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FOLA Submissions on Automatic Standard Orders Relating to Financial Disclosure by the Clerk in Family Law Matters

Submitted to: CSD.operationalsupportbranch@ontario.ca
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Submitted on: May 25th, 2021

Submitted by: Sam Misheal, FOLA Family Law Chair
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Introduction

Thank you for providing this opportunity to FOLA to comment on the Ministry of Attorney General's proposal for automatic standard orders relating to financial disclosure by the clerk in family law matters.

The Federation of Ontario Law Associations (FOLA) is an organization that represents the associations and members of the 46 local law associations across Ontario. Together with our associate member, The Toronto Lawyers Association, we represent approximately 12,000 lawyers, most of whom are in private practice in firms across the province. These lawyers are on the front lines of the justice system and see its triumphs and shortcomings every day.

General Overview

This reply serves as FOLA's comments regarding the proposal to create new standard orders relating to financial disclosure requirements in family law matters.

In response to the Ministry of Attorney General's request, FOLA has consulted with our members in order to make meaningful observations and submissions. Many of our members are professionals who practice family law either exclusively or as part of a broader general practice.

Issues for Consideration

FOLA's view is that The Family Law Rules already require at the start of any Family Court Case, and pursuant to Rules 13(3.2) and (3.3) of the [Family Law Rules](#), that no later than 30 days after the day by which the financial statement is required to be served, serve on the other a comprehensive financial disclosure which is necessary to understand each parties' financial situation. There is a further obligation for an ongoing and update financial disclosure throughout the proceedings.

FOLA's position on the proposal to create new standard orders relating to financial disclosure requirements in family law matters is cautiously welcomed.

However, automatic routine financial disclosure orders can be problematic, because they operate on the presumption that a party must disclose certain information, and that the disclosure is readily available to the parties. This presumption fails to consider situations which may be beyond the norm of the typical T4 employee or take into account situations where the ordered financial disclosure is for some valid reasons outside the party's control.

A one-size-fits-all standard wording, amongst other things, may not apply to particular fact scenarios, may not be relevant in the circumstances, and may not be possible within a specified time period.

For example:

- In a circumstance where in a T4 employed payor is ordered to produce bank records via a clerk's order;
- A party has not filed their income tax returns for several years, and it is not possible to produce within a specific time period;
- The party may not be a Canadian resident in a given year and have no legal obligation to file his or her income tax returns;



- A carte blanche Order may not be relevant in the circumstances causing unnecessary costs associated with obtaining and compiling for the production of the said disclosure; and
- Third parties may not be cooperative with producing financial disclosure

FOLA has concerns that in situation as outlined above, a party’s inability to provide disclosure in these circumstances may prove to be or maybe prejudicial in the proceedings.

The Rules already provide and deal with disclosure on the premise that it will be dealt with and provided well in advance of the conference to allow counsel the opportunity to have a productive conference, settlement discussions, and receive judicial opinion.

Recommendations

In conclusion, FOLA is of the view that this is a great initiative, but any proposed disclosure order must be carefully drafted.

FOLA recommends the following:

1. Develop a template where counsel/litigants can determine what disclosure is provided on consent.
2. Any outstanding items need to be determined by the court with serious cost consequences.
3. Consider implementing a mechanism for enforcement in cases of willful noncompliance.

FOLA is grateful for the opportunity to provide its submissions and welcomes any opportunity to work with the Ministry of Attorney General as it continues its commitment to improving Ontario's justice system.

Respectfully submitted,

Sam Misheal
FOLA Family Law Chair