FAMILY COURT RULES
AND
PROCEDURES

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The sections of this paper dealing with the preparation and use of Financial and Property Statements at pages 18 to 21 repeat the comments included in the paper prepared by Marilyn Penner for the SKLESI seminar and are used with her permission.
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I. INTRODUCTION

Family law proceedings are dealt with under Part Forty-Eight of the Queen’s Bench Rules for Saskatchewan. Effective January 1, 2001, this part was amended by repealing the former Part Forty-Eight Family Law Proceedings and substituting a new Part Forty-Eight. This paper attempts to highlight various aspects of the family law rules of procedure. Although some substantive law will be referenced in the context of the use of the family law rules, this paper is not an attempt to exhaustively deal with substantive family law matters. This task is left to other lecturers on family law matters. Further, this paper is not intended to be either a supplement or a substitution for the family law rules of procedure. The comments which follow are based on the writer's own research and musings, except as noted in the acknowledgement to this paper.

II. FAMILY LAW PROCEEDINGS AND DISCLOSURE GENERALLY

Essentially, the revisions to the family law rules responded to:

(a) changes which had occurred in the law dealing with corollary relief matters, especially child support;

(b) ongoing concerns that family matters were proceeding where insufficient information was available to the court to pronounce decisions in relation to custody, access and property division issues; and

(c) problems with financial disclosure.

As a result, the revised family law rules of procedure place great emphasis on early disclosure and provide the tools to obtain full disclosure in an effective and cost efficient manner. Further, the rules now provide for more complete disclosure and more stringent time lines respecting the service and filing of family law proceedings. Additionally, the rules clarify the information to be presented both in support of and in reply to family law proceedings.
The focus on full disclosure is not a novel concept in family law proceedings. However, as with other areas of practice, obtaining full disclosure is easier said than done.

Pursuant to section 27 of the *Family Property Act*, the court has the discretion to require a spouse to file a statement under oath disclosing particulars of:

(a) all of the spouse's family property (whether situated in Saskatchewan or elsewhere);
(b) all family property disposed of within two years before the commencement of an application for division of family property; and
(c) all of the spouse's liabilities and debts.

Pursuant to section 21 of the *Federal Child Support Guidelines* (the “Guidelines”), litigants in family law proceedings where child support is in issue are required to produce extensive financial information, including income tax returns, pay stubs, financial statements, and corporate tax returns.

The Saskatchewan Court of Appeal has commented on the importance of the duty of disclosure of relevant documents in the context of Rule 222 of the *Queen’s Bench Rules*. As the Court of Appeal identified in *Cominco Ltd. v. Phillips Cables Ltd., et al* (1987), 54 Sask. R. 134, the relevance of a document is based on the extent to which the document contains information directly or indirectly enabling a party to advance their case, damage their opponent's case or which may fairly lead to a train of inquiry which may have either of these consequences.

In *Spencer v. Canada (Attorney General)*, 2000 SKCA 96, 2000 SKCA 96A, the Court of Appeal commented on issues regarding the extent to which litigants had a duty to disclose and produce documents in their possession and control which relate to any matters in question between the parties. The Court of Appeal has also commented on and emphasized the broad duty and obligation placed upon litigants in family law proceedings to provide full and complete disclosure of all relevant financial information: *Eftoda v. Eftoda* (1987), 56 Sask. R. 258 and *Ewing v. Ewing* (1987), 56 Sask. R. 260. Finally, in cases such as *Kofed v. Fichter* (1998), 39 R.F.L. (4th) 348 and *Dergousoff v. Dergousoff* (1998), 167 Sask. R. 66, the Court of Appeal
commented on the extent to which parties must adequately produce evidence of extraordinary expense items sought pursuant to section 7 of the Guidelines.

It is in the context of the requirement of full and complete financial disclosure that one should approach the task of putting together the documents in support of or opposition to a family law proceeding.

III. FAMILY LAW PROCEEDINGS GENERALLY

Rule 585 of the Queen’s Bench Rules (the “Rules”) indicates that Part Forty-Eight applies exclusively to “family law proceedings”. Rule 584 defines family law proceedings with reference to the definition found in section 2 of the Queen’s Bench Act, 1998. Essentially, any matter or action based on statute law, common law or the inherent jurisdiction of the court which relates to family, is a family law proceeding.

Although the family law rules do not apply to the general proceedings in the Court of Queen’s Bench, Rule 585(2) and (3) clarify that the general procedure and practice of the court applies to family law proceedings, with the exception that family law proceedings are to be conducted as informally as the case may permit, having regard for the proper administration of justice. This informality exception is also provided for under section 98 of the Queens Bench Act, 1998. However, section 98 of the Queen’s Bench Act, 1998 goes further by eliminating any informality as a ground of appeal from a decision, order or action of a judge.

Informality of proceedings should not be confused with the court’s acceptance of a lackadaisical observance of either the Rules or the application of the law, including the law of evidence, in family law proceedings. Rather, to some extent, the court will be more forgiving of litigants (usually those that are un-represented) who present their case with less formality and decorum than what would be accepted from a lawyer. Further, a less formal approach to the presentation of evidence in court is often more acceptable in matters involving children.
A. COMMENCING A FAMILY LAW PROCEEDING

1. The Petition

Family law proceedings are generally commenced by a Petition (Form 589). The party commencing the proceeding is called the petitioner and the party opposing the proceeding is called the respondent (Rule 592(1)). Use of the names petitioner and respondent in describing the parties in the style of cause in any subsequent proceedings, including any interim motions, applications or variation applications, remains consistent throughout the family law proceeding regardless of which party is actually bringing the proceeding (Rule 592(2)). Therefore, the terms Petitioner by Counter-Petition, Respondent by Counter-Petition and Applicant have been eliminated.

Care should be taken with respect to the information included in the Petition. The Petition should contain all relevant factual information relating to the relief being sought. Attention to the factual information required is especially important when claims relate to issues of custody and access to children, extraordinary expense claims, and claims with respect to unequal division of family assets.

Although the Petition is not a sworn document, counsel should resist including matters in the Petition which are not factually probative or which state the petitioner's position in meaningless platitudes with little or no regard for the legal requirements to meet the case put forward in the Petition. The Petition is the Court’s first look at your client’s claim and you should present a compelling case on your client’s behalf. The basic rule of pleading, “plead the facts not the evidence” applies; so you do not tell your client’s version of events. Rather, you should provide the material facts to support his or her claim.

The family law rules also provide for the joinder and continuation of claims within family law proceedings. Rule 591 specifies that, once issued, the Petition has the effect of raising all issues concerning or in any way relating to the matters for which relief is specifically sought.
Consequently, to the extent that the family law proceeding raises collateral matters not specifically plead or to the extent that another matter relating to the family law proceeding is before the court, the court has the discretion to pronounce judgments and orders to mete out justice in the case. For example,

(a) where a Petition claims sole custody of children, the court would nevertheless have the discretion to make an award with respect to joint custody of the children. (See: Fox v. Schwinghammer, 1999 SKQB 182); or

(b) to the extent that a party may be suing a third party for the return of a family asset sold to the third party by the party’s spouse, the court could join that action to a family law proceeding raising the issue of division of the family assets between the spouses. (See: Gordon v. Goetz (1993), 111 Sask, R. 1 (Sask. Q.B.).)

One should also note the following when completing a Petition:

(a) Rule 590 provides that a marriage certificate or a certificate of registration of the marriage will be accepted as proof of marriage;

(b) Paragraph 7 of the Petition form, which relates to Collusion, Condonation and Connivance, should include sub-paragraphs (a) and (b) or just sub-paragraph (a), but not sub-paragraph (b) alone;

(c) Rule 592(3) provides that “a person alleged to have committed adultery with a party shall not be named in the Petition of any other document, unless the court orders otherwise on an application which may be made ex parte”. Accordingly, if a party seeks a divorce on the basis of adultery, the Petition should state the fact that adultery has occurred, not the name of the person with whom the party is alleged to have committed adultery; and

(d) Rule 637 states that children are to be named where relief is claimed with respect to those children. Alternatively, the document should contain a statement to the effect that there are no children who are in the custody or care of either of the parties.

With respect to service of the Petition, a Petition claiming divorce must be personally served on the respondent and such service cannot be effected by the petitioner (Rule 594). Other than a Petition for divorce, a lawyer representing a respondent may accept service of any documents commencing a family law proceeding. Documents other than those commencing a family law proceeding may be served by ordinary mail with such service deemed to be effected on the seventh day following the date of mailing.
There are now two forms for proof of service: Forms 595A Personal Service and 595B Service by Ordinary Mail. Since a Petition claiming Divorce must be served personally, Form 595A will be used. It can also be used to prove service of any other document in the proceedings. If service of a document is effected by ordinary mail, Form 595B will be used.

2. **Answer and Counter-Petition**

According to Rule 597(1), a respondent wishing to oppose a claim made in a Petition must file an Answer in Form 597A:

(a) within 30 days after service of a Petition in Canada or the United States of America; or

(b) within 60 days after service of a Petition outside of Canada or the United States of America.

However, note Rule 597(2) which provides that notwithstanding Rule 597(1), an Answer may be served and filed at any time before a family law proceeding is noted for default. One should also note the ability to extend the time for serving and filing an Answer by serving and filing a Notice of Intent to Answer in accordance with Rules 597(3) and (4).

In circumstances where the respondent claims relief against the petitioner, the respondent serves and files an Answer and Counter-Petition in Form 598. The Answer and Counter-Petition must be served within the time set for serving and filing an Answer. As with a petition, the Answer and Counter-Petition should succinctly and factually set forth the matters relied upon by the respondent in his or her claim against the petitioner.

3. **Uncontested and Miscellaneous Proceedings**

When you apply for a judgment in an uncontested family law proceeding, have regard for Rules 606 and 624 with respect to the documents to be filed in support of the application, including the requirements of Rules 643 and 644 where those applications are brought pursuant to the *Children's Law Act, 1997* and the *Family Maintenance Act, 1997*, respectively.
Finally, Rules 639 and 641 set out specific procedures for appointing a custody access assessor and a mediator, respectively. Rules 645 to 651 provide for proceedings regarding enforcement of maintenance orders and reciprocal enforcement of maintenance orders.

IV. MOTIONS AND AFFIDAVIT EVIDENCE IN FAMILY LAW PROCEEDINGS

A. MOTIONS

Rule 602 sets out the substantive requirements for motions in family law proceedings. The form of the motion used in family law proceedings will depend on the nature of the application being presented to the court. Rule 602(1) provides that:

(a) motions for substantive relief or interim relief shall be in Form 602 entitled Notice of Motion (Family Law Proceedings);
(b) motions seeking a variation of relief shall be in Form 632 entitled Application for Variation; and
(c) motions for purely procedural matters shall be in Form 47 entitled Notice of Motion.

Care should be taken in completing the prescribed form so that the factual and legal basis for the relief sought is set out succinctly and clearly, including section numbers of relevant statutory authority or case citations of relevant judicial pronouncements. Although some lawyers tend to provide minimum details in the motion and rely on the factual circumstances set out in the supporting affidavits, it is a good practice to specify the allegations and law grounding the application within the body of the motion. This draws specific attention to the matters at the heart of the application, both to the judge and the party opposite, while focusing your attention on the matters to be dealt with in argument upon the hearing of the motion.
B. TIMING YOUR MOTIONS

For motions other than purely procedural motions, the basic timing rule is the ‘14-day rule’ contained in Rule 602(2)(b). Rule 602(2)(b) states that “[w]here a motion claiming substantive relief, interim relief, or variation relief is made on notice, the party bringing the motion shall … file the notice of the motion and supporting affidavits with proof of service 14 days before the date set for the hearing of the motion”.

Rule 602(3) appears to contain important exceptions to the default ‘14-day rule’ in 602(2)(b). That rule states as follows:

602(3) Notwithstanding subrule (2), where:

(a) a motion claims support or variation of spousal support, there shall be at least 37 days between the date of service of the document commencing the family law proceeding and the date set for hearing the motion;

(b) a motion claims variation of child support, there shall be at least 37 days between the date set for hearing the motion and:

   (i) the date that written notice was given pursuant to subsection 25(1) of the guidelines; or

   (ii) the date of service of the Application for Variation.

On its face, Rule 602(3)(a) appears to require 37 days from the date of service of the documents commencing the motion for support or variation of spousal support. However, as Chief Justice Gerein stated in Bowering v. Bowering, 2001 SKQB 488, at paragraph 7:

“… attention must be given to when the period of 37 days begins. That date is when ‘… the document commencing the family law proceeding’ is served”.

According to Rule 584, a “document commencing a family law proceeding” is:

(a) a Petition;

(b) an Application for Variation; or

(c) a Notice of Motion commencing a corollary relief proceeding.
As to the phrase “corollary relief proceeding”, Rule 584 defines such a proceeding as it is defined in section 2 of the *Divorce Act*. According to the definition in that section, a corollary relief proceeding “means a proceeding in a court in which either or both former spouses seek a child support order or a custody order” [emphasis added].

*Bowering, supra*, holds that motions for spousal support orders, child support orders or custody orders brought by a spouse prior to the granting of a judgment for divorce do not constitute motions commencing “corollary relief proceedings” (since the *Divorce Act* requires that spouses seeking such relief must be “former spouses”). Accordingly, in these circumstances, the “document commencing the family law proceeding” is the Petition. Thus, as Chief Justice Gerein confirmed in *Bowering, supra*, if a motion for spousal support, child support or custody is served with the Petition, then there must be 37 days notice between the date of service of the Petition and the return date set for hearing the motion. However, if the motion for spousal support, child support or custody is served 23 days or more after service of the Petition, only 14 days of notice is required between service of the motion documents and the return date set for hearing of the motion.

An application for spousal support brought by a spouse after the granting of a judgment for divorce, would require 37 days notice. (See *Bowering, supra*, at paragraph 9.)

A motion for variation of spousal support during the course of a family law proceeding would require 37 days notice under Rule 602(3)(a). This interpretation follows from the definition of “document commencing a family law proceeding” as including an Application for Variation under Rule 584, and the wording of Rule 602(3)(a).

Pursuant to Rule 602(3)(b), an application to vary child support would require 37 days notice from service of the Application for Variation or the date that written notice was given pursuant to section 25(1) of the *Federal Child Support Guidelines*. Section 25 of the *Guidelines* facilitates requests for updating financial information in the context of existing child support orders.

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Rule 602(4) provides for motions made for purely procedural matters, such as enforcing compliance with rules regarding affidavits, striking pleadings, enforcing requests for financial disclosure, amending pleadings, setting down for pre-trial, etc. If you are bringing a purely procedural motion, Rule 602(4) indicates that there must be at least three days notice between the service of the motion and the date set for the hearing of the motion. This Rule also indicates that the provisions of Rule 602 dealing with affidavits do not apply to motions on purely procedural matters. Having regard for section 24 of the *Interpretation Act, 1995*, S.S. 1995, c. I-11.2, these time periods should be interpreted as clear days and the first and last day shall be excluded.

Rule 602(5) enables the parties to consent to the hearing of a motion on a date earlier than otherwise contemplated by the rules. However, the court retains the discretion as to whether the motion will be heard on the earlier date. In the event you are unable to obtain the consent of the other party to have a matter heard on an expedited basis, Rule 602(6) sets out the procedure for applying to the court on an *ex parte* basis to abridge the time for service of the motion. Rule 602(6) is explicit, the *ex parte* application “shall” be brought before service of the notice of motion and any order obtained is to be served with the notice of motion. (See: *Friesen v. Lague*, 2001 SKQB 109 at paragraphs 24 to 26 and *Yazdani-Yazdeli v. Naziripour et al*, [1993] 3 W.W.R. 424, 109 Sask.R. 164, 13 C.P.C. (3d) 162.)

In addition to the timing issues set out above, attention should also be given to the *Queen’s Bench Act, 1998*, and in particular the requirement under section 44.1 that parties to a family law proceeding involving custody, access or child support (other than proceedings under the *Reciprocal Enforcement of Maintenance Orders Act, 1996*) must attend a parenting education program before taking any further steps in the proceeding. The mandatory requirement to attend the parenting education programs currently only applies to the judicial centres of Regina, Saskatoon, Prince Albert and Yorkton, which are the only designated centres to date. However, the court does have the discretion pursuant to section 44.1(5) to order parties in any other judicial centres to participate in the parenting education programs. If parties do not attend the parenting education program where required to do so, pursuant to section 44.1(8), the court can strike the party’s
pleadings or documents; refuse to allow the party to make any submissions on an application or at trial; or require the party to attend a parenting education program within a specified period of time. The court can, in very limited circumstances, grant the party an exemption or postponement of the requirement to attend a parenting education program: see section 44.1(9).

C. SUPPORTING AFFIDAVITS AND MOTIONS

Rule 602(2) provides that motions requesting substantive relief, interim relief, or variation of relief are to be served with all supporting affidavits and filed with the court fourteen days before the hearing of the motion. Rule 602(2)(a) and (b) requires that you serve and file with the motion “a copy of each affidavit on which the party intends to rely at the hearing”. Having regard for the limitation found in Rule 602(8) with respect to filing an affidavit in reply to the opposite party’s affidavit materials, counsel should set forth their client’s best case in the first instance rather than run the risk that all available evidence may not be before the court on the hearing of the motion. Accordingly, the party bringing the motion must make the judgment call at the outset of preparing the motion materials regarding the extent of the evidence the party intends on filing with the court in support of the relief being requested.

In the past, counsel frequently relied on the ability to file additional affidavit material, sometimes right up to the day of the hearing of the motion, to buttress their client’s case. However, the interplay of Rules 602(2), (7), (8), (9), (10) and (11) prevent this practice.

Pursuant to Rule 602(7), a party wishing to oppose a claim made in a motion must serve on every other party “a copy of each affidavit on which that party intends to rely at the hearing” and file the same with proof of service seven days before the date set for the hearing. Pursuant to Rule 602(8) the party bringing the motion may then serve “an affidavit replying only to any new matters raised by the opposite party”. In Johnson v. McAlaster (2001), 206 Sask. R. 85, 2001 SKQB 112, Justice Smith outlined three categories of evidence that are subject to censure in a reply affidavit:
(a) repeating or expanding on matters already addressed in the applicant’s affidavit;

(b) taking issue with trivial and non-material matters. This often consists of parties complaining about what they perceive to be annoying conduct of the opposite party when the conduct is not material to the issues raised on the application. A further example could be an applicant denying the respondent’s denial of the applicant’s initial allegations; and

(c) responding to new allegations that, although not material to the claim for relief or which may be peripheral or argumentative in nature, if left unanswered, may give the court a false or one-sided story prejudicial to the applicant. See also comments of Gerein C.J., Q.B. in Bowering, supra. Balanced within this category is the concern that to “interpret sub-rule 602(8) as requiring an applicant to address in advance every possible negative comment that the other side might make in response would simply encourage the excessively prolix affidavits that the new rules seek to discourage”. (McAlaster, supra, paragraph 27).

Justice Smith concluded her discussion on the interpretation of Rule 602(8) as follows:

The above review illustrates, above all, the need to interpret sub-rule 602(8) narrowly and strictly. The rule is intended to reform a practice that has plagued family law proceedings—a practice that, unrestrained, operates not only to confuse issues and thereby render the proceeding ultimately unfair, but also to further elevate offensive rhetoric and thereby to divide families.

Properly interpreted, the rule is clearly offended by reply evidence falling into what I have described as categories #1 and #2. On the other hand, the rule must be interpreted as not prohibiting limited responses in reply that clearly fall into what I have described as Category #3, where their admission, in my view, is required by the principles of a fair hearing. Although, as I have attempted to illustrate, it may be difficult to draw the line between those cases that fall in Category #3 from those in Category #2, the test is whether, in light of the issues raised on the application, fairness requires that the applicant should have the opportunity to reply to new (in the sense that they address facts not previously addressed and which the applicant could not reasonably have anticipated) and relevant allegations that are prejudicial to the applicant. The scope of the permitted reply should, however, be limited to address the prejudice at issue, and should not itself raise new allegations that would call for a further response. In most cases, a simple denial of the allegation at issue would suffice.

The affidavit in reply is to be served and filed at least two clear days before the date set for the hearing (Rule 602(8)).

Rule 602(9) provides that no other affidavits may be relied upon without leave of the court and Rules 602(10) and (11) provide for the striking and/or disregarding of any affidavits or portions thereof, filed in non-compliance with the rules and the awarding of costs surrounding the same.
D. SETTING A MOTION DOWN FOR A HEARING

Pursuant to Rule 602(12) the court has the discretion to direct, either before or on the hearing of the motion, that the matter be set down for a hearing “on oral evidence, either alone, or with any other form of evidence”. The court also has the discretion to give directions with respect to the pre-hearing procedure and the conduct of the proceeding. Rule 602(12) simply confirms the practice outlined by the Saskatchewan Court of Appeal in *Bradley v. Zaba* (1996), 137 Sask. R. 295 (and followed in 140 Sask. R. 297). To the extent that there is or may be a dispute on the facts, the court can direct a *viva voce* hearing of the matter. However, not every disputed fact will result in such a hearing. The threshold issue is whether the judge hearing the matter is unable to make a determination on the basis of the affidavit evidence filed in support of and opposition to the requested relief. (See: *Hauser v. Thatcher*, [1995] 10 W.W.R. 623 (Sask. Q.B.); *Friends of Old Man River v. Canada (Minister of Transport)* (1992), 88 D.L.R. (4th) 1 (S.C.C.) at 50-51; *Willick v. Willick* (1995), 119 D.L.R. 4th 405 (S.C.C.) at 450; and *Pasterfield v. Pasterfield* (1993), 109 Sask. R. 71, (Sask. C.A.).)

E. AFFIDAVITS IN GENERAL

The procedural requirements for the preparation and presentation of affidavit evidence in family law proceedings are set out in Rule 603. Rule 603(1) states the general rule of evidence that an affidavit is to be confined to statements of facts within the personal knowledge of the person signing the affidavit. Rule 603(2) provides that affidavits are not to contain argument or speculation. However, Rule 603(3) sets out the exception to the general rule that an affidavit is to be based on the deponent’s personal knowledge. Rule 603(3) provides that a deponent may, in limited circumstances, state information obtained from another person. Those circumstances are twofold.
Firstly, the motion in which the affidavit will be used is for an interim order, or for a matter which will not determine the final outcome of the proceeding. Accordingly, before preparing an affidavit that contains evidence based on information and belief you must determine whether the proceeding is interlocutory. The general rule is that if the judgment or order finally disposes of the rights of the parties then the matter is considered final. Consequently, affidavits tendered in such proceedings should not contain evidence based on information and belief. In family law proceedings the following are generally treated as final applications: variation applications, applications to suspend or cancel access and applications to allow a child to be removed from the jurisdiction.

The second requirement for stating evidence on information and belief in an affidavit has three elements:

(a) the source of the information is to be identified by name;
(b) the affidavit states that the person signing it believes the information to be true; and
(c) the circumstances justifying the use of the information from someone else are stated.

It is unlikely that a court would simply accept a deponent’s assertion that the person from whom the information was obtained could not be inconvenienced to sign an affidavit, or that it was simply cheaper to have the deponent include the third party information in the deponent’s affidavit. However, the court may accept the information in the deponent’s affidavit if the person from whom the information was obtained was out of the country, since deceased, a minor or the deponent’s lawyer.

As a point of practice, counsel should hesitate to simply include statements as to information and belief in a deponent’s affidavit. To the extent possible, the best evidence available should be presented to the court, which may often require counsel in family law proceedings to prepare several affidavits in support of their client’s application.
F. ATTACHMENTS TO AFFIDAVITS

The fact that attachments to affidavits are subject to the same rules as the information contained within the body of the affidavit should not be ignored. Accordingly, counsel should avoid attaching to a deponent’s affidavit documents which are outside of the scope of the personal knowledge of the deponent unless the exceptions to including matters on information and belief can be met or the document is otherwise admissible under the *Saskatchewan Evidence Act* or the *Canada Evidence Act*.

At this point, it is also worth noting that marking a document as an exhibit to an affidavit does little more than identify the document; exhibiting a document does not prove the contents of the document nor its authenticity. Accordingly, when attaching documents to an affidavit, the affidavit should prove the contents of the documents and their authenticity; otherwise, they could simply be disregarded by the court.

A frequent abuse in family law proceedings is to see a report prepared by physicians, psychologists and social workers attached to a party’s affidavit as an exhibit. These reports contain opinions of these professionals. The problem with attaching these reports as exhibits to a party’s affidavit is twofold. Firstly, the circumstances justifying the professional’s failure to swear his or her own affidavit with the report attached as an exhibit are usually not met. This follows directly from the requirements of Rule 603(3). Secondly, and perhaps more significantly, opinion evidence, as an exception to the hearsay rule, is only admissible when offered by properly qualified individuals with relevant experience to give the opinion.

It is unlikely that parties to a family law proceeding have the expertise to give opinion evidence to the court. Therefore, merely attaching an expert’s report to a party’s affidavit who is not the author of the report does not prove the report for the purpose of tendering it as evidence in the proceeding. The proper approach would be to provide an affidavit of the expert, including the expert’s credentials to state the opinion provided in the report, the steps taken by the expert in the preparation of the report, and attaching the report to the expert’s affidavit.
One should also remember Rule 317 which provides the court with discretion to order the deponent to submit to cross-examination on his or her affidavit. Caution should be exercised when considering whether to adduce evidence of counselling and therapy taken by family members involved in a family breakdown. It may be that such information may be protected by privilege and therefore is not properly adduced into evidence. Alternatively, if it is accepted into evidence, having regard for the availability of cross-examination under Rule 317, you risk exposing sensitive and/or privileged information contained in the counsellor or therapist’s notes. For cases considering the privilege attaching to such documents see: M. (A.) v. Ryan, [1997] 1 S.C.R. 157; Smith v. Smith (1997), 159 Sask. R. 40 (Q.B.); Smith v. Smith (2000), 192 Sask. R. 56, 2000 SKQB 108; and Slavutych v. Baker, [1975] 55 D.L.R. (3d) 244 (S.C.C.).

G. STRIKING OF AFFIDAVITS

The revisions to the Rules for family law proceedings in January of 2001 has brought a renewed focus on the proper preparation of affidavit evidence in family law proceedings. Since the introduction of the new family law rules, lawyers have increasingly challenged the appropriateness of affidavit evidence presented in family law chambers applications and judges have been more willing to award costs against parties who presented inappropriate affidavit evidence.

Affidavits or such portions of an affidavit that do not comply with Rule 603 may be struck and the court may award costs against the party or the party’s lawyer who filed the offending affidavit. Further, as noted in Orr v. Bzowey, 2005 SKQB 12 at paragraph 6, this Rule also applies to reply affidavits. Having regard for the timelines surrounding the filing of affidavits in support of applications on substantive matters, counsel should consider bringing an application to strike offending affidavits in advance of preparing affidavits in response to the application proper. (See: Rivard v. Rivard, 2002 SKQB 25; Gusikoski v. Gusikoski, 2001 SKQB 139; and Friesen v. Lague, 2001 SKQB 109.)
Moreover, parties could seek to have affidavit materials filed in contravention of the provisions of Rule 602 disregarded by the court. In *Johnson v. McAlaster, supra*, Justice Smith highlighted the distinction of the remedies available for impugning affidavits under Rules 602 and 603:

“It is to be noted that, while Rule 603 contemplates striking affidavits or parts of affidavits, sub-rule 602(11) provides only that offending portions of affidavits may be disregarded by the Court. (Sub-rule 602(10), which does contemplate striking, relates to contravention of sub-rule 602(9), prohibiting the filing of additional affidavits after the applicant’s affidavit in reply, without leave of the Court.) In addition, while sub-rule 602(11) provides a remedy in costs against the party filing the offending affidavit, infringement of the limitations of Rule 603 may also result in the award of costs against the party’s lawyer, on a solicitor and client basis.”

V. FINANCIAL DISCLOSURE IN FAMILY LAW PROCEEDINGS

As stated above, one of the objectives of the family law proceedings rules is to enhance the requirements with respect to financial disclosure. Pursuant to Rule 610, parties are required to file financial statements wherever a Petition, Answer and Counter-petition, Application for Variation or Notice of Motion contains a claim for support or variation of support. The form of the Financial Statement is Form 609A, as prescribed by Rule 609. The Financial Statement is to be served and filed either with the Petition or Answer and Counter-petition as the case may be, or within ten days of issuing of the Petition and prior to bringing any motion for interim relief (Rule 610(2) and (3)). A Property Statement in Form 609B is to be completed wherever a Petition, Counter-petition or Notice of Motion contains a property claim (Rule 610(1)(a) and (3)(b)).

Regardless of whether a party opposite is opposing the support claim or the property claim set out in a Petition or a Notice of Motion, the party opposite is required to serve and file a Financial Statement and/or a Property Statement within the time limit for serving and filing an Answer, Reply or affidavit in response to the motion (Rule 610(5) and (6)).
Where relief is urgently required you can bring an *ex parte* application to permit a motion for interim relief to be brought before a Financial Statement or Property Statement is filed. The *ex parte* application must include an undertaking by the party bringing the motion that the required statement will be served and filed within time limits to be set by the court. (Rule 610(4).)

If completed fully and properly, the Financial Statement and the Property Statement should in many instances provide the parties with the information necessary to resolve their claims. If the statements do not provide you with all the necessary information you can still avoid costly applications to the courts or examinations for discovery by using the Notice To File Income Information (Form 640B), the Notice to Disclose (Form 616), and/or the Notice to Reply to Written Questions (Form 617).

There are circumstances where you do not need to serve and file Financial Statements and/or Property Statements. These circumstances are set out in Rules 611, 613 and 614(c) and include the following notable exceptions:

(a) where there is a spousal or parental support claim but the parties have reached an agreement with respect to that claim, you can file Waiver of Financial and Property Statements in Form 611A;

(b) where there is a child support claim but the parties have reached an agreement with respect to that claim, you can file Agreement as to Child Support in Form 611B and the income information to be included with that form;

(c) where there are children of the marriage, but no claim for relief with respect to the children is made, parties are to file all income information required by the *Guidelines*, or an Agreement as to Child Support in Form 611B, together with the income information required by that form;

(d) where the only claim for child support is in the table amount under the *Guidelines*, the party making the claim is not required to file a Financial Statement. Although not explicitly stated, the provisions of Rules 610(5) and (6) would nevertheless apply to the party against whom the claim is made and that party would accordingly have to serve and file a Financial Statement;
(e) where the only claim is with respect to custody of children with no claim for child support, no Financial Statement is required. However, the court can still require the serving and filing of Financial Statements or give other directions with respect to providing financial disclosure; and

(f) where the parties are filing a Petition or Motion jointly and there are no children involved the parties can file a Waiver of Financial and Property Statements in Form 611A.

The information that ultimately appears in the Financial and Property Statements is for the most part provided to us by our clients, but that is not to say that the lawyer does not play a significant role in the preparation of the statements. Great care must be taken to ensure that the client understands the information that is required and that the information presented is accurate.

It is also worth noting that the Financial Statement and Property Statement are mere forms and the provisions of Rule 2 apply to them as to any other form. Accordingly, in completing the Financial Statement and Property Statement it is appropriate to make such changes to the forms as necessary. For example, because of the length of the forms counsel should consider deleting those portions of the form which are otherwise not applicable to their clients.

The Financial Statements and Property Statements are sworn statements. Accordingly, the client must do his or her utmost to ensure the accuracy of the information provided. The client’s obligation to disclose financial information continues until proceedings are concluded. If any of the information provided in a Financial or Property Statement was incomplete or incorrect or there has been a material change in the information, you must provide the party opposite with the new information and any documents substantiating the correct information. The parties are also required to update the information in their Financial or Property Statements every 60 days by either filing a new statement with the new information or swearing an affidavit stating there has been no changes since the last statement and that it remains true (Rule 620). Note that the requirement under Rule 620(3) to file the updated Financial or Property Statement or affidavit is at least seven days before the hearing of a motion or before a trial or at least ten days before a pre-trial conference.
A. COMPLETING THE FINANCIAL STATEMENT FORM 609A

There are six parts to the form and only the portions relevant to your case need to be completed. Paragraph 3 of the Affidavit clearly allows you to attach only the portion relevant to your case.

Part 1 - Annual Income – provides the information required by sections 16 to 20 of the Guidelines and Schedule III.

Part 2 - Annual Expenses – required when the court will be considering financial circumstances.

Part 3 - Special or Extraordinary Expenses – provides the information required under section 7 of the Guidelines.

Part 4 - Undue Hardship – provides the information required under section 10 of the Guidelines.

Part 5 - Income of Other Persons in Household – provides the information required under section 10 Guidelines.

Part 6 – Property – completed only when ordered by the court and would be used to assess whether property has been reasonably utilized to generate income under section 19(1)(e) of the Guidelines.

Part 1 will always be attached. Part 2 is attached when there is a claim for child support beyond the table amount and or a claim for spousal support. Part 3 is attached when the party is claiming special or extraordinary expenses. Parts 4 and 5 are attached when there is a claim of undue hardship. Part 6 is attached only when ordered by the court.

B. POINTERS FOR COMPLETING THE FINANCIAL STATEMENT

1. Set it up as a spreadsheet: it will save you much time and aggravation.

2. Read the instructions: they tell you when to complete the form and what information to include. However, be careful the instructions are not always clear.

3. Part 1 - Income, paragraph 3: if you have all of the personal income tax information required, attach it. If you are missing any portion of it, provide the consent in Form 640C and reword the paragraph to describe what you are attaching.
4. Part 1 - Annual Income instructions may cause some confusion. These instructions should be read as giving options on how to complete depending on what is happening with an individual’s income:
   a) if the income will be the same for the remainder of the year as it was over the last twelve months, record those amounts; or
   b) if the income will be the same as that recorded on the last income tax return, record those amounts; or
   c) if the income will be something different, record the amounts you expect to receive as income for this year.

5. The income set out in lines 1 to 18 of Part 1 is taxable income.

6. Commission income is important to identify, even if it is included in employment income as it will support any deductions claimed for expenses incurred to earn that income.

7. Pension income refers to disability income: remember some disability payments are non-taxable.

8. Child Support and Spousal Support received: it is important to identify where the support is coming from and the tax consequences of receiving it.

9. Benefits, both monetary and non-monetary, must be identified. The value of monetary benefits should be added into the Adjustments to Annual Income. For example, income earned by a status Indian on reserve or non-taxable disability payments received should be shown under benefits and the amount grossed up for taxes under Adjustments to Annual Income to arrive at the income which is to be used for determining support.

10. Complete the calculations in Part 1 with the information you have and for the type of claim at issue.

11. Part 2 - Annual Expenses: record the annual amounts which are different than the old statement.

12. Attach receipts or other supporting documents under Part 3 – Special or Extraordinary Expenses.

13. Identify any subsidies, benefits or tax deductions or credits relating to the expense being claimed.
C. COMPLETING THE PROPERTY FORM 609B

There are five different sections of the Property Statement and all sections need to be completed even if it is a matter of simply putting in a zero value. There are nine different categories under Part I - Assets, including one general or other category which captures all the different assets an individual could have an ownership interest in. Part II - Debts and Other Liabilities includes all personal and business debts. Part III - Property, Debts and Other Liabilities on Date of Marriage and Part IV- Property Exempt from Distribution, when fully completed and supported with documentation, eliminate the need for examination for discovery on these exemptions. The fully completed Property Statement might be all that is required to complete a division of property.

D. POINTERS FOR COMPLETING THE PROPERTY FORM

1. List all property which may be subject to a property claim, including property that may be owned by the spouse.

2. Read the notes or instructions as they are helpful.

3. Obtain from your client as much supporting documentation as possible to ensure the accuracy of the statement and to avoid later revisions to the statement.

4. Estimate values when exact amounts are not known and update as more accurate information becomes available.

5. List assets and liabilities in each part as required; do not show equity positions. The equity will be apparent if each asset and liability are described with sufficient detail.

6. Remember you have 10 days from issuing the Petition until the Property Statement must be filed.

7. Identify, at a very early date, the information which will support your client’s claim for an unequal division of property. Take great care that you have the information to justify such a claim.
E. Obtaining Further or Better Financial Disclosure

Pursuant to Rule 640, where a party claims child support or a variation of child support in either a Petition, Answer and Counter-petition, Notice of Motion or Variation Application, the party making the claim, in addition to the other documents to be filed in support of the claim, must serve and file on the party opposite a Notice to File Income Information in Form 640B. The party receiving the Notice to File Income Information must serve and file the income information requested in the notice within 30 days if served in Canada or the United States of America or within 60 days if the party served resides outside of Canada or the United States of America.

Counsel should pay particular attention to the disclosure requirements of Rule 640 where a claim includes a request for child support or variation of child support. These disclosure requirements correspond to those set out in section 21 of the Guidelines.

In addition to the usual procedures for disclosure, production of documents and examinations for discovery, pursuant to Rules 616 (Notice to Disclose) and 617 (Notice to Reply to Written Questions) parties can, once without leave and at any other time with leave, seek additional financial disclosure from the party opposite. These procedures only apply where Financial Statements or Property Statements are otherwise required to be served and filed. The party opposite must respond to either Notice within 30 days of service or make a written objection.

Note that Form 616 is not intended to be exhaustive of the additional financial disclosure that you can seek from a party opposite and that Rule 617 limits the number of written questions that you can put to a party to a maximum of 15. The extent to which a question with many subparts will be viewed as “one question” may be the subject of some litigation. In light of the obligation on parties to provide financial disclosure in family law proceedings, parties should be reasonable both with respect to stretching out a question and with respect to objecting to such a question. To the extent that the disclosure requested is relevant to a matter in issue between the parties, a court would likely require disclosure in the context of the ordinary rules of discovery and production of documents.
In this context, one should remember Rule 605(4) which provides that:

605(4) Each Financial Statement, Property Statement and response to a Notice to Answer Written Questions may be used by the other party as though it were an examination for discovery, and all or any part of the statement or response may be admitted in evidence, saving all just exceptions.

Therefore, it cannot be emphasized enough that care should be taken to ensure that the information conveyed in any reply is accurate.

Pursuant to Rule 618, if the response is not satisfactory or the objection is not accepted the party seeking disclosure may apply to the court for an order directing further or better disclosure. Alternatively, where an objection has been filed, either party may apply to the court for an order determining the validity of the objection. If a party fails to respond to a Notice to Disclose or a Notice to Reply to Written Questions, or fails to serve and file a Financial or Property Statement as required, the court is entitled to draw an adverse inference against that party pursuant to Rule 619 and grant such orders as the court deems appropriate in the circumstances. (See: Friedt v. Fraser, 2002 SKQB 79.)

It will be a tactical decision when to Notice to Disclose and Notice to Reply to Written Questions. At a minimum you should wait until you have received the Financial or Property Statements. After reviewing the Financial or Property Statement, the need for seeking additional documentation should be apparent. The Notice to Reply to Written Questions could then be used to seek clarification with respect to any remaining financial issues following review of the totality of the financial disclosure to date.

Some lawyers serve the Notice to Disclose and Notice to Reply to Written Questions at the same time as serving the Petition. In my view, this tactic is somewhat premature in that it is difficult to meaningfully assess what disclosure you require to either make out your client’s case or
defend against the case presented by the opposite side until after the opposite party has served and filed any Answer and Counter-petition together with the requisite initial financial disclosure. In this context, recall that a party has a positive obligation under Rule 620 to immediately correct and/or update financial information previously contained in a party’s Financial or Property Statement or reply to a Notice to Disclose or to a Notice to Reply to Written Questions. The consequences for failing to comply with an order of the court requiring financial disclosure include the potential of having your claim struck with costs awarded against that party (Rule 622).

F. DISCLOSURE BY NON-PARTIES

Pursuant to Rule 621, the court has the discretion, in specific circumstances, to require non-parties to disclose financial information in their custody or control relevant to the issues before the court. Essentially, these circumstances include situations where:

(a) a court has made a finding of undue hardship under section 10 of the Guidelines; and

(b) a party has failed to make satisfactory disclosure after being served with an order:

(i) requiring such party to serve and file a Financial or Property Statement; or

(ii) directing the party to respond to a Notice to File Income Information, a Notice to Disclose or a Notice to Reply to Written Questions.

Non-parties who may be subject to such an order include a person living with a party, a corporation and the government.

As an applicant on a non-party disclosure motion you need to establish that the other party has not supplied the information requested, that you have not been able to obtain the information by more informal methods, that it is unfair to require you to proceed to trial without the information and that the request is reasonable and not prohibited by law (Rule 621(4)). There is no obligation in Rule 621 to serve the non-party with the motion requesting the order. Upon being served with the order, the non-party has either 30 days to provide the information or to seek an exemption from having to provide the information.
VI. COSTS IN FAMILY LAW PROCEEDINGS

The rule with respect to costs in family law proceedings is Rule 608. Regard should also be had for

(a) Rule 602(10): costs ordered where non-compliance with motion rules;

(b) Rules 602(11) and 603(4)(b), (5) and (6): costs ordered where non-compliance with affidavit rules;

(c) Rule 619: costs ordered where failure to disclose financial information;

(d) Rule 621(7): order for costs in context of request for disclosure from third parties; and

(e) Rule 622: costs ordered where failure to obey order respecting disclosure.

Rule 608 maintains the general applicability of Part Forty-Six of the Rules dealing with the court’s discretion to award costs in proceedings before the court (one should therefore note the January 2003 amendments to the rules surrounding costs in Part Forty-Six of the Rules).

However, Rule 608 modifies the Rules in Part Forty-Six by drawing the court’s attention to particular instances where the court should consider favourably the exercise of the court’s discretion to award costs in family law proceedings.

Parties to family law proceedings should pay particular attention to the court exercising its discretion to award costs in family law proceedings in the following aspects:

(a) Rule 608(2) creates a presumption that a successful party of a family law proceeding or a step of a family law proceeding is entitled to costs. Although this presumption follows general case law (see: Dominion Fire Insurance Co. v. Thomson, [1923] 4 D.L.R. 903, (Sask. C.A.); Thomas v. Laflèche Union Hospital Board (1991), 93 Sask. R. 150 (C.A.); and Johnson v. Erickson, [1941] 3 D.L.R. 651, [1942] 2 W.W.R. 524 (Sask. C.A.)); it dispels the view which had developed in family law proceedings that costs should not be awarded (see: Benson v. Benson (1994), 120 Sask. R. 17 (C.A.); Scott v. Scott (1999), 49 R.F.L. (4th) 397 (Sask. Q.B.); Dagenais v. Dagenais (1995), 138 Sask. R. 142 (Q.B.); and Kochylema v. Fulton (1993), 114 Sask. R. 268 (Q.B.)). Further, given the number of unrepresented litigants appearing before the court on family law matters, this presumption clearly draws to the parties’ attention that there can be an economic consequence to the bringing of proceedings in family law matters, especially where such proceedings or steps in a proceeding are held to be improper, unreasonable or unnecessary.
(b) Rules 608(3) and (4) enable the court to exercise its discretion in making an award of costs to consider whether a successful party has behaved unreasonably, such that no award of costs should be made in favour of that party and allowing for an order of costs to be made against that party. This rule directs the court’s attention to the behaviour of a successful party who has acted either unreasonably or in bad faith to the extent that the court should not award that party costs or should award costs against that party notwithstanding that party’s success in the proceeding. Rule 608(4) sets out a non-exhaustive list of criteria for the court to consider in the determination of a costs award either in favour of or against the successful party.

Some of these criteria are similar, but less formal, than existing criteria under which a court can exercise its discretion to either award costs to or against a successful party. For example, pursuant to Rule 244, the court has a discretion to make an order for costs against a successful party where that party failed or neglected to admit a fact for which notice to admit was provided. However, the wording of Rule 608(4)(d) would also presumably enlarge the discretion of the court to enable a judge to consider the behaviour of a party who denied or refused to admit anything that should have been admitted, regardless of whether a formal notice to admit was served on that party pursuant to Rule 244.

Other criteria stated under Rule 608(4) already exist within the discretion of the court pursuant to Part Forty-Six in making an award of costs (see: Welk and Sask. Social Services Appeal Bd., Re (1986), 23 D.L.R. (4th) 698 (Sask. Q.B.), rev’d on other grounds (1986), 28 D.L.R. (4th) 475 (Sask. C.A.)), but are stated explicitly under Rule 608(4), presumably as a warning to litigants in family law proceedings. For example, the ability of a court to award costs against a successful party whose conduct was oppressive or vexatious or which tended to lengthen unnecessarily the duration of a family law proceeding. This issue could be quite significant in future family law proceedings, having regard for the extensive financial disclosure requirements set out in Part Forty-Eight and the stringent time frame within which such disclosure is required to occur.

(c) Under Rule 608(6) the court may make an order for costs against either party where that party fails to appear at a step in a family law proceeding; appears but is not properly prepared to deal with the issues at that step; or appears but has failed to make the disclosure required before that step. In this context, regard should also be had for the court’s discretion pursuant to Rule 551 to disallow costs and/or to order a solicitor to pay costs incurred by the client in circumstances where costs have been improperly or without reasonable cause incurred or that have resulted from undue delay or misconduct or default on the part of a party’s solicitor.
VII. CONFIDENTIALITY IN FAMILY LAW PROCEEDINGS

Rules 586 to 588 impose confidentiality restrictions around the conduct of a family law proceeding. Rule 586 restates the discretion of a judge pursuant to section 99 of the Queen’s Bench Act, 1998 to order that a family law proceeding be heard in private. This discretion also exists pursuant to other legislative provisions touching on family law matters, and is generally exercised by the court in circumstances where vulnerable individuals appearing before the court require the court’s protection. (See: the Adoption Act, section 16(12); the Children’s Law Act, section 13; the Child and Family Services Act, section 26; the Family Maintenance Act, section 18; and the Victims of Domestic Violence Act, section 9.)

Although the long standing principle is that justice is to be administered in open court so that justice is not only done, but is seen to be done (see: Scott v. Scott, [1913] A.C. 417 (H.L.); and R. v. Sussex Justices, [1924] 1K.B. 256), there are circumstances where the court is entitled to exercise a discretion to limit this principle. In their annotation to the Queen’s Bench Rules, Neva R. McKeague and Willa M.B. Voroney identify three categories of interests protected by the limitation on openness (at p. G-17-18):

(a) protection of vulnerable individuals, such as infants (see the Child and Family Services Act, section 26), mentally disabled, youthful offenders (see the Young Offenders Act, sections 38 and 39), victims of sexual assaults (see the Criminal Code, sections 486(2) to (4), R. v. T.S., [1994] S.C.R. 952, 128 Sask. R. 16). See also section 23.7 of the Queen’s Bench Act;

(b) ensuring trials are conducted fairly and objectively, e.g., Rule 272 re exclusion of witnesses; common law of contempt proscribing the publication of any matter that tends to prejudice the outcome of pending litigation: Tichborne v. Tichborne (1870), 39 L.J.Ch. 398; see also the Criminal Code, sections 517, 539, 542(2) and 648); and

Rule 587 limits access to the court record in a family law proceeding to the parties, their lawyers or a person authorized by a party or a party’s lawyer. Again, this rule maintains consistency with the court’s discretion pursuant to various statutes dealing with family law matters that restrict access to the court record. (See the *Children’s Law Act*, section 13; the *Child and Family Services Act*, section 26(2); the *Family Maintenance Act*, section 18; the *Family Property Act*, section 27(3); and the *Victims of Domestic Violence Act*, sections 9(1) - (3).) Rule 587 also recognizes the highly sensitive and intimately personal nature of family law proceedings which in most cases outweigh the public’s interest to have access to the court record to oversee the administration of justice.

Rule 588 draws explicit attention to the limited purposes for which one can use documents, evidence and information obtained through a court proceedings. In Saskatchewan, as in most other provinces, limitations exist around the use of information and documents obtained through the discovery process. This limitation had previously been identified by the court under Rule 237(4). An implied undertaking exists that information and documents obtained through the discovery process will not be used for any other purpose than the proper conduct of the action in which the information and documents were produced, and breach of that undertaking is a civil contempt of court.

The implied undertaking referred to above follows from the court’s inherent jurisdiction to control its own practice and is consistent with the broadening right of the discovery process (see *Kunz v. Kunz*, 2004 SKQB 410 for an extensive discussion of the implied undertaking rule). The undertaking confines all information arising from the discovery process, whether it is oral or documentary evidence, to the lawsuit at hand. The undertaking by the solicitor and the parties is to maintain all information confidential in that it is not to be used for any collateral, ulterior or improper purpose. The Court of Appeal recognized the applicability of the implied undertaking in Saskatchewan in *Laxton Holdings Ltd. v. Non-Marine Underwriters, Lloyd’s, London* (1987), 56 Sask. R. 152 where Justice Sherstobitoff stated at p. 154 to 155:
Under Queen's Bench Rule 237(4) the transcripts of the examinations for discovery are sealed and may not be examined by anyone without an order of the court. The practice here has been similar to the rule in England where a solicitor, who in the course of discovery in litigation obtains possession of documents, gives an implied undertaking to the court not to use those documents, or allow them to be used, for any other purpose than the proper conduct of the action on behalf of his client and breach of that undertaking is a civil contempt of court: *Harman v. Secretary of State for the Home Department* [1983] A.C. 280 (H.L.).

However, there may be cases where the privacy interests of the parties are such that reliance on the implied undertaking is not sufficient to protect the privacy of the parties to the proceeding.

In *Popowich v. Saskatchewan* (1996), 1 W.W.R. 261 (Sask. Q.B.) (reversed on other grounds [1996] 8 W.W.R. 609 (Sask. C.A.)), Justice Geatros reviewed the law relating to the court’s discretion to impose confidentiality orders on documents obtained through disclosure requirements in court proceedings. At page 271, Justice Geatros held that the highly sensitive nature of “... documents involving the disclosure of intimate matters ... raise privacy concerns beyond the accepted duty of counsel as stated in (*Laxton, supra*)”. Justice Geatros went on to impose terms regarding the inspection, disclosure of the content, reproduction and use of certain documents disclosed and produced in that proceeding, including the sealing of such documents by the local registrar so that the documents would be unavailable to the public or press and only available to counsel for the litigants (page 273).

The existence of the implied undertaking as to confidentiality, associated with production of documents at the discovery stage was recently commented on by the Supreme Court of Canada (in the context of a Quebec Civil Code case). (See: *Lac d'Amiante du Quebec Ltee v. 2858-0702 Quebec Inc.* 2001 S.C.C. 51, [2001] 2 S.C.R. 743.)
VIII. CONCLUDING COMMENTS

Part Forty-Eight of the Queen’s Bench Rules regarding family law proceedings constitutes, in many respects, a codification of practice directives and rules pertaining to family law proceedings. The Rules have been dictated primarily by changes to family law legislation, in particular the Guidelines. If followed, the family proceedings rules potentially provide for effective financial disclosure and act to focus parties on the factual merits of the claims being brought to the court.

In addition, the family law proceedings rules should enhance the ability of litigants to have their matters determined by the court in a timely and efficient manner. For those who wish to litigate, the Rules provide ample procedural fodder to have a matter progress through the court system. However, the Rules may also encourage parties to work towards a resolution of family law issues arising out of separation and divorce since the parties should be in a position following disclosure, both in terms of time and information available, to assess their respective cases and work towards resolution of their outstanding issues.
APPENDICES
# WHAT AND WHEN TO FILE IN FAMILY LAW PROCEEDINGS

<table>
<thead>
<tr>
<th>What Procedure</th>
<th>Comment</th>
<th>Which Documents</th>
<th>Time Periods</th>
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| Procedural Motions | 1. Striking Pleadings  
2. Compelling Reply to Undertakings  
3. Amending Pleadings  
4. Setting Down for Pre-trial | 1. R602(1)(c): Use Form 47 for “Purely Procedural Matters”  
2. R317 and R602(4): Affidavit | 3 Days |
| Child Custody Access Parenting Compensatory Access Variation of any of the above | 1. R602(1)(a): Use Form 602 for substantive or interim relief  
2. R602(1)(b) and R632(1): Use Form 632 for variation of relief  
3. R602(2),(7),(8): Affidavit and see R633 regarding Affidavits in Variation proceedings  
4. R634: Existing order or agreement pertaining to Custody or Access on Variation Application  
5. R643: Affidavit in Form 606C if Petitioner applies for judgment in uncontested proceeding under the *Children’s Law Act, 1997*  
6. R613 – Financial Statements needed in Custody and Access proceedings? (Financial Statement in Form 609A; see consequences of not filing where necessary in R619)  
7. R611: Do parties to a parental support claim have to file financial or property statements? (Form 609A; see consequences of not filing where necessary in R619) | | 14 Days |
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<th>What Procedure</th>
<th>Comment</th>
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<th>Time Periods</th>
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<tbody>
<tr>
<td>Exclusive possession of matrimonial home</td>
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<tr>
<td>Order restraining Disposition of Property</td>
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<tr>
<td>Child Support</td>
<td>See <em>Bowering v. Bowering Gerein</em> C.J.Q.B. {2001} S.J. No. 657</td>
<td>1. R602(1)(a): Use Form 602 for substantive or interim relief&lt;br&gt;2. R602(2), (7), (8): Affidavit&lt;br&gt;3. R610(3): Financial Statement (Form 609A; see consequences of not filing in R619)&lt;br&gt;4. R612 and R640: Child Support Information Sheet (Form 640A); Notice to File Income information (640B); Tax information [see R640(4) - e.g., copies of income tax returns of CCRA Consent Form (Form 640C)]; Child Support Calculation (Form 640D)&lt;br&gt;5. See R611(2) re: when to file Agreement As to Child Support (Form 611B)</td>
<td>37 Days from service of Petition; and 14 Days from filing of Motion</td>
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<tr>
<td>What Procedure</td>
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<td>Which Documents</td>
<td>Time Periods</td>
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<tr>
<td>Variation of Child Support</td>
<td>1. R602(1)(b) and R632(1): Use Form 632 for variation of relief</td>
<td>1. R602(1)(b) and R632(1): Use Form 632 for variation of relief</td>
<td>37 Days from service of Variation Application or from the date that written notice was given pursuant to subsection 25(1) of the Federal Child Support Guidelines; and 14 Days from service of Motion</td>
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<td>2. R602(2),(7),(8): Affidavit and see R633 for Affidavits on Variation Applications</td>
<td>2. R602(2),(7),(8): Affidavit and see R633 for Affidavits on Variation Applications</td>
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<td>3. R610(3): Financial Statement (Form 609A; see consequences of not filing in R619)</td>
<td>3. R610(3): Financial Statement (Form 609A; see consequences of not filing in R619)</td>
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<td>4. R612 and R640: Child Support Information Sheet (Form 640A); Notice to File Income Information (Form 640B); Child Support Calculation (Form 640D)</td>
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<td>Spousal Support Variation of spousal support</td>
<td>See Bowering v. Bowering Gerein C.J.Q.B. {2001} S.J. no. 657</td>
<td>1. R602(1)(b) and R632(1): Use Form 632 for variation of relief</td>
<td>37 Days from service of Petition or Variation Application; and 14 Days from filing of Motion</td>
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<td>2. R602(2),(7),(8): Affidavit and see R633 for Affidavits on Variation Applications</td>
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</table>
Time periods can be varied only by an *ex parte* order made prior to service 606(6) or by consent of all parties.

The reply affidavits must be filed 7 days ahead of the motion.

A single reply affidavit may be filed 2 clear days ahead of the motion.

For example, file:

- Wednesday for Monday
- Thursday for Tuesday
- Friday for Wednesday
- Monday for Thursday
- Tuesday for Friday