



## **COURT OF QUEEN'S BENCH OF ALBERTA**

### **NOTICE TO THE PROFESSION AND PUBLIC**

#### **SECTION 21 DISCLOSURE INITIATIVE INFORMATION SUMMARY**

##### **Background and Timelines**

1. There is consensus among the Queen's Bench judiciary that the existing disclosure process in Alberta is not working. Disclosure applications take up much of our chambers lists and incomplete disclosure results in delays and ultimately retroactive support applications. On December 9, 2015, the Court of Queen's Bench Executive Board approved a number of short-term measures to improve the current family law financial disclosure application process. The proposed short-term solutions operate within the existing legislative and rule framework, while longer-term solutions require legislative and rule amendment. As a first step, the Court will strictly enforce the disclosure requirements of s. 21 of the Child Support Guidelines. To date, the steps toward implementation have included the following:

- On January 25, 2016, the CBA and the Law Society of Alberta were sent notices for distribution to the Bar;
- There was an announcement made at the January Town Hall Meeting in Calgary and the March CBA Family Section meeting in Edmonton;
- The Court Clerk's received training on April 6 and 7;
- On April 15, the Court posted a Notice to Profession and Public on the Alberta Court's website along with the Disclosure Statement and Schedules;
- The Court Clerks and Resolution Services staff throughout the Province have received a detailed Checklist;
- Since shortly after April 15, an "Important Notice" handout has been given to the public and lawyers at the clerk's counters and at Resolution Services counters. Signs have been posted in the Clerk's area, Resolution Services reception and on the chambers courtroom doors;
- Since May 2, Justices hearing morning Family Chambers have been asked to read an announcement at the commencement of family chambers advising of the strict enforcement of s. 21;
- The Court will review this information summary with the family bar at a Chambers Practice Meeting in Calgary at the end of May and at the CBA North Family Section May lunch meeting in Edmonton;
- There will be an information session for Justices before June 1;

- Information system codes have been created for the Court Clerks and the Court to monitor Fiat requests and so that the chambers list can indicate when no s. 21 disclosure has been provided;
- June 1, 2016 is the strict implementation date for this initiative.

### Section 21 and Disclosure Statement

2. Section 21 of the Federal and Provincial Child Support Guidelines require specified disclosure from the parties bringing an application for child support to the Court. These requirements apply to both Applicants and Respondents whose income information is necessary in order to determine the amount of child support. The language used – “must include the following with the application” and “provide the Court as well as the other spouse” makes it clear that this information must be filed with the Court. Therefore, anyone who is filing an application for child support, including an application to vary child support, must comply with s. 21 if his/her income information is necessary to determine the amount of child support. Under this initiative, all persons filing an application for child support or a response to an application for child support must complete the Disclosure Statement, even if they are not required to attach a Schedule and disclosure. If an Applicant or Respondent chooses not to use the Disclosure Statement on the website but uses a format that provides the same information in a concise way, this will be acceptable.

### Confidentiality Issues

3. A concern has been raised about confidentiality in relation to the personal information being included with the Disclosure Statement. The provision of the s. 21 information is a legislative requirement. Further, existing affidavits and application materials routinely include personal information, so the disclosure initiative results in little change to the current system. The Court has initiated a process to determine if restricting access to family law files is appropriate for Alberta. This will take time. In the meantime, our current system does not restrict access to family files.

### Consent Orders and Desk Divorces

4. Early disclosure is encouraged in the hope that the issue of child support will be resolved by consent and a Consent Order can be presented to the Court. This initiative will not apply to Consent Orders where the Consent Order is sought before an Application is filed. It also does not apply to desk divorce applications.

### Notice to Disclose and Section 65 Family Law Act Disclosure

5. The focus of this initiative is s. 21 disclosure. The Schedules prepared for attaching to the Disclosure Statement include the Notice to Disclose and s. 65 responses for convenience only. There is no requirement to file Notice to Disclose or s. 65 disclosure with the Court before filing a child support application. That said, if a party has chosen to file Notice to Disclose or s. 65 disclosure with the Court, this would include the required s. 21 information. Accordingly, if that information was recently filed, a further filing of the s. 21 Schedule should not be required.

Schedule 5 was designed to provide updates where the s. 21 disclosure (all or part of it) has already been recently filed with the Court, including being provided for a Dispute Resolution or Child Support Resolution meeting.

#### Urgent Child Support Applications

6. In the judicial centres of Edmonton, Calgary, Red Deer, and Lethbridge, a party can apply for a Fiat if there is urgency in relation to the child support application. There has been a standard Fiat prepared for this purpose. It is similar in principle to the application for a Parenting After Separation exemption – it is without prejudice to the right of the other party to argue that the application should not be heard without the required s. 21 disclosure (in recognition of the fact that the other party does not have notice) and also requires disclosure to be provided within 30 days. On files where both parties are represented by Counsel, some type of notice to opposing Counsel before applying for the Fiat will continue to be encouraged.

7. In the smaller judicial centres, the Clerk will accept the documents for filing and make a note on the chambers list that there was no s. 21 disclosure provided in relation to the child support application so that the Justice hearing the application will know and can deal with the matter accordingly.

#### Multiple Issue Applications

8. If a party is filing a multiple issue Application that includes child support, the s. 21 filing requirements still apply to the child support portion of the application. Therefore, the following options are available to the Applicant:

- a) wait to file the application until the s. 21 disclosure is provided;
- b) proceed only with the portions of the application that do not relate to child support (deleting the child support reference from the Application document if necessary) and file a second Application for child support once the s. 21 disclosure has been provided. This should result in only a small additional cost, as the evidence for the child support application will generally be included in the affidavit being relied on for the other relief;
- c) if there is an urgent need to obtain a child support order without the s. 21 disclosure, a party can apply for a Fiat in Edmonton, Calgary, Red Deer and Lethbridge. Points 6 and 7 above apply.

#### Respondent's Disclosure

9. Section 21(2) gives the Respondent 30 days (60 days if outside Canada or the United States) after being served with an application for a child support order, to provide his/her disclosure. Therefore, if an application is returnable in less than 30 days following service, and assuming no urgency, the Respondent is entitled to an adjournment to give him/her the full 30

days to provide disclosure. In those cases where less than 30 days (less than 60 days if outside Canada or the United States) have passed since service of notice of the Application, the Respondent's options are:

- a) file his/her s. 21 disclosure before the 30 days (60 days) has expired;
- b) attend chambers and request an adjournment so that he/she has the full 30 days (or 60 days) to provide disclosure and file a response;
- c) where the matter is urgent, or where the application deals with issues in addition to child support and the Respondent wishes to respond to those issues, attend chambers and request a Fiat to allow the filing of the responding materials without the s. 21 disclosure. As explained above, the Fiat will be without prejudice and will require the filing of the disclosure within the 30 days from service or such other time as the Court determines appropriate.

10. If more than 30 days (60 days if outside Canada or the US) have passed from the date of service of notice of the application on the Respondent and the Respondent has not provided his/her s. 21 disclosure, he/she will not be permitted to file any responding materials without a Fiat. The Respondent should be aware that in the absence of disclosure without a good reason, the Court may choose to impute income and set the amount of child support, with the obligation then being on the Respondent to bring the matter back to Court after the required disclosure has been provided.

#### Fiats

11. The wording of the Fiat for an Applicant is as follows:

FIAT granted this \_\_\_ day of \_\_\_\_\_, 20\_\_  
Let the Applicant's Application be filed without the  
Applicant's s. 21 disclosure, without prejudice to arguments  
that the hearing should not proceed without that disclosure.

Applicant shall provide s. 21 disclosure within 30 days.

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12. The wording of the Fiat for a Respondent is as follows:

FIAT granted this \_\_\_ day of \_\_\_\_\_, 20\_\_.  
Let the Respondent's Affidavit/Reply be filed without the  
Respondent's s. 21 disclosure, without prejudice to any  
arguments related to disclosure at the hearing.

Respondent shall provide s. 21 disclosure within \_\_\_ days

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The Court intends to have prepared Fiats (on labels) available to the Justice in morning chambers so that they can be attached to the Application and Affidavit.

Any time a Fiat is granted, there will be an entry by the Clerks at the time of filing the Application, indicating that a Fiat was granted in relation to the child support application so that it appears on the chambers list for the Justice hearing the matter, and in CASES for tracking purposes.

#### Other Important Information

13. The Clerks will not be reviewing the disclosure that is provided. They do not have time to do so. They will be looking for the Disclosure Statement to have been completed with the appropriate Schedule attached. The Clerk will not file the Application for child support without the Disclosure Statement having been filed. They will explain the options outlined above in cases of urgency.

14. This s. 21 disclosure procedure will not apply to applications for a stay of enforcement, given their urgent nature. Therefore, the Clerk will not reject an Application for a stay of enforcement in the absence of s. 21 disclosure (though the Justice may require disclosure before considering the application).

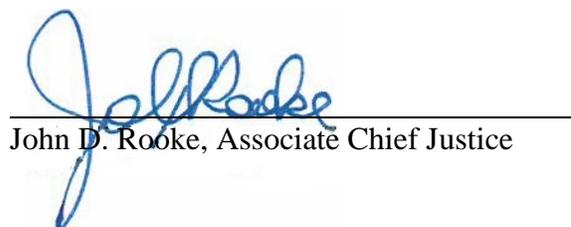
15. The Practice Note 2 page limits do not apply to the Disclosure Statement and attached Schedules and disclosure. The Clerks have also been instructed to file the Disclosure Statement even if there are no tabs.

16. A Court of Queen's Bench "Providing Financial Disclosure" Package has been prepared primarily for the assistance of self-represented litigants (both at the QB Clerk's counter and for use by Resolution Services). It is available for everyone. It can be found at <https://albertacourts.ca/docs/default-source/Family-Justice-Services/notice-to-disclose.pdf?sfvrsn=2>

17. The current Notice to Disclose is not affected by this process.



Neil C. Wittmann, Chief Justice



John D. Rooke, Associate Chief Justice