The Law Society of Manitoba

INCORPORATED 1877 | INCORPORÉ EN 1877

FAMILY LAW

Chapter 6

Enforcement, Variation and Appeals

July 2023

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A. ENFORCEMENT OF COURT ORDERS

1. Enforcement of Support Orders by the Maintenance Enforcement Program

In 1980 Manitoba became the first province in Canada to implement an automatic support enforcement program. Originally part of *The Family Maintenance Act* (now repealed), the statutory provisions governing the operation of the Maintenance Enforcement Program are found in *The Family Support Enforcement Act* and in the Support Enforcement Regulation, 53/2023 (*SER*), in effect as of July 1, 2023. The program's services are available at no cost to support recipients.

a) Eligibility

Orders which meet the definition of "support order" in section 1 of *The Family Support Enforcement Act* (*FSEA*) are eligible for enforcement through the program.

This includes support orders made pursuant to the *Divorce Act*, *The Family Maintenance Act* (now repealed), *The Family Law Act*, *The Child and Family Services Act*, eligible orders from other jurisdictions registered pursuant to *The Interjurisdictional Support Orders Act* (or *The Reciprocal Enforcement of Maintenance Orders Act* (now repealed)), decisions of a child support service, recalculated support orders and family arbitration awards, as well as support provisions contained in orders made pursuant to other provincial legislation.

Separation agreements are also included in the definition of a support order and can be enforced through the program if they meet the eligibility criteria.

Orders pronounced in Manitoba that contain provisions for support must be accompanied by a completed Recalculation and Enforcement Form (Form 70W) per King's Bench Rule 70.31(15). When the order is signed, the court will provide a copy to the Maintenance Enforcement Program, along with a copy of the 70W.

If you are filing a Form 70W it is very important to ensure that the contact information for the parties is current and correct so that the Maintenance Enforcement Program can get in touch with them. Enforcement will not commence until the support recipient formally opts in and provides a completed registration package.

In order to have a separation agreement enforced, both parties must have consented in writing in a form satisfactory to the program to the filing of the agreement, or the agreement must contain a provision allowing it to be enforced through the program (*FSEA* s. 9(1)). Out-of-province agreements which are enforceable in Manitoba pursuant to *The Inter-jurisdictional Support Orders Act* are enforceable through the program.

The wording of a paragraph allowing for enforcement of an agreement should mirror as closely as possible the enforcement paragraph incorporated in court orders (referring to an agreement rather than a court order – see, for example, clause PA-1 in Version 6 of the Standard Clauses for Orders in Family Proceedings, and the appropriate clause in Version 7, once available).

In order for the program to register and enforce an order, a copy of the order must be signed by the court and received by the program (*FSEA* s. 8(2)). A disposition sheet from the court is not sufficient. Where the "support order" meets the definition and is something other than a court order, section 8(2) also lists the documents required. The required registration documents must also be completed and filed with the director (*FSEA* s. 11(1)).

The program sends the registration package to the support recipient for completion upon receipt of an originating court order and a properly completed Form 70W.

The director can refuse to enforce a support order if:

- the support provisions contain errors or are ambiguous or unsuitable for enforcement;
- the amount of support cannot be determined from the face of the order because it depends on a variable that does not appear in the order (*FSEA* s. 26).

Once a support order is registered with the program, the director in charge of the case will notify the support payor by letter so that they are aware that support payments are to be made through the program.

Where the terms of a support order and agreement conflict, except when an out-of-province agreement meets the definition of a "support order" in *The Inter-Jurisdictional Support Orders Act*, the terms of the order prevail (*FSEA* s. 9(3)).

Section 10(1) similarly provides that where the terms of a family arbitration award and a support order conflict, the terms of the order prevail. However, pursuant to section 10(2) the terms of a family arbitration award may prevail in certain circumstances, including that it was made subsequent to the court order, that it contains a term whereby the parties agree that it should be enforced rather than the court order, and that it is registered with the Court in accordance with section 49(9) of *The Arbitration Act*.

Support recipients may opt out of the program if they wish, and again there are prescribed forms to be executed in order to do so. The one restriction that exists is that individuals who are in receipt of social allowances or assistance pursuant to *The Manitoba Assistance Act* and who have assigned ongoing support in favour of the Director of Assistance are not allowed to opt out at will. This is because the support payments are not owed to the support recipient, but to the Director of Assistance by virtue of the assignment (*FSEA* ss. 12(2) and 13). A support recipient can always choose to opt out of the program in relation to ongoing support or support arrears that is owed to them personally.

b) Making and Monitoring Payments

The program monitors support payments through a computer system. The program is a "pay to" program which means that all payments are sent to the program payable to the "Province of Manitoba – Minister of Finance". This allows the program to deposit and issue payments to support recipients from its bank account. Payments should clearly reference the parties' file number to ensure they are properly credited.

By recording the date, type and dollar amounts of payments made, the program is able to provide an accurate, ongoing record of payments. As a result, in the event of default, appropriate action can be taken. This is also helpful for the payor who may need to prove payments made.

Acceptable forms of payment include cash, electronic transfers of funds, pre-authorized debits, money orders and bank drafts. Cheques issued by a court, an employer of a support payor, a financial institution and from an appropriate authority in a reciprocating jurisdiction (*SER* s. 3) are accepted. Cheques directly from support payors are not acceptable forms of payment.

Difficulties can arise if a support payor whose order is registered with the program provides support directly to a support recipient, because program records will not reflect the payments. In such cases, unless the support recipient acknowledges the payments in writing in a form satisfactory to the director, program records will continue to show a support payor in default when this may not be the case.

> It is very important for support payors to ensure that all payments are made through the system, and not directly. The support payor may never receive credit for making direct payments the recipient refuses to acknowledge.

The director may refuse any payment and require that the payments be made in a specific manner (*FSEA* s. 16(2)). For example, this provision would allow the director to refuse to permit a support payor to make payments via pre-authorized debit where they have a history of non-sufficient funds (NSF) transactions.

c) Communicating with the Director

Questions about enforcement matters should be directed to the director, as they are best able to respond to inquiries about enforcement action, adjustments to accounts, statements of account, and day-to-day management of the account. Please note that it may take up to five business days to receive a response, depending on how busy it is and how your inquiry is prioritized.

It is important that you let the program know if your matter is urgent or if you have a deadline for receiving requested information so that your inquiry is properly managed. If you are unsatisfied with a response, you should bring your issue to the attention of a manager at the program and request follow up.

The Maintenance Enforcement Program's contact information is as follows:

Canada Building, 100 – 352 Donald Street, Winnipeg, Manitoba, R3B 2H8
Phone: 204-945-7133 or 1-866-479-2717 Fax: 204-945-5449
Email: *ManitobaMEPinquiries@gov.mb.ca*

Some general information and forms can also be found *online*.

The Family Support Enforcement Regulation sections 29 – 32 provide general rules for how the director provides and receives notice or documents required to be provided pursuant to *The Family Law Act*. Please note that these rules do not replace specific service rules applicable under the King's Bench Rules or specific service rules set out in the legislation.

Any document or notice to be served, given or provided by the director to a support payor, support recipient, or other person may be delivered:

- personally;
- by registered or certified mail;
- by ordinary first-class mail;
- by fax;
- by courier, if confirmation of delivery is provided;
- by email.

Service, notice, or other documents provided by the director to a support recipient or support payor will be at the last known address, fax number or email of that person. Therefore, it is in a client's best interests to keep their contact information up to date.

Any document or notice to be served, given, or provided to the director must be in writing and may be delivered by any of the means set out above. It is important to note that Crown counsel does not accept service of any documents on behalf of the director.

d) Late Payment Penalties and Fees

As of April 1, 2012, the program began assessing late payment penalties (*FSEA* s. 37) and fees (*FSEA* s. 86) in situations where a support payor is in arrears of their support obligation.

i. Late Payment Penalties

Late payment penalties are calculated on accounts that have an enforceable maintenance obligation (*SER* s. 22). Unless a judge has set the support arrears and ordered repayments on the arrears balance, the whole amount of arrears will have late payment penalties assessed against it (*SER* s. 23 and s. 26(1)(i)).

A late payment penalty is only assessed on support arrears. It is not assessed on unpaid penalties or on cost recovery fees charged by the program. Penalties are also not assessed on amounts that are subject to a suspension order, where enforcement action is taken on behalf of the estate of a support recipient, or on money owing where the support payor resides in a reciprocating jurisdiction where the order is registered for enforcement (*SER* s. 26).

Late payment penalties are assessed at a rate of 18% per annum and are enforced on the daily balance of the account. It is assessed on the second Friday of each month for the month immediately preceding it (*SER* ss. 22-25).

A late payment penalty is a debt owed to the support recipient. The program is required to assess penalties on delinquent accounts. (*FSEA* s. 37).

A support recipient may opt out of the assessment of penalties (*FSEA* s. 38(1)) in which case penalties will not be assessed on the account after the date of the opt out. A support recipient may also choose to waive all or part of any penalties that have already been assessed (*FSEA* s. 38(2)).

Any support recipient who is considering opting out of or waiving penalties should carefully consider their decision. Doing so means that they lose the right to receive penalties for the period that an opt out was in effect or any amount that was waived, and they will be unable to recover these amounts later (*FSEA* s. 38(4)).

A support payor may apply to court to have assessed penalties reduced or deleted. It is up to a judge to decide if remission of a penalty amount is reasonable in the circumstances.

The test for remission of penalties is whether it would be grossly unfair and inequitable to the support payor to leave the penalties in place, and that having regard to the interests of the support recipient, remission is justified (*FSEA* s. 39(2)). Section 39(1) also permits the director to cancel a penalty in whole or in part in certain circumstances.

A standard clause has been created for use in orders that seek to set, reduce, or cancel late payment penalties (see clause QA-4 in Version 6 of the Standard Clauses for Orders in Family Proceedings). Using the available clause ensures that orders will be interpreted properly by the program. The appropriate Version 7 clause should be used, once available.

ii. Fees

The fees referred to in *FSEA* s. 86 are different than court costs assessed by a master or judge. These fees are charged to the support payor by the director to recover some of the costs associated with taking enforcement actions. Examples of these include:

- $50.00 – garnishing orders;
- $114.00 – registering an order in a land titles office;
- $100.00 – taking proceedings to obtain a writ.

> A full list of these fees is available at section 28 of the Support Enforcement Regulation.

Any fee assessed is a debt owing to the government. When money is collected it will be applied to the fee amount only if there is no support balance, late payment penalty, or compensatory payment outstanding (*FSEA* s. 86(3)).

The director can continue to enforce fees even if the support order is no longer being enforced, arrears have been paid in full or cancelled, or there is no further obligation to pay support (*FSEA* s. 86(4)).

Section 86(5) of *FSEA* permits the court to cancel such fees if the court is satisfied that it would be grossly unfair and inequitable not to do so. Section 86(6) also permits the director to reduce or cancel fees if the director is satisfied that the fees cannot be collected, if the payor does not reside in Manitoba and the support order is registered for enforcement elsewhere, or if the director is satisfied that the reduction or cancellation is reasonable.

iii. Enforcement of Late Payment Penalties and Fees

Late payment penalties and fees can be enforced in the same manner as a support order. The only difference is that the director cannot issue a notice to appear before the director for an examination under section 66, issue a summons to a hearing before a judge or master under section 67, or give notice for possible action under *The Highway Traffic Act* under section 52 (*FSEA* s. 37(3)).

> Due to the differences in the treatment of support, penalties and fees, it is imperative that court orders deal with each category separately. Orders which set a lump sum amount which purports to include support, penalties and fees will be rejected by the program as unenforceable.

iv. Court Costs

Section 73 of *FSEA*, which would allow the enforcement of some court costs by the director of Maintenance Enforcement is not in force as of the date of writing, and will come into force on proclamation. Watch for this important change.

e) Statements of Account

The statements of account issued by the program show the status of the account between the parties. In any proceeding, a computer printout "is admissible in evidence as proof of the state of the account as of the date of the printout unless the contrary is shown". Copies do not need to be certified. Prior notice to the other party of the intention to submit the printout is not required. (s. 83).

These printouts are regularly used in maintenance enforcement court proceedings to establish on a prima facie basis the arrears owing on a particular account and

payments made. Statements of account can also be very useful to counsel in other family cases and are often attached to affidavits.

There are three types of statements of accounts: a Debtor Statement of Account, a Creditor Statement of Account, and a Legacy Financial Statement. Which of these you require will depend on who you represent and what you are trying to show on the matter.

Legacy Financial Statements show the history of the account prior to December 3, 2011, when the program transitioned to a new computer system for managing files. The Legacy Financial Statements are static and not subject to changes – they show information from the Maintenance Enforcement Program's old computer system. Once you have obtained a Legacy Financial Statement for a file, you will not need to request it again. If a file was originally registered with the program after December 3, 2011, there will not be a Legacy Financial Statement for that file.

> The Debtor and Creditor Statements of Account provide the current total balance owing on the account as well as a list of the transactions on the account for the two years preceding the printout date. If you require it, you can request a complete Debtor or Creditor Statement of Account that will list transactions beginning December 3, 2011 or when the account was opened, whichever date is later.

If the support recipient is assigning or has in the past assigned their child support to the Director of Assistance (EIA) there will be two Creditor Statements of Account, one for each creditor. The Debtor Statement of Account does not break down the total arrears owing between creditors, it simply shows the total amount the debtor owes.

The Debtor Statement of Account and the Creditor Statement of Account do not have all of the same information on them. The information that they do have in common includes:

- The names of the parties and the program file number;
- The current enforceable balance on the account (Note: only the amount owed to the support recipient will show on the Creditor Statement of Account – this includes support and late payment penalties. If EIA is involved, there will be a separate Creditor Statement of Account showing the amount owed to EIA);
- The dates and amounts of any payments coming due in the following 31 days;

- The total late payment penalties owing on the account. (Note: only the amount owed to that particular support recipient will appear on the Creditor Statement of Account);
- A detailed list of payments made for the last two years (unless you request a statement covering a longer period), including the payment's effective date (date the payment was received) as well as the transaction date (date the payment was processed). (Note: Creditor Statements of Account only show payments made to that particular support recipient); and
- Details of any adjustments made to the account (for example, as a result of a variation order).

The Debtor Statement of Account contains additional information including, but not restricted to the following:

- The total cost recovery fees (pursuant to *FSEA* s. 86) owing on the account;
- The total of direct payments (payments made outside the program that the support recipient has acknowledged receiving);
- The total amount pending (i.e., an amount received, but not yet processed); and
- The total of any reductions of support, late payment penalties and cost recoveries.

Debtor Statements of Account will also provide greater detail about how payments were made (e.g., pre-authorized debit; employer transfer; federal money received) but will not provide specifics about the source of the payments. For example, a support payor's employer name or banking information will not appear on statements of account.

Which statement to request:

- If a support payor wants to know the current state of the account they should request a Debtor Statement of Account;
- If a support payor or support recipient is returning to court to deal with arrears on the account, they should also request the Creditor Statement(s) of Account;
- If a support recipient wants to know the current state of the account they should request a Creditor Statement of Account;
- If a support payor or support recipient requires more than 2 years of account history, they must specifically request this;
- In all cases, if detailed transaction information is needed predating December 3, 2011, then a Legacy Financial Statement should be requested.

Counsel can obtain statements of account at no cost by contacting the program by email at *ManitobaMEPInquiries@gov.mb.ca* or through one of the offices listed below.

In Winnipeg: Canada Building, 100 – 352 Donald Street, Winnipeg MB R3B 2H8
Phone: 204-945-7133 (Province wide toll free 1-866-479-2717)
Fax: 204-945-5449

In Brandon: Room 108 - 1104 Princess Avenue, Brandon MB R7A 0P9
Phone: 204-726-6237 (Province wide toll free 1-866-219-9151)
Fax: 204-726-6546

In Thompson: 59 Elizabeth Drive, Box 12, Thompson MB R8N 1X4
Phone: 204-677-6758 (Province wide toll free 1-866-804-5830)

Below you will find samples of each type of Statement of Account for reference. A list of computer code vocabulary is also provided below to assist in interpreting Legacy Financial Statements.

If you have questions about Statements of Account, they should be directed to the Maintenance Enforcement Program.

COMPUTER CODE VOCABULARY – For use with Legacy Financial Statements

A. Types of Payments & Code Meanings

CA	=	CASH PAYMENT
CHQ	=	CHEQUE OR MONEY ORDER PAYABLE TO CREDITOR
CHI	=	MONEY ORDER PAYABLE TO PROGRAM (TO BE RECEIPTED)
PHI	=	PERSONAL CHEQUE PAYABLE TO PROGRAM (TO BE RECEIPTED) ALSO HELD TILL CLEARS BANK
COQ	=	COMPANY CHEQUE PAYABLE TO CREDITOR
COI	=	COMPANY CHEQUE PAYABLE TO PROGRAM (TO BE RECEIPTED)
FGO	=	MONIES OBTAINED UNDER A FEDERAL GARNISHMENT
DBA	=	DEBIT ADJUSTMENT (DOCUMENTATION IN FILE)
CRA	=	CREDIT ADJUSTMENT (DOCUMENTATION IN FILE)
DBC	=	DEBIT ADJUSTMENT (OPERATOR ERROR)
CRC	=	CREDIT ADJUSTMENT (OPERATOR ERROR)
DCI	=	DEBIT CARD TRANSACTION
ADH	=	DEBIT ADJUSTMENT TO PREVIOUS YEAR
CRH	=	CREDIT ADJUSTMENT TO PREVIOUS YEAR
CC	=	CERTIFIED CHEQUE
STP	=	STOP PAYMENT
NSF	=	NON-SUFFICIENT FUNDS
TPI	=	TELEPAY PAYMENT
DPD	=	DEFAULT PAYMENT DUE
RPD	=	REGULAR PAYMENT DUE
SP	=	SINGLE PAYMENT DUE
PDC	=	POST-DATED CHEQUE

Sample Debtor Statement of Account

[Document follows on next page]

MAINTENANCE ENFORCEMENT PROGRAM
Debtor Statement of Account

File: 1234-567

Sorted by: Transaction Date

PERSON A
&
PERSON B

Statement Start Date: 2010-05-15

Maintenance & Section 7 Expenses Balance:	$5,952.00
***Late Payment Penalties (payable to the creditor)**	$80.50
Cost Recovery Balance (payable to the program)	$200.00
Subtotal	$6,232.50
****Less Pending Money**	$0.00
Total Enforceable Balance:	$6,232.50

Debtor Summary

Maintenance Activity between 2010-05-15 to 2012-05-15	
Maintenance Additions	$6,952.00
*Late Payment Penalties (as of most current calculation)	$80.50
Cost Recovery Additions	$200.00
Adjustments:	
Maintenance Reductions	$0.00
Late Payment Penalty Reductions	$0.00
Cost Recovery Reductions	$0.00
Total Net Maintenance and Adjustments	$7,232.50
Payment Activity between 2010-05-15 to 2012-05-15	
Direct Payments Claimed	$0.00
Received by MEP (this amount may include Late Payment Penalties and/or cost recovery payments)	$1,000.00
Adjustment to Payments:	
Reversed Direct Payments	$0.00
Returned Items and Bank Debits	$0.00
Refund	$0.00
Transferred Out	$0.00
Total Net Payments Received and Adjustments	$1,000.00
Cost Recovery Activity between 2010-05-15 to 2012-05-15	
Cost Recovery Additions	$200.00
Cost Recovery Reductions	$0.00
Cost Recovery Fees Collected	$0.00
Total Net Cost Recoveries	$200.00

Within the next 31 days the following terms are scheduled to become due:

2012-06-01 MAINTENANCE (OTHER) $316.00/ Semi-Monthly

The balance above may change by information (including recent payments) the Program subsequently receives and is therefore only current as at the time the statement is generated.

*Late Payment Penalties for the current month may not have been calculated at the time this statement was generated and is therefore subject to change.

**Payments received in our office that require further processing are not included in the transaction details at the time of generation.

MAINTENANCE ENFORCEMENT PROGRAM
Debtor Statement of Account

File: 1234-567

PERSON A
&
PERSON B

Sorted by: Transaction Date

Debtor Statement of Accounts

Within the next 31 days the following terms are scheduled to become due:

2012-06-01 MAINTENANCE (OTHER) $316.00/ Semi-Monthly

Transaction Date	Effective Date	Reference Number	Description	Charges	Received	Total Balance
2012-05-15	2012-05-15	13319289	MAINTENANCE (OTHER)	316.00		6,232.50
2012-05-11	2012-05-01	13309344	LPP	80.50		5,916.50
2012-05-01	2012-05-01	13298202	MAINTENANCE (OTHER)	316.00		5,836.00
2012-04-19	2012-04-18	7656786	CASH - DEBTOR		-500.00	5,520.00
2012-04-15	2012-04-15	13285697	MAINTENANCE (OTHER)	316.00		6,020.00
2012-04-03	2012-04-03	13260911	COURT SUMMONS COST RECOVERY	200.00		5,704.00
			JV#: 1328100 JV Type: J91 ADD COST RECOVERY Comment:			
2012-04-01	2012-04-01	13274037	MAINTENANCE (OTHER)	316.00		5,504.00
2012-03-15	2012-03-15	13263276	MAINTENANCE (OTHER)	316.00		5,188.00
2012-03-01	2012-03-01	13252874	MAINTENANCE (OTHER)	316.00		4,872.00
2012-02-24	2012-02-21	7598720	CASH - DEBTOR		-500.00	4,556.00
2012-02-15	2012-02-15	13241842	MAINTENANCE (OTHER)	316.00		5,056.00
2012-02-01	2012-02-01	13231079	MAINTENANCE (OTHER)	316.00		4,740.00
2012-01-15	2012-01-15	13219767	MAINTENANCE (OTHER)	316.00		4,424.00
2012-01-01	2012-01-01	13209875	MAINTENANCE (OTHER)	316.00		4,108.00
2011-12-15	2011-12-15	13198662	MAINTENANCE (OTHER)	316.00		3,792.00
2011-12-02	2011-12-02	13185056	MAINTENANCE (OTHER)	3,476.00		3,476.00
			JV#: 1270346 JV Type: J3x CHARGE Comment: NEW COMPUTER SYSTEM (M3P) OPENING BALANCE (REGULAR ACCOUNT			
			BALANCE FORWARD			0.00

Sample Creditor Statement of Account

[Document follows on next page]

MAINTENANCE ENFORCEMENT PROGRAM
Creditor Statement of Account

File: 1234-567

PERSON A
&
PERSON B

Statement Start Date: 2010-05-15

Maintenance & Section 7 Expenses Balance:	$6,952.00
***Late Payment Penalty Subtotal**	$80.50
Total Enforceable Balance:	$6,032.50

Creditor Summary

Maintenance Activity between 2010-05-15 to 2012-05-15	
Maintenance Additions	$6,952.00
*Late Payment Penalty (as of most current calculation)	$80.50
Maintenance Reductions	$0.00
Late Payment Penalty Reductions	$0.00
Total Net Charges and Adjustments	**$7,032.50**
Payment Activity between 2010-05-15 to 2012-05-15	
Direct Payments Claimed	$0.00
Paid through MEP	$1,000.00
Adjustment to Payments	$0.00
Reversed Direct Payments	$0.00
Returned Items (Payments paid through MEP)	
Net Payments	**$1,000.00**

Within the next 31 days the following terms are scheduled to become due:

2012-06-01 MAINTENANCE (OTHER) $316.00/ Semi-Monthly

The balance above may change by information (including recent payments) the Program subsequently receives and is therefore only current as at the time the statement is generated.

*Late Payment Penalties for the current month may not have been calculated at the time this statement was generated and is therefore subject to change.

**Payments received in our office that require further processing are not included in the transaction details at the time of generation.

MAINTENANCE ENFORCEMENT PROGRAM
Creditor Statement of Account

File: 1234-567

PERSON A
&
PERSON B

Creditor Financial Transaction Details

Within the next 31 days the following terms are scheduled to become due:

2012-06-01 MAINTENANCE (OTHER) $316.00/ Semi-Monthly

Transaction Date	Effective Date	Reference Number	Description	Charges	Paid Out	Total Balance
2012-05-15	2012-05-15	13319289	MAINTENANCE (OTHER)	316.00		6,032.50
2012-05-11	2012-05-01	13309344	LPP	80.50		5,716.50
2012-05-01	2012-05-01	13298202	MAINTENANCE (OTHER)	316.00		5,636.00
2012-04-20	2012-04-18	797399	Cheque		-500.00	5,320.00
2012-04-15	2012-04-15	13285697	MAINTENANCE (OTHER)	316.00		5,820.00
2012-04-01	2012-04-01	13274037	MAINTENANCE (OTHER)	316.00		5,504.00
2012-03-15	2012-03-15	13263276	MAINTENANCE (OTHER)	316.00		5,188.00
2012-03-01	2012-03-01	13252874	MAINTENANCE (OTHER)	316.00		4,872.00
2012-02-25	2012-02-21	790470	Cheque		-500.00	4,556.00
2012-02-15	2012-02-15	13241842	MAINTENANCE (OTHER)	316.00		5,056.00
2012-02-01	2012-02-01	13231079	MAINTENANCE (OTHER)	316.00		4,740.00
2012-01-15	2012-01-15	13219767	MAINTENANCE (OTHER)	316.00		4,424.00
2012-01-01	2012-01-01	13209875	MAINTENANCE (OTHER)	316.00		4,108.00
2011-12-15	2011-12-15	13198662	MAINTENANCE (OTHER)	316.00		3,792.00
2011-12-02	2011-12-02	13185056	MAINTENANCE (OTHER) JV# 1270346 JV TYPE: J3x CHARGE COMMENT: NEW COMPUTER SYSTEM (M3P) OPENING BALANCE (REGULAR ACCOUNT)	3,476.00		3,476.00
			BALANCE FORWARD			0.00

Run Date: 2012-05-15 09:30:56 AM

Legacy Financial Statement

[Document follows on next page]

MAINTENANCE ENFORCEMENT PROGRAM
Legacy Financial Statement

File: 1234-567

PERSON A

&

PERSON B

Previous Reference Number: **(Primary Creditor)**

Statement Start Year: 2011

Legacy Financial Transactions

Date	Description	Charged	Received
2011-12-01	RPD - Maintenance (Other)	316.00	0.00
2011-11-15	RPD - Maintenance (Other)	316.00	0.00
2011-11-01	RPD - Maintenance (Other)	316.00	0.00
2011-10-15	RPD - Maintenance (Other)	316.00	0.00
2011-10-01	RPD - Maintenance (Other)	316.00	0.00
2011-09-15	RPD - Maintenance (Other)	316.00	0.00
2011-09-01	RPD - Maintenance (Other)	316.00	0.00
2011-08-15	RPD - Maintenance (Other)	316.00	0.00
2011-08-01	RPD - Maintenance (Other)	316.00	0.00
2011-07-19	COI - Electronic Payment (Income Source)	0.00	-1,580.00
2011-07-15	RPD - Maintenance (Other)	316.00	0.00
2011-07-01	RPD - Maintenance (Other)	316.00	0.00
2011-06-28	CHI - Cheque/Money Order	0.00	-2,840.00
2011-06-15	RPD - Maintenance (Other)	316.00	0.00
2011-06-01	RPD - Maintenance (Other)	316.00	0.00
2011-05-15	RPD - Maintenance (Other)	316.00	0.00
2011-05-01	RPD - Maintenance (Other)	316.00	0.00
2011-04-15	RPD - Maintenance (Other)	316.00	0.00
2011-04-01	RPD - Maintenance (Other)	316.00	0.00
2011-03-15	RPD - Maintenance (Other)	316.00	0.00
2011-03-01	RPD - Maintenance (Other)	316.00	0.00
2011-02-15	RPD - Maintenance (Other)	316.00	0.00
2011-02-01	RPD - Maintenance (Other)	316.00	0.00
2011-01-15	RPD - Maintenance (Other)	316.00	0.00
2011-01-01	RPD - Maintenance (Other)	316.00	0.00
2010-12-31	BDR - Debit Adjustment (Regular Arrears)	628.00	0.00

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f) Duties and Powers of Directors

The Family Law Act requires the director to take "any action as the director considers necessary or advisable to ascertain whether the support payer is in default" (*FSEA* s. 36(1)), determine the amount, assess penalties (*FSEA* s. 37) and take any other action necessary to enforce payment (*FSEA* s. 36(2)).

To that end, the director can require any person (including the support payor or recipient), the government, or any agency of the government to disclose particulars of the whereabouts of the support payor or the support recipient, as well as the support payor's circumstances, including any assets, debts, income and employment (*FSEA* ss. 41(1) and (2)). This is called a Request for Information (*RFI*).

Requested information must be provided within 21 days (*FSEA* s. 41(3)). Information received by the program is confidential. It can only be disclosed for certain specified purposes which are set out in *FSEA* section 42, including:

- It can be used to enforce a support order (either in Manitoba, or in a reciprocating jurisdiction);
- It can be provided to the Child Support Service for the purposes of carrying out its duties;
- Address and employment information can be given to a designated authority under *The Inter-jurisdictional Support Orders Act* or under the *Divorce Act* to be used for the purposes stated in those acts; and
- Personal information may be disclosed to any person with the consent of the individual if the director deems it appropriate.

A major advantage of the system of automated enforcement is that default situations are automatically drawn to the attention of the director handling the account. There is no need for a support recipient to request enforcement or report missed payments.

In addition to any other enforcement proceedings that may be taken, the director may initiate one or more of the following pursuant to *FSEA* section 40:

(a) issue a support deduction notice under section 44 and take any action that may be taken to enforce payment in accordance with the notice;

(b) take steps to obtain a garnishing order under The Garnishment Act;

(c) under section 52,
  (i) notify the support payor that action may be taken under section 273.1 of The Highway Traffic Act, or
  (ii) issue a request for action to be taken under section 273.2 of The Highway Traffic Act;

(d) apply under section 53 for a court order to preserve assets;

(e) register a lien in the Personal Property Registry under section 55;

(f) register the support order in a land titles office under section 57 and take any action that may be taken under The Judgments Act to enforce the registered order;

(g) take steps to obtain a writ of execution under The Executions Act;

(h) apply under section 58 for the appointment of a receiver to take action as permitted by that section;

(i) apply under section 59 for an order declaring assets over which the support payor exercises authority subject to attachment and execution;

(j) issue a notice under section 66 requiring the support payor to appear before the director;

(k) issue a summons under section 67 requiring the support payor to appear before a judge or master for a hearing under that section;

(l) provide a personal reporting agency, as defined in The Personal Investigations Act, with information indicating that the support payor is in default under the support order but, despite clause 4(e) of that Act, without providing the address of the support recipient;

(m) take steps to have the support order enforced in another jurisdiction;

(n) take any steps that may be taken under a federal law to enforce payments under a support order.

Directors may also take enforcement action in relation to lottery winnings of $1,001.00 or more (*FSEA* s. 60). Provisions respecting lottery winnings are found in *FSEA* sections 61 through 63. (See also *SER* ss. 19 - 21).

Garnishment, land titles registrations, writs of execution, and receivership will be discussed later in this chapter, as they are actions that can also be taken by individuals to enforce a family order privately.

The program takes a measured approach to enforcement of support orders. Support payors are given an opportunity to make voluntary payment arrangements prior to enforcement action being initiated.

When enforcement is necessary there is a designated progression in which less severe or restrictive actions are attempted before more serious enforcement remedies are considered.

The remedies most often pursued by directors are issuing support deduction notices/garnishments, and driver's licence suspension notices because these actions tend to be the most successful in terms of obtaining payment.

g) Driver's Licence/Vehicle Registration Suspension

A tool frequently used by directors to enforce support arrears is to take steps to suspend a support payor's driver's licence and/or vehicle registration (*FSEA* s. 52). The process begins by serving the support payor with a notice that unless they take certain action their privileges may be suspended. The notice is usually served by registered mail. (See also *SER* ss. 16 -18).

The support payor has two options to avoid the suspension. Within thirty days of being served with the notice they can propose a repayment schedule acceptable to the director (*FSEA* s. 52(3)) or they can pay the arrears in full before the proposed date of suspension. These options will be identified on the notice.

If a payment scheduled is proposed and is accepted by the director, the support payor will be provided with correspondence that sets out the agreement and the terms of payment. Prior to entering such an agreement, the director will require the support payor to provide a completed financial statement, as well as proof of income.

If the support payor fails to comply with the repayment schedule, the director may advise the registrar of motor vehicles to implement the suspension of driving/vehicle registration privileges (*FSEA* s. 52(4)).

If the director is unable to serve a notice to suspend, then they can request that the registrar place a refuse to renew on the support payor's account (*FSEA* s. 52(2)), which prevents the support payor from being able to renew their licence and registration until their arrears have been dealt with.

As with all enforcement tools, the goal of the driver's licence/vehicle registration restrictions is to encourage payment. Support payors who receive notices of possible suspension should be encouraged to be proactive and to contact their director to discuss options before the suspension is put in place.

h) Examinations before the Director

A director can issue a notice to appear requiring the appearance of a support payor before them (which could be by telephone or in any other manner) to be examined in respect of their default and their employment, income, assets and financial circumstances and to complete and file a financial statement along with any other requested information (*FSEA* s. 66(1)).

These examinations before the director are similar in function to an examination in aid of execution (discussed below). The goal of the examination is to obtain information from the support payor that will allow outstanding support to be collected. At the end of the examination, the director has a number of options set out in *FSEA* section 66(2):

- refer the matter for enforcement;
- summon the support payor to appear for a hearing before a judge or a master under *FSEA* section 67 (known as a "show cause" hearing);
- require the support payor to pay in accordance with a reasonable payment plan, where they have made such a proposal; or
- adjourn the examination with or without conditions, for certain purposes, including an opportunity to retain counsel, pay the arrears, settle the issue of arrears with the support recipient, file and serve an application to vary support and remit arrears, provide further evidence requested by the director, or allow time for a recalculation of child support or arrears.

i) Show Cause Hearings Before a Judge or Master

A support payor can be required, by a summons issued by a director, to appear before a judge or master to show cause why the support order should not be enforced and to file a financial statement with the court. The required financial statement is attached to the summons that is served on the individual.

A summons to initiate proceedings must be served personally unless a judge or master orders otherwise (*FSEA* s. 67(1)). Failure to appear will generally result in a warrant being issued for the individual's arrest (*FSEA* s. 70). In practice, if a support payor is unable to attend court for a valid reason, the program will usually agree to "hold" warrants (i.e., not send them to the police for execution) where they are contacted by the support payor to make arrangements to attend court on another day.

FSEA provides a clear process for individuals apprehended on warrants to be released pending a show cause or screening court hearing, upon the giving of an undertaking or promise to appear, unless the director is opposed and shows cause that detaining the support payor or requiring a recognizance is justified (*FSEA* s. 71). Support payors appearing on these dockets are required to personally appear, even if they have counsel in place.

The purpose of the enforcement process as a whole is to obtain payments on the arrears of support. Show cause proceedings are initiated on files where less onerous enforcement action has not been successful. The purpose of the proceeding is to gather information that may make enforcement possible, to review the reasons for non-payment to see if they can be addressed, and if necessary to proceed with a hearing to have the support payor punished for failure to comply with the support order.

Crown counsel represent the Maintenance Enforcement Program at show cause hearings to enforce support obligations. Information about court dates for the support payor is available to support recipients and they can contact the program

with information or come to court should they wish. Information provided to the program by the support payor in the course of these hearings is not able to be disclosed to the support recipient.

Defaulting support payors are required to appear for show cause hearings before a judge or master as a last resort. Masters of the Court of King's Bench ordinarily preside at these hearings.

First appearances and matters not ready to proceed to a show cause hearing are put on a screening docket that occurs every Monday afternoon at 2:00 p.m. in Winnipeg. Matters are adjourned from time to time to future screening court dates to allow support payors reasonable time to retain counsel, proceed with a variation application, provide requested financial and other information, and to make arrangements to pay on the support account. Matters ready to proceed to hearing are put on a show cause docket that occurs every Thursday afternoon at 2:00 p.m. in Winnipeg. Matters placed on show cause dockets are expected to proceed to hearing that day.

There are also enforcement dockets in several regional centres. Brandon and Thompson have an enforcement docket once a month. The Pas, Selkirk and Dauphin have an enforcement docket every other month. Morden and Portage have an enforcement docket every three months. These regional dockets are for both screening and show cause matters.

> To prevent avoidable delays, counsel with matters on screening or show cause dockets should arrive a half hour prior to the commencement of the docket to discuss matters with Crown counsel and should ensure their clients are also present. Alternatively, counsel may want to contact Crown counsel a day or two prior to court to discuss matters and agree on an adjournment date and conditions.

At a show cause hearing, the account record is filed to establish that the account is in arrears. The support payor then has the opportunity to explain why they are not wilfully in default. The support payor is sworn and asked whether they dispute the arrears shown on the account record. If the support payor has counsel, direct evidence is led as to the reason for default and particularly the support payor's financial circumstances during the period of time arrears accrued and at present.

The onus is on the support payor to establish that any default was not wilful (*FSEA* s. 67(4)). If a support payor attends without counsel, they will still be sworn in to give evidence. Crown counsel has the opportunity to cross-examine the support payor and questions may also be posed by the presiding master or judge to aid in determining whether or not there has been wilful default.

At the conclusion of a show cause hearing, the judge or master can pronounce an order that does one or more of the following pursuant to *FSEA* section 67(2):

(a) imposes a fine of not more than $10,000, or a term of imprisonment for not more than 200 days, or both, if the support payor is found to be wilfully in default;

(b) determines whether the support payor is in default under the support order and, if so, fixes the amount of arrears for the purpose of enforcement under this Act;

(c) requires the support payor to pay the arrears in full by a specified date;

(d) requires the support payor to make periodic payments on account of the arrears according to a specified schedule;

(e) adjourns the hearing with or without conditions if the judge or master is satisfied that

(i) the support payor cannot at that time make payments on the arrears, or

(ii) the support payor reasonably requires time to obtain counsel, provide additional financial or other information to the court or make specified payments on the arrears;

(f) requires the support payor to deposit a specified amount of money in the court or with the director or any other person the judge or master considers appropriate, to be held as security and for use in the event of a default under the support order or a subsequent variation of the support order;

(g) requires the support payor to deposit security in a form other than money to ensure compliance with the support order;

(h) dismisses the proceedings.

The court can order that any term of imprisonment be served on an intermittent basis (*FSEA* s. 67(3)).

Pursuant to *FSEA* section 67(6), a judge or master who has made an order at a show cause hearing for payment of the arrears in full by a certain date, or for periodic payments on the arrears, can also order that the support payor enter into a bond in a specified amount, with or without sureties, to secure the performance of the support payor's obligations under the order.

An appeal from a decision of a master at a show cause hearing lies to a judge of the Court of King's Bench on the record (*FSEA* s. 69).

The Court of Queen's Bench Auto Order Project was implemented for Winnipeg maintenance enforcement dockets in March, 2000 and allows orders to be generated and signed in court immediately after pronouncement. At the conclusion of a show cause hearing, the support payor (or their counsel) will receive a copy of the order pronounced by the master that day.

Family Law Section counsel forward a basic draft order to the Court of King's Bench which is modified in court by the clerk to reflect the particulars of the order pronounced by the master. If the matter is adjourned after a hearing has been held and findings have been made, an order is sometimes prepared which sets out the findings and the terms of the adjournment.

Imprisonment after a show cause hearing does not discharge any of the arrears of support (*FSEA* s. 68).

j) Suspensions of Enforcement of Support Orders

i. Administrative Suspensions

Section 19(1) of *FSEA* permits the director to consider requests for administrative suspensions. Administrative suspensions have the advantage of being simple to apply for and decisions are usually made quickly. Most requests for administrative suspensions will be considered within 5 business days.

A support payor is required to request an administrative suspension of enforcement prior to making an application to court for a suspension (*FSEA* s. 19(8)).

A support payor who wants to apply for an administrative suspension must complete a short application form (which can be found on the program's website) and provide supporting material. The type of supporting material required depends on the reason a support payor is requesting a suspension, but often includes proof of income.

The director can suspend enforcement in whole or in part (*FSEA* s. 19(1)) and can suspend for a period of up to six months (*FSEA* s. 19(2)).

There is no limit to the number of times that a support payor can apply for an administrative suspension (*FSEA* s. 19(3)), although in most cases the director will require there to be reasonable progress made on a support variation application in order to grant subsequent suspensions.

The director can place any conditions upon an administrative suspension as they consider appropriate (*FSEA* s. 19(2)).

Once a decision has been made by the director, both the support payor and the support recipient will be notified. If the support recipient does not agree with the administrative suspension, they can provide information to the director and ask that the suspension be reviewed (*FSEA* s. 20(1)). The director must notify the support payor and the support recipient in writing of the outcome of any review (*FSEA* s. 20(3)).

If an administrative suspension is made, the support recipient is entitled to a copy of any information provided by a support payor, on request.

Similarly, the support payor is entitled to a copy of any information provided by a support recipient in support of a review of an administrative suspension.

Neither party is entitled to information provided by a third party.

The director may remove contact, identifying, or sensitive information from the copy that is provided.

(*FSEA* s. 22).

An administrative suspension ends on the last day of the suspension period (or its extension) or earlier if the support payor fails to comply with a payment or any conditions imposed by the suspension order (*FSEA* s. 23(10)).

ii. Court ordered Suspensions

Section 23 of *FSEA* sets out a scheme for obtaining suspensions of enforcement by a court where a support order is registered for enforcement with the director.

The legislation sets out three levels of suspension orders. For the first two levels, the suspensions cannot exceed six months from the date of pronouncement and can include any conditions that the court considers appropriate.

A suspension order granted must specify an end date which cannot exceed six months (s. 23(5)). A suspension may be extended pursuant to *FSEA* (ss. 23(6) – (9)). A suspension expires by operation of law if a support payor fails to comply with any condition included in the suspension order (*FSEA* s. 23(10)).

There are different requirements for each level of suspension order.

An initial suspension order is granted pursuant *FSEA* section 23(4). A court may make a suspension order if the support payor establishes a valid reason for not paying the amounts required under the support order. The support payor must also establish that they have taken all reasonable steps to apply to vary the support order or provide reasons for failing to do so, or that they have made reasonable efforts to establish a payment arrangement with the director but have been unable to do so.

The support payor can apply for an order **extending the initial suspension order** for up to 6 months if, while the first suspension was in effect, the support payor applies to vary the support order or takes all reasonable steps to have a previous variation application determined (*FSEA* s. 23(6)).

If the first two levels of suspension orders have been granted the support payor can apply for a **third level suspension order** (*FSEA* s. 23(8)). To grant a third level suspension order the court must be satisfied that:

- The support payor has taken all reasonable steps to have the support order varied, or to otherwise address any default payments under the support order; and
- Serious harm would result to the support payor if enforcement of the support order by the director was not suspended for a longer period.

A third level suspension order can be made for an indefinite period. It must set out the period of the further extension, and may add or modify any conditions (*FSEA* s. 23(9)). It expires on the date set out in the suspension order, if any, or upon the support payor failing to meet any condition which is included in the suspension order (*FSEA* s. 23(10)).

Certain enforcement actions are not affected by a suspension order unless the court specifically orders otherwise, such as enforcement action taken under the *Family Orders and Agreements Enforcement Assistance Act* (Canada), the *Garnishment, Attachment and Pension Diversion Act* (Canada) or any other federal law (garnishment of federal money such as tax refunds, GST payments, etc.). See *FSEA* s. 24 for a full list of these exceptions.

> If it is intended that these actions be suspended, the suspension order must clearly state that they are included in the suspension (*FSEA* s. 24).

Standard clauses have been developed for use in suspension orders. It is important to make use of these clauses when drafting suspension orders, as they contain all of the information the director needs to give proper effect to

a suspension order. In particular, a suspension order should indicate the section and subsection of *FSEA* under which it is made and should include reference to any excluded action that is intended to be covered.

These provisions respecting court ordered suspensions of enforcement came into effect December 3, 2011, initially under *The Family Maintenance Act*, now repealed.

k) Administrative Options

In recent years, there has been increased focus placed on providing out of court solutions for Manitoba families who need to change or end support obligations. To that end, the program has been provided with some tools that enable them to administratively assist families whose support orders are registered for enforcement.

i. Child Support Enforcement Eligibility Inquiries – Adult Children

Section 29(1) of *FSEA* allows the director to conduct reviews to determine whether an adult child remains eligible to have a support order enforced on their behalf. Decisions made by the director under this section relate solely to eligibility for enforcement through the program, and do not have the effect of changing or terminating a court order.

Child support enforcement eligibility inquiries (*FSEA* s. 29(1)) are automatically commenced the year that a child turns 18, and they are typically sent out once per year after age 18. The support recipient is obligated to provide the information requested by the director (*FSEA* s. 30). Section 28 of *FSEA* also obligates a support recipient to notify the director if they believe the director is enforcing a support order for an adult child which is no longer eligible for enforcement.

If a support payor has reason to believe that enforcement of support for an adult child should cease, they may also contact the program to ask that an inquiry be initiated. A support payor who makes such a request is required to provide any information and supporting documentation that they have with respect to the adult child's circumstances (*FSEA* s. 30(3)).

To initiate an inquiry, the director sends a request to the support recipient asking that they provide information about the adult child's living situation and circumstances, including any reasons why the child may not be able to live independently such as post-secondary studies (*FSEA* ss. 29(2), 30(1) and 30(4)).

For adult children who are 24 years of age or older, there is a rebuttable presumption that the support obligation is no longer eligible for enforcement. The onus of proof that the order remains eligible for enforcement is on the support recipient (*FSEA* s. 29(4)). No eligibility inquiry may be made if the order specifies that support shall continue to be enforced beyond the age of 24. An order that states support is to be paid "until further order of the court" is not sufficient to meet this requirement (*FSEA* s. 29(3)).

If the support recipient's response does not satisfy the director that support should continue to be enforced, or if the support recipient fails to respond within the allotted time, the director must cease to enforce support for the adult child (*FSEA* s. 31(1)).

If, after ceasing enforcement, the director is provided with information which confirms that the adult child remains eligible, or has re-established eligibility for enforcement, then enforcement of support for that adult child may be resumed (*FSEA* s. 31(3)), subject to certain limits.

The support payor and support recipient are entitled to receive a copy of any information provided by the other for these purposes (*FSEA* s. 30(5)), but the director may remove any contact or other identifying information from the copy provided.

Both the support payor and the support recipient are advised of the outcome of a child support enforcement eligibility inquiry (*FSEA* s. 31(2)). A party who disagrees with a decision made under this section can apply to court for a determination as to whether an adult child is entitled to support (*FSEA* s. 31(7)).

No eligibility inquiries may be made where the court order specifies the date for support to terminate (*FSEA* s. 30(2)).

ii. Agreements to Change Support Obligations

Section 23(4) of *FSEA* creates a simplified process for changing the amount of ongoing support being enforced by the Maintenance Enforcement Program in a situation where both the support payor and support recipient agree. It permits a support payor and a support recipient to enter into an agreement to change ongoing support, even where the support was ordered by a court (*FSEA* s. 15).

> A standard form for an agreement to change support obligations is available on the program's website and must be used by parties who wish to take advantage of this administrative *option*.

Upon receipt of a completed agreement to change, the director will provide a copy of same to the court and to the child support service (*FSEA* s. 15(3)).

An agreement to change can be terminated in writing by either party, who must then provide notice of termination to the director, or may be terminated by court order. The director will then resume enforcement of the prior support order (*FSEA* s. 15(4)) and will notify the court and the child support service accordingly (*FSEA* s. 15(5)).

If a support order is assigned to the Director of Assistance, the support recipient is not permitted to enter into an agreement to change (*FSEA* s. 15(6)).

2. Enforcement of Court Orders by Parties

Obtaining a court order on behalf of a client in some cases may only be an early step in a long, and sometimes very complex, process to ensure the compliance of the other party. The methods and remedies available to enforce family law orders can vary substantially depending on the type of relief.

While there are many means of enforcement, not all will be applicable or available in every case. Factors such as whether the order is of a financial nature, or interim or final, can be important. While support orders can be enforced by the Maintenance Enforcement Program at no cost to individuals, enforcing other orders can be a lengthy and expensive process.

a) Enforcing Court Orders from Other Jurisdictions

Money judgments from other jurisdictions can be registered in Manitoba pursuant to the provisions of *The Reciprocal Enforcement of Judgments Act* and/or *The Enforcement of Canadian Judgments Act*. Neither act applies to support orders. The provisions of *The Inter-jurisdictional Support Orders Act*, discussed later in this chapter, govern foreign and extra-provincial support orders.

Section 3(6) of *The Reciprocal Enforcement of Judgments Act* imposes limitations on the orders which may be registered in Manitoba. The effect of registration is to make the foreign judgment of the same force and effect as if it had been pronounced in the court in which it is registered (s. 7). Once a foreign judgment has been registered pursuant to the Act, it may be enforced in the same manner as a Manitoba judgment.

The Enforcement of Canadian Judgments Act provides a simplified process for recognizing and enforcing civil judgments pronounced by courts in other Canadian jurisdictions. *The Enforcement of Canadian Judgments Act* also applies to certain non-monetary judgments. This is discussed in further detail in the section of the materials relating to domestic violence.

b) Examination of Judgment Debtor

Because of the numerous means available to parties in family law proceedings to obtain financial disclosure, usually a judgment creditor will have sufficient information through examinations for discovery, interrogatories, cross-examinations on affidavits, and sworn financial statements, to ascertain the assets and debts of the judgment debtor.

King's Bench Rule 60.17 (Examination in Aid of Execution), read in conjunction with Rule 34 (Procedure on Oral Examinations), sets forth the procedures for an examination of a judgment debtor:

> ***Examination of Debtor***
> *60.17(2) A creditor may examine the debtor in relation to,*
> *(a) the reason for nonpayment or non-performance of the order;*
> *(b) the debtor's income and property;*
> *(c) the debts owed to and by the debtor;*
> *(d) the disposal the debtor has made of any property either before or after the making of the order;*
> *(e) the debtor's present, past and future means to satisfy the order;*
> *(f) whether the debtor intends to obey the order or has any reason for not doing so; and*
> *(g) any other matter pertinent to the enforcement of the order.*

The judgment creditor is only entitled to examine a judgment debtor in the same proceeding once per twelve-month period, unless a court order provides otherwise (Rule 60.17(4)). A judgment debtor must be served personally with the notice of examination (Rule 60.17(7)).

The court can make a contempt order against a judgment debtor if it is apparent during the examination in aid of execution that the individual has "concealed or made away with property to defeat or defraud creditors…" (Rule 60.17(5)).

The information obtained during the discovery process prior to the pronouncement of a final order, or during an examination in aid of execution, can be of great assistance to counsel for the judgment creditor in determining the most effective means of enforcing an order for a money payment, or delivery of personal or real property.

c) Garnishment

The provisions of *The Garnishment Act* are used to enforce orders for money judgments through payments from the wages or debts accruing due to a judgment debtor (e.g., bank accounts).

Wages by definition in section 1 include "salary, commission and fees, and any other money payable by an employer to an employee in respect of work or services

performed in the course of employment…", and are net of statutory deductions, whether pursuant to Acts of the Legislature of any province or the Parliament of Canada.

i. Garnishment of Non-Support Debt

A judgment creditor can obtain a notice of garnishment from the Court of King's Bench attaching the wages of the judgment debtor, subject to the exemptions in *The Garnishment Act*.

Section 5 provides that 70% of an employee's wages are exempt from garnishment, but in no case shall the exemption be less than $250.00 per month if the debtor has no dependants or $350.00 per month if the debtor has one or more dependants. With periods of time less than a month, the exemption is calculated on a pro-rata basis.

The Garnishment Act empowers a judgment creditor to garnish "any debt due or accruing due at the time of service, from the garnishee to the defendant or judgment debtor…" (s. 4). This provision enables attachment of other money debts owing to the judgment debtor such as bank accounts, interest payments, and so on.

Either the garnishment creditor or the garnishment debtor can apply under section 8 of *The Garnishment Act* to the clerk of the court having jurisdiction over the matter to increase or decrease the applicable statutory exemption (i.e., s. 5 or s. 7). All parties affected by the application to vary the statutory exemption are notified and a hearing is held within 7 days of the receipt of the application.

The clerk of the court is specifically prohibited from increasing the exemption to more than 90% of the debtor's wages or reducing same to less than the applicable statutory exemption. Any individual affected by the altered exemption may appeal the clerk's order to a judge of the court with jurisdiction over the matter. In Winnipeg, the court in question would be the Court of King's Bench.

Except in the case of a garnishing order obtained to enforce a support order (s. 13.7) or to enforce a recognizance, restitution or a fine (s. 14.7), pursuant to section 9 the judgment debtor can also apply to the clerk of the court, without notice to the creditor, for an order to release the garnishment and provide for payment of the judgment by installments.

In this event, if warranted in the circumstances of the particular case, the clerk would order payments in certain amounts on specified dates and no further garnishment would take place. Such an order can be varied by a judge upon application by an interested party. A clerk's order terminates in the event the judgment debtor is in default of the installment payments for more than

5 days or a judgment or garnishment order, or both, issues against the debtor in another cause (s. 10).

A garnishing order against wages binds monies due or payable within one year after the garnishing order takes effect (s. 4(1)(b)).

When a garnishing order to collect monies other than wages is for a judgment debt other than support, it will only attach the monies owing to the judgment debtor at the time of service.

King's Bench Rule 60.08 outlines in detail the procedural steps to be followed by a judgment creditor to enforce an order through garnishment, and the requisite forms.

In the event that a garnishee wishes to dispute garnishment, a garnishee's statement setting out the particulars of the dispute must be filed within 7 days of service of the notice (Rule 60.08(11)). On motion by a creditor, debtor, garnishee or other interested person, the court can determine the rights and liabilities of the parties in question (Rule 60.08(12)).

Pursuant to Rule 60.08(13), where payment is not made by a garnishee in accordance with the notice of garnishment, and no garnishee's statement is filed, the creditor is entitled to an order against the garnishee for payment of the amount that was payable to the debtor by the garnishee.

ii. Garnishment of Support Debt

A support recipient or the director on behalf of a support recipient can obtain a notice of garnishment from the Court of King's Bench attaching wages or other money due to a support payor (*The Garnishment Act* s. 13.1). Some of the legislation governing garnishment for support is different than the legislation that applies to garnishment to collect other debts.

In the case of garnishment to satisfy a support obligation, the exemption allowed is $250.00 per month (s. 7), and is pro-rated for period of time of less than one month.

Pursuant to sections 13.1 and 13.5(1)(e) notices of garnishment for support payments bind the support payor's wages for the period of their employment with the named garnishee. Such garnishing orders against money other than wages remain in continuous effect. Section 13.5 of *The Garnishment Act* allows continuous garnishment of ongoing support even when the support payor is

no longer in arrears, assuming there is an ongoing obligation to make support payments.

Directors under *FSEA* are able to obtain garnishing orders for support payments for money that is held jointly by the support payor and one or more other persons (s. 13.1(2)). The garnishee is required to notify the support payor and anyone who holds money jointly with the support payor on receipt of such a garnishing order (s. 13.1(3)).

The judgment debtor or any person to whom that money is owing or payable jointly may apply to the court that issued the garnishing order for an order determining the interests in that money. In any such court application, the onus is on the person making the application to establish that the support payor's interest in the money is less than the amount garnished (s. 13.2)

In addition to wages and other money, section 14 enables pension benefits (i.e., payments out of the pension plan) subject to provincial jurisdiction to be garnished for support payments. Pension benefits by definition (s. 14(4)) include payments pursuant to accident or disability insurance policies.

Section 14.1 enables pension benefit credits which are subject to provincial jurisdiction to be garnished for support payments. Only a director can obtain a garnishing order for pension benefit credits (s. 14.1(6)).

A pension benefit credit is defined in section 1(1) of *The Pension Benefits Act* as "the value at a particular time of the pension benefits and any other benefits provided under the pension plan to which the employee has become entitled as of that time." The Maintenance Enforcement Program can therefore access the accumulated credits in a support payor's pension plan and forward same to the support recipient, even though the support payor has not started receiving the pension and they would not have access to the full amount of the credits.

On being served with such a garnishing order, a pension plan administrator must calculate the net pension benefit credit (net of any known third party entitlements, allowable costs and taxes) in accordance with a formula set out in section 31.1 of *The Pension Benefits Act*, and with the regulations. The administrator must remit the amount shown in the garnishing order within 90 days after service. Section 14.2 of *The Garnishment Act* sets out the exemptions which apply when the garnishee has notice that a third party is or might be entitled to a division of the support payor's pension benefit credit.

Section 8 of *The Garnishment Act* and King's Bench Rule 60.08 are both applicable to notices of garnishment issued by the director.

Section 12.1 of *The Garnishment Act* recognizes extra-provincial garnishing orders for support. These provisions allow attachment of money located in Manitoba where both parties live outside the province. The extra–provincial garnishing order has legal effect in Manitoba if it is for support and it was received from a support enforcement authority in a jurisdiction with which Manitoba has a reciprocal relationship (as determined by *The Inter-jurisdictional Support Orders Act*).

The role of the Manitoba Maintenance Enforcement Program respecting extra-provincial garnishing orders is limited. They serve the garnishment documents provided by the other jurisdiction on the Manitoba garnishee along with an explanatory letter. The garnishee sends payment directly to the enforcement authority in the other jurisdiction.

The extra-provincial garnishing orders are equivalent in legal effect and priority to section 4 garnishing orders. However, the amount of the support payor's exemption, as with section 13 garnishing orders, is governed by section 7 ($250.00 per month).

A support deduction notice is an enforcement tool which can be utilized exclusively by the director under *FSEA* pursuant to section 44. The rights and responsibilities under a support deduction notice are the same as under a garnishment to satisfy a support obligation issued by the director.

The main advantage of a support deduction notice is that it can be automatically generated by the computer system, which saves the program time. A further advantage is that it can be adjusted, suspended, reactivated or terminated whereas a garnishment can only be terminated. Examples of support deduction notice forms can be found below.

iii. Garnishment of Federal Money

Pursuant to the federal *Garnishment, Attachment and Pension Diversion Act*, wages of federal employees, including civil servants, senators, Members of Parliament and members of the RCMP, can be garnished for support payments and arrears, and other debts. The Act allows certain federal pensions to be garnished for support payments, but only if they are being paid out at the time of garnishment. The procedures involved are in accordance with provincial garnishment legislation and the specific requirements in the Act and regulations.

Part II of the federal *Family Orders and Agreements Enforcement Assistance Act* enables old age security, Canada Pension Plan benefits, unemployment insurance benefits, income tax refunds and GST related payments to be

garnished for support payments and arrears. Additional federal payments are added from time to time. Again, provincial garnishment legislative procedures and the specific requirements in the statute interact with one another.

3. Registration of a Judgment Against Real Property

The Judgments Act allows any judgment over $40.00 to be registered at the Land Titles Office against properties specifically named in the judgment and all other lands which are registered in the name of the debtor, as set out in the certificate of judgment (s. 2).

A judgment creditor can realize the amount set forth in the order, but must wait one year from the date of registration to commence proceedings to sell the property (s. 3). A judgment against a deceased individual can be enforced in the same manner as if the individual was still alive (s. 7).

Support orders can be registered against property in the same manner as any other money judgment (s. 9(1)). Unlike other judgments, when default in support payments occurs, the land can be ordered sold by the Court of King's Bench without waiting for the expiration of one year (s. 9(2)). Where the director registers a support order in a land titles office, the registration is deemed to be an order to which sections 9 and 21 of the *Judgments Act* apply (*FSEA* s. 57(1)).

Pursuant to sections 13(1) and (2) of *The Judgments Act*, no action can be taken under a registered judgment against:

(a) up to 160 acres of the farmland where the judgment debtor or their family resides, or has for cultivation or grazing (surplus land may be sold - s. 13(2)), including fixtures such as the house, stables, barns and fences;

(b) the solely owned residence of a non-farmer where the value is $2,500.00 or less; or

(c) the jointly owned residence of a non-farmer where the judgment debtor's interest is $1,500.00 or less.

Where the value of a home exceeds $2,500.00 or $1,500.00, as the case may be, it may be sold, but only if the net proceeds will exceed that amount and the dollar value exemption is paid to the judgment debtor. Such monies are exempt from execution (ss. 13(3) and (4)). A judgment debtor cannot sign away their rights to the section 13 exemptions (s. 8(1)). Pursuant to section 57(2) of *FSEA* these exemptions do not apply to any process issued by a court to enforce a support order.

By order of the court a judgment registered in the Land Titles Office may be vacated or postponed to enable a judgment debtor to register a mortgage or other encumbrance (s. 21).

King's Bench Rules 54 and 55 set forth in detail the steps to be followed and forms utilized in requesting and taking part in a reference to the master for the sale of land.

4. Attachment of Property

The Executions Act enables a judgment creditor to seize and sell personal property of a judgment debtor in order to satisfy a judgment. Writs of execution pursuant to the Act take priority over all interests of other parties and transactions which take place subsequent to the receipt by the sheriff or bailiff of the writ of execution, with the exception of a bona fide sale by the judgment debtor and actual and continued change of possession of the personal property, without actual notice of the writ to the purchaser (s. 5(1)). Writs of execution remain in effect for two years from the date of issuance, within which period they may be renewed (s. 2.1).

Mortgages of real or personal estate, cheques, bills of exchange, bonds, promissory notes, or other securities for money, certain RRSPs, stocks, shares, and dividends are all assets which may be seized and sold under a writ of execution (ss. 7(1) and 8).

When goods or chattels are seized in execution, the sheriff or bailiff must deliver to the owner of the goods or their agent, or leave on the premises, an inventory of the goods or chattels removed, as well as a notice in the form prescribed in the Act (see s. 16(1)). Pursuant to section 23(3), the exemptions under subsection (1) do not apply to a writ of execution issued for the enforcement of a support order as defined in *FSEA*.

King's Bench Rule 60.07 contains detailed requirements for the issuance or renewal of a writ of seizure and sale, and prescribes the forms to be used. Rule 60.12 applies where ownership of an asset is disputed, and section 37 of *The Executions Act* applies to disputes regarding seizures generally. The party filing the writ can request a report from the sheriff on execution of the writ (Rule 60.13). That party is obliged to notify the sheriff of any payments received on the judgment debt, and to withdraw the writ when the debt is satisfied in full (Rule 60.15). Motions can be made to court for clarification regarding execution of a writ (Rule 60.16).

The Executions Act contains specific requirements regarding the sale of seized goods, as to notice, distribution of proceeds, and so on (ss. 16(2)-17 and ss. 19-22). Writs issued to collect support arrears, a forfeited recognizance order, a restitution order or a fine have priority over other writs of execution (ss. 19.1 and 19.2).

Certain property exemptions are available to the judgment debtor, unless the judgment debtor is a corporation (s. 28), is removing from the province or has absconded with their family (s. 29), the debt is for support (*FSEA* s. 23(3)) or the debt is for the purchase price of the asset in question (s. 31). Among the many exempt assets specified in section 23(1) are:

- household furnishings to a value of $4,500.00;
- necessary clothing of the judgment debtor and their family;
- necessary food and fuel for the family for six months, or cash equivalent;
- animals and equipment "reasonably necessary for the proper and efficient conduct of...agricultural operations for the next ensuing 12 months";

- one motor vehicle necessary for agricultural operations;
- "tools, implements, professional books" and other occupational necessaries to a maximum total value of $7,500;
- one motor vehicle necessary for employment purposes to a value of $3,000; and
- health aids.

Where a specified asset value exceeds the exemption value, it may be sold but the proceeds are paid first to the judgment debtor to the value of the exemption, then to the judgment creditor (s. 23(2)).

5. Receivers

King's Bench Rule 60.02(1) provides: "In addition to any other method of enforcement provided by law, an order for the payment or recovery of money may be enforced by…(c) the appointment of a receiver." *The Court of King's Bench Act* allows the court to "…appoint a receiver or receiver and manager by an interlocutory order where it appears to the judge to be just or convenient to do so" and to "…include such terms as are considered just" (ss. 55(1) and (2)).

Rule 41 prescribes the means of obtaining an order appointing a receiver, which can refer conduct of all or part of the receivership to a master (see Rules 54 and 55 re: references).

The Family Support Enforcement Act also provides for cases of default in respect of a support order. It allows for the appointment of a receiver to the extent of any payments due or accruing under the support order (*FSEA* s. 58). This appointment can be made by a judge or a master, without prior application when a person is before the court for any purpose under *FSEA* (s. 58(3)).

6. Contempt

a) Legislation

King's Bench Rule 60.10 sets forth the procedural requirements for contempt proceedings to enforce an order "requiring a person to do an act, other than the payment of money…" (Rule 60.10(1)).

Proceedings are commenced by motion (Rule 60.10(1)) personally served on the responding party, unless otherwise ordered by the court (Rule 60.10(2)), supported by an affidavit (Rule 60.10(3)).

If contempt is found, Rule 60.10(5) states the judge may order that the person in contempt:

(a) be imprisoned for such period and on such terms as are just;

(b) be imprisoned if a term of the order is not complied with;

(c) pay a fine;

(d) do, or refrain from doing, an act;

(e) pay costs;

(f) comply with any other necessary order;

and may direct the sheriff to seize property of the person in contempt and collect and hold income therefrom until there is compliance.

Section 14(1) of *The Child Custody Enforcement Act* gives the court authority to punish contempt of an access or custody order (including a parenting or contact order under *The Family Law Act* or the *Divorce Act* or a corresponding order made by an extra-provincial tribunal) by a fine of up to $500.00 and/or up to six months imprisonment. An order of imprisonment "may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently" (s. 14(2)).

b) Requirements to Establish Contempt

For a thorough review of the law regarding civil contempt, see the judgment of Steel J. in *Paton v. Shymkiw* (1996), 26 R.F.L. (4th) 22, [1997] 2 W.W.R. 667, 114 Man. R. (2d) 303 (Q.B.), the review of the law by Quinn J. in *Geremia v. Harb*, 2007 CanLII 1893 (ON S.C.), *Smart v. Belland*, 2021 ONSC 1124 (CanLII) and *Gagnon v. Martyniuk*, 2019 ONSC 1518, *upheld* 2020 ONCA 708.

In order to successfully pursue an application to have a party found in contempt, the following principles are important:

i. The responding party must be aware of the provisions of the order. Proof of personal service can be necessary.

- *Genua v. Genua*, (1979), 12 R.F.L. (2d) 85 (Ont. Prov. Ct. F.Div)
- *Desilets v. Desilets*, (1975), 21 R.F.L. 297 (Man. C.A.)
- *D.K.P. v. P.J.D.*, 2003 ABQB 916
- *Bhatnager v. Canada*, [1990] 2.S.C.R. 217
- *Tilden Rent-A-Car Co. v. Rollins*, (1966), 57 W.W.R. 309 (Sask. K.B.)
- *Dew v. Dew*, 2008 MBQB 314
- *Willms v. Willms*, 2001 MBCA 123

ii. Particulars of the alleged contempt must be set forth in the motion.

- *Dare Foods (Biscuit Division) Ltd. v. Gill*, [1973] 1O.R. 637 (H.C.)
- *Singer v. Singer,* (1974), 17 R.F.L. 18 (Ont. H.C.)

iii. Contempt proceedings are *strictissimi juris*. The utmost procedural compliance is required. Motions must be properly before the court with supporting direct evidence. Hearsay evidence is not admissible.

- *Stupple v. Quinn*, (1990), 30 R.F.L. (3d) 197 (B.C.C.A.)
- *Divi v. Divi,* (1992), 106 Sask. R. 241 (K.B.)
- *Bee Chemical Co. v. Plastic Paint & Finish Specialties Ltd.*, (1980), 15 C.P.C. 288 (Ont. C.A.)
- *Dragun v. Dragun*, (1984), 30 Man. R. (2d) 126 (K.B.)
- *Crown Zellerbach Can. Ltd. v. Annand*, [1972] 5 W.W.R. 104 (B.C.S.C.)
- *Dineson v. Dineson*, (1958), 25 W.W.R. 542 (B.C.S.C.)
- *Canada Metal Co. Ltd. v. Canadian Broadcasting Corporation (No. 2)*, (1974), 48 D.L.R. (3d) 641, aff'd 65 D.L.R. (3d) 231 (Ont. C.A.)
- *Zhang v. Chau*, (2003), 229 D.L.R. (4th) 298 (Que. C.A.), leave to appeal to SCC dismissed 2003 SCC 419
- *Geremia v. Harb*, 2007 CanLII 1893 (ON S.C.)

iv. There must be willful failure to comply with the court order.

- *Nintendo of America Inc. v. 131865 Canada Inc.*, (1991), 34 C.P.C. (3d) 559 (F.C.T.D.)
- *Rawlinson v. Rawlinson*, (1986), 52 Sask. R. 191, 5 R.F.L. (3d) 166 (K.B.)
- *Shaw v. Louie,* (1988), 33 B.C.L.R. (2d) 99 (B.C.C.A.)
- *Singer v. Singer,* (1974), 17 R.F.L. 18 (Ont. H.C.), a custodial parent need not force a child to go for access ("access" is now known as "parenting time")
- *Racette v. Racette,* (1976), 27 R.F.L. 299 (Ont. H.C.) the wishes of older children may be decisive factors where access orders (now "parenting time") are not complied with
- But see the later cases of: *Hatcher v. Hatcher*, 2009 CanLII 14789 (ON S.C.); *Geremia v. Harb*, 2007 CanLII 1893 (ON S.C.),; *A.G.L. v. K.B.D.*, 2009 CanLII 14788 (ON S.C.), all of which suggest that a parent may have an obligation to encourage or require compliance with an access or custody order (now "parenting order")

v. The meaning and requirements of the order that was breached must be clear and unambiguous.

- *Bell Express Vu Ltd. Partnership v. Torroni*, 2009 ONCA 85
- *Jackson v. Honey*, 2009 BCCA 112
- *Campbell v. Campbell*, 2011 MBCA 61

vi. Contempt proceedings should be a last resort, where there are alternative means to ensure compliance.

- *Danchevsky v. Danchevsky*, [1974] 3 All E.R. 934 (C.A.)
- *Gribben v. Gribben*, (1972), 9 R.F.L. 114 (B.C.S.C.)
- *Sukhram v. Sukhram*, (1987), 6 R.F.L. (3d) 200, 49 Man. R. (2d) 39 (Q.B.)
- *V.S. v. I.M.B.*, 2021 ONCJ 705 (CanLII)
- *Dunn v. Shaw*, 2021 ONSC 8286 (CanLII)

c) Disposition on Contempt Finding

A review of principles, purposes and the objectives of sentencing are discussed in *Rogers v. Rogers*, 2008 MBQB 131(CanLII) and *Alabi v. Alabi*, 2022 ONSC 230 (CanLII).

Once the court has found a party to be in contempt, among the orders that have been pronounced are:

i. A period of incarceration:

- *Petryczka v. Petryczka*, (1973), 10 R.F.L. 321 (Ont. S.C.)
- *McMillan v. McMillan*, (1999), 44 O.R. (3d) 139
- *Hache v. Hache*, (1979), 26 N.B.R. (2d) 449 (N.B.S.C.)
- *Beattie v. Ladouceur*, [2000] O.J. No. 3233, 2000 Carswell Ont 1973
- *Burge v. Burge*, (1994) 127 Sask. R. 48, appeal dismissed (1995) 134 Sask. R. 72
- *Rogers v. Rogers*, 2008 MBQB 131 (CanLII)
- *Griffin v. Eros*, 2015 MBQB 64 (CanLII)
- *Sezin v. Sheikh*, 2021 ONCJ 637 (CanLII)

ii. A suspended sentence:

- *Burke v. Burke*, (1984), 63 N.S.R. (2d) 443 (N.S.F.C.)
- *Berg v. Berg*, 2000 SKQB 52 (CanLII)

- *Rogers v. Rogers*, 2008 MBQB 131 (CanLII)
- *Griffin v. Eros*, 2015 MBQB 64 (CanLII)
- *K.H. v. M.S.*, 2021 NBQB 263 (CanLII)

Iii. A fine:

- *Rawlinson v. Rawlinson*, (1986), 52 Sask. R. 191, 5 R.F.L. (3d) 166 (K.B.)
- *Taylor v. Taylor*, [2005] W.D.F.L. 4709, 21 R.F.L. (6th) 449
- *SNC-Lavalin Profac Inc. v. Sankar*, 2009 ONCA 97 (CanLII)
- *Griffin v. Eros*, 2015 MBQB 64 (CanLII)

iv. Order that the responding party attend a parenting course or receive counselling and/or that the children receive therapeutic counselling:

- *Paton v. Shymkiw* (1996), 26 R.F.L. (4th) 22, [1997] 2 W.W.R. 667, 114 Man. R. (2d) 303 (Q.B.), *S.R. v. M.R.*, [2002] O.J. No. 1519
- *Gendreau v. Campbell*, 2005 MBQB 224, 20 R.F.L. (6th) 270
- *V.S. v. I.M.B.*, 2021 ONCJ 705 (CanLII) (and temporary change of parenting)

v. A stay of any ongoing litigation:

- *Cottick v. Cottick* (1990), 64 D.L.R. (4th) 374 (Man. C.A.)
- *Dickie v. Dickie*, 2007 SCC 8; aff'g the dissent by Laskin J.A. (2006), 78 O.R. (3d) 1 (cited in *Morrison v. Charney*, 2007 MBQB 47)

vi. Re: Breach of access orders (now "parenting time"):

In an annotation to the case of *Rutherford v. Rutherford* (1987), 4 R.F.L. (3d) 457 (B.C.S.C.) at 458, the late Professor James G. McLeod, of the Faculty of Law at the University of Western Ontario, made the following comments about breaches of access orders:

> *In reality, there is little the court can do to assist the access parent in the face of interference with access by the custodial parent. The judicial process, overall, is too slow and its tools too blunt.*
>
> *The denial of access is treated as contempt of court. The normal means of punishment are censure, fine or imprisonment. None of these directly provide access. Fines simply reduce the family income of the lower income family or become a licence to break the law for those who can afford it. Courts are extremely wary of putting a custodial parent in jail, having regard to the best interest of the child. In any event, jailing will only increase the animosity between the spouses and is likely to further erode*

the access parent's relationship with the child when the child finds out, which is likely to happen.

In many cases, like Rutherford, the courts have indicated that if interference with access continues, they may reverse custody on the basis that it is in the best interest of the child to know and have contact with both parents; such threats by the courts ring hollow. The more likely scenario is that access will be terminated if it proves sufficiently unsettling to the child, even where the problem may be laid squarely at the feet of the custodial parent.

Nonetheless, the following sanctions have been imposed:

1. Compensatory access periods (now "parenting time"):
    - *MacNaughton v. MacNaughton*, 2005 MBQB 216, [2005] W.D.F.L. 4678, [2005] W.D.F.L. 4708, 197 Man. R. (2d) 99
    - *Yunyk v. Judd*, (1986), 5 R.F.L. (3d) 206 (Man. Q.B.)
    - *Amaral v. Myke*, (1992), 42 R.F.L. (3d) 322 (Ont. U.F.C.)
    - *Remus v. Remus*, [2004] W.D.F.L. 605, [2004] O.T.C. 812
    - *Olema v. Coudougen*, 2021 ONCJ 67 (CanLII)
2. Supervised access (now "parenting time"):
    - *Rutherford v. Rutherford* (1986), 4 R.F.L. (3d) 457 (B.C.S.C.)
3. Suspension of support pending resumption of access (now "parenting time"):
    - *Brownell v. Brownell* (1987), 9 R.F.L. (3d) 31 (N.B.K.B. Fam. Div.)
    - *Casement v. Casement* (1987), 9 R.F.L. (3d) 169 (Alta. K.B.)
    - *Fernquist v. Garland*, [1999] 12 W.W.R. 25, 184 Sask. R. 68, 12 W.W.R. 25, confirmed on appeal with variation at 2000 SKCA 43, [2000] 6 W.W.R. 207, 189 Sask. R. 293, 216 W.A.C. 293, 6 R.F.L. (5th) 146, 6 W.W.R. 207
    - *Harrison v. Harrison* (1987), 10 R.F.L. (3d) 1 (Man. K.B.)
    - *Lee v. Lee* (1990), 29 R.F.L. (3d) 417 (B.C.C.A.)

But also see:

- *Turecki v. Turecki* (1989), 57 D.L.R. (4th) 266 (B.C.C.A.)
- *Wright v. Wright* (1973), 40 D.L.R. (3d) 321 (Ont.C.A.)

4. Variation of custody and access rights (now "parenting time"):

    - *Einstoss v. Starkman*, [2002] O.J. No. 4889, 2002 CarswellOnt 4435, *Affm'd by Ont.C.A.* at 2003 CarswellOnt 3234, 124 A.C.W.S. (3d) 1078
    - *Steinebach v. Strobel*, 2002 BCSC 440 (CanLII)
    - *J.E.M. v. L.J.M.,* 2006 BCSC 579, [2006] B.C.W.L.D. 2925, [2006] B.C.W.L.D. 2954, [2006] W.D.F.L. 1838, [2006] W.D.F.L. 1910
    - *K.H. v. M.S.*, 2021 NBQB 263 (CanLII)
    - *JLZ v. CMZ*, 2021 ABCA 200 (CanLII)
    - The case of *M.J. v. T.J.*, 2022 PESC 6 (CanLII) dealt with a contempt motion for failure to provide access to dogs as had been agreed. Two dogs were ordered to be turned over to the husband.

vii. Reimbursement of expenses incurred due to breach and costs:

- *Paton v. Shymkiw* (1996), 26 R.F.L. (4th) 22, [1997] 2 W.W.R. 667, 114 Man. R. (2d) 303 (Q.B.), *S.R. v. M.R.*, [2002] O.J. No. 1519
- *Einstoss v. Starkman*, 2003 CarswellOnt 100, 37 R.F.L. (5th) 77
- *1307347 Ontario Inc. v. 1243058 Ontario Inc*, 2001 CarswellOnt 492
- *Partridge v. Partridge*, 2007 MBQB 80 (CanLII)

7. Custody/Parenting

a) Criminal Sanctions

On January 4, 1983 specific provisions in the *Criminal Code of Canada* came into effect which made parental child abductions a criminal offence. In *R. v. Dawson*, [1996] 3 S.C.R. 783, 111 C.C.C. (3d) 1, 2 C.R. (5th) 121, L'Heureux-Dubé J., explained the impact of the child abduction provisions in the *Criminal Code* as follows:

> *...although the parties and the courts below speak of ss. 281 to 283 as provisions enacted for the protection of parental "rights", their ultimate purpose is the protection of children. In Chartrand, supra, we described this purpose in this way (at p. 880):*
>
> > *...to secure the right and ability of parents (guardians, etc.) to exercise control over their children...for the protection of those children, and at the same time to prevent the risk of harm to children by diminishing their vulnerability.*
>
> *This description was given in the context of section 281; however, I believe that section 283 has the same broad purpose. Parliament has decided that the protection of children rests in ensuring that people entitled to exercise care and*

control over children are able to do so. Accordingly, by enacting sections 281 to 283, Parliament has criminalized conduct - whether by a stranger or a parent, and whether or not there is a custody order in force - that intentionally interferes with a parent's lawful exercise of care and control over the children.

The pertinent provisions of the *Criminal Code*, as amended, read as follows:

> ***Abduction in contravention of custody or parenting order***
> *282(1) Everyone who, being the parent, guardian or person having the lawful care or charge of a child under the age of 14 years, takes, entices away, conceals, detains, receives or harbours that child, in contravention of a custody order or a parenting order made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that child, of the possession of that child is guilty of*
>
> *(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or*
>
> *(b) an offence punishable on summary conviction.*
>
> ***If no belief in validity of custody order or parenting order***
> *(2) If a count charges an offence under subsection (1) and the offence is not proven only because the accused did not believe that there was a valid custody order or parenting order but the evidence does prove an offence under section 283, the accused may be convicted of an offence under that section.*
>
> ***Abduction***
> *283(1) Everyone who, being the parent, guardian or person having the lawful care or charge of a child under the age of 14 years, takes, entices away, conceals, detains, receives or harbours that child, whether or not there is an order referred to in subsection 282(1) in respect of the child , with intent to deprive a parent, guardian or any other person who has the lawful care or charge of that child, of the possession of that child, is guilty of*
>
> *(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or*
>
> *(b) an offence punishable on summary conviction.*
>
> ***Consent required***
> *(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General or counsel instructed by him for that purpose.*
>
> ***Defence***
> *284. No one shall be found guilty of an offence under sections 281 to 283 if he establishes that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was done with the consent of the parent,*

guardian or other person having the lawful possession, care or charge of that young person.

Defence

285. No one shall be found guilty of an offence under sections 280 to 283 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm or if the person charged with the offence was escaping from danger of imminent harm.

No Defence

286. In proceedings in respect of an offence under sections 280 to 283, it is not a defence to any charge that a young person consented to or suggested any conduct of the accused.

Sections 282 and 283 of the *Criminal Code* apply to parental child abduction situations where there is a custody or parenting order made by a Canadian court, and where there is no such custody or parenting order, respectively.

Section 282 applies to parenting orders and orders of sole and joint custody. There is no necessity for a Canadian custody or parenting order to be registered pursuant to extra-provincial custody enforcement legislation in the province in which it was actually violated before charges can be laid (indeed a registration process is usually not available). Charges can only be laid in a province where an offence has been committed. Because of the continuing nature of the offence, however, there may be jurisdiction in more than one province.

Section 283 of the *Criminal Code* applies in situations where there is not a valid custody or parenting order from a Canadian court. It therefore covers situations where:

(a) both parents continue to have joint custody or joint parental rights respecting their child by virtue of provincial legislation (e.g., s. 39(1) of *The Family Maintenance Act* (now repealed) or s. 36 of *The Family Law Act)* and one parent, without the consent of the other, takes the child from the other parent with the intention of depriving him or her of parental rights;

(b) one parent has custody or parental rights respecting their child by virtue of provincial legislation (e.g., s. 39(1) of *The Family Maintenance Act* (now repealed) or s. 36 of *The Family Law Act)* and one parent, without the consent of the other, takes the child from the other parent with the intention of depriving him or her of parental rights;

(c) parents have been separated and there is an agreement that the child will reside with one of the parents, and a parent takes the child from the care of the de facto parent with parental responsibility with an intention to deprive him or her of parental rights;

(d) there is a foreign custody or parenting order in place which has been violated in Canada; or

(e) an offence under subsection 282(1) is not made out because the abducting parent did not believe there was a valid custody or parenting order.

Because the issue of parental child abductions is of such great importance, in 1998 Federal/Provincial/Territorial Ministers Responsible for Justice unanimously adopted guidelines to improve the handling of cases involving inter-provincial parental child abduction.

The *Model Charging Guidelines* are intended to assist in the application of sections 282 and 283 of the *Criminal Code*. The guidelines provide (in part):

A. Under section 282(1) of the *Criminal Code* charges may be laid where:

1. A child under the age of 14 is involved.

2. A court order establishing "custody rights" granted in Canada is not being complied with.

Note:

(a) Persons can have different types of custody rights under custody orders. Orders can contain different types of terminology. For example, an order may grant a person sole custody, joint custody, periods of care and control [with custody remaining joint between the parents by virtue of provincial legislation] or guardianship. These are all types of custody rights.

(b) It is not necessary to register an order of custody granted from one province before criminal charges can be laid in another. The investigative agency should, however, consider making inquiries to ascertain whether the custody order is the most current custody order, that the order is still in effect and may request a copy of the order. This can be done through direct inquiries of the complainant, a call to the registrar/court staff from where the order was issued or otherwise.

3. (a) The alleged abductor is a parent, guardian (defined in s. 280(2)) or other person having the lawful right to care for or charge of a child.

(b) The alleged abductor takes, entices away, conceals, detains, receives or harbours the child.

(c) The alleged abductor is in contravention of the custody provisions of a Canadian custody order [note there is a distinction between custody and access provision terms].

4. (a) The taking, etc. was done by the alleged abductor with the intent to deprive a parent, guardian or person having lawful care or charge of the child of possession of the child contrary to a court order.

(b) A parent, guardian or other person having the lawful care or charge of the child did not consent to the taking, etc. of the child by the alleged abductor. [Note: the alleged abductor's consent is not sufficient to avoid a charge.]

(c) There is no reason to believe that the alleged abductor did not know of the existence or terms of the custody order.

B. Under section 283(1) of the *Criminal Code* charges may be laid where:

1. A child under 14 is involved.

2. (a) A Canadian custody order exists but the alleged abductor did not believe or know there was a valid order. (See s. 282(2)).

(b) No Canadian custody order exists, but parental rights of custody under statute or common law exist (for example, provincial family law legislation may indicate that parents have joint custody of their children unless the court orders otherwise).

(c) No Canadian custody order exists, but custody rights under a separation agreement or a foreign order have been violated.

(d) (i) There has been a permanent or indefinite denial of a right of access pursuant to an agreement which provides the access parent with a significant degree of care and control over a child with or without a provision permitting the child's removal from the jurisdiction.*

(ii) There has been a permanent or indefinite denial of a right of access pursuant to a court order[1] which provides the access parent with a significant degree of care and control over a child.[2] [Note: Various factors may indicate "significant care and control" exists; one factor may be a court order with a non-removal clause.]

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1 Custody and access rights and parental rights may be found in various court orders, including those that precede or supplement custody, access and parenting orders such as those dealing with non-removal.

2 For further clarification on what "significant care and control" means, law enforcement officials can consult a Crown Attorney. Where the rights of the access parent are not so extensive, resort should be made to civil remedies which exist in the jurisdiction.

3. (a) The alleged abductor is a parent, guardian (defined in s. 280(2)) or other person having the lawful right to care for, or lawful charge of, the child.

   (b) The alleged abductor does so with the intent to deprive the other parent, guardian or person of possession of that child.

4. (a) The taking, enticing, etc. was done by the alleged abductor with the intent to deprive a parent, guardian or person having care or charge of the child of the possession of the child. [Note: the non-abducting parent does not need to be in or have been in physical control over the child at the time of the alleged abduction. The notion of possession includes actual possession or a right to possession. This refers to the right of a parent to exercise control over a child. See *R. v. Dawson, supra*].

   (b) A parent, guardian or other person having the lawful care or charge of the child did not consent to the taking, enticing or detention of the child by the alleged abductor. [Note: the alleged abductor's own consent is not sufficient to avoid a charge.]

5. Consent of the Attorney General, or counsel instructed by them for that purpose, is obtained.

Law enforcement officers throughout Manitoba have long had ready access (including after-hours telephone access) to legal counsel with the Family Law Section of the Legal Services Branch of Manitoba Justice in order to deal promptly with domestic and international parental child abduction situations.

In Winnipeg, if a parent fears a parental child abduction may have taken place, the Winnipeg Police Service Communications Centre should be contacted as soon as possible (phone: 204-986-6222 or 911 in an emergency). Police officers will investigate the complaint.

The Winnipeg Police Service Missing Persons Unit (phone: 204-986-6250) will provide assistance and advice to the investigating officers and oversee and direct more complex investigations. In areas outside of the City of Winnipeg, complaints should be addressed to the local police department or the RCMP detachment.

Law enforcement officers will take a report and investigate the incident, as necessary. Investigating officers will then contact one of the Crown counsel with the Family Law Section of the Legal Services Branch of Manitoba Justice, to discuss the case and obtain a Crown opinion and Crown consent for charges, if appropriate. In an emergency situation where Family Law Section Crown counsel are unavailable, a number of Prosecutions officials are authorized to provide the necessary consent to charge an abducting parent.

The primary goal for the left-behind parent in most abduction cases is to have the child returned. Disputes about custody or parenting arrangements should be resolved through the civil courts in the jurisdiction of the child's habitual residence. If this can be accomplished without a criminal charge, so much the better.

Criminal charges can be of great assistance in effecting a child's return, because a cross-Canada warrant can result in the quick apprehension of an abducting parent and halt an abduction in progress. This is particularly so where there is knowledge of the abducting parent's whereabouts or a parent is in the process of leaving the province or country. However, the laying of a criminal charge is not a guarantee that the child will be returned from another jurisdiction.

Criminal charges may not be of assistance in international abduction situations where a child has left Canada, and in fact may even hinder attempts to have the child returned to Manitoba if a request for return is made pursuant to the Hague *Convention on the Civil Aspects of International Child Abduction* (discussed subsequently).

There are a number of signatory states to the Convention which take a dim view of the use of criminal charges in parental child abduction situations and take same into consideration in determining requests for return. There are a limited number of countries from which individuals can be extradited when charged with parental child abduction. Nationals of many civil law countries cannot be extradited to face charges even if they have lived in Canada and clearly committed an offence here.

In most international abduction cases, a criminal charge will not help effect the child's return to Canada. The experience of some jurisdictions is that the existence of a criminal charge can, however, be useful in obtaining assistance in locating a missing child through Interpol in some countries.

Another problem that exists with criminal charges is that there is no provision in the *Criminal Code* for the return of the children. Usually, one or more of the following options is used to ensure that the children are returned to the care of the custodial parent:

- the custodial parent may attempt to attend before the warrant is actually executed;
- the custodial parent may designate a person in the area where the abducting parent is to care for the child and arrange for their return;
- the police may be given authority by the custodial parent to take charge of the child and return them by whatever means of transportation is agreed; or

- local child protection authorities may be asked to apprehend the child on a short- term basis until arrangements can be made for the child to return to the custodial parent.

The Federal Government's National Centre for Missing Persons and Unidentified Remains (NCMPUR) includes National Missing Children Operations (formerly known as National Missing Children Services) and coordinates a travel/reunification program that can provide free return transportation for abducted children and custodial parents where financial assistance is required and program criteria are met.

Requests for transportation assistance must be made by the investigating police department or the Central Authority for purposes of the Hague *Convention on the Civil Aspects of International Child Abduction* (discussed subsequently).

Information on NCMPUR can be obtained at: *www.canadasmissing.ca*.

Information about the travel/reunification program, including eligibility criteria, is available at: *www.canadasmissing.ca/services*.

Another useful resource is *www.missingkids.ca*, referred to later under Supportive Services.

b) Civil Remedies

i. Disclosure

Learning the whereabouts of an abducted child is of crucial importance to enforcement, whether criminal charges or civil measures are being pursued. If police officers are involved, their investigation, whether or not charges are laid, can be of great assistance in ascertaining the child's whereabouts. When a parent is proceeding with civil remedies, different steps may need to be taken, such as hiring a private investigator to locate the child.

The Child Custody Enforcement Act can be utilized to try to locate a missing child, as well as to enforce provisions of custody and access orders, which are defined to include contact and parenting orders under *The Family Law Act* and the *Divorce Act* as well as corresponding orders made by an extra-provincial tribunal.

Section 9 of the Act provides for orders to locate and apprehend a child in certain circumstances:

Order to locate and take child

9(1) Where a court is satisfied upon application that there are reasonable and probable grounds for believing,

- *(a) that any person is unlawfully withholding a child from a person entitled to custody of or access to the child;*
- *(b) that a person who is prohibited by court order or separation agreement from removing a child from Manitoba proposes to remove the child or have the child removed from Manitoba; or*
- *(c) that a person who is entitled to access to a child proposes to remove the child or to have the child removed from Manitoba and that the child is not likely to return,*

the court by order may

- *(d) authorize the applicant or someone on his behalf to apprehend the child for the purpose of giving effect to the rights of the applicant to custody or access, as the case may be; or*
- *(e) direct a peace officer, a police force, or an agency or all three, having jurisdiction in any area where it appears to the court that the child may be, to locate, apprehend and deliver the child to the person named in the order; or*
- *(f) do both (d) and (e).*

Section 1 of the Act defines an agency (referred to in s. 9(1)(e) above) as "an agency as defined in *The Child and Family Services Act.*"

Because the court can grant rights and impose obligations on third parties pursuant to section 9(1), these parties (e.g., peace officers, police departments and child protection agencies) should be given notice of an application for relief which could affect them, if granted. Notice can act as a safeguard in cases where, if the court had information in the hands of the peace officers, police departments and/or child protection agencies, there might be concerns about granting an order requiring the apprehension of a child and their delivery to the applicant.

It should be noted that section 9(1)(a) makes no reference to custody or access rights pursuant to a court order, and the section later provides:

Where application may be made

9(7) An application under subsection (1) may be made in an application for custody or access under The Family Law Act or under this Act at any time.

Pursuant to section 13 of the Act, the court can order individuals or public bodies to provide the court with information regarding the whereabouts of children in order to enforce a custody or access order.

Information as to address

13(1) Where, upon application to a court, it appears to the court that, for the purpose of enforcing a custody order, the person in whose favour the order is made has need to learn or confirm the whereabouts of the person subject to the order, the court may order any person or public body to provide the court with such particulars of the address of the person subject to the order as are contained in the records in the custody of the person or body or within the knowledge of an individual, and the person, body or individual shall give the Court such particulars and the Court may then give the particulars to such person or persons as the Court considers appropriate.

Service of application

13(1.1) An application under subsection (1) must be served on the person or public body that holds the record sought by the applicant

(a) personally; or

(b) by sending it by regular mail, in which case it is deemed to be served on the fifth day after the day it is mailed.

Exception

13(2) A court shall not make an order on an application under subsection (1) where it appears to the court that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has custody of a child, rather than to learn or confirm the whereabouts of the person subject to a custody order so as to enforce the custody order.

Assessing risk of domestic violence or stalking

13(2.1) Before giving the particulars of a person's address to an applicant or other person under subsection (1), the court shall consider whether giving the particulars of a person's address could expose that person to a risk of domestic violence or stalking.

Compliance with order

13(3) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.

Crown bound

13(4) This section binds the Crown in right of Manitoba.

The requirement in section 13(2.1) ensures that any abuse or domestic violence factors of which the person or public body is aware can be drawn to the court's attention and must be taken into consideration by the court in determining whether the information as to the person's location should be given to the applicant.

In addition to *The Child Custody Enforcement Act*, pursuant to section 47 of *The Family Law Act* the court can order it be provided with information as to the whereabouts of a person to enable an application to be brought for a parenting or contact order:

Order to locate and apprehend a child

47(1) On application for a parenting order or a contact order under this Part or a comparable order under the Divorce Act (Canada), the court may make one or both of the following orders:

(a) authorizing the applicant or someone on their behalf to locate and apprehend the child, in which case section 9 of The Child Custody Enforcement Act applies, with necessary changes;

(b) requiring a person, the government or other entity to give the court the address of the respondent or another person if it is contained in the records in the possession or control of the person, the government or other entity, in which case section 13 of The Child Custody Enforcement Act applies, with necessary changes.

Notice

47(2) An application under clause (1)(b) must be served on the person, the government or other entity from whom the address is sought.

As is the case with section 13(1) of *The Child Custody Enforcement Act*, section 47(1) of *The Family Law Act* requires that the locate information be provided to the court, not the applicant. This again enables any abuse or domestic violence factors or other concerns of which the person or public body is aware to be drawn to the court's attention and must be taken into consideration by the court in determining whether information as to the person's location should be given to the applicant.

Part I of the federal *Family Orders and Agreements Enforcement Assistance Act*, S.C. 1986, c.5 provides a mechanism to obtain an order through an *ex parte* court application that certain federal data banks[3] be searched to obtain the address of an abducting parent, the child or the employer of the parent or child. The statute requires the applicant to have first pursued all possible avenues pursuant to provincial legislation to obtain information.

[3] Those federal data banks specified in s. 3 of the Act's *Release of Information for Family Orders and Agreements Enforcement Regulations,* SOR/87-315.

ii. *The Child Custody Enforcement Act*

Manitoba's *Child Custody Enforcement Act* (like other provincial/territorial child custody enforcement legislation) provides a variety of means to ensure compliance with custody and access orders, which includes parenting orders. The provisions of the Act apply to orders granted by courts in Manitoba or courts or tribunals outside Manitoba with jurisdiction to grant custody orders.

Section 2 clearly states the purposes of the legislation:

(a) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one province, territory or state in respect of the custody of the same child ought to be avoided;

(b) to discourage the abduction of children as an alternative to the determination of custody rights by due process;

(c) to provide for the more effective enforcement of custody orders; and,

(d) to provide for the recognition and enforcement of custody and access orders made outside Manitoba.

By definition, the term "custody order" means:

(a) an order or that part of an order that grants custody of a child, or the effect of which is to grant custody of a child, to any person, including provisions, if any, granting another person a right of access or visitation to the child, and

(b) a parenting order under The Family Law Act or the Divorce Act (Canada) or a corresponding order made by an extra-provincial tribunal.

"Access" is defined to include contact with a child.

Where an extra-provincial custody order exists, a Manitoba court "…shall enforce, and may make such orders as it considers necessary to give effect to…" the order "…unless it is satisfied on evidence adduced that the child affected by the custody order did not, at the time the custody order was made, have a real and substantial connection with the province, state or country in which the custody order was made." (s. 3)

The court is empowered to substitute its own custody order if the child does not currently have a real and substantial connection with the jurisdiction which pronounced the original order and has such a connection with Manitoba, all the parties are habitually resident in Manitoba (s. 4(1)) or the child would

suffer serious harm if returned to the custodial person named in the order (s. 5).

In *Lavitch v. Lavitch* (1985), 49 R.F.L. (2d) 225, the Honourable Mr. Justice Twaddle, writing for the Manitoba Court of Appeal, after noting the variation in wording in the Act and the Hague *Convention on the Civil Aspects of International Child Abduction* regarding the exceptions allowed in the enforcement of custody orders, indicated at 233-234:

> *Ordinarily the order of custody of an extra-provincial tribunal with proper authority and recognized jurisdiction will be respected and enforced by a court in Manitoba. Only where there is a bona fide allegation of risk of harm to children or objection by a child of an age of discretion or other condition precedent contained in the Act or Convention will a Manitoba court consider the objection to enforcement and only if it considers that objection well founded will it exercise its own discretion as to the proper disposition of a custody application. The law of Manitoba expects no greater consideration of orders made by its courts than this.*

Pursuant to *The Child Custody Enforcement Act*, a Manitoba court can:

(a) after recognizing a foreign custody order, pronounce such orders as are necessary to give effect to same under The Child and Family Services Act and The Family Maintenance Act (s. 7). (Note that effective July 1, 2023 reference in this section to these Acts has been amended to The Family Law Act);

(b) pronounce non-molestation orders and require the posting of a bond, or signing of recognizances (s. 8);

(c) with or without notice, authorize a person to apprehend the child in question to give effect to the court order (s. 9(1)(d) and (2));

(d) with or without notice, direct law enforcement officers or agencies to "locate, apprehend and deliver the child to the person named in the order" (s. 9(1)(e)) and in order to do so, to "...enter and search any place where he has reasonable and probable grounds for believing that the child may..." (s. 9(4)); and/or

(e) to prevent the removal of a child or secure the return of a child, order
- *(i) transfer of property to a trustee,*
- *(ii) maintenance payments be made to a trustee,*
- *(iii) the posting of a bond, with or without sureties, and/or*
- *(iv) delivery of the person's or the child's passport and other travel documents (s. 10(1)-(3)).*

It is important to remember that orders made pursuant to extra-provincial custody order enforcement legislation, with the exception of a new custody

order, are only binding in the province in which they are granted (see *Murphy v. Jordan* (1996), 26 R.F.L. (4th) 82 (B.C.S.C.)). If, therefore, a child had been abducted to Saskatchewan, the application to enforce the order would have to be made in Saskatchewan.

> Our Act is utilized where children are abducted to Manitoba or are in the process of being abducted from Manitoba. The Act can be invoked without the existence of formal reciprocal arrangements with the other jurisdiction unlike legislation to enforce support orders from another province or state.

Where there are jurisdiction issues involving competing custody orders in different jurisdictions, judges may utilize direct judicial communication to resolve issues expeditiously, through the Canadian Network of Contact Judges. See *Giesbrecht v. Giesbrecht* 2013 MBQB 115 or *Cohen v. Cohen,* 2013 MBQB 292, for examples of how direct judicial communication can be used to resolve jurisdiction issues.

> The Recommended Practices for Court-to-Court Judicial Communication are appended to *Cohen v. Cohen*, a decision of Diamond, J.

Other non-judicial resources may be considered for dealing with custody enforcement issues such as mediation or the services of a parenting coordinator.

In *Thomson v. Thomson*, [1994] 3 S.C.R. 551, 6 R.F.L. (4th) 290, the Supreme Court of Canada (SCC) indicated relief must be sought under either provincial custody enforcement legislation or the Convention - the two applications cannot proceed together.

iii. The Hague Convention on the Civil Aspects of International Child Abduction

The Hague *Convention on the Civil Aspects of International Child Abduction* (often referred to as the "Hague Abduction Convention") was concluded by 29 governments in its draft form on October 25th, 1980 and came into force December 1st, 1983. Canada was one of the original signatories of the Convention.

Information regarding this Convention, and other Conventions concluded by The Hague Conference on Private International Law may be obtained on the Conference's *website*.

By virtue of section 17(2) of *The Child Custody Enforcement Act,* the Hague Abduction Convention, which appears in its entirety as a schedule to the Act, is law in the Province of Manitoba.

The Convention's primary purpose of securing the return of abducted children is set forth in its preamble:

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect…

and in Article 1:

The objects of the present Convention are

(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

As is apparent from its preamble, the Hague Abduction Convention is based upon the principle that the best interests of children are met by protecting them from abduction and by securing respect for custody rights. The Convention is not, however, concerned with the merits of competing custody claims.

Although it does not deal with issues of jurisdiction directly, as stated in paragraph 19 of the official Explanatory Report prepared by Professor Elisa Pérez-Vera,[4] "…the Convention rests implicitly upon the principle that any debate on the merits of the question, i.e., of custody rights, should take place before the competent authorities in the State where the child had its habitual residence prior to its removal; this applies as much to a removal which

4 Hague Conference on Private International Law, Tirage à part des Actes et documents de la Quatorzième session (1980), Tome III.

occurred prior to any decision on custody being taken...as to a removal in breach of a pre-existing custody decision."

The Convention provides a mechanism to effect the return of abducted children, in all but extraordinary cases, to the state of their habitual residence for custody issues to be resolved in that jurisdiction.

The Hague Abduction Convention governs international abduction situations, not those of an inter-provincial nature. As it applies to "any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights" (Article 4), the date of the breach can be of crucial importance as the Convention has entered into force in various states on different dates.

The Convention only applies to children under 16 years of age (Article 4). As *The Child Custody Enforcement Act* applies to children under the age of 18 years, where a foreign custody order exists, an application under the Act may be more appropriate in some cases.

Each contracting state designates a Central Authority to discharge obligations under the Convention. All Central Authorities are required to "co-operate with each other and promote co-operation amongst the competent authorities in their respective State to secure the prompt return of children" (Article 7).

In Canada there is a federal Central Authority, as well as a Central Authority in every province and territory. In Manitoba the Central Authority is the Family Law Section of the Legal Services Branch of Manitoba Justice, 1230-405 Broadway, Winnipeg, R3C 3L6 (phone: 204-945-0268, fax: 204-948-2004).

> The Family Law Section can assist with, and will transmit, the necessary documentation to the Central Authority in the contracting state to request the return of a child under the Convention.

Removal or retention of a child is considered wrongful under Article 3 of the Convention if:

(a) it is in breach of rights of custody attributed to a person, an institution or any other body either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

Article 5(a) of the Hague Abduction Convention provides that "'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence." Pursuant to Article 3 "rights of custody…may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of the State."

Where no order exists, provincial/territorial legislation prescribes whether one or both parents have rights of custody (i.e., rights that arise by operation of law). Although these rights are subject to court orders, they may or may not be affected by a written agreement. (Manitoba's *Family Law Act*, for example, provides that statutory rights of parental responsibility under the Act are subject to a contrary order of the court. Agreements, written or otherwise, do not affect these statutory custody rights.)

Clarity in orders is extremely important in Hague Abduction Convention cases. The Convention's definition of "rights of custody" can be extremely important given that orders and agreements, internationally and within Canada, can and do use a wide range of terms other than "custody" to describe parenting arrangements.

As it relates to Article 3(a), the Supreme Court of Canada case *Office of the Children's Lawyer v. Balev* (*"Balev"*), 2018 SCC 16, considered the issue of determining the habitual residence of a child. In doing so the Supreme Court rejected both a parental intention approach and an alternative child-centered approach. Instead, the court adopted a "hybrid model" that combined parental intention and the circumstances of the child.

The Ontario Court of Appeal case of *Ludwig v. Ludwig*, 2019 ONCA 680, summarized the approach in *Balev* at paragraphs 30 – 31 as follows:

> *The aim of the hybrid approach is to determine the "focal point of the child's life – the family and social environment in which its life has developed – immediately prior to the removal or retention": at para. 43. To determine the focal point of the child's life, the majority required judges to consider the following three kinds of links and circumstances:*
> *1) The child's links to and circumstances in country A;*
> *2) The circumstances of the child's move from country A to country B; and,*
> *3) The child's links to and circumstances in country B.*
>
> *The majority went on to outline a number of relevant factors courts may consider in assessing these three kinds of links and circumstances. Considerations include the child's nationality and "the duration, regularity, conditions and reasons for the [child's] stay," along with the circumstances of the parents and parental intention.*

Where it has been established pursuant to Article 3 that a child was wrongfully removed or retained, and less than one year has elapsed from the removal or retention to the date of the commencement of court proceedings, Article 12 states "the authority concerned shall order the return of the child forthwith."

Where more than one year has elapsed the Article states "the judicial or administrative authority…shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment."

Because of the different requirement for a judicial authority to return a child depending on the time elapsed since the wrongful retention or removal, quick action is imperative. Inquiries are not to be made into the merits of a custody application by a court unless there has been a determination the child is not to be returned (Article 16).

Despite the provisions of Article 12, where it can be established that:

(a) the applicant parent was not exercising custody rights or consented or subsequently acquiesced in the removal/retention; or

(b) returning the child would expose him or her to "physical or psychological harm" or "place the child in an intolerable situation"; or

(c) the child "objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views",

the contracting state does not have to order the return of the child (Article 13). Courts around the world, including the Supreme Court of Canada in *Thomson v. Thomson*, *supra*, have interpreted the Article 13(b) "grave risk of harm" test very narrowly.

The child's return can also be refused if return "would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms" (Article 20).

Article 11 of the Hague Convention requires the court to "act expeditiously in proceedings for the return of children." The importance of prompt action has been stressed at many international meetings examining the operation of the Convention.

In June of 2007 the Manitoba Court of Queen's Bench approved a procedural protocol for the handling of return applications under the Hague Convention.

The protocol and Notice to the Profession are accessible on the Manitoba Courts' website in *English* or *French*.

Rule 70 of the *Court of King's Bench Rules* applies to applications under the Hague Convention and should be read carefully along with the procedural protocol.

On January 26, 1994 the Supreme Court of Canada considered and granted a Scottish father's application pursuant to the Convention for the return of a toddler brought to Manitoba by his mother in late 1992 (*Thomson v. Thomson*, *supra*). Although the Supreme Court of Canada acknowledged that removal of a child in contravention of a non-removal clause in an interim order which granted the father access constituted wrongful removal within the meaning of the Convention, it also indicated that a prohibition against removal in a permanent custody order would raise different issues.

The Manitoba Court of Queen's Bench (Family Division) and Court of Appeal decisions in the case should also be noted (reported at *48 R.F.L. (3d) 308* (Man.Q.B.), and *50 R.F.L. (3d) 145* (Man.C.A.); 88 Man.R. (2d) 204 (C.A.)).

In both *Thomson v. Thomson,* and the subsequent decision in Droit de la famille-1763, [1996] 2 S.C.R. 108, 134 D.L.R. (4th) 481, 19 R.F.L. (4th) 341, the Supreme Court of Canada indicated custody orders pronounced after the removal of a child ("chasing orders") cannot ground a finding of wrongful retention under the Hague Abduction Convention.

Chasing orders (post-removal custody orders altering the status quo at the time of removal/retention, as opposed to Article 15 declarations as to whether there has been a wrongful removal or retention) can actually operate as impediments to return. The comments of La Forest J. in *Thomson v. Thomson,* at page 598, respecting the complications post-removal custody orders can have when a request for return is made should be noted:

> *…the chasing order issued by the Scottish court complicates matters in the case at bar, for it makes one objective of the Convention, a return to the status quo as it existed before the wrongful removal, impossible to achieve without further action.*

As of April 1, 2020 the Convention was in effect between Canada and the following countries:

	Entry Into Force
Albania	Aug. 8/07
Andorra	Jan. 1/15
Argentina	June 1/91
Australia	Jan. 1/87
Austria	Oct. 1/88
Bahamas	Aug. 1/95
Belarus	Jan. 1/01
Belgium	May 1/99
Belize	Sept. 1/91
Bosnia and Herzegovina	Mar. 6/92
Brazil	Nov. 1/03
Bulgaria	Feb.1/10
Burkina Faso	Oct. 1/93
Chile	Aug. 1/95
Colombia	Dec. 1/97
Costa Rica	Jan. 1/01
Croatia	Dec. 1/91
Cyprus	Jan. 1/98
Czech Republic	Mar. 1/98
Denmark (except the Faroe Islands and Greenland)	July 1/91
Ecuador	Dec. 1/93
El Salvador	Nov. 1/03
Estonia	Nov. 1/03
Fiji	Jan. 1/01
Finland	Aug. 1/94
France	Dec. 1/83
Georgia	Nov. 1/99
Germany	Dec. 1/90
Greece	June 1/93
Honduras	Aug. 1/95
Hong Kong	Sept 1/97
Hungary	Apr. 1/88
Iceland	Dec. 1/97
Ireland	Oct. 1/91
Israel	Dec. 1/91
Italy	May 1/95
Japan	May 1/14
Republic of Korea	April 1/20
Latvia	Feb.1/10
Lithuania	Feb.1/10
Luxembourg	Jan. 1/87
Macau	Mar.1/99

Former Yugoslav Republic of Macedonia	Dec. 1/91
Malta	Nov. 1/03
Mauritius	Aug. 1/95
Mexico	July 1/92
Republic of Moldova	Jan. 1/01
Monaco	June 1/95
Morocco	July 1/17
The Netherlands	Sept. 1/90
New Zealand	July 1/92
Norway	Apr. 1/89
Panama	Aug. 1/95
Paraguay	Jan. 1/01
Peru	Nov. 1/03
Poland	Feb. 1/94
Portugal	Dec. 1/83
Romania	June 1/95
Saint Kitts and Nevis	Aug. 1/95
San Marino	May 1/15
Serbia and Montenegro	Dec. 1/91
Singapore	Mar 1/11
Slovakia	Feb. 1/01
Slovenia	Aug. 1/95
South Africa	May 1/99
Spain	Sept. 1/87
Sri Lanka	Nov. 1/03
Sweden	June 1/89
Switzerland	Jan. 1/84
Trinidad and Tobago	Nov. 1/03
Turkey	Aug. 1/00
Turkmenistan	Jan. 1/01
Ukraine	Sept. 1/06
United Kingdom of Great Britain and Northern Ireland	Aug. 1/86
Uruguay	Nov. 1/03
U.S.A.	July 1/88
Uzbekistan	Nov. 1/03
Venezuela	Jan. 1/97
Zimbabwe	Jan. 1/98

The foregoing is an **unofficial list**, current as of the date of writing. If you wish to confirm whether a country is a contracting state for the purposes of the Convention, contact the Family Law Section of the Legal Services Branch of Manitoba Justice at 204-945-0268 or check the child abduction page of The Hague Conference on Private International Law *website*.

Countries who were not members of The Hague Conference on Private International Law when this Convention was drafted may still accede to it. The Convention only comes into effect between the acceding state and those contracting states who declare acceptance of the accession. For example, Hungary, Belize, Mexico and New Zealand all acceded to the Convention, and Canada subsequently accepted their accessions.

Countries such as Canada that were members of The Hague Conference on Private International Law when the Convention was finalized need only ratify same for the Convention to enter into force with other ratifying nations and such acceding states as may be designated.

iv. Supportive Services

The Canadian Centre for Child Protection can assist parents of abducted children:
615 Academy Road, Winnipeg, Manitoba, R3N 0E7
Phone: 204-560-2083 or 1-800-532-9135

The Canadian Centre for Child Protection owns and operates MissingKids.ca. The primary functions of MissingKids.ca include:

- assisting in the location of missing children;
- providing educational materials to help prevent children from going missing;
- offering information and a response centre on missing children;
- co-ordinating efforts to assist stakeholders in the delivery of missing children services.

The MissingKids.ca *website* may be a useful resource for parents of abducted children.

8. Parenting Time

The most common method utilized to enforce orders containing parenting time or contact provisions is proceeding to court to have the non-complying parent found in contempt. The general remedies available and procedures involved in contempt proceedings were discussed earlier in this chapter. Parties experiencing difficulties with parenting time or contact orders may also request the assistance of local law enforcement officers to ensure compliance with the order.

The traditional contempt route or the involvement of the police to enforce access provisions can be detrimental to the welfare of those individuals most parents agree are of primary importance - the children.

Fining a parent with the majority of parenting time or deleting or eliminating support as a means to purge contempt, will almost always have a detrimental effect on the financial well-being of the family unit, including the children. This is particularly so given that research has shown most parents with the majority of parenting time and their children enjoy a substantially lower standard of living than the other parent, even taking support payments into account. Imprisoning a parent or changing the parenting order itself can have negative emotional effects on children, as can involvement of the police.

The Child Custody Enforcement Act (*CCEA*) defines **"custody order"** as:

> *(a) an order or that part of an order that grants custody of a child, or the effect of which is to grant custody of a child, to any person, including provisions, if any, granting another person a right of access or visitation to the child, and*
>
> *(b) a parenting order under The Family Law Act or the Divorce Act (Canada) or a corresponding order made by an extra-provincial tribunal;*

"Access" includes contact with a child.

Sections 14 and 14.1of the *CCEA* contains the following provisions dealing with non-compliance with orders:

> ***Contempt of court orders***
> *14(1) Every court may punish any contempt of or resistance to its process or orders in respect of custody or of access to a child by a fine of not more than $500 or imprisonment for not more than six months or both.*
>
> ***Conditions of imprisonment***
> *14(2) An order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.*
>
> ***Order where access wrongfully denied***
> *14.1(1) Where a court, upon application, is satisfied that a person in whose favour an order has been made for access to a child at specific times or on specific days has been wrongfully denied access to the child by a person in whose favour an order has been made for custody of the child, the court may make one or both of the following orders, taking into account the best interests of the child:*
>
> *(a) require the respondent to reimburse the applicant for any reasonable expenses actually incurred as a result of the wrongful denial of access;*

(b) require supervision of the access where the court is satisfied that a person or agency is willing and able to provide proper supervision.

Order on failure to exercise access

14.1(2) Where the court, upon application, is satisfied that a person in whose favour an order has been made for access to a child at specific times or on specific days has wrongfully failed to exercise the right of access or to return the child as the order requires, the court may make one or both of the following orders, taking into account the best interests of the child:

(a) require the respondent to reimburse the applicant for any reasonable expenses actually incurred as a result of the failure to exercise the right of access or to return the child as the order requires;

(b) require supervision of the access where the court is satisfied that a person or agency is willing and able to provide proper supervision.

If an assessment report by a family evaluator (i.e., a person so appointed by the Minister of Justice, e.g., Family Resolution Service) is essential in order to deal with the issue of contempt and parental responsibilities and contact, requests for same can be made pursuant to section 49(1) of *The Court of King's Bench Act* and section 20.4(1) of *The Provincial Court Act*.

Other non-judicial resources may be considered for dealing with access/parenting time enforcement issues such as mediation or the services of a parenting coordinator.

Both federal and provincial legislation acknowledge the importance of parenting time/contact with children of divorce and separation. Section 16(1) of the *Divorce Act* indicates that the court "shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order."

Section 16(6) specifically provides that **"**in allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child." One of the factors set out in section 16(3) for the consideration of what is in the child's best interest is "each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse."

There are a growing number of reported decisions involving what are now commonly referred to as Parental Alienation Syndrome cases ("PAS" cases). These cases involve a parent who is found to have engaged in an extreme pattern of conduct over what is usually a lengthy period of time that is aimed at severing the relationship between the child and the non-alienating parent (sometimes called the "rejected parent").

The alienating parent's conduct results in an unjustified rejection of the rejected parent by the child. There is a growing body of psychosocial research, and some longitudinal studies that explain the severe negative impact on children who are victims of parental alienation. The research studies children who are deprived of a relationship with one parent as a result of the alienating parent's actions.

Parents who engage in behavior that ignores or thwarts parenting orders and deprives the other parent of information, parenting time and rights to the child (e.g., the right to attend activities, to obtain school and medical information, to see and communicate with the child) face the possibility of severe consequences.

Courts across Canada and in Manitoba have repeatedly called the behavior by an alienating parent child abuse.

The courts have, in many cases, imposed reductions and restrictions on the alienating parent's time with the child. PAS cases often involve findings of contempt against the alienating parent resulting in fines, penalties, and in rare cases the court imposing a jail or conditional sentence. In extreme cases, where one parent repeatedly ignores court orders or is engaged in an incorrigible campaign against the rejected parent, the courts have reversed custody (now "parental responsibilities") in favor of the rejected parent and imposed terms of no contact for the alienating parent.

Please refer to the following list of relatively recent Manitoba cases in this area:

- *Bellows v. Bellows,* FD11-01-96846, Judgment of Everett, J., delivered January 17, 2017
- *T.L.L.L. v. J.J.L.*, 2009 MBQB 148
- *L.M.A.M. v. C.P.M.*, 2011 MBQB 46
- *J.D.G. v. S.L.G.,* 2016 MBQB 71

B. VARIATION OF ORDERS

1. Substantive Matters

Applications can be made to vary, vary retroactively, rescind, or suspend provisions in final orders or judgments relating to parenting, spousal support and/or child support, pursuant to the *Divorce Act* and *The Family Law Act* (*FLA*). Although there is no specific jurisdiction given to vary provisions of interim orders, courts will vary such orders in appropriate circumstances. The courts do, however, discourage motions to vary interim orders, and will often urge the matter on to completion at a final hearing if necessary.

When commencing an application or motion to vary counsel should carefully review the specific provisions of the legislation and regulation under which they are proceeding and be familiar with the King's Bench Rules dealing with variation of final orders.

> Rule 70.37 provides specific direction as to the form of the notice of motion or notice of application to vary and a list of specific information that must be included in the supporting affidavit. Detailed financial information must also be provided.
>
> A respondent who wishes to oppose an application or motion to vary must file a notice of opposition to variation, an affidavit and detailed financial information. A notice of opposition to variation need not be filed if the application or motion to vary is exempted from the Case Management process under subrule 70.24(4).

Counsel should also ensure that their motions or applications, and any orders arising from them, correctly reference the legislation under which the original orders were made. Counsel should also ensure that they include copies of the orders referred to above.

Where a former spouse living in a different province or outside of Canada applies to obtain or vary a support order, the person's application proceeds in an interjurisdictional process under sections 18.1, 18.2 and 18.3 of the *Divorce Act*.

Where the respondent to an application to vary a support order lives in another province, instead of filing an opposition to vary and proceeding under the case flow model to a triage conference, the respondent may request that the variation motion/application be converted and proceed in the interjurisdictional process.

The *Divorce Act* states that the conversion is mandatory if the motion/application seeks to vary only support.

If the motion/application seeks to vary both support and parenting, the respondent's request to convert the support application may or may not succeed.

The judge will either rule that both the support and parenting issues should proceed together through the case flow model or that it would be appropriate for support to be dealt with through the interjurisdictional process, and parenting through the case flow model (s. 18.2(1) of the Act). The court might also decline to hear the parenting aspect of the variation application if the child resides in the other province and transfer the variation proceeding to the court where the child resides (s. 6(2) of the Act).

If the respondent does not request conversion or file a notice of opposition within 40 days, the court can either pronounce a variation order or decide on its own initiative to convert to the interjurisdictional process.

a) Grounds for Variation

Variation is provided for in section 17(1) of the *Divorce Act* and sections 39, 43, 61 and 73 of *FLA.*

> Section 17(4) of the *Divorce Act* and section 61(2) of *The Family Law Act* provide that in order to vary a child support order, the court must be satisfied that a change in circumstances as provided for in the guidelines has occurred.

Section 14 of the Manitoba Child Support Guidelines Regulation provides that the coming into force of the guidelines is deemed to be a change in circumstances. The coming into force of the current Child Support Guideline tables on November 22, 2017 may constitute a change in circumstances where application of the updated tables may result in a different child support amount.

Where orders have been made under the guidelines and determined on the basis of table amounts (and section 7 expenses, if any), a change in circumstances is one that would result in a different child support order including:

- a change in the payor's income;
- child(ren) ceasing to be child(ren) of the marriage, (not necessarily the same as reaching the age of majority);
- a change in the special or extraordinary expenses of a child or children;
- a change in parenting arrangements to or from split parenting time or shared parenting time; and
- undue hardship of a parent and/or child(ren) being established or found to no longer exist.

In any other case, the traditional change of circumstances test applies.

When varying a child support order, the court is required to make an order in accordance with the child support guidelines (s. 17(6.1) of the *Divorce Act* and s. 61(3) of *FLA*).

The court can depart from the amount that would be determined in accordance with the Child Support Guidelines if:

- It is satisfied that special provisions in an order, judgment or written agreement respecting the financial obligations of the spouses/parents, or the division or transfer of their property, directly or indirectly, benefit a child, or that special provisions have otherwise been made for the benefit of a child:
    - and that given these special provisions, it would be inequitable to apply the child support guidelines (see s. 17(6.2) of the *Divorce Act* and s. 61(4) of *FLA*); and
    - the court must record its reasons in this case (see s. 17(6.3) of the *Divorce Act* and ss. 59(4) and (5) of *FLA*);

  or

- Both spouses/parents have consented and the court is satisfied that reasonable arrangements have been made for the support of the children (see s. 17(6.4) of the *Divorce Act* and s. 59(6) of *FLA*).
    - The court must have regard for the child support guidelines, but the agreed upon arrangements are not deemed unreasonable solely because the amount agreed is not the same amount that would be ordered under the child support guidelines (see s. 17(6.5) of the *Divorce Act* and s. 59(7) of *FLA*).

Section 13 of the Child Support Guideline Regulations specifies information that must be included in a variation order:

- the names and birthdays of the children;
- the incomes of the parents used to determine the child support amounts;
- the child support amounts for minor and adult children;
- the particulars of section 7 special or extraordinary expenses; and
- the dates of the first and ongoing payments.

Section 78 of *FLA* sets out the test for remission of child support arrears that have accumulated pursuant to an order.

The two-step test requires the court to consider whether, having regard to the interests of the debtor, it would be grossly unfair and inequitable not to do so and, having regard to the interests of the creditor, it is justified.

b) Child Support Service

For information on the Child Support Service which has the authority to recalculate child support at regular intervals, please see the chapter on Divorce, Parenting, Support and Protective Relief.

c) Variation of Spousal Support (Including Remission of Arrears) Pursuant to the *Divorce Act*

The Child Support Guidelines have no application to spousal support orders or to variations of spousal support orders.

> The test on an application to vary a spousal support order is whether there has been a "change in the condition, means, needs or other circumstances of either former spouse" since the making of the last order dealing with spousal support.

Section 17(7) of the *Divorce Act* requires that such a variation order should:

- recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
- apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- relieve any economic hardship arising from the breakdown of the marriage; and
- in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

These are the same objectives as are set out in section 15.2(6) relating to an initial spousal support order.

Section 17(10) of the *Divorce* Act provides that where a spousal support order is time limited to a specified time or event, on a variation application commenced after such time or event, a court may not make a variation order to resume such support unless it is satisfied that:

- a variation order is necessary to relieve economic hardship arising from a change in circumstances that is related to the marriage; and
- the changed circumstances, had they existed at the time the last spousal support order was made, would likely have resulted in a different order.

The *Divorce Act* (s. 17(6.6) and s. 15.3) provides that the court will give priority to child support on an application. If, as a result of giving priority to child support, the court is unable to order spousal support or orders less than it otherwise would have:

- the court must record its reasons; and
- any subsequent reduction or termination of such child support will constitute a change of circumstances for the purposes of applying for a variation order in respect of spousal support.

d) Variation of Parenting and Contact Orders Pursuant to the *Divorce Act*

The court may vary, rescind or suspend, retroactively or prospectively, a parenting order upon application by either or both former spouses (or by any other parent or person who stands or intends to stand in place of a parent with leave of the court). Similarly, a person to whom a contact order relates may apply to vary it (*Divorce Act* s. 17).

> The test for a variation is whether there has been a change in the condition, means, needs or other circumstances of the child since the last order was made. The court is to take into consideration only the best interests of the child as determined by reference to that change.

In addition, section 17(5.1) provides that where a former spouse is terminally ill or in critical condition, that situation shall be considered a change of circumstances of the child and the court shall make a variation order in respect of the allocation of parenting time that is in the best interests of the child.

Section 17(5.2) confirms that relocation of the child is a change in circumstances.

e) Variations of Parenting or Contact Orders and/or Spousal Support Pursuant to *The Family Law Act*

Variation of orders is provided for in *FLA* in section 39 (variation of parenting orders), section 43 (variation of contact orders), section 61 (variation of child support orders) and section 73 (variation of spousal support orders). Section 63 provides that for the purposes of the sections dealing with spousal support, that the definition of "spouse" includes common law partners. The definition also incudes former spouses.

In each case, before making a variation order, the court must be satisfied that there has been a change of circumstances since the last order or variation.

Also note section 78 of *FLA*, which sets out the test for remission of support arrears. The two-step test is the same for both spousal and child support arrears that have accumulated pursuant to a support order.

As in the *Divorce Act*, *FLA* stipulates in section 71 that if a court is considering an application for child support and an application for spousal support, priority should be given to child support. If, as a result of priority being given to child support, an order of spousal support is not made or is made for an amount that is less than it would have been otherwise, the court shall record its reasons (*FLA* s. 71(2)).

Section 71(3) of *FLA* states that any reduction or termination in child support constitutes a change of circumstances for the purposes of applying for a variation in spousal support.

f) Review of Spousal Support

Section 72 of *FLA* also allows for a review of spousal support, where that is stipulated in an agreement or order. The agreement or order may provide:

(a) that the review occur on or after a specified date, after a specified period of time or after a specified event has occurred;

(b) the manner in which the review is to take place;

(c) the grounds on which a review is to be permitted;

(d) the matters to be considered in a review.

2. Procedural Matters

The procedures on variations are governed by King's Bench Rule 70.37 which provides explicit details.

a) How to Commence a Variation

i. Variations of Orders Made in Manitoba or in Proceedings Already Transferred to Manitoba from Another Jurisdiction

Commence by a notice of motion to vary (Form 70H).

ii. Variations of a Family Arbitration Award

Commence by a notice of motion to vary a family arbitration award (Form 70H.2).

iii. Variations of Final Orders or Judgments Made in Other Jurisdictions Under the *Divorce Act*

Commence by way of notice of application to vary (Form 70G).

iv. Notice of Opposition to Variation

Must file Form 70H.1. A notice of opposition to variation does not need to be filed if the matter is exempt from the Case Management Process.

v. Variations of Final Orders or Judgments that are Silent with Respect to Type of Relief Now Requested on Variation

Commence by way of notice of application (Form 70E).

vi. Variations of Interim Orders that are Silent With Respect to the Type of Relief Sought When Proceedings are Still at Interim Stage

A variation is not appropriate.

File a new notice of motion seeking new relief desired (Form 70Q).

vii. Consent Variation Orders

King's Bench Rule 37.06(2.1) provides that the court may make an order on consent, without a notice of motion being filed. The consent of the opposite party, by their counsel, must be endorsed on the order. Alternatively, a separate consent of counsel or of the party (together with an affidavit of execution) must be filed.

Whether the consent variation order is a variation of child support pursuant to the *Divorce Act* or *FLA*, the financial information required by section 21 of the Child Support Guidelines regulation must be filed.

In Winnipeg, it is only necessary to submit one copy of the consent variation order to the court with the consent of the other party or their counsel endorsed thereon. Appropriate copies will be made by the court and distributed as required. The process for courts outside of Winnipeg will change at the discretion of each centre so you may need to submit three copies of the consent variation order to rural courts.

In cases where the relief sought could result in a change to the amount of a support order or the remission of arrears, a letter from the Director of Assistance should also be filed, advising that the director does not have an interest in the matter.

3. Documents to be Filed in Variation Matters

a) General

King's Bench Rules 70.03(7), 70.03(7.3), 70.03(9) and 70.37 govern the procedure for filing documents in variation matters. When applying for a variation of an order, judgment or family arbitration award one must file a notice of motion to vary (Form 70H or 70H.2) or a notice of application to vary (Form 70G), whichever is applicable (see Rule 70.37(1)).

Note that if the order has already been varied, or has been varied more than once all of those variations should be noted in the preamble of the motion.

An affidavit must be filed in support of the motion or application to vary.

b) The Information Required to be Included in Affidavits

The King's Bench Rules specify the information that must be included in an affidavit in support of a motion to vary, suspend or rescind a final order in a family proceeding or a family arbitration award.

In all cases, except a motion or an application to vary, rescind or suspend child support, Rule 70.37(2) states that the following information must be included in the affidavit:

- the current marital or relationship status of the parties;
- the ordinary residence of the parties and the children of the marriage or relationship;
- particulars of current parenting arrangements and particulars of any proposed change;
- particulars of current support arrangements and particulars of any proposed changes;
- the amount of any support arrears; and
- particulars of any change in circumstances of the parties or the children since the date any prior order was made.

On a motion to vary, rescind or suspend spousal support, Rule 70.37(4) also requires that the affidavit contain:

- the date of the last spousal support order or family arbitration award with a copy of that order or award attached to the affidavit;

- particulars of current support arrangements and particulars of any proposed change;
- particulars of any change in circumstances since the date the support order or award was made;
- particulars of the financial circumstances of the parties when the support order or award was made, with copies of any financial statements filed by the parties in relation to that order or award;
- the total income of the applicant in each year for which the variation, rescission or suspension of support is requested, evidenced by copies of income tax returns and other relevant documentation;
- if the applicant is presently unemployed, the length and reason for the unemployment and the particulars of any efforts to gain employment;
- particulars of any expenses the applicant shares with another person;
- particulars of the current financial circumstances of the applicant with any financial information required by subrule (6);
- the amount of arrears (if any) under any prior support orders and, if the support was or is payable through a provincial or territorial maintenance enforcement program, a payment record from the applicable program indicating the amount of arrears under the order, attached to the affidavit;
- if the applicant is seeking the suspension of a support order, the outcome of their request for an administrative suspension under section 19 of *FSEA*; and
- if the applicant is in receipt of money from any source, documentation to verify the amount and particulars.

On a motion to vary, rescind or suspend child support, Rule 70.37(5) states that the following information must be included in the affidavit:

- the date of the last child support order, family arbitration award or decision with a copy of that document attached to the affidavit;
- if applicable, the date of the last recalculated child support order and the date on which the recalculated child support amount became payable, or would have become payable but for the filing of the notice of motion to vary, with a copy of that order attached to the affidavit;
- the ordinary residence of the parties and of the children for whom support is sought;
- particulars of current parenting arrangements;

- particulars of current support arrangements and particulars of any proposed change;
- particulars of any change in circumstances since the date the support order, family arbitration award or decision was made; and
- particulars of the financial circumstances of the parties when the support order, family arbitration award or decision was made, with copies of any financial statements filed by the parties in relation to that order,

  unless, for both of the above in the now unlikely event that

  - the order was made before May 1, 1997 if made under the *Divorce Act* (Canada); or
  - the order was made before June 1, 1998 if made under *FMA;*
- any financial information required by subrule (6);
- the amount of arrears (if any) under any prior support orders, and if the support was or is payable through court, a payment record from the applicable provincial or territorial maintenance enforcement office as to the amount of arrears under the support order, attached to the affidavit;
- if the applicant is seeking the suspension of a support order, the outcome of their request for an administrative suspension under section 19 of *FSEA*; and
- where the applicant seeks remission of arrears, documentation to be attached to the affidavit including tax returns, evidencing the applicant's income in each year in which the remission is sought.

King's Bench Rule 70.37(6) provides that Rule 70.05 applies with respect to the financial information to be filed. It includes all parts of financial statement Form 70D, and if dealing with child support, the documents required under section 21 of the *Child Support Guidelines*.

In some situations, a recipient parent's income is not required in order to determine the guideline amount of child support, but in many cases the recipient does need to file financial information. These include the following:

- when either parent is claiming undue hardship;
- where a support recipient is claiming a contribution by the payor toward special or extraordinary expenses of the child(ren); and
- where the court has discretion (and thus is likely to consider the means and needs of each parent), such as where a child is over the age of majority, where the payor's income exceeds $150,000.00, or where there is a shared or split parenting arrangement.

The recipient's financial information is always relevant to the determination of section 7 special or extraordinary expenses.

A motion or application to vary support in an order or a family arbitration award is an initiating pleading. Therefore, King's Bench Rule 70.05 provides that you must also serve a demand for financial information (Form 70D.1) if the other party's income information is necessary to determine a support amount.

If you are applying to vary an order or judgment granted under the *Divorce Act* in another jurisdiction, copies of the original divorce pleadings and all corollary relief orders must be filed (Rule 70.37(12)).

For a contested matter, the following documents must be filed:

- motion or application brief;
- affidavits of service on other party and on Director of Assistance (see below);
- letter from Director of Assistance, if applicable; and
- transcript of any cross-examinations on affidavits of the other party or transcripts of cross-examinations on affidavits of deponents or other persons filed in support of the other party's position.

c) Notes on Filing Affidavits in Variation Matters - King's Bench Rule 70.20

When preparing affidavits, generally only one affidavit of each party can be filed (Rule 70.20(8)). However, the moving party may file a second affidavit in order to respond to new matters raised in the affidavit of the responding party (Rule 70.20(10)). Special leave of the court must be obtained for either party to file any further affidavits by either one of them (see Rule 70.20(11)). As well, a party may file one affidavit from each person who is not a party, if that person has relevant evidence (Rule 70.20(9)).

Note also the time limits for filing in Rule 70.20(2)-(5) for matters that are not proceeding through the case management agreement process under Rule 70.24.

4. Form of Variation Orders

Forms of orders are set out in Rule 70.31. Rule 70.31(10) provides that variation orders shall include, in addition to general requirements in Rule 70.31(9):

- **in the preamble:** the date of the order being varied and the name of the judge who pronounced it as well as the date and pronouncing judge of any prior variations;
- **in the body:** the clause of the original or prior variation order to be deleted or replaced and the clause to be added, if any.

As well, Rule 70.31(10.1) relates to content of variation orders when a party applies for variation within 30 days of being notified of the recalculation of child support. Rule 70.31(10.2) relates to the contents of a variation order which varies a recalculated order.

5. Service of Documents in Variation Matters

a) Service on Parties

A notice of motion to vary, a notice of application to vary or a notice of opposition to variation must be served on the other party personally. That person's lawyer may also agree to endorse the acceptance of service. This is required unless the court orders substituted service or dispenses with service (Rules 70.37(13) and 70.06).

If the matter is not proceeding through the case management process under Rule 70.24 and the motion or application is made on notice:

- the supporting affidavits must be filed on or before 2:00 p.m., at least fourteen days before the hearing date or four days before the date the matter is first returnable (Rule 70.20(2));
- the affidavits in opposition must be filed and served not later than 2:00 p.m., at least seven days before the hearing date (Rule 70.20(3)); and
- the affidavits filed in reply must be filed and served at least four days before the hearing (Rule 70.20(4)).

Rule 70.05.2(1) provides that an initiating pleading must be served within one year of filing unless an order for substituted service, to validate service or to extend time for service is granted within that year.

b) Service on the Director of Assistance

Where there is an application to vary that could result in a change in the amount of a support order or the remission of arrears or suspension of enforcement, including a consent order dealing with arrears, Rule 70.06(5)(b) requires service of all materials on both the Director of Assistance designated under *The Manitoba Assistance Act* and the director under *The Disability Support Act.* The service letter enclosing the support variation materials or draft consent orders should reference service on both the Director of Assistance and the Director of Disability Support.

They may be served at:

> Maintenance Officer
> Employment and Income Assistance
> Department of Families
> 300 - 114 Garry Street
> Winnipeg, MB R3C 4V4
> Fax: 204-948-4678
> Email provservic@gov.mb.ca

Parties are requested to provide the following information in their email to ensure that their variation documents are forwarded directly to the Maintenance Officer:

> SUBJECT LINE: Support Variation Documents – Attention: EIA Maintenance Officer
>
> BODY OF EMAIL: Please find attached the following court documents [type of document/s] regarding the matter of [name of party vs. name of party and court file number].
>
> Parties or counsel should also provide their contact information in their email, including their full name, mailing address and phone number.

Service on the directors is required because section 76 of *FLA* gives the director the same right to be notified and participate in proceedings to vary, discharge, suspend or enforce support payments or arrears as the person entitled to payments under the order when the person has assigned their support order to the director. Section 20.1 of the *Divorce Act* also recognizes that support can be validly assigned and gives the director similar rights to participate in the proceedings.

Personal service on the director is preferred, but service may be effected as permitted by the rules. The Family Law Section, Legal Services Branch of the Department of Justice does not accept service of these materials.

In order to determine the director's interest in a variation application, some identifying information regarding the support recipient should be provided (the full name of the recipient, any aliases and either the person's date of birth or social insurance number).

If the support recipient is not currently receiving social assistance and no social assistance arrears are affected, the director will issue a letter advising that it has no interest in the matter in question. If, on the other hand, social assistance arrears and/or assigned ongoing support may be affected, the matter will be referred to the Family Law Section as the lawyers for the director.

c) Service on Director of Assistance

Where there is an application for suspension of enforcement of support or arrears and the responding party lives outside of Manitoba, the applicant shall serve on the director under *FSEA* a copy of the document by which the relief is sought, whether the application is made with or without notice to the responding party (Rule 70.06(5)(c)).

d) Requirement Where Court Varies Order or Judgment of Another Jurisdiction

Where a Manitoba Court varies, rescinds, or suspends an order made by a court of another province under the *Divorce Act*, the registrar must forward a certified copy of the variation order to the court which made the original order and to any other court which has varied the original order (Rule 70.37(14)).

6. Inter-jurisdictional Support Proceedings

It continues to become more prevalent that cases involving child and spousal support involve parties that reside in different provinces, territories or countries. There may be more than one option available to approach a client's inter-jurisdictional case under the *Divorce Act* or provincial and territorial legislation depending on that client's situation. The focus of this section of the materials is the forms-based support application processes available under:

- sections 18 – 19.1 of the *Divorce Act*; and
- *The Inter-jurisdictional Support Orders Act* of Manitoba (the *ISO Act*) which was amended by *The Inter-jurisdictional Support Orders Amendment Act* which came into force July 1, 2023.

> If there are questions about the available processes for your client's inter-jurisdictional support matter, counsel may wish to contact the Family Law Section for additional information:
> Phone: 204-945-0268 Fax: 204-948-2004 Email: *ISOQuestions@gov.mb.ca*

a) History

The *ISO Act* repealed and replaced *The Reciprocal Enforcement of Maintenance Orders Act* (the *REMO Act*) in Manitoba in 2003. ISO legislation has repealed and replaced REMO legislation in all common law provinces and territories. An ISO bill has received assent in Quebec but has not been proclaimed in effect.

The *ISO Act*, like its predecessor, governs matters relating to establishment, variation, and registration or recognition of support orders in inter-jurisdictional cases (other than inter-jurisdictional support matters governed by the *Divorce Act*).

Initial applications for support under the *REMO Act* involved two stage hearings. The first stage took place in Manitoba without notice to the party in the other jurisdiction. At the conclusion of the hearing in Manitoba, the court would make a provisional order of support, which was of no force and effect until the second hearing (the confirmation hearing) was held in the respondent's jurisdiction. The resulting confirmation order would then be the enforceable order.

The *ISO Act* eliminated the former complex two-stage hearing process and replaced it with a forms-based support application process as described below.

Until recently, inter-jurisdictional support applications under the *Divorce Act* also involved a two-stage hearing. However, on March 1, 2021, significant changes were made to the *Divorce Act*, which included eliminating the two-stage provisional variation/confirmation process. For information on the *Divorce Act* changes generally please visit Department of Justice *websitehttps://www.justice.gc.ca/eng/fl-df/cfl-mdf/index.html*.

The changes to the inter-jurisdictional process under the *Divorce Act* were enacted to make it easier for families to obtain or vary a support order when they live in different jurisdictions. The changes were also made to promote consistency between inter-jurisdictional proceedings whether they are conducted under provincial and territorial legislation or the *Divorce Act*.

> For more detailed information see the *course* "Inter-jurisdictional Support Proceedings under the *Divorce Act*".

b) Should an Application be made Under the *Divorce Act* or *The Inter-jurisdictional Support Orders Act*?

In some circumstances there is only one option as to the legislation under which an application must be made. However, there are circumstances where applicants have a choice. In determining pursuant to which legislation to make an application, the following should be considered:

- If the parties were never married, the application would have to be made under the *ISO Act* whether it is a support application or a support variation application.
- If it is a support application and the parties were married, and are not yet divorced, the *ISO Act* would apply as parties would not be in a position to apply for the simplified process under the *Divorce Act* (as it only applies to former spouses).

- If it is a support application and the parties were married and are currently former spouses (having been divorced in Canada), a support application may be made under the *Divorce Act* or possibly the *ISO Act* depending on the circumstances.
- If it is a support variation application, the legislation under which the order to be varied was made determines whether the application is going to be made pursuant to the *Divorce Act* or provincial and territorial legislation. If the order that is to be varied is from outside Manitoba and it is not clear on the face of the order the legislation pursuant to which it was pronounced, it is recommended that counsel contact the Family Law Section for assistance (phone: 204-945-0268; fax: 204-948-2004; email: *ISOQuestions@gov.mb.ca*).
- If the parties were divorced in a country other than Canada, the process under the *Divorce Act* does not apply.

It is also important to note that as it relates to the *Divorce Act*, when one party lives outside of Canada the forms-based process only applies to incoming cases from designated jurisdictions (see *Divorce Act* s. 18). This remains the case even if the parties were divorced under the Canadian *Divorce Act*.

c) Application Process

When making an application under either the *Divorce Act* or the *ISO Act*, the applicant seeking to establish or vary support must complete a support application on forms that are available on the Manitoba Justice *website*.

> Also available on the Manitoba Justice website is an Introduction and General Information *Guide* which explains the process in detail. This Introduction Guide sets out a series of charts to assist parties in determining which forms are appropriate for their circumstances. Each form has a corresponding guide to assist in their completion.

Matters being dealt with pursuant to the *ISO Act* must contain either a Form A.1 (for a request to establish support) or a Form A.2 (for a request to vary support).

Matters being dealt with pursuant to the *Divorce Act* must contain either a Form A.3 (for a request to establish support) or a Form A.4 (for a request to vary support).

The parentage of a child is sometimes raised and can be determined by the court hearing a support application if it is made pursuant to the *ISO Act*. In most Canadian jurisdictions, such a determination of parentage is only effective for the purposes of the ISO support proceeding, but Manitoba's *ISO Act* also allows for a determination of

parentage that would have the same effect as a declaratory order pursuant to *FLA* under certain circumstances (see s. 11(3) of the *ISO Act*). A party making this request would include a Form B in their support application. The same option is not available for a support application pursuant to the *Divorce Act*.

With the exception of what is outlined above, the remainder of the forms are common to applications whether through the *Divorce Act* or the *ISO Act* and just depend on the specific relief sought. All applications must include an Additional Locate Information Form to provide the other jurisdiction with the information necessary to serve the respondent.

The completed application forms must be sworn or affirmed before a notary public, with notarial seal affixed, and submitted to the ISO designated authority at a Manitoba Court of King's Bench location.

The designated authority will forward the application to the Family Law Section, Legal Services Branch, Manitoba Justice, who will review the application forms for completeness prior to being sent on to the appropriate reciprocating jurisdiction. If information is missing, or additional forms are required, the Family Law Section will advise the applicant what is required to complete their application prior to it being transmitted.

Once the court or other competent authority in the other jurisdiction receives the support application, the respondent is served with it and is required to appear at a hearing or provide a response in another form. The respondent has the opportunity to provide evidence in response to what is contained in the application.

A hearing will be arranged in the reciprocating jurisdiction and a support determination may be made. In their application, the applicant may request to participate in the proceeding by telephone or other means. Permission to allow their participation is determined by the jurisdiction where the matter is being heard.

The reciprocating jurisdiction can make interim orders and request further information or documents from the claimant, if necessary, and adjourn the hearing until they are received. If all necessary evidence is provided in the first instance, the reciprocating jurisdiction can also make a final order to bring the matter to conclusion. That order would then be enforceable.

The Province of Manitoba has entered into formal arrangements with all Canadian provinces and territories, the United States, (including fifty states and various other U.S. territories), and a number of other countries which have legislation that is "substantially similar to" the *ISO Act* provisions, enabling the reciprocal enforcement

of maintenance orders. The Lieutenant Governor in Council has designated such jurisdictions as "reciprocating jurisdictions" for the purposes of the *ISO Act*. Support orders from Manitoba can be registered and then enforced in reciprocating jurisdictions. Orders from those reciprocating jurisdictions can be similarly registered and then enforced in Manitoba.

The following jurisdictions have been declared to be reciprocating jurisdictions for the purposes of the *ISO Act* and are listed in the *ISO Regulation*.

A. **In Africa:**
Ghana
South Africa
Zimbabwe

B. **In Asia:**
Hong Kong Special Administrative Region of the People's Republic of China
Singapore

C. **In Australia and Polynesia:**
Australia, including Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Island
Fiji
New Zealand
Papua New Guinea

D. **In Canada:**
Alberta
British Columbia
New Brunswick
Newfoundland and Labrador
Northwest Territories
Nova Scotia
Nunavut
Ontario
Prince Edward Island
Quebec
Saskatchewan
Yukon

E. **In Central America and West Indies:**
Barbados

F. **In Europe:**
Austria
Czech Republic
Germany
Guernsey, Alderney and Sark
Isle of Man
Jersey
Malta
Norway
Poland
Slovak Republic
Switzerland
United Kingdom, (England, Wales, Scotland and Northern Ireland)

G. **In the United States**, including the fifty states, America Samoa, District of Columbia, Guam, Puerto Rico, United States Virgin Islands and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act (U.S.A.)

In cases where the respondent resides outside Canada, it is recommended that counsel contact the Family Law Section to determine if additional or alternative forms or documents are required as they can vary from country to country:
Phone: 204-945-0268 Fax: 204-948-2004 Email: *ISOQuestions@gov.mb.ca*

d) Enforcement of Support Orders from Other Jurisdictions

Final orders from reciprocating jurisdictions can be sent to or from Manitoba for registration and enforcement in the appropriate jurisdiction. The *ISO Act* distinguishes between orders made in other Canadian jurisdictions (extra-provincial orders) and orders made outside Canada (foreign orders). A final order received from a reciprocating jurisdiction must be registered in the Court of King's Bench. A registered order has the same effect as if it had been a final order originally made in Manitoba (see s. 18(2) of the *ISO Act*).

Where it is a foreign order, notice of the registration is given to the respondent (see s. 19(1) of the *ISO Act*). Within 30 days of notice being given, a respondent may apply to the registration court to set the registration aside (see s. 19(2) of the *ISO Act*). In the case of an extra-provincial order, the respondent is not given notice of registration and does not have the same ability to apply to set aside the registration. Once the order is registered with the Manitoba court, enforcement can begin though the Maintenance Enforcement Program.

The *Divorce Act* also allows for the recognition and enforcement of a decision from a designated jurisdiction that has the effect of varying a support order originally made under the *Divorce Act* (see s. 19.1 of the *Divorce Act*). A "designated jurisdiction" is a country that is listed as a reciprocating jurisdiction under the ISO Regulation.

Where payments pursuant to a foreign order are not expressed in Canadian funds and must be converted, the payment amounts are converted to the equivalent in Canadian funds in accordance with the ISO Regulation (see s. 21 of the *ISO Act*).

e) Provisional/Provisional Variation Orders

There are some unique situations where the forms based process is not available because of the law of the reciprocating jurisdiction, and parties seeking to establish or vary a support order must first obtain a provisional order or a provisional variation order.

If the applicant resides in Manitoba but the respondent resides in a jurisdiction where the court requires a provisional order or a provisional variation order, there is still the ability to obtain a provisional order from the Manitoba court pursuant to section 7, or a provisional variation order pursuant to section 27 of *ISO Act*. The Manitoba court can pronounce either a provisional order (for an initial request for support) or a provisional variation order (when asking to vary an existing order), neither of which will have any force or effect until confirmed by the court in the respondent's jurisdiction. Sections 6 and 16 of the *ISO Regulation* are important to refer to in these cases.

In order to enable the Manitoba court to deal with provisional orders or provisional variation orders that it receives from jurisdictions that use this form of order, the definition of "support application" includes a provisional order and the definition of "support variation application" includes a provisional variation order (see ss. 8 and 28 of the *ISO Act*).

Therefore, if the authorities responsible for administering inter-jurisdictional matters in Manitoba receive a provisional order or a provisional variation order from a reciprocating jurisdiction, it will be dealt with as though it is an initial support application or support variation application.

> Examples of two jurisdictions that currently require a provisional order or a provisional variation order are Quebec and the United Kingdom. Since these are unique situations, it is recommended that counsel contact the Family Law Section for more information and assistance.
> Phone: 204-945-0268 Fax: 204-948-2004 Email: *ISOQuestions@gov.mb.ca*

f) Conversion of Applications (*Divorce Act*)

The March 1, 2021 changes to the *Divorce Act* resulted in another significant change to the abilities of former spouses in different jurisdictions to vary support orders pronounced under the *Divorce Act*.

If an applicant makes an application in their province of residence for a variation of their *Divorce Act* support order, section 18.2(1) allows the respondent in the other jurisdiction to request that the court in the first jurisdiction "convert" the application into an inter-jurisdictional application. Upon being served with the application, the respondent has 40 days to file an answer or a request to convert with the court in the other jurisdiction.

Courts in Manitoba and the other provinces and territories have developed specific court forms for the purpose of requesting a conversion. In Manitoba, Form G notice of application to vary and Form H notice of motion to vary both include a notice respecting the right to request a conversion and the request form.

If the respondent files a request to convert in the court where the variation application was made, the court must then direct that the application originally made under section 17(1)(a) be considered an inter-jurisdictional application under section 18.1(3). Thereafter it will be dealt with by the authorities responsible for administering inter-jurisdictional matters as though it had been an inter-jurisdictional application to begin with.

If, upon being served with the application for a variation order, the respondent does not file an answer or a request to convert, the court to which the application was made shall hear and determine the application without the respondent's participation, if it is satisfied that there is sufficient evidence to do so (see s. 18.3(1)).

However, if the court is of the opinion that there is not sufficient evidence to hear and determine the application, it can still direct that the application and any evidence in support of it, be considered an inter-jurisdictional application under section 18.1(3) and be sent to the province where the respondent resides for determination there.

In order to protect the rights of order assignees, section 18.3(2) also requires the court to consider whether the support order in question has been assigned to the Crown or a government agency (see s. 20.1).

Some provinces require or ask income assistance recipients to assign support orders to the province in order to be eligible to receive their full income assistance benefits. The assignment results in a right on behalf of the Crown or government agency to participate in any court proceedings to vary the support order or remit any arrears that accumulated pursuant to the support order. However, if the respondent in the other jurisdiction does not inform the court that the order has been assigned, the order assignee would not know about the application to vary.

Therefore, in a situation where the respondent in the other jurisdiction has been served and does not file an answer or request to convert, before the court can proceed with the hearing under 18.3(1)(a) the court must take into consideration whether the support order has been assigned. If the support order was assigned, the court must also consider whether the order assignee received notice of the application and did not request a conversion. Rule 70.06(5)(b.1) includes reference to this under "Service requirements in particular proceedings".

Contact information to assist applicants in providing notice of filing an application to vary a support order to support order assignees in other jurisdictions, as required under section 18.3(2) of the *Divorce Act* can be found at:
https://www.justice.gc.ca/eng/fl-df/enforce-execution/continfo.html

> It is important to note that if the application to vary the *Divorce Act* order includes a request to vary a parenting order, the court in which the application is initially filed shall only grant a conversion order if it considers it appropriate to do so in the circumstances.

Generally speaking, it is the court in the province where the children habitually reside that will hear an application to vary a parenting order. If counsel is applying for or responding to an application under section 17(1) that also includes an application to vary a parenting order under section 17(1)(b), they should be mindful of section 6(2) of the *Divorce Act* regarding the transfer of variation proceedings involving parenting orders.

Pursuant to section 6(2), if an application for a variation of a parenting order is made to a court, and the child or children who are the subject of the parenting order habitually reside in another province, the court may transfer the variation proceedings to the court in the province where the children reside. This could be done by way of application by either of the parents or by the court of its own volition.

g) *The International Recovery of Child Support and Family Maintenance (Hague Convention) Act*

The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance is an international treaty respecting child and spousal support obligations when family members live in different countries. Canada ratified this Convention on October 27, 2023, and declared that the Convention extends to the Province of Manitoba.

The Convention expands the number of foreign jurisdictions with which Manitoba has child and spousal support reciprocity. This builds on and complements procedures under the *ISO Act* and recent amendments to the federal *Divorce Act*. Certain countries cannot enter into bilateral reciprocity arrangements with provinces under *ISO* laws, therefore the Convention provides an avenue for establishment and recovery of support for Manitobans with family members in those countries.

The Convention permits the same types of application as under the *ISO Act* – applications to establish or vary child or spousal support orders, as well as applications to register and enforce foreign support orders.

Manitoba's implementing legislation, *The International Child Support and Family Maintenance (Hague Convention) Act*, C.C.S.M. c. I61 and its Regulations came into force on January 1, 2024. Related amendments to the *Divorce Act* came into force on February 1, 2024. The Act with the Convention attached as a schedule is available at the following *website*. Information about the Convention is available at the following *website*.

FOAEAA permits the search, and release of, tracing information for a person (i.e. address and employer's name and address) and/or financial information (i.e. income) from designated federal information banks. A party may file a application under *The Family Orders and Agreements Enforcement Assistance Act* (*FOAEAA*) for the purpose of establishing, varying, and enforcing child and spousal support or enforcing a parenting, contact, custody, or access order.

The procedures and obligations under the Convention are comparable to those in place under the *ISO Act* and the provisions of Manitoba law that govern the Maintenance Enforcement Program. The Convention does not change Manitoba's substantive family law that governs child and spousal support obligations.

For more information on *FOAEAA, The International Child Support and Family Maintenance (Hague Convention) Act*, and the Hague Support Convention, and the court processes and filing requirements for *FOAEAA* applications (including non-prescribed, court approved forms), see the Practice Direction of *February 1, 2024 - Rule Amendments (FOAEAA & Hague Convention Act).* You may also contact Manitoba's Central Authority at *HagueMaintenanceManitoba@gov.mb.ca*.

C. APPEALS

1. General

An appeal by way of a de novo hearing lies as of right from decisions of the master to a judge of the Family Division of the Court of King's Bench. Appeals of decisions of Family Division judges lie to the Manitoba Court of Appeal. In the case of appeals from consent orders or of costs only, leave from the judge who made the order is required (*The Court of King's Bench Act*, s. 90(1)), except with respect to an order of costs made against a lawyer (*The Court of King's Bench Act*, s. 90(2)).

Appeals of master's orders in matters that are subject to the case management process are covered in Rule 70.24(15.1) - (15.6).

A notice of appeal in Form 70CC must be filed within 14 days of the order being signed, and served within 14 days of filing. The notice of appeal must state the relief being sought and the grounds of appeal.

If the appeal relates to striking a pleading or allowing or setting aside default judgment, a returnable date will be obtained from the triage conference coordinator prior to filing the notice of appeal. On that date, the judge will either hear the appeal or set a hearing date and provide directions to the parties. All other appeals must be adjourned to triage.

If the appeal is to be dealt with at a triage conference, the judge will either hear the appeal or set a prioritized hearing within 30 days.

The appeal from a master's order is a fresh hearing, and the parties may not adduce further evidence, except with leave of the judge.

Prior to instituting an appeal, counsel should consider whether other avenues of redress might be available, some of which are discussed below.

On appeal, the Court of Appeal may "give any judgment which ought to have been pronounced and may make such further or other order as is deemed just" (s. 26(1) of *The Court of Appeal Act*).

However, the scope of appellate review of trial decisions is narrow, particularly in family law cases involving parenting disputes. Significant deference is given to the trial judge who heard the parties directly. Since parenting appeals are fact-based and the facts vary considerably from case to case, absent material error, an error in law or a serious misapprehension of the evidence, it is very difficult to overturn a trial decision. See *JDG v. SLG*, 2018 MBCA 51;

Hickey v. Hickey, [1999] 2 S.C.R. 518; and *Van de Perre v. Edwards*, 2001 SCC 60 for a discussion of appellate review in family cases.

Hickey was confirmed by the Supreme Court of Canada in *S.(D.B.) v. G. (S.R.),* 2006 SCC 37 [2006] 2 S.C.R. 231. It has been applied in the Manitoba Court of Appeal in *Kynoch v. Kynoch*, 2013 MBCA 73 and *G. (J.S.) v. G. (M.F.),* 2013 MBCA 66.

If the error raised is a question of fact, the standard of review is whether there was a palpable and overriding error in the decision. The Court of Appeal can only overturn a factual conclusion in such circumstances. See *H.L. v. Canada (Attorney General),* 2005 S.C.C. 25 – paragraph 56, for the question of what is a palpable and overriding error.

For cases which were upheld on appeal (no error found), refer also to *Bochurka v. Bochurka*, 2013 MBCA 28, particularly paragraph 6; *Schreyer v. Schreyer*, 2009 MBCA 84, paragraph 46; *Verwey v. Verwey*, 2007 MBCA 102, paragraph 13. Where the judge was found to be in error, see *Campbell v. Campbell*, 2014 MBCA 104.

Where the error alleged is a question of law, the standard of review is correctness (the judge failed to apply the law correctly). Refer to *Stuart v. Toth*, 2011 MBCA 42, paragraph 15; *Dickson v. Dickson*, 2011 MBCA 26, paragraph 1; and *Boryskiewich v. Stuart*, 2015 MBCA 23, paragraph 13.

Where the error raised is a question of mixed fact and law, the standard of review is palpable and overriding error unless there is an extricable question of law involved. Refer to *Dundas v. Schafer*, 2014 MBCA 92, paragraph 17.

2. Appeals of Interim Orders

The Manitoba Court of Appeal has on numerous occasions taken the opportunity to express a general disapproval of appeals of interim orders. The court's long-standing policy has been to deny appeals even where the result is not one which it might have ordered in the circumstances, unless the court believes that there has been a major error in law.

Effective January 1, 2022, *The Court of Appeal Act* requires that leave be granted in order to appeal an interim order. Such a motion would be brought in the Court of Appeal in chambers.

> ***Leave required for interlocutory appeals***
> *25.2(1)*
> *Subject to subsection (2), an appeal must not be made to the court with respect to an interlocutory order of a judge of the Court of King's Bench unless leave to appeal is granted by a judge or the court.*

Exceptions

25.2(2)

Leave to appeal an interlocutory order is not required

(a) in a proceeding involving the liberty of a person or the custody of a minor;

(b) if the order grants or declines to grant a stay or an interlocutory injunction; or

(c) in other cases specified in the rules.

Because most interim applications in family proceedings tend to be fact-based, the Court of Appeal will not intervene unless the lower court judge has made a palpable and overriding error. One of the other main reasons that the court refuses these interim appeals finds its basis in the theory that the whole system - parties, courts, lawyers - is better served by an early and effective resolution at trial. An interim order is not intended to be a precise or final disposition. It is not binding on the trial judge.

It is imperative for counsel who anticipate that an interim order may be appealed to request that the judge provide written reasons immediately upon delivering the decision. While a motions judge may not welcome such a request, without written reasons the appeal court has no formal record as to the facts and/or principles of law applied at the time of the interim determination.

3. Practice on Appeals to the Court of Appeal

a) Initiation of the Appeal

Appeals to the Court of Appeal are initiated by filing a notice of appeal. Subject to the rights to appeal noted above, leave may be required depending on the issue for appeal. The respondent may cross-appeal, if challenging the order granted, or may simply oppose.

The notice of appeal is followed by the filing of an appeal book, transcripts of evidence and then the written argument or factum. The time limits and formats of these documents are set out in the rules of court.

The date for the oral hearing of the appeal is set by the registrar of the court after the appellant's appeal book and factum have been filed. The registrar has been instructed to expedite hearings that involve children and are urgent (e.g., relocation or child protection cases), so counsel filing an appeal in this type of case should bring the facts to the registrar's attention.

b) Time for Appeal

An appeal must be filed and served within the time set by the operative statute, or where no time for appeal is stipulated, within 30 days of the order or judgment being filed (or where a judgment is not required to be filed, within 30 days of the judgment being pronounced).

In circumstances where the order or judgment has not been filed, the Court of Appeal Rules provide that the appeal can be initiated in any event. In these circumstances the notice of appeal must be accompanied by a letter indicating the reason that the judgment or order has not been filed (Court of Appeal Rule 11(4)). Note also that in circumstances where the appeal has not been filed in time, it may be possible to obtain an order extending the time for appeal by a chambers application.

An appeal without notice may be made where a motion without notice was made in the Court of King's Bench and the moving party is dissatisfied with the decision (Court of Appeal Rule 12).

Where the case on appeal is from a trial, the appellant will have to arrange to have a court reporter's certificate filed with the court. This document will confirm that the appellant has requisitioned a transcript of the proceedings and that the reporter has undertaken to transcribe it within a particular time limit (Court of Appeal Rule 16). Where there is no transcript available, see Court of Appeal Rules 18 and 19.

c) Notice of Appeal

The form and content of the notice of appeal is prescribed by Court of Appeal Rule 4, and Form 1 of Schedule A to the Court of Appeal Rules. The notice of appeal must set out the following:

- the name of the court appealed from;
- the name of the judge or other authority, as may be appropriate, of the court appealed from;
- the place where the trial or other proceeding in the court appealed from was held;
- the date on which the judgment appealed from was pronounced;
- the date on which the judgment appealed from was filed;
- the grounds to be argued;
- the relief or disposition sought;

- whether or not oral evidence was adduced in the proceedings; and
- whether there is a publication ban and if so, the particulars and whether access to the court file is restricted and if so, the particulars.

The notice of appeal must have a standard notice of intent to exercise language rights attached to it. See the Court of Appeal Language Rules commencing at Rule 109 for more information on the use of languages for documents, proceedings and witnesses.

d) Appeal Books and Transcripts

> The appeal books are the appellant's responsibility. These are generally bound volumes setting out the important pieces of documentary evidence from the court below. Their usual contents are set out in Rule 23(1).

Three copies (one hard copy and the others electronic) must be filed with the registrar within 45 days after filing the transcript of evidence or, if no transcript of evidence is required, within 45 days after filing the notice of appeal. That time period may be extended by the registrar if written request is made before expiry of the time period and all parties consent, or by a judge on motion (Rule 28.1). The appellant must serve a copy of the appeal book on the other parties within 5 days of filing it.

The respondent, if dissatisfied with the appellant's selection of documents, may file a respondent's appeal book to fill those gaps (Rule 23(3)). The transcripts of *viva voce* evidence are generally filed separately, also in bound volumes.

The court encourages the litigants to restrict their appeal book material to what is actually germane "by excluding from it material that is not relevant to the appeal" (Court of Appeal Rule 24(1)). The parties may apply to a judge of the court in chambers to resolve the issue where the parties cannot agree. The possibility of limiting the bulk of material applies to the exhibits and transcripts. For example, it would be appropriate in a family case to leave out the financial evidence of appraisers, accountants, and the like, where the only issue under appeal relates to parenting.

e) Factums

If no transcript of evidence is required, the appellant's factum must be filed and served within 45 days of filing the notice of appeal. If a transcript is required, the appellant's factum must be filed within 45 days from filing the transcript. The factum must be served within 5 days of being filed.

If no transcript is required, a respondent has 30 days after being served with the appellant's factum to file and serve a factum. If a transcript is required, the respondent has 30 days after being served with the appellant's factum to file a factum and a further 5 days to serve it. Each party must file three copies of their factum. The registrar may require that further copies be filed.

Rule 29(1) prescribes four parts to a factum:

Part 1 is an overview of what is involved in the appeal.

Part 2 is a concise statement of facts.

Part 3 contains the points in issue and the appellant's or respondent's position on each issue, as well as the basis for the court's jurisdiction and the applicable standard of review.

Part 4 is the argument, setting out the law and facts to be discussed.

Counsel's name and signature must appear at the end of the factum.

A judge may reject a factum for being excessively long. It should be 30 pages or less. If it is rejected for being too long, the factum must be redone and filed within 10 days.

Three copies of a case book must be filed within 14 days of filing each party's factum, or within 14 days of filing the respondent's factum, if it is a joint case book (Rule 31(1) and 31(1.1)).

f) Oral Argument

Argument on the appeal is usually before a panel of three judges. The appellant makes the first address to the court, followed by the respondent's argument, and rebuttal, if any. The court may choose not to call upon one of the parties (usually the respondent). It is not unheard of, however, for the court to go directly to the respondent and ask that party to justify why the appeal ought not to be allowed. Argument can take the form of a debate between counsel and some or all members of the panel.

Counsel can assume that the transcript has been well-read, and the factums digested. It will usually not do to simply attempt to repeat one's written argument in an oral fashion. The court will have considered the material, and will expect counsel to focus on the points troubling the court.

Expect the unexpected. The court is not bound by the arguments presented by the lawyers, and, for that matter, neither are counsel bound by their written arguments (Rule 30). The court will often reach into unpredictable areas to find a solution that

neither lawyer has contemplated. Counsel are urged to be prepared, and to firmly respond to the court's remarks in a courteous and candid manner.

4. Motions for New Evidence

Motions for new evidence are not dealt with as interim motions, but will be entertained as preliminary matters at the argument of the appeal itself. These motions are rarely successful, except in circumstances that can be described as extraordinary.

Section 26(3) of *The Court of Appeal Act* sets out that further evidence may be received in the discretion of the court.

The Supreme Court of Canada recently considered the issue of the admission of new evidence in *Barendregt v. Grebliunas*, 2022 SCC 22 (CanLII).

> The Court reviewed the test for the admission of additional evidence on appeal:
>
> (a) the evidence could not, by the exercise of due diligence, have been available for the trial;
>
> (b) the evidence is relevant in that it bears upon a decisive or potentially decisive issue;
>
> (c) the evidence is credible in the sense that it is reasonably capable of belief; and
>
> (d) the evidence is such that, if believed, it could have affected the result at trial.

The Court emphasized the importance of finality, especially in cases involving the best interests of children.

The motion for new evidence should be handled separately from the material on the main appeal. Although the material should be readied for court and handed to the clerk, the court will not read the new evidence until it has determined that it will be admitted. There are dicta which suggests that the Court of Appeal will more readily accept new evidence if the case involves the welfare of children.

5. Interim Motions in the Court of Appeal

a) Practice Generally

The Court of Appeal will entertain interim motions on an appeal. These motions are procedural, most often used to regulate the conduct of the proceedings themselves. Substantive relief, such as interim access or support pending the appeal can be entertained in appropriate cases.

b) Stays

i. Theory

An appeal does not operate as a stay of the order being appealed, except in one circumstance, an appeal from an order under *The Child and Family Services Act*.

Where the child caring agency which apprehended the child is required by the trial judge to return the child to their parents, it must do so within 14 days, unless within that time it obtains an order from a judge of the Court of Appeal in chambers that the child remain in the care of the agency pending the appeal (s. 44(4)). In this time period the order to return the child is considered stayed.

Subject to that exception, the theory is that the successful litigant ought not to be deprived of the "fruits of litigation" pending the appeal. It is possible, however, to obtain a stay of the order under appeal in appropriate circumstances.

Where the order which has just been pronounced is one which changes parenting orders or occupation of a home, transfers significant assets, or effects major or irrevocable changes in the lives of the litigants, it might mean that the appeal will be nugatory or destructive if the order is enforced prior to the determination of the appeal.

In parenting cases, where the effect of the lower court order is to call for a dramatic change in long-standing provisions, a change of parenting, or a re-institution of parenting time or contact after a lengthy court-ordered denial, or an order allowing for relocation of a child, it might be appropriate for a stay to be granted.

Failure to grant the stay might result in a back-and-forth series of changes which is presumed to be inherently very unhealthy for a child. An award of interim parenting time, if appealed, could mean numerous moves for a young child if each decision is carried out as ordered.

An unlikely but nonetheless possible scenario could find an interim order changing the majority of parenting time which had been with the father on a *de facto* basis to the mother, followed some time later by an appeal sending the child back from mother to father until the trial. The trial might see the child again moving to mother's home and, of course, that result might be successfully appealed sending the child back to father. The purpose of a stay

application is to avoid these many changes, and keep the child in a stable circumstance until the final decision is made.

ii. Practice on Stays

> Prior to approaching the Court of Appeal for a stay, the practice in Manitoba is that the appellant should first approach the judge who made the original order.

This practice, articulated in the case of *Powell v. Guttman and Nassar*, [1977] 6 W.W.R. 106 (Man. C.A.), has been repeatedly affirmed.

The trial or motions court judge has the power to grant a stay of their own order, and the Court of Appeal prefers that route be exhausted first. As odd and uncomfortable as this practice might seem there is good sense behind it.

To deal appropriately with the request, the Court of Appeal judge might have to become familiarized with a large and detailed file, and one for which the transcript would not yet have been produced. The trial or motions court judge, recently and intimately familiar with the evidence and aware of the impact of their order, is in a superior position to assess the impact of the order made and the appropriateness of a stay.

The request of the trial court or motions court judge for a stay can be made orally at the conclusion of the judge's decision or by formal motion, on notice, supported by affidavit material. An undertaking by counsel to expeditiously perfect the appeal, or the provision of security by the appellant, as might be appropriate having regard to the nature of the case, may be required.

The application for a stay to the trial judge opens a window for that judge in disposing of the motion to clarify the ambiguities or deficiencies to which counsel might attempt to point. Many judges, however, will take the attitude that they would not have granted the order if it was not intended to be effective immediately, and will routinely dismiss the stay application. Counsel must be fearless and point to the irreversible harm that might result.

> If the stay is refused, an application for a stay can then be made to a judge of the Court of Appeal in chambers. This is a fresh application, not merely an appeal of the trial judge's refusal of the stay. The lower court judge's reasons for refusal are required.

Accordingly, if a request for a stay before the judge who heard the motion or trial is unsuccessful, counsel must ask that judge for written reasons for the decision before court adjourns. If the judge in chambers denies the application, an appeal of the decision can be brought before a full panel.

The recent case of *Kuny v. Pullan Kammerloch Frohlinger et al*, 2021 MBCA 56 (CanLII) confirms that a chambers judge of the Court of Appeal has the jurisdiction to grant a stay both in the first instance and after a stay has been refused by a King's Bench judge. The tests to be applied in each case are the same, and no particular deference is owed to the reasoning of the King's Bench judge who refused the stay.

Morrill v. Morrill, 2016 MBCA 93 (CanLII), sets out the tests to be applied in a stay application:

1. *Is there a serious question to be argued on appeal?*
2. *Would the applicant suffer irreparable harm if the stay is refused? and*
3. *On a balance of convenience, who would suffer greater harm from the granting or the refusal of the stay?*

The Court also stated *"when cases involve the care and custody of children, the irreparable harm and balance of convenience considerations must also take into account the best interests of the children involved in the dispute".*

6. Costs on Appeal

Costs on appeals are dealt with under Rule 47 and the tariffs contained in Schedule A.1 to the rules. Rule 47(7) allows the court to award costs against or deny costs to a party who does not respect the rules for appeal books and evidence.

7. Decision

A decision of the Court of Appeal on an appeal is reflected in a certificate of decision. It is usually prepared by the successful party and must be in accordance with Form 2 of Schedule A to the Court of Appeal Rules. If counsel are unable to agree to the form of the certificate, an appointment can be booked with the Court of Appeal Registrar.

8. Alternatives to Appealing

Given the relatively strong possibility that an appeal will be unsuccessful, counsel should consider the alternatives. High on this list in the case of interim orders, is to move forward with all necessary steps to complete triage and/or case conference requirements if not already complete, in order to obtain a final decision at trial.

Rather than appealing an interim order, another possibility might be to move for severance of an issue, in order to obtain final relief on that issue. Although the court is not anxious to

grant such orders, it will do so in an appropriate case. In *Palansky v. Palansky* (1989), 60 Man. R. (2d) 141 (Q.B. Fam. Div.), appeal dismissed (5 Dec. 1989), Winnipeg 386/89 (Man. C.A.), Mr. Justice Monnin agreed to sever the issue of the validity of a separation agreement before allowing corollary relief proceedings and the financial disclosure sought further to it, to be pursued.

In some cases, there being no parenting or child support issues, the divorce might be severed from the complex property issues.

A motion for summary judgment is possible, in certain circumstances in family proceedings. Summary judgment motions are specifically authorized in Rule 70.18.1 which states:

> *70.18.1(2) A judge must allow a motion for summary judgment to proceed if he or she is satisfied that the summary judgment motion can achieve a fair and just adjudication of the issues in the action by providing a process that*
>
> *(a) allows the judge to make the necessary findings of fact;*
>
> *(b) allows the judge to apply the law to the facts; and*
>
> *(c) is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.*

In *Dakota Ojibway Child and Family Services et al v. MBH*, 2019 MBCA 91 (CanLII), the Court of Appeal reviewed the Supreme Court of Canada's decision in *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 and the summary judgment rules.

In *Hryniak,* Karakatsanis J. said

> *In my view, a trial is not required if a summary judgment motion can achieve a fair and just adjudication, if it provides a process that allows the judge to make the necessary findings of fact, apply the law to those facts, and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.*
>
> *There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.*

In *Dakota Ojibway* the Court concluded that a contextual analysis is required to determine whether summary judgement is appropriate in a particular case, providing a fair and just method of adjudication in the particular circumstances.

The Court considered the issues of summary judgment and severance in *Carmyn Alyson Aleshka v. Gregory Fettes*, 2021 MBQB 19 (CanLII).

The Court held that the mandatory language of Rule 70.18.1(2) requires a motion for summary judgment where the judge is satisfied of all three factors and based on the principles of proportionality as described in Rule 20.03(2):

20.03(2) When making a determination under subrule (1), the judge must consider the evidence submitted by the parties and he or she may exercise any of the following powers in order to determine if there is a genuine issue requiring a trial:

(a) weighing the evidence;

(b) evaluating the credibility of a deponent;

(c) drawing any reasonable inference from the evidence;

unless it is in the interests of justice for these powers to be exercised only at trial.

The Court commented that for cases proceeding under the new case flow model a request for severance of a claim might not be granted, given the rules which mandate the early setting of a trial date. The Court noted that it is possible to proceed directly to summary judgment in appropriate cases, without severing the claim.

In this case, the new case flow model procedures were not available and the parties' litigation and settlement efforts had already proceeded for years and likely would continue for a significant period of time. The Court was satisfied with the parenting and child support arrangements. The wife was not able to show that a trial was necessary or that she would be prejudiced in any way. The Court found that summary judgment was the appropriate process and granted the divorce.

Where it is a final order, counsel should consider waiting for circumstances to change and thereby justify a variation application. In *Barendregt v. Grebliunas*, 2022 SCC 22 (CanLII), the Supreme Court of Canada described a motion to admit new evidence on appeal as a disguised application to vary. The court emphasized that the legislative scheme that permits variation may be a more appropriate course of action than an appeal and a motion to admit new evidence.

Another consideration at either the interim or final stage is whether matters might now be capable of resolution in another forum, such as mediation, arbitration or counselling.

9. Appeals of Family Matters to the Supreme Court of Canada

Although such appeals are rare, in an appropriate case, an appeal of a family law matter may be heard by the Supreme Court of Canada (SCC). Such appeals are governed by the *Supreme Court Act* and by *the Rules of the Supreme Court of Canada.*

Subject to some limited exceptions, unless specifically referred to the SCC by the Manitoba Court of Appeal, an appeal may be made to the SCC only if leave to appeal is granted by that court.

Leave to appeal may be granted by the SCC where:

> *…the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it… (s. 40(1) of the Supreme Court Act).*

It is rare for leave to appeal to be granted in family law cases. However, occasionally the SCC will determine that a family case involves such an important question of law that it should be heard (for example, *Moge v*. *Moge* [1992] 3 SCR 813 dealing with spousal support, *Miglin v. Miglin* 2003 SCC 24 dealing with support and agreements, *Schreyer* v *Schreyer*, 2011 S.C.C. 35 dealing with division and equalization of family property and the interplay between family law and bankruptcy law, and *Michel v. Graydon*, 2020 SCC 24 and *Colucci v. Colucci*, 2021 SCC 24, both relating to retroactive variations in support.

See also the most recent cases, *Barendregt v. Grebliunas*, 2022 SCC 22 (CanLII), relating to the admission of new evidence and deference owed to the trial judge in relation to best interests in the context of a relocation application, *Kreke v. Alansari*, 2021 SCC 50 (CanLII), relating to the admission of new evidence, *B.J.T. v. J.D.*, 2022 SCC 24 (CanLII), relating to deference owed to the trial judge in relation to best interests in the context of a custody/guardianship case, and *Anderson v. Anderson*, 2023 SCC 13, relating to domestic agreements and the division of family property**.**

D. APPENDICES

1. Form 70W – Recalculation and Enforcement Information

File # FD_____

RECALCULATION AND ENFORCEMENT INFORMATION FORM

Name of Party completing this form: _____

Register this order with the Maintenance Enforcement Program Yes ☐ No ☐
[Note: The Maintenance Enforcement Program cannot register an order if only the person required to make payments requests registration]

Register this order with the Child Support Service for future recalculation Yes ☐ No ☐

[Please check the box below if you wish to make the following authorization, where appropriate for your circumstances:]

☐ I authorize the Child Support Service to e-mail notices, correspondence, requests for financial information, child support decisions and other documents to me whenever possible to my designated e-mail address. I may revoke this authorization in writing at any time.

If you do not wish to register with either the Maintenance Enforcement Program or the Child Support Service, please provide only the names of the parties and the court file number.

PERSON REQUIRED TO MAKE PAYMENTS: _____
(name)

Address:	Date of Birth:
City, Province:	Social Insurance Number:
Country:	Treaty Status Number:
Postal Code:	Mother's Maiden Name:
Home Phone Number:	Work Phone Number:
Cell Phone Number:	E-mail Address:

EMPLOYMENT

Occupation *(Trade, Profession, Union Member, etc.)*:	
Current Employer:	
Address:	
City, Prov., Country:	Phone Number:
Postal Code:	

PERSON ENTITLED TO RECEIVE PAYMENTS: _____
(name)

Address:	Date of Birth:
City, Province:	Social Insurance Number:
Country:	Treaty Status Number:
Postal Code:	Mother's Maiden Name:
Home Phone Number:	Work Phone Number:
Cell Phone Number:	E-mail Address:

CHILD(REN)

Name	Date of Birth	Address

2. Enforcement Opt-Out (Form 70X)

FORM 70X

File No. FD_____

ENFORCEMENT OPT-OUT

(Heading as in Form 70A)

ENFORCEMENT OPT-OUT

I am the person entitled to receive payments of support as ordered on _____ by _____.
(date) *(judge)*

I do not choose to have my support order registered with the Maintenance Enforcement Program at this time. I understand that:

- *The Family Support Enforcement Act* of Manitoba provides for automatic monitoring and enforcement of support orders. If my case were in the program, the support payments due to me would be sent through the court, and the Maintenance Enforcement Program would record and monitor the payments. If insufficient payment were made, the Maintenance Enforcement Program would automatically initiate enforcement actions on my behalf.

- By signing and submitting this form, I will not receive any assistance from the Maintenance Enforcement Program in monitoring and collecting my payments.

- I understand that payments will not be recorded or monitored through the Maintenance Enforcement Program.

- I may register with the Maintenance Enforcement Program in the future.

_____
(*date*)

_____
Name of Recipient Signature of Recipient

_____
Name of Witness Signature of Witness

E. PRECEDENTS

1. Garnishment of Wages

a) Affidavit for Garnishment (garnishment of wages for ongoing support and arrears)

File No. 1234-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

TRACY COLLEEN PAYEE

Creditor

- and -

SHAWNE L. PAYOR

Debtor

AFFIDAVIT FOR GARNISHMENT

I, JANE DOE, of the Maintenance Enforcement Office of Winnipeg, in the Province of Manitoba, Director, make oath and say:

1. I have knowledge of the facts herein deposed to, except where same are stated to be based upon information and belief.

2. An Order was pronounced in the KING'S BENCH (FAMILY DIVISION) WINNIPEG CENTRE on May 1, 20_, varied in the KING'S BENCH (FAMILY DIVISION) WINNIPEG CENTER: September 9, 2022 whereby the above named debtor was ordered to pay to the above named creditor the sum of $500.00 monthly and the same is still wholly unsatisfied.

3. The payments ordered to be made are in arrears. The arrears amount to $200.00; and that the arrears can be attached up to an amount of $200.00.

4. I am informed and believe that

(insert employer information)

is or will become indebted to the above-named debtor, and that this debt is in the nature of salary/wages. My source of information is the Maintenance Enforcement File.

SWORN before me this
_____, 20_
at Winnipeg, Manitoba

_____

_____
Deputy Registrar
Court of King's Bench for Manitoba
Commissioner for Oaths in and for the
Province of Manitoba
My Commission Expires_____

b) Notice of Garnishment by Director, Maintenance Enforcement Program (garnishment of wages for ongoing support and arrears) (Form 60F.1)

File No. 1234-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

TRACY COLLEEN PAYEE

Creditor

- and -

SHAWNE L. PAYOR

Debtor

- and -

(insert employer information)

Garnishee

NOTICE OF GARNISHMENT
By Director, Maintenance Enforcement Program
(Section 13.1 and 13.2 of The Garnishment Act)

Maintenance Enforcement Program-Winnipeg
100 – 352 Donald St., Winnipeg, MB R3B 2H8
204-945-7133
FAX: 204-945-5449

Form 60F.1 File No. 1234-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

TRACY COLLEEN PAYEE

Creditor

- and -

SHAWNE L. PAYOR

Debtor

- and -

(insert employer information)

Garnishee

NOTICE OF GARNISHMENT
by Director, Maintenance Enforcement Program
(Sections 13.1 and 13.2 of The Garnishment Act)

TO: (insert employer information)

THE DEBTOR OWES SUPPORT PAYMENTS TO THE CREDITOR pursuant to a court order or agreement. The Director, on behalf of the creditor claims:

A) that you pay wages or make other payments to the debtor; or

B) that you owe money to the debtor **; or

C) that you may owe money to the debtor at any time after the day of service of this Notice of Garnishment.**

The Director, on behalf of the creditor, has directed this Notice of Garnishment to you, as garnishee, in order to seize these monies to enforce the debtor's support obligation.

THIS NOTICE OF GARNISHMENT BINDS:

A) **wages** that are due and payable by you to the debtor on and after the first day, other than a holiday, after the day of service; and

B) **any money other than wages that is owing or payable** by you to the debtor at the time of service**; and

C) **any money other than wages that becomes owing or payable** by you to the debtor at any time after the day of service**.

** All money held jointly by the debtor and one or more other persons, at the time of service of this Notice of Garnishment or any time thereafter, is presumed for the purpose of this Notice of Garnishment to be owned by the debtor.

1. **YOU ARE REQUIRED** to deduct from the wages or other money bound by this Notice of Garnishment

A) the sum of $200.00 payable at a rate of $25.00 per month on the 15th day of each month, commencing _____15, 20_; and

B) the sum of $500.00, monthly, commencing _____ 1, 20_.

and **WITHIN SEVEN DAYS** after deduction to forward the amount(s) so deducted to

Maintenance Enforcement Program - Winnipeg
100 – 352 Donald St., Winnipeg, MB R3B 2H8

for so long as you continue to make payment to the debtor or until this Notice of Garnishment has been terminated, revoked, or replaced by another Notice of Garnishment relating to this support obligation.

CHEQUES must be made payable to PROVINCE OF MANITOBA – MINISTER OF FINANCE, re: File No. 1234-000.

2. **YOU ARE REQUIRED** to file with the Director the Garnishee's Statement attached to this notice

A) within seven days after the day of service of this notice
(i) **if** there is no money currently owing or payable by you to the debtor; or
(ii) **if** the monies seized were jointly held by the debtor and one or more other persons; and

B) within seven days after you are required to deduct the amount(s) under paragraph 1, **if** you do not forward the required amount(s).

3. **YOU ARE REQUIRED** to deliver or mail a copy of this Notice of Garnishment without delay to the debtor and to each person who held the garnished money jointly with the debtor, if applicable.

IF YOU FAIL TO OBEY THIS NOTICE, THE COURT MAY MAKE AND ENFORCE AN ORDER AGAINST YOU for payment of the amount(s) set out above and the costs of the Director on behalf of the creditor.

IF YOU MAKE PAYMENT TO ANY PERSON OTHER THAN AS REQUIRED BY THIS NOTICE, YOU MAY BE REQUIRED TO PAY AGAIN.

THIS NOTICE OF GARNISHMENT HAS PRIORITY OVER ANY OTHER NOTICE OF GARNISHMENT SERVED ON YOU OR ANY DEBT OWED BY THE DEBTOR TO YOU.

IF THIS NOTICE OF GARNISHMENT BINDS WAGES AND THE DEBTOR CEASES TO BE EMPLOYED BY YOU, YOU MUST ADVISE THE DIRECTOR IN WRITING.

NOTICE WHEN JOINTLY HELD MONEY SEIZED

TO: ANY PERSON WHO HELD MONEY JOINTLY WITH THE DEBTOR

AND TO: THE DEBTOR

The Director may enforce a support obligation by seizing money that is held jointly by the debtor and one or more other persons.

The Notice of Garnishment binds all money owing or payable on the day of service or that becomes owing or payable to the debtor by the garnishee at any time after the day of service for as long as the Notice of Garnishment remains in force.

All this money is presumed for the purpose of the Notice of Garnishment to be owned by the debtor, but you may apply to the court that issued the Notice of Garnishment for an order that:

a) the interest of the debtor in the garnished money is less than the amount garnished; and

b) the part of the garnished money in excess of the debtor's interest be distributed to the other joint holder or holders in accordance with their interests.

Notice of an application to the court must be served on the Director and each person who held the garnished money jointly within 21 days after the Notice of Garnishment is served on the garnishee.

Any party may make a motion to the court to determine any matter in relation to this Notice of Garnishment.

Date issued: _____, 20___

_____
Registrar

Director's Address:
Maintenance Enforcement Program - Winnipeg
100 – 352 Donald St.
Winnipeg, MB R3B 2H8
Telephone 204-945-7133

Address of Court Office:
c/o Maintenance Enforcement Program – Winnipeg
100 – 352 Donald St.
Winnipeg, MB R3B 2H8
Telephone 204-945-7133

DEBTOR'S FULL NAME AND ADDRESS:
SHAWNE L. PAYOR
247 COLLECTION ROAD
WINNIPEG, MANITOBA
R3T 2E7

c) Garnishee's Statement (garnishment of wages for ongoing support and arrears of support) (Form 60G.1)

File No. 1234-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

TRACY COLLEEN PAYEE

Creditor

- and -

SHAWNE L. PAYOR

Debtor

- and -

(insert employer information)

Garnishee

GARNISHEE'S STATEMENT

Maintenance Enforcement Program-Winnipeg
100 – 352 Donald St., Winnipeg, MB R3B 2H8
204-945-7133
FAX: 204-945-5449

FORM 60G.1 File No. 1234-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

TRACY COLLEEN PAYEE

Creditor

- and -

SHAWNE L. PAYOR

Debtor

- and -

(insert employer information)

Garnishee

GARNISHEE'S STATEMENT

YOU MUST COMPLETE AND FILE THIS STATEMENT WITHIN THE TIME AND IN THE CIRCUMSTANCES SET OUT IN PARAGRAPH 2 OF THE NOTICE OF GARNISHMENT.

This statement need not be completed if you pay the full amount required by the Notice of Garnishment within the prescribed time.

Instructions: Strike out the paragraphs that do not apply. Complete any applicable paragraphs.

1. I do not currently owe any money to the debtor **.

2. (a) I acknowledge that I owe or will owe the debtor ** the sum of $_____, payable on _____.
(describe nature of debt and terms of payment)

(b) I owe the debtor the sum of $_____ and am concurrently forwarding to _____ the sum of $_____
(the court or the Director as directed in the Notice of Garnishment)
(for use when the garnishee forwards less than the required amount(s) set out in the Notice of Garnishment).

(c) I owe the debtor the sum of $_____ and am concurrently forwarding to the Director the sum of $_____. This money was held jointly by the debtor and one or more other persons.

3. I am not the debtor's employer.

**In the case of a Notice of Garnishment by the Director, Maintenance Enforcement Program, this includes all money that is held jointly by the debtor and one or more other persons.

4. I acknowledge that I am the debtor's employer and that the debtor is paid wages as follows:

$_____	$_____	_____	_____
(gross amount before deductions)	(net amount of pay after deductions)	(date of next pay day)	(pay period)

Copy of the debtor's latest pay slip is enclosed.

5. I have been served with another Notice of Garnishment against the debtor for support payments, the details of which are as follows:

_____	_____	_____	_____
(name of creditor)	(name of court and judicial centre)	(date of notice)	(date of service on garnishee)

6. I reside outside Manitoba and object on the basis that service outside Manitoba was improper on the following grounds:

_____

_____

_____

_____

Date: _____, 20____

_____
Signature of or for Garnishee

_____
Name of Garnishee

_____
Address

_____

_____
Phone

2. Garnishment of Bank Account

a) Affidavit for Garnishment (garnishment of bank account for arrears)

File No. 5678-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

JOE PAYEE

Creditor

- and -

GEORGETTE PAYOR

Debtor

AFFIDAVIT FOR GARNISHMENT

I, JULIA ROBERTSON, of the Maintenance Enforcement Office of Winnipeg, in the Province of Manitoba, Director, make oath and say:

1. I have knowledge of the facts herein deposed to, except where same are stated to be based upon information and belief.

2. An Order was pronounced in the QUEEN'S BENCH (FAMILY DIVISION) WINNIPEG CENTRE on May 1, 2012, varied: October 1, 2015; November 23, 2017; January 22, 2020; January 23, 2022; whereby the above named debtor was ordered to pay to the above named creditor the sum of $500.00 monthly and the same is still wholly unsatisfied.

3. The payments ordered to be made are in arrears. The arrears amount to $8,000.00; and that the arrears can be attached up to an amount of $8,000.00.

4. I am informed and believe that

BANK OF MANITOBA
123 ANY STREET
WINNIPEG, MB R3C 3A7

is or will become indebted to the above-named debtor, and that this debt is in the nature of a bank account. My source of information is the Maintenance Enforcement File.

SWORN before me this
September 29, 20__
at Winnipeg, Manitoba

_____

_____
Deputy Registrar
Court of King's Bench for Manitoba
Commissioner for Oaths in and for the
Province of Manitoba
My Commission Expires_____

b) Notice of Garnishment by Director, Maintenance Enforcement Program (garnishment of bank account for arrears) (Form 60F.1)

File No. 5678-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

JOE PAYEE

Creditor

- and -

GEORGETTE PAYOR

Debtor

- and -

BANK OF MANITOBA
123 ANY STREET
WINNIPEG, MB
R3C 3A7

Garnishee

NOTICE OF GARNISHMENT
By Director, Maintenance Enforcement Program

Maintenance Enforcement Program-Winnipeg
100 – 352 Donald St., Winnipeg, MB R3B 2H8
204-945-7133
FAX: 204-945-5449

Form 60F.1 File No. 5678-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

JOE PAYEE

Creditor

- and -

GEORGETTE PAYOR

Debtor

- and -

BANK OF MANITOBA
123 ANY STREET
WINNIPEG, MB
R3C 3A7

Garnishee

NOTICE OF GARNISHMENT
by Director, Maintenance Enforcement Program

TO: BANK OF MANITOBA, 123 ANY STREET, WINNIPEG, MB R3C 3A7

THE DEBTOR OWES SUPPORT PAYMENTS TO THE CREDITOR pursuant to a court order or agreement. The Director, on behalf of the creditor claims:

A) that you pay wages or make other payments to the debtor; or

B) that you owe money to the debtor **; or

C) that you may owe money to the debtor at any time after the day of service of this Notice of Garnishment.**

The Director, on behalf of the creditor, has directed this Notice of Garnishment to you, as garnishee, in order to seize these monies to enforce the debtor's support obligation.

THIS NOTICE OF GARNISHMENT BINDS:

A) **wages** that are due and payable by you to the debtor on and after the first day, other than a holiday, after the day of service; and

B) **any money other than wages that is owing or payable** by you to the debtor at the time of service**; and

C) **any money other than wages that becomes owing or payable** by you to the debtor at any time after the day of service**.

** All money held jointly by the debtor and one or more other persons, at the time of service of this Notice of Garnishment or any time thereafter, is presumed for the purpose of this Notice of Garnishment to be owned by the debtor.

1. **YOU ARE REQUIRED** to deduct from the wages or other money bound by this Notice of Garnishment

A) the sum of $8,000.00; and
B) the sum of $250.00 monthly, payable on the 1st day of each month, commencing June 1, 20_

and **WITHIN SEVEN DAYS** after deduction to forward the amount(s) so deducted to

Maintenance Enforcement Program - Winnipeg
100 – 352 Donald St.
Winnipeg, MB R3B 2H8

for so long as you continue to make payment to the debtor or until this Notice of Garnishment has been terminated, revoked, or replaced by another Notice of Garnishment relating to this support obligation.

CHEQUES must be made payable to PROVINCE OF MANITOBA – MINISTER OF FINANCE, re: File No. 5678-000.

2. **YOU ARE REQUIRED** to file with the Director the Garnishee's Statement attached to this notice

A) within seven days after the day of service of this notice
(i) **if** there is no money currently owing or payable by you to the debtor; or
(ii) **if** the monies seized were jointly held by the debtor and one or more other persons; and

B) within seven days after you are required to deduct the amount(s) under paragraph 1, **if** you do not forward the required amount(s).

3. **YOU ARE REQUIRED** to deliver or mail a copy of this Notice of Garnishment without delay to the debtor and to each person who held the garnished money jointly with the debtor, if applicable.

IF YOU FAIL TO OBEY THIS NOTICE, THE COURT MAY MAKE AND ENFORCE AN ORDER AGAINST YOU for payment of the amount(s) set out above and the costs of the Director on behalf of the creditor.

IF YOU MAKE PAYMENT TO ANY PERSON OTHER THAN AS REQUIRED BY THIS NOTICE, YOU MAY BE REQUIRED TO PAY AGAIN.

THIS NOTICE OF GARNISHMENT HAS PRIORITY OVER ANY OTHER NOTICE OF GARNISHMENT SERVED ON YOU OR ANY DEBT OWED BY THE DEBTOR TO YOU.

IF THIS NOTICE OF GARNISHMENT BINDS WAGES AND THE DEBTOR CEASES TO BE EMPLOYED BY YOU, YOU MUST ADVISE THE DIRECTOR IN WRITING.

NOTICE WHEN JOINTLY HELD MONEY SEIZED

TO: ANY PERSON WHO HELD MONEY JOINTLY WITH THE DEBTOR

AND TO: THE DEBTOR

The Director may enforce a support obligation by seizing money that is held jointly by the debtor and one or more other persons.

The Notice of Garnishment binds all money owing or payable on the day of service or that becomes owing or payable to the debtor by the garnishee at any time after the day of service for as long as the Notice of Garnishment remains in force.

All this money is presumed for the purpose of the Notice of Garnishment to be owned by the debtor, but you may apply to the court that issued the Notice of Garnishment for an order that:

a) The interest of the debtor in the garnished money is less than the amount garnished; and
b) The part of the garnished money in excess of the debtor's interest be distributed to the other joint holder or holders in accordance with their interests.

Notice of an application to the court must be served on the Director and each person who held the garnished money jointly within 21 days after the Notice of Garnishment is served on the garnishee.

Any party may make a motion to the court to determine any matter in relation to this Notice of Garnishment.

Date issued:_____, 20__

_____
Registrar

Director's Address:
Maintenance Enforcement Program - Winnipeg
100 – 352 Donald St.
Winnipeg, MB R3B 2H8
Telephone 204-945-7133

Address of Court Office:
c/o Maintenance Enforcement Program-Winnipeg
100 – 352 Donald St.
Winnipeg, MB R3B 2H8
Telephone 204-945-7133

DEBTOR'S FULL NAME AND ADDRESS:
GEORGETTE PAYOR
123 MONEY STREET
WINNIPEG, MANITOBA
R3T 2Z6

FORM 60G.1 File No. 5678-000

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

JOE PAYEE

Creditor

- and -

GEORGETTE PAYOR

Debtor

- and -

BANK OF MANITOBA

Garnishee

GARNISHEE'S STATEMENT

YOU MUST COMPLETE AND FILE THIS STATEMENT WITHIN THE TIME AND IN THE CIRCUMSTANCES SET OUT IN PARAGRAPH 2 OF THE NOTICE OF GARNISHMENT.

This statement need not be completed if you pay the full amount required by the Notice of Garnishment within the prescribed time.

Instructions: Strike out the paragraphs that do not apply. Complete any applicable paragraphs.

1. I do not currently owe any money to the debtor **.

2. (a) I acknowledge that I owe or will owe the debtor ** the sum of $_____, payable on _____.
(describe nature of debt and terms of payment)

(b) I owe the debtor the sum of $_____ and am concurrently forwarding to _____ the sum of $_____
(the court or the Director as directed in the Notice of Garnishment)
(for use when the garnishee forwards less than the required amount(s) set out in the Notice of Garnishment).

(c) I owe the debtor the sum of $_____ and am concurrently forwarding to the Director the sum of $_____. This money was held jointly by the debtor and one or more other persons.

3. I am not the debtor's employer.

**In the case of a Notice of Garnishment by the Director, Maintenance Enforcement Program, this includes all money that is held jointly by the debtor and one or more other persons.

4. I acknowledge that I am the debtor's employer and that the debtor is paid wages as follows:

$_____	$_____	_____	_____
(gross amount before deductions)	(net amount of pay after deductions)	(date of next pay day)	(pay period)

Copy of the debtor's latest pay slip is enclosed.

5. I have been served with another Notice of Garnishment against the debtor for support payments, the details of which are as follows:

_____	_____	_____	_____
(name of creditor)	(name of court and judicial centre)	(date of notice)	(date of service on garnishee)

6. I reside outside Manitoba and object on the basis that service outside Manitoba was improper on the following grounds:

_____

_____

_____

_____

Date: _____, 20____

_____
Signature of or for Garnishee

_____
Name of Garnishee

_____
Address

_____

_____
Phone

3. Garnishment of Pension Benefit Credits

a) Affidavit for Garnishment (garnishment of pension benefit credits for arrears)

File No. 2222-333

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

GARY PAYEE

Creditor

- and -

SHERRY PAYOR

Debtor

AFFIDAVIT FOR GARNISHMENT

I, JORDAN MICHAELS, of the Maintenance Enforcement Office of Winnipeg, in the Province of Manitoba, Director, make oath and say:

1. I have knowledge of the facts herein deposed to, except where same are stated to be based upon information and belief.

2. An Order was pronounced in the QUEEN'S BENCH (FAMILY DIVISION) WINNIPEG CENTRE on May 2, 2012, Varied: October 2, 2013; November 24, 2017; January 23, 2019; January 24, 2020; August 28, 2021 whereby the above named debtor was ordered to pay to the above named creditor the sum of $250.00 monthly and the same is still wholly unsatisfied.

3. The payments ordered to be made are in arrears. The arrears amount to $10,000.00; and that the arrears can be attached up to an amount of $10,000.00.

4. I am informed and believe that the debtor has a pension benefit credit with

PENSION BENEFITS COMPANY OF MANITOBA
456 RETIREMENT ROAD
WINNIPEG, MB R2V 3C6

My source of information is the Maintenance Enforcement File.

SWORN before me)
September 25, 20__)
at Winnipeg, Manitoba) _____
_____)
Deputy Registrar
Court of King's Bench for Manitoba
Commissioner for Oaths in and for the
Province of Manitoba
My Commission Expires_____

b) Notice of Garnishment by Director, Maintenance Enforcement Program (garnishment of pension benefit credits for arrears) (Form 60F.2)

File No. 2222-333

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

GARY PAYEE

Creditor

- and -

SHERRY PAYOR

Debtor

- and -

PENSION BENEFITS COMPANY OF MANITOBA
456 RETIREMENT ROAD
WINNIPEG, MB R2V 3C6

Garnishee

NOTICE OF GARNISHMENT OF PENSION BENEFIT CREDIT
(Section 14.1 of *The Garnishment Act*)

Maintenance Enforcement Program-Winnipeg
100 – 352 Donald St., Winnipeg MB R3B 2H8
204-945-7133
FAX: 204-945-5449

FORM 60F.2 File No. 2222-333

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

GARY PAYEE

Creditor

- and -

SHERRY PAYOR

Debtor

- and -

PENSION BENEFITS COMPANY OF MANITOBA
456 RETIREMENT ROAD
WINNIPEG, MB R2V 3C6

Garnishee

NOTICE OF GARNISHMENT OF PENSION BENEFIT CREDIT
(Section 14.1 of *The Garnishment Act*)

TO: PENSION BENEFITS COMPANY OF MANITOBA, 456 RETIREMENT ROAD, WINNIPEG, MB R2V 3C6

THE DEBTOR OWES SUPPORT PAYMENTS TO THE CREDITOR pursuant to a court order or agreement. The Director, Maintenance Enforcement Program, on behalf of the creditor claims that as you are:

A) an employer who established or administers a pension plan for employees including the debtor; or

B) an administrator or trustee of a pension plan of which the debtor is a member; or

C) a financial or other institution that issued, underwrites or is a depository of a retirement benefit plan, owned by the debtor, of a type prescribed by regulation under *The Pension Benefits Act;*

you are a garnishee as defined in subsection 14.1(1) of *The Garnishment Act.*

The Director, on behalf of the creditor, has directed this Notice of Garnishment to you, as garnishee, in order to seize the net pension benefit credit of the debtor, as determined in accordance with the regulation to *The Pension Benefits Act* made under clause 37(s.1) of that Act, to enforce the debtor's support obligation.

This Notice of Garnishment binds the net pension benefit credit of the debtor on the day it is served on you, to the extent necessary to satisfy this notice.

Where you have notice as of the day of service of this Notice of Garnishment that a person is entitled to a division of the debtor's pension benefit credit under subsection 31(2) of *The Pension Benefits Act,* the amount of that person's entitlement is not bound by this Notice of Garnishment and is exempt from attachment by virtue of subsection 14.2(1) of *The Garnishment Act.*

1. **YOU ARE REQUIRED TO** deduct from the net pension benefit credit of the debtor the sum of $10,000.00, plus $250.00 on the 1st day of each month, commencing July 1, 20__, until the funds are remitted, and **within 90 days after the day of service of this notice** on you to forward the amount so deducted to:

   Maintenance Enforcement Program-Winnipeg
   100 – 352 Donald St.
   Winnipeg MB R3B 2H8

   Cheques must be made payable to the Province of Manitoba - Minister of Finance, with reference to Maintenance Enforcement Program file number 2222-333.

2. **YOU ARE REQUIRED TO** complete and provide the attached statutory declaration to the Director, Maintenance Enforcement Program:

   (A) within 30 days after the day of service of this notice, if you are not one of the group of persons defined as a garnishee in subsection 14.1(1) of *The Garnishment Act;* or

   (B) within 90 days after the day of service of this notice, if you do not forward the required amount within that period for any other reason, including either of the following:
   (i) the debtor's net pension benefit credit, determined in accordance with the regulations to *The Pension Benefits Act,* is insufficient to satisfy this Notice of Garnishment; or
   (ii) you have notice that there might be a person entitled to a division of the debtor's pension benefit credit under subsection 31 (2) of *The Pension Benefits Act* as of the day of service of this Notice of Garnishment. **Subsection 14.2(3) of *The Garnishment Act* applies in this situation. YOU MUST NOT PAY any money sought in this Notice of Garnishment until the court determines the payment required. YOU MUST ALSO FILE the completed statutory declaration in the court that issued the Notice of Garnishment.**

Date: _____ 20__

_____
Registrar

Director's Address:
Maintenance Enforcement
Program-Winnipeg
100 – 352 Donald St.
Winnipeg MB R3B 2H8
Telephone Number 204-945-7133

Address of Court Office:
c/o Maintenance Enforcement
Program-Winnipeg
100 – 352 Donald St.
Winnipeg MB R3B 2H8
Telephone Number 204-945-7133

Debtor's FULL NAME and Address:
SHERRY PAYOR
456 Cabot Trail
Winnipeg, Manitoba
R2N 3M4

Form 60G.2 File No. 2222-333

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

BETWEEN:

GARY PAYEE

Creditor

- and -

SHERRY PAYOR

Debtor

- and -

PENSION BENEFITS COMPANY OF MANITOBA
456 RETIREMENT ROAD
WINNIPEG, MB R2V 3C6

Garnishee

STATUTORY DECLARATION OF PENSION BENEFIT CREDIT GARNISHEE

(Section 14.1 of *The Garnishment Act*)

I, _____ , of _____, _____,
(full name of declarant) (city/town) (province/territory)

do solemnly declare that:

Instructions: Complete paragraph 1 and one of paragraphs 2, 3 and 4, strike out the inapplicable paragraphs and make the appropriate modifications.

1. I am the (where the declarant is an officer, director, partner, proprietor, member or employee of the garnishee, set out the nature of the declarant's capacity) garnishee named in the Notice of Garnishment.

Instructions: Complete paragraph 2 when payment is not being forwarded because the named garnishee in the Notice of Garnishment does not meet the definition of "garnishee" in subsection 14.1(1) of *The Garnishment Act*.

2. (The garnishee named herein is not / I am not) a garnishee within the meaning of subsection 14.1(1) of *The Garnishment Act*, in that (the named garnishee is not / I am not) an administrator or trustee of a pension plan in which the debtor has a pension benefit credit, nor (is the named garnishee / am I):

   (a) an employer who has established or administers a pension plan for employees, of which the debtor is a plan member; or

   (b) a financial or other institution that issues, underwrites or is a depository of a retirement benefit plan of a type prescribed by regulation under *The Pension Benefits Act,* of which the debtor is the owner.

Instructions: Complete paragraph 3 when less than the amount requested by the Director in the Notice of Garnishment is being remitted.

3. I am concurrently forwarding to the Director, Maintenance Enforcement Program, the sum of $_____, which is less than the amount required in the Notice of Garnishment. I am forwarding this amount because:

   (a) The debtor's pension benefit credit as of _____
   (date of service of notice of garnishment)
   was $_____.

   (b) The debtor's net pension benefit credit is $_____, being the debtor's pension benefit credit less the following deductions allowed and prescribed by regulation to *The Pension Benefits Act*:

   (i) Tax withheld: $_____

   (ii) Amount of debtor's pension benefit credit owing to another person pursuant to subsection 31(2) of *The Pension Benefits Act* as of the day of service of the notice of garnishment: (specify amount of fixed entitlement as at day of service):
   $_____.

   (iii) Other deductions as allowed and prescribed by regulation (provide specifics):
   $_____
   $_____
   $_____

Instructions: Complete paragraph 4 when payment as requested in the Notice of Garnishment is not forwarded because the garnishee has received notice a person might be entitled, as of the day of service of the Notice of Garnishment, to a division of the debtor's pension benefit credit pursuant to subsection 31(2) of *The Pension Benefits Act*, and accordingly subsection 14.2(3) of *The Garnishment Act* applies.

4. Payment as requested in the Notice of Garnishment is not being forwarded at this time because (the garnishee has / I have) received notice that a person might be entitled, as of the day of service of the Notice of Garnishment, to a division of the debtor's pension benefit credit pursuant to subsection 31(2) of *The Pension Benefits Act.*

(A) (i) The name and address of this person are:

_____
_____
_____

(ii) (The garnishee is / I am) not aware of the name and/or address of the person, but (the garnishee has / I have) made the following efforts to ascertain same:

_____
_____
_____

(B) The particulars of the notice (the garnishee has / I have) received of this person's interest are as follows:

_____
_____
_____

(C) The following efforts have been made by (the garnishee / me) to ascertain whether this person is entitled to a division of the debtor's pension benefit credit:

_____
_____
_____

5. I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the _____ of _____, in the _____ of _____, this ____ day of _____, ____.)

_____
Signature of Declarant

_____
Commissioner for Oaths in and for the Province of Manitoba
My Commission Expires:_____
(or as the case may be)

Note: This form may be modified, if necessary, for use after the court has determined rights and liabilities pursuant to a Notice of Garnishment under section 14.1 of ***The Garnishment Act***.

4. Support Deduction Notice Documents

(a) Support deduction notice, with cover letter
(b) Response to support deduction notice
(c) Cover letter for replacement of a support deduction notice
(d) Suspension of a support deduction notice, with cover letter
(e) Adjustment of a support deduction notice, with cover letter
(f) Termination of a support deduction notice, with cover letter
(g) Non-compliance letter

[Document follows on next page]

Manitoba

Justice
Maintenance Enforcement Program
Programme d'exécution
des ordonnances alimentaires

100-352 Donald St
Winnipeg, MB R3B 2H8

352, rue Donald, bur. 100
Winnipeg (Manitoba) R3B 2H8

Telephone/Téléphone : 204-945-7133
Facsimile/Télécopieur : 204-945-5449
Toll free in Canada: 1-866-479-2717
Sans frais au Canada : 1-866-479-2717
ManitobaMEPinquiries@gov.mb.ca

10 May 2023

DONALD DUCK'S CAR DETAILING
BOX 1546
WINNIPEG BEACH MB R0H 2J4

Attention: Payroll / Accounts Department
Fax Number:

RE: Support Deduction Notice - Salary / Wages
Manitoba MEP File: 5027-073

You are being served with the attached Support Deduction Notice.

Your obligations are outlined in the Support Deduction Notice. Please see our website www.manitoba.ca/justice/courts/mep/index.html for Frequently Asked Questions (FAQs) and additional information with respect to your obligations under this Notice. SDN documents may be served by email if you provide us with a completed and signed Authorization of SDN Documents by Email. Please contact us to request a form or visit our website at www.manitoba.ca/justice/courts/mep/index.html.

Please carefully compare this Support Deduction Notice with any other Notice you have previously received for this support payor. This may be a new Notice respecting the same support recipient (the other party named in the Notice), or it may be a Notice with respect to a different support recipient. If this Notice is with respect to a different support recipient, you are required to deduct and remit the amounts required by both Notices.

Pursuant to *The Family Support Enforcement Act*, the copy of the Support Deduction Notice provided to you must be forwarded to the support payor immediately. If you are a financial institution, a copy of the Notice must also be forwarded to each joint account holder. A financial statement has also been enclosed with this Support Deduction Notice. Please provide it to the support payor together with the extra copy of the Support Deduction Notice.

You may wish to remit payments using Direct Deposit. This option will save you time and postage and increase the security of the remittance as well as assist support payors by ensuring timely receipt of funds. Please contact our office for more information.

If you have any questions or concerns, we can be contacted by email at ManitobaMEPinquiries@gov.mb.ca or by phone, fax or regular mail at the numbers and address noted above. Please be sure to include the support payor name and MEP file number on any communication with our office.

Thank you for your cooperation and assistance in providing support to Manitoba families.

MAINTENANCE ENFORCEMENT PROGRAM, MANITOBA

BETWEEN:

MINNIE MOUSE

- and -

MICKEY MOUSE

- and -

DONALD DUCK'S CAR DETAILING

Person Required To Pay

SUPPORT DEDUCTION NOTICE

Section 58.1 of *The Family Support Enforcement Act*

1. This support deduction notice (hereafter referred to as the "Notice") is issued with respect to the obligation of MICKEY MOUSE (hereafter referred to as support payor) under the support order(s) granted on: 9 October 2013

   plus any penalties or costs which have been or will be assessed.

   As long as this Notice remains in force, it binds money payable by the Person Required to Pay (hereafter referred to as you) to the support payor as follows:

   a) (i) wages that are due and payable to the support payor by you at the time of service;
   (ii) wages that become due and payable to the support payor by you, on and after the first day of service.

   Wages include salary, commission and fees, and any other money payable by an employer to an employee in respect of work or services performed in the course of employment but it does not include any deductions made by the employer under any Act of the Legislature of any province or the Parliament of Canada.

2. The following amount is payable:

   (i) ongoing support:

Amount	Next Payment Due	Payment End Date	Payment Frequency
$176.94	2023-05-12	Until Further Notice	Bi-Weekly

   (ii) support arrears of $1,527.13 are due immediately.

   If the amount payable to the support payor is not sufficient to pay the total amount(s) in paragraph 2(i) and 2(ii), these arrears are payable by sending the net amount left after paying the amount(s) in paragraph 2(i) and leaving the support payor with a net monthly exemption of $250.00 until the arrears have been paid in full.

   The sum of $250.00 net, per month or pro-rated for any part of a month, is exempt from the amount

you submit. Net is the full amount of money earned by or owing to the support payor after the mandatory deductions are made, including, but not limited to, salary; general holiday, vacation and overtime pay; commissions; bonuses; incentive pay; termination pay and severance packages (buy-outs).

3. Payments, as set out at number 2 above, must be sent to the Director within seven (7) days of funds becoming due and payable by you to the support payor.

   All payments must be payable to: Province of Manitoba - Minister of Finance, MEP File Number 5027-073 through electronic deposit or transfer, telephone or internet banking or by forwarding a cheque to 100-352 Donald Street, Winnipeg MB R3B 2H8.

4. This Notice has the same priority as a garnishment order to enforce support and has priority over any other garnishment or any debt owed by the support payor to you.

5. Within seven (7) days after being served with this Notice, you must send the completed Response to Support Deduction Notice to the Director by regular mail or facsimile to the address or fax number provided.

6. You must immediately notify the Designated Officer, in writing, if:
   - There are insufficient funds to satisfy the payment terms listed in Paragraph 2;
   - The support payor is laid off and/or on an extended leave;
   - The support payor returns to work after a layoff and/or extended leave;
   - The support payor's employment is terminated.

7. You will be notified in writing of any changes to this Notice.

8. If you fail to comply with the requirements of this Notice, the Director may make a motion to the Court of King's Bench to request an order against you for payment of the amount(s) owing under this Notice plus court costs.

9. The following information is provided to assist with correctly identifying the support payor:

   DOB: 29 January 1985

10. You are required to give the support payor a copy of this support deduction notice including the Financial Statement if one is attached.

ISSUED by the Director in and for the Province of Manitoba on 10 May 2023.

To the Support Payor: If you are unable to pay the arrears as set out in Paragraph 2 of this notice, the Director will work with you to establish a satisfactory payment arrangement for the arrears. To establish a payment arrangement, you must complete and return a financial statement to our office. If you did not receive a financial statement with your copy of the support deduction notice, they are available on our website at www.manitoba.ca/justice/courts/mep/index.html or by contacting our office to request a statement be sent to you. A Cost Recovery Fee (CRF) has been assessed and added to the file balance for this collection action pursuant to *The Family Support Enforcement Act* and Regulations.

To the Person Required to Pay: Please see our website www.manitoba.ca/justice/courts/mep/index.html for Frequently Asked Questions (FAQs) and additional information with respect to your obligations under this Notice. SDN documents may be served by email if you provide us with a completed and signed

Authorization of SDN Documents by Email. Please contact us to request a form or visit our website at www.manitoba.ca/justice/courts/mep/index.html.

Maintenance Enforcement Program
100 - 352 Donald St, Winnipeg MB R3B 2H8
Phone: (204) 945-7133, toll free in Canada 1-866-479-2717
Fax: (204) 945-5449
Email: ManitobaMEPinquiries@gov.mb.ca

TO: Director
Maintenance Enforcement Program
100 - 352 Donald St
WINNIPEG MB R3B 2H8
Fax: (204)945-5449

FROM: DONALD DUCK'S CAR DETAILING

RESPONSE TO SUPPORT DEDUCTION NOTICE
Manitoba MEP File: 5027-073, SUPPORT PAYOR: MICKEY MOUSE

Persons Required To Pay must complete the three (3) parts of this Response to Support Deduction Notice and, within 7 days of service of the Support Deduction Notice, return it to the Maintenance Enforcement Program (MEP) at the address provided above. More information is available on the Manitoba Justice website at www.manitoba.ca/jus or phone 204-945-7133 (or toll-free in Canada at 1-866-479-2717) for direct assistance.

Part 1 - Employers

Active Employee

☐ I **am** the **employer** of the support payor named in the Support Deduction Notice (SDN). The support payor is paid wages or other income as follows: $_____ gross pay or other income (before deductions) $_____ net pay or other income (after deductions)

The support payor's pay period cycle is (please check one):

Cycle ☐ Monthly ☐ Semi-Monthly ☐ Bi-Weekly ☐ Weekly

Next Pay Period/Date _____

Please provide details if payment dates vary _____

☐ The support payor is paid by direct deposit to the following financial institution:

_____

If support payor is paid other income (ex. overtime, bonuses), indicate the type(s) and frequency:

_____

Former Employee/Named Support payor never employed

Former Employee

☐ I **am not** the **employer** of the support payor named in the Support Deduction Notice, nor do I or will I owe any money to the support payor. I employed the support payor in the past between the following dates:

_____

☐ The support payor was paid by direct deposit to the following financial institution:

_____

Support payor never employed

☐ I **am not** the **employer** of the support payor named in the Support Deduction Notice, nor do I or will I owe any money to the support payor.

Part 1 - Financial Institutions

Section 1 - Active Account Holders/Clients

☐ I am a financial institution that holds monies on deposit and **do owe or will owe** the support payor named in the Support Deduction Notice the sum of $_____ representing _____, with the frequency of deposits being _____.
(nature of monies owing or held on deposit)

Funds are held jointly by the support payor and one or more other person: (circle one) **Yes** **No**

Section 2 - Inactive Account Holder/No Accounts

☐ I am a financial institution that holds monies on deposit and **do not owe any money** to the support payor named in the Support Deduction Notice, which includes all money that is held by the support payor and one or more other persons. Past deposit information: _____

Part 1 - Any Entity Other Than Employers or Financial Institution

☐ I am a Person Required To Pay under a Support Deduction Notice and I (check which applies):

☐ **do owe or will owe** money to the support payor named in the Support Deduction Notice in the amount(s) and dates as follows:
_____

☐ **do not owe money** to the support payor named in the Support Deduction Notice, which includes all money that is held for or owed to the support payor and one or more other persons by me. Past monies owed to the support payor and one or more other persons by me are:
_____
_____

Please use the reverse side or additional paper if more information can be provided.

Part 2

Information in my possession regarding the Support payor named in Support Deduction Notice:
Date of Birth _____
Social Insurance Number _____
Address and phone number(s) _____
_____
Current/Past Employers _____
Pension Plans (Name and Address of Pension Administrator) _____
_____

Part 3

I, _____ certify that the information entered on this Response
(print name in full)
to Support Deduction Notice is accurate and complete to the best of my knowledge.

The required payment(s) will be remitted to the Maintenance Enforcement Program by:
□ electronic exchange (direct deposits/funds transfer) □ telephone/Internet banking □ cheques

Date _____ **Signature** _____

Please provide contact number and position of the signee _____

Please verify the fax number used for service of SDN documents: _____

Justice
Maintenance Enforcement Program
Programme d'exécution
des ordonnances alimentaires

100-352 Donald St
Winnipeg, MB R3B 2H8

352, rue Donald, bur. 100
Winnipeg (Manitoba) R3B 2H8

Telephone/Téléphone : 204-945-7133
Facsimile/Télécopieur : 204-945-5449
Toll free in Canada: 1-866-479-2717
Sans frais au Canada : 1-866-479-2717
ManitobaMEPinquiries@gov.mb.ca

10 May 2023

DONALD DUCK'S CAR DETAILING
BOX 1546
WINNIPEG BEACH MB R0H 2J4

Attention: Payroll / Accounts Department
Fax Number:

RE: Support Deduction Notice - Replacement
Manitoba MEP File: 5027-073

You are being served with the attached Support Deduction Notice that replaces an earlier Support Deduction Notice and any Adjustments or Suspensions to the earlier Support Deduction Notice.

The payment requirements have changed and are now due as set out in the attached Support Deduction Notice. Please see our website at www.manitoba.ca/justice/courts/mep/index.html for Frequently Asked Questions (FAQs) and additional information with respect to your obligations under this Notice. SDN documents may be served by email if you provide us with a completed and signed Authorization of SDN Documents by Email. Please contact us to request a form or visit our website at www.manitoba.ca/justice/courts/mep/index.html.

Pursuant to *The Family Support Enforcement Act*, the copy of the Support Deduction Notice provided to you must be forwarded to the support payor immediately. If you are a financial institution, a copy of the Notice must also be forwarded to each joint account holder. A financial statement has also been enclosed with this Support Deduction Notice. Please provide it to the support payor together with the extra copy of the Support Deduction Notice.

If you are not already doing so, you may wish to remit payments using Direct Deposit.
This option will save you time and postage and increase the security of the remittance as well as assist support payors by ensuring timely receipt of funds. Please contact our office for more information.

If you have any questions or concerns, we can be contacted by email at ManitobaMEPinquiries@gov.mb.ca or by phone, fax or regular mail at the numbers and address noted above. Please be sure to include the support payor name and MEP file number on any communication with our office.

Thank you for your cooperation and assistance in providing support to Manitoba families.

ISSUED by the Director in and for the Province of Manitoba on 10 May 2023

Justice
Maintenance Enforcement Program
Programme d'exécution
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10 May 2023

DONALD DUCK'S CAR DETAILING
BOX 1546
WINNIPEG BEACH MB R0H 2J4

Attention: Payroll / Accounts Department
Fax Number:

RE: Suspension of Wage Support Deduction Notice
Manitoba MEP File: 5027-073

Enclosed is a suspension of the existing Wage Support Deduction Notice for the above noted file. SDN documents may be served by email if you provide us with a completed and signed Authorization of SDN Documents by Email. Please contact us to request a form or visit our website at www.manitoba.ca/justice/courts/mep/index.html.

If you have any questions or concerns, please contact us by using the various means noted above.

Yours truly,

Maintenance Enforcement Program

Enclosure

Manitoba MEP File: **5027-073**

MAINTENANCE ENFORCEMENT PROGRAM, MANITOBA

BETWEEN:

MINNIE MOUSE

- and -

MICKEY MOUSE

- and -

DONALD DUCK'S CAR DETAILING

Person Required To Pay

SUSPENSION OF WAGE SUPPORT DEDUCTION NOTICE

The Wage Support Deduction Notice dated 10 May 2023 together with any Adjustments of the Wage Support Deduction Notice that issued subsequently with respect to:

- MICKEY MOUSE
- MINNIE MOUSE, and
- MEP FILE 5027-073

is/are suspended effective immediately.

Please make no further deductions and remittances until you are notified in writing by the Director that the Wage Support Deduction Notice and subsequent Adjustments have been replaced with another Wage Support Deduction Notice or terminated entirely.

The following information is provided to assist with correctly identifying the support payor:

DOB: 29 January 1985

ISSUED by the Director in and for the Province of Manitoba on 10 May 2023.

Maintenance Enforcement Program
100 - 352 Donald St, Winnipeg MB R3B 2H8
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ManitobaMEPinquiries@gov.mb.ca

10 May 2023

DONALD DUCK'S CAR DETAILING
BOX 1546
WINNIPEG BEACH MB R0H 2J4

Attention: Payroll / Accounts Department
Fax Number:

RE: Adjustment of Wage Support Deduction Notice
Manitoba MEP File: 5027-073

Enclosed is an adjustment of the existing Wage Support Deduction Notice for the above noted file. SDN documents may be served by email if you provide us with a completed and signed Authorization of SDN Documents by Email. Please contact us to request a form or visit our website at www.manitoba.ca/justice/courts/mep/index.html.

If you are not already doing so, you may wish to remit payments using Direct Deposit. This option will save you time and postage and increase the security of the remittance as well as assist support payors by ensuring timely receipt of funds. Please contact our office for more information.

If you have any questions or concerns, please contact us by using the various means noted above.

Yours truly,

Maintenance Enforcement Program

Enclosure

Manitoba MEP File: 5027-073

MAINTENANCE ENFORCEMENT PROGRAM, MANITOBA

BETWEEN:

MINNIE MOUSE

- and -

MICKEY MOUSE

- and -

DONALD DUCK'S CAR DETAILING

Person Required To Pay

ADJUSTMENT OF WAGE SUPPORT DEDUCTION NOTICE

1. Pursuant to the Wage Support Deduction Notice dated 10 May 2023 with respect to:
   - MICKEY MOUSE
   - MINNIE MOUSE, and
   - MEP FILE 5027-073

   effective immediately you are required to adjust the amount payable by you as follows:

   (i) ongoing support:

Amount	Next Payment Due	Payment End Date	Payment Frequency
$176.94	2023-05-12	Until Further Notice	Bi-Weekly

   (ii) support arrears of $1,000.00 are due immediately.

   If the Support Deduction Notice affects wages, it is important that you ensure the monthly sum of $250.00 net (which may be pro-rated over the month) is at all times exempt from deductions.

2. Payments, as set out at Number 1 above, must be sent to the Director within seven (7) days of funds becoming due and payable by you to the support payor.

   All payments must be payable to: Province of Manitoba - Minister of Finance, MEP File Number 5027-073 through electronic deposit or transfer, telephone or internet banking or by forwarding a cheque to 100-352 Donald Street, Winnipeg MB R3B 2H8.

3. Your obligations as the Person Required To Pay remain in full force and effect under this Adjustment as set out in the Wage Support Deduction Notice issued 10 May 2023.

4. The following information is provided to assist with correctly identifying the support payor:

   DOB: 29 January 1985

ISSUED by the Director in and for the Province of Manitoba on 10 May 2023.

Maintenance Enforcement Program
100 - 352 Donald St, Winnipeg MB R3B 2H8
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Manitoba

Justice
Maintenance Enforcement Program
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10 May 2023

DONALD DUCK'S CAR DETAILING
BOX 1546
WINNIPEG BEACH MB R0H 2J4

Attention: Payroll / Accounts Department
Fax Number:

RE: Termination of Wage Support Deduction Notice
Manitoba MEP File: 5027-073

Enclosed is a termination of the existing Wage Support Deduction Notice for the above noted file. SDN documents may be served by email if you provide us with a completed and signed Authorization of SDN Documents by Email. Please contact us to request a form or visit our website at www.manitoba.ca/justice/courts/mep/index.html.

If you have any questions or concerns, please contact us by using the various means noted above.

Yours truly,

Maintenance Enforcement Program

Enclosure

Manitoba MEP File: **5027-073**

MAINTENANCE ENFORCEMENT PROGRAM, MANITOBA

BETWEEN:

MINNIE MOUSE

- and -

MICKEY MOUSE

- and -

DONALD DUCK'S CAR DETAILING

Person Required To Pay

TERMINATION OF WAGE SUPPORT DEDUCTION NOTICE

The Wage Support Deduction Notice dated 10 May 2023 together with any Adjustments of the Wage Support Deduction Notice that issued subsequently with respect to:

- MICKEY MOUSE
- MINNIE MOUSE, and
- MEP FILE 5027-073

is/are terminated effective immediately.

Please make no further deductions and remittances pursuant to the Wage Support Deduction Notice and/or Adjustment identified above.

The following information is provided to assist with correctly identifying the support payor:

DOB: 29 January 1985

ISSUED by the Director in and for the Province of Manitoba on 10 May 2023.

Maintenance Enforcement Program
100 - 352 Donald St, Winnipeg MB R3B 2H8
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ManitobaMEPinquiries@gov.mb.ca

10 May 2023

DONALD DUCK'S CAR DETAILING
BOX 1546
WINNIPEG BEACH MB R0H 2J4

Attention: Payroll / Accounts Department
Fax Number:

RE: Support Deduction Notice - MICKEY MOUSE
Manitoba MEP File: 5027-073

On 10 May 2023 you were served with a Support Deduction Notice under Section 58.1 of *The Family Support Enforcement Act*. You are required to respond within seven (7) days of service of the Support Deduction Notice by completing and returning the Response to Support Deduction Notice and/or remitting payments within seven (7) days of funds becoming due and payable by you to the support payor.

In the event that you fail to pay and/or respond as required by the Support Deduction Notice, *The Family Support Enforcement Act* allows the Director of the Maintenance Enforcement Program to seek a court order against DONALD DUCK'S CAR DETAILING for payment of the amount(s) owing under the Support Deduction Notice and the costs of acquiring the court order.

If payment and/or a completed Response are not received **within five (5) days** of the date of this letter, the Director may proceed with an application for an order from the Court of King's Bench.

If you require a new Response to Support Deduction Notice, please visit the Justice website at www.manitoba.ca/justice/courts/mep/index.html where forms are available.

The following information is provided to assist with correctly identifying the support payor:

DOB: 29 January 1985

If you have any questions or concerns, we can be contacted by email at ManitobaMEPinquiries@gov.mb.ca or by phone, fax or regular mail at the numbers and address noted above. Please be sure to include the support payor name and MEP file number on any communication with our office.

ISSUED by the Director in and for the Province of Manitoba on 10 May 2023

5. Support Order (pursuant to *The Inter-jurisdictional Support Orders Act* (Form 70N))

File No. FD

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

THE HONOURABLE)
) Tuesday, the 4th day of October, 20__
JUSTICE)

BETWEEN:

JANE DOE,

Claimant,

- and –

JACK DOE,

Respondent.

ORDER

1.0 **THIS MATTER** having proceeded at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba, R3C 0P9, at the request of Jane Doe on October 4, 20__;

2.0 **THIS MATTER** being a support application made by Jane Doe of British Columbia pursuant to *The Inter-jurisdictional Support Orders Act;*

3.0 **IN THE PRESENCE** of:

3.1 Jack Doe;

3.2 Joe Blow, counsel for Jack Doe; and

3.3 Crown Counsel, Manitoba Justice for the Designated Authority for the Province of Manitoba.

4.0 **THE FOLLOWING** documents and evidence having been filed in support of this application:

4.1 Notice of Hearing;

4.2 Certificate of Service by Sheriff;

4.3 Support Application submitted by Jane Doe; and

4.4 Response and Financial Statement of Jack Doe, sworn August 15, 20__.

5.0 UPON considering the material filed, evidence presented and submissions made in this matter;

6.0 THIS COURT ORDERS pursuant to *The Inter-jurisdictional Support Orders Act* of Manitoba and *The Family Law Act* of Manitoba that:

6.1 The annual income of Jack Doe is determined by the Court to be $30,000.00;

6.2 Jack Doe pay Jane Doe support for Mary Doe, born January 1, 2012, pursuant to the Manitoba Table of the *Child Support Guidelines*, in the sum of $233.00 per month on the 1st day of each month commencing November 1, 20__, until further order of the Court;

7.0 THIS COURT ORDERS pursuant to *The Family Support Enforcement Act* of Manitoba that:

7.1 The payments of the support ordered be made by cash, electronic transfer of funds, pre-authorized debit from a financial institution, money order or bank draft payable to the Province of Manitoba – Minister of Finance and be sent to the Director, Maintenance Enforcement Program, Canada Building, 100 – 352 Donald Street, Winnipeg, Manitoba, R3B 2H8, pursuant to *The Family Support Enforcement Act*;

8.0 THIS COURT ORDERS pursuant to the *Court of King's Bench Act* and Rules that:

8.1 A copy of this Order shall be served on Jack Doe by regular letter mail addressed to Jack Doe, c/o Joe Blow, Barrister and Solicitors 123 Fourth Street, Winnipeg, Manitoba, R1X 2X3, attention: Joe Blow, within 20 days of the date of signing;

DATED

_____
(Judge/Master/Deputy Registrar)

CONSENTED AS TO FORM:
Blow and Blow

Per: _____
Joe Blow
Counsel for Jack Doe

CONSENTED AS TO FORM:
Manitoba Justice, Legal Services Branch, Family Law Section

Per: _____
Janet Lawer
Crown Counsel

Counsel for Manitoba Justice, Family Law Section is:
Name: Janet Lawer, Crown Counsel
Firm Name: Manitoba Justice, Legal Services Branch, Family Law Section
Address: 1230 - 405 Broadway, Winnipeg, Manitoba R3C 3L6
Phone Number: (204) 945-0268
Fax Number: (204) 948-2004
Firm File Number: 12345

Lawyer of record for Jack Doe is:
Name: Joe Blow
Firm Name: Blow and Blow, Barristers and Solicitors
Address: 5 - 123 Fourth Street, Winnipeg, Manitoba R1X 2X3
Phone Number: (204) 544-4445
Fax Number: (204) 544-4454
E-mail Address:
Firm File Number:

6. Provisional Order (pursuant to s. 7 of *The Inter-jurisdictional Support Orders Act* - where Respondent resides in a reciprocating jurisdiction that requires a Provisional Order (Form 70N))

*** Note new procedural options under s. 6 of the ISO Regulation. This precedent reflects the procedure under s. 6(1)(a)**

File No. FD

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

The HONOURABLE) day, the day of , 20_.

BETWEEN:

{specify name}

Applicant,

- and –

{specify name}

Respondent.

PROVISIONAL ORDER

1.0 This matter having proceeded at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba, R3C 0P9, at the request of [specify party name] of Manitoba on [date];

2.0 No one appearing for [specify party name];

3.0 No one appearing for [specify party name];[5]

4.0 The following documents having been filed in support of this application:

4.1 Support Application of [specify party name];

4.2 {specify other documents};

[5] Note: the duplicate appearance of this "no one appearing clause" is intentional as this type of matter can proceed without either parties' attendance.

5.0 THIS COURT ORDERS pursuant to *The Inter-jurisdictional Support Orders Act* of Manitoba and *The Family Law Act* of Manitoba that:

5.1 The current annual income of [specify party name] is determined by the Court to be [specify amount];

5.2 [Specify party name] pay [specify party name] support for [specify child name/birthdate], pursuant to the [specify province] Table of the Child Support Guidelines, in the sum of $[specify table amount] per month on the [specify day] of each month commencing [specify date] until further order of the Court;

5.3 The payment(s) of the (support/lump sum support/compensatory payment/arrears of support) ordered be made by cash, electronic transfer of funds, pre-authorized debit from a financial institution, money order or bank draft payable to the Province of Manitoba – Minister of Finance and be sent to the Director, Maintenance Enforcement Program, Canada Building, 100 - 352 Donald Street, Winnipeg, Manitoba, R3B 2H8, pursuant to *The Family Support Enforcement Act*;

5.4 Paragraphs 5.1, 5.2 and 5.3 of this Order are of no force and effect until confirmed by a Court of a reciprocating jurisdiction where [specify party name] may be residing.

DATED

_____

(Judge/Master/Deputy Registrar)

Lawyer of record for {specify name of respondent} is:
Name: Joe Blow
Firm Name: Blow and Blow, Barristers and Solicitors
Address: 5 - 123 Fourth Street, Winnipeg, Manitoba R1X 2X3
Phone Number: (204) 544-4445
Fax Number: (204) 544-4454
E-mail Address:
Firm File Number:

7. Notice of Motion to Vary (Form 70H)

File No. FD _____

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

JOHN SMITH,

petitioner,

- and -

JANE SMITH,

respondent.

NOTICE OF MOTION TO VARY

TO THE PETITIONER OR RESPONDENT:
Jane Smith
25 Rose Street
Winnipeg, Manitoba R3C 7X2

THE PETITIONER, JOHN SMITH, WILL MAKE A MOTION FOR AN ORDER VARYING:

The child support order granted by The Honourable Mr. Justice Reynolds of the Court of Queen's Bench (Family Division), Winnipeg Centre, pronounced on the 10th day of September, 2010.

(List any other orders which the moving party is asking to vary.)

_____

_____

_____

The details of the variation the moving party is requesting are found on the attached page.

(If this motion is for an order varying or deleting a support order, add:)

You must do the following things unless the NOTICE OF RIGHT TO REQUEST INTER-JURISDICTIONAL CONVERSION under the *Divorce Act* (Canada) applies to you AND you submit the REQUEST TO CONVERT APPLICATION INTO AN INTER-JURISDICTIONAL SUPPORT VARIATION APPLICATION UNDER THE *DIVORCE ACT* (CANADA) within 40 days:

You or a Manitoba lawyer acting for you must serve and file in the court office an affidavit and a financial statement in accordance with Rule 70.37 and Form 70D of the *King's Bench Rules* within the time set out below for filing and serving a notice of opposition to variation.

(If this motion is for an order varying a child support order under the Divorce Act (Canada), add both of the following paragraphs:)

You must also file and serve in the court office an affidavit containing the documents required by section 21 of the *Federal Child Support Guidelines* (if either the moving party or you live outside Manitoba) or by section 21 of the *Manitoba Child Support Guidelines Regulation* (if you both live in Manitoba) within the time set out below for filing and serving a notice of opposition to variation.

NOTE that if there are no support or property issues raised in this motion, you do not need to file and serve at this time a financial statement nor an affidavit containing the documents required by section 21 of the applicable child support guidelines.

IF YOU ARE SERVED WITH A DEMAND FOR FINANCIAL INFORMATION IN FORM 70D.1, YOU MUST ALSO PROVIDE THE FINANCIAL INFORMATION REQUIRED OF YOU WITHIN THE TIME SET OUT IN THE DEMAND FOR FINANCIAL INFORMATION, WHICH MAY BE DIFFERENT THAN THE TIME SPECIFIED BELOW FOR FILING A RESPONSE TO THIS MOTION.

IF YOU FAIL TO FILE AND SERVE YOUR COMPLETED FINANCIAL INFORMATION ON TIME, YOU MAY INCUR SERIOUS PENALTIES.

IF YOU WISH TO OPPOSE THIS MOTION AND PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE MOTION, you or a Manitoba lawyer acting for you must prepare:

- a notice of opposition to variation (Form 70H.1) except for guardianship, contact or *loco parentis* orders;
- a responding affidavit;
- a Financial Statement (Form 70D) if the motion is to vary, rescind or suspend support;

and file them in the court office where the application is to be heard:

- WITHIN 20 DAYS after this motion is served on you, if you are served in Manitoba;
- WITHIN 40 DAYS after this motion is served on you, if you are served in another province or territory of Canada or in the United States of America;
- WITHIN 60 DAYS after this motion is served on you, if you are served outside Canada or the United States of America.

and serve them on the moving party's lawyer or, where the moving party does not have a lawyer, serve them on the moving party.

IF YOU FAIL TO FILE AND SERVE A NOTICE OF OPPOSITION TO VARIATION, AN ORDER MAY BE GRANTED AGAINST YOU ON ANY CLAIM IN THIS MOTION IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DETAILS OF THE REQUESTED VARIATION

(Set out in separate, consecutively numbered paragraphs the details of the requested variation. Where the motion requests a variation of child support, specify whether the claim is for an amount of support in the applicable table in the child support guidelines, an amount for special or extraordinary expenses, or a different amount.)

1. Particulars of relief sought:

    (a) to vary the quantum of child support payable by the respondent to the petitioner for the child, Matthew Smith, in accordance with the *Child Support Guidelines*.

2. The moving party also moves for an Order:

    (a) that short leave be granted for the hearing of this motion;

    (b) that the respondent be required to contribute to the private school tuition expense for Matthew Smith in accordance with section 7 of the *Child Support Guidelines*;

    (c) that the respondent be required to pay the costs of this motion; and

    (d) that there be such other order or orders as this Honourable Court deems just.

FINANCIAL INFORMATION

(Attached is the moving party's financial statement (Form 70D).)

(Note: If the moving party is not asking for a variation of a support or property order, the moving party does not need to attach a financial statement nor an affidavit containing the documents required by section 21 of the applicable child support guidelines.)

(*Where the motion requests a variation of child support under the Divorce Act (Canada) and either the moving party or the responding party lives outside Manitoba, add*:)

(Attached is the moving party's affidavit containing the documents required under section 21 of the applicable child support guidelines.)

EVIDENCE TO BE USED AT THE HEARING

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(List affidavits or other documentary evidence on which the moving party will be relying.)

(a) the affidavit of John Smith, sworn September 10, 20__;

(b) such other evidence as counsel may advise.

_____, 20____

"*W. R. Barrel*"
Signature of lawyer or party filing

W. R. Barrel of the firm
LOCK, STOCK & BARREL
Barristers and Solicitors
123 Main Street
Winnipeg, Manitoba R3C 1X8

Telephone No.: (204) 777-0050
Fax No.: (204) 777-0840
E-mail: wrbarrel@lex.ca

(Strike out paragraph 1 if relief is not being sought under the Divorce Act (Canada) or The Family Law Act.)

1. The particulars of all orders, processes and court proceedings affecting any party to this proceeding, including any of the following:

   (Give details of any such orders, processes, proceedings, etc. – e.g. nature of the matter, date, court, court file/incident number, status, etc. or state NONE if there are no orders, processes and court proceedings affecting any party.)

   (a) an order or proceeding in relation to parenting arrangements, child support, spousal support or property;

   _____
   _____
   _____

(b) a civil protection order or a proceeding in relation to such an order;

(c) a child protection order, proceeding, agreement or measure;

(d) an order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature.

(Strike out all of paragraph 2 if the moving party is not claiming relief under the Divorce Act (Canada).)

2. Certification of moving party under the *Divorce Act* (Canada):

I certify that I am aware of my duties and responsibilities under the *Divorce Act* (Canada), as follows:

(Strike out paragraphs 2(a) and 2(b) if parenting time, decision-making responsibility or contact are not being sought.)

(a) If I am granted parenting time or decision-making responsibility or allocated contact:

(i) I will exercise it in a manner that is consistent with the best interests of the child.

(ii) Before changing my place of residence or that of the child I must give notice in the manner required by the *Divorce Act* (Canada) to anyone who has parenting time, decision-making responsibility or contact under a contact order respecting the child*.

- * Any move — including a local move — is a change of residence.
- A "relocation" is a move — either by a child or a person with parenting time or decision-making responsibility — that could have a significant impact on the child's relationship with a person with or applying for parenting time or decision-making responsibility or a person who has contact under a contact order.
- A person with parenting time or decision-making responsibility must give notice before any proposed move to any person with parenting time, decision-making responsibility or contact of a change of their residence or that of the child.
- Notice of a relocation must be given at least 60 days in advance.
- A person with contact who proposes any change of residence, must give notice to any person with parenting time, decision-making responsibility or contact. If the proposed change of residence is likely to have a significant impact on the relationship with the child, the notice must be given at least 60 days in advance.
- **The specific details of the notice requirements are set out in the *Divorce Act*, Canada (s. 16.7 to 16.96) and the required notice forms and descriptions of how to give notice are set out in the Notice of Relocation Regulations under the *Divorce Act*, Canada. See Justice Canada web site: www.laws-lois.justice.gc.ca**

(b) If I am granted parenting time or decision-making responsibility, before relocating myself or the child, I must give notice at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations under the *Divorce Act* (Canada), to any other person who has parenting time, decision-making responsibility or contact under a contact order respecting the child of my intention*.

(Strike out paragraph 2(c) if there are no children of the marriage.)

(c) I will, to the best of my ability, protect any child of the marriage from conflict arising from this proceeding.

(d) I will, to the extent that is appropriate to do so, try to resolve this matter with the responding party through a family dispute resolution process.

(e) I will provide all complete, accurate and up-to-date information that is required by the *Divorce Act* (Canada).

(f) I will comply with any order made under the *Divorce Act* (Canada).

(Strike out all of paragraph 3 if relief is not being claimed under The Family Law Act.)

3. Certification of moving party under *The Family Law Act*:

I certify that I am aware of my duties and responsibilities under *The Family Law Act* as follows:

(a) I will act in a way that strives

(i) to minimize conflict;

(ii) to promote cooperation; and

(iii) to meet the best interests of any child involved in the dispute.

(Strike out paragraph 3(b) if parenting time, decision-making responsibility or contact is not being sought under The Family Law Act.)

(b) If I am granted parenting time or decision-making responsibility or contact with a child under a contact order:

(i) I will exercise my parental responsibilities or contact in a manner that is consistent with the best interests of the child.

(ii) Before relocating myself or the child I must give notice at least 60 days before the expected date of the proposed relocation and in the form and manner prescribed by *The Family Law Act* and the *Family Law Regulation* to anyone who:

(1) is a parent who has parental responsibilities (a parent with decision-making responsibility, parenting time, custody or access) under an order made under *The Family Law Act* or *The Family Maintenance Act* or by operation of law,

(2) is a guardian who has a guardianship order,

(3) stands in the place of a parent who has parental responsibilities under a parenting order made under *The Family Law Act*;
(4) has contact with the child under a contact order made under *The Family Law Act* or an access order made under *The Child and Family Services Act*, and
(5) has applied for a parenting order, a guardianship order or a contact order where the application is pending**.

(iii) Before changing my place of residence or that of the child I must give notice in the form and manner required by *The Family Law Act* and the *Family Law Regulation* to anyone who:
(1) is a parent who has parental responsibilities (a parent with decision-making responsibility, parenting time, custody or access) under an order made under *The Family Law Act* or *The Family Maintenance Act* or by operation of law,
(2) is a guardian who has a guardianship order,
(3) stands in the place of a parent who has parental responsibilities under a parenting order made under *The Family Law Act*, and
(4) has contact with the child under a contact order made under *The Family Law Act* or an access order made under *The Child and Family Services Act***

I understand that if the proposed change of residence is likely to have a significant impact on the relationship with the child, I must give the notice at least 60 days in advance.

(Strike out paragraph 3(c) if there are no children in the relationship.)

(c) I will, to the best of my ability, protect any child from conflict arising from the proceeding.

(d) I will, to the extent that it is appropriate to do so, try to resolve the matters that may be the subject of an order under *The Family Law Act* through a family dispute resolution process.

(e) I will provide all complete, accurate and up-to-date information that is required by *The Family Law Act* or any other applicable law.

(f) I will comply with any order made under *The Family Law Act.*

Dated at _____, this _____ day of _____, _____.

_____
Signature of moving party

The specific details of the notice requirements under *The Family Law Act* are set out in *The Family Law Act* and the *Family Law Regulation*. The Forms: Notice of Proposed Relocation, Notice of Change of Residence and Notice of Objection to Proposed Relocation are prescribed in the *Family Law Regulation*.

The moving party's Lawyer is:

_____
(Name of lawyer)

_____
(Firm name)

_____
(Address)

_____
(Phone)

_____
(Fax)

_____
(E-mail address)

(Strike out the Statement of Lawyer below if moving party is not claiming relief under the Divorce Act (Canada).)

Statement of Lawyer under the *Divorce Act* (Canada):

I, _____, the lawyer for _____, the moving party, certify to this court that I have complied with the requirements of subsection 7.7(2) of the *Divorce Act* (Canada).

Dated at _____, this _____ day of _____, _____.

_____
Signature of lawyer

_____
Name of lawyer

(Strike out the Statement of Lawyer below if moving party is not claiming relief under The Family Law Act.)

Statement of Lawyer under *The Family Law Act*:

I, _____, the lawyer for _____, the moving party, certify to this court that I have complied with the requirements of subsection 9(1) of *The Family Law Act*.

Dated at _____, this _____ day of _____, _____.

_____
Signature of lawyer

_____
Name of lawyer

NOTICE OF RIGHT TO REQUEST INTER-JURISDICTIONAL CONVERSION

If you reside in another province or territory in Canada other than Manitoba you may request that the Manitoba Court convert this application into an inter-jurisdictional support variation application under section 18.1 of the *Divorce Act* (Canada).

You must make this request within 40 days of being served with this Notice of Motion to Vary.

If you do not make this request within this time period, you must comply with all other requirements set out in this document.

To make this request, you must complete the attached page and send it to:

The Court of King's Bench of Manitoba (Family Division)
[ADDRESS]
[FAX #]

File No. FD _____

THE KING'S BENCH (FAMILY DIVISION)
_____Centre

BETWEEN:

petitioner

- and -

respondent

REQUEST TO CONVERT APPLICATION INTO AN INTER-JURISDICTIONAL SUPPORT VARIATION APPLICATION UNDER THE *DIVORCE ACT* (CANADA)

I, _____ am the Petitioner/Respondent named
(insert your full name) *(cross out word that does not apply)*

in the Notice of Motion to Vary that I received on _____.
(date)

I reside in the Province/Territory of _____.
(insert name of your province or territory)

I request that the Court convert this application into an inter-jurisdictional support variation application under section 18.2 of the *Divorce Act* (Canada).

My address for service of documents relating to an inter-jurisdictional support variation application is:

(Insert your address, postal code, telephone number and email address and/or the name, address postal code, telephone number and email address of your lawyer.)

_____ _____
_____ _____
_____ _____
_____ _____

☐ I agree to receive communication by email from the Manitoba Court or the Designated Authority under the *Divorce Act* (Canada).

_____ _____
Date of Request Signature of Requesting Party

8. Notice of Application to Vary (Form 70G)

File # FD _____

THE KING'S BENCH (FAMILY DIVISION)

_____Centre

BETWEEN:

petitioner/applicant

- and -

respondent

NOTICE OF APPLICATION TO VARY

_____

_____

_____

_____

(Name, address and telephone number of party filing)

File # FD _____

THE KING'S BENCH (FAMILY DIVISION)

_____Centre

BETWEEN:

petitioner/applicant

– and –

respondent

NOTICE OF APPLICATION TO VARY

TO THE RESPONDENT: _____
(full name and address including postal code)

THE APPLICANT HAS COMMENCED A LEGAL PROCEEDING AGAINST YOU.

THIS APPLICATION IS FOR AN ORDER VARYING

the _____
(specify the kind of order the applicant seeks to vary; for example, custody, child support)

order granted by _____ of _____,
(judge) *(court)*

of _____ pronounced on the _____ day of _____, _____.
(province)

(*List any other orders which the applicant is asking to vary*.)

The details of the variation the applicant is requesting are found on the attached page.

(*If this application is for an order varying, rescinding or suspending support, add:*)

You must do the following things unless the NOTICE OF RIGHT TO REQUEST INTER-JURISDICTIONAL CONVERSION under the *Divorce Act* (Canada) applies to you AND you submit the REQUEST TO CONVERT APPLICATION INTO AN INTER-JURISDICTIONAL SUPPORT VARIATION APPLICATION UNDER THE *DIVORCE ACT* (CANADA) within 40 days:

You or a Manitoba lawyer acting for you must file and serve in the court office an affidavit and a financial statement in Form 70D of the *King's Bench Rules* within the time set out below for filing and serving your notice of opposition to variation.

(*If this application is for an order varying a child support order under the* Divorce Act *(Canada), add both of the following paragraphs:*)

You must also file and serve in the court office an affidavit containing the documents required by section 21 of the applicable child support guidelines within the time set out below for filing and serving your notice of opposition to variation.

Note that if there are no support or property issues, you do not need to file and serve at this time a financial statement nor an affidavit containing the documents required by section 21 of the applicable child support guidelines.

IF YOU ARE SERVED WITH A DEMAND FOR FINANCIAL INFORMATION IN FORM 70D.1, YOU MUST ALSO PROVIDE THE FINANCIAL INFORMATION REQUIRED OF YOU WITHIN THE TIME SET OUT IN THE DEMAND FOR FINANCIAL INFORMATION, WHICH MAY BE DIFFERENT THAN THE TIME SPECIFIED BELOW FOR FILING A RESPONSE TO THIS APPLICATION.

IF YOU FAIL TO FILE AND SERVE YOUR COMPLETED FINANCIAL INFORMATION ON TIME, YOU MAY INCUR SERIOUS PENALTIES.

IF YOU WISH TO OPPOSE THIS APPLICATION AND PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or a Manitoba lawyer acting for you must prepare:

- a notice of opposition to variation (Form 70H.1);
- a responding affidavit;
- a Financial Statement (Form 70D) if the application is to vary, rescind or suspend support;

and file them in the court office where the application is to be heard:

- WITHIN 20 DAYS after this application is served on you, if you are served in Manitoba;
- WITHIN 40 DAYS after this application is served on you, if you are served in another province or territory of Canada or in the United States of America;
- WITHIN 60 DAYS after this application is served on you, if you are served outside Canada or the United States of America.

and serve them on the applicant's lawyer or, where the applicant does not have a lawyer, serve them on the applicant.

IF YOU FAIL TO FILE AND SERVE A NOTICE OF OPPOSITION TO VARIATION, AN ORDER MAY BE GRANTED AGAINST YOU ON ANY CLAIM IN THIS APPLICATION IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

_____ Issued by_____

Date Registrar

Court of King's Bench _____ Centre

_____

_____

(*court address*)

DETAILS OF THE REQUESTED VARIATION

(Set out in separate, consecutively numbered paragraphs the details of the requested variation. Where the application requests a variation of child support, specify whether the claim is for an amount of support in the applicable table in the child support guidelines, an amount for special or extraordinary expenses, or a different amount.)

FINANCIAL INFORMATION

(Attached is the applicant's financial statement (Form 70D).)

(Note: If the applicant is not claiming any child or spousal support or division of property, the applicant does not need to attach a financial statement or an affidavit containing the documents required by section 21 of the applicable child support guidelines.)

(If the application contains a claim for child support, add:)

(Attached is the applicant's affidavit containing the documents required under section 21 of the applicable child support guidelines.)

EVIDENCE TO BE USED AT THE HEARING

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

(List affidavits or other documentary evidence on which the applicant will be relying.)

_____

_____

_____

_____

_____ _____

Date *(name of applicant's lawyer or applicant)*

_____

(address of applicant's lawyer or applicant)

_____

(telephone number of applicant's lawyer or applicant)

(Strike out paragraph 1 if relief is not being sought under the Divorce Act (Canada) or The Family Law Act.)

1. The particulars of all orders, processes and court proceedings affecting any party to this proceeding, including any of the following:

   (Give details of any such orders, processes, proceedings, etc. – e.g. nature of the matter, date, court, court file/incident number, status, etc. or state NONE if there are no orders, processes and court proceedings affecting any party.)

   (a) an order or proceeding in relation to parenting arrangements, child support, spousal support or property;

   _____

   _____

   _____

   (b) a civil protection order or a proceeding in relation to such an order;

   _____

   _____

   _____

   (c) a child protection order, proceeding, agreement or measure;

   _____

   _____

   _____

(d) an order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature.

_____

_____

_____

(Strike out all of paragraph 2 if relief is not being sought under the Divorce Act (Canada).)

2. Certification of applicant under the *Divorce Act* (Canada):

I certify that I am aware of my duties and responsibilities under the *Divorce Act* (Canada), as follows:

(Strike out paragraphs 2(a) and 2(b) if parenting time, decision-making responsibility or contact are not being sought.)

(a) If I am granted parenting time or decision-making responsibility or allocated contact:

(i) I will exercise it in a manner that is consistent with the best interests of the child.

(ii) Before changing my place of residence or that of the child I must give notice in the manner required by the *Divorce Act* (Canada) to anyone who has parenting time, decision-making responsibility or contact under a contact order respecting the child*.

(b) If I am granted parenting time or decision-making responsibility, before relocating myself or the child, I must give notice at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations under the *Divorce Act* (Canada), to any other person who has parenting time, decision-making responsibility or contact under a contact order respecting the child of my intention*.

(Strike out paragraph 2(c) if there are no children of the marriage.)

(c) I will, to the best of my ability, protect any child of the marriage from conflict arising from this proceeding.

- * Any move — including a local move — is a change of residence.
- A "relocation" is a move — either by a child or a person with parenting time or decision-making responsibility — that could have a significant impact on the child's relationship with a person with or applying for parenting time or decision-making responsibility or a person who has contact under a contact order.
- A person with parenting time or decision-making responsibility must give notice before any proposed move to any person with parenting time, decision-making responsibility or contact of a change of their residence or that of the child.
- Notice of a relocation must be given at least 60 days in advance.
- A person with contact who proposes any change of residence, must give notice to any person with parenting time, decision-making responsibility or contact. If the proposed change of residence is likely to have a significant impact on the relationship with the child, the notice must be given at least 60 days in advance.
- **The specific details of the notice requirements are set out in the *Divorce Act*, Canada (s. 16.7 to 16.96) and the required notice forms and descriptions of how to give notice are set out in the Notice of Relocation Regulations under the *Divorce Act*, Canada. See Justice Canada web site:** *www.laws-lois.justice.gc.ca*

(d) I will, to the extent that is appropriate to do so, try to resolve this matter with the respondent through a family dispute resolution process.

(e) I will provide all complete, accurate and up-to-date information that is required by the *Divorce Act* (Canada).

(f) I will comply with any order made under the *Divorce Act* (Canada).

(Strike out all of paragraph 3 if relief is not being claimed under The Family Law Act.)

3. Certification of applicant under *The Family Law Act*:

I certify that I am aware of my duties and responsibilities under *The Family Law Act* as follows:

(a) I will act in a way that strives

(i) to minimize conflict;

(ii) to promote cooperation; and

(iii) to meet the best interests of any child involved in the dispute.

(Strike out paragraph 3(b) if parenting time, decision-making responsibility or contact is not being sought under The Family Law Act.)

(b) If I am granted parenting time or decision-making responsibility or contact with a child under a contact order:

(i) I will exercise my parental responsibilities or contact in a manner that is consistent with the best interests of the child.

(ii) Before relocating myself or the child I must give notice at least 60 days before the expected date of the proposed relocation and in the form and manner prescribed by *The Family Law Act* and the *Family Law Regulation* to anyone who:

(1) is a parent who has parental responsibilities (a parent with decision-making responsibility, parenting time, custody or access) under an order made under *The Family Law Act* or *The Family Maintenance Act* or by operation of law,

(2) is a guardian who has a guardianship order,

(3) stands in the place of a parent who has parental responsibilities under a parenting order made under *The Family Law Act*;

(4) has contact with the child under a contact order made under *The Family Law Act* or an access order made under *The Child and Family Services Act*, and

(5) has applied for a parenting order, a guardianship order or a contact order where the application is pending**.

(iii) Before changing my place of residence or that of the child I must give notice in the form and manner required by *The Family Law Act* and the *Family Law Regulation* to anyone who:

(1) is a parent who has parental responsibilities (a parent with decision-making responsibility, parenting time, custody or access) under an order made under *The Family Law Act* or *The Family Maintenance Act* or by operation of law,

(2) is a guardian who has a guardianship order,

(3) stands in the place of a parent who has parental responsibilities under a parenting order made under *The Family Law Act*, and

(4) has contact with the child under a contact order made under *The Family Law Act* or an access order made under *The Child and Family Services Act*.**

I understand that if the proposed change of residence is likely to have a significant impact on the relationship with the child, I must give the notice at least 60 days in advance.

(Strike out paragraph 3(c) if there are no children in the relationship.)

(c) I will, to the best of my ability, protect any child from conflict arising from the proceeding.

(d) I will, to the extent that it is appropriate to do so, try to resolve the matters that may be the subject of an order under *The Family Law Act* through a family dispute resolution process.

(e) I will provide all complete, accurate and up-to-date information that is required by *The Family Law Act* or any other applicable law.

(f) I will comply with any order made under *The Family Law Act.*

Dated at _____, this _____ day of _____, _____.

_____
Signature of applicant

The specific details of the notice requirements under *The Family Law Act* are set out in *The Family Law Act* and the *Family Law Regulation*. The Forms: Notice of Proposed Relocation, Notice of Change of Residence and Notice of Objection to Proposed Relocation are prescribed in the *Family Law Regulation*.

The Applicant's Lawyer is:

_____
Signature of lawyer

_____
(Name of lawyer)

_____
(Firm name)

_____
(Address)

_____
(Phone)

_____
(Fax)

_____
(E-mail address)

(Strike out the Statement of Lawyer below if applicant is not claiming relief under the Divorce Act (Canada).)

Statement of Lawyer under the *Divorce Act* (Canada):

I, _____, the lawyer for _____, the applicant, certify to this court that I have complied with the requirements of subsection 7.7(2) of the *Divorce Act* (Canada).

Dated at _____, this _____ day of _____, _____.

_____
Signature of lawyer

_____
Name of lawyer

(Strike out the Statement of Lawyer below if applicant is not claiming relief under The Family Law Act.)

Statement of Lawyer under *The Family Law Act*:

I, _____, the lawyer for _____, the applicant, certify to this court that I have complied with the requirements of subsection 9(1) of *The Family Law Act*.

Dated at _____, this _____ day of _____, _____.

_____
Signature of lawyer

_____
Name of lawyer

NOTICE OF RIGHT TO REQUEST INTER-JURISDICTIONAL CONVERSION

If you reside in another province or territory in Canada other than Manitoba you may request that the Manitoba Court convert this application into an inter-jurisdictional support variation application under section 18.1 of the *Divorce Act* (Canada).

You must make this request within 40 days of being served with this Notice of Application to Vary.

If you do not make this request within this time period, you must comply with all other requirements set out in this document.

To make this request, you must complete the attached page and send it to:

The Court of King's Bench of Manitoba (Family Division)
[ADDRESS]
[FAX #]

THE KING'S BENCH (FAMILY DIVISION)
_____Centre

BETWEEN:

petitioner

– and –

respondent

REQUEST TO CONVERT APPLICATION INTO AN INTER-JURISDICTIONAL SUPPORT VARIATION APPLICATION UNDER THE *DIVORCE ACT* (CANADA)

I, _____ am the Petitioner / Respondent named
(insert your full name) *(cross out word that does not apply)*

in the Notice of Application to Vary that I received on _____.
(date)

I reside in the Province/Territory of _____.
(insert name of your province or territory)

I request that the Court convert this application into an inter-jurisdictional support variation application under section 18.2 of the *Divorce Act* (Canada).

My address for service of documents relating to an inter-jurisdictional support variation application is:

(Insert your address, postal code, telephone number and email address and/or the name, address postal code, telephone number and email address of your lawyer.)

_____ _____

_____ _____

_____ _____

_____ _____

☐ I agree to receive communication by email from the Manitoba Court or the Designated Authority under the *Divorce Act* (Canada).

_____ _____
Date of Request Signature of Requesting Party

9. Affidavit (in support of Notice of Motion to Vary child support or Notice of Application to Vary child support)

File No. FD _____

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

JOHN SMITH,

petitioner,

and -

JANE SMITH,

respondent.

AFFIDAVIT OF JOHN SMITH

I, John Smith, of the City of Winnipeg, in the Province of Manitoba,

MAKE OATH AND SAY THAT:

1. I am the petitioner, and the applicant in these particular proceedings, and, as such, have personal knowledge of the facts and matters hereinafter deposed to by me, except where same are stated to be based upon information and belief, in which case, I do verily believe them to be true.

2. The respondent, Jane Smith, and I were divorced by Divorce Judgment pronounced by The Honourable Mr. Justice Reynolds of the Manitoba Court of Queen's Bench (Family Division) Winnipeg Centre on

September 10, 2015. Attached hereto and marked as Exhibit “A” to this my affidavit is a copy of the Final Order pronounced that day.

3. Jane and I have one child, namely Matthew Smith, who was born September 15, 2011. Pursuant to the terms of the Final Order I have custody, now known as the majority of parenting time and decision-making responsibility, for Matthew and Jane has access, now known as parenting time, with Matthew every second weekend and one overnight per week.

4. At the time the divorce was granted, I was employed on a full-time basis by ABC Corporation earning $2,000.00 gross per month. Jane was employed on a full-time basis by DEF Corporation and was earning approximately $4,000.00 gross per month. The Final Order required that Jane pay to me the sum of $394.00, each month, for the support of Matthew.

5. I continue to have the same employment and my income has increased to $3,000 gross per month.

6. On or about January 1, 2023, Jane advised me, and I do verily believe, that she has received shares in DEF Corp. over the years such that she is now a 39% owner of DEF. She has advised that she has received variable dividends and that she earned over $70,000 last year. When Jane told me this information, I asked her to increase the child support that she pays me for Matthew. Jane told me that she would continue to follow the existing Final Order.

7. Jane has recently moved to a new home with an office and has advised me that she can work from home and write off various expenses of the home as well as her new car.

8. In view of the increase in Jane's income and the fact that she is now self-employed and has the ability to deduct expenses, I am requesting that this Honourable Court determine Jane's income and increase the child support that Jane provides to me for the support of Matthew, in accordance with the *Child Support Guidelines*.

9. I am also seeking a contribution from Jane to Matthew's tuition costs at XYZ School. Matthew has attended at XYZ School for the last three years. I have always paid his tuition in full. Attached hereto and marked Exhibit "B" to this my affidavit is a copy of the receipt issued for the 2021-2022 tuition fees, totalling $3,000.00. I have paid this amount in full. The tuition for the upcoming school year in the same amount is due shortly. I have paid the deposit of $300.00. Attached hereto and marked Exhibit "C" to this my affidavit is a copy of the invoice which also shows the deposit paid.

10. Apart from Matthew, I do not live with or share expenses with anyone.

11. Since our divorce, Jane has remarried and lives with her new husband, Mr. Phillip Lune. I am advised by Jane, and I do verily believe, that Mr. Lune is employed on full-time basis as a nurse. I do not know what he earns. Neither Jane nor Mr. Lune has any other children.

12. Matthew and I live together in a two bedroom apartment located at 123 Fort Street, Winnipeg.

13. Jane pays the child support to me directly. There are no arrears.

14. Attached hereto and marked Exhibit “D” to this my affidavit is my sworn financial statement.

15. Attached hereto and marked as Exhibits “E”, “F” and “G” respectively to this my affidavit, are copies of my 2020, 2021 and 2022 income tax returns.

16. Attached hereto and marked Exhibit “H” to this my affidavit, are copies of three of my recent and consecutive pay stubs.

17. I make this Affidavit bona fide.

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this 10th day of October, 20__.

_____
JOHN SMITH

_____
A Barrister and Solicitor entitled to practise in and for the Province of Manitoba

10. Variation Order (when proceeding has been commenced by Notice of Motion to Vary or Notice of Application)

FORM 70N – Order **File No. FD**

THE KING'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE

THE HONOURABLE	)))	The day of , 20__

BETWEEN:

DINAH BISTROW,

Petitioner [Wife],

- and -

ANDREW GEORGE BISTROW,

Respondent [Husband].

VARIATION ORDER

1.0 This matter having proceeded at the Court of King's Bench, 104 Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba, R3C 0P9 at the request of ANDREW GEORGE BISTROW.

2.0 This matter being a request by ANDREW GEORGE BISTROW to vary the Final Order pronounced April 17, 2019 by the Honourable Madam Justice O'Connor and subsequently recalculated by Child Support Recalculation Decision of Support Determination Officer Susan Dale dated February 11, 2021.

3.0 In the absence of the parties and their counsel.

4.0 The following documents having been filed in support of this matter:

4.1 Affidavit of ANDREW GEORGE BISTROW, affirmed March 25, 20__;

4.2 Affidavit of DINAH BISTROW, affirmed May 3, 20__;

4.3 Affidavit of Anna Martz, affirmed May 17, 20__;

5.0 DINAH BISTROW and ANDREW GEORGE BISTROW having consented to the content of this Order.

6.0 THIS COURT ORDERS pursuant to the *Divorce Act* that:

6.1 Paragraphs 5.3 to 5.5 of the Final Order pronounced April 17, 2019 by the Honourable Madam Justice O'Connor which read as follows:

> 5.3 The current annual income of ANDREW GEORGE BISTROW is determined by the Court to be $34,351.98 based on his current employment at ABC Co.;
>
> 5.4 The current annual income of DINAH BISTROW is determined by the Court to be $58,147.75 based on her 2018 Income Tax Return;
>
> 5.5 ANDREW GEORGE BISTROW shall pay DINAH BISTROW support for Albert Horace Bistrow, born October 13, 2011 and Elizabeth Janet Bistrow, born August 9, 2015 pursuant to the Manitoba Table of the *Child Support Guidelines*, in the sum of $487.28 per month payable on the 15st of each month commencing May 15, 2019;

are deleted and replaced with the following:

5.3 The current annual income of ANDREW GEORGE BISTROW is agreed by the parties to be $35,435.00 based on his 20__ Income Tax Return;

5.4 The current annual income of DINAH BISTROW is determined by the Court to be $66,087 based on her 20__ Income Tax Return;

5.5 ANDREW GEORGE BISTROW shall pay DINAH BISTROW support for Albert Horace Bistrow, born October 13, 2011 and Elizabeth Janet Bistrow, born August 9, 2015 pursuant to the Manitoba Table of the *Child Support Guidelines*, in the sum of $503.00 per month payable in bi-weekly installments commencing on September 15th, 20__ in an amount to be calculated by the Director, Maintenance Enforcement Program, based on the monthly sum and the frequency of installments;

6.2 The total arrears of support pursuant to the Final Order pronounced April 17, 2019 by the Honourable Madam Justice O'Connor and subsequently recalculated by Child Support Recalculation Decision of Support Determination Officer Susan Dale dated February 11, 2021 for the period up to and including September 1, 20__ are cancelled;

6.3 The total arrears of penalties assessed by the Director, Maintenance Enforcement Program owed by ANDREW GEORGE BISTROW to DINAH BISTROW are cancelled as of September 1, 20__.

6.4 The total arrears of penalties assessed by the Director, Maintenance Enforcement Program owed by ANDREW GEORGE BISTROW to the Director, Maintenance Enforcement Program are cancelled as of September 1, 20__.

7.0 THIS COURT ORDERS pursuant to *The Court of King's Bench Act* and The Court of King's Bench Rules that:

7.1 The issue of parenting time as set out in the Notice of Motion to Vary of ANDREW GEORGE BISTROW is severed and will be determined separately from the balance of relief sought;

7.2 DINAH BISTROW and ANDREW GEORGE BISTROW shall each bear their own costs;

7.3 A copy of this Variation Order be served by ordinary mail addressed to ANDREW GEORGE BISTROW c/o Legal Law, 123 Orange Street, Winnipeg MB R2P 9N7 within twenty (20) days of signing.

Date: , 20__

_____
Judge / Master / Deputy Registrar

APPROVED AS TO FORM AND CONTENT:

_____
GRACE BRACKEN LLP
(Per: **SILAS BRACKEN**)
Solicitors for DINAH BISTROW

APPROVED AS TO FORM AND CONTENT:

_____
LEGAL LAW
(Per: **ELLEN EDWARDS**)
Solicitors for ANDREW GEORGE BISTROW

(Return Order to:) **Lawyer of record for DINAH BISTROW**

SILAS BRACKEN
Grace Bracken LLP
Barristers & Solicitors
1170 Garnet Avenue
Winnipeg, Manitoba, R4D 5E4
Phone: 204-797-0001
Fax: 204-797-2000
E-Mail: sb@gracebracken@mymts.net

11. Demand for Financial Information (Form 70D.1)

File No. FD _____

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

JOHN SMITH,

petitioner,

– and –

JANE SMITH,

respondent.

DEMAND FOR FINANCIAL INFORMATION

TO THE RESPONDENT, JANE SMITH:

JOHN SMITH demands that you provide the information required in paragraphs 1 to 3 below.

IF YOU FAIL TO PROVIDE THE INFORMATION REQUIRED OF YOU WITHIN THE REQUIRED TIME PERIOD, THE COURT MAY MAKE ONE OR BOTH OF THE FOLLOWING ORDERS **WITHOUT FURTHER NOTICE TO YOU**:

- an order based on assumptions about your financial situation
- an order of financial disclosure

NOTE: FAILURE TO PROVIDE THE REQUESTED INFORMATION MAY ALSO RESULT IN ONE OR BOTH OF THE FOLLOWING ORDERS BEING MADE:

- an order requiring you to pay costs to the other party to this litigation or a penalty of up to $5,000
- an order preventing you from pursuing all or part of your case

YOU MUST:

(Check applicable box)

1. Within [ ] 30 days *(select 30 days where the party who is to provide the information lives in Canada or, in a Divorce Act (Canada) proceeding, lives in the United States)*

   [ ] 60 days *(select 60 days in all other instances)*

2. *(Check all applicable boxes)*

[ ] provide the information requested in paragraph 3 to the other party, or their lawyer if they have one;

[ ] provide the information requested in paragraph 3 to the other party, or their lawyer if they have one, in a sworn affidavit;

[ ] file the information requested in paragraph 3 with the Court, in a sworn affidavit.

3. The following information *(check all applicable boxes)*:

[ ] a prepared and sworn financial statement in accordance with Rule 70.05, 70.07 or 70.08 in Form 70D of the *Court of King's Bench Rules*, including:

[ ] Part 1 — Annual Income
[ ] Part 2 — Monthly Expenses
[ ] Part 3 — Assets of Both Parties
[ ] Part 4 — Debts of Both Parties

[ ] copies of your Canada Revenue Agency income and deduction computer printouts showing your income as assessed by the Canada Revenue Agency for each of the three most recent taxation years in which you filed a tax return;

[ ] a copy of every personal income tax return filed by you for each of the three most recent taxation years;

[ ] a copy of every notice of assessment and reassessment issued to you for each of the three most recent taxation years;

<u>Additional information applicable to employees:</u>

[ ] your most recent statement of earnings (pay stub) indicating the total earnings paid to you in the year to date, including overtime or, if such a statement is not provided by your employer, a letter from your employer setting out that information including your rate of annual salary or remuneration;

<u>Additional information applicable to self-employed individuals:</u>

[ ] the financial statements of your business or professional practice, other than a partnership, for the three most recent taxation years;

[ ] a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom you do not deal at arm's length, for the three most recent taxation years;

<u>Additional information applicable to partners in a partnership:</u>

[ ] confirmation of your income and draw from, and capital in, the partnership for its three most recent taxation years;

Additional information from those who control a corporation:

[ ] the financial statements of the corporation and its subsidiaries for its three most recent taxation years;

[ ] a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length for its three most recent taxation years;

Additional information from beneficiaries under a trust:

[ ] a copy of the trust settlement agreement;

[ ] copies of the trust's three most recent financial statements;

Additional information from those who receive income from any other source (for example, employment insurance, social assistance, a pension, workers compensation, disability payments):

[ ] the most recent statement of income indicating the total amount of income from the applicable source during the current year or, if such a statement is not provided, a letter from the appropriate authority stating the required information;

Other specify: _____

_____

_____

Date: _____
(month/day/year)

W.R. Barrel
Lock, Stock & Barrel
Barristers and Solicitors
123 Main Street
Winnipeg, Manitoba
R3C 1A3

Telephone No.: (204) 777-0050
Fax No.: (204) 777-0840

TO: JANE SMITH
25 Rosedale Street
Winnipeg, Manitoba
R3C 4T2

12. Explanatory Note (Form 70V)

File No. FD_____

THE KING'S BENCH (FAMILY DIVISION)
Winnipeg Centre

BETWEEN:

JOHN SMITH,

petitioner,

- and -

JANE SMITH,

respondent.

EXPLANATORY NOTE

Clause Wording

_____
_____
_____
_____
_____

Explanation

(Claim Rule 70.31(13) of the Court of King's Bench Rules or provide a detailed explanation.)

_____
_____
_____
_____
_____

_____

FOR COURT USE ONLY

[ ] ACCEPTED BY:

_____
(Judge/Master/Deputy Registrar)

[ ] REJECTED BY:

_____
(Judge/Master/Deputy Registrar)

(Note: Upon a clause being accepted, forward the Explanatory Note to The Family Division Standard Clause Committee for review.)

13. Notice of Motion (for extension of time to file appeal)*

IN THE COURT OF APPEAL

BETWEEN:

(Applicant) Appellant,

- and -

(Respondent) Respondent.

NOTICE OF MOTION

THE Applicant, _____, will make a motion before the presiding Chamber's Judge of the Court of Appeal on Thursday, the 6th day of October, 20xx, at 10:00 a.m., or so soon after that time as the motion can be heard in courtroom 130 at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION is for an Order extending the time for filing the Notice of Appeal from the Order of the Honourable Madam Justice Sandling, Court of King's Bench, Winnipeg Centre, pronounced on _____ and filed on _____.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

The Affidavit of _____, sworn September 9th, 20xx; and

The Transcript of Reasons for Decision of the Honourable Madam Justice Sandling, to be filed.

DATED September 9, 20xx.

_____

HELEN D. SMITH
DAWSON LAW OFFICE
Barristers and Solicitors
35 - 2nd Avenue N.W.
Dauphin MB R7N 1G7
Telephone No. 204-632-4202
Solicitor for the Applicant

TO: _____
The above named Respondent

AND TO: JOHNSTON & ASSOCIATES
Attention: John Johnston
Solicitor for _____

*Note: All Court of Appeal documents require cover pages. This example does not have a cover page.

14. Notice of Appeal

File No. AF-
File No. FD-

IN THE COURT OF APPEAL

BETWEEN:

MILO ANDERSON,

(Petitioner) Appellant,

- and -

DARLA ANDERSON,

(Respondent) Respondent.

NOTICE OF APPEAL

SETH ASHE
ASHE TREE LLP
56 Forest Avenue
Winnipeg, MB R6Y 7H8

Phone No. 204-786-9876
Fax No. 204-786-9877
Client File No. 4567-1

Lawyers for the Appellant

IN THE COURT OF APPEAL

BETWEEN:

MILO ANDERSON,

(Petitioner) Appellant,

- and -

DARLA ANDERSON,

(Respondent) Respondent.

NOTICE OF APPEAL

TAKE NOTICE that a motion will be made on behalf of the Petitioner (Appellant), MILO ANDERSON, before the Court of Appeal of Manitoba, at the next sitting thereof or so soon thereafter as the Appeal can be heard, by way of Appeal from the Order of the Honourable Madam Justice Brown, of the Court of King's Bench Winnipeg Centre, pronounced on the 2nd day of October, 20xx, and filed on the 5th day of October, 20xx, whereby the learned judge did order, *inter-alia*:

1. That DARLA ANDERSON shall have the majority of parenting time with REGAN WILLIAM ANDERSON, born May 1, 2018;

2. MILO ANDERSON shall pay $6,075.00 to DARLA ANDERSON, as reimbursement for her payment of his share of the parenting assessment of Regan William Anderson, no later than November 30, 20xx;

3. MILO ANDERSON's request for a stay of the within Order is dismissed.

On the appeal, this Court will be asked to set aside those portions of the Order pronounced by the Honourable Madam Justice Brown on October 2, 20xx, as set out in paragraphs 1 through 3 above, with costs payable to MILO ANDERSON, on the following grounds:

1. The learned judge erred by ordering that DARLA ANDERSON have the majority of parenting time with Regan William Anderson by way of interim variation;

2. The learned judge erred in law by ordering MILO ANDERSON to pay $6,075.00 to DARLA ANDERSON as reimbursement for her payment of his share of the Assessment Report by no later than November 20, 20xx, on a final basis without recourse at trial, notwithstanding that this relief was not sought in the Notice of Motion filed by DARLA ANDERSON on June 9, 20xx;

3. Such further and other grounds as counsel may advise and this Honourable Court deem fit.

On the appeal, this Honourable Court will also be asked to order the following:

1. An Order that DARLA ANDERSON and MILO ANDERSON have shared parenting time and shared decision making responsibility for Regan William Anderson pending trial of this matter.

2. That DARLA ANDERSON reimburse MILO ANDERSON the $6,075.00 that he was order to pay to her in relation to the costs of the Assessment Report, or that he otherwise receives a credit against funds owing to her, if any;

3. That DARLA ANDERSON pays costs to MILO ANDERSON; and

4. Such further and other Orders as counsel may advise and this Honourable Court deems just.

Has a transcript of the evidence with respect to the Order appealed from been ordered from transcription services:

[X] Yes [ ] No [ ] Not Required

Dated this 21st day of October, 20xx

SETH ASHE
ASHE TREE LLP
56 Forest Avenue
Winnipeg, MB R6Y 7H8

TO: The Registrar of the Court of Appeal of Manitoba;

AND TO: Darla Anderson
The (Respondent) Respondent herein

AND TO: Burgess Jones
Solicitors for (Respondent) Respondent

IN THE COURT OF APPEAL

Notice of Intent to Exercise Language Right

The attached document begins a proceeding in the Court of Appeal. Your rights may be affected in the course of the proceeding. You have a right to use either the English or the French language even where the attached document is in the other language, but in order to exercise your right you are required within 21 days of service of this document on you to file with the registrar of the court a notice of your intention to do so and to leave with the registrar an address for service. If you file such a notice, you will be notified, in the language indicated in your notice, of further stages in the proceeding by registered mail addressed to your address for service. If you do not file a notice of your intention to exercise your right, the appeal will continue in the language of the attached document. The time limited for your filing of a notice may be enlarged or abridged at any time by order of a judge made on application in either English or French.

Registrar
Manitoba Court of Appeal
Room 205 Law Courts Building
408 York Avenue
Winnipeg, Manitoba R3C 0P9

COUR D'APPEL

Avis relatif au droit d'utilisation d'une langue

Le document ci-joint constitue un document introductif d'instance devant la Cour d'appel. Les procédures dans l'instance pourront porter atteinte à vos droits. Vous avez le droit d'utiliser l'anglais ou le français aux différentes étapes de l'instance même lorsque le document ci-joint est rédigé dans l'autre langue. Si vous désirez exercer votre droit d'utiliser l'une ou l'autre langue, vous devez, dans les 21 jours de la signification qui vous est faite de ce document, déposer auprès du registraire de la Cour d'appel un avis à cette fin et lui indiquer un domicile élu aux fins de signification. Si vous déposez cet avis, vous serez avisé(e) des procédures subséquentes par letter recommandée envoyée à votre domicile élu aux fins de signification, dans la langue que vous aurez indiquée dans l'avis. Si vous ne déposez pas un avis de votre intention d'exercer votre droit, toutes les procédures subséquentes en appel se dérouleront dans la même langue que celle du document ci-joint. Suite à une demande présentée en anglais ou en français, le juge peut, en tout temps, par ordonnance, proroger ou abréger le délai prescrit pour le dépôt de l'avis.

Registraire
Cour d'appel du Manitoba
Palais de justice
408, avenue York, pièce 205
Winnipeg, Manitoba R3C OP9

15. Notice of Motion (for a stay of Court of King's Bench Order)

IN THE COURT OF APPEAL

BETWEEN:

ARNOLD ADAMS,

(Petitioner) Appellant,

- and -

BARBARA ADAMS,

(Respondent) Respondent.

NOTICE OF MOTION

THE Petitioner, Arnold Adams, will make a motion before the presiding Judge of the Court of Appeal on Thursday, the 15th day of October, 20xx, at 10:00 a.m., or so soon after that time as the motion can be heard in Courtroom 130 at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION is for an Order that the operation of the Order of the Honourable Madam Justice Stone pronounced the 18th day of August, 20xx and filed the 26th day of August, 20xx, be stayed until the Petitioner's appeal herein has been heard and determined by this Honourable Court.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of the _____, sworn _____; and

2. the transcript of reasons of the Honourable Madam Justice Stone

October 1, 20xx.

Harold Edwards
EDWARDS LAW
Barristers & Solicitors
75 Island Avenue
Winnipeg MB R5G 7D3
Harold Edwards
Phone: 204-595-6989

TO: Registrar
Court of Appeal
100E - 408 York Avenue
Winnipeg MB R3C 0P9

16. Order (Chambers)

IN THE COURT OF APPEAL

IN CHAMBERS)
THE HONOURABLE) Thursday, October 5, 20xx.
MADAM JUSTICE KNORR)

BETWEEN:

ARNOLD ADAMS,

(Petitioner) Appellant,

- and -

BARBARA ADAMS,

(Respondent) Respondent.

ORDER

THIS MOTION made by the Petitioner, ARNOLD ADAMS, for a stay of the Order of the Honourable Madam Justice Stone pronounced the 18th day of August, 20xx was heard this day at the Law Courts Building, 408 York Avenue, in the City of Winnipeg, in Manitoba in the presence of _____.

UPON reading the Affidavit of ARNOLD ADAMS, sworn August 1, 20xx, and on hearing the submissions of counsel for the Petitioner and counsel for the Respondent:

1. IT IS ORDERED that the motion for a stay of the Order of Madam Justice Stone entered on August 26th, 20xx is hereby allowed with respect to that portion of the order with respect to the interim support payable by the Petitioner to the Respondent pending the hearing and determination of the appeal herein.

2. IT IS FURTHER ORDERED that there be no stay of the order of Madam Justice Stone with respect to the financial disclosure to be made by the Respondent on or before October 15, 20xx.

3. IT IS FURTHER ORDERED that the costs of the within motion shall be costs in the Appeal.

DATED this 5th day of October, 20xx. _____
J.A.

APPROVED AS TO FORM:

EDWARDS LAW

Per:_____
HAROLD EDWARDS

17. Certificate of Decision

IN THE COURT OF APPEAL

THE HONOURABLE	**)**	
_____	**)**	
THE HONOURABLE	**)**	
_____	**)**	**The _____ day of _____, _____.**
THE HONOURABLE	**)**	**(date of written decision)**
_____	**)**	
- JUDGES OF APPEAL -	**)**	

BETWEEN:

(Petitioner) Appellant,

- and -

(Respondent) Respondent.

CERTIFICATE OF DECISION

The appeal of the petitioner,_____, from the judgment of the Honourable _____ Justice _____ of the Court of King's Bench, Family Division, Winnipeg Centre, pronounced on the _____ day of _____, _____, was heard by this court on the ____ day of _____, _____, in the presence of _____ and, after considering the record and the factums, and hearing the representations of counsel*, this Court did order:

1. that the appeal be allowed with costs;

2. that the petitioner be awarded exclusive parenting time with, and exclusive decision making power for his daughter, _____, born _____; and

3. that all sheriffs, deputy sheriffs, constables and other peace officers shall do all such acts as may be necessary to enforce this Certificate of Decision and for such purposes they and each of them be given full power and authority to enter upon any lands and premises whatsoever to enforce the terms of this Certificate of Decision.

CERTIFIED this _____ day of _____, _____.

_____
Registrar of the Court of Appeal

If the decision was reserved add:
"and as this court directed that the appeal should stand over for judgment, and reasons of decision being delivered this day,"