

**CANADA'S RESPONSE TO THE QUESTIONNAIRE ON THE FEASIBILITY OF
DEVELOPING A PROTOCOL TO DEAL WITH THE INTERNATIONAL RECOVERY
OF MAINTENANCE IN RESPECT OF VULNERABLE PERSONS**

Identification

For follow-up purposes

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Uploading of the Responses onto the HCCH Website

The Permanent Bureau envisages uploading the responses to this Questionnaire onto the HCCH website, as this may assist other States / Organisation in preparing their own responses or their position before the November 2009 Special Commission. Does your State / Organisation agree to making its response available for uploading onto the HCCH website?

YES – Our response to the Questionnaire may be uploaded onto the HCCH website

NO – No detail of our response may be uploaded onto the HCCH website

In the absence of an answer to this question your response to the Questionnaire will be uploaded onto the HCCH website.

14) Do you see the need for the development of a protocol to deal with the international recovery of maintenance in respect of vulnerable persons?

We understand that the Hague Maintenance Convention already covers vulnerable persons in Article 2(3). A State may simply declare that the Convention will apply to vulnerable persons and for this State and other States having made the same declaration, the scope of the Convention will include vulnerable persons. Such declarations may have the same effect than a protocol and would identify the categories of vulnerable persons such as vulnerable spouses or vulnerable children over the age of 21 (or 18) or others for each declaring State.

It would be useful to look at the upcoming experience of the States in applying the Maintenance and the Protection of Adults Conventions and then assess whether these instruments cover or not all of the issues regarding maintenance towards vulnerable persons.

MANITOBA

(A) Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention

1) Does the law of your State / Organisation provide specifically for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years)?

YES (child support)
 NO

2) Does the law of your State / Organisation provide specifically for maintenance obligations for a spouse towards a vulnerable spouse?

YES (spousal support)
 NO

3) Can you please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to maintenance obligations: a) arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years); or, b) for a spouse towards a vulnerable spouse:

a) parent-child relationship: the “vulnerable person” must be:

i) under the charge of the parent seeking to enforce or establish a maintenance obligation; and

ii) unable to withdraw from the charge of this parent or to obtain the necessities of life by reason of illness, disability, or other cause.

(derived from s. 35.1 *Family Maintenance Act* of Manitoba and s. 2 of the *Divorce Act* of Canada)

b) obligation towards a vulnerable spouse:

- address whether “spouse” includes non-married partners
- link between the creditor’s “vulnerable” status and the marriage/relationship and a continuing financial dependence.

(B) Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States

4) Does the law of your State / Organisation provide specifically, in respect of vulnerable persons, for maintenance obligations arising from:

- a family relationship YES / NO

i) support of parent by adult child where parent is dependent by reason of age, disease, or infirmity and is unable to maintain himself or herself without assistance.

ii) support of unmarried partners (considered spousal support under Manitoba law)

- parentage YES / NO (child support)

- marriage YES / NO (spousal support)

- affinity YES / NO

5) Does your State / Organisation intend to extend the application of the whole or any part of the Convention to maintenance obligations arising from a family relationship, parentage, marriage or affinity which would include vulnerable persons?

YES

NO

Not yet determined

(C) Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention

9) Does the law of your State / Organisation provide specifically for maintenance obligations which **do not** arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons?

YES

NO

10) Please identify any categories within your State / Organisation of maintenance obligations towards vulnerable persons which at the moment cannot be brought within the scope of the Convention:

NONE

General questions

12) Does your State / Organisation have bilateral, regional or international agreements in place that deal specifically with maintenance obligations in respect of vulnerable persons?

YES

NO

13) If you replied YES to Question 12), please identify the categories of maintenance obligations towards vulnerable persons which fall within the scope of the bilateral, regional or international agreements referred to therein:

Some bilateral arrangements include child support for children over the age of 18 or 21 that continue to be dependent and some include spousal support alone orders. These arrangements may not specify that they include maintenance obligations for vulnerable persons but the bases for the continuing dependency may imply that the creditor is a vulnerable person in accordance with the law under which the obligation was established.

ONTARIO

(A) Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention

1) Does the law of your State / Organisation provide specifically for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years)?

YES (child support)

NO

2) Does the law of your State / Organisation provide specifically for maintenance obligations for a spouse towards a vulnerable spouse?

YES (spousal support)

NO

3) Can you please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to maintenance obligations: a) arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years); or, b) for a spouse towards a vulnerable spouse:

a) **Section 31 of the *Family Law Act* of Ontario provides as follows:**

Obligation of parent to support child

31. (1) Every parent has an obligation to provide support for his or her unmarried child who is a minor or is enrolled in a full time program of education, to the extent that the parent is capable of doing so. R.S.O. 1990, c. F.3, s. 31 (1); 1997, c. 20, s. 2.

(2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control. R.S.O. 1990, c. F.3, s. 31 (2).

The age of majority in Ontario for the purposes of subsection 31(1) is 18.

Section 2 of the *Divorce Act* of Canada provides as follows:

"child of the marriage" means a child of two spouses or former spouses who, at the material time,

**(a) is under the age of majority and who has not withdrawn from their charge, or
(b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life**

The age of majority in Ontario for the purposes of the *Divorce Act* is 18.

b) Section 30 of the *Family Law Act* of Ontario provides as follows:

Obligation of spouses for support

30. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

The definition of spouse for the purposes of spousal support in the *Family Law Act* is two persons who are married to each other, and in addition, includes either of two persons who are not married to each other and have cohabited,

**(a) continuously for a period of not less than three years, or
(b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.**

(derived from Section 29 of the *Family Law Act* of Ontario)

(B) Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States

4) Does the law of your State / Organisation provide specifically, in respect of vulnerable persons, for maintenance obligations arising from:

- a family relationship [X] YES / [] NO

i) Obligation of a child to support a parent – Section 32 of the *Family Law Act* of Ontario provides that every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.

ii) Support of unmarried partners – considered spousal support under Ontario law if it meets the definition set out in the answer to question 3(b) above.

- parentage [X] YES / [] NO (child support)

- marriage YES / NO (spousal support)
- affinity YES / NO

5) Does your State / Organisation intend to extend the application of the whole or any part of the Convention to maintenance obligations arising from a family relationship, parentage, marriage or affinity which would include vulnerable persons?

YES

NO

Not yet determined

(C) Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention

9) Does the law of your State / Organisation provide specifically for maintenance obligations which **do not** arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons?

YES

NO

10) Please identify any categories within your State / Organisation of maintenance obligations towards vulnerable persons which at the moment cannot be brought within the scope of the Convention:

NONE

General questions

12) Does your State / Organisation have bilateral, regional or international agreements in place that deal specifically with maintenance obligations in respect of vulnerable persons?

YES

NO

13) If you replied YES to Question 12), please identify the categories of maintenance obligations towards vulnerable persons which fall within the scope of the bilateral, regional or international agreements referred to therein:

Some bilateral arrangements under the *Interjurisdictional Support Orders Act, 2002* of Ontario include child support for children over the age of 18 or 21 that continue to be dependent as defined in the legislation under which the order was made and some include spousal support alone orders. These arrangements may not specifically indicate that they include these obligations for vulnerable persons; however, the obligation to provide support is determined in accordance with the law under which the obligation was established.

ALBERTA

(A) Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention

1) Does the law of your State / Organisation provide specifically for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years)?

YES (child support)

NO

2) Does the law of your State / Organisation provide specifically for maintenance obligations for a spouse towards a vulnerable spouse?

YES (spousal support)

NO

(B) Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States

4) Does the law of your State / Organisation provide specifically, in respect of vulnerable persons, for maintenance obligations arising from:

- a family relationship **YES** / **NO**

- “No” for parents, extended family

- “Yes” for un-married partners if these are included in “family relationship”

- parentage **YES** / **NO** (child support)

- marriage **YES** / **NO** (spousal support)

- affinity **YES** / **NO** (in-law support)

5) Does your State / Organisation intend to extend the application of the whole or any part of the Convention to maintenance obligations arising from a family relationship, parentage, marriage or affinity which would include vulnerable persons?

YES

NO

Not yet determined (but probably not)

(C) Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention

9) Does the law of your State / Organisation provide specifically for maintenance obligations which **do not** arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons?

- YES
 NO

General questions

12) Does your State / Organisation have bilateral, regional or international agreements in place that deal specifically with maintenance obligations in respect of vulnerable persons?

- YES
 NO

13) If you replied YES to Question 12), please identify the categories of maintenance obligations towards vulnerable persons which fall within the scope of the bilateral, regional or international agreements referred to therein:

Spousal support.

NOVA SCOTIA

(A) Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention

1) Does the law of your State / Organisation provide specifically for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years)?

- YES
 NO

2) Does the law of your State / Organisation provide specifically for maintenance obligations for a spouse towards a vulnerable spouse?

- YES
 NO

(B) Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States

4) Does the law of your State / Organisation provide specifically, in respect of vulnerable persons, for maintenance obligations arising from:

- a family relationship YES / NO
- parentage YES / NO
- marriage YES / NO
- affinity YES / NO

5) Does your State / Organisation intend to extend the application of the whole or any part of the Convention to maintenance obligations arising from a family relationship, parentage, marriage or affinity which would include vulnerable persons?

YES

NO

Not yet determined

(C) Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention

9) Does the law of your State / Organisation provide specifically for maintenance obligations which **do not** arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons?

YES

NO

General questions

12) Does your State / Organisation have bilateral, regional or international agreements in place that deal specifically with maintenance obligations in respect of vulnerable persons?

YES

NO

14) Do you see the need for the development of a protocol to deal with the international recovery of maintenance in respect of vulnerable persons?

YES

NO

SASKATCHEWAN

(A) Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention

1) Does the law of your State / Organisation provide specifically for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years)?

YES

NO

2) Does the law of your State / Organisation provide specifically for maintenance obligations for a spouse towards a vulnerable spouse?

- YES
 NO

(B) Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States

4) Does the law of your State / Organisation provide specifically, in respect of vulnerable persons, for maintenance obligations arising from:

- a family relationship YES / NO
- parentage YES / NO
- marriage YES / NO
- affinity YES / NO

5) Does your State / Organisation intend to extend the application of the whole or any part of the Convention to maintenance obligations arising from a family relationship, parentage, marriage or affinity which would include vulnerable persons?

- YES
 NO
 Not yet determined

(C) Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention

9) Does the law of your State / Organisation provide specifically for maintenance obligations which **do not** arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons?

- YES
 NO

General questions

12) Does your State / Organisation have bilateral, regional or international agreements in place that deal specifically with maintenance obligations in respect of vulnerable persons?

- YES
 NO

14) Do you see the need for the development of a protocol to deal with the international recovery of maintenance in respect of vulnerable persons?

- YES
 NO