

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

There are a number of steps to take in the process of varying, or changing a Child Support Order. These steps are required by law, and are set out in the *Court of Queen's Bench Rules*.

For complete information about preparing documents for the Court of Queen's Bench, read the *Court of Queen's Bench Rules*. These rules can be purchased through Manitoba's Statutory Publications:

Statutory Publications
200 Vaughan Street
Winnipeg, MB R3C 1T5
945-3101
Fax: 945-7172
Toll-free: 1-800-321-1203

The rules can also be found in your local Court library, at the University of Manitoba Law Library, and on the Internet at: www.gov.mb.ca/chc/statpub/free/index.html

This guide will take you through the basic steps to vary a Child Support Order. **You may not need to follow each step, so watch for the checklists at the beginning of each step to decide if you should continue where you are, go back, or skip ahead to another step.**

The steps to vary a Child Support Order in this Guide are:

- Step One: Representing Yourself
- Step Two: Applying for a Court Order for Financial Information
- Step Three: Applying to Vary a Child Support Order
- Step Four: Applying to Vary a Child Support Order (When Both Parents Agree)
- Step Five: Preparing an Affidavit
- Step Six: Transferring a Court File
- Step Seven: Filing Documents in Court
- Step Eight: Case Management
- Step Nine: Serving Documents
- Step Ten: Responding to a Notice of Motion to Vary Child Support
- Step Eleven: Family Motions Court
- Step Twelve: Representing Yourself in an Uncontested Hearing
- Step Thirteen: Representing Yourself in a Contested Hearing
- Step Fourteen: Preparing the Order

You have a right to represent yourself in Court if you want. But remember that with this right comes the **responsibility to follow the rules of Court and Court process.**

You have the right to go to Court without a lawyer to represent you, but you need to know that in Court, you will be treated the same as a person who has a lawyer. Do not expect any special or different treatment because you don't have a lawyer. **If you do not know and follow the Court rules, you will have to live with the consequences.**

If you want to find a lawyer:

- call the Lawyer Referral Program and get a free 30-minute appointment with a lawyer: (204) 943-2305 in Winnipeg or 1-800-262-8800 outside Winnipeg
- check the *Yellow Pages* listings
- speak to friends or family for recommendations

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Even if you decide not to use a lawyer to represent you, you still should consult a lawyer before you use this guide.

Remember that if you use this guide, you are expected to:

- read the whole guide
- be familiar with the *Court of Queen's Bench Rules* that apply

- follow the *Court of Queen's Bench Rules* that apply
- be familiar with the laws that apply, including *The Divorce Act, The Family Maintenance Act* and the *Child Support Guidelines*.
- follow the laws that apply

Step One: Representing Yourself

- Have you decided to represent yourself, instead of hiring a lawyer or applying for Legal Aid?
- Did you have a lawyer in the most recent or last Court process between you and the other parent? If not, skip ahead to **Step Two, Applying for a Court Order for Financial Information**.

When you have a lawyer represent you in Court that lawyer becomes your *lawyer of record* with the Court. This means that the Court assumes this person is still your lawyer until:

- the Court makes a Final Order or Judgment or
- you advise the Court of a change

If the Court has not made a Final Order or Judgment and you had a lawyer before, you have to file a document called a **Notice of Intention to Act in Person so the Court knows your lawyer is no longer involved. If the Court has made a Final Order or Judgment, then you do not need to file a Notice of Intention to Act in Person.**

Part C includes an example of a **Notice of Intention to Act in Person**. This is a document that you have to create, following the format in the example. Make sure you read and follow the Rules for Preparing Court Documents found in **Part C**.

The form of the Notice of Intention to Act in Person is found in *Court of Queen's Bench Rule 15* (Form 15C).

Make at least three copies of the Notice of Intention to Act in Person. You have to *serve*, or deliver copies of this document to:

- the lawyer that represented you last
- the other parent, or his/her lawyer

Read **Step Nine, Serving Documents** for how to serve a document and how to prove you've done it.

After you serve each person that must be served, file the Notice of Intention to Act in Person and the proof of service in Court. Read **Step Seven, Filing Documents in Court** for how to file documents in Court.

You can't go on with the process to vary the Child Support Order until after you complete this step. If you are having difficulty with this step, consider retaining the services of a lawyer, as matters become more complicated, not less so.

Step Two: Applying for a Court Order for Financial Information

- Do you have the financial information you need from the other parent? If so, skip ahead to **Step Three, Applying to Vary a Child Support Order**.
- If you're not sure, go back and review the checklist on Page 12. Do you have all the information that you need? If so, skip ahead to **Step Three, Applying to Vary a Child Support Order**.

- If you don't have all the information you need from the other parent, make sure you have sent a letter to the other parent asking for the information you need. If not, go back to **Part A: How do I ask for the financial information?** You need to make a written request for the information before you apply for a Court Order for the information.

How do I get a Court Order for financial information?

If the other parent doesn't give you the financial information you asked for in your letter, apply for a Court Order that says the other parent must provide the information to you.

The Court can make this Order **without notice** to the other parent. This means you don't have to let the other parent know you have applied for the Order.

To get a Court Order for the other parent to provide you with financial information, you need to prepare two documents:

1. Notice of Motion
2. Affidavit

These documents are filed in the Court so that you can have a hearing before a judge to decide if you will get the Order.

If your name has changed since the last Court process between you and the other party, you need to prepare and file a **Notice of Change of Name** with supporting identifying certificate before filing any other documents. The Notice of Change of Name is a Court document that you must prepare following the *Court of Queen's Bench Rule 70.44* and Form 70AA. An example of the Notice of Change of Name is included in Part C.

File the Notice of Change of Name in the Court office. For help on how to file Court documents, read **Step Seven, Filing Documents in Court**. Serve the Notice of Change of Name on the other party or their lawyer. For help on how to serve Court documents, read **Step Nine, Serving Documents**.

A Notice of Motion is a document that lets the Court know what kind of Court Order you are asking for. It

also sets the date and time when you will be heard by a judge.

Part C includes an example of a Notice of Motion. This is a document that you have to create following the format in the example. Make sure you read and follow the **Rules for Preparing Court Documents** found in **Part C**. The form for a Notice of Motion is found in *Court of Queen's Bench Rule 70.18 Form 70Q*.

A Notice of Motion has 4 paragraphs. The first paragraph says who is making the Motion. Is it the petitioner or the respondent? Is the Motion made to a judge or to a master? When and where will the Motion be heard? All of this information must be filled in the first paragraph of the Notice of Motion.

A **master** is an officer of the Court of Queen's Bench in Manitoba who has authority to make Orders about procedure during a court proceeding and other Orders as set out in the *Court of Queen's Bench Rules*.

The second paragraph says what the Motion is for. This is where you ask for the Court Order to require that the other parent must provide you with certain financial information. Be sure to list the specific information that you need from the other parent.

When the Notice of Motion is to take place without letting the other parent know about the hearing, or giving notice, the second paragraph must also ask for a Court Order that the Motion will be heard without notice to the other parent.

The third paragraph sets out the legal basis for the Motion. In other words, what laws are you relying on to ask for the Court Order? List the statute laws under which your Child Support Order was made. This could include:

The Divorce Act

The Family Maintenance Act

The Court of Queen's Bench Act and Court of Queen's Bench Rules

The fourth paragraph lists the documentary evidence you will rely on at the hearing. This means the

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Affidavit or Affidavits that you will file to support your Motion. List the Affidavit as:

Affidavit of [insert name of person swearing Affidavit], sworn [insert date Affidavit is sworn].

The Notice of Motion is dated with the date that you file it in Court and lists your name, address and telephone number. It is addressed to the other parent or his/her lawyer.

Every document filed in Court must have a cover page except for orders. The form of a cover page is found in *Court of Queen's Bench Rule 4* and Form 4C. **Part C** includes an example of a cover page.

Once you have prepared your Notice of Motion, skip ahead to **Step Five, Preparing an Affidavit**.

Step Three: Applying to Vary a Child Support Order

- Do you have the financial information you need from the other parent? If not, go back to **Step Two, Applying for a Court Order for Financial Information**. If you're not sure, go back and review the checklist on Page 11. If you don't have all the information that you need, go back to **Step Two, Applying for a Court Order for Financial Information**.
- Do you and the other parent agree about the change to the Child Support Order that you want to make? Do you both agree to what the amount of child support should be? If so, skip ahead to **Step Four, Applying to Vary a Child Support Order (When Both Parents Agree)**.

How do I apply to vary a Child Support Order?

To apply to change or vary a Child Support Order, there are at least two documents that you need to prepare. These are:

1. Notice of Motion to Vary
2. Affidavit

These documents are filed in the Court so that you can have a hearing before a judge to decide if the Child Support Order will be changed.

A Notice of Motion to Vary is a document that lets the Court know what kind of Court Order you are asking to change. It also sets the date and time when you will be heard by a judge.

Part C includes an example of a Notice of Motion to Vary. This is a document that you have to create, following the format in the example. Make sure you read and follow the Rules for Preparing Court Documents found in **Part C**.

If your name has changed since the last Court process between you and the other party, you need to prepare and file a **Notice of Change of Name** with supporting identifying certificate before filing any other documents. The Notice of Change of Name is a Court document that you must prepare following the *Court of Queen's Bench Rule 70.44* and Form 70AA. An example of the Notice of Change of Name is included in Part C.

File the Notice of Change of Name in the Court office. For help on how to file Court documents, read **Step Seven, Filing Documents in Court**. Serve the Notice of Change of Name on the other party or their lawyer. For help on how to serve Court documents, read **Step Nine, Serving Documents**.

Before you begin to prepare any documents, make sure that you have a copy of the Order or Judgment setting the current amount of child support. If the original Order or Judgment has been changed or varied before, you also need to have copies of all earlier Variation Orders. If you do not have a copy of the Order or Judgment, you can get a copy at the office of the Court of Queen's Bench where your Order or Judgment was made. There is a charge for making copies at the Court office.

The form of a Notice of Motion to Vary is found in *Court of Queen's Bench Rule 70.03(7)* Form 70H. A Notice of Motion to Vary must follow Form 70H.

At the beginning of the Notice of Motion to Vary you have to set out the full name and address of the other parent, including the postal code.

The first paragraph of the Notice of Motion to Vary says who is making the Motion. Is it the petitioner or the respondent? When will the Motion be heard? In Winnipeg Centre, the first Court date will be on a Tuesday morning at 9 a.m. In Brandon Centre, the first Court date will be on a Monday morning at 9 a.m. Outside of Winnipeg Centre, check with the Court of Queen's Bench office as to when the next date will be for family motions to be heard. Where will the Motion be heard? You must file your Motion in the same Court of Queen's Bench centre where the Child Support Order was made, or last varied. Fill in the address of the Court of Queen's Bench office in the first paragraph. All of this information must be filled in the first paragraph of the Notice of Motion.

If you want to file your Notice of Motion to Vary in a different Manitoba Court of Queen's Bench Centre and you or the other parent live in or near that centre, you can ask the Court to **transfer your Court file** to the other centre. Read **Step Six, Transferring a Court File** for information on how to do this.

The second paragraph says which kind of Court Order you are applying to change. Fill in the kind of Order (for example, Child Support Order). Then fill in the name of the judge that made the Order, name of the Court, province and date that the Order was made. Do this for each Order that you need varied.

The third paragraph remains the same. It tells the other parent how to respond after receiving the document.

The next two paragraphs are included only if the Child Support Order that you want to vary was made under the *Divorce Act*. Set these out exactly as shown in Form 70H. If your Child Support Order was not made under the *Divorce Act*, do not include these paragraphs.

The next two paragraphs of the Notice of Motion to Vary must say:

IF YOU WISH TO 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 serve a copy of the evidence on the moving party's lawyer or, where the moving party

does not have a lawyer, serve it on the moving party, and file it in the court office where the motion is to be heard as soon as possible, but not later than 2:00 p.m. on a day that is at least seven days before the hearing.

IF YOU FAIL to appear at the hearing, an order may be given in your absence and without further notice to you.

This information lets the other parent know their rights and responsibilities in response to your Notice of Motion to Vary.

Next, you set out the details of the changes you are asking for. List these in separate, numbered paragraphs. For a change to a Child Support Order, you must say whether you are asking for an amount that is:

- the table amount from the *Child Support Guidelines*
- an amount for special or extraordinary expenses, as defined in the *Child Support Guidelines*
- a different amount

If you are also asking the Court to make any other Orders, such as to *remit*, or reduce arrears of child support, list those requests here in separate numbered paragraphs.

If your Motion asks to reduce or forgive arrears of child support, and you are also appearing in Maintenance Enforcement Court, you can also ask the Court to *suspend* or put on hold the Maintenance Enforcement Court proceedings.

If you don't ask for this, you will have to continue to attend Maintenance Enforcement Court and any other enforcement proceedings will also continue. That process doesn't stop or get put on hold just because you file a Notice of Motion to Vary. There has to be a Court Order to suspend that process until the Notice of Motion to Vary is decided.

To deal with arrears and/or suspend enforcement you must in addition to serving the other parent, serve a Director of Field Services, Employment and Income Assistance or his or her authorized representative at 305-114 Garry Street, Winnipeg, Manitoba R3C 4V7.

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The next page of the Notice of Motion to Vary begins with the heading Financial Information. Under this heading, the first paragraph says:

Attached is the petitioner's financial statement (Form 70D).

This paragraph is only included if you need to include a financial statement. *Court of Queen's Bench Rules* 70.05 and 70.37(6) tell you when you need to file a financial statement with the Notice of Motion to Vary. **Step Five, Preparing an Affidavit** tells you how and when to prepare a financial statement.

If you are asking to change a Child Support Order made under the *Divorce Act* and you or the other parent live outside Manitoba, add the following paragraph:

Attached is the moving party's affidavit containing the documents required under section 21 of the *Federal Child Support Guidelines*.

The last paragraph of the Notice of Motion to Vary lists the documentary evidence you will use at the hearing. This means the Affidavit or Affidavits you will file to support your Motion. List each Affidavit as:

Affidavit of [insert name of person swearing Affidavit], sworn [insert date Affidavit is sworn].

If there is more than one Affidavit you are relying on, list each on a separate line in the same way as the example.

You sign your name at the end of the Notice of Motion to Vary, and list your name, address, telephone number, fax number and E-mail address.

Every document filed in Court must have a cover page except for orders. The form of a cover page is found in *Court of Queen's Bench Rule 4* and Form 4C. **Part C** includes an example of a cover page.

Can I ask for the other parent to pay my Court costs?

Your Notice of Motion to Vary can include a request for the other parent to pay your costs. Costs can mean either an amount decided according to the schedule of costs, or *tariff* set out in the *Court of Queen's Bench Rules*, or an amount up to the full costs of the Court process, including any legal fees. At the end of the Court process, the judge decides whether or not to

make an Order for your costs to be paid. If you don't ask for costs in the Notice of Motion to Vary, the judge cannot make an Order for costs to be paid. Ask for costs in the second paragraph of the Notice of Motion to Vary, after listing the Orders that you want to vary.

Once you have prepared your Notice of Motion to Vary, skip ahead to **Step Five, Preparing an Affidavit**.

Step Four: Applying to Vary a Child Support Order (When Both Parents Agree)

- Do you have the financial information you need from the other parent? If not, go back to the checklist on Page 11 and ask the other parent to provide the information to you. If you're not sure, go back and review the checklist on Page 11.
- Do you and the other parent agree to the change that you want to make to the Child Support Order? If not, go back to **Step Three, Applying to Vary a Child Support Order**.
- Do you and the other parent agree to any other Court Orders that you are applying for? For example, are you applying to remit or forgive arrears of child support and you both agree? If not, go back to **Step Three, Applying to Vary a Child Support Order**.

How do I apply to vary a Child Support Order?

To apply to change, or vary a Child Support Order when both parents agree, there are at least three documents you need to prepare. These are:

1. Notice of Motion to Vary
2. Affidavit
3. Proposed Variation Order

These documents must be filed in the Court so that a judge can review them and decide if the Child Support Order will be changed.

A Notice of Motion to Vary is a document that lets the Court know what kind of Court Order you are asking to change. It also sets the date and time when you will be heard by a judge.

Part C includes an example of a Notice of Motion to Vary. This is a document that you have to create, following the format in the example. Make sure you read and follow the Rules for Preparing Court Documents found in **Part C**.

If your name has changed since the last Court process between you and the other party, you need to prepare and file a **Notice of Change of Name** with supporting identifying certificate before filing any other documents. The Notice of Change of Name is a Court document that you must prepare following the *Court of Queen's Bench Rule 70.44* and Form 70AA. An example of the Notice of Change of Name is included in Part C.

File the Notice of Change of Name in the Court office. For help on how to file Court documents, read **Step Seven, Filing Documents in Court**. Serve the Notice of Change of Name on the other party or their lawyer. For help on how to serve Court documents, read **Step Nine, Serving Documents**.

Before you begin to prepare any documents, make sure that you have a copy of the Order or Judgment setting the current amount of child support. If the original Order or Judgment has been changed or varied before, you also need to have copies of all earlier Variation Orders. If you do not have a copy of the Order or Judgment, you can get a copy at the office of the Court of Queen's Bench where your Order or Judgment was made. There is a charge for making copies at the Court.

The form for a Notice of Motion to Vary is found in *Court of Queen's Bench Rule 70.03(7)* [Form 70H]. A Notice of Motion to Vary must follow Form 70H.

At the beginning of the Notice of Motion to Vary you have to set out the full name and address of the other parent, including the postal code.

The first paragraph of the Notice of Motion to Vary says who is making the Motion. Is it the petitioner or the respondent? When will the Motion be heard? In Winnipeg Centre, the first Court date will be on a Tuesday morning at 9 a.m. In Brandon Centre, the first Court date will be on a Monday morning at 9 a.m. Outside of Winnipeg Centre, check with the Court of

Queen's Bench office as to when the next date will be for family motions to be heard. Where will the Motion be heard? You must file your Motion in the same Court of Queen's Bench centre where the Child Support Order was made, or last varied. Fill in the address of the Court of Queen's Bench office in the first paragraph. All of this information must be filled in the first paragraph of the Notice of Motion.

If you want to file your Notice of Motion to Vary in a different Manitoba Court of Queen's Bench Centre and you or the other parent live in or near that centre, you can ask the Court to **transfer your Court file** to the other centre. Read **Step Six, Transferring a Court File** for information on how to do this.

The second paragraph says which kind of Court Order you are applying to change. Fill in the kind of Order (for example, Child Support Order). Then fill in the name of the judge that made the Order, name of the Court, province and date that the Order was made. Do this for each Order that you need varied.

The third paragraph remains the same. It tells the other parent how to respond after receiving the document.

The next two paragraphs are included only if the Child Support Order that you want to vary was made under the *Divorce Act*. Set these out exactly as shown in Form 70H. If your Child Support Order was not made under the *Divorce Act*, do not include these paragraphs.

The next two paragraphs of the Notice of Motion to Vary must say:

IF YOU WISH TO 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 serve a copy of the evidence on the moving party's lawyer or, where the moving party does not have a lawyer, serve it on the moving party, and file it in the court office where the motion is to be heard as soon as possible, but not later than 2:00 p.m. on a day that is at least seven days before the hearing.

IF YOU FAIL to appear at the hearing, an order may be given in your absence and without further notice to you.

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This information lets the other parent know their rights and responsibilities in response to your Notice of Motion to Vary.

Next, you set out the details of the changes you are asking for. List these in separate, numbered paragraphs. For a change to a Child Support Order, you must say whether you are asking for an amount that is:

- the table amount from the *Child Support Guidelines* or a different amount; and/or
- an amount for special or extraordinary expenses, as defined in the *Child Support Guidelines*

If you are also asking the Court to make any other Orders, such as to remit, or reduce arrears of child support, list those requests here in separate numbered paragraphs.

If your Motion asks to reduce or forgive arrears of child support, and you are also appearing in Maintenance Enforcement Court, you can also ask the Court to *suspend* or put on hold the Maintenance Enforcement Court proceedings.

If you don't ask for this, you will have to continue to attend Maintenance Enforcement Court and any other enforcement proceedings will also continue. That process doesn't stop or get put on hold just because you file a Notice of Motion to Vary. There has to be a Court Order to suspend that process until the Notice of Motion to Vary is decided.

To deal with arrears and/or suspend enforcement you must in addition to serving the other parent, serve a Director of Field Services, Employment and Income Assistance or his or her authorized representative at 305-114 Garry Street, Winnipeg, Manitoba R3C 4V7.

The next page of the Notice of Motion to Vary begins with the heading Financial Information. Under this heading, the first paragraph says:

Attached is the petitioner's financial statement (Form 70D).

This paragraph is only included if you need to include a financial statement. *Court of Queen's Bench Rules* 70.05 and 70.37(6) tell you when you need to file a

financial statement with the Notice of Motion to Vary. **Step Five, Preparing an Affidavit** tells you how and when to prepare a financial statement.

If you are asking to change a Child Support Order made under the *Divorce Act* and you or the other parent live outside Manitoba, add the following paragraph:

Attached is the moving party's affidavit containing the documents required under section 21 of the *Federal Child Support Guidelines*.

The last paragraph of the Notice of Motion to Vary lists the documentary evidence you will use at the hearing. This means the Affidavit or Affidavits you will file to support your Motion. List each Affidavit as:

Affidavit of [insert name of person swearing Affidavit], sworn [insert date Affidavit is sworn].

If there is more than one Affidavit you are relying on, list each on a separate line in the same way as the example.

You sign your name at the end of the Notice of Motion to Vary, and list your name, address, and telephone number, as well as fax number and E-mail address, if you have them.

Every document filed in Court must have a cover page except for orders. The form of a cover page is found in *Court of Queen's Bench Rule 4* and Form 4C. **Part C** includes an example of a cover page.

Once you have prepared your Notice of Motion to Vary, go to **Step Five, Preparing an Affidavit**.

Step Five: Preparing an Affidavit

- Do you have the financial information you need from the other parent? If not, go back to **Step Two, Applying for a Court Order for Financial Information**.
- If you are applying for a Court Order for financial information, have you prepared your Notice of Motion? If not, go back to **Step Two, Applying for a Court Order for Financial Information**.
- If you have the financial information you need, have you prepared your Notice of Motion to Vary? If not, go back to **Step Three, Applying to Vary a Child Support Order**.

What is an Affidavit?

An **Affidavit** is a document that contains written facts you swear are true. These are facts supporting your request for the Court Order. The form of an Affidavit is found in *Court of Queen's Bench Rule 4* (Form 4D).

Part C includes an example of an Affidavit. This is a document that you have to create. Follow the format in *Court of Queen's Bench Rule 4* and the example. Make sure you read the Rules for Preparing Court Documents found in **Part C**.

The facts in an Affidavit are set out in a series of numbered paragraphs. Each paragraph should be as short as possible, and contain a sentence or sentences about a single topic. The Affidavit is clearer and easier to read if each paragraph contains just a single sentence or topic.

An Affidavit can only include facts that the person making the Affidavit or deponent personally knows to be true. If someone has told you something and you believe it, you can include this information in your Affidavit only if you say who told you and that you believe that it is true.

I need financial information.

What do I include in my Affidavit?

An Affidavit that supports a Notice of Motion for financial information should include the following facts:

- your name and your city/town of residence
- whether you are the petitioner or the respondent in the Court file
- whether you made a written request for financial information from the other parent
- a list of the information that you asked the other parent to give you
- the date that you sent or delivered the written request to the other parent and how you did so
- whether you received the financial information that you requested from the other parent
- a list of the information you still need from the other parent

Use this list as a checklist when you prepare your Affidavit.

I'm applying to change a Child Support Order.

What do I include in my Affidavit?

Every Affidavit that supports a Notice of Motion to Vary a Child Support Order must include the following information:

- your name, and city/town of residence
- whether you are the petitioner or the respondent in the original Court file
- the date of the last Child Support Order with a copy of that Order attached to the Affidavit and any other orders.
- the place of ordinary residence of both parents, as well as the children for whom support is paid or sought
- the current custody and access arrangements
- the current child support arrangements
- a description of the proposed change to the child support arrangements
- if there are any arrears under a previous Child Support Order, the amount of the arrears and a payment record from the Maintenance Enforcement office if the support is paid through that program
- if applying to forgive, reduce or remit arrears of child support, proof of your total income in each year for which you are asking to vary, cancel or suspend support, including copies of income tax returns or other documents
- if applying to change ongoing child support, proof of your total income for the current year
- a description of any change in either parent's circumstances or the child's circumstances since the time of the last Court Order, unless the Child Support Order was made:
 - before May 1, 1997 under the *Divorce Act*
 - before June 1, 1998 under *The Family Maintenance Act*
- if needed, a sworn financial statement, prepared following *Court of Queen's Bench Rules* 70.05 and 70.37(6) and using **Form 70D** (**Part C** includes an example of a financial statement)

Use this list as a checklist when you prepare your Affidavit.

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What is Form 70D?

Form 70D is a sworn financial statement that sets out your financial information attached to an Affidavit. The *Court of Queen's Bench Rules* 70.05 and 70.37(6) tell you when to include Form 70D with your Affidavit and which parts you need to complete. **Part C** includes an example of a financial statement. You have to create this document following the *Court of Queen's Bench Rule* 70.05 and Form 70D.

Form 70D has a first page and four parts. The first page is the Affidavit that you swear is true. The Affidavit must be signed and sworn to be true. That means that the person making the Affidavit or *deponent* must sign, date and swear that the Affidavit is true in the presence of a witness. The witness must be a Commissioner for Oaths, a justice of the peace, a magistrate, a postmaster, a lawyer or a notary public. A lawyer or notary public may charge you for this service.

The four parts of the financial statement are:

- Part 1 – Annual Income
- Part 2 – Monthly Expenses
- Part 3 – Assets of Both Parties
- Part 4 – Debts of Both Parties

When do I need to include Form 70D in my Affidavit?

If you are applying to vary a Child Support Order, you do not need to file and serve Form 70D if all of these apply:

- the only child support amount claimed is the table amount from the *Child Support Guidelines* (e.g. there are no claims for: special or extraordinary expenses, undue hardship and neither split custody or shared custody is in issue) and you are the support recipient; and
- the children for whom support is sought are all under the age of 18 years; and
- there are no other issues of support or property raised in your Notice of Motion to Vary; and
- your income information is not necessary to decide the amount of the new Child Support

Order (e.g. there are no claims for: special or extraordinary expenses, undue hardship and neither split custody or shared custody is in issue).

If you are not sure whether you need to file a Form 70D or not, you may want to consider consulting with a lawyer.

If you are applying to vary a Child Support Order, you only need to file and serve Part 1 of Form 70D if:

- the only child support amount claimed is the table amount from the *Child Support Guidelines* and you are the support payor; and
- the children for whom support is sought are all under the age of 18 years; and
- there are no other issues of support or property raised in your Notice of Motion to Vary; and
- your income information is necessary to decide the amount of the new Child Support Order (e.g. special or extraordinary expenses, but not undue hardship, split custody or shared custody).

If you are not sure whether you need to file a Form 70D or not, you may want to consider consulting with a lawyer.

What if my Child Support Order was made under the *Divorce Act*?

The same rules apply if you are applying to vary a Child Support Order made under the *Divorce Act* and your income information is necessary to decide the amount of the new Child Support Order. But, you also need to file and serve:

- copy of every personal income tax return that you filed for each of the three most recent tax years
- copy of every notice of assessment or reassessment issued to you by Canada Customs and Revenue Agency for each of the three most recent tax years
- if you are an employee**, your most recent statement of earnings showing the total earnings paid in the year to date, including overtime, or a letter from your employer setting out that information including the rate of annual salary or pay
- if you are self-employed**, the financial statements of

the your business or professional practice, other than a partnership, and a statement showing a breakdown of all salaries, wages, management fees or other payments and benefits paid to people or businesses that you are somehow related to, for each of the three most recent tax years

- if you are a partner in a partnership**, confirmation of your income and draw from, and capital invested in the partnership, for each of the three most recent tax years
- if you control a corporation**, the financial statements of the corporation and its subsidiaries, and a statement showing a breakdown of all salaries, wages, management fees or other payments and benefits paid to people or businesses that you are somehow related to, for each of the three most recent tax years
- if you receive benefits from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source**, the most recent statement of income that shows the total amount received from that source in the year or a letter from the provider of the benefits setting out that information
- if you are a beneficiary under a trust**, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements
- if you cannot provide the documents required**, you must explain why you haven't attached those documents

Use this list as a checklist when you prepare your Affidavit.

In addition, if you are seeking to vary your support downward because of a change in your circumstances including, but not necessarily limited to, loss of employment or for medical reasons, you may wish to consider providing other information if applicable including but not necessarily limited to:

- proof of and reasons for loss of employment
- details of efforts to find work
- medical reports pertaining to your ability to be employed
- affidavits of doctors
- Employment Insurance records

- Worker's Compensation information

How do I include documents in an Affidavit?

When you are including other documents with an Affidavit, such as a copy of an income tax return printout, a sworn financial statement or a copy of a pay-stub, these other documents must be attached at the end of the Affidavit as **exhibits**. In the Affidavit, you must state that a document is attached to the Affidavit as an exhibit. Each exhibit is assigned a consecutive letter of the alphabet. The first exhibit attached is Exhibit A, the next is Exhibit B, the next is Exhibit C, and so on.

The paragraph that refers to an exhibit must always clearly describe the document that is attached as an exhibit. For example:

10. Attached to this my Affidavit and marked as Exhibit A is a copy of my sworn financial statement in Form 70D.

Each document attached as an exhibit must be clearly marked as an exhibit. The exhibits must each be attached to the Affidavit before the Affidavit is signed, dated and sworn. The witness to the swearing of the Affidavit will sign the Affidavit as a witness, and will also sign and date each exhibit as a witness.

On each exhibit, you will need to write or type the following words:

THIS IS EXHIBIT ____ TO THE AFFIDAVIT OF

 SWORN BEFORE ME AT THE CITY/TOWN OF
 _____ IN THE PROVINCE OF
 MANITOBA, THIS _____ DAY OF _____
 20____.

 (Signature of Witness)

A Commissioner for Oaths in an for the Province
 of

Manitoba. My commission expires: _____

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Procedure and Rules in Court of Queen's Bench (Family Division)

A Barrister and Solicitor in and for the Province of Manitoba.

A Notary Public in and for the Province of Manitoba.

These words must appear on the front of an exhibit, unless there is no available space. If you cannot add these words to the front of the document, the words must appear on the back of the first page of the document.

Is there anything else I need to do?

Every document filed in Court must have a cover page except for orders. The form of a cover page is found in *Court of Queen's Bench Rule 4* and Form 4C. **Part C** includes an example of a cover page.

The cover page of an Affidavit must say:

- the name of the person who swears the Affidavit
- the date the Affidavit is sworn

The Affidavit must be signed and sworn to be true. That means that the person making the Affidavit or *deponent* must sign, date and swear that the Affidavit is true in the presence of a witness. The witness must be a Commissioner for Oaths, a justice of the peace, a magistrate, a postmaster, a lawyer or a notary public. A lawyer or notary public may charge you for this service.

Can I use an Affidavit from someone else?

Sometimes, another person may know facts that are relevant or important for your case. If you want to rely on the facts that the other person knows, you need to get an Affidavit from that person.

The *Court of Queen's Bench Rule 70.20(9)* says that you can only file one Affidavit from each person who is not a party and that you can only do this if that person has evidence that is relevant to your case.

Prepare this Affidavit in the same way as you prepare your own. Make sure that the Affidavit clearly states the name and place of residence of the person making the Affidavit or *deponent*. Set out the important and relevant facts in a series of numbered paragraphs. Keep

each paragraph as short as possible, with just a sentence or sentences about a single topic. Remember that an Affidavit can only include facts that the deponent personally knows are true. Attach any exhibits that are relevant. Add a cover page. The deponent signs, dates and swears the Affidavit in the same way as you did your Affidavit.

Can I reply to the facts in the other parent's Affidavit?

If you have filed your Notice of Motion to Vary and supporting Affidavit, and served these documents on the other parent, you may be served with an Affidavit from the other parent, responding to what you said.

You can file one more Affidavit of your own evidence in reply to the other parent's Affidavit. This second Affidavit can only respond to new issues that the other parent brought up in their Affidavit.

Sometimes your motion will result in the other party raising other issues and seeking to vary other aspects of the prior order (i.e. custody/access or issues of undue hardship).

If you need to file any other financial information at this time, you must do so within 20 days after you are served with the other parent's Affidavit.

Attach any exhibits that are relevant. Add a cover page. Sign, date and swear this second Affidavit in the same way as you did the first.

If you are preparing documents to vary a Child Support Order where both parents agree to the changes, then skip ahead to **Step Fourteen, Preparing an Order**. Otherwise, go to **Step Seven, Filing Documents in Court**.

Step Six: Transferring a Court File

- If you and the other parent want to file your documents and have the hearing in a Court of Queen's Bench centre in Manitoba that is different from where you filed your documents before, read on.

- If you plan to file your documents and have the hearing in the Court of Queen's Bench centre where you filed your documents before, skip ahead to **Step Seven, Filing Documents in Court.**

In some cases, you can ask to transfer your Court file to a different Court of Queen's Bench centre. You might want to do this if you have moved within Manitoba, and are now closer to a different Court of Queen's Bench centre. You can only transfer a file from one judicial centre to another judicial centre.

In Manitoba, the following towns or cities are a Court of Queen's Bench **judicial centre**:

- Brandon
- Dauphin
- Flin Flon
- Portage la Prairie
- Selkirk
- The Pas
- Thompson
- Winnipeg

The following towns or cities are a Court of Queen's Bench **administrative centre**:

- Minnedosa
- Morden
- St. Boniface
- Swan River
- Virden

You can file documents in an administrative centre, but you may have to travel to a judicial centre for the hearing.

There are two ways to ask to transfer a Court file to a different Court of Queen's Bench judicial centre. These are:

1. by Requisition, if both parents agree
2. by Notice of Motion, if both parents don't agree

How do I transfer a Court file using a Requisition?

Using a Requisition is possible only if you and the other parent agree to transfer the Court file. If you agree, either you or the other parent can file a document called a **Requisition** in the Court of Queen's Bench centre where the Court file is. Both you and the other parent must sign the Requisition to show you agree to transfer the Court file.

The form for a Requisition is found in *Court of Queen's Bench Rule 4* (Form 4E). **Part C** includes an example of a Requisition. The Requisition must follow Form 4E.

Every document filed in Court must have a cover page except for orders. The form of a cover page is found in *Court of Queen's Bench Rule 4* and Form 4C. **Part C** includes an example of a cover page.

Prepare the Requisition in Form 4E. Fill in the name of the Court of Queen's Bench centre where the file will be transferred. Both you and the other parent must sign the document. File the Requisition in the Court of Queen's Bench centre where your Court file is now. Go to **Step Seven, Filing Documents in Court.**

How do I transfer a Court file using a Notice of Motion?

If you and the other parent don't agree to transfer your Court file to a different Court of Queen's Bench centre, you can use a **Notice of Motion** and set a hearing to ask the Court to transfer the file.

A Notice of Motion is a document that lets the Court know what kind of Court Order you are asking for. It also sets the date and time when you will be heard by a judge.

Part C includes an example of a Notice of Motion. This is a document that you have to create, following the format in the example. Make sure you read and follow the Rules for Preparing Court Documents found in **Part C.**

The form for a Notice of Motion is found in *Court of Queen's Bench Rule 70.18* Form 70Q.

A Notice of Motion has four paragraphs. The first paragraph says who is making the Motion. Is it the

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Procedure and Rules in Court of Queen's Bench (Family Division)

petitioner or the respondent? Is the Motion made to a judge or to a master? A Notice of Motion for a transfer of a Court file can only be made to a master. When and where will the Motion be heard? All of this information must be filled in the first paragraph of the Notice of Motion.

A **master** is an officer of the Court of Queen's Bench in Manitoba who has authority to make Orders about procedure during a court proceeding and other Orders as set out in the *Court of Queen's Bench Rules*.

The second paragraph says what the Motion is for. This is where you ask for a Court Order to transfer the Court file to another Court of Queen's Bench centre. Be sure to list the specific centre where you want the file transferred.

The third paragraph says what the legal basis for the Motion is. In other words, what laws are you relying on to ask for the Court Order? In this case, list:

The Court of Queen's Bench Act and Court of Queen's Bench Rules

The fourth paragraph lists the documentary evidence you will rely on at the hearing. This means the Affidavit or Affidavits you will file to support your Motion. List the Affidavit as:

Affidavit of [insert name of person swearing Affidavit], sworn [insert date Affidavit is sworn]

The Notice of Motion is dated with the date that you file it in Court and lists your name, address and telephone number. It is addressed to the other parent, or his/her lawyer.

Every document filed in Court must have a cover page except for orders. The form of a cover page is found in *Court of Queen's Bench Rule 4* and Form 4C. **Part C** includes an example of a cover page.

You need to prepare an Affidavit to support the Notice of Motion. The Affidavit gives the facts, or evidence that the judge uses to decide if your Motion to transfer the Court file will be allowed. In the Affidavit, include the following facts:

- your name and your city/town of residence and the other parent's city/town of residence
- whether you are the petitioner or the respondent in the Court file
- the reasons why you want the Court file transferred to a different Court of Queen's Bench judicial centre and why the balance of convenience favours transfer
- whether or not you asked the other parent to agree to the transfer, and if so, the other parent's answer

For help in preparing the Affidavit, go back to **Step Five, Preparing an Affidavit**. After the Notice of Motion and Affidavit are prepared, go to **Step Seven, Filing Documents in Court**.

Step Seven: Filing Documents in Court

- If you had a lawyer for the last Court process between you and the other parent, have you prepared and served a Notice of Intention to Act in Person if it is necessary for you? If not, go back to **Step One, Representing Yourself**.
- Have you prepared a Notice of Motion or Notice of Motion to Vary? If not, go back to **Step Three, Applying to Vary a Child Support Order**.
- Have you prepared an Affidavit to support your Notice of Motion? If not, go back to **Step Five, Preparing an Affidavit**.
- If you and the other parent agree to vary the Child Support Order, have you prepared a Proposed Variation Order? If not, go to **Step Fourteen, Preparing The Order**.

Where do I file the documents?

File the documents in the Court of Queen's Bench centre where the Child Support Order was made. The name of the Court of Queen's Bench centre is found on the top of the front cover page of your Child Support Order. For example, if it says Winnipeg Centre, then you will file your documents in the Winnipeg Court of Queen's Bench office, and if it says Flin Flon Centre, then you will file your documents in the Flin Flon Court of Queen's Bench office.

If your Court of Queen's Bench file was transferred to another centre, then file the documents in the new Court of Queen's Bench centre.

To find the address of the Court office, check **Part D**. You can also check the Manitoba Government listings at the back of your telephone book. Look under the heading of Justice, and the sub-heading of Courts Division.

Is there anything else I need to do before I file the documents?

Make copies of all the documents that you are filing in the Court. You need at least three extra copies of each document.

If you are filing a Notice of Motion that will be heard without notice to the other parent, call ahead to the Court's Family Division office to schedule a date and time for the Motion to be heard by a judge. In most centres, there is a motions co-ordinator who schedules all the motions. Check **Part D** for the telephone number of the motions co-ordinator or Court office in your centre.

Fill in the Court date and time on the cover page of the Notice of Motion and inside first paragraph.

If you are filing a Notice of Motion to Vary, leave the Court date and time blank until you file the document at the Court office.

Before you can file an Affidavit, it must be signed, dated and sworn to be true before a witness. The witness must be a Commissioner for Oaths, a justice of the peace, a magistrate, a postmaster, a lawyer or a notary public. A lawyer or notary public may charge you for this service.

Are there any time limits for filing documents?

Yes. The time limits are set out in the *Court of Queen's Bench Rules* as follows:

- Notice of Motion to Vary – file and serve by 2 p.m., four days before the first Court date.
- Affidavit (supporting Notice of Motion to Vary) – file and serve by 2 p.m., four days before the first Court date.
- Affidavit (in response to Notice of Motion to Vary) – file and serve by 2 p.m., seven days before the contested hearing date.
- Affidavit (in reply) – file and serve by 2 p.m., four days before the contested hearing date.

If you want to file an Affidavit after the time allowed, you must mark the word LATE in large and bold type on the cover page for filing. Also, you must prepare and file a Notice of Motion asking for permission, or *leave* for the late filing. The judge will hear this Motion on the contested hearing date. Remember that you must also serve the other parent or his/her lawyer with your Notice of Motion and Affidavit.

Court of Queen's Bench Rule 3 says that when counting less than seven days, you don't count holidays. This means, you don't count Saturday, Sunday or any of the following holidays:

- New Year's Day
- Good Friday
- Easter Monday
- Victoria Day
- Canada Day
- Civic Holiday (August)
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- Boxing Day

You also don't count the day that you filed the documents.

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Procedure and Rules in Court of Queen's Bench (Family Division)

EXAMPLE ONE

If a Motion is set for hearing on Tuesday morning, count backwards four days from Tuesday. Don't include the day that the documents are filed. Don't include holidays. Include the day of the hearing. It must be filed no later than the Wednesday before the Motion, if there are no other holidays.

S	M	T	W	Th	F	Sa
			File	1	2	X
S	M	T	W	Th	F	Sa
X	3	4 (Hearing)				

EXAMPLE TWO

If there is another holiday in this time period, you must file the documents even earlier. If the day before the hearing is a holiday too, you must file the documents no later than the Tuesday before the hearing.

S	M	T	W	Th	F	Sa
		File	1	2	3	X
S	M	T	W	Th	F	Sa
X	X	4 (Hearing)				

What do I need to bring with me?

Filing documents in Court means that you are adding documents to your Court file. For this reason, you should bring along at least two copies of each document that you are filing in the Court of Queen's Bench.

If you are filing a proposed Interim Order or proposed Variation Order, bring at least three copies of this document.

You should also bring money, in cash, money order or certified cheque. There is a filing fee for a Notice of Motion (Without Notice) or a Notice of Motion to Vary. Court fees and charges can be paid by certified cheque or money order made out to the Minister of Finance, or in cash. There is no filing fee for an Interim Order or Variation Order, unless the document was returned to you with a Notice of Rejection. There is a filing fee for re-filing rejected documents.

Fees paid to the Court of Queen's Bench for filing documents are not refundable. You must pay the filing fee or charge. Filing fees and other charges are not refunded. For more information about fees and charges, check *The Law Fees and Probate Act*.

One copy of each document that you file will remain on the Court file. Keep the extra copies for your own use, and for serving, or delivering to the other parent.

Step Eight: Case Management

What is Case Management?

Case management is a Court process that allows a judge to monitor and manage the progress of a Court case as it moves through the system. As part of this process, people who are separating and divorcing have an opportunity to meet with a judge, in a settlement oriented atmosphere, to try to resolve their issues together.

What are the goals of Case Management?

One goal of Case Management is to reduce the unnecessary delay in reaching a final determination of a case. Another goal is to reduce the costs to individuals involved with the court. A third goal is to allow and encourage people involved in separation, divorce and other family law matters to participate directly in finding their own mutually satisfactory solutions.

If you were involved in case management when the first Child Support Order was made, you must also use case management if you want to vary, or change the Child Support Order.

In Winnipeg, family law cases that begin on or after November 1, 2002 are automatically included in the Case Management process.

Prior to November 1, 2002, one in five Winnipeg family law cases were randomly selected to be part of the Case Management process. If you don't know whether your file was a part of the Case Management

process, contact the Court office where you filed your documents and ask. If it is determined that your family file was not part of the Case Management process prior to November 1, 2002, you have the option of opting in to the program. Contact the case management co-ordinator for more information. Check **Part D** for the telephone number.

The rules for case management are found in *Court of Queen's Bench Rule 70.24*.

How does case management work for variations?

When you file a Notice of Motion to Vary in the Court, a case management schedule begins to run. You receive from the Court two copies of the *Case Management of Family Matters* pamphlet, one of which is to be served on the other parent. This can be done at the same time when you serve the Notice of Motion to Vary. Further steps must be taken to follow up on the Motion within 90 days.

If your variation motion is being contested to decide if the Child Support Order will be varied, you must attend a case conference first. A case conference is an informal meeting between the parents, their lawyers (if lawyers are involved) and a judge. Usually, the case conference judge will be the same judge who led your case conferences in the past.

A contested hearing is a hearing that takes place when both parents don't agree to what one or both are asking the Court to do. For example, if one parent is asking to increase child support, and the other parent doesn't agree to the increase, a contested hearing will take place and a judge will decide for them.

How is a case conference scheduled?

After you have filed your Notice of Motion to Vary, you can schedule a first case conference at anytime. You must call the case management co-ordinator who will provide you with a list of available dates and times. Check with the other parent or his/her lawyer about which dates and times work best. Call the case management co-ordinator to schedule a date and time for the first case conference to take place.

If the other parent consents or agrees to the date and time of the case conference, you need to file a Requisition with the Court indicating the case conference date and time, and serve the other parent. At the case conference, the judge requires proof of service that the other parent was informed of the arranged case conference date and time.

If the other parent does not respond or consent to the case conference, you need to file a Requisition with the Court indicating the case conference date and time, and serve the other parent 14 days in advance of the case conference date. At the case conference, the judge requires proof of service that the other parent was informed of the arranged case conference date and time. Go to **Step Nine, Serving Documents** for further information.

If there is no action on your Court file in 90 days of the filing of the Notice of Motion to Vary, a case conference will be scheduled for you to attend. A **Notice of Case Conference** is sent from the Court to the parent who filed the Notice of Motion to Vary. This parent must serve or deliver the Notice of Case Conference to the other parent in the same way as the Notice of Motion to Vary was served. Go to **Step Nine, Serving Documents** for more information on how to serve the Notice of Case Conference.

What if I can't attend on the date scheduled?

If you can't attend the Case Conference when it is scheduled, you can ask for the date to be *adjourned*, or changed to a different date. You can only do this if the other parent consents, or agrees.

You have to file a **Request for Adjournment** form to ask for the date to be changed. **Part C** includes an example of a Request for Adjournment. The Request for Adjournment must be prepared as set out in the *Court of Queen's Bench Rule 70.24(19)* Form 70T. You can create your own form following *Court of Queen's Bench Rule 70.24(19)* and Form 70T.

Before you complete the Request for Adjournment, call the case management co-ordinator to set up a new date. This new date must be filled in on the Request for Adjournment form. The Request for Adjournment also

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must explain why you need to adjourn the case conference.

There are time limits for filing the Request for Adjournment. It must be filed at least 14 days before the case conference. There is no filing fee for a Request for Adjournment. Once the case conference judge decides to either grant or deny your request for an adjournment, you are contacted by the case management co-ordinator. Whether your request is granted or denied, you must advise the other parent of the status of the case conference hearing.

You should know that in most situations, a case conference judge can only adjourn the first case conference one time.

Is there anything I have to do before the case conference?

Before the case conference, both parents must fill out and file a **Case Management Information Statement**. **Part C** includes an example of a Case Management Information Statement. The Case Management Information Statement must be prepared as set out in the *Court of Queen's Bench Rule 70.24(14)* Form 70S. You can create your own form following the *Court of Queen's Bench Rule 70.24(14)* and Form 70S.

There are time limits for filing the Case Management Information Statement. The Case Information Statement must be filed:

- 14 days before the case conference, if A Notice of Case Conference set the date for your case conference
- by 2 p.m., two days before the case conference, if you or the other parent set the date for your case conference

There is no filing fee for a Case Management Information Statement.

The same time limits indicated above apply to serving the Case Management Information Statement. It must be served on the other parent in the same manner that the Notice of Motion to Vary was served. Skip ahead to **Step Nine, Serving Documents** for more information on how to serve Court documents.

What happens at a case conference?

A number of things can happen at a case conference. You and the other parent can agree on some or all of the issues. The judge can require the parents to take certain steps, such as providing more information, or going to mediation or to a parent information program. The judge can arrange for another case conference or can set a date for hearing the Motion and give procedural directions or order further disclosure prior to the motion being heard.

The judge assigned to your case will continue to work with you until all the issues are agreed on, or until it is clear that the only way to resolve the issues is to hold a contested hearing.

A contested hearing is a hearing that takes place when both parents don't agree to what one or both are asking the Court to do. For example, if one parent is asking to increase child support, and the other parent doesn't agree to the increase, a contested hearing will take place and a judge will decide for them.

The judge who participates in the case conference is not the judge for the contested hearing unless everyone agrees.

If you have filed a Notice of Motion to Vary, go on to **Step Nine, Serving Documents**.

If you have been served with a Notice of Motion to Vary, go on to **Step Ten, Responding to a Notice of Motion to Vary Child Support**.

Step Nine: Serving Documents

- Have you filed a Notice of Motion or Notice of Motion to Vary in Court? If not, go back to **Step Seven, Filing Documents in Court**.
- Do you have copies of the documents that you filed in Court? If not, go to the Court office where you filed your documents, and ask to make copies of the documents that you filed. There is a charge for making copies at the Court.

When you file documents in the Court of Queen's Bench to start a Court process like a variation or when you get an Order from the Court, you must always **serve** a copy of each document on the other parent. To serve a document means that you give a copy of a document to a person, by a certain method.

How are documents served?

Court of Queen's Bench Rule 16 sets out the rules for serving documents. There are a number of different ways to serve Court documents.

Personal service means a copy of the document is given to the person who is served.

An **alternative to personal service** means you can serve a person in one of the following ways:

- by giving a copy of the document to the person's lawyer, if the lawyer agrees to accept service and signs and dates a copy of the document
- by registered or certified mail with a confirmation of delivery
- by regular letter mail with an **Acknowledgement of Receipt Form**, as set out in *Court of Queen's Bench Rule 16* (Form 16A). **Part C** includes an example of an Acknowledgement of Receipt Form.
- by leaving a copy in a sealed envelope addressed to the person at his/her home, with any adult person, and then by mailing another copy to the person at that address, the same day or next day

You must serve the other parent with the Notice of Motion to Vary and supporting affidavit(s) by personal service or by serving his/her lawyer by giving a copy of the document to the lawyer. You can only serve the lawyer if the lawyer agrees to accept service and signs and dates a copy of the document(s).

It is important to know that you cannot personally serve a Notice of Motion to Vary on the other parent. Someone else must do it for you and sign an affidavit confirming the document was served. You can serve documents other than a Notice of Motion to Vary on the other parent, but it is still a good idea to have someone else do it in case there is any issue raised by the other parent about the service of documents.

A Case Management Information Statement must be served by one of the same methods. You can choose which of the methods of service to use from the list above.

Who do I have to serve?

When you file a Notice of Motion to Vary a Child Support Order, you have to serve the other parent.

You also have to serve the Director of Field Services, Employment and Income Assistance whenever you are asking for a change in the amount of a Child Support Order or cancellation of arrears of child support or suspension of enforcement of a Child Support Order. Serve the Director of Field Services, Employment and Income Assistance at:

**Director of Field Services,
Employment and Income Assistance
Attention: Maintenance Officer
305-114 Garry Street
Winnipeg, Manitoba
R3C 4V7**

If the other parent lives outside Manitoba, and you are applying to suspend enforcement of child support payments or arrears of child support, you also have to serve the Designated Officer, Maintenance Enforcement Program with a copy of the Notice of Motion to Vary. Serve the Designated Officer, Maintenance Enforcement Program at:

**Designated Officer
Maintenance Enforcement Program
225-405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6**

Are there any time limits for serving documents?

When you file a Notice of Motion to Vary, you must serve it on the other parent at least four days before the first Court date.

If you file an affidavit in response to the Notice of Motion to Vary, you must serve it on the other parent at least seven days before the contested hearing date.

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A Case Management Information Statement must be served on the other parent:

- 14 days before the case conference, if a Notice of Case Conference set the date for your case conference
- by 2 p.m., two days before the case conference, if you or the other parent set the date for your case conference

Court of Queen's Bench Rule 3 says that when counting less than seven days, you don't count holidays. This means, you don't count Saturday, Sunday or any of the following holidays:

- New Year's Day
- Good Friday
- Easter Monday
- Victoria Day
- Canada Day
- Civic Holiday (August)
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- Boxing Day

You also don't count the day that you served the documents.

EXAMPLE ONE

If a Motion is set for Tuesday morning, count backwards four days from Tuesday. Start counting on the day after the documents are served. Don't include holidays. Include the day of the hearing. It must be served no later than the Wednesday before the Motion, if there are no other holidays.

S	M	T	W	Th	F	Sa
			Serve	1	2	X
S	M	T	W	Th	F	Sa
X	3	4 (Hearing)				

EXAMPLE TWO

If there is another holiday in this time period, you must serve the documents even earlier. If the day before the hearing is a holiday too, you must serve the documents no later than the Tuesday before the hearing.

S	M	T	W	Th	F	Sa
		Serve	1	2	3	X
S	M	T	W	Th	F	Sa
X	X	4 (Hearing)				

Who serves the documents?

If there has been violence or threats of violence between you and the other parent in the past, think carefully before you decide how to serve the other parent with any Court documents. Any adult person can serve Court documents. You don't have to do it yourself.

You cannot serve a Notice of Motion to Vary on the other parent. Someone else must do this for you.

People who serve documents for others are called process servers. They charge a fee for their work, which usually includes a fee for travel mileage and the preparation of the necessary affidavit proving service. Check the *Yellow Pages* of your telephone book for a list of process servers in your region.

How do I prove that the documents were served?

Before a hearing takes place in Court, you have to prove you served everyone who needed to be served.

If a person was served personally, or by an alternative to personal service, an **Affidavit of Service** must be prepared. This is a document that proves that a person was served with documents in the way, and in the time limits required by the *Court of Queen's Bench Rules*.

The form of the Affidavit of Service is found in *Court of Queen's Bench Rule 16* (Form 16B). **Part C** includes an example of an Affidavit of Service. The Affidavit of Service is a document that you have to create following the format in the example. Make sure you read and follow the Rules for Court Documents found in **Part C**.

The form includes wording to use for each of the different ways a person can be served.

Every document filed in Court must have a cover page except for orders. The form of a cover page is found in *Court of Queen's Bench Rule 4* (Form 4C). See **Part C** for an example of a cover page. The cover page of an Affidavit must say:

- the name of the person who swears the Affidavit
- the date the Affidavit is sworn

The Affidavit must be signed and sworn to be true. That means that the person making the Affidavit, or *deponent* must sign, date and swear that the Affidavit is true in the presence of a witness. The witness must be a Commissioner for Oaths, a justice of the peace, a magistrate, a postmaster, a lawyer or a notary public. A lawyer or notary public may charge you for this service.

Proof of service on a lawyer can also be a copy of all documents served, with the lawyer's signed and dated acceptance of service on the cover of each document.

The sworn Affidavit of Service or other proof of service is filed in the Court of Queen's Bench. It should be filed no later than 2 p.m. on the day before the hearing.

When you have served the other parent and anyone else that needs to be served, move on to **Step Ten, Responding to a Notice of Motion to Vary Child Support**.

Step Ten: Responding to a Notice of Motion to Vary Child Support

- Have you been served with a Notice of Motion to Vary? If so, read on to find out what you can do in response.
- Did you serve a Notice of Motion to Vary on the other parent? If so, read on to find out what you can expect in response.

What is a Notice of Motion to Vary?

The Notice of Motion to Vary is a document that lets the Court know what kind of Court Order the other parent is asking to change. It also sets the date and time when the Motion will be heard by a judge. **Part C** includes an example of a Notice of Motion to Vary.

Carefully read the Notice of Motion to Vary. The first paragraph of the Notice of Motion to Vary says who is making the Motion, when the Motion will be first heard and where the hearing will take place.

The second paragraph says which kind of Court Order the other parent is applying to change. It lists the kind of Order (for example, Child Support Order), the name of the judge that made the Order, the name of the Court and province and the date that the Order was made.

The third paragraph tells you that you have to serve and file an affidavit and a financial statement in the Court within 20 days.

If your Child Support Order was made under the *Divorce Act*, the following two paragraphs give you instructions about the documents you need to file in response. Read these carefully.

The next paragraphs are instructions for you. These say that:

IF YOU WISH TO 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 serve a copy of the evidence on the moving party's lawyer or, where the moving party does not have a lawyer, serve it on the moving party, and file it in the court office where the motion is to be heard as soon as possible, but not later than 2:00 p.m. on a day that is at least seven days before the hearing.

IF YOU FAIL to appear at the hearing, an order may be given in your absence and without further notice to you.

This information lets you know your rights and responsibilities in response to the Notice of Motion to Vary.

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

Next, the document will set out the details of the changes the other parent is asking for. For a change to a Child Support Order, the document must say whether the other parent is asking for an amount that is:

- the table amount from the *Child Support Guidelines* or a different amount and/or
- an amount for special or extraordinary expenses, as defined in the *Child Support Guidelines*

Any other Orders that the other parent is asking for, such as to remit, or reduce arrears of child support or suspend enforcement are listed here in separate numbered paragraphs.

The next page of the Notice of Motion to Vary begins with the heading Financial Information. Under this heading, the first paragraph may say:

Attached is the petitioner's financial statement (Form 70D).

This paragraph is only included if the other parent needs to include a financial statement. If the other parent is asking to change a Child Support Order made under the *Divorce Act* and you or the other parent live outside Manitoba, the next paragraph will be:

Attached is the moving party's affidavit containing the documents required under section 21 of the *Federal Child Support Guidelines*.

The last paragraph of the Notice of Motion to Vary lists the documentary evidence the other parent will use at the hearing. This means the Affidavit or Affidavits that have been filed to support the Notice of Motion to Vary. You must be served with a copy of each of the documents listed here.

How can I respond to a Notice of Motion to Vary?

You can respond to the Court process in the following ways:

- by agreeing or consenting to what the other parent is asking for
- by disagreeing, or opposing what the other parent is asking for
- by hiring a lawyer to represent you
- by representing yourself in Court

Go to Court for the hearing scheduled in the Notice of Motion to Vary. When there, you can let the Court know if you agree or disagree with the Motion, and if you plan to get a lawyer or plan to represent yourself in Court.

If you want a lawyer to represent you, contact the lawyer as soon as possible after you are served with the documents. Let the lawyer know the names of the documents you were served with, and the date of the hearing and if possible have that lawyer attend court on the first date.

Remember that if you do nothing, the Court can still make an Order to vary the child support amount. In this case, the Court has to make a decision without hearing from you. The decision is based only on the facts the other parent stated in his/her Affidavit(s). Without hearing from you, the Court will assume everything the other parent has stated is accurate and true.

What if I want to represent myself?

You have a right to represent yourself in Court if you want. But you should know that with this right comes the **responsibility to follow the rules of Court and Court process.**

Before you decide to use this guide, ask a lawyer what it would cost to represent you. You have the right to go to Court without a lawyer to represent you, but you need to know that in Court, you will be treated the same as a person who has a lawyer. Do not expect any special or different treatment because you don't have a lawyer. **If you do not know and follow the Court rules, you will have to live with the consequences.**

To find a lawyer:

- call the Lawyer Referral Program and get a free 30-minute appointment with a lawyer: (204) 943-2305 in Winnipeg or 1-800-262-8800 outside Winnipeg
- check the *Yellow Pages* listings
- speak to friends or family for recommendations

Even if you decide not to use a lawyer to represent you, you still should consult a lawyer before you use this guide.

If you use this guide, you are expected to:

- read the whole guide
- be familiar with the Court rules that apply
- follow the Court rules that apply

What does it mean if I'm asked to pay costs?

The Notice of Motion to Vary might include a request that you pay the other parent's Court costs. Costs can mean either an amount decided according to the schedule of costs, or *tariff* set out in the *Court of Queen's Bench Rules*, or an amount up to the full costs of the Court process, including any legal fees. At the end of a hearing, the judge decides whether or not to make an Order for payment of costs. If costs are not asked for in the Notice of Motion to Vary, the judge cannot make an Order for costs to be paid. If you consent to an order promptly and sign a consent order, the other party may forego costs or the Court may in some circumstances be persuaded not to order any costs.

You should know that you could be ordered to pay the other parent's Court costs if:

- you don't respond to the other parent's Motion
- you ask for adjournments that you don't need
- you try to delay the Court process
- you don't follow the *Court of Queen's Bench Rules* and any statute laws that apply
- you don't succeed in opposing the other parent's Motion

What is a financial statement (Form 70D)?

A financial statement is a document that sets out your financial information attached to an Affidavit. An **Affidavit** is a document that contains written facts you swear are true. The financial statement must be prepared following *Court of Queen's Bench Rules* 70.07 and 70.37 and Form 70D. **Part C** includes an example of a financial statement. You have to create this document following the *Court of Queen's Bench Rule* 70.07 and Form 70D.

The financial statement (Form 70D) has a first page and four parts. The first page is the Affidavit that you

swear is true. The Affidavit must be signed and sworn to be true. That means that the person making the Affidavit, or *deponent* must sign, date and swear that the Affidavit is true in the presence of a witness. The witness must be a Commissioner for Oaths, a justice of the peace, a magistrate, a postmaster, a lawyer or a notary public. A lawyer or notary public may charge you for this service.

The four parts of the financial statement are:

- Part 1 – Annual Income
- Part 2 – Monthly Expenses
- Part 3 – Assets of Both Parties
- Part 4 – Debts of Both Parties

You don't need to file and serve a financial statement in Form 70D at all if:

- the only child support amount claimed is the table amount under the *Child Support Guidelines* and all the children that support is claimed for are under the age of 18 years
- there are no other issues of support or property raised in the Notice of Motion to Vary or your response
- your income information is not necessary to decide the amount of the changed Child Support Order

You only need to complete and attach Part 1 of the financial statement in Form 70D to your Affidavit if:

- the only child support amount claimed is the table amount under the *Child Support Guidelines* and all the children that support is claimed for are under the age of 18 years
- there are no other issues of support or property raised in the Notice of Motion to Vary or your response
- your income information is necessary to decide the amount of the changed Child Support Order

Remember that you must file and serve the financial statement within 20 days of the day that you are served with the Notice of Motion to Vary. Go to **Step Seven, Filing Documents in Court** for help with filing documents. Go to **Step Nine, Serving Documents** for help with serving documents.

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

What if my Child Support Order was made under the *Divorce Act*?

The same rules apply if you are responding to a Notice of Motion to Vary a Child Support Order that was made under the *Divorce Act*. If your income information is necessary to decide the amount of the new Child Support Order, you also need to file and serve:

- copy of every personal income tax return that you filed for each of the three most recent tax years
- copy of every notice of assessment or reassessment issued to you by Canada Customs and Revenue Agency for each of the three most recent tax years
- if you are an employee**, your most recent statement of earnings showing the total earnings paid in the year to date, including overtime, or a letter from your employer setting out that information including the rate of annual salary or pay
- if you are self-employed**, the financial statements of the your business or professional practice, other than a partnership, and a statement showing a breakdown of all salaries, wages, management fees or other payments and benefits paid to people or businesses that you are somehow related to, for each of the three most recent tax years
- if you are a partner in a partnership**, confirmation of your income and draw from, and capital invested in the partnership, for each of the three most recent tax years
- if you control a corporation**, the financial statements of the corporation and its subsidiaries, and a statement showing a breakdown of all salaries, wages, management fees or other payments and benefits paid to people or businesses that you are somehow related to, for each of the three most recent tax years
- if you receive benefits from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source**, the most recent statement of income that shows the total amount received from that source in the year or a letter from the provider of the benefits setting out that information
- if you are a beneficiary under a trust**, a copy of the trust settlement agreement and copies of the trust's

three most recent financial statements

- if you cannot provide the documents required**, you must explain why you haven't attached those documents

Use this list as a checklist when you prepare your Affidavit.

Remember that you must file and serve the financial statement within 20 days of the day that you are served with the Notice of Motion to Vary. Go to **Step Seven, Filing Documents in Court** for help with filing documents. Go to **Step Nine, Serving Documents** for help with serving documents.

What if I agree to everything the other parent is asking for?

Make sure that you have read the Notice of Motion to Vary and understand what the other parent is asking for. If you agree to the Motion, there are a few ways that you can go ahead.

It's a good idea to get legal advice even if you agree with the other parent.

If you decide not to hire a lawyer to represent you, let the other parent or the other parent's lawyer know that you agree to the Motion, preferably in writing. Do this as soon as possible, before the Court date or at the first hearing. At this time, you can also ask that any claim for costs be waived, or given up.

Remember that you will still need to provide the Court and other parent or his/her lawyer with the financial information that is asked for in the Notice of Motion to Vary.

The hearing can be adjourned or postponed to file a Variation Order. The Variation Order is a document that sets out changes to the Child Support Order you agree to. Often, the Variation Order can be filed in the Court and signed by a judge without going to a formal Court hearing.

This is a document that you must review and sign before it can be filed in Court. It's a good idea to review a Variation Order with a lawyer before you sign it, even if you decided not to hire a lawyer to represent you.

When you sign the Variation Order, you have to do so in front of a witness. The person who is the witness then must complete, swear and sign the Affidavit of Execution, attached to the Variation Order. **Part C** includes an Example of a Variation Order and Affidavit of Execution. Sometimes the other parent's lawyer will prepare these and all you have to do is go to that lawyer's office to have the document witnessed.

If you agree to the other parent's Motion, get more information about this process. Go back to **Step Four, Applying to Vary a Child Support Order (when both parents agree)**.

What if I don't agree to the Motion?

You can respond to the Notice of Motion to Vary by preparing and filing your own Affidavit. Your Affidavit responds to what is contained in the Affidavit of the other parent and can also raise new issues.

You can also respond by filing a Notice of Motion to Vary requesting other changes to the current Court Order. This could include changes to custody, changes to access, or asking to forgive support that you owe. This Guide does not provide assistance with respect to changes to custody, access or issues other than child support. If you want to ask for any variations, go back to **Step Three, Applying to Vary a Child Support Order**.

There are rules and time limits for filing and serving Affidavits. Because of these, you may not be ready to go ahead on the Court date. If this is the case, you can ask to adjourn or postpone the hearing to a later date. You can ask to do this when you appear in Court on the date set for your hearing. To find out more about how to do this, go on to **Step Eleven, Family Motions Court**.

What are the rules for responding to a Notice of Motion to Vary?

The *Court of Queen's Bench Rule* 70.20(8) says that you are allowed to file one Affidavit of your own evidence in response to the Affidavit(s) filed by the other parent. The *Court of Queen's Bench Rule* 70.28(9) says that you are also allowed to file one Affidavit from each person who is not a party if that person knows information

that is relevant to the Court proceeding. (For example, an employer or a doctor). Go back to **Step Five, Preparing an Affidavit** for help in preparing your Affidavit.

There are time limits for filing Affidavits. All Affidavits in response must be filed in Court within 20 days of the day that you are served with the Notice of Motion to Vary and by no later than 2 p.m. at least seven days before the contested hearing date.

Go back to **Step Seven, Filing Documents in Court** for information on how to file documents in Court.

What about serving documents?

If you respond by preparing and filing your own Notice of Motion to Vary, it must be filed in Court and served on the other parent by no later than 2 p.m. at least four days before the first Court date. An Affidavit that supports your Notice of Motion to Vary must be served on the other parent in the same time limits.

An Affidavit that responds to the other parent's Affidavit must be served on the other parent within 20 days of the day that you are served with the Notice of Motion to Vary and by no later than 2 p.m. at least seven days before the contested hearing date.

Go back to **Step Nine, Serving Documents** for information on how to serve documents on another person.

Are there limits on the how many Affidavits can be filed?

Yes. Each parent can file one Affidavit of his/her own evidence. But if your Affidavit in response raises any new issues, the other parent may respond to it by preparing and filing another Affidavit of his/her own evidence. This second Affidavit of the other parent must be filed in the Court office and served on you by no later than 2 p.m. at least four days before the Court date.

Is there anything else that I can do to respond to the Notice of Motion to Vary?

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

There are some additional processes that could take place before the Court hears the Motion.

A person who is served with an Affidavit may make a Motion to the Court to have all or certain parts of that Affidavit removed from the court file. This is called a Motion to Expunge.

Expunging an Affidavit must take place within very short time limits. The appropriate documents must be filed in the Court office and served on the other party within four days after the Affidavit is received. *Court of Queen's Bench Rule 70.32* deals with this process. If you are served with a Notice of Motion to Expunge, you can respond, but must do so within three days after you are served.

A person who is served with an Affidavit can also take steps to cross-examine the person who swore the Affidavit. This process of cross-examination takes place outside of Court, and in the presence of a Court reporter who makes a written transcript of the questions asked and answers given during the cross-examination. This process can only take place after all Affidavits have been filed, and before a hearing takes place. *Court of Queen's Bench Rule 39.02* deals with this process.

This guide is not designed to help you with motions to Expunge or cross-examinations on Affidavits. It is important, however, that you know that these processes can be used. It is also important to know they have a cost that will have to be paid for by you.

If the other parent hires a lawyer, you may find yourself faced with one or both of these processes. Depending on your case, it may be important to use these processes yourself.

If you are served with a Notice of Motion to Expunge, or if you are served with a Notice of Examination, get specific legal advice. Even if you don't hire a lawyer at this point, you should get specific legal advice.

If you think that either of these processes could help your case, you should get specific advice from a lawyer.

Step Eleven: Family Motions Court

- Have you filed a Notice of Motion or Notice of Motion to Vary? If not, go back to **Step Seven, Filing Documents in Court**.
- Have you served the documents on everyone who needs to be served? If not, or if you're not sure, go back to **Step Nine, Serving Documents**.
- Have you prepared and filed an Affidavit of Service for each person who was served? If not, go back to **Step Nine, Serving Documents**.

Some Court processes are different from one Court of Queen's Bench centre to another. Following are general descriptions of family motions procedures in Winnipeg Centre and Brandon Centre and in Courts outside Winnipeg Centre and Brandon Centre. Check with your local Court office for the details of the specific processes used in your local Queen's Bench centre.

When you go to Court for a hearing, always bring along copies of all the documents you have filed in Court and the documents you have been served with.

MOTIONS COURT WINNIPEG CENTRE and BRANDON CENTRE

What do I do when I go to Court?

In the Court of Queen's Bench Winnipeg Centre, the first Court date for a Notice of Motion to Vary will be on a Tuesday morning at 9 a.m. unless a special time has been booked with the consent of both parties. Each Tuesday morning, a Family Division Motions Court takes place.

In the Court of Queen's Bench Brandon Centre, the first Court date for a Notice of Motion to Vary will be on a Monday morning at 9 a.m. Each Monday morning, a Family Division Motions Court takes place.

On the day of your hearing, arrive at the Court at least 15 minutes before 9 a.m. When you get there, check the notice board for the list of family motions. All motions scheduled for that morning are found on the same list. This is usually quite a long list. The different files are listed in numeric order, based upon the Court file numbers. This is the number found on the upper right-hand corner of your Court documents. When you find the listing for your Motion, make a note of the number that it has been assigned on the list. If you cannot find your file on the list, go to the courtroom and check the list available there, or speak to the Court clerk for help.

Go to the courtroom. When you arrive there, you will see a person seated in the judge's chair at the front of the room. In Winnipeg, this is the family motions co-ordinator. In Brandon, this is a master of the Court of Queen's Bench.

A **master** is an officer of the Court of Queen's Bench in Manitoba who has authority to make Orders about procedure during a court proceeding and other Orders as set out in the *Court of Queen's Bench Rules*.

You will also see another person seated at a desk in front of the judge's desk. In Winnipeg, this is the Court clerk. In Brandon, this is the family motions co-ordinator.

What happens in Motions Court?

If you are ready to go ahead with your Motion, get in the line to speak to the family motions co-ordinator and wait your turn.

The family motions co-ordinator checks if the other parent is present or has a lawyer present. If you do not know, the other parent will be paged. If the other parent or his/her lawyer is present, he or she will come up to the desk to speak with you and the family motions co-ordinator.

If you both are ready to go ahead to a *contested* hearing, the family motions co-ordinator helps you schedule a day and time for the hearing. After you set a date for the contested hearing, nothing further will happen on this day provided that you agree to filing deadlines.

A contested hearing is a hearing that takes place when both parents don't agree to what one or both are asking the Court to do. For example, if one parent is asking to increase child support, and the other parent doesn't agree to the increase, a contested hearing will take place and a judge will decide for them.

What if my case is in case management?

If you are in case management, the family motions co-ordinator won't let you set a Court date. Instead your Motion must be adjourned, or postponed until after a case conference has taken place. Go back to **Step Eight, Case Management** for more information about case conferences.

What if I'm not ready to go ahead?

If you or the other parent is not ready to set a date for a hearing, you can ask to adjourn, or postpone the Motion to another date. It can be adjourned to another family motions Court date and you will have to re-attend court then.

In Winnipeg, if you and the other parent agree to adjourn the Motion to a later date, speak to the Court clerk, seated at the desk in front of the judge's desk. The Court clerk gives you a form to fill out to adjourn the hearing to another date. If you need help with the form, ask the Court clerk. When the form is completed, give it back to the Court clerk. Make sure you and the other parent note the new Court date. Nothing else happens on this day.

In Brandon, if you and the other parent agree to adjourn the Motion to a later date, remain seated in the gallery until your case is called. Then make your way to the front of the courtroom and request an adjournment from the Master. Make sure you and the other parent note the new Court date. Nothing else happens on this day.

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

What if the other parent and I can't agree?

If you and the other parent can't agree about setting a Court date, or about adjourning the Motion to another day, or setting deadlines for filing affidavits, you both have to go before a judge or master to decide. Get in the line to speak to the family motions co-ordinator and ask to go before a standby judge or master. The standby judge is waiting in another courtroom, to hear and decide disputes like this.

The family motions co-ordinator assigns you to a courtroom and gives you a file requisition form. Note the courtroom you are assigned to. You need this form to get the Court file for your hearing.

In Winnipeg, take the file requisition form to the Family Division desk on the 1st floor of the Court, across the hall from the security desk. Give the file requisition form to the clerk at the Family Division desk. The clerk gets the Court file for you, and asks you to fill in a receipt form, with your name and address.

Take the Court file to the courtroom the family motions co-ordinator assigned. Enter the room quietly as there may be a hearing going on when you come in. When there is a break, or if the judge is not in the room, give the Court file to the Court clerk seated in front of the judge's desk.

In Brandon, appear in court on the date and at the time set, remain seated in the gallery until your case is called.

Your names will be called out in turn. When your name is called, stand up and move to the table or desk in the front of the courtroom. The other parent or the other parent's lawyer also stands up and moves to the table.

Each parent or lawyer has a chance to speak. Remember that this is not the hearing of the Motion to Vary. This hearing is only to decide if the Motion will be scheduled for a hearing, or if it will be adjourned or postponed to another date.

Stand up when you are asked to speak. Tell the judge your name and that you are representing yourself. In the Court of Queen's Bench, address a male judge as "My Lord" and a female judge as "My Lady." Tell the

judge in clear and simple words what you and the other parent can't agree about.

Listen to the judge when she or he is talking. Don't interrupt the judge. Listen carefully to what the judge says and make notes for yourself. The judge makes a decision about when your Motion will be heard and whether any steps need to be taken before then. Do what the judge says.

What if the other parent doesn't show up?

In Winnipeg, wait in the courtroom. When court opens, the Master or family motions co-ordinator starts calling out the names of cases not set for hearings or adjourned to another date. Your case should be in this list.

When your name is called, stand up and say who you are. If the other parent isn't in the courtroom and if no one else is there to represent the other parent, then the family motions co-ordinator gives you a file requisition form and sends you to appear before a standby judge. The standby judge is waiting in another courtroom to decide what to do in cases like this one.

The family motions co-ordinator assigns you to a courtroom and gives you a file requisition form. Make note of the courtroom you are assigned.

In Winnipeg, take the file requisition form to the Family Division desk on the 1st floor of the Court, across the hall from the security desk. Give the file requisition form to the clerk at the Family Division desk. The clerk gets the Court file for you and asks you to fill in a receipt form with your name and address.

Take the Court file to the courtroom the family motions co-ordinator assigned. Enter the room quietly as there may be a hearing going on when you come in. When there is a break, or if the judge is not in the room, give the Court file to the Court clerk seated in front of the judge's desk.

Your name and the other parent's name will be called out. When your name is called, stand up and move to the table or desk in front of the courtroom. You have a chance to speak to the judge. Remember that this is not the hearing of the Motion to Vary. This hearing is only

to decide when your Motion will be scheduled for a hearing or if it will be adjourned, or postponed to another date.

In Brandon, the Master will ask if there are any matters to go to the Standby Justice. Make your way to the front of the courtroom and request the Master to send your matter to the Standby Justice. The family motions co-ordinator will give you a file requisition form. Take this form to the courtroom indicated. Enter the room quietly as there may be a hearing going on when you come in. When there is a break, or if the judge is not in the room, give the requisition form to the court clerk seated in front of the judge's desk. The clerk will retrieve the file from the first courtroom you were in. Wait for your name to be called. Your uncontested hearing will be dealt with at this time.

Stand up when you are asked to speak. Tell the judge your name and that you are representing yourself. In the Court of Queen's Bench, address a male judge as "My Lord" and a female judge as "My Lady." Tell the judge in clear and simple words what your Motion is about and that the other parent did not show up in Court.

Listen to the judge when she or he is talking. Don't interrupt the judge. Listen carefully to what the judge says and make notes for yourself. The judge decides when to schedule your Motion and gives you instructions about what to do before then. Do what the judge says. In Brandon, the Justice may grant an order at this time.

MOTIONS COURT WINNIPEG and BRANDON

What do I do when I go to Court?

On the date and time for the hearing set out in the Notice of Motion to Vary, be at the Court at least 15 minutes before the hearing time. This allows you time to find the courtroom that you should be in. Be ready when your hearing is scheduled to begin. To find out where the courtroom is, check the notice board in the Court office or ask for help from Court staff.

There may be other hearings scheduled for the same time, so wait until your hearing is called. Usually, a

Court clerk calls out the hearing using only the last names of both parents. If the judge is not in the courtroom when you arrive, tell the Court clerk seated at the front of the courtroom your name and you are ready to go ahead with the hearing.

What happens in Motions Court?

When your hearing is called, stand up. Usually, there will be a desk or table near the front of the courtroom with a microphone. Stand behind the desk and microphone and tell the judge your name and the name of the other parent. Tell the judge that you are representing yourself and you are ready to go ahead with the hearing.

In the Court of Queen's Bench, always address a male judge as "My Lord" and a female judge as "My Lady."

What if I'm not ready to go ahead with the hearing?

If you need to adjourn or postpone the hearing to a later date, ask the judge to adjourn the hearing and set a new Court date. Tell the judge why you need the Court date adjourned.

The other parent or the other parent's lawyer also has a chance to tell the judge whether s/he is ready to go ahead with the hearing or whether s/he needs to adjourn the hearing to a later date and why.

The judge makes a decision and tells you whether the hearing will be adjourned or go ahead. If the hearing is adjourned, the judge tells you the new date for the hearing or how to set a new date. Nothing else happens on this day.

A contested hearing is a hearing that takes place when both parents don't agree to what one or both are asking the Court to do. For example, if one parent is asking to increase child support, and the other parent doesn't agree to the increase, a contested hearing will take place and a judge will decide for them.

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

What if the hearing goes ahead?

If both you and the other parent are ready to go ahead with the hearing, you can expect the hearing to take place that day or to be scheduled for another day if more time is needed. It may happen at this time, or later in the day, depending on what other cases the judge may need to deal with that day. Skip ahead to **Step Thirteen, Representing Yourself in a Contested Hearing**.

What if the other parent doesn't show up?

When your hearing is called, stand up. Usually, there will be a desk or table near the front of the courtroom, with a microphone. Stand behind the desk and microphone and tell the judge your name and the name of the other parent. Tell the judge that you are representing yourself. Tell the judge you are ready to go ahead with the hearing and the other parent is not in Court.

In the Court of Queen's Bench, always address a male judge as "My Lord" and a female judge as "My Lady."

If the other parent was properly served with the Notice of Motion to Vary, has not appeared, and you filed an Affidavit of Service as proof, expect the hearing to take place. It may happen at this time or later in the day, depending on what other cases the judge may need to deal with that day. Go on to **Step Twelve, Representing Yourself in an Uncontested Hearing**.

Step Twelve: Representing Yourself in an Uncontested Hearing

- Have you prepared and filed the Affidavit of Service for each person served? If not, go back to **Step Nine, Serving Documents**.
- If the other parent agrees to your Motion, have you prepared and filed the Variation Order signed by both parents? If not, go to **Step Fourteen, Preparing the Order**.

What is an uncontested hearing?

An uncontested hearing is a hearing of a Motion in Court when there is no one opposing the Motion. Uncontested hearings take place for the following reasons:

- both parents agree to all issues
- the Motion was brought without notice to the other parent
- the other parent didn't show up in Court to oppose the Motion

If the other parent comes to Court and opposes the Motion, skip ahead to **Step Thirteen, Representing Yourself in a Contested Hearing**.

What do I do to get ready for a hearing?

When you go to Court for a hearing, always bring along copies of all the documents you have filed in Court and the documents you have been served with in this process.

Prepare what you want to say in Court. If you write this out, at least in point form, it will be easier to remember everything you want to say. Bring these notes along to Court and make sure you use them in the hearing.

On the day of the uncontested hearing, be at the Court at least 15 minutes before the hearing. This allows you time to find the courtroom you should be in. Be ready when your hearing is scheduled to begin. To find out where the courtroom is, check the notice board in the Court office or ask for help from Court staff.

What happens in an uncontested hearing?

There may be other hearings scheduled for the same time, so wait until your hearing is called. The Court clerk calls out the hearing using only the last names of both parents. If the judge is not in the courtroom when you arrive, tell the Court clerk your name and you are ready to go ahead with the hearing.

Stand up when your hearing is called. Usually, there is a desk or table near the front of the courtroom with a

microphone on it. Stand behind the microphone and tell the judge your name and the name of the other parent. Tell the judge you are representing yourself and you are ready to go ahead with the hearing.

In the Court of Queen's Bench, always address a male judge as "My Lord" and a female judge as "My Lady."

In most cases, the judge has a chance to review the documents you filed before the hearing starts. If not, the judge does so now. The judge tells you when to speak. In some cases, the judge reviews the documents you filed and makes an Order based on what is said in the documents. In other cases, the judge wants to hear what you have to say about why the Order should be made. If you have not previously filed proof of service on the other parent, you should present that to the judge.

In any Court hearing, speak only to the Judge during the hearing. Don't speak directly to the other parent or his/her lawyer while the hearing is going on.

When you speak to the judge, speak clearly and slowly. Always be respectful. Tell the basic facts of your case and the reasons why you are asking for the Order. Use your notes or read your prepared presentation. If the judge asks you any questions, answer honestly and as best you can.

At the end of the hearing, the judge says whether or not the Order will be made. The judge says specifically what is in the Order. Do not interrupt when the judge is speaking.

Make careful notes of what the judge says. You have to prepare a document called an Order for the judge to sign, based upon what s/he has said in the courtroom. You should note the judge's response to each thing that you asked for in your Notice of Motion or Notice of Motion to Vary. Also, note the amount of the new Child Support Order, the dates for payments, the start date and the names of the children that child support is for. If you asked to reduce or remit arrears, make note of the reduced amount or the amount that is forgiven, and the schedule for paying off any arrears. If you do not understand, ask the judge to speak more slowly or repeat it. If necessary you can obtain a transcript of the judge's reasons but this has a cost.

What about my Court costs?

At the end of the hearing, the judge decides whether to order the other parent to pay all or some part of your Court costs. If you did not ask for costs in your Notice of Motion to Vary, the judge cannot order the other parent to pay your costs. If the judge does not say anything about costs in making the Order, ask about this part of your Motion before the hearing ends. The judge decides whether to order payment of costs, and on what basis, or how much.

What happens next?

If you filed a Variation Order before the hearing, or if you have the signed Variation Order with you, ask the judge to review it now. The judge signs the Variation Order that you've filed, or tells you what needs to be different or changed before it is signed. If the judge signs the Variation Order, it is filed in the Court file.

The judge tells you to send a copy of the signed Order to the other parent, including how and when you must do so.

If you do not understand any part of what the judge says, ask questions before the hearing is over to make sure that you do understand. Many times there are other motions scheduled. The judge will not want to keep other people waiting and may not have the time to answer all your questions. You may need to ask for help at the filing counter if this occurs.

If the judge signs your Variation Order, ask the court clerk for a copy of the signed Order after the hearing is over. Follow the instructions for serving the Order on the other parent as found in the last paragraph of the Order. After you've done that, you are done with this Motion.

If you didn't file an Order before the hearing or if the judge didn't sign an Order at the hearing, skip ahead to **Step Fourteen, Preparing the Order.**

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

Step Thirteen: Representing Yourself in a Contested Hearing

- ❑ Have you prepared and filed the Affidavit of Service for each person served? If not, go back to **Step Nine, Serving Documents**.
- ❑ Does the other parent agree to your Motion? If so, go back to **Step Twelve, Representing Yourself in an Uncontested Hearing**.

What is a contested hearing?

A contested hearing is a hearing of a Motion in Court where the two parents do not agree to the issues raised in the Motion. The parents might agree to some but not all issues, or they might not agree to any issues.

If the other parent comes to Court and no longer opposes the Motion, go back to **Step Twelve, Representing Yourself in an Uncontested Hearing**.

Before the contested hearing date, the both parents or their lawyers must file and serve a Motion Brief.

What is a Motion Brief?

A Motion Brief is a document that lets the judge know which issues need to be decided at the contested hearing, and what documents from the Court file to read before the hearing. **Part C** includes an example of a Motion Brief. The Motion Brief is prepared according to *Court of Queen's Bench Rule 70.22 Form 70R*.

The person who filed the Motion must file and serve the Motion Brief in the following time limits:

- five days before the contested hearing date
- two days before the contested hearing date, if the contested hearing date is within seven days after the date is set

The person responding to the Motion must file and serve the Motion Brief in the following time limits:

- two days before the contested hearing date
- one day before the contested hearing date, if the contested hearing date is within seven days after the date is set

The Motion Brief must include the following information:

- the issues that are not agreed on
- a list of documents that you will refer to in the hearing including the date that the document was filed in Court
- your position on each of the issues
- listing of relevant cases and statute laws that you will rely on in the hearing
- precise calculations of the amount of child support to be paid and any amount of arrears to be remitted and the basis for why the amounts to be remitted are appropriate.

What do I do to get ready for a hearing?

When you go to Court for a hearing, always bring copies of all the documents you filed in Court and the documents you have been served with in this process.

Prepare what you want to say in Court. If you write this out, at least in point form, it will be easier to remember everything you want to say. Bring these notes along to Court and make sure you use them in the hearing.

On the day of the contested hearing, be at the Court at least 15 minutes before the hearing time. This allows you time to find the courtroom that you should be in. Be ready when your hearing is scheduled to begin. **DO NOT BE LATE**. To find out where the courtroom is, check the notice board in the Court office or ask for help from Court staff.

What happens in a contested hearing?

Contested motions to vary a Child Support Order usually follow the order below:

1. The person who filed the Motion explains to the judge why the change to the Child Support Order should be made, and what amount of child support should be paid.
2. The person responding to the Motion explains to the judge why the change to the Child Support Order should not be made, and what amount of child support should be paid, if any.

3. The person who filed the Motion briefly responds to the comments of the other parent or his/her lawyer.
4. The judge decides whether or not the Motion for a change to the Child Support Order will be allowed and briefly explains the reasons for the decision.

There may be other hearings scheduled for the same time, or just before or after your hearing, so wait until your hearing is called. The Court clerk calls out the hearing using only the last names of both parents. If the judge is not in the courtroom when you arrive, tell the Court clerk your name and you are ready to go ahead with the hearing.

Stand up when your hearing is called. Usually, there is a desk or table near the front of the courtroom, with a microphone on it. Stand behind the microphone and tell the judge your name and the name of the other parent. Tell the judge you are representing yourself and you are ready to go ahead with the hearing.

In any Court hearing, speak only to the Judge during the hearing. Don't speak directly to the other parent or his/her lawyer while the hearing is going on.

In the Court of Queen's Bench, always address a male judge as "My Lord" and a female judge as "My Lady."

When you speak to the judge, speak clearly and slowly. Always be respectful. Tell the basic facts of your case and the reasons why you are asking for the Order. Use your notes or read your prepared presentation. If the judge asks you any questions, answer honestly and as best you can.

Sometimes the judge asks that you keep to certain time limits in presenting your side of the case. The judge will let you know at the beginning of the hearing if there are any time limits. Generally, if a hearing is scheduled for 45 minutes, plan to speak for up to 15 minutes. If a hearing is scheduled for 60 minutes, plan to speak, if you need to, for up to 20 minutes.

When the other parent or his/her lawyer is speaking, do not interrupt if you disagree with what is said. If you spoke first, you have a chance to respond afterwards. It is a good idea to write a note for yourself about what you disagree with, so that you will remember to say this when you have the chance to respond.

When both sides have finished speaking, the judge speaks. While the judge is speaking, remain seated. It is a good idea to make some notes about what the judge says. The judge summarizes what each side said and then tells you what the decision is. Do not interrupt the judge.

Carefully write down the decision of the judge, including the new amount of child support, the date when these payments will start, and the names of the children the support is for.

The judge makes an Order and says specifically what is in the Order. It is very important that you make detailed notes of what the judge says, because you will have to prepare a document called a **Variation Order** for the judge to sign based upon the decision in the courtroom.

Part of the judge's Order will be to send a copy of the Variation Order to the other parent. The judge says exactly how and in what time limits to do so.

If you do not understand any part of the judge's Order, stand up and ask questions before the hearing is over to make sure that you do understand.

What about my Court costs?

At the end of the hearing, the judge decides whether to order the other parent to pay all or some part of your Court costs. If you did not ask for costs in your Notice of Motion to Vary, the judge cannot order the other parent to pay your costs. If the judge does not say anything about costs in making the Order, ask about this part of your Motion before the hearing ends. The judge decides whether to order payment of costs, and on what basis, or how much.

Go on to **Step Fourteen, Preparing the Order.**

PART B

Procedure and Rules in Court of Queen's Bench (Family Division)

Step Fourteen: Preparing the Order

- ❑ Has a judge made a decision at a hearing? If so, continue with this step.
- ❑ If not, do you and the other parent agree to vary the Child Support Order? If not, go back to **Step Eleven, Family Motions Court**. If so, continue with this step to prepare a Variation Order.

After a hearing takes place and a judge makes an Order, the parent who filed the Notice of Motion or Notice of Motion to Vary must prepare a document that says what the judge ordered. This document is called an **Order**. The Order sets out what the judge ordered in written form. The judge or Court registrar must sign the Order.

What do I need to know about Orders?

There are different kinds of Orders in the Court of Queen's Bench Family Division. An Order that is made after hearing of a Motion is called:

- Interim Order
- Variation Order

The rules for preparing an Order are found in *Court of Queen's Bench Rule 70.31*. In the Family Division, an Order must use the wording of the Automated Court Order Standard Clauses. You can find Automated Court Order Standard Clauses at the Manitoba Courts web site at www.manitobacourts.mb.ca or you can get them through the Court of Queen's Bench Family Division (Winnipeg Centre). You cannot prepare an Order without the Automated Court Order Standard Clauses.

Automated Court Order Standard Clauses are used in preparing an Order in the Court of Queen's Bench Family Division. In most cases, you must use the wording of the Automated Court Order Standard Clauses. Get a copy of the Automated Court Order Standard Clauses before you prepare your Order.

Part C includes an example of a Variation Order and an Interim Order. The examples include a variety of possible clauses. You have to decide which clauses to

use based on the Order of the judge. Be sure to follow the instructions in the Automated Court Order Standard Clauses.

What goes in an Order?

The first part of an Order is called the *preamble*. The preamble includes the following information:

- the date of the hearing
- the name of each parent who was present and whether he or she was represented by a lawyer
- the name of each parent who was absent and whether he or she was represented by a lawyer
- whether the parents consent to the Order or any part of it
- the documents that were filed in support of the motion
- any promise or *undertaking* that either parent (or his/her lawyer) made as a condition of the Order

If the Order is a Variation Order, the preamble also must say:

- the date of the Order being varied and the name of the judge who made it
- the date of any earlier Variation Order and the name of the judge who made it

The next paragraph says which statute or rule the Order is made under.

Then following from here are the paragraphs that set out the specific Orders the judge made. Use the sequence of the Automated Court Order Standard Clauses as a guide when you prepare the Order.

If the Order is a Variation Order, the clause(s) of the original Order or earlier Variation Order that are to be deleted or replaced must be repeated exactly. Then, the wording of the new clause is set out.

The last paragraph of the Order sets out the instructions for serving a copy of the signed Order on the other parent and any others that must be served.

The Order ends with a space for the date, and the signature of the judge.

Below the judge's signature, set out space for each parent or his/her lawyer to approve the form of the Order by signing it. Each parent or his/her lawyer must approve the form of the Order that you have prepared unless the judge directs otherwise. If a parent has a lawyer, the lawyer must approve the form of the Order; otherwise, the parent must do so.

If the Order is made with the consent of the parents, this is followed by space for each parent or their lawyers to sign, showing his/her consent or agreement. If either parent doesn't have a lawyer, that parent must also attach a document called an **Affidavit of Execution** to the Order.

An Affidavit of Execution is a kind of Affidavit that proves that the person who signed the document was the person who should sign it and that the person signed it willingly. **Part C** includes an example of an Affidavit of Execution, with the Variation Order.

Like other Affidavits, the Affidavit of Execution must be signed and sworn to be true. That means that the person making the Affidavit or *deponent* signs, dates and swears that the Affidavit is true in the presence of a witness. The witness must be a Commissioner for Oaths, a justice of the peace, a magistrate, a postmaster, a lawyer or a notary public. A lawyer or notary public may charge you for this service.

What do I do after I have prepared the Order?

Make at least three copies of the document.

Make sure that each parent or his/her lawyer has signed each copy of the Order to show that they approve the form of the Order that you have prepared. If a parent has a lawyer, the lawyer must approve the form of the Order; otherwise, the parent must do so, unless the judge has directed otherwise.

If the Order or any part of it is made by consent, make sure that both parents or their lawyers have signed their consent on all three copies.

What if my Child Support Order is enforced by the Maintenance Enforcement Program?

You have to prepare and complete a document called **Enforcement Information** if your Child Support Order is:

- made under *The Family Maintenance Act*
- made under the *Divorce Act* and payments are made through the Maintenance Enforcement Program

The Enforcement Information document is prepared following the *Court of Queen's Bench Rule* 70.31(15) and Form 70W. An example of the Enforcement Information is included in **Part C**.

If you don't want your Child Support Order enforced by the Maintenance Enforcement Program, you must prepare and complete a document called **Enforcement Opt-Out** following the *Court of Queen's Bench Rule* 70.31(15) and Form 70X. Only the parent who receives child support can decide to opt out of the Maintenance Enforcement Program. An example of the Enforcement Opt-Out is included in **Part C**.

What happens when I file the Order?

Take all three copies of the Order to the Court office and file them. If the Order contains a Child Support Order, you must also file one copy of the Enforcement Information or two copies of the Enforcement Opt-Out.

After filing, the documents are checked by the judge, master or deputy registrar to make sure that they are complete and accurate. If the Order is correct, the judge, master or deputy registrar signs it.

When the judge signs the Variation Order, the original signed Order stays in the Court file. A copy of the signed document is returned to the parent who filed it, who must mail a copy of this Order to the other parent as directed by the Order. Another copy is sent to the Maintenance Enforcement Office if the child support payments are made through the Maintenance Enforcement Program.

If the judge does not sign the Order, all copies are returned to the parent who filed it with a **Notice of Rejection**. The Notice of Rejection tells you the reason the Order was not signed and usually also tells you what you need to do next. If this happens and you're unsure what to do next, contact the Court office for more information. At this point, it may be helpful to get advice from a lawyer.

A copy of the signed Order must be sent or delivered to the other parent. Do this in the way the judge ordered and within the time frame the judge ordered.

If you got an Interim Order for the other parent to provide financial information, go back to **Step Three, Applying to Vary a Child Support Order**.

If you obtained a Variation Order, the process to vary your Child Support Order is now complete.