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March 16, 2023

Via email: commentsFOAEAA-GAPDA.commentairesLAEOEF-LSADP@justice.gc.ca

Annick Boulay
Counsel, Family and Children's Law Team, Family Law and Youth Justice Policy Section
Department of Justice
284, Wellington Street
Ottawa ON K1A 0H8

Dear Annick Boulay:

Re: Canada Gazette, Part 1, Volume 157, Number 7: Release of Information for Family Orders and Agreements Enforcement Assistance Regulations

I write on behalf of the Canadian Bar Association's Family Law Section (CBA Section) to recommend amendments to the proposed *Release of Information for Family Orders and Agreements Enforcement Assistance Regulations* (proposed Regulations).

The CBA is a national association of over 37,000 lawyers, law students, notaries and academics, and our mandate includes seeking improvement in the law and the administration of justice. The CBA Section consists of family law specialists from all regions of Canada, with clients representing the full range of individuals impacted by family breakdown.

The CBA Section's six recommendations aim to promote the efficiency of support enforcement, to increase access to justice and to reduce poverty. We believe this can specifically be achieved by amending the proposed Regulations as follows:

Clarified timeframe

The CBA Section recommends that the Regulations specify that the "information to be released" applies to the two most recent years for which the information is available.

Where the proposed Regulations make reference to a "prior taxation year" or the "year preceding that taxation year," or make no reference to a timeframe at all, a delay may be caused in releasing or obtaining the information since the requested information may not be available. This may result in multiple applications, each requesting information for previous years.

A more encompassing timeframe than “prior taxation year” also better serves the reality of vulnerable persons seeking to establish support, of judges, of support recipients seeking enforcement, and of enforcement agencies, for whom any information (even older information) is better than no information at all.

Payor’s assets

The CBA Section recommends that documents pertaining to a payor’s assets be listed in paragraph 5(2) of the Regulations. The CBA Section recommends adding the following information from paragraph 5(1) to paragraph 5(2):

- Statement of Pension, Retirement, Annuity, and Other Income (T4A)
- Statement of RRSP Income (T4RSP)
- Statement of Investment Income (T5)
- Statement of Real Estate Rentals (T776)
- Statement of Business or Professional Activities (T2125)
- Statement of Securities Transactions (T5008)

Support enforcement agencies (as well as other third-party enforcement options such as sheriffs) can garnish payors’ assets to satisfy arrears of support. Information about assets that produce income will assist enforcement agencies and other third-party agencies in garnishing assets from payors to the benefit of support recipients and their children.

Information contained in the application

Section 3 of the proposed Regulations lists the requirements to release information under Part I of the Act, which includes extensive information about the person on whom the information is requested. Not all support recipients are privy to identifying features about a support payor. There should be no prejudice to support recipients who have less information about their support payor.

The CBA Section recommends that the words “if known” apply to ALL items listed in paragraph 3(1)(d). We also recommend that there be a “catch all” criteria to assist efforts to locate the individual, that aliases be included, and that gender be removed.

For clarity, the CBA Section recommends that paragraph 3(1)(d) read as follows:

(d) the following information concerning the person in respect of whom information is requested, if known:

- (i) their name and any known aliases,
- (ii) their date of birth,
- ~~(iii) their gender,~~
- (iv) their phone number and email address, ~~if known,~~
- (v) their Social Insurance Number, ~~if known,~~ and
- (vi) the surnames at birth of their parents, ~~if known;~~ and
- (vii) any other identifying information which may assist in locating the person in respect of whom information is requested.

These revisions also serve as safeguards to prevent support recipients from inadvertently breaching paragraph 3(1)(g) of the proposed Regulations, which requires a declaration by the applicant stating that the information in the application is correct.

Format of information released

The proposed Regulations state that “information” will be released, suggesting that the released information may not be copies of the documents listed in the Regulations. In the experience of the CBA Section members, many support recipients do not understand the difference between various income forms (e.g.: a T1 versus a notice of assessment). If the format differs from its source, the information released should closely resemble the document from which the information is derived to reduce confusion and increase access to justice, particularly for self-represented litigants.

This will also eliminate any confusion for courts, enforcement agencies and other third parties receiving information pursuant to the Regulation as to where the information received was derived.

Family violence

Exceptions should be made for circumstances of family violence throughout the proposed Regulations.

Support recipients and children should never be placed at risk when attempting to enforce support. We recommend that situations of family violence be disclosed pursuant to paragraph 3(1) of the proposed Regulations. Subsequently, any paragraph in the proposed Regulations which requires that notice be given to a payor, such as paragraph 6, should specify that no notice will be given to the payor in circumstances where family violence was disclosed.

Timeframe

The CBA Section recommends that the information banks have a timeframe by which they are to release the requested information. This will assist everyone involved in an application, including the support recipient, enforcement agency, and Court to have an expectation about the timeframe for the case to move forward.

Last, the CBA Section noted some paragraph errors throughout the proposed Regulations. For example, paragraph 6 makes references to several paragraphs that we were unable to locate in the Act. We propose that all paragraph references be verified before the proposed Regulations come into force.

The CBA Section is thankful for the opportunity to comment and welcomes further discussions on these recommendations.

Yours truly,

(original letter signed by Véronique Morissette for Annie Kenet)

Annie Kenet
Chair, Family Law Section