

Family Motions: Jurisdiction of Associate Judges

Non-procedural and substantive Motions

1. A temporary **parenting order or contact order** under the Children's Law Reform Act or the Divorce Act (Canada).
2. A temporary order for support under section 15.1 (**Child support order**) or 15.2 (**Spousal support order**) of the Divorce Act (Canada).
3. A temporary order for or relating to support under the following sections of the Family Law Act:
 - section 33 (**order for support**),
 - clause 34 (1) (a) (**periodic payment of child support**), (e) (**payment into court or other**), (f) (**retroactive support**), (g) (**payment to an agency**) or (h) (**prenatal birth and care payment**),
 - subsection 34 (5) (**indexing support payments**) or
 - section 37 (**application for variation**), 42 (**order for return by employer**) or 47 (**stand over support until parenting order under CLRA is determined**)
4. A temporary order under section 40 (**restraining depletion of property**) of the Family Law Act.
5. A temporary order dealing with property other than real property.
6. An order under subrule 1 (8) (**failure to obey an order**), other than a contempt order under clause 1 (8) (g), and an order under subrule 1 (8.1) (**failure to follow rules**).
7. Strike a document that may delay or is inflammatory and consequences of striking out certain documents, if the associate judge made the order striking out the document.
8. An order for costs
9. An order to change a temporary order made by the associate judge.
10. An order for blood, DNA tests under section 17.2 of the Children's Law Reform Act.
11. A support deduction order under section 10 (Support deduction orders to be made) of the Family Responsibility and Support Arrears Enforcement Act, 1996.
12. An order limiting or suspending a support deduction order.
13. An order under section 8 (Director to cease enforcement, termination of support obligation) of the Family Responsibility and Support Arrears Enforcement Act, 1996 that terminates a support obligation or orders repayment from a person who received support.
14. An order under subsection 89 (3.1) (Children's Lawyer costs payable into Consolidated Revenue Fund) or 112 (2) of the Courts of Justice Act requesting the Children's Lawyer to act.
15. An order that is necessary and incidental to the power to make a temporary order that is within the jurisdiction of the associate judge.

Procedural Motions

1. An order re time (ex: time of service)
2. Representation
3. Where a Case Starts and Is to be Heard
4. Service of Documents
5. Parties
6. Continuing Record 10 (Answering a Case),
7. Amending an Application, Answer or Reply
8. Withdrawing, Combining or Splitting Cases
9. Financial Disclosure
10. Offers to Settle
11. Document Disclosure
12. Questioning a Witness and Disclosure

Limits on Jurisdiction

An associate judge has no jurisdiction in respect of,

- (a) a power, duty or function that is conferred exclusively on a judge of a superior court by law or expressly on a judge by an Act;
- (b) a case involving a special party or a child party;
- (c) the determination of a right or interest of a party in real property; or
- (d) the making of an order or hearing of a motion for an order,
 - (i) to change, set aside, stay or confirm an order of a judge,
 - (ii) to find a person in contempt of court,
 - (iii) to restrain the liberty of a person, including an order for imprisonment, a warrant for arrest or a warrant of committal,
 - (iv) to dismiss all or part of a party's case for a failure by the party to follow these rules or obey an order in the case or a related case, if the *Family Responsibility and Support Arrears Enforcement Act, 1996* applies to the party's case,
 - (v) to split a divorce from other issues in a case under [subrule 12 \(6\)](#), or
 - (vii) to grant summary judgment.

ANNOTATED VERSION OF RULE 42(8) OF THE FAMILY LAW RULES

Orders on motion under rule 14

(8) If a motion under [rule 14](#) is made in a case under an Act to which this rule applies, the associate judge may make only the following orders:

0.1 Subject to [subclause \(5\) \(d\)](#) (iv), an order under [subrule 1 \(8\)](#), other than a contempt order under [clause 1 \(8\)](#) (g), and an order under [subrule 1 \(8.1\)](#).

0.2 An order under [subrule 1 \(8.2\)](#).

As referred to in r. 42(8)(0.2), [subrule 1\(8.2\) \(Documents that may delay or is inflammatory, etc.\)](#) states: The court may 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.

0.3 An order under [subrule 1 \(8.4\)](#), if the associate judge made the order striking out the document.

As referred to in r. 42(8)(0.3), [subrule 1\(8.4\) \(Consequences of striking out certain documents\)](#) states:

If an order is made striking out a party's application, answer, motion to change or response to motion to change in a case, the following consequences apply unless a court orders otherwise:

1. The party is not entitled to any further notice of steps in the case, except as provided by [subrule 25 \(13\) \(service of order\)](#).
2. The party is not entitled to participate in the case in any way.
3. The court may deal with the case in the party's absence.
4. A date may be set for an uncontested trial of the case.

1. An order under rules [3](#), [4](#), [5](#), [6](#), [7](#), [9](#), [10](#), [11](#), [12](#), [13](#), [18](#), [19](#) and [20](#).

As referred to in r. 42(8)(1):

- **Rule 3** ([Time](#))
- **Rule 4** ([Representation](#))
- **Rule 5** ([Where a case starts and is to be heard](#))
- **Rule 6** ([Service of Documents](#))
- **Rule 7** ([Parties](#))
- **Rule 9** ([Continuing Record](#))
- **Rule 10** ([Answering a Case](#))
- **Rule 11** ([Amending an Application, Answer or Reply](#))
- **Rule 12** ([Withdrawing, Combining or Splitting cases](#))
- **Rule 13** ([Financial Disclosure](#))

- **Rule 18** ([Offers to Settle](#))
- **Rule 19** ([Document Disclosure](#))
- **Rule 20** ([Questioning a Witness and Disclosure](#))

2. An order for costs under [rule 24](#) relating to a step in the case that the associate judge dealt with.
3. An order under [rule 25](#) relating to an order made by the associate judge.
- 3.1 An order under [subrule 39 \(3\)](#) or [\(14.1\)](#).

As referred to in r. 42(8)(3.1):

[Subrule 39 \(3\) \(Parties may not lengthen times\)](#) states: This rule applies only to cases in the Family Court of the Superior Court of Justice, which has jurisdiction in the municipalities listed in [subrule 1\(3\) \(Case management in Family Court of Superior Court of Justice\)](#).

[Subrule 39\(14.1\) \(Judge may set clerk's order aside\)](#) states: The case management judge may, on motion, set aside an order of the clerk under [subrule \(12\) \(Dismissal of case\)](#).

4. An order to change a temporary order made by the associate judge.
5. An order under section 17.2 (Blood, DNA tests) of the *Children's Law Reform Act*.

As referred to in r. 42(8)(5), **[section 17.2](#)** of the *Children's Law Reform Act* states: (1) On the application of a party in a proceeding in which the court is called on to determine a child's parentage, the court may give the party leave to obtain a blood test, DNA test or any other test the court considers appropriate of a person named in the order granting leave, and to submit the results in evidence.

6. A temporary parenting order or contact order under the *Children's Law Reform Act* or the *Divorce Act* (Canada).
7. REVOKED: O. Reg. 42/21, s. 18.
8. An order appointing a mediator under [section 31](#) of the *Children's Law Reform Act* or [section 3 \(Mediation\)](#) of the *Family Law Act*.

As referred to in r. 42(8)(8), **[section 31\(1\) \(Mediation\)](#)** of the *Children's Law Reform Act* states: Upon an application for a parenting order or contact order, the court, at the request of the parties, by order may appoint a person selected by the parties to mediate any matter specified in the order.

Section 3(1) (Mediation) of the *Family Law Act* states: In an application under this Act, the court may, on motion, appoint a person whom the parties have selected to mediate any matter that the court specifies.

9. A temporary order for or relating to support under section 33, clause 34 (1) (a), (e), (f), (g) or (h), subsection 34 (5) or section 37, 42 or 47 of the *Family Law Act*.

As referred to in r. 42(8)(9):

Family Law Act

33 – Order for Support (1) A court may, on application, order a person to provide support for his or her dependants and determine the amount of support.

...

34 – Powers of Court (1) In an application under section 33, the court may make an interim or final order,

- (a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (e) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the dependant's benefit;
- (f) requiring that support be paid in respect of any period before the date of the order;
- (g) requiring payment to an agency referred to in subsection 33 (3) of an amount in reimbursement for a benefit or assistance referred to in that subsection, including a benefit or assistance provided before the date of the order;
- (h) requiring payment of expenses in respect of a child's prenatal care and birth;

...

(5) In an order made under clause (1) (a), other than an order for the support of a child, the court may provide that the amount payable shall be increased annually on the order's anniversary date by the indexing factor, as defined in subsection (6), for November of the previous year.

...

37 – Application for variation (1) An application to the court for variation of an order made or confirmed under this Part may be made by,

- (a) a dependant or respondent named in the order;
- (b) a parent of a dependant referred to in clause (a);
- (c) the personal representative of a respondent referred to in clause (a); or

(d) an agency referred to in [subsection 33 \(3\)](#).

...

42 – Order for return by employer (1) In an application under [section 33](#) or [37](#), the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding twelve months.

...

(3) – Order for access to information The court may, on motion, make an order under subsection (4) if it appears to the court that, in order to make an application under [section 33](#) or [37](#), the moving party needs to learn or confirm the proposed respondent's whereabouts.

(4) The order shall require the person or public body to whom it is directed to provide the court or the moving party with any information that is shown on a record in the person's or public body's possession or control and that indicates the proposed respondent's place of employment, address or location.

...

47 – Application under *Children's Law Reform Act* The court may direct that an application for support stand over until an application under the [Children's Law Reform Act](#) for a parenting order has been determined.

47.1 – Order regarding conduct In making any order under this Part, other than an order under [section 46](#), the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this Part is dealt with justly.

10. A temporary order for support under [section 15.1 \(Child support order\)](#) or [15.2 \(Spousal support order\)](#) of the *Divorce Act* (Canada).

As referred to in r. 42(8)(10):

Divorce Act

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to pay for the support of any or all children of the marriage, pending the determination of the application under subsection (1).

...

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

11. A temporary order under [section 40](#) of the *Family Law Act*.

As referred to in r. 42(8)(11), [section 40 \(Restraining orders\) of the *Family Law Act*](#) states: The court may, on application, make an interim or final order restraining the depletion of a spouse's property that would impair or defeat a claim under this Part.

12. A temporary order dealing with property other than real property.

13. A support deduction order under [section 10 \(Support deduction orders to be made\)](#) of the *Family Responsibility and Support Arrears Enforcement Act, 1996*.

As referred to in r. 42(8)(13), [section 10\(1\) \(Support deduction orders to be made\) of the *FRSAEA*](#) states: An Ontario court that makes a support order, as defined in [subsection 1 \(1\)](#), shall also make a support deduction order.

14. An order limiting or suspending a support deduction order.

15. An order under [section 8 \(Director to cease enforcement, termination of support obligation\)](#) of the *Family Responsibility and Support Arrears Enforcement Act, 1996* that terminates a support obligation or orders repayment from a person who received support.

As referred to in r. 42(8)(15), [section 8\(1\) \(Director to cease enforcement, termination of support obligation\) of the *FRSAEA*](#) states: Subject to [section 8.3](#), the Director shall cease enforcement of a support obligation provided for

in a support order or support deduction order filed in the Director's office if the support obligation has terminated.

15.1 An order under subsection 89 (3.1) or 112 (2) of the *Courts of Justice Act* requesting the Children's Lawyer to act.

16. An order that is necessary and incidental to the power to make a temporary order that is within the jurisdiction of the associate judge.

As referred to in r. 42(8)(15.1):

Courts of Justice Act

89 – Children's Lawyer (3.1) At the request of a court, the Children's Lawyer may act as the legal representative of a minor or other person who is not a party to a proceeding.

...

112 (2) – Report of Children's Lawyer (Investigation) The Children's Lawyer may report and make recommendations to the court on the results of an investigation or meeting conducted under subsection (1).