

**UNIFORM MAINTENANCE AND CUSTODY
ENFORCEMENT ACT**

29B-1

1. (1) In this Act,

Definitions

“custody order” means a provision in an order of a court in or outside (*enacting jurisdiction*) enforceable in (*enacting jurisdiction*) for custody of a child other than right of access, and includes such a provision, in a marriage contract, cohabitation agreement or separation agreement, that is enforceable under the law of (*enacting jurisdiction*) (or insert name of relevant statute);

“Director” means the Director of Maintenance and Custody Enforcement appointed under section 2;

“maintenance order” means a provision in an order of a court in or outside (*enacting jurisdiction*) enforceable in (*enacting jurisdiction*) for the payment of money as support or maintenance, and includes a provision for,

- (a) the payment of an amount periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event,
- (b) a lump sum to be paid or held in trust,
- (c) any specified property to be transferred to or in trust for or vested in a party, whether absolutely, for life or for a term of years,
- (d) one spouse to be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs,
- (e) a spouse to whom exclusive possession of a matrimonial home is given to make such periodic payments to the other spouse as are prescribed in the order,
- (f) one spouse to be given exclusive possession of the contents of a matrimonial home or household goods or any part thereof,
- (g) fixing the obligation to repair and maintain a matrimonial home or to pay other liabilities arising in respect thereof,
- (h) all or any of the moneys payable under the order to be paid into court or to any other appropriate person or agency for the benefit of a party,

- (i) payment of support or maintenance in respect of any period before the date of the order,
- (j) payment to the (*Minister of social allowances*) of any amount in reimbursement for a benefit or assistance provided to a party, including an amount in reimbursement for such benefit or assistance provided before the date of the order,
- (k) payment of expenses in respect of the pre-natal care and birth of a child,
- (l) the irrevocable designation by a spouse who has a policy of life insurance or an interest in a benefit plan of the other spouse or a child as the beneficiary,
- (m) the securing of payment under the order, by a charge on property or otherwise, or
- (n) interest or the payment of legal fees or other expenses arising in relation to support or maintenance,

and includes such a provision, in a marriage contract, cohabitation agreement or separation agreement, that is enforceable under the law of (*enacting jurisdiction*) (or insert name of relevant statute).

*Acting by
solicitor*

(2) Anything required by this Act to be signed or done by a person, or referred to in this Act as signed or done by a person, may be signed or done by a lawyer acting on the person's behalf.

Act binds Crown

(3) This Act binds the Crown.

PART I

ENFORCEMENT BY DIRECTOR

*Director of
Maintenance and
Custody
Enforcement*

2. (1) There shall be a Director of Maintenance and Custody Enforcement who shall be appointed by the Lieutenant Governor in Council.

*Duty and powers
of Director*

(2) It is the duty of the Director to enforce maintenance orders and custody orders that are filed in the office of the Director in such manner, if any, as appears practicable and the Director may, for the purpose, commence and conduct a

proceeding and take steps for the enforcement of an order in the name of the Director for the benefit of the person entitled to enforcement of the order, or of the person's child.

(3) The Director shall not charge a fee for services to persons on whose behalf the Director acts. *Fees*

(4) The Director may appoint employees of the office of the Director to be enforcement officers for the purposes of this Act. *Enforcement officers*

(5) An enforcement officer may act for and in the name of the Director. *Powers of enforcement officers*

3. (1) A maintenance order or custody order may be filed in the office of the Director by a person entitled to maintenance or custody under the order. *Filing of orders*

(2) A maintenance order may be filed in the office of the Director by the *(Minister of social allowances)*. *Filing of maintenance orders by Minister of*

(3) Every maintenance order made by a court in *(enacting jurisdiction)*, other than a provisional order shall, *Filing of maintenance orders by the court*

(a) state in the operative part of the order that it shall be enforced by the Director and amounts owing under the order shall be paid to the person to whom it is owed through the Director unless the order is withdrawn from the office of the Director; and

(b) be filed in the office of the Director by the clerk or registrar of the court that made it, forthwith after it is signed,

unless the person who instituted the application for the order files with the court and the office of the Director a notice in writing signed by the person stating that he does not wish to have the order enforced by the Director.

(4) Every maintenance order made by a court outside *(enacting jurisdiction)* that is received by the Ministry of *(as appropriate)* or a court for enforcement in *(enacting jurisdiction)* shall be filed in the office of the Director forthwith after it is received unless the order is accompanied by a notice in writing signed by the person seeking to enforce the order stating that he does not wish to have the order enforced by the Director. *Filing of maintenance orders made outside jurisdiction*

Filing of past maintenance orders enforced by court

(5) A maintenance order that was made before this Act comes into force and filed for enforcement under (*provision for automatic or court-initiated enforcement*) shall be filed in the office of the Director by the clerk or registrar of the court in which it is filed, forthwith after this Act comes into force.

Withdrawal of filing

4. (1) A maintenance order or custody order filed in the office of the Director may be withdrawn by a notice in writing signed by the person by or on whose behalf it was filed.

Refiling

(2) A maintenance order or custody order that has been withdrawn may be refiled at any time by any person entitled to file the order under section 3.

Notice of filings and withdrawals

(3) The Director shall give notice of the filing or withdrawal of a maintenance order or custody order to all the parties to it and, on request of the (*Minister of social allowances*), to the Minister.

Filing by Minister of (social allowances)

(4) Where a person who is entitled to maintenance under a maintenance order has applied and is eligible for, or has received, a benefit under (*social allowances Acts*), the Minister of (*social allowances Ministry*) may file the order in the office of the Director regardless of whether a notice referred to in subsection 3(3) or (4) has been given, and the order shall not be withdrawn except by, or with the consent in writing of, (*the Minister or other official*).

Enforcement by Director exclusive

5. (1) No person other than the Director shall enforce a maintenance order or custody order that is filed in the office of the Director.

Past orders and arrears

(2) The Director may enforce arrears of maintenance under a maintenance order notwithstanding that the arrears were incurred before the order was filed in the office of the Director or before this Act comes into force.

Access by Director to information

6. (1) The Director may, for the purposes of enforcing a maintenance order or custody order that is filed in the office of the Director,

- (a) demand and receive from any person or public body, including the Crown in right of (*enacting jurisdiction*), information as to the location, address and place of employment of the person

against whom the order is being enforced that is shown on a record in the possession or control of the person or body; and

- (b) provide information obtained under clause (a) to a person performing similar functions in another jurisdiction.

(2) Information obtained under clause (1)(a) shall not be disclosed to any person except as provided in clause (1)(b) or to the extent necessary for the enforcement of the order. *Information confidential*

(3) Where, on motion to a court, it appears that,

Order of court for access to information

- (a) the Director has been refused information after making a demand under clause (1)(a); or
- (b) a person has need of an order under this subsection for the enforcement of a maintenance order or custody order that is not filed in the office of the Director,

the court may order any person or public body, including the Crown in right of (*enacting jurisdiction*), to provide the court or such person as the court directs with any information as to the location, address or place of employment of the person against whom the order is being enforced, that is shown on a record.

(4) The provisions of this section that require the disclosure of information apply notwithstanding the provisions of any other enactment restricting the disclosure of information, but do not apply. *Application*

- (a) to personal correspondence between family members; or
- (b) to a record that is subject to solicitor-client privilege.

(5) Where the Director has been refused information after making a demand under clause (1)(a) and obtains an order under subsection (3), the court shall award the costs of the motion to the Director. *Costs*

(6) Information obtained under an order under subsection (3) shall not be disclosed except as permitted by the order or a subsequent order or as necessary for the enforce- *Information confidential*

ment of the maintenance order or custody order, and shall be sealed in the court file.

PART II

ENFORCEMENT REMEDIES

Definition 7. In this Part, "court" means the (*appropriate family court*).

GARNISHMENT

Garnishment 8. (1) An obligation to pay money under a maintenance order may be enforced by garnishment of money payable to the debtor by another person, in accordance with the (*rules of court*).

Notice (2) On the filing of the material prescribed by the (*rules of court*), the clerk (*or registrar*) of the court shall issue a notice of garnishment.

Recognition of extra-provincial garnishments

(3) On the filing of a notice of garnishment that,

- (a) is issued outside (*enacting jurisdiction*);
- (b) states that it is issued in respect of support or maintenance; and
- (c) is written in or accompanied by a sworn or certified translation into (*language of enacting jurisdiction*),

the clerk (*or registrar*) of the court shall issue a notice of garnishment.

Obligation of garnishee

(4) On service of a notice of garnishment, the garnishee shall pay to the court or other person as specified in the notice any money that is payable by the garnishee to the debtor named in the notice, and money as it becomes payable to the debtor from time to time after service of the notice, up to the amount shown in the notice.

Effect of payment

(5) Payment by a garnishee of money in accordance with a notice of garnishment discharges the obligation of the garnishee to the debtor to the extent of the payment.

Order of court for payment by garnishee

(6) Where a garnishee fails to pay money that is payable or becomes payable in accordance with the notice of garnishment or fails to respond to the notice as provided by the (*rules of court*),

- (a) the court may order payment by the garnishee of the amount unpaid;
 - (b) the order under clause (a) may be enforced in any manner that an order of the court may be enforced; and
 - (c) the court shall award costs of the order and its enforcement against the garnishee.
- (7) The debtor, creditor or garnishee may make a motion Motion to set aside at any time for an order setting aside a notice of garnishment.
- (8) A garnishee shall not charge a fee for receiving or responding to a notice of garnishment. Garnishee not to charge fee (Each jurisdiction to provide for its own exemptions from garnishment in appropriate place).
9. A notice of garnishment may be issued in respect of a garnishee who is outside Service of garnishment outside (enacting jurisdiction) (enacting jurisdiction) and shall,
- (a) be signed and sealed by the clerk (or registrar) of the court;
 - (b) state that it is issued in respect of maintenance;
 - (c) set out the name, address and telephone number of the person who caused it to be issued and the name and address of the garnishee; and
 - (d) be written in or accompanied by a sworn or certified translation into a language ordinarily used in the courts of the jurisdiction where it is to be served.

SALE OF PROPERTY

10. (1) An obligation to pay money under a maintenance order may be enforced by seizure and sale of the debtor's real and personal property. Seizure and sale of property
- (2) On the filing of the material prescribed by the Procedure (rules of court), the clerk (or registrar) of the court shall issue a writ of (seizure and sale, etc.).
11. (1) A maintenance order may be registered against the land of the person against whom an obligation to pay money under the order is enforceable in the Registration against real property (land registry office)

and on registration the obligation under the order becomes a charge on the property.

Sale of property (2) A charge created by subsection (1) may be enforced by sale of the property against which it is registered in the same manner as a sale to realize on a mortgage.

Discharge or postponement of charge (3) A court may order the discharge, in whole or in part, or the postponement, of a charge created by subsection (1), on such terms as to security or other matters as the court considers just.

Director to be served (4) An order under subsection (3) may be made only after notice is given to the Director. *(Each jurisdiction to provide for its own exemptions from seizure and sale in appropriate place).*

RECEIVERSHIP

Appointment of receiver 12. An obligation to pay money under a maintenance order or agreement may be enforced by the appointment of a receiver under the *(appropriate Act)*.

DEFAULT EXAMINATIONS AND ORDERS

Filing of financial statement with Director 13. (1) Where an obligation to pay money under a maintenance order that is filed in the office of the Director is in default, the Director may prepare a statement of the arrears, not including arrears that accrued before this Act comes into force, and the Director may by notice served on the debtor together with the statement of arrears require the debtor to file in the office of the Director a financial statement in the form prescribed by *(rules of court)* and to appear before the court to explain the default.

Filing financial statement in court (2) Where an obligation to pay money under a maintenance order that is not filed in the office of the Director is in default, on the filing of a request, together with a statement of arrears in the form prescribed by the *(rules of court)*, the clerk *(or registrar)* of the court shall by notice served on the debtor together with the statement of arrears require the debtor to file a financial statement in the form prescribed by the *(rules of court)* and to appear before the court to explain the default.

Arrest of debtor (3) Where the debtor fails to file the financial statement or to appear as required by the notice, the court may issue a

warrant for the arrest of the debtor for the purpose of bringing the debtor before the court.

(4) At the default hearing, unless the contrary is shown, the debtor shall be presumed to have the ability to pay the arrears and to make subsequent payments under the order, and the statement of arrears prepared and served by the Director shall be presumed to be correct as to arrears accruing while the order is filed in the office of the Director. *Presumptions at hearing*

(5) The court may, unless it is satisfied that there are no arrears or that the debtor is unable for valid reasons to pay the arrears or to make subsequent payments under the order, order that the debtor, *Powers of court*

- (a) discharge the arrears by such periodic payments as the court considers just;
- (b) discharge the arrears in full by a specified date;
- (c) comply with the order to the extent of the debtor's ability to pay, but an order under this clause does not affect the accruing of arrears;
- (d) provide security in such form as the court directs for the arrears and subsequent payment;
- (e) report periodically to the court, the Director or a person specified in the order;
- (f) provide forthwith to the court, the Director or a person specified in the order particulars of any future change of address or employment;
- (g) be imprisoned continuously or intermittently for not more than (*ninety*) days unless the arrears are sooner paid; and
- (h) be imprisoned continuously or intermittently for not more than (*ninety*) days on default in any payment ordered under this subsection.

(6) The court that made an order under subsection (5) may vary the order where there is a material change in the debtor's circumstances. *Power to vary order*

(7) Imprisonment of a debtor under clause 5(g) or (h) does not discharge arrears under an order. *Imprisonment does not discharge arrears*

Realizing on security

(8) An order for security under clause 5(d) or a subsequent order of the court may provide for the realization of the security by seizure, sale or other means, as the court directs.

Proof of service not necessary

(9) Proof of service on the debtor of a maintenance order is not necessary for the purpose of a default hearing.

Joinder of default and variation hearings

(10) A default hearing under this section and a hearing on an application for variation of the maintenance order in default may be heard together or separately.

Civil remedies

(11) The remedies available under this section are civil process and the (*Act for summary convictions procedure*) does not apply.

Spouses compellable witnesses

(12) Spouses are competent and compellable witnesses against each other on a default hearing.

EVASION OF DEBTOR

Restraining order

14. A court may make an interim or final order restraining the disposition or wasting of assets that may hinder or defeat the enforcement of a maintenance order.

Arrest of absconding debtor

15. Where it appears that a debtor is about to leave (*enacting jurisdiction*) in order to evade or hinder enforcement of a maintenance order against him, a court may issue a warrant for the arrest of the debtor for the purpose of bringing the debtor before the court and may make any order provided for in subsection 13(5).

PRIORITIES

Application of payments

16. Money paid on account of a maintenance order shall be credited,

- (a) first to the principal amount most recently due and then to any interest owing on that amount; and
- (b) then to the balance outstanding in the manner set out in clause (a),

unless the debtor specifies otherwise at the time the payment is made or the court orders otherwise.

Other judgment debts

17. Arrears of payment under a maintenance order in an amount not exceeding one year's maintenance at the current rate,

- (a) have priority over other judgment debts; and
- (b) rank equally with like arrears under another maintenance order,

regardless of when an enforcement process is issued or served.

18. Money realized under an enforcement process taken by or on behalf of the Director in respect of money owing under a maintenance order is not subject to distribution among creditors under the (insert name of creditors' relief statute). *Exemption from creditors' relief*

SPECIAL PROVISIONS

19. A minor may commence, conduct and defend a proceeding and initiate and complete steps for enforcement of a maintenance order without the intervention of a (*litigation guardian*). *Capacity of minor*

20. The (*Crown, etc.*) may enforce a maintenance order that is assigned to the (*Crown, etc.*). *Assignment to Crown*