

PRACTICE DIRECTION

COURT OF KING'S BENCH OF MANITOBA

RE: RULE 70 AMENDMENTS: *THE FAMILY LAW ACT AND THE FAMILY SUPPORT ENFORCEMENT ACT*

On May 8, 2023, the King's Bench Statutory Rules Committee met and passed King's Bench Rule Amendments dealing with Rule 70 amendments, required by *The Family Law Act*, *The Family Support Enforcement Act*, and *The Inter-Jurisdictional Support Order Amendment Act*. These Acts and their accompanying Regulations, together with the Amended Rules and Forms will come into effect July 1, 2023. The legislation and updated Rules and Forms will be posted on the Manitoba Laws website on July 1, 2023 at <https://web2.gov.mb.ca/laws>.

The Family Law Act and *The Family Support Enforcement Act* replace *The Family Maintenance Act*. *The Family Law Act* gives rights and responsibilities to parents and their children. *The Family Support Enforcement Act* oversees the enforcement of support obligations.

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” used in *The Family Maintenance Act*, in order to align with the *Divorce Act Amendments* which came into effect on March 1, 2021.

Non-parent access is now referred to as “contact” and is available under *The Family Law Act*, instead of *The Child and Family Services Act*.

A “contact order” may be granted to a family member or a non-family member. A family member of a child is defined as a step-parent, sibling, grandparent, aunt, uncle, cousin, and a spouse or common-law partner of any of them. A person who is not a family member may apply for a “contact order”, with leave of the court. (s. 40(4) of the *Act*)

The Rules and Forms also include new terminology from or references to *The Family Support Enforcement Act* that replaces Part VI (Enforcement of Maintenance Orders) of *The Family Maintenance Act* – e.g. “support” (formerly, “maintenance”); “director” (formerly, “designated officer”). There were minor consequential amendments to *The Garnishment Act* because of *The Family Support Enforcement Act* (“FSEA”) which resulted in housekeeping amendments in five Rule 60 forms respecting garnishment.

2. Guardianship

The Family Law Act repeals Part VII (Private Guardianship of the Person and Access) of *The Child and Services Act*. (s. 106(3))

A non-parent may apply for guardianship under *The Family Law Act*. (s. 48(1)) The application will continue to be made by filing a Notice of Application and supporting affidavit returnable before the Master.

The private guardianship application will continue to be referred by the Master to a judge for hearing, or to a child protection intake judge if the child is in the care or a ward of the Agency.

3. Changes to Initiating and Responding Pleadings

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

- i. The pleadings include new terminology of “parenting time” and “decision-making responsibility” relief sought pursuant to provincial legislation.
- ii. The pleadings recite new “duties” for parties under ss. 2 to 7 of *The Family Law Act* (the “Act”) for certification, as required by s. 8 of the *Act*. These duties are that parties act in the child’s best interest, shield the child from conflict, attempt alternate dispute resolution, provide accurate information and comply with orders.
- iii. The pleadings include an acknowledgement of the obligation to provide a Notice of Intention to Change Place of Residence and Relocation duties set out in ss. 50(1) and s. 55(1) of the *Act*.
- iv. The pleadings include certifications by counsel where required under s. 9(2) of the *Act*. Counsel must certify that they have addressed with their clients alternative dispute resolution, compliance with orders and parties’ duties under the *Act*.

In all other pleadings, reference to custody and access under *The Family Maintenance Act* has been replaced with the new terminology used in *The Family Law Act*.

4. Support

There are no substantive changes to the Rules for determining amounts of child and spousal support. Children may apply for child support for themselves, and former spouses, whether divorced under the *Divorce Act* or another law, may apply for spousal support under *The Family Law Act*. The *FSEA* continues the substantive provisions of Part VI of *The Family Maintenance Act* with some restructuring, updated terminology and a few new administrative provisions to reduce the need to go to court.

5. Amendments – Pleadings

A party is not required to amend a pleading filed prior to the new legislation coming into force to obtain an order pursuant to *The Family Law Act*. *The Family Law Act* contains transitional provisions for proceedings that were commenced under *The Family Maintenance Act* but were not finally disposed of before the new legislation came into force.

Section 100(2) of *The Family Law Act* specifies that any proceedings commenced under Parts I to V of *The Family Maintenance Act* “not fully disposed of before the coming into force of this section are to be dealt with and disposed of under this *Act*.” Section 100(2) continues the proceeding. There is a change in terminology, not the creation of a new cause of action. Custody equates to “parenting time and decision-making responsibility” and access equates to “parenting time.” This applies whether the proceedings are by default, resolved at a triage or a case conference or adjudicated at a trial.

6. Standard Clauses

Standard clauses for *The Family Maintenance Act* will continue to be used for those orders pronounced before the new legislation is proclaimed on July 1, 2023, but filed after, and will continue to be included in the new version of the standard clauses for that limited purpose. Counsel and self-represented parties are directed to use the current standard clauses for orders made under *The Family Law Act* and *The Family Support Enforcement Act* as of July 1, 2023, pending the completion of Standard Clauses Version 7.

7. 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 July 1, 2023.

ISSUED BY:

“Original signed by Associate Chief Justice Hatch”

The Honourable Associate Chief Justice Gwen B. Hatch
Court of King’s Bench of Manitoba

DATE: May 30, 2023

Proceedings that do not Enter the FD Case Flow Model

	Rule	Form	Returnable
<p>Part III (Child Protection)</p> <ul style="list-style-type: none"> • Petition and Notice of Hearing • Petition and Notice of Further Hearing • Application for access (child in care) • Child Abuse Registry <p><i>The Child and Family Services Act</i></p>	<p>70.24(4)(a)</p> <p>70.03(5)</p> <p>70.03(8)(a)</p>	<p>CFS-19 Petition and Notice of Hearing</p> <p>CFS-20 Petition and Notice of Further Hearing</p> <p>70E Notice of Application</p> <p>70E Notice of Application</p>	<p>Master’s CP docket; Intake Court</p> <p>Master’s CP docket; Intake Court</p> <p>Master’s Uncontested List; Judge</p>
<p>Private guardianship (child in care)</p> <p>(child not in care)</p> <p>Application of guardian for parenting time by parent or contact by non-parent</p> <p>Variation of guardianship order (including removing guardian or varying parenting/contact terms in guardianship order)</p> <p><i>The Family Law Act</i></p>	<p>70.24(4)(a.1)</p> <p>70.03(3)</p> <p>70.03(8)(a)</p> <p>70.24(4)(a.1),(f.7)</p>	<p>70F Notice of Application for Guardianship</p> <p>70E Notice of Application</p> <p>70H Notice of Motion to Vary and Requisition for date before Master</p>	<p>Master’s CP docket; Intake Court</p> <p>Master’s CP docket; Judge</p> <p>Master’s Uncontested List; Judge</p> <p>Master’s Uncontested List; Judge</p>

<p>Set aside/vary/revoke Protection Order <i>The Domestic Violence and Stalking Act</i></p>	<p>70.24(4)(b) 70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>Protection Order List</p>
<p>Adoption Application <i>The Adoption Act</i></p>	<p>70.24(4)(c)</p>	<p>Forms prescribed under Adoption Regulation</p>	<p>Adoption Coordinator; then family duty judge</p>
<p>Inter-jurisdictional Support Orders Act Application (ISO) MB applicant MB respondent</p>	<p>70.24(4)(d)</p>	<p>ISO A.1 or A.2 Support (Variation) Application</p>	<p>ISO Coordinator</p>
<p>Enforcement of Maintenance Orders <i>The Family Support Enforcement Act</i></p>	<p>70.24(4)(e) 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) s.18.1 and s.19 <i>Divorce Act</i></p> <p>Application by former spouse in Manitoba to obtain, vary, rescind or suspend a support order (outgoing) s.18.1 <i>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 s. 19.1 <i>Divorce Act</i></p>	<p>70.24(4)(f)(i) 70.39.2</p> <p>70.39.1</p> <p>70.24(4)(f)(ii)</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>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>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 s. 18.2(1) <i>Divorce Act</i></p>	<p>70.37(6.1.1)(b)(i)</p>	<p>Request to convert application form</p>	<p>If only <u>support</u> variation sought- registry to send to ACJ Hatch or her designate for direction and mandatory conversion and sent to ISO</p> <p>If <u>support and parenting</u> variation sought, registry to send to ACJ Hatch or her designate to determine if support variation should be sent to ISO</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>Motion for exemption to give notice of intention to change place of residence or relocate (no 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. 50(5), s. 55(5) <i>The Family Law Act</i></p>	<p>70.24(4)(f.2)</p>	<p>70Q Notice of Motion</p> <p>70E Notice of Application</p> <p>70Q Notice of Motion</p> <p>70E Notice of Application</p>	<p>Master's Uncontested List</p>

<p>Motion for <u>Leave</u> by a non-spouse parent/or who stands/intends to stand in place of a parent to file application for a <u>parenting order</u> or to <u>vary</u>, rescind or suspend a parenting order that does not relate to him/her</p> <p>s. 16.1(3), s. 17(2) <i>Divorce Act</i></p> <p>Motion for <u>Leave</u> by a non-spouse who is <u>not the parent</u> to file application for <u>contact</u> order</p> <p>s. 16.5(3) <i>Divorce Act</i></p> <p>Motion for <u>Leave</u> by a non-parent who stands/intends to stand in place of a parent to file application for a <u>parenting order</u> or to <u>vary</u>, rescind or suspend a parenting order that does not relate to him/her</p> <p>s. 37(1)(b), s. 39(1)(c) <i>The Family Law Act</i></p> <p>Motion for <u>Leave</u> by a non-family member to file application for <u>contact</u> order</p> <p>s. 40(4) <i>The Family Law Act</i></p>	<p>70.24(4)(f.3)</p>	<p>70Q Notice of Motion</p>	<p>Master's Uncontested List</p>
<p>Application by a non-spouse parent/or who stands/intends to stand in place of a parent <u>for</u> a parenting order <u>or</u> to <u>vary</u>, 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 <u>contact</u> order or to <u>vary</u>, 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>70.24(4)(f.4) 70.24(4)(f.5) 70.03(2.1) 70.24(4)(f.6) 70.24(4)(f.7)</p>	<p>70E.3 Notice of Application for special relief</p>	<p>Master's Uncontested List; Judge</p>

<p>Application by a non-parent who stands/intends to stand in place of a parent <u>for</u> a parenting order <u>or</u> to <u>vary</u>, rescind or suspend a parenting order</p> <p>s. 37(1)(b), s.39(1)(b), s.39(1)(c) <i>The Family Law Act</i></p> <p>Application by a non-parent for a <u>contact</u> order or to <u>vary</u>, rescind or suspend a contact order that relates to him/her</p> <p>s. 40(3), s.40(4), s.43 <i>The Family Law Act</i></p>	<p>70.24(4)(f.4) 70.24(4)(f.5)</p> <p>70.03(2.1) 70.03(7)(a)</p> <p>70.24(4)(f.6) 70.24(4)(f.7)</p>	<p>70E Notice of Application</p> <p>70H Notice of Motion to Vary and Requisition for date before Master</p>	<p>Master's Uncontested List; Judge</p>
<p>Hague Convention Application for return of a child</p>	<p>70.03(7.1) 70.24(4)(i)</p>	<p>70E Notice of Application</p>	<p>Trial coordinator to schedule date</p>
<p>Enforce Custody Order</p> <p><i>The Child Custody Enforcement Act</i></p>	<p>70.24(4)(j) 70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p><u>Proceedings</u> under:</p> <p>ss. 2(4) or 6(1) of <i>The Change of Name Act</i></p> <p><i>The Marriage Act</i> (minor)</p> <p><i>The Parents' Maintenance Act</i></p> <p>s. 155(4) of <i>The Insurance Act</i></p> <p>ss. 12.1 & 13 to 14.3 of <i>The Garnishment Act</i></p>	<p>70.24(4)(k) 70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p><i>The Arbitration Act</i> respecting a family arbitration,</p> <p>(except notice of motion to vary a family arbitration award)</p>	<p>70.24(4)(l) 70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>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)</p>

<p>Set Aside Decision of the Child Support Service</p> <p><i>The Child Support Service Act</i></p>	<p>70.24(4)(m) 70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p>Determination of whether an adult child is entitled to support by party who disagrees with decision of Maintenance Enforcement Program</p> <p><i>The Family Support Enforcement Act, s. 31(7)</i></p>	<p>70.24(4)(n) 70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p>Objection to Maintenance Enforcement Program administrative suspension</p> <p>(except notice of motion by debtor for objection to Maintenance Enforcement Program's refusal to suspend enforcement; request suspension order under s. 23(2) of <i>The Family Support Enforcement Act</i>)</p>	<p>70.24(4)(o) 70.03(8)(a)</p>	<p>70E Notice of Application</p>	<p>Master's Uncontested List</p>
<p>Notice of Motion to amend, set aside, vary or suspend order (R. 70.34(1) and (2))</p>	<p>70.24(4)(p)</p>	<p>70Q Notice of Motion</p>	<p>via Form 70DD – (except for amendment for accidental slip – directly to Deputy Registrar)</p>
<p>Application or statement of claim to enforce a spousal agreement under <i>The Family Property Act</i></p>	<p>70.24(4)(q) 70.03(8)(a)(b)</p>	<p>70E Notice of Application or Statement of Claim</p>	<p>Master's Uncontested List Trial coordinator to schedule date</p>
<p>Motion to enforce a Final Order or Variation Order</p>	<p>70.24(4)(q)</p>	<p>70Q Notice of Motion</p>	<p>via Form 70DD</p>
<p>Contempt motion for a Final order or Variation order</p>	<p>70.24(4)(r)</p>	<p>70Q Notice of Motion</p>	<p>via Form 70DD</p>

<p>Exclusive Occupation Order <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i></p>	<p>70.24(11)(a) 70.03(7.2)</p>	<p>70E.1 Notice of Application for Exclusive Occupation order</p>	<p>Trial coordinator to schedule date Duty judge</p>
<p>Notice of Application for Prevention Order <i>s. 14(1) The Domestic Violence and Stalking Act</i></p>	<p>70.03(8)(a)</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 <i>s. 22.1(1) 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>

May 30, 2023