

# **PRACTICE DIRECTION**

## **COURT OF QUEEN'S BENCH OF MANITOBA**

### **RE: FAMILY DIVISION CASE FLOW MODEL PRACTICE ISSUES**

#### **I. Commencement of Family Division Proceedings**

There remains some confusion regarding the applicable procedure for commencement of Family Division proceedings. To assist counsel and self-represented parties, attached is a Table which designates:

- (1) those proceedings that are included in the New Case Flow Model;
- (2) those proceedings which are excluded;
- (3) the proper procedure to be followed for each proceeding; and
- (4) the applicable Queen's Bench Rule(s) and form for each proceeding.

#### **II. Expectations of Counsel**

The following practice procedures will enable the triage judge to assist parties and counsel with settlement at the triage conference:

##### ***Certificate of Prerequisite Form***

Counsel are reminded to complete the Certificate of Prerequisite Form 70D.3 fully and accurately. All applicable prerequisites are to be marked as completed, all clauses that do not apply are to be deleted, and all documents certified as being filed must be filed.

In those cases where the date of cohabitation and/or the date of separation is in issue, counsel are to obtain an order for a reference to the master from a judge and the master's recommendations prior to proceeding to triage screening court.

Counsel are to ensure that all prerequisites have been completed in accordance with the Lawyers' Certification on the Certificate of Prerequisite Completion Form, failing which the triage judge may make an order of costs or other sanctions.

### ***Triage Brief***

Counsel are reminded to complete each section of the Triage Brief Form 70D.4 fully and to attach all relevant documents requested therein to the brief. Updated Triage Briefs may be filed at case conferences.

### ***Assessments***

In cases where parenting time is in issue and an assessment is reasonable and necessary, counsel and the parties must ensure that the assessment is either completed or underway with an estimated date of completion before proceeding to triage screening court.

### ***Family Property References***

Counsel are reminded to prepare and file a *Family Property Act* focused reference order immediately upon pronouncement of the order, and to proceed expeditiously to schedule a hearing for directions before the master. This will ensure that the master is able to complete the family property accounting before the scheduled trial.

### ***Adjournment: Scheduled Triage Conference and First Case Conference***

A scheduled date for a triage conference or first case conference will not be adjourned.

### **Coming into effect**

This Practice Direction comes into effect immediately.

### **ISSUED BY:**

***“Original signed by Associate Chief Justice Gwen B. Hatch”***

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

**DATE: December 14, 2020**

## Proceedings that Enter New Case Flow Model

	<b>Rule</b>	<b>Form</b>
<p><b>Petition for Divorce</b></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><b>Petition</b></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><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
<p><b>Notice of Motion to Vary</b></p>	70.37(1)(a)	70H Notice of Motion to Vary
<p><b>Notice of Motion to Vary a Family Arbitration Award</b></p>	70.03(7.3) 70.37(1)(c)	70H.2 Notice of Motion to Vary a Family Arbitration Award
<p><b>Statement of Claim</b></p> <p>*depends on relief claimed</p>	70.03(8)(b)	14A Statement of claim
<p><b>Notice of Application to Vary</b>, 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

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

Part VI <b>Enforcement of Maintenance Orders</b> <i>The Family Maintenance Act</i>	70.24(4)(e) 70.03(8)(a)	70E Notice of Application	Master's Uncontested List
<b>Application for Provisional Order to Vary</b> , rescind or suspend (s. 18 of the <i>Divorce Act</i> ) (s. 19 confirmation hearing)	70.24(4)(f) 70.38(1)	70G.1 Notice of Application for Provisional Order to Vary	ISO Coordinator
<b>Hague Convention Application</b> for return of a child	70.03(7.1) 70.24(4)(i)	70E Notice of Application	Trial coordinator to schedule date
<b>Enforce Custody Order</b> <i>The Child Custody Enforcement Act</i>	70.24(4)(j) 70.03(8)(a)	70E Notice of Application	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	Master's Uncontested List
<i>The Arbitration Act</i> <b>respecting a family arbitration</b> , (except notice of motion to vary a family arbitration award)	70.24(4)(l) 70.03(8)(a)	70E Notice of Application	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)
<b>Set Aside Decision of the Child Support Service</b> <i>The Child Support Service Act</i>	70.24(4)(m) 70.03(8)(a)	70E Notice of Application	Master's Uncontested List

<p><b>Determination of whether an adult child is entitled to support by party who disagrees with decision of Maintenance Enforcement Program</b></p> <p>(s. 53.9(12) of <i>The Family Maintenance Act</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><b>Objection to Maintenance Enforcement Program administrative suspension</b> (s. 61.1.1 of <i>The Family Maintenance Act</i>)</p> <p>(except notice of motion for suspension order under s. 61.2 of <i>The Family Maintenance 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><b>Notice of Motion to amend, set aside, vary or suspend order</b> (R. 59.06(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 <b>enforce a spousal agreement under <i>The Family Property Act</i></b></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</p>
<p>Motion to <b>enforce a Final Order or Variation Order</b></p>	<p>70.24(4)(q)</p>	<p>70Q Notice of Motion</p>	<p>via Form 70DD</p>
<p><b>Contempt motion</b> 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><b>Exclusive Occupation Order</b> <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>Duty judge</p>
<p><b>Notice of Application</b> (Prevention Order) (s. 14(1) <i>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>