

FAMILY MAINTENANCE ENFORCEMENT ACT

CHAPTER 3

Assented to March 11, 1988.

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1

INTERPRETATION

Interpretation

1. (1) In this Act

"attachee" means a person required or directed to pay under a notice of attachment or attachment order;

"attachment order" means an order made under section 21;

"court" means,

- (a) in sections 3 (1) and (2), 9, 10 (2) and (3), 13 to 21, 23 (1), (5), (7) and (8), 28, 29, 33 (2), 36, 41 (c), 42, 43 (2) and (3), 45 (b), 47 (1) (c) and (i) and 49 (1), the Supreme Court or the Provincial Court,
- (b) in sections 26 and 27, the Supreme Court, and
- (c) in section 24 (1) and (2), the Provincial Court;

"creditor" means a person entitled under a maintenance order to receive maintenance for himself or another person and, for the purposes of sections 3 (1), 5 (2), 6 (1), 7 (2), 9 (1) (b), 11 (b) and 28, includes

- (a) the director of GAIN, in relation to a maintenance order in respect of which the Crown has, under section 19.2 (1) or 19.3 of the *Guaranteed Available Income for Need Act*, the right to take enforcement proceedings, and
- (b) the Superintendent of Family and Child Service, in relation to
 - (i) an order for contribution to maintenance made under section 13 of the *Family and Child Service Act*,
 - (ii) an agreement deemed to be a maintenance order under subsection (2) (b), or
 - (iii) a maintenance order made under the *Child Paternity and Support Act*;

"debtor" means a person required under a maintenance order to pay maintenance;

"default hearing" means a hearing referred to in section 18;

"director" means the person designated under section 2 (1) as the Director of Maintenance Enforcement and, in relation to a power, duty or function that the director has under section 2 (2) delegated to another person, service, agency or body, includes that other person, service, agency or body;

"director of GAIN" means the person appointed as director under section 23 (1) of the *Guaranteed Available Income for Need Act*;

"Divorce Act" means the *Divorce Act*, 1985 (Canada) or an Act repealed by that Act;

"maintenance" means maintenance, support or alimony, whether payable

- (a) periodically, annually or otherwise,

- (b) for an indefinite or limited period or until the happening of a specified event, or
 - (c) as a lump sum,
- and includes
- (d) expenses arising from and incidental to
 - (i) the prenatal care of the mother or child, or
 - (ii) the birth of a child,
 - (e) an amount payable under section 14 (1) (b), and
 - (f) taxed costs awarded in relation to anything that comes within this definition;
- "maintenance order" means a provision for the payment of maintenance in an order or judgment that is enforceable in the Province and includes
- (a) an interim order made under Part 4.1 of the *Family Relations Act*, and
 - (b) an order made under section 20,

but does not include a provisional order as defined in section 70 of the *Family Relations Act*;

"notice of attachment" means a notice of attachment issued under section 15;

"reciprocating state" has the same meaning as in section 70 of the *Family Relations Act*.

(2) For the purposes of this Act, the following shall be deemed to be maintenance orders made by the Provincial Court:

- (a) an agreement that, under section 74 of the *Family Relations Act*, is enforceable under this Act and contains a provision respecting maintenance;
- (b) an agreement that is entered into under section 4 or 5 of the *Family and Child Service Act* and that contains a provision respecting maintenance.

PART 2

ENFORCEMENT BY THE DIRECTOR

Director of Maintenance Enforcement

2. (1) The Attorney General shall designate a person as the Director of Maintenance Enforcement for the purposes of this Act.

(2) Subject to subsection (3), the director may delegate any power, duty or function conferred or imposed on him under this Act to any person, service, agency or body.

(3) The director may delegate the power conferred on him by section 8 (1) or (4) only to a person employed under the *Public Service Act*.

Filing of orders

3. (1) A maintenance order made by, or deemed under section 1 (2) to have been made by, a court in the Province may be filed in the prescribed manner with the director by a creditor under the order, notwithstanding that the order was made or entered into before this section comes into force.

(2) Subject to the regulations, the court designated by the Attorney General for the purpose of the registration of final orders or the filing of confirmation orders under Part 4.1 of the *Family Relations Act*, or under an enactment replaced by that Part or repealed by that Act, shall file with the director all final orders registered by or confirmation orders filed with that court, notwithstanding that the orders were made, registered or filed with that court before this subsection comes into force.

(3) A minor who is creditor under a maintenance order may file the order under subsection (1).

Enforcement of filed orders

4. Where the director considers it is necessary and practicable to do so, he shall enforce a maintenance order that is filed with him and, for that purpose, he may in his name

- (a) take whatever steps he considers advisable for the enforcement of the maintenance order,
- (b) commence, conduct, continue or discontinue any proceeding that may be taken by a creditor under Part 3,
- (c) sign all documents with respect to the enforcement of the maintenance order, and
- (d) enforce the payment of all or part of any arrears of maintenance owing under the maintenance order, even though the arrears accrued before the maintenance order was filed with the director or before this Act comes into force.

**Enforcement by
director exclusive**

5. (1) No person other than the director shall enforce a maintenance order during the time it is filed with the director.

(2) Nothing in this Act prohibits the director or, subject to subsection (1), a creditor from taking proceedings under another enactment of the Province or Canada to enforce a maintenance order.

Withdrawal from filing

6. (1) Subject to subsection (3), a maintenance order that is filed with the director may at any time be withdrawn by filing with the director a written notice that is signed by the creditor and states that the creditor does not wish to have the maintenance order enforced by the director.

(2) The director may,

- (a) where he has reasonable grounds to believe that the creditor has contravened section 5 (1), or
- (b) in any other prescribed circumstances,

14 days after the director mails by ordinary mail to the creditor a notice of withdrawal, withdraw a maintenance order filed by the creditor.

(3) Where the director of GAIN

- (a) has caused a maintenance order to be filed with the director or has filed a notice under section 19.5 (b) of the *Guaranteed Available Income for Need Act* respecting the creditor under a maintenance order, and

(b) has not filed a notice of termination referred to in section 19.5 (d) of that Act, the maintenance order shall not be withdrawn by the creditor without the consent of the director of GAIN.

(4) Subject to the regulations, a maintenance order that has been withdrawn under subsection (1) or (2) may be refiled with the director.

**Notice of filing, withdrawal
or application to vary**

7. (1) The director shall give notice of the filing or withdrawal of a maintenance order to all the parties to the order.

(2) On making an application for variation of a maintenance order that is filed with the director, the debtor or creditor shall serve a copy of the application on the director.

(3) Notice under subsection (1) may be given by ordinary mail.

(4) The validity of proceedings under this Act is not affected by the inability of the director, after reasonable effort, to give notice to a party under subsection (1).

Access to information

8. (1) The director may, for the purpose of enforcing a maintenance order that is filed with him or of obtaining information for a person performing similar functions in another jurisdiction, demand from any person or public body, including the Crown, information that is in a record in the possession or control of that person or public body and that concerns

- (a) the location, address or place of employment of a debtor, or
- (b) the location of the assets or of the source of income of a debtor.

(2) Subsection (1) does not apply in respect of

- (a) personal correspondence between the debtor and a parent, child, spouse, brother or sister of the debtor,
- (b) information in the possession or control of
 - (i) a solicitor of the debtor, or
 - (ii) a family court counsellor, or
- (c) information the disclosure of which is forbidden by section 9 (1) (b) of the *Statistics Act*.

(3) Notwithstanding any other enactment or any common law rule of privilege or confidentiality, any person or public body, including the Crown, that receives a demand under subsection (1) shall provide any of the demanded information that is in any record in the possession or control of the person or public body.

(4) The director may disclose information provided under subsection (3) to a person in a reciprocating state performing functions similar to those of the director.

Order of court for access to information

9. (1) Where, on application, the court is satisfied that

- (a) the director has been refused information after making a demand under section 8 (1), or
- (b) a creditor needs an order under this section in order to enforce a maintenance order that is not filed with the director,

the court may, notwithstanding any other enactment or any common law rule of privilege or confidentiality but subject to subsection (2), order any person or public body, including the Crown, to provide to the applicant or to an individual named by the court any information that is in any record in the possession or control of that person or public body and that concerns

- (c) the location, address or place of employment of a debtor, or
- (d) the location of the assets or of the source of income of a debtor.

(2) The court shall not make an order under subsection (1) in respect of information described in section 8 (2) (b) or (c).

(3) Where the court makes an order under subsection (1) or under a similar provision in an enactment of Canada, it may make any order it considers appropriate with respect to the confidentiality to be maintained in connection with the information provided.

Payments

10. (1) Notwithstanding the provisions of the maintenance order but subject to subsections (2) and (3), all payments required to be made by the debtor under a maintenance order that is filed with the director shall

- (a) be made by cheque or money order payable to the creditor and delivered to the director, or
 - (b) with the approval of the director, be made directly to the creditor in a prescribed manner.
- (2) Payments made by a debtor against whom an order described in section 20 (1) (d) is made shall,
- (a) during the period the order is in effect, be made by cheque or money order payable to the creditor and delivered to the court, and
 - (b) where the maintenance order is filed with the director, be forwarded by the court to the director.
- (3) A payment received by the court in respect of a maintenance order that is made under the *Divorce Act* and is filed with the director shall be forwarded by the court to the director.
- (4) The director shall forward to the creditor under the maintenance order all payments received by the director in respect of the maintenance order.

Record of payments

11. The director shall

- (a) keep a record of all payments received and forwarded by the director and of the persons from whom the payments were received and to whom they have been forwarded,
- (b) on the request of the creditor or the debtor, provide a statement showing the current status of payments required under a maintenance order that is filed with the director, and
- (c) on the request of the proper officer of a reciprocating state or a court of a reciprocating state, provide a sworn, itemized statement with respect to a maintenance order, showing
 - (i) all amounts that have become due and owing by the debtor during the 24 months immediately preceding the date of the statement, and
 - (ii) all payments received by the director during the period mentioned in subparagraph (i).

PART 3

ENFORCEMENT PROCEEDINGS

Statement of finances required by director

12. (1) Where the debtor defaults in a payment required under a maintenance order that is filed with the director, the director may, by notice served on the debtor together with a statement of arrears in the prescribed form, require the debtor to file a statement of finances with the director.

(2) The statement of finances required by subsection (1) shall be in the prescribed form, shall be accompanied by the prescribed documents and shall be filed by the debtor with the director not more than 10 days after the debtor is served with a notice under subsection (1).

(3) The director may extend the period within which the statement of finances is required to be filed by the debtor with the director.

**Statement of finances
required by court**

13. (1) Where the debtor defaults in a payment required under a maintenance order that is not filed with the director, the creditor may

- (a) file a statement of arrears in the prescribed form with the clerk of the court, and
- (b) by notice served on the debtor together with the statement of arrears, require the debtor to file a statement of finances with the court.

(2) The statement of finances required by subsection (1) shall be in the prescribed form, shall be accompanied by the prescribed documents and shall be filed by the debtor with the clerk of the court not more than 10 days after the debtor is served with a notice under subsection (1).

(3) The debtor shall, on filing the statement of finances with the clerk of the court, serve the creditor with a copy of the statement of finances filed under subsection (2).

(4) The court may extend the period within which the statement of finances is required to be filed by the debtor with the court.

**Failure to provide
statement of finances**

14. (1) Where a debtor fails to file a statement of finances or prescribed document or both as required under section 12 or 13, the court may

- (a) on application by the director or the creditor, order the debtor to file the statement of finances or prescribed document or both before the date specified in the order, or
- (b) on application by the creditor, order the debtor to pay an amount not exceeding \$5 000 for the benefit of the creditor.

(2) Where the debtor fails to comply with an order under subsection (1) (a), the court may, on application by the director or the creditor, issue

- (a) a summons requiring the debtor to appear before the court at the time and place specified in the summons, or
- (b) a warrant authorizing the apprehension of the debtor to bring him before the court

to show cause why the order should not be enforced.

(3) Where the court finds that a debtor who has been summoned or apprehended under subsection (2) is capable of complying with an order made under subsection (1) (a) and has not complied with it, the court may order the debtor to be imprisoned for a term not exceeding 30 days if he does not comply with that order before the date specified in the order made under this subsection.

(4) A payment made under subsection (1) (b) does not reduce or discharge the debtor's obligations under a maintenance order.

(5) The imprisonment of a debtor under subsection (3) does not discharge the debtor's duty to file a statement of finances and the prescribed documents.

Notice of attachment

15. (1) Where the director files with the clerk of the court

- (a) a notice that the debtor has defaulted in a payment required under a maintenance order, and
 - (b) any other material that may be prescribed for the purposes of this section,
- the clerk of the court shall issue a notice of attachment in the prescribed form.

(2) Service in accordance with the regulations of a notice of attachment on the attachee binds, without further service and to the extent limited by the regulations, the attachee in respect of

- (a) any money that is due and owing on the date of service to the debtor by the attachee, and
 - (b) any money that becomes due and owing from time to time after the date of service to the debtor by the attachee.
- (3) The director shall deliver a copy of the notice of attachment to the debtor, but the inability of the director, after reasonable effort, to deliver the copy of the notice does not render the notice of attachment ineffective.
- (4) A notice of attachment remains in effect without further service until
- (a) the date specified on the notice of attachment,
 - (b) a notice of withdrawal is served on the attachee under section 16 (1) (a),
 - (c) the court, on application by the director under section 16 (3) or by the attachee or the debtor under section 16 (5), orders otherwise, or
 - (d) a notice of termination is served on the attachee under section 16 (7),
- whichever occurs first.
- (5) On receipt of a notice of attachment, the attachee shall
- (a) deduct from the money then due and owing and from time to time becoming due and owing by the attachee to the debtor the amount required by the notice, and
 - (b) deliver to the director a cheque or money order payable to the creditor for each amount as it becomes due in accordance with the notice.
- (6) Payment by an attachee to the creditor discharges the attachee's obligation to the debtor to the extent of the payment.

Withdrawal or termination of notice of attachment

16. (1) Where the attachee responds in accordance with the regulations to a notice of attachment, the director shall,

- (a) by serving a notice of withdrawal on the attachee, withdraw the notice if the attachee satisfies the director that
 - (i) no money is owing by the attachee to the debtor, or
 - (ii) the director has not supplied the attachee with sufficient information with respect to the debtor to enable the attachee to make any deductions,or
 - (b) refuse to withdraw the notice if he is not satisfied as to any matter referred to in paragraph (a).
- (2) The director may, on application by the debtor, withdraw a notice of attachment if the debtor satisfies the director that the notice contains or is based on a material error.
- (3) Where an attachee fails to pay in accordance with a notice of attachment served on him or fails to respond in accordance with the regulations to the notice, the court may, on application by the director, order payment by the attachee of the amount unpaid.
- (4) An order of the court under subsection (3) may be enforced in any manner that an order of the court may be enforced.
- (5) Where the director refuses to withdraw a notice of attachment, the court may, on application by the attachee or the debtor in accordance with the regulations,
- (a) summarily determine whether or not
 - (i) the attachee is liable under the notice, or
 - (ii) the notice contains or is based on a material error, or
 - (b) determine that an issue or question necessary for the determination of the liability of the attachee be tried.
- (6) A determination of the court under subsection (5) is a judgment of the court and may be so enforced.
- (7) The director shall, by serving a notice of termination of attachment on the attachee, terminate a notice of attachment

- (a) if the debtor enters into a voluntary payment arrangement that is satisfactory to the director,
- (b) if the debtor has fully satisfied his obligations under the maintenance order and no further payments will be due from him to the creditor, or
- (c) in any other prescribed circumstances.

(8) The withdrawal or termination of a notice of attachment by the director does not prevent the issue of another notice of attachment in respect of the same debtor and the same attachee.

Garnishment

17. (1) For the purposes of this section, "garnishee" means a person named in an order made under subsection (2) as, or likely to be, indebted to a debtor under a maintenance order.

(2) The court may, on application ex parte by the creditor under a maintenance order, make an order that shall, subject to subsections (3) to (7), be deemed to be an order made under section 4 of the *Court Order Enforcement Act*.

(3) An order made under subsection (2) shall, if provided in the order, remain in force for the period, not to exceed 12 months, specified in the order unless the court during that period discharges it, to seize and attach, without further application or order, any debt that is then due and owing by the garnishee to the debtor under the maintenance order or that becomes due and owing at any time while the order under subsection (2) remains in force.

(4) Where the garnishee admits a debt, he shall promptly pay to the court the amount of the debt or the amount limited by the order and, where the maintenance order is filed with the director, that amount shall be forwarded by the court to the director.

(5) Notwithstanding sections 8 (4) and 22 of the *Court Order Enforcement Act*, the garnishee, on paying to the court the amount of the debt or on complying with an order of the court made under that Act in respect of the debt, is not entitled to any costs or fees.

(6) Where a copy of an order made under subsection (2) has been served on the garnishee and the debtor in accordance with section 11 of the *Court Order Enforcement Act*, money paid into court under that order may,

(a) without an order of the court under section 14 of that Act, and

(b) without notice being given to the debtor under section 15 of that Act or to the garnishee,

be paid out of court from time to time to the creditor or to the director unless the debtor or the garnishee files with the court, within 10 days after the date of service of the order under subsection (2), a notice of intention to dispute any payment out.

(7) Sections 8 (1) and (2) and 29 of the *Court Order Enforcement Act* do not apply in respect of an order under subsection (2).

Summons for default hearing

18. Where the debtor defaults in a payment required under a maintenance order, the clerk of the court that made the order may, on application by

(a) the director, if the maintenance order is filed with him, or

(b) the creditor, if the maintenance order is not filed with the director,

issue, as often as default occurs, a summons requiring the debtor to appear at a default hearing before the court at the time and place indicated on the summons to show cause why the order should not be enforced.

Warrant for arrest

19. Where the debtor fails to appear before the court at the time and place indicated on a summons issued under section 18, the court may issue a warrant for his arrest for the

purpose of bringing him before the court to show cause why the maintenance order should not be enforced.

Default hearing

20. (1) Unless the court is satisfied at a default hearing that there are no arrears owing under the maintenance order or that the debtor is unable for valid reasons to pay the arrears in full, the court may make one or more of the following orders:

- (a) that the debtor report periodically to the court, or in person or as the court directs, to
 - (i) the director, where the order is filed with him, or
 - (ii) a person designated by name or position by the court;
- (b) that the debtor provide promptly to the court or to
 - (i) the director, where the order is filed with him, or
 - (ii) a person designated by name or position by the court, particulars of each change of residential address, place of employment or business address;
- (c) that the debtor discharge the arrears
 - (i) in one payment by a date the court specifies, or
 - (ii) by periodic payments in the amounts and on the dates the court specifies;
- (d) that, notwithstanding section 72 of the *Offence Act*, the debtor be imprisoned, without further hearing, for not more than 30 days each time he defaults in paying, on a date specified in an order under this section, the full amount due on that date;
- (e) that, as security for the payments in arrears and subsequent payments, the debtor provide security in any form that the court directs.

(2) Where the court is satisfied at a default hearing that the debtor is, for valid reasons, unable to pay the arrears in full or to make subsequent payments under the maintenance order, the court may

- (a) order the debtor to make periodic payments under the maintenance order in a reduced amount and for a term specified by the court, with the amount by which the payments are reduced being added to the arrears, and
- (b) make one or more of the orders described in subsection (1) (a) to (d).

(3) The court may make an order under subsection (1) or (2) in the absence of the debtor if he was served with a summons issued under section 18 or was apprehended under a warrant issued under section 19.

(4) Where a debtor against whom an order described in subsection (1) (d) is made

- (a) is present or represented at the hearing where that order is made, or
- (b) is personally served with a summons setting out on its face that an order described in subsection (1) (d) may be made,

proof of service of that order on the debtor is not necessary for the purpose of imprisoning him under the order.

(5) Where neither subsection (4) (a) nor subsection (4) (b) applies to a debtor against whom an order described in subsection (1) (d) is made, proof of service of that order not less than 5 days before the day on which the first warrant of committal was issued in respect of that order is necessary for the purpose of imprisoning the debtor under that order.

(6) Imprisonment of a debtor under this section does not discharge arrears owing under a maintenance order.

(7) Where there is a material change in the circumstances of the debtor, the court may, without reducing or cancelling the aggregate of the arrears required to be paid under an order it made under subsection (1) or (2), vary the order.

(8) In an order for security under subsection (1) (e) or a subsequent order, the court may provide for the realization of the security by seizure, sale or other means that the court directs or for the release of all or part of the security.

(9) Where an order under subsection (1) or (2) is in force, a payment made by the debtor shall be credited

- (a) first to the amount due and owing under the maintenance order after the date of the order under subsection (1) or (2),
- (b) next to any arrears required to be paid under the order under subsection (1) or (2), and
- (c) last to any other amount due and owing.

Attachment orders

21. (1) Where at the conclusion of a default hearing the court finds that a debtor who has defaulted in a payment required under a maintenance order is receiving or is entitled to receive wages, salary or other remuneration from a person employing or engaging the services of the debtor, the court may make an attachment order directing that person and any other person who during the period the order is in effect employs or engages the services of the debtor

- (a) to promptly deduct from the debtor's wages, salary or other remuneration as it becomes due and owing from time to time an amount that is specified in the attachment order and does not exceed the amount permitted under the regulations, and
- (b) to promptly pay each amount deducted under paragraph (a) to the court or, where the maintenance order is filed with the director, to promptly deliver to the director a cheque or money order payable to the creditor for each amount.

(2) An attachment order shall be served on every person who during the period the order is in effect employs or engages the services of the debtor and, when served, binds that person, without further service, for as long as the order remains in effect and the debtor is entitled to receive wages, salary or other remuneration from that person.

(3) An attachment order remains in effect until

- (a) the date specified in the order, or
- (b) the court, on application by the debtor or by an attachee, orders otherwise, whichever occurs first.

(4) Payment made by an attachee to the court or to a creditor discharges the obligation of the attachee to the debtor under the maintenance order to the extent of the payment.

Attachment or garnishment of money owing by the Crown

22. (1) In this section

"government corporation" has the same meaning as in section 1 (1) of the *Financial Administration Act*, except that paragraph (b) of that definition does not apply;

"money" means

- (a) wages, salary or other remuneration, or
- (b) any prescribed payments or prescribed benefits authorized to be paid by the Crown or a government corporation by or under an enactment or a program under an enactment.

(2) Notwithstanding any other Act, the Crown or a government corporation may

- (a) for the purpose of attaching or garnishing any money that is due to a debtor, be named as the attachee in a notice of attachment or as the garnishee in an order under section 17 (2), or

- (b) for the purpose of attaching any wages, salary or other remuneration, be named as the person directed to pay under an attachment order.

Registration in land title office

23. (1) A maintenance order that is certified by a proper officer of the court that made the order may, on application by

- (a) the creditor, where the order is not filed with the director, or

- (b) the director, where the order is filed with the director,

be registered in a land title office in the same manner as a charge is registered and shall, for the purposes of Part 3 of the *Court Order Enforcement Act*, be deemed to be a judgment as defined in section 74 of that Act.

(2) Sections 76 (1), 87 and 104 of the *Court Order Enforcement Act* do not apply in respect of a maintenance order registered under this section.

(3) Where a maintenance order is registered on application by the director, the registrar of titles shall note that fact in the register.

(4) Notwithstanding the *Land Title Act* but subject to subsections (5) and (6) of this section, the registrar of titles shall not register the discharge or postponement of a maintenance order that is registered under this section unless the discharge or postponement is signed

- (a) by the creditor, or

- (b) where the director made the application to register the order, by both the creditor and the director.

(5) The court may, on application by

- (a) the person against whose land a maintenance order is registered, or

- (b) the creditor, where the director refuses to sign a discharge or postponement of a registered order,

make an order discharging or partially discharging the registered order or an order postponing the registered order to allow the registration of a charge.

(6) Where a maintenance order is registered under this section against land charged under section 61 (3) (c) of the *Family Relations Act*, the registrar of titles shall not register the discharge or postponement of the registered order without an order under subsection (5).

(7) The court may, in an order made under subsection (5), impose any conditions as to security or otherwise it considers necessary and reasonable.

(8) No order shall be made under subsection (5) unless notice has been given to any person in the manner, including service by mail or by public advertisement, that the court requires.

Warrant of execution

24. (1) Where the debtor defaults in a payment required under a maintenance order, the court may, on application ex parte by the creditor, issue a warrant of execution.

(2) A warrant of execution

- (a) shall not, unless the court otherwise orders, be for the recovery of more than one year's arrears of maintenance, and

- (b) shall be executed in the same manner as an execution under the *Small Claim Act*.

(3) Money realized when a maintenance order is enforced under this section is not subject to distribution under the *Creditor Assistance Act*.

Priority

25. (1) Notwithstanding any other Act, a maintenance order, whether filed with the director or not, takes priority over any other unsecured judgment debt of the debtor regardless of when an enforcement process is issued or served.

(2) The priority under subsection (1) does not apply to arrears of maintenance owing under a maintenance order that were owing more than one year before the date on which the creditor initiated the current proceedings to enforce the maintenance order.

(3) A maintenance order ranks equally with another maintenance order regardless of when an enforcement process is issued or served.

(4) Payments received by the director on behalf of a creditor are not attachable under any other Act.

Appointment of receiver

26. For the purpose of enforcing a maintenance order, the court may, on application by the creditor, appoint a person as a receiver of any property of the debtor.

Restraining order

27. Where, on application ex parte by the creditor, the court is satisfied that the debtor is likely to evade or hinder the enforcement of a maintenance order by disposing of or wasting any property, the court may make an order to restrain the debtor from disposing of or wasting the property.

Arrest of absconding debtor

28. Where, on application ex parte by the creditor, the court is satisfied that there are reasonable and probable grounds for believing that a debtor is about to leave the Province in order to evade or hinder the enforcement of a maintenance order, the court may

- (a) issue a warrant for the arrest of the debtor for the purpose of bringing the debtor before the court, and
- (b) make an order under section 20 (1) or (2).

Crediting of payments

29. Unless the court orders otherwise, a payment made under section 10, 15 or 21 shall be credited

- (a) first to the periodic payment most recently due under the maintenance order,
- (b) next to the arrears due and owing, and
- (c) last to any other amount due and owing in respect of the maintenance order.

PART 4**GENERAL****Enforcement of Supreme Court orders by, and jurisdiction of, Provincial Court**

30. (1) Where a copy of a maintenance order made by or registered for enforcement with the Supreme Court is certified by a proper officer of that court and is filed with the Provincial Court, the order, including arrears that accrued before the filing, may be enforced under this Act by the Provincial Court as if it were an order of that court.

(2) The powers and duties conferred or imposed on the Provincial Court by subsection (1) and sections 9, 10 (2) (b) and (3), 13 (4) to 21, 23 (5), (7) and (8), 24 (1) and

(2), 28, 32 (1), 33 (2), 36, 41 (c), 42 and 43 (2) and (3) are, for the purpose of section 2 of the *Provincial Court Act*, conferred or imposed on a judge of that court.

Proceedings in Provincial Court

31. Subject to the regulations, an application under this Act to the Provincial Court shall be heard summarily or in the manner the court may direct.

Joinder and defence of variation application

32. (1) A default hearing and an application for variation of the maintenance order in default may be heard together or separately by the court that made the order.

(2) The director may defend an application for variation of a maintenance order that is filed with him and is in default.

(3) Subsection (2) applies also in respect of a maintenance order made under the *Divorce Act*, but only if the maintenance order has been assigned to a minister designated by the Lieutenant Governor in Council pursuant to that Act.

Presumption and inferences

33. (1) In a proceeding under this Act, unless the contrary is proved, the debtor shall be presumed to have the ability to pay the arrears owing under a maintenance order and to make subsequent payments as they become due under the maintenance order.

(2) Where a debtor fails to file a statement of finances or prescribed document required under section 12 or 13, the court may at a default hearing draw whatever adverse inferences appear to it to be reasonable having regard to all the circumstances.

Debt no defence

34. The fact that the debtor under a maintenance order owes money or has paid money owing to a person other than the creditor under the maintenance order is not a defence to a proceeding taken to enforce the maintenance order.

Spouses compellable

35. Notwithstanding section 8 of the *Evidence Act*, in a proceeding under this Act a person is compellable to disclose a communication made to him by his spouse.

Proof of default or arrears

36. For the purposes of proving default or arrears under a maintenance order, the court may accept in evidence an affidavit made by any person deposing to have knowledge of, or information and belief concerning, the facts.

Statements and signatures

37. (1) A statement of arrears signed by the director and stating the dates of default, the amount of arrears and any other facts relevant to default under a maintenance order is, without proof of the signature, evidence of the facts stated.

(2) A statement signed by the director and stating that

(a) a maintenance order is filed with the director, or

(b) a notice under section 19.5 (b) of the *Guaranteed Available Income for Need Act* is filed with the director

is, without proof of the signature, conclusive evidence of the facts stated.

(3) Any document signed by the director with respect to the enforcement of a maintenance order is admissible in evidence without proof of the signature or official character of the director.

Proof of service

38. Subject to section 20 (5), where a proceeding is taken to enforce a maintenance order, it is not necessary to prove that the debtor was served with the order.

Information confidential

39. No person shall disclose information obtained under this Act except

- (a) to the extent necessary for purposes relating to the enforcement of a maintenance order, or
- (b) as provided in section 8 (4).

Protection against action

40. No action for damages lies or shall be instituted against

- (a) the Attorney General, the director, the director of GAIN or a person acting under the authority of any of them, or
- (b) a person, service, agency or other body to whom the director has under section 2 (2) delegated a power, duty or function

for anything done in good faith in the performance or intended performance of a duty or in the exercise or intended exercise of a power or function under this Act or the regulations or for any neglect or default in the performance or exercise in good faith of that duty, power or function.

Provision unenforceable

41. A provision in an agreement or a maintenance order by which a creditor agrees or that requires a creditor

- (a) not to file a maintenance order with the director,
- (b) to withdraw a maintenance order that is filed with the director, or
- (c) to file with the court or the director a notice stating that the creditor does not wish to have a maintenance order enforced by the director

is not enforceable.

Order restraining harassment

42. The court may, on application by the creditor or the director,

- (a) make an order restraining any person from molesting, annoying, harassing, communicating with or attempting to molest, annoy, harass or communicate with a creditor, and
- (b) require a person named in an order under paragraph (a)
 - (i) to enter into a recognizance, with or without sureties, or to post a bond, and
 - (ii) to report to the court or a person named by the court, at the times and places and for the period of time the court directs.

Employers

43. (1) No employer shall dismiss, suspend, lay off, penalize, discipline or discriminate against an employee if the reason for doing so is in any way related to the

service of a notice of attachment, an order under section 17 (2) or an attachment order on the employer.

(2) On the application of an employee who alleges that he is the subject of a contravention of subsection (1), the court may, if it finds the allegation to be true, make any order in favour of the employee that it considers just, including an order for reinstatement and an award of damages.

(3) The court may make an order under subsection (2) notwithstanding that the person against whom the order is made is convicted of an offence under section 45 (e).

Appeal

44. (1) An appeal lies from an order of the Provincial Court under this Act and sections 91 to 94, 98 to 102, 104, 105 and 107 to 114 of the *Offence Act* respecting appeals apply.

(2) Section 14 of the *Family Relations Act* applies in respect of any order made under this Act.

Offences

45. (1) A person who

- (a) contravenes section 8 (3),
- (b) knowingly gives false information in a statement of finances filed with the director or the court,
- (c) contravenes section 39,
- (d) contravenes an order made under section 42, or
- (e) contravenes section 43,

commits an offence.

(2) Any person who, without reasonable excuse, refuses or neglects to comply with an order made under section 9 (1) or 20 (1) (e) commits an offence.

Section 5 of the Offence Act

46. Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Regulations and orders

47. (1) The Lieutenant Governor in Council may make regulations that he considers necessary or advisable for achieving the objects and purposes of this Act, including regulations

- (a) prescribing forms and procedures for making and keeping records, returns and reports with respect to the director's responsibilities,
- (b) respecting service of documents under this Act or the regulations,
- (c) governing all matters of practice and procedure in the court in proceedings under this Act,
- (d) governing, with respect to Provincial Court proceedings under this Act, any matter referred to in section 73 of the *Family Relations Act*,
- (e) providing that specified provisions of the *Family Relations Act* apply for the purposes of this Act,
- (f) respecting the effect of service of a notice of attachment or attachment order where the attachee has more than one place for the service of process,
- (g) requiring creditors, attachees or garnishees to provide the director with information necessary for the purpose of enforcing or monitoring the enforcement of a maintenance order or for issuing, serving or varying a notice of attachment,

- (h) for determining the amount of a debtor's wages, salary or other remuneration that shall be exempt from attachment under section 15 or 21,
 - (i) providing for applications by debtors to court for orders increasing or decreasing exemptions from attachment under section 15 or 21,
 - (j) respecting payments that are to be included or deductions that are to be excluded for the purpose of determining the amount of salary, wages or other remuneration that may be bound by a notice of attachment or an attachment order,
 - (k) providing for the variation of payments required under a notice of attachment and for the application of surplus payments,
 - (l) requiring payment to be made by an attachee on a proportional basis where more than one notice of attachment or attachment order is served on the attachee in respect of the same debtor and the money payable to the debtor by the attachee is insufficient to satisfy all the notices,
 - (m) requiring the payment by debtors, or a class of debtors, of fees and expenses that relate to the costs of enforcing maintenance orders filed with the director or to the costs of monitoring or reporting on payments required or made under those orders,
 - (n) empowering the director to refuse in prescribed circumstances to accept from a debtor uncertified cheques,
 - (o) defining any word or expression used in this Act,
 - (p) requiring verification, by affidavit or otherwise, of any statement, information or document required to be filed or provided under this Act,
 - (q) governing the filing or withdrawal from filing of registered orders and any matters necessary for the transition to the enforcement of those orders under this Act, and
 - (r) for any purpose for which regulations are contemplated by this Act.
- (2) Notwithstanding any other enactment, the Lieutenant Governor in Council may exempt
- (a) the director in the performance of his duties or functions or the exercise of his powers under this Act, or
 - (b) any person in the performance of a duty or function or the exercise of a power that the director has delegated to that person under section 2 (2) of this Act
- from any provision of an enactment requiring a licence or permit or membership in a professional association or body and may impose conditions on an exemption granted under this section.
- (3) Regulations under subsection (1) (c) or (d) shall be made in the manner provided for in the *Court Rules Act*.

Appropriation

48. In addition to money appropriated under any other Act, \$200 000 may be paid out of the consolidated revenue fund on or before March 31, 1988 for expenditures required for the purposes of this Act.

Transitional

49. (1) A maintenance order that was made before this section comes into force and contains a provision requiring payments to be made to the court shall be deemed to have been filed with the director on the date referred to in paragraph (b) if

- (a) the director gives the creditor and the debtor written notice that the order is deemed to have been filed with the director and that the creditor may withdraw the order from filing, and
- (b) the creditor does not file a written notice of withdrawal with the director before the date specified on the notice given under paragraph (a).

(2) Where an order described in subsection (1) is withdrawn before the specified date or is subsequently withdrawn under section 6 (1), the debtor shall, notwithstanding the provisions of the order, make directly to the creditor any payments that are required under the order to be made after the date of withdrawal.

(3) Subsection (2) does not apply to

(a) a debtor in respect of whom an order was made, and remains in effect, under section 67 (2.1) (f) of the *Family Relations Act* or under section 20 (1) (d) of this Act, or

(b) a debtor under a maintenance order made under the *Divorce Act*.

(4) Sections 6 (3) and 7 (1) and (4) apply in respect of the withdrawal of a maintenance order before the date referred to in subsection (1) (b).

Consequential Amendments

Corporation Capital Tax Act

50. Section 28 of the *Corporation Capital Tax Act*, R.S.B.C. 1979, c. 69, is amended by adding the following paragraph:

(b.1) as provided in section 37.1, 37.2, 63.2 or 63.3 of the *Family Relations Act* or section 8 or 9 of the *Family Maintenance Enforcement Act*, .

Court Order Enforcement Act

51. Section 4 (6) (c) of the *Court Order Enforcement Act*, R.S.B.C. 1979, c. 75, is amended by striking out "the *Family Relations Act*," and substituting "section 17 (2) of the *Family Maintenance Enforcement Act*,".

Employment Standards Act

52. Section 7 (2) of the *Employment Standards Act*, S.B.C. 1980, c. 10, is amended by adding the following paragraph:

(b.1) to a person to whom the employee is required under a maintenance order, as defined in the *Family Maintenance Enforcement Act*, to pay maintenance, .

Family Relations Act

53. Section 6 (1) (c) of the *Family Relations Act*, R.S.B.C. 1979, c. 121, is amended by striking out ", including the enforcement of maintenance orders".

54. Section 12 is amended by striking out "alimony, maintenance," and by striking out ", including alimony or maintenance arrears accrued before filing,".

55. Section 13 is amended by striking out "Subject to section 67 (2.3), where" and substituting "Where".

56. Section 59 is amended by adding the following subsection:

(5) For the purposes of section 19.2 (a) of the *Guaranteed Available Income for Need Act*, the Crown may apply, in its own name or in the name of an individual, for an order under this Part.

57. Section 61 is amended

(a) in subsection (1) by striking out "the court or", and

(b) by repealing subsection (5).

58. Section 63 is amended

- (a) in subsection (1) by striking out "sections 64, 66, 67, 68, 68.2 and 69 and", and
- (b) in subsection (2) by striking out "sections 64, 65.1, 66, 67, 68, 68.1, 68.2 and 69 and".

59. Section 63.2 is amended

- (a) by repealing subsection (3) and substituting the following:

(3) An enforcement officer may, for the purpose of assisting a person to obtain a maintenance order or a variation of a maintenance order or to enforce a maintenance order, demand from any person or public body, including the Crown, information that is in a record in the possession or control of that person or public body and that concerns

(a) the location, address or place of employment, or

(b) the location of the assets or the source of income

of the proposed respondent or person against whom the maintenance order is made. ,

- (b) in subsection (4) by striking out "Subsection (3) (a)" and substituting "Subsection (3)", and

- (c) by repealing subsection (5) and adding the following subsections:

(6) Notwithstanding any other enactment or any common law rule of privilege or confidentiality, any person or public body, including the Crown, that receives a demand under subsection (3) shall provide any of the demanded information that is in any record in the possession or control of the person or public body.

(7) An enforcement officer may disclose information provided under subsection (6) to a person in another jurisdiction performing functions similar to those of the enforcement officer.

60. The following section is added:**Order of court for access to information****63.3 (1) Where, on application, the court is satisfied that**

- (a) an enforcement officer has been refused information after making a demand under section 63.2 (3), or

- (b) a person needs an order under this section in order to obtain a maintenance order or a variation of a maintenance order,

the court may, notwithstanding any other enactment or any common law rule of privilege or confidentiality but subject to subsection (2), order any person or public body, including the Crown, to provide to the applicant or to an individual named by the court any information that is in any record in the possession or control of that person or public body and that concerns

(c) the location, address or place of employment, or

(d) the location of the assets or of the source of income

of the proposed respondent or of the person against whom the maintenance order is made.

(2) The court shall not make an order under subsection (1) in respect of information described in section 63.2 (4) (b) or (c).

(3) Where the court makes an order under subsection (1) or under a similar provision in an enactment of Canada, it may make any order it considers

appropriate with respect to the confidentiality to be maintained in connection with the information provided.

(4) No person shall disclose information provided under section 63.2 (6) or this section except

- (a) to the extent necessary for the purpose of obtaining, varying or enforcing a maintenance order, or
- (b) as provided in section 63.2 (7).

61. Sections 64 to 69 are repealed.

62. Section 70.1 (1) is amended by striking out "and enforcement of the final order" and substituting "of the final order under this Act and its enforcement under the *Family Maintenance Enforcement Act*".

63. Section 70.41 is amended

- (a) in subsection (1) by adding "under the *Family Maintenance Enforcement Act*" after "registered order",
- (b) by repealing subsection (2) and substituting the following:

(2) For the purposes of section 63.2 a request shall be deemed to have been made in respect of registered orders and interim orders under this Part. ,
- (c) in subsection (3) by adding "the *Family Maintenance Enforcement Act* or" after "as provided in" and by adding "or that Act" after "after this Part",
- (d) in subsections (5) and (6) by adding "under the *Family Maintenance Enforcement Act*" after "a proceeding is brought", and
- (e) in subsection (7) by adding "under the *Family Maintenance Enforcement Act*" after "is being enforced".

64. Section 70.6 is amended

- (a) in subsection (2) by adding "or the *Family Maintenance Enforcement Act*" after "under this Part", and
- (b) in subsection (3) by adding "or the *Family Maintenance Enforcement Act*" after "of this Part".

65. Section 70.7 is amended by striking out "this Part." and substituting "this Part and the *Family Maintenance Enforcement Act*."

66. Section 70.8 (1) and (2) is amended by adding "or the *Family Maintenance Enforcement Act*" after "this Part".

67. Section 70.81 is repealed.

68. Section 70.93 is amended by striking out "under this Part." and substituting "under this Part or the *Family Maintenance Enforcement Act*."

69. Section 74 (2) is amended

- (a) by repealing paragraphs (a) and (b) and substituting the following:
 - (a) custody of or access to a child by a parent, or
 - (b) maintenance of a child by a parent or of a person by his spouse, , and

- (b) by adding "or the *Family Maintenance Enforcement Act*, as the case may be," after "subject to subsection (3), under this Act".

70. Section 74 (3) is amended by striking out "shall be enforced under subsection (2)" and substituting "referred to in subsection (2) shall be enforced".
71. Section 74 (4) is amended by striking out "A provision that is enforceable under this section" and substituting "A provision that is referred to in subsection (2) and is enforceable under this Act or the *Family Maintenance Enforcement Act*".
72. Section 74 (6) is repealed.
73. Section 81 is amended
- (a) by repealing subsection (1.1) and substituting the following:
- (1.1) Any person who
- (a) contravenes section 37.1 (3) or 63.2 (6), or
- (b) without reasonable excuse, refuses or neglects to comply with an order made under section 37.2 (1) or 63.3 (1)
- commits an offence, and
- (b) in subsection (2.1) (b) by striking out "section 63.2 (5)" and substituting "section 37.3 or 63.3 (4)".

Hotel Room Tax Act

74. Section 9 of the *Hotel Room Tax Act*, R.S.B.C. 1979, c. 183, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Hydro and Power Authority Act

75. Section 52 of the *Hydro and Power Authority Act*, R.S.B.C. 1979, c. 188, is amended
- (a) by adding the following subsection.
- (3.1) Money, as defined in section 22 of the *Family Maintenance Enforcement Act*, that is owing, payable or accruing due from the authority to any of its members or employees may be attached or garnished under section 15, 17 or 21 of that Act, and that Act applies to the authority, . and
- (b) in subsection (4) by striking out "garnishing" and by adding "or attachee" after "garnishee".

Insurance Premium Tax Act

76. Section 36 (1) of the *Insurance Premium Tax Act*, R.S.B.C. 1979, c. 205, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Logging Tax Act

77. Section 14 of the *Logging Tax Act*, R.S.B.C. 1979, c. 248, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Mining Tax Act

78. Section 14 of the *Mining Tax Act*, R.S.B.C. 1979, c. 267, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Motor Fuel Tax Act

79. Section 51 of the *Motor Fuel Tax Act*, S.B.C. 1985, c. 76, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Social Service Tax Act

80. Section 11 of the *Social Service Tax Act*, R.S.B.C. 1979, c. 388, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Supreme Court Act

81. Section 11 (4) of the *Supreme Court Act*, R.S.B.C. 1979, c. 397, is amended by adding "*Family Maintenance Enforcement Act*;" after "*Child Paternity and Support Act*;".
82. Section 44 is repealed.

Taxation (Rural Area) Act

83. Section 3 (1) of the *Taxation (Rural Area) Act*, R.S.B.C. 1979, c. 400, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Tobacco Tax Act

84. Section 6 of the *Tobacco Tax Act*, R.S.B.C. 1979, c. 404, is amended by adding the following paragraph:
- (b.1) as provided in, or ordered under, section 37.1 (3), 37.2 (1), 63.2 (6) or 63.3 (1) of the *Family Relations Act* or section 8 (3) or 9 (1) of the *Family Maintenance Enforcement Act*, .

Commencement

- 85.** (1) This Act comes into force by regulation of the Lieutenant Governor in Council.
- (2) Any provision of section 3 may be brought into force on different dates in different areas of the Province with respect to different classes of creditors.

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