

PRACTICE DIRECTION

COURT OF KING'S BENCH OF MANITOBA

RE: RULE AMENDMENTS:

THE *FAMILY ORDERS AND AGREEMENTS ENFORCEMENT ASSISTANCE ACT*

THE HAGUE CONVENTION of 23 NOVEMBER 2007 ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

THE INTERNATIONAL CHILD SUPPORT AND FAMILY MAINTENANCE (HAGUE CONVENTION) ACT

Amendments to Part I of the *Family Orders and Agreements Enforcement Assistance Act* (Canada), R.S.C., 1985, c. 4 (2nd Supp.) (“FOAEAA”) and the *Release of Information for Family Orders and Agreements Enforcement Assistance Regulations*, SOR/2023-125 came into force on November 15, 2023.

Canada ratified the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* on October 27, 2023, and declared that the Convention extends to the Province of Manitoba. The Convention will come into effect in Manitoba on February 1, 2024. Manitoba’s implementing legislation, *The International Child Support and Family Maintenance (Hague Convention) Act*, C.C.S.M. c. 161 and the *International Child Support and Family Maintenance Regulation*, M.R. 56/2023, came into force on January 1, 2024. Related amendments to the *Divorce Act* come into force on February 1, 2024. The Convention (“Hague Support Convention”) is attached as a Schedule to both Manitoba’s implementing legislation and the *Divorce Act*.

On January 24, 2024, the Court of King’s Bench Statutory Rules Committee approved Court of King’s Bench Rule Amendments to King’s Bench Rules 70.01.2, 70.31(11)(f), subrule 70.24(4)(i), and Form 70Z for purposes of applications pursuant to the above legislation, and to King’s Bench Rule 37.02(2)(g) and subrules 70.03(2) and 70.24(4)(k) for minor housekeeping changes.

Applications pursuant to the *Family Orders and Agreements Enforcement Assistance Act* and the Hague Support Convention are excluded from the Case Management process pursuant to King’s Bench Rule 70.24(4)(i).

1. AMENDMENTS TO PART I OF THE FAMILY ORDERS AND AGREEMENTS ENFORCEMENT ASSISTANCE ACT (FOAEAA)

The amendments to Part I of *FOAEAA* permit 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.

Court Applications

A party may file a *FOAEAA* application for the purpose of establishing, varying, and enforcing child and spousal support or enforcing a parenting, contact, custody, or access order.

The application requests an order from a judge under section 10 authorizing a court official to apply to the Minister of Justice for Canada for the release under section 12 of:

- (i) a support payor's or recipient's tracing information (address and employer's name and address) and/or their financial information to establish, or vary or enforce a child and/or spousal support provision in an interim or final order;
- (ii) the address of a person and/or child and/or the name or address of the employer of the person and/or the child to enforce an order related to parenting, contact, custody, and access.

The application also requests an order that upon receipt of the information by the court, that the information be disclosed to the applicant or their lawyer for the purpose of the application (s.13(3)).

Filing Requirements

A Petition, Petition for Divorce, Notice of Motion to Vary, or such other initiating pleading must be filed where the purpose of the *FOAEAA* application is to establish or vary a support order.

The following documents are required to be filed concurrently for a *FOAEAA* desktop application:

- *FOAEAA* application
- Affidavit
- Proof of service (if not *ex parte*)
- Court Order authorizing the request that Justice Canada release information and adjourning the request to disclose the information
- Court Order ordering the disclosure of the information received

Court Process

The application and supporting affidavit are served on the other party. If opposed, the other party will file a responding affidavit. The application may be made on an *ex parte* basis (e.g. tracing information where the location of a party is unknown).

The *FOAEAA* application is heard as a desk top application.

Where the court grants an order authorizing a court official (the Registrar) to apply to the Minister of Justice for Canada for the requested information, the party's request to release the information received by the court to the party is adjourned pending receipt of the information.

On receipt, the Registrar will seal the information and provide the information to the judge who may make an order that:

1. the information received be disclosed to the applicant without conditions;
2. the information be disclosed to the party's lawyer or another third party on the basis that the information be kept confidential or make such other use as is required (s.13(3));
3. partial disclosure of the requested information be granted (financial information but not tracing information); or
4. the information received not be disclosed to the moving party.

Where the application is made *ex parte*, the Minister of Justice has an obligation to notify the other party of the order authorizing the release of information to the court unless the court orders otherwise (s. 12.1).

Court of King's Bench Forms (FOAEAA)

The *FOAEAA* forms, which are non-prescribed, court approved forms, are located on the Manitoba Court's website. There are four sets of forms; each set is comprised of four forms, as follows:

Form	Title
	Locate Request to Establish or Vary Support Order – Ex Parte
1a	FOAEAA Application
1b	FOAEAA Affidavit
1c	FOAEAA Order Authorization
1d	FOAEAA Order Disclosure

	Financial Request to Establish or Vary Support Order
2a	FOAEAA Application
2b	FOAEAA Affidavit
2c	FOAEAA Order Authorization
2d	FOAEAA Order Disclosure
	Locate Request to Enforce an Order for parenting, contact, custody or access
3a	FOAEAA Application
3b	FOAEAA Affidavit
3c	FOAEAA Order Authorization
3d	FOAEAA Order Disclosure
	Locate/Financial Request to Enforce an Order for support
4a	FOAEAA Application
4b	FOAEAA Affidavit
4c	FOAEAA Order Authorization
4d	FOAEAA Order Disclosure

FOAEAA Applications: Purpose and Information

The following is a concise summary of the purpose and information sought respecting FOAEAA Applications:

Form 1a

Locate Request to Establish or Vary Support Order – Ex Parte

- application where a party has filed an initiating pleading for support or a notice of motion to vary a support order and cannot locate the other party;
- request address and the name and address of their employer.

Form 2a

Financial Request to Establish or Vary Support Order

- application where a party has filed an initiating pleading for support or a notice of motion to vary a support order, and the other party:
 - (i) has failed to provide their financial information in the timeframe required by an order or direction of a judge or associate judge, or
 - (ii) has been noted in default.
- request federal tax returns, the name and address of their employer, and/or federal tax return information of third party(ies) for determination of household income in accordance with the Child Support Guidelines;

Form 3a

Locate Request to Enforce an Order for parenting, contact, custody or access

- application where a party has an interim or final order for parenting, contact, custody or access and cannot locate the other party believed to have the child(ren) with them;
- request address of other party, the name and address of their employer, the address of the child(ren) believed to be with the other party, the name and address of the child's(ren's) employer.

Form 4a

Locate/Financial Request to Enforce an Order for support

- application where a party has an interim or final support order and cannot locate the other party, and/or requires the other party's financial information to enforce the support order where the order is not registered with the Maintenance Enforcement Program.
- request address of other party, the name and address of their employer, and/or their federal tax returns

2. THE HAGUE SUPPORT CONVENTION

The Hague Support Convention provides for child and spousal support applications for establishment, modification and enforcement, and recognition of foreign orders between contracting states. These applications and the applicable procedures are compatible with comparable applications and procedures under the *ISO Act* and the federal *Divorce Act*.

The Family Law section of the Legal Services Branch, which is the Designated authority under *ISO* applications, is the Central Authority for Manitoba for these applications. The incoming applications will be heard on the *ISO* list.

The list of countries from which the Central Authority receives (and sends) child and spousal support applications and variation applications will be significantly expanded. For example, countries such as France, Spain, the Philippines and Portugal are not reciprocating states under the *ISO Act*, but are contracting states under the Hague Support Convention.¹

¹ "reciprocating jurisdictions" listed at [Inter-jurisdictional Support Orders Regulation](#); "contracting states" listed at [HCCH | #38 - Status table](#).

The recommended forms include:

- Application for Establishment of a Decision
- Application for Modification of a Decision
- Financial Circumstances Form

Standard clauses will be used for orders pronounced pursuant to the Hague Support Convention, in accordance with King's Bench Rule 70.31(11)(f). Form 70Z Notice of Hearing has been amended to include Hague Support Convention applications.

For information about the Hague Support Convention and the forms, contact the Manitoba Central Authority at: HagueMaintenanceManitoba@gov.mb.ca (Family Law Section, Legal Services Branch, Manitoba Justice).

3. CIVIL MARRIAGE ACT (CANADA)

King's Bench Rule 70.03(2) has been amended to remove reference to the *Civil Marriage Act*, S.C. 2005, c. 33. An application for a divorce pursuant to the *Civil Marriage Act* will be commenced with a Notice of Application and is excluded from the Case Management process in accordance with King's Bench Rule 70.24(4)(k).

Coming into effect

This Practice Direction comes into effect immediately.

ISSUED BY:

“Original signed by Associate Chief Justice Hatch”

**The Honourable Associate Chief Justice Gwen B. Hatch
Court of King's Bench (Manitoba)**

DATE: February 1, 2024