

Part 6.2—Disclosure procedures

Division 6.2.1—Introduction

6.07 Application of Part 6.2

This Part does not apply to the following applications:

- (a) an application for an order that a marriage is a nullity;
- (b) an application for a declaration as to the validity of a marriage;
- (c) an application for a declaration as to the validity of a divorce or annulment of marriage.

Division 6.2.2—Processes of disclosure, production and inspection

6.08 Application of Division 6.2.2

This Division does not affect:

- (a) the right of a party to inspect a document, if the party has a common interest in the document with the party who has possession or control of the document; or
- (b) any other right of access to a document other than under this Division; or
- (c) an agreement between the parties for disclosure by a procedure that is not described in this Division.

6.09 Disclosure by list of documents

- (1) After a proceeding has been allocated a first court date, a party (the *requesting party*) may, by written notice, ask another party (the *disclosing party*) to give the requesting party a list of documents to which the duty of disclosure applies.
- (2) The disclosing party must, within 21 days after receiving the notice, serve on the requesting party a list of documents identifying:
 - (a) the documents to which the duty of disclosure applies; and
 - (b) the documents (if any) no longer in the disclosing party's possession or control to which the duty would otherwise apply (with a brief statement about the circumstances in which the documents left the party's possession or control); and
 - (c) the documents (if any) for which privilege from production is claimed.
- (3) If a document that must be disclosed is located by, or comes into the possession or control of, a disclosing party after service of the list under subrule (2), the party must disclose the document within 7 days after it is located or comes into the party's possession or control.

6.10 Request for disclosed document

- (1) This rule applies to a document disclosed under rule 6.09.

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- (2) The requesting party may, by written notice, ask the disclosing party to:
 - (a) provide a copy of the document in accordance with rule 6.13; or
 - (b) produce the document for inspection in accordance with rule 6.14.

6.11 Request for other identified document

- (1) This rule applies to a document referred to:
 - (a) in a document filed or served by a party on another party or on an independent children's lawyer; or
 - (b) in correspondence prepared and sent by or to another party or to an independent children's lawyer.
- (2) A party may, by written notice, require another party to:
 - (a) provide a copy of the document in accordance with rule 6.13; or
 - (b) produce the document for inspection in accordance with rule 6.14.

6.12 Request to inspect original document

- (1) A party may, by written notice, require another party to produce for inspection an original document if the document is a document that must be produced under the duty of disclosure.
- (2) If a party receives a notice under subrule (1), the party must produce the document for inspection in accordance with rule 6.14.

6.13 Provision of copies of documents

- (1) Subject to subrule (2) and rule 6.15, a party must provide copies of documents to the party requesting the copies:
 - (a) within 21 days after receiving a notice under paragraph 6.10(2)(a) or 6.11(2)(a); and
 - (b) at the expense of the party requesting the copies; and
 - (c) if practicable, in an electronic format.
- (2) If it is not convenient for a disclosing party to provide copies of documents under subrule (1) because of the number and size of the documents, the disclosing party must produce the documents for inspection in accordance with rule 6.14.

6.14 Production of documents for inspection

- (1) A party must produce documents for inspection in accordance with this rule if the party:
 - (a) receives a notice under paragraph 6.10(2)(b); or
 - (b) receives a notice under paragraph 6.11(2)(b); or
 - (c) receives a notice under paragraph 6.10(2)(a) or 6.11(2)(a) and subrule 6.13(2) applies; or
 - (d) receives a notice under subrule 6.12(1).
- (2) Subject to rule 6.15, a party must, within 14 days after receiving a notice referred to in subrule (1):

- (a) notify, in writing, the party requesting the document of a convenient place and time to inspect the document; and
 - (b) produce the document for inspection at that place and time; and
 - (c) allow copies of the document to be made, at the expense of the party requesting it.
- (3) The time fixed under paragraph (2)(a) must be within 21 days after the party receives the notice referred to in subrule (1) or as otherwise agreed.
- (4) A party who fails to inspect a document after receiving a notice under subrule (2) may not later do so unless the party tenders an amount for the reasonable costs of providing another opportunity for inspection.

6.15 Documents that need not be produced

- (1) A party must disclose, but need not provide a copy of nor produce to the party requesting it:
- (a) a document for which there is a claim of privilege from production; or
 - (b) a document that is no longer in the disclosing party's possession or control; or
 - (c) a document a copy of which has already been provided, if the copy contains no change, obliteration or other mark or feature that is likely to affect the outcome of the proceeding.
- (2) Subrule (1) does not affect the operation of rule 7.14.

Note: Rule 7.14 requires the disclosure of an expert's report in a parenting proceeding.

Division 6.2.3—Objecting to production

6.16 Objection to production

- (1) This rule applies if:
 - (a) a party claims:
 - (i) privilege from production of a document; or
 - (ii) that the party is unable to produce a document; and
 - (b) another party, by written notice, challenges the claim.
- (2) The party making the claim must, within 7 days after the other party challenges the claim, file an affidavit setting out details of the claim.
- (3) The court may inspect the document for the purpose of determining whether the claim is valid.

Division 6.2.4—Orders in relation to disclosure

6.17 Consequences of non-disclosure

If a party does not disclose a document as required by these Rules:

- (a) the party:
 - (i) must not offer the document, or present evidence of its contents, at a hearing or trial without the other party's consent or the court's permission; and
 - (ii) may be guilty of contempt for not disclosing the document; and
 - (iii) may be ordered to pay costs; and
- (b) the court may stay or dismiss all or part of the party's case.

Note 1: A party who discloses a document under this Part must produce the document at the trial if a notice to produce has been given (see rule 6.42).

Note 2: Section 112AP of the Family Law Act sets out the court's powers in relation to a contempt of court.

6.18 Application for order for disclosure, production or inspection

- (1) A party (the *first party*) may seek an order that:
 - (a) another party comply with a request for a list of documents in accordance with rule 6.09; or
 - (b) another party provide an affidavit of documents; or
 - (c) another party disclose a specified document, or class of documents, by providing a copy of the document, or each document in the class; or
 - (d) another party produce a document for inspection; or
 - (e) another party file an affidavit stating:
 - (i) that a specified document, or class of documents, does not exist or has never existed; or
 - (ii) the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of that party; or
 - (f) the first party be partly or fully relieved of the duty of disclosure.
- (2) A party making an application under subrule (1) must satisfy the court that the order is appropriate in the interests of the administration of justice.
- (3) The court may make an order of a kind referred to in subrule (1) on its own initiative if it is satisfied that the order is appropriate in the interests of the administration of justice.
- (4) In making an order under subrule (1) or (3), the court may consider:
 - (a) whether the disclosure sought is relevant to an issue in dispute; and
 - (b) the relative importance of the issue to which the document or class of documents relates; and
 - (c) the likely time, cost and inconvenience involved in disclosing a document or class of documents, taking into account the amount of the property, or

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- complexity of the corporate, trust or partnership interests (if any), involved in the proceeding; and
- (d) the likely effect on the outcome of the proceeding of disclosing, or not disclosing, the document or class of documents.
- (5) If the disclosure of a document is necessary for the purpose of resolving a proceeding at a dispute resolution event, a party (the *requesting party*) may, on the first court date, seek an order that another party:
- (a) provide a copy of the document to the requesting party; or
- (b) produce the document to the requesting party for inspection and copying.
- (6) The court may make an order under subrule (5) only in exceptional circumstances.
- (7) The court may inspect a document to decide:
- (a) an application made under this rule; or
- (b) whether to make an order under subrule (3).

6.19 Costs of compliance

If the cost of complying with the duty of disclosure would be oppressive to a party, the court may order another party to:

- (a) pay the costs; or
- (b) contribute to the costs; or
- (c) give security for costs.

6.20 Electronic disclosure

The court may make an order directing electronic disclosure of documents.