

## **QUESTIONS AND ANSWERS: CANADA**

### **1. Can you provide any update as to when Canada is likely to ratify the 2007 Hague Convention?**

The following steps are still required before Canada can ratify the 2007 Convention:

- 1) Finalize the draft uniform act for the implementation of the 2007 Convention by interested Canadian provinces and territories;
- 2) Adoption of the uniform act by some provinces and territories; and
- 3) Finally, ratification of the Convention and extension to those provinces or territories that have adopted legislation and want the Convention to apply in their territory.

### **2. When the Convention comes into force, we understand that it may not necessarily apply to all provinces and territories. How will cases where a parent leaves a Convention province and goes to a non-Convention province be handled?**

Where a parent leaves a Convention province and goes to a non-Convention province, the file can be transferred to the non-Convention province for processing only if the requesting State has a reciprocity arrangement with the non-Convention province. If no reciprocity arrangement exists between the non-Convention province and the requesting State, then the applicant will need to obtain private counsel in Canada to assist them with their case.

### **3. REMO has recently had correspondence returned from the following address : Family Responsibility Office, Interjurisdictional Support Orders Unit, PO Box 600, Steeles West Post Office, Toronto, Ontario, M3J OK8, Canada-cover envelope suggests the office has moved. Can you confirm where REMO should write instead please?**

Ontario confirms this is the correct address.

### **4. Do you have a general contact email address list for some or all of the Provinces? MEBC are currently asking for an email address regarding a case in British Columbia.**

Yes, please see OCSE "IRG", which includes a contact for B.C. Step 1: Go to:  
<https://www.acf.hhs.gov/css/resource/canada-frc>  
Step 2: Click on link "IRG - Contact Information"

### **5. Alberta has stated they can't do a trace on an application sent to their office-our understanding is Canada will trace if the Province is known-the application from UK confirmed debtor is believed to live in Alberta so the MEBC were asking if**

**tracing has changed in respect of Alberta/Canada. I attach part of the email exchange with MEBC and Alberta that has been forwarded to me in relation to this query. It has emerged the debtor has returned to the UK in this case, my query is solely in relation to the tracing facilities of Alberta and their acceptance of applications if a full address isn't known.**

Alberta (AB) will undertake locate searches for the UK, and other countries with which Alberta has a reciprocity arrangement. If the person is found, then AB will provide confirmation of location so that requesting countries can forward the application for establishment or variation to AB. If the UK has a case-specific question, then we would encourage the UK to contact Alberta (see contact list information distributed for this call).

**6. Can Ontario update us on the status of the proposed agreement between Norway and Ontario?**

Ontario has been in touch with Norway.

**7. US OCSE Question: The legislation in British Columbia and Manitoba to do periodic currency conversation rate updates has made a big difference to caseworkers as it means that the case account balances on both sides of the border are much closer. Could you please advise if any other provinces have the same legislation – and whether all provinces intend to change this before entering into the Convention?**

Ontario has amended its Interjurisdictional Support Orders Act (ISO Act) to provide regulation-making authority respecting conversion into Canadian currency to allow foreign dollar support amounts that have been converted in accordance with the Act to be updated periodically based upon the rate of exchange on a further review date.

This amendment was necessary as the wording of the previous section did not provide sufficient authority to make a regulation that would allow for updated currency conversion of support amounts that had already been converted on registration.

Following this amendment to the ISO Act, the Ministry of Children, Community and Social Services, in consultation with the Ministry of the Attorney General will move forward with the proposed amendments to the regulation under the ISO Act to clarify the timing of conversion to Canadian dollars of support amounts in foreign orders. This amendment will provide that the amounts will be converted as of the date of registration in Ontario as opposed to the date of the order being registered. Further, the amendments to the regulation will allow foreign dollar support amounts that have been converted at registration to be updated periodically based upon the rate of exchange on a further review date.

**8. UIFSA and Divorce Act: Do the recent changes to the Divorce Act affect the ability of U.S. states to initiate modification applications for orders under the**

**Divorce Act? Or do parents still have to go to Canada if they need to modify a Divorce Act order?**

A former spouse living in a designated jurisdiction will be able to use the new application procedure to apply to vary (modify) a support order under the Divorce Act. Countries or political subdivisions of a country that have reciprocity arrangements with Canadian provinces and territories are designated jurisdictions. This means that if a state has a reciprocal arrangement with the province or a territory where the other former spouse resides, a former spouse living in that State will be able to use the new process under the Divorce Act to initiate applications to modify support orders made under the Divorce Act without having to go to Canada or make a traditional court application to a court in Canada.

**FROM GERMANY**

**9. Does Canadian law know something like a forfeiture of claims (as something different from a statute of limitation) and if so, what are the prerequisites?**

There are principles in Canadian law that are similar to what has been referred to as “forfeiture of claims” by Germany, but Canadian court decisions in which this principle has been raised as a defence to enforcement by a debtor have generally decided that this principle should not be applied to the enforcement of child support arrears. As child support is the right of the child, the courts have said that any delay with respect to seeking enforcement of child support and arrears by the creditor parent of the child should not punish the child. A court of competent jurisdiction may consider a creditor’s delay in seeking enforcement of child support and arrears when considering an application for modification of child support as Canadian law permits retroactive variation of child support and reduction or deletion of arrears, but this is not considered a defence to enforcement – it must be in the context of a modification application in which the debtor’s ability to pay child support for the past period in which the arrears accumulated would be the primary consideration of the court.

**10. Under Canadian law, is there an obligation to pay child support after the child has reached the age of majority (for example if the child is a full time student at university) and if so what are the relevant legal provisions of the Canadian legislation? Is it different from province to province? Where can we find this information?**

The federal Divorce Act, which applies when married couples divorce, states that child support is required for a child of the marriage who is under the age of majority. It may also be required for a child over the age of majority who is still dependent on their parents. The age of majority is either 18 or 19 years of age, depending on the province or territory where the child lives. If the child lives outside Canada, the age of majority is presumed to be 18.

There are also provincial and territorial laws that address family support/continuing obligations to support a child past the age of majority. Most provincial and territorial laws are similar to the Divorce Act and provide that child support may be required past the age of 18 if the child is still dependent because of illness or disability, or if the child is still in school or completing his or her education at a university or other post-secondary institution on a full-time basis.

Information on child support can be found in the Department of Justice's guide called "The Federal Child Support Guidelines: Step-by-Step". Information on child support for children over the age of majority is included in Step 2 of the guide (determining the number of children requiring support). The guide may be found at:

<http://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/guide/index.html>.

**11. Could you give a list of the complete contact details of the central authorities of the different provinces/territories and indicate the fastest way they can be contacted?**

Yes, please see OCSE "IRG". Step 1: Go to:  
<https://www.acf.hhs.gov/css/resource/canada-frc>  
Step 2: Click on link "IRG - Contact Information"

**12. What is the role of the maintenance enforcement service after having received an application from abroad – such as applications to enforce a German support order, applications for establishment of a new support order, and application for establishment of paternity?**

Applications to register and enforce foreign support orders, to establish a new support order, or to vary/modify an existing support order are received by the designated authority of the province.

There are some differences between provinces and territories with respect to the role of the maintenance enforcement program in terms of handling the different types of inter-jurisdictional applications. In some provinces and territories, the maintenance enforcement program is the designated authority for all of these type of applications and in others, the maintenance enforcement program is responsible for applications to register and enforce foreign support orders but not for applications to establish or modify, which are handled by a different part of the designated authority.

However, each province and territory takes the necessary steps to process inter-jurisdictional applications received from reciprocating jurisdictions. An application to establish or modify a support order will be submitted to the court in the province or territory.

Once a foreign support order is registered for enforcement or a new or modified support order is made by a court in the province, the maintenance enforcement program of that province will monitor and collect support payments from the debtor and transmit the

payments to the appropriate authority in the reciprocating jurisdiction for the benefit of the creditor. The maintenance enforcement program will also take enforcement action to collect the payments if necessary.

Provinces and territories can only accept applications for establishment of paternity if the application is included in an application to establish child support.

- **Does the maintenance enforcement service represent the child outside of a court proceeding?** No
- **Does the maintenance enforcement service represent the child before the court?** No
- **Can a local lawyer be designated to assist the child during the court proceeding?**

Canadian provincial and territorial (PT) Maintenance Enforcement Programs (MEPS) would not make arrangements for a local lawyer to represent the child. In any enforcement proceedings involving a MEP neither the child nor the creditor would participate as a party. If the creditor wished to take their own private enforcement proceedings, then that would not involve the MEP and it would be up to the child's representative to determine whether legal representation was required.

**13. Is there a possibility to apply for the designation of a lawyer under legal aid to assist the child with the three kinds of applications mentioned above?** No

**14. Are there any uniform directives/provisions concerning the localisation of maintenance debtors? Our experience is that we receive different replies from state to state. Under which conditions can a maintenance creditor ask for the debtor's localisation?**

Whether a locate-only request made to a Canadian province or territory is acceptable is a matter of provincial and territorial law; therefore, the exact manner in which such a request will be handled will depend on the jurisdiction to which it is sent. While some provinces and territories may be able to provide the actual locate information, in general, unless they have an open case involving the person, most provinces and territories are only able to confirm that a person can or cannot be located in the jurisdiction and only if the requesting State has a reciprocity arrangement with the particular province or territory. However, once a foreign reciprocating jurisdiction (a country which has a reciprocity arrangement with a particular Canadian province or territory) learns that the respondent is found within the province or territory, the foreign child support agency may then send the appropriate application seeking enforcement of an existing order or establishment or modification of an order.

A locate-only request should be in writing and contain the following information:

- The person making the request is an authorized representative of the foreign child support agency in the initiating state (or requesting State);
- Confirmation that the request is for a debtor (or creditor) under an existing support order and that the purpose of the request is to enforce that order;
- Any information that may assist in locating the debtor or creditor; and
- If there is no existing support order, the purpose of the request.

**15. Please provide a contact name or information for Nova Scotia.**

For contact in N.S., please see OCSE "IRG", which includes a contact for B.C. Step 1:  
Go to: <https://www.acf.hhs.gov/css/resource/canada-frc>  
Step 2: Click on link "IRG - Contact Information"

**16. Is Quebec able to recognize a foreign order? Does the creditor need to get a lawyer to enforce a German order in Quebec? Will the Central Authority assist the creditor to get a lawyer?**

Article 3155 of the Civil Code of Quebec provides for the recognition of a foreign order in Quebec. An application for recognition must be submitted to the Quebec court by a Quebec lawyer. If the order is recognized, then Revenu Quebec will provide free enforcement services. The Central Authority in Quebec will not assist the creditor in finding a lawyer in Quebec. However, the Quebec Bar publishes a Directory of Lawyers online, which can be used to find a local lawyer <https://www.barreau.qc.ca/en/directory-lawyers/#!/search>

**FROM FINLAND**

**17. Finland has a bilateral arrangement with Ontario, and it might be possible for us to get address information from the authorities there. We are wondering about the rest of Canada. Is there any way that we can ask for address information for maintenance debtors in the other Canadian states also? Are there special authorities we could turn to?**

See answers above (limited to the PTs that have reciprocity with Finland)

**18.1 We are also wondering whether it is possible to send applications for declaration of enforceability and enforcement to the other states based on Canadian domestic law?**

It is possible in other provinces or territories (that do not have a reciprocity arrangement with Finland) for an application for a declaration of enforceability and enforcement to be made to a court in that province or territory, but the applicant would have to retain their own private lawyer, at their own expense, to make this type of application. This would be an application under Canadian common law (not under the Inter-jurisdictional Support Orders Act, which applies to cases with reciprocating jurisdictions). The designated

authority in the province would not be involved in this type of application. An applicant would have to seek legal advice in the province or territory in question as to the possibility of making this type of application.

## **FROM THE USA**

### **19.a. Will all provinces and territories establish paternity upon request? We understand that Quebec may not do this – is this correct?**

(Common law) Provinces and territories can only establish parentage as part of an interjurisdictional child support application. Where paternity is at issue, the state IV-D agency should send an application to establish paternity and child support to the appropriate provincial/territorial office. As part of the application, the U.S. petitioner should complete the federal intergovernmental paternity affidavit. The petitioner is required to provide prima facie evidence of paternity and must also affirmatively state agreement to genetic testing. The following description of paternity establishment is provided in general terms; please note that the procedures may vary depending on the specific province or territory involved.

In common law provinces and territories, where the custodial parent/petitioner submits an application to a provincial/territorial court to establish a support order, the respondent has the ability to contest paternity. (The petitioner may also specifically request that paternity be determined.) If the respondent does not contest paternity, then a determination of parentage for the purpose of the support proceeding can be made by the court or by the consent of the parties.

If the respondent contests paternity and indicates a willingness to participate in genetic testing, the petitioner will be asked whether she consents to such testing. Testing can be arranged by consent without a court order.

Where paternity is contested, the court can order genetic testing. If the genetic test results establish a high probability that the respondent is the father of the child, the court will determine paternity and proceed with the child support hearing.

Provincial and territorial officials note that in common law jurisdictions, a paternity determination is not required as a prerequisite to entry of a child support order. Should the respondent to a child support action not challenge or question paternity, the support matter may proceed without consideration of paternity.

Presumptions of paternity are set out in provincial and territorial law. These laws generally include presumptions of paternity that will look familiar to U.S. caseworkers; however, state IV-D agencies should contact the respective province or territory for further information.

**In Quebec**, it is currently not possible for foreign applicants from jurisdictions with which Quebec has reciprocity (all Canadian PTs and 10 U.S. states) to ask for assistance

with the establishment of paternity as Quebec law does not provide for this. However, foreign applicants with which Quebec has reciprocity or with which Quebec does NOT have reciprocity can ask the Quebec Superior Court in the district where the putative father resides to establish paternity under common law (Civil Code of Quebec, art. 530 et seq.) and the Quebec Code of Civil Procedure (art. 99 et seq.)

A Directory of Quebec Lawyers can be found here:

<https://www.barreau.qc.ca/fr/bottin-des-avocats/>

- **Can any P/T establish paternity as a stand-alone action, or must it always be done in conjunction with an order establishment?**

See answer above

**19.b. Which provinces / territories are able to establish a child support order if paternity has not yet been established?**

Establishment of paternity is not a prerequisite for establishment of a support order in Canadian provinces and territories. It may be necessary in some cases depending on the facts.

**20.a. Can all provinces/ territories do location investigation? What information will be provided? What form should the request take?**

Short answer: Yes, all PTs can assist with locating parties in Canada, in most cases. The U.S. parent locate form can be used for this purpose.

Long Answer: Whether a locate-only request is acceptable is a matter of provincial and territorial law; therefore, the exact manner in which such a request will be handled will depend on the jurisdiction to which it is sent. While some provinces and territories may be able to provide the actual locate information, in general, unless they have an open case involving the person, most provinces and territories are only able to confirm that a person can or cannot be located in the jurisdiction. However, once a IV-D agency learns that the respondent is found within the province or territory, the agency may then send the appropriate application seeking enforcement of an existing order or establishment or modification of an order.

A locate-only request should be in writing and contain the following information:

- The person making the request is an authorized representative of the IV-D agency in the initiating state;
- Confirmation that the request is for an obligor (or obligee) under an existing support order and that the purpose of the request is to enforce that order; or,
- If there is no existing support order, the purpose of the request.

IV-D agencies may not apply to Canada Post to verify a postal address. Similarly, provincial/territorial support enforcement agencies do not have access to Canada Post information for location purposes.

**20.b. Can all provinces / territories do service of process? Who should the request be sent to? What forms are required?**

Provincial and territorial inter-jurisdictional support (ISO) designated authorities and maintenance enforcement programs are not authorized to serve documents relating to proceedings in foreign jurisdictions. Service of process respecting a proceeding in another country must be done in accordance with the Hague Service Convention. The following link provides information about service in Canada in accordance with the Service Convention: <https://www.hcch.net/en/states/authorities/details3/?aid=248>

**20.c. If we need to establish paternity in our state, can all provinces/territories assist with genetic testing of a party/parties in your jurisdiction? Who should we contact? What forms are required?**

A Canadian province or territory would only be involved in facilitating paternity establishment in context of an application to establish support in their province.

**RECONCILIATION OF ARREARS**

**21.a. If you are enforcing a U.S. order and the individual state has a different arrears amount due to currency conversion, what would you need to change your arrears to match the U.S. state arrearage figure? Does this differ from province to province?**

This would differ from province/territory (PT) to PT. In most, one would need a new order setting out the arrears owing. The PTs that have ability to update currency conversion amounts would be able to get closer to reconciliation (see answer to Q7).

**22. There is a definition of habitual residence in the recent changes to the Divorce Act. Is this intended to apply to matters under the Hague Convention when it comes into force?**

The changes to the Canadian Divorce Act do NOT include a definition of “habitual residence”. “Ordinary residence” has long been used in the Divorce Act, and changing terminology to “habitual residence” in the English version of the Act is not intended to affect its interpretation. The terms have the same meaning. “Habitually resident” is also more consistent with terminology used in provincial and territorial statutes and in international family law conventions. The determination of an individual’s habitual or ordinary residence, both under the Divorce Act and under the 1996 Convention, is a based on facts. The court must always look at the facts of the individual case to determine in those circumstances where the individual has their “real” home.