



COURT OF QUEEN'S BENCH FOR
SASKATCHEWAN

FAMILY PRACTICE DIRECTIVE #5

SUMMARY HEARINGS IN FAMILY SERVICES PROCEEDINGS

REFERENCE: FAM-PD #5

Effective: September 1, 2018

1. The following practices and procedures shall be used in contested applications under *The Child and Family Services Act* [CFSA] when either of the following orders is sought:
 - a) Placement with a parent under supervision pursuant to s. 37(1)(a) of the CFSA; or
 - b) An order temporarily placing the child in the care of the Minister for a period of six months or less pursuant to s. 37(1)(c) of the CFSA.
2. If the application is opposed by any of the parents or a person of sufficient interest, and the matter is at the stage where it should be directed to a pre-trial conference, the parents and the persons of sufficient interest will be given the option of proceeding directly to a one-day summary hearing instead of proceeding to a pre-trial conference. If all of the parents and persons of sufficient interest who are opposed to the application do not consent to the matter proceeding directly to a one-day summary hearing, the matter shall first proceed to a pre-trial conference.
3. If one of the parents or persons of sufficient interest elects to have a pre-trial conference and the matter is not resolved at the pre-trial conference, the matter shall then be set for a one-day summary hearing.
4. If any of the parties who are participating in the matter are self-represented, the local registrar shall provide them with a copy of this Practice Directive and the document entitled "Explanation to a Self-Represented Person Opposing the Application" (Appendix "A"), when the matter is set for summary hearing.

5. The following procedure shall be used for summary hearings:
 - a) At the summary hearing, the affidavits filed by the applicant will be the evidence-in-chief on behalf of the applicant. The applicant may file additional affidavits within seven days after the matter is set down for summary hearing and these additional affidavits also form part of the evidence-in-chief on behalf of the applicant. The applicant may file additional affidavits with leave of the court.
 - b) The applicant shall make available a copy of all of its affidavits to all of the parties who are participating in the matter within 10 days after the matter has been set down for summary hearing, in the following manner:
 - i. For any parties represented by counsel, the affidavits shall be served on the parties' counsel.
 - ii. For any self-represented parties, the court will make an order providing conditions upon which the affidavits will be provided to the self-represented party. This order will require the self-represented party to personally pick up the copies of the affidavits from the office of the Ministry of Social Services and sign an undertaking regarding the use of the documents. The undertaking will mirror the conditions of the order.
 - iii. The copies of the affidavits shall not be redacted without an order permitting such redaction. The applicant may apply to the court for an order permitting redaction before providing copies of the affidavits.
 - c) The applicant must make the deponents of its affidavits available for cross-examination by the other parties at the hearing. Each of the other parties participating in the application shall promptly provide the applicant with reasonable notice for any deponent the party does not wish to cross-examine. Unless all of the other parties participating in the matter give notice that a particular deponent is not required for cross-examination, that deponent must attend the hearing for the purpose of cross-examination.
 - d) The evidence of the parents and the persons of sufficient interest may be *viva voce* or by affidavits with the right of the applicant and any other parties opposed in interest to cross-examine each witness or deponent. Any affidavits filed on behalf of a parent or person of

sufficient interest must be served on the applicant and filed a minimum of seven days in advance of the hearing. If a parent or person of sufficient interest wishes to file affidavits, that party must make copies of the affidavits available to all self-represented parties who are participating in the matter in the same manner as set out in para. 5(b)(ii) of this procedure with modifications as necessary.

- e) The parents and persons of sufficient interest must make the deponents of their affidavits available for cross-examination at the hearing. The applicant and other participating parties shall promptly provide the party who files an affidavit with reasonable notice with regard to any deponent the applicant or other participating parties do not wish to cross-examine. Unless the applicant and all other participating parties give notice that a particular deponent is not required for cross-examination, that deponent must attend the hearing for the purpose of cross-examination.
 - f) The applicant will have the right to provide *viva voce* reply evidence with leave of the court.
 - g) The applicant shall be first to argue, followed by the other parties, with rebuttal by the applicant.
 - h) This procedure is subject to modification by the judge presiding at the summary hearing after hearing submissions from the parties regarding any proposed modifications. Such modifications may be made in advance of the hearing or at the hearing.
 - i) Once a matter has been set for a summary hearing, if counsel for one of the parties wishes to withdraw, such counsel must seek leave of the court to withdraw. Such an application, unless otherwise ordered, may be by conference call with any judge of the court.
 - j) Summary judgment will be provided by the court as soon as possible, preferably orally at the conclusion of the hearing. Section 37(9) of *The Child and Family Services Act* requires written reasons be provided. If an oral ruling is given the presiding judge should request the oral decision be transcribed by transcript services for distribution to the parties.
6. Attached as Appendix “A” is the “Explanation to a Self-Represented Person Opposing the Application”.

7. Attached as Appendix “B” is the “Suggested Terms for a Disclosure of Affidavits Order for Summary Hearing”.
8. Attached as Appendix “C” is a draft “Undertaking to Obtain Copies of Affidavits”.

Chief Justice M.D. Popescul
Court of Queen’s Bench for Saskatchewan

APPENDIX “A”

Explanation to a Self-Represented Person Opposing the Application

Attached to this document is the procedure that will take place where Social Services (or a child and family services agency) has apprehended a child and wants a judge to make a short-term order (less than six months) that allows Social Services to care for the child or to return the child to a parent with conditions. The procedure is written in legal terms. Here is an explanation in more common language. This explanation refers to “Social Services” but the procedure is the same if a child and family services agency is involved instead of Social Services.

Overview

There is often opposition to the order Social Services wants. It is a judge, not Social Services, who makes the final decision as to what should happen with the child. This explanation will refer to the person opposing Social Services as the “parent” but in some cases it is both parents or other people who are interested in the welfare of the child that can have a say in what is best for the child.

Social Services must bring an application to the court after it apprehends a child. An application is simply a document that describes what Social Services wants the court to order. For example, Social Services may want to keep the child in its care for a few months or return the child to the parent but with conditions. It sometimes asks for a longer order, such as when it says that it is best for the child to be placed in the care of Social Services permanently.

When Social Services wants an order allowing it to care for the children for longer than six months, there is a fairly long legal process involving a pre-trial conference and sometimes a trial.

The summary hearing procedure described here is faster than going all the way to a trial but can only be used when Social Services is asking for an order that affects the child for six months or less and:

- wants the child to be placed with a parent, but with conditions, or
- wants the child to be placed in the care of Social Services.

If the parent does not want the order Social Services wants, there will be a summary hearing before a judge who will decide what kind of an order is best for the child. A summary hearing is a very short trial, usually less than a day.

What Happens before the Hearing?

Within 10 days of the judge ordering that there will be a summary hearing, Social Services has to give the parent the sworn affidavits that it says justify the court making the order that it wants. These affidavits are evidence that the court will consider in making its decisions. The parent will have to pick up these copies of the affidavits from Social Services and sign an undertaking agreeing to use the affidavits only for the purposes of the hearing.

Seven days before the hearing, the parent can serve Social Services with any sworn affidavits it wants the court to consider. The parent has to file those affidavits with the court as well. The parent does not have to file affidavits and can call witnesses who can testify at the hearing.

Affidavits are statements containing facts that the person making the statements swears to be true. Anyone who swears an affidavit has to be present in court at the hearing so the other side can cross-examine them (ask them questions). If the parent does not need to cross-examine a person who swore an affidavit, the parent should tell this to Social Services and that person does not have to be at the hearing.

What Happens at the Hearing?

1. Social Services goes first. The judge will have read the affidavits Social Services filed and will consider them to be the evidence that Social Services says is sufficient to persuade the judge to give it the order Social Services wants the judge to make.
2. The parent can cross-examine the people who swore the affidavits Social Services filed.
3. The parent then has the opportunity to bring evidence before the judge in opposition to the order Social Services wants:
 - (a) If the parent has filed sworn affidavits, Social Services can cross-examine those people (remember that those people have to be at the hearing unless Social Services tells the parent that they do not have to be there). The parent can ask the witness a few questions after that.
 - (b) The parent can testify and call other witnesses to testify. Social Services can cross-examine the parent and any other witnesses the parent calls.
4. Social Services can then bring witnesses to testify in reply to the evidence put before the court by the parent.

5. After that, the judge will listen to Social Services explain why the order it wants should be granted and the parent can explain why the judge should not grant the order.
6. The judge will make a decision after hearing the arguments from Social Services and the parent. Sometimes the judge will give the decision at the end of the hearing and the parent will later be given a transcript of what the judge said. Sometimes the judge will not give a decision right away and will make the order in writing at a later date.

APPENDIX “B”**Suggested Terms for a Disclosure of Affidavits Order for a Summary Hearing**

The Ministry of Social Services (or name of the child and family services agency) shall make copies of its affidavits available to _____ [the Respondent], upon the following conditions:

1. The Respondent shall use the affidavits solely for the purpose of conducting the summary hearing in the Court of Queen’s Bench in relation to the children _____.
2. The Respondent shall not share the contents of the affidavits with any other person except for the purpose of preparing for the summary hearing.
3. The Respondent shall keep the affidavits in his or her possession and not allow any other person to take possession of the affidavits.
4. The Respondent shall store the affidavits in a secure, private location.
5. The Respondent shall not make any copies of the affidavits.
6. The Respondent shall not post the affidavits or their contents to Facebook, Instagram or any other social media.
7. The Respondent shall not publish, broadcast or disseminate, in any form or format, the affidavits or their contents.
8. The Respondent shall return the affidavits to the Ministry of Social Services within seven days after the conclusion of the summary hearing.
9. _____
(Any other conditions the court deems appropriate)
10. The Respondent shall personally pick up the copies of affidavits from the offices of the Ministry of Social Services.
11. The Respondent shall sign an undertaking at the offices of the Ministry of Social Services acknowledging his or her obligations under this order before receiving copies of the affidavits from the Ministry of Social Services.

APPENDIX “C”**UNDERTAKING TO OBTAIN COPIES OF AFFIDAVITS**

I, _____, am a self-represented party in the court application for:

(children’s names and birth dates)

In order to receive a copy of the affidavits in this matter, I undertake I will comply with the conditions listed below:

1. I will use the affidavits solely for the purpose of conducting the summary hearing in the Court of Queen’s Bench for the children listed above.
2. I will not share the contents of the affidavits with any other person except for the purpose of preparing for the summary hearing.
3. I will keep the affidavits in my possession and not allow any other person to take possession of the affidavits.
4. I will store the affidavits in a secure, private location.
5. I will not make any copies of the affidavits.
6. I will not post the affidavits or their contents to Facebook, Instagram or any other social media.
7. I will not publish, broadcast or disseminate, in any form or format, the affidavits or their contents.
8. I will return the affidavits to the Ministry of Social Services within seven days after the conclusion of the summary hearing.
9. _____
(Any other conditions the court ordered)
10. I acknowledge failure to comply with any of these conditions can result in contempt of court proceedings against me.

DATED at _____, Saskatchewan, this
 _____ day of _____, 2_____.

(signature)