reg. 114/99, r. 34 (2).

USE OF INITIALS IN DOCUMENTS

(2.1) An applicant or respondent may be referred to by only the first letter of his or her surname in any document in the case, except that,

- (a) the applicant’s full names shall appear in the adoption order; and
- (b) the child’s full names shall appear in the adoption order, unless the court orders that the child’s first name and the first letter of his or her surname be used. O. Reg. 337/02, s. 3 (1).

CERTIFIED COPY OF ORDER FROM OUTSIDE ONTARIO

(3) When this rule requires a copy of an order to be filed and the order in question was made outside Ontario, it shall be a copy that is certified by an official of the court or other authority that made it. O. Reg. 114/99, r. 34 (3).

MATERIAL TO BE FILED WITH ADOPTION APPLICATIONS

(4) The following shall be filed with every application for an adoption:

1. A certified copy of the statement of live birth of the child, or an equivalent that satisfies the court.
2. If required, the child’s consent to adoption (Form 34) or a notice of motion and supporting affidavit for an order under subsection 137 (9) of the Act dispensing with the child’s consent.
3. If the child is not a Crown ward, an affidavit of parentage (Form 34A) or any other evidence about parentage that the court requires from the child’s parent or a person named by the court.
4. If the applicant has a spouse who has not joined in the application, a consent to the child’s adoption by the spouse (Form 34B).
5. If required by the Act or by an order, a Director’s or local director’s statement on adoption (Form 34C) under subsection 149 (1) or (6) of the Act.
6. An affidavit signed by the applicant (Form 34D) that includes details about the applicant’s education, employment, health, background and ability to support and care for the child, a history of the relationship between the parent and the child and any other evidence relating to the best interests of the child, and states whether the child is

an Indian or a native person. O. Reg. 114/99, r. 34 (4); O. Reg. 337/02, s. 3 (2).

REPORT OF CHILD'S ADJUSTMENT

(5) A report under subsection 149 (5) or (6) of the Act of the child's adjustment in the applicant's home shall also be filed with the application if the child is under 16 years of age, or is 16 years of age or older but has not withdrawn from parental control and has not married. O. Reg. 114/99, r. 34 (5).

ADDITIONAL MATERIAL — CROWN WARD

(6) If the child is a Crown ward, the following shall also be filed with the application:

1. A Director's consent to adoption (Form 34E).

1.1 If an access order was made under subsection 58 (1) of the Act,

i. copies of each notice of intention to place a child for adoption (Form 8D.2) or of the notice to child of intention to place for adoption (Form 8D.3) that was sent to a person who was granted an access order,

ii. copies of each notice of termination of access (Form 8D.4) that was sent to a person who was the subject of an access order but was not entitled to bring an application for an openness order,

iii. for each notice,

A. proof of service of the notice in accordance with subsection 145.1.1 (4) of the Act,

B. a copy of an order permitting another method of service under subsection 145.1.1 (5) of the Act and proof of such service, or

C. a copy of an order under subsection 145.1.1 (6) of the Act that notice is not required, and

iv. an affidavit (Form 34G.1) signed by an employee of a children's aid society stating that,

A. no application for an openness order has been filed, or

B. if any applications for openness orders have been filed, the status of those applications, including details of any openness orders that have been made.

2. A copy of any order under subsection 58 (1) of the Act ending access to the child.

3. A copy of the order of Crown wardship.

4. Proof of service of the orders referred to in paragraphs 2 and 3, or a copy of any order dispensing with service.

5. An affidavit (Form 35G.1), signed by a person delegated by the local director of the children's aid society that has placed the child for adoption, stating that there is no appeal in progress from an order referred to in paragraph 2 or 3, or that the appeal period has expired without an appeal being filed, or that an appeal was filed but has been withdrawn or finally dismissed.

6. If the child is an Indian or native person, proof of 30 days written notice to the child's band or native community of the intention to place the child for adoption. O. Reg.

114/99, r. 34 (6); O. Reg. 337/02, s. 3 (3); O. Reg. 383/11, s. 7 (1, 2).

ADDITIONAL MATERIAL — CHILD NOT CROWN WARD

(7) If the child is not a Crown ward and is placed for adoption by a licensee or children's aid society, the following shall also be filed with the application:

1. A copy of any custody or access order that is in force and is known to the person placing the child, or to an applicant.
2. Revoked: O. Reg. 337/02, s. 3 (4).
3. A consent to adoption (Form 34F) under section 137 of the Act from every parent, other than the applicant, of whom the person placing the child or an applicant is aware. An order under section 138 of the Act dispensing with a parent's consent may be filed instead of the consent.
4. An affidavit (Form 34G) signed by the licensee or by an authorized employee of the children's aid society (depending on who is placing the child).
5. If the child is placed by a licensee, a copy of the licensee's licence to make the placement at the time of placing the child for adoption.
6. If the child is an Indian or native person, proof of 30 days written notice to the child's band or native community of the intention to place the child for adoption. O. Reg. 114/99, r. 34 (7); O. Reg. 337/02, s. 3 (4-6).

ADDITIONAL MATERIAL — RELATIVE OR STEP-PARENT

(8) If the applicant is the child's relative or the spouse of the child's parent, an affidavit from each applicant (Form 34H) shall also be filed with the application. O. Reg. 114/99, r. 34 (8).

APPLICATION BY STEP-PARENT OR RELATIVE

- (9) An application by a relative of the child or the spouse of the child's parent,
- (a) shall not be commenced until the 21-day period referred to in subsection 137 (8) of the Act has expired; and
 - (b) shall be accompanied by the applicant's affidavit confirming that he or she did not receive a withdrawal of consent during the 21-day period. O. Reg. 337/02, s. 3 (7).

STEP-PARENT ADOPTION, PARENT'S CONSENT

(10) An application by the spouse of the child's parent shall be accompanied by the parent's consent (Form 34I). O. Reg. 337/02, s. 3 (7).

INDEPENDENT LEGAL ADVICE, CHILD'S CONSENT

(11) The consent of a child to be adopted (Form 34) shall be witnessed by a representative of the Children's Lawyer, who shall complete the affidavit of execution and independent legal advice contained in the form. O. Reg. 337/02, s. 3 (7).

INDEPENDENT LEGAL ADVICE, CONSENT OF PARENT UNDER 18

(11.1) The consent of a person under the age of 18 years who is a parent of the child to be adopted (Form 34F) shall be witnessed by a representative of the Children's Lawyer, who shall

complete an affidavit of execution and independent legal advice (Form 34J). O. Reg. 337/02, s. 3 (7).

INDEPENDENT LEGAL ADVICE, ADULT PARENT'S CONSENT

(12) The consent of an adult parent of the child to be adopted shall be witnessed by an independent lawyer, who shall complete the affidavit of execution and independent legal advice. O. Reg. 114/99, r. 34 (12); O. Reg. 337/02, s. 3 (8).

COPY OF CONSENT FOR PERSON SIGNING

(13) A person who signs a consent to an adoption shall be given a copy of the consent and of the affidavit of execution and independent legal advice. O. Reg. 114/99, r. 34 (13).

WITHDRAWAL OF CONSENT BY PARENT

(13.1) A parent who has given consent to an adoption under subsection 137 (2) of the Act may withdraw the consent under subsection 137 (8) of the Act in accordance with the following:

1. If the child is placed for adoption by a children's aid society, the parent who wishes to withdraw the consent shall ensure that the children's aid society receives the written withdrawal within 21 days after the consent was given.
2. If the child is placed for adoption by a licensee, the parent who wishes to withdraw the consent shall ensure that the licensee receives the written withdrawal within 21 days after the consent was given.
3. If a relative of the child or a spouse of a parent proposes to apply to adopt the child, the parent who wishes to withdraw the consent shall ensure that the relative or spouse receives the written withdrawal within 21 days after the consent was given. O. Reg. 337/02, s. 3 (9).

WITHDRAWAL OF CONSENT BY CHILD AGED SEVEN OR OLDER

(13.2) A child who has given consent to an adoption under subsection 137 (6) of the Act may withdraw the consent under subsection 137 (8) of the Act in accordance with the following:

1. The withdrawal shall be signed within 21 days after the consent was given, and witnessed by the person who witnessed the consent under subrule (11) or by another representative of the Children's Lawyer.
2. The person who witnesses the withdrawal shall give the original withdrawal document to the child and promptly serve a copy on the children's aid society, licensee, relative or spouse, as the case may be, by regular service. O. Reg. 337/02, s. 3 (9).

MOTION TO WITHDRAW CONSENT

(14) Despite subrule 5 (4) (place for steps other than enforcement), a motion to withdraw a consent to an adoption under subsection 139 (1) of the Act shall be made in,

- (a) the municipality where the person who gave the consent lives; or
- (b) in any other place that the court decides. O. Reg. 114/99, r. 34 (14); O. Reg. 337/02, s. 3 (10).

CLERK TO CHECK ADOPTION APPLICATION

- (15) Before the application is presented to a judge, the clerk shall,
- (a) review the application and other documents filed to see whether they are in order; and
 - (b) prepare a certificate (Form 34K). O. Reg. 114/99, r. 34 (15).

DISPENSING WITH CONSENT BEFORE PLACEMENT

- (16) In an application to dispense with a parent's consent before placement for adoption,
- (a) the applicant may be the licensee, a parent, the children's aid society or the person who wants to adopt;
 - (b) the respondent is the person who has not given consent;
 - (c) if an order that service is not required is sought, the request shall be made in the application and not by motion;
 - (d) if the application is being served, the applicant shall serve and file with it an affidavit (Form 14A) setting out the facts of the case;
 - (e) if the application is not being served, the applicant shall file with it an affidavit (Form 14A) setting out the facts of the case, and the clerk shall send the case to a judge for a decision on the basis of affidavit evidence. O. Reg. 337/02, s. 3 (11).

FORMS FOR OPENNESS APPLICATIONS

- (17) In a case about an openness order under Part VII of the Act,
- (a) an application for an openness order shall be in Form 34L;
 - (b) a consent to an openness order under section 145.1 of the Act shall be in Form 34M;
 - (b.1) a consent to an openness order under section 145.1.2 of the Act shall be in Form 34M.1;
 - (c) an application to change or terminate an openness order shall be in Form 34N;
 - (d) an answer to an application for an openness order or an answer to an application to change or terminate an openness order shall be in Form 33B.2;
 - (e) the notice of intention to place a child for adoption to be served on persons entitled to access, other than the child, shall be in Form 8D.2;
 - (f) the notice to a child who is entitled to access that he or she will be placed for adoption shall be in Form 8D.3; and
 - (g) the notice of termination of access to be served on a person who is the subject of an access order and not entitled to bring an application for an openness order shall be in Form 8D.4. O. Reg. 519/06, s. 6; O. Reg. 383/11, s. 7 (3).

SERVICE OF NOTICE OF INTENTION TO PLACE A CHILD FOR ADOPTION

- (18) In an application for an order under subsection 145.1.1 (5) of the Act to allow another method of service of the notice of intention to place a child for adoption or of the notice of termination of access (Form 8D.4), or for an order under subsection 145.1.1 (6) of the Act that notice is not required,
- (a) the applicant is the children's aid society;

- (b) the respondent is the person who is entitled to have access to, or contact with, the child;
- (c) the application shall be made using Form 8B.2 — Application (general) (*Child and Family Services Act* cases other than child protection and status review);
- (d) the application shall be filed in the same court file as the child protection case in which the child was made a Crown ward;
- (e) the applicant shall file an affidavit (Form 14A) setting out the facts in support of the order being requested and the clerk shall send the case to a judge for a decision on the basis of the affidavit evidence. O. Reg. 383/11, s. 7 (4).

TIMELINES FOR OPENNESS APPLICATIONS

(19) Every application for an openness order is governed by the following timetable:

Step in the case	Maximum time for completion, from the date the application is filed
Service and filing of answers	30 days
First hearing or settlement conference	50 days
Hearing	90 days