

PRACTICE DIRECTION

COURT OF QUEEN'S BENCH OF MANITOBA

RE: *DIVORCE ACT* AMENDMENTS RULES

On January 29, 2021, The Queen's Bench Statutory Rules Committee met and passed Queen's Bench Rule Amendments dealing with Rule 70 amendments, required by the *Divorce Act* amendments which come into effect on March 1, 2021. The full text of the amendments along with the forms, Man. Reg. 7/2021 are posted on the Manitoba Laws website at <https://web2.gov.mb.ca/laws/regs/annual/2021/007.pdf>.

OVERVIEW OF CHANGES TO RULE 70

1. New Terminology

The new Rule and forms include new terminology such as "parenting order", "parenting time", "decision-making responsibility" in place of "custody" and "access".

The words "contact" and "contact orders" are used for non-spouses, with leave of the court (s. 16.5(3) of the *Act*).

The Rules retain the words "custody" and "access" in the Rules and forms because these words are still applicable for proceedings under *The Family Maintenance Act* of Manitoba.

2. Changes to Initiating and Responding Pleadings

All initiating and responding pleadings have been changed in four major ways:

- i. The pleadings recite new "duties" for parties under ss. 7.1 to 7.5 of the *Divorce Act* (the *Act*) for certification, as required by s. 7.6 of the *Act*. These duties are that parties act in the child's best interests, shield the child from conflict, attempt alternative dispute resolution, provide accurate information and comply with orders.
- ii. The pleadings include a notice of intention to change place of residence and relocation duties set out in ss. 16.8 and 16.9 of the *Act*.
- iii. The pleadings include a section for identification of orders and proceedings detailed in s. 7.8 of the *Act*. A child protection order, a civil protection order, or a criminal proceeding must be identified in the pleading.
- iv. The pleadings include certifications by counsel where required under s. 7.7(3) of the *Act*. Counsel must certify that they have addressed with their clients reconciliation, alternative dispute resolution, compliance with orders and parties' duties under the *Act*.

3. New Forms

There are four new forms. Three of these forms relate to the new Rule respecting co-petitioners seeking a divorce:

Joint Petition for Divorce – (form 70A.1)
 Joint Petitioner Affidavit- (form 70M.1)
 Divorce Judgment on Joint Petition for Divorce- (form 700.1)

The fourth new form is a Notice of Application for Special Relief under the *Act* (form 70E.3) for non-spouses who seek parenting or contact orders or variations.

The new Rule permits a non-spouse parent or a person who stands in the place of a parent to ask for a parenting order or a parenting order variation (s. 16.1(1)(b); s. 17(1)(b)(ii) of the *Act*).

The new Rule permits a non-spouse who is not the parent to file an application for contact (like grandparent access) (s. 16.5(1), s. 17(1)(c) of the *Act*).

4. Support

There are no substantive changes to the Rules for determining amounts of child and spousal support.

There are two main Rule changes respecting situations involving support under the *Divorce Act* where one of the parties lives outside of Manitoba.

1. Where the former spouse in a different province or outside of Canada applies to obtain or vary a support order, the person's application proceeds similar to the ISO process which currently exists under provincial law (s. 18.1(3); s. 19 of the *Act*). The provisional order process no longer exists.
2. Where the former spouse is in Manitoba and applies to vary a support order, and the respondent 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 into an "ISO-like" variation application and be transmitted through Manitoba's designated authority to the other province and heard in that province similar to an ISO matter (s. 18.2.(1) of the *Act*).

The new Notice of Motion to Vary (form 70H) and the new Notice of Application to Vary (form 70G) include a Notice form advising of the right to request inter-jurisdictional conversion and a Request to Convert Application into an Inter-Jurisdictional Support Variation Application form.

If the respondent chooses to request conversion of the variation motion/application and have it transmitted to their province of residence and heard like an ISO matter, the respondent

will send the court office the Request to Convert form within 40 days of service. The *Divorce Act* states that the conversion is mandatory if only support is being varied.

However, if the motion/application is a support and parenting variation, the respondent's Request to Convert the support application may or may not be successful.

The judge will either rule that both the support and parenting issues should proceed together through the case flow model OR that support should be dealt with through the ISO model, and parenting through the case flow model ("appropriate" test) (s. 18.2(1) of the *Act*). It might also be appropriate for the court to 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 in that province (s. 6(2) of the *Act*).

In those support variation cases where 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 ("default" cases).

5. Comparative Family Property Statement

A single document will be filed by both parties now to improve the court process for *Family Property Act* cases (Rule 70.09.1, form 70D.5).

6. Table of Proceedings

Attached to this memorandum is a detailed list of pleadings and their proposed procedural treatment in the court process which has been updated to include the proceedings governed by the new Rule amendments.

Coming into effect

This Practice Direction comes into effect March 1, 2021.

ISSUED BY:

"Original signed by Associate Chief Justice Gwen B. Hatch"

The Honourable Associate Chief Justice Gwen B. Hatch
Court of Queen's Bench of Manitoba

DATE: February 12, 2021

Proceedings that Enter New Case Flow Model

	Rule	Form
<p>Petition for Divorce</p> <p>Claim for divorce <u>alone</u> or <u>in conjunction</u> with other relief</p>	70.03(1)	70A Petition for Divorce
<p>Petition</p> <p>Claim relief <u>alone</u> under any of the following statutes or agreements, or <u>in conjunction</u> with <u>other relief</u>:</p> <p><i>The Family Maintenance Act</i></p> <p><i>The Family Property Act</i></p> <p>s. 15 of the <i>Divorce Act</i> (child/spousal support) (divorce previously granted)</p> <p>s. 16.1(1)(a) of the <i>Divorce Act</i> (parenting order) (divorce previously granted)</p> <p><i>Divorce and Matrimonial Causes Act</i></p> <p><i>The Homesteads Act</i></p> <p><i>The Law of Property Act</i> – partition or sale</p> <p>s. 7 of <i>The Married Women's Property Act</i></p> <p>Agreement re: separation, common-law, marital property, family property</p> <p><i>Civil Marriage Act</i></p>	70.03(2)	70B Petition
	70.03(2)(b.1)	
<p>Notice of Motion to Vary</p>	70.37(1)(a)	70H Notice of Motion to Vary
<p>Notice of Motion to Vary a Family Arbitration Award</p>	70.03(7.3) 70.37(1)(c)	70H.2 Notice of Motion to Vary a Family Arbitration Award
<p>Statement of Claim</p> <p>*depends on relief claimed</p>	70.03(8)(b)	14A Statement of claim
<p>Notice of Application to Vary, rescind or suspend <i>Divorce Act</i> Order by court in another province</p>	70.37(1)(b)	70G Notice of Application to Vary

Proceedings that do not Enter the FD Case Flow Model

	Rule	Form	Returnable
Part III (Child Protection) <ul style="list-style-type: none"> • Petition and Notice of Hearing • Application for Private Guardianship (child in care) • Application for access (child in care) <p><i>The Child and Family Services Act</i></p>	<p>70.24(4)(a)</p> <p>70.03(3)</p> <p>70.03(5)</p>	<ul style="list-style-type: none"> • Petition and Notice of Hearing • Notice of Application for Guardianship Form 70F • Notice of Application Form 70E 	<p>Master's CP docket; Intake Court</p>
Set aside/vary/revoke Protection Order (stand-alone application) <i>The Domestic Violence and Stalking Act</i>	<p>70.24(4)(b)</p> <p>70.03(8)(a)</p>	<p>Notice of Application Form 70E</p>	<p>Protection Order List</p>
Private guardianship (child not in care) Application for access (child not in care) Child Abuse Registry <i>The Child and Family Services Act</i>	<p>70.24(4)(c)</p> <p>70.03(3)</p> <p>70.03(8)(a)</p>	<p>Notice of Application for Guardianship Form 70F</p> <p>Notice of Application Form 70E</p>	<p>Masters' Uncontested List</p>
Adoption Application <i>The Adoption Act</i>	<p>70.24(4)(c)</p>	<p>Forms prescribed under the Adoption Regulation</p>	<p>Adoption Coordinator; then family duty judge</p>
Inter-jurisdictional Support Orders Act Application (ISO) MB applicant MB respondent	<p>70.24(4)(d)</p>	<p>ISO A.1 or A.2 Support (Variation) Application</p>	<p>ISO Coordinator</p>

<p>Part VI Enforcement of Maintenance Orders</p> <p><i>The Family Maintenance Act</i></p>	<p>70.24(4)(e)</p> <p>70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p>Application by former spouse in different province or territory to obtain, vary, rescind or suspend a support order (incoming) Application by former spouse in a designated jurisdiction (outside Canada) to obtain, vary, rescind or suspend a support order (incoming) <i>s.18.1 and s.19 Divorce Act</i></p> <p>Application by former spouse in Manitoba to obtain, vary, rescind or suspend a support order (outgoing) <i>s.18.1 Divorce Act</i></p> <p>Registration by former spouse in a designated jurisdiction (outside Canada) for recognition and enforcement if applicable of a decision of the designated jurisdiction that has the effect of varying a support order in the province where the respondent habitually resides support order <i>s. 19.1 Divorce Act</i></p> <p>Request to convert variation support application to an inter-jurisdictional support proceeding between provinces into an application under s. 18.1(3) by respondent who resides in a different province or territory <i>s. 18.2(1) Divorce Act</i></p>	<p>70.24(4)(f)(i)</p> <p>70.39.2</p> <p>70.39.1</p> <p>70.24(4)(f)(ii)</p> <p>70.37(6.1.1)(b)(i)</p>	<p>ISO A.3 or A.4 Support (Variation) Application (incoming) (applications from outside Canada may be received on forms other than A.3 or A.4)</p> <p>Requisition</p> <p>70E Notice of Application to set aside registration by MEP by MB party</p> <p>Request to convert application form</p>	<p>ISO Coordinator</p> <p>Requisition for registration by MEP</p> <p>Serve set aside application on Designated Authority (Family Law Section) MB Justice; proceeds under <i>ISO Act</i></p> <p>If only support variation sought-registry to send to ACJ Hatch or her designate for direction and mandatory conversion and sent to ISO</p> <p>If support and parenting variation sought, registry to send to ACJ Hatch or her designate to determine if support variation should be sent to ISO</p>

Hague Convention Application for return of a child	70.03(7.1) 70.24(4)(i)	70E Notice of Application	of	Trial coordinator to schedule date
Enforce Custody Order <i>The Child Custody Enforcement Act</i>	70.24(4)(j) 70.03(8)(a)	70E Notice of Application	of	Master's Uncontested List
<u>Proceedings</u> under: ss. 2(4) or 6(1) of <i>The Change of Name Act</i> <i>The Marriage Act</i> (minor) <i>The Parents' Maintenance Act</i> s. 155(4) of <i>The Insurance Act</i> ss. 12.1 & 13 to 14.3 of <i>The Garnishment Act</i>	70.24(4)(k) 70.03(8)(a)	70E Notice of Application	of	Master's Uncontested List
<i>The Arbitration Act</i> respecting a family arbitration, (except notice of motion to vary a family arbitration award)	70.24(4)(l) 70.03(8)(a)	70E Notice of Application	of	Master's Uncontested List (unless s. 44(3.1) appeal or s. 49(2.1) enforcement; directly to a judge via trial coordinator to provide a date)
Set Aside Decision of the Child Support Service <i>The Child Support Service Act</i>	70.24(4)(m) 70.03(8)(a)	70E Notice of Application	of	Master's Uncontested List
Determination of whether an adult child is entitled to support by party who disagrees with decision of Maintenance Enforcement Program (s. 53.9(12) of <i>The Family Maintenance Act</i>)	70.24(4)(n) 70.03(8)(a)	70E Notice of Application	of	Master's Uncontested List
Objection to Maintenance Enforcement Program administrative suspension (s. 61.1.1 of <i>The Family Maintenance Act</i>) (except notice of motion for suspension order under s. 61.2 of <i>The Family Maintenance Act</i>)	70.24(4)(o) 70.03(8)(a)	70E Notice of Application	of	Master's Uncontested List

Notice of Motion to amend, set aside, vary or suspend order (R. 59.06(1) and (2))	70.24(4)(p)	70Q Notice of Motion	via Form 70DD (except for amendment for accidental slip; directly to Deputy Registrar)
Application or statement of claim to enforce a spousal agreement under <i>The Family Property Act</i>	70.24(4)(q) 70.03(8)(a)(b)	70E Notice of Application or Statement of Claim	Master's Uncontested List Trial coordinator to schedule date
Motion to enforce a Final Order or Variation Order	70.24(4)(q)	70Q Notice of Motion	via Form 70DD
Contempt motion for a final order or variation order	70.24(4)(r)	70Q Notice of Motion	via Form 70DD
Exclusive Occupation Order <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>	70.24(11)(a) 70.03(7.2)	70E.1 Notice of Application for Exclusive Occupation order	Trial coordinator to schedule date – Duty Judge
Notice of Application (Prevention Order) (s. 14(1) <i>The Domestic Violence and Stalking Act</i>)	70.03(8)(a)	70E Notice of Application	Master's Uncontested List
Motion for Leave by a non-spouse parent /or who stands/intends to stand in place of a parent to file application for a parenting order or to vary , rescind or suspend a parenting order that does not relate to him/her s. 16.1(3), s. 17(2) <i>Divorce Act</i> Motion for Leave by a non-spouse who is not the parent to file application for contact order s. 16.5(3) <i>Divorce Act</i>	70.24(4)(f.3)	70Q Notice of Motion	Master's Uncontested List

<p>Application by a non-spouse parent/or who stands/intends to stand in place of a parent for a parenting order or to vary, rescind or suspend a parenting order</p> <p>s. 16.1(1)(b), s. 17(1)(b)(ii) <i>Divorce Act</i></p> <p>Application by a non-spouse who is not the parent for a contact order or to vary, rescind or suspend a contact order that relates to him/her</p> <p>s. 16.5(1), s. 17(1)(c) <i>Divorce Act</i></p>	<p>70.03(2.1)</p> <p>70.24(4)(f.4)</p> <p>70.24(4)(f.5)</p> <p>70.24(4)(f.6)</p> <p>70.24(4)(f.7)</p>	<p>70E.3 Notice of Application for special relief</p>	<p>Master's Uncontested List</p>
<p>Motion for exemption to give notice of intention to change place of residence or relocate (existing Manitoba court pocket)</p> <p>Application for exemption to give notice of intention to change place of residence or relocate (no existing Manitoba court pocket)</p> <p>s. 16.8(3), s. 16.9(3) s. 16.96(3) <i>Divorce Act</i></p>	<p>70.24(4)(f.2)</p>	<p>70Q Notice of Motion</p> <p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p>Application by interested person to recognize a foreign decision that has the effect of varying, rescinding or suspending a parenting order or a contact order</p> <p>s. 22.1(1) <i>Divorce Act</i></p>	<p>70.24(4)(f.1)</p>	<p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p>Motion to dismiss, strike or stay a proceeding</p>	<p>70.24(4)(p.1)</p>	<p>70Q Notice of Motion</p>	<p>Master's Uncontested List</p>

February 12, 2021