

Please select the "Table of Contents" Bookmark to navigate this document.

FINAL REPORT

ENFORCEMENT OF MAINTENANCE OBLIGATIONS

Law Reform Commission of Nova Scotia
November, 1992

FINAL REPORT

ENFORCEMENT OF MAINTENANCE OBLIGATIONS

Law Reform Commission of Nova Scotia
November, 1992

The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, in February, 1991.

The Commissioners are:

William Charles, Q.C., President
Ronald Culley, Q.C.
Mr. Justice John Davison
Beverley Johnson, M.S.W.
Dawna Ring, LL.B.

Dr. Moira McConnell is Executive Director to the Commission.

Anne Jackman is Legal Research Officer to the Commission.

Nancy Johnston is responsible for word processing and administrative duties for the Commission.

The Commission offices are located at 8th Floor, Garrison Place, 1526 Dresden Row, Halifax, Nova Scotia, B3J 2K2. The telephone number is 423-2633 and the Fax number is 423-0222.

The Law Reform Commission receives funding from the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Commission gratefully acknowledges this financial support in carrying out its research projects.

Canadian Cataloguing in Publication Data:

Law Reform Commission of Nova Scotia
Enforcement of Maintenance Obligations - Final Report, November 1992

Law Reform Commission of Nova Scotia

TO: The Honourable Joel Matheson, Q.C.
Attorney General for Nova Scotia

In accordance with section 12(3) of the *Law Reform Commission Act*, we are pleased to present the Commission's Report on the Enforcement of Maintenance Obligations.

William Charles
President

Ronald Culley
Commissioner

Justice John Davison
Commissioner

Beverley Johnson
Commissioner

Dawna Ring
Commissioner

CONTENTS

	Page
SUMMARY	
I. INTRODUCTION	1
1. The Project	1
2. Terminology	2
II. GENERAL PRINCIPLES AND POLICY ISSUES	3
Background	3
1. The financial effects of marital breakdown	3
2. The need for maintenance guidelines	4
3. The enforcement problem	6
III. MAINTENANCE ENFORCEMENT	10
Present Systems of Maintenance Enforcement in Nova Scotia	10
1. Provincial	10
(a) general	10
(b) default hearings	10
(c) execution orders	11
(d) registration against land	12
(e) Family Court security orders	12
(f) receivership	12
(g) imprisonment/contempt	13
(h) tracing	14
2. Federal	14
(a) <i>Family Orders and Agreements Enforcement Assistance Act</i>	14
(i) tracing	15
(ii) garnishment	16
(b) <i>Garnishment, Attachment and Pension Diversion Act</i>	16
(c) Armed Forces Personnel	16

Maintenance Enforcement in other Jurisdictions	17
1. General	17
2. Examples of "Automatic Systems"	18
(a) Ontario	18
(b) New Brunswick	20
IV. PROPOSED AUTOMATIC ENFORCEMENT SYSTEM FOR NOVA SCOTIA	21
1. Introduction	21
2. Office of Director	22
3. Automatic Filing of Maintenance Order with Director's Office	22
4. Opting Out of the Enforcement Program	24
5. Garnishment after First Default	26
6. Amendments to Existing Legislation	27
(a) <i>Family Maintenance Act</i>	27
(b) <i>Family Court Act</i>	28
(c) <i>Testators' Family Maintenance Act</i>	28
(d) <i>Workers' Compensation Act</i>	29
(e) <i>Pension Benefits Act</i>	29
(f) <i>Maintenance Orders Enforcement Act</i>	29
(g) <i>Family Orders Information Release Act</i>	30
7. Implementation	30
V. DRAFT MAINTENANCE ENFORCEMENT ACT (WITH COMMENTS)	32
APPENDIX A - Draft <i>Maintenance Enforcement Act</i>	72
APPENDIX B - List of Persons Who Received Copies of the Discussion Paper, July 1992	100
APPENDIX C - List of Persons Who Responded to the Discussion Paper, July 1992	122
APPENDIX D - Summary of Recommendations Released in Discussion Paper, July 1992	123

LAW REFORM COMMISSION OF NOVA SCOTIA

FINAL REPORT ON THE ENFORCEMENT OF MAINTENANCE OBLIGATIONS

SUMMARY

The Law Reform Commission of Nova Scotia's Final Report on reform of the law relating to the enforcement of the legal obligation to pay family maintenance contains a number of recommendations to the Government of Nova Scotia. It proposes a draft *Maintenance Enforcement Act*, based on those recommendations.

In a Discussion Paper published and distributed in Nova Scotia in July, 1992 the Commission commented on the fact that for many people maintenance payments are a matter of personal, emotional difficulty since the obligations generally arise as a result of changes in a family unit. These difficulties are exacerbated when the process of payment and enforcement is also a matter of emotional and financial distress for the parties.

It is the opinion of the Law Reform Commission, that while many of the difficulties in this situation cannot be addressed by law or changes to the legal system it is the responsibility of the government to seek to ensure that the operation of the legal system does not itself add to the difficulties that people experience in their lives. Under the present legal system, the responsibility and costs of enforcement are generally placed on the person entitled to receive the payment. The issue of non-payment then becomes a personal matter between the parties, some of whom may find this an outlet through which to express their anger or distress at their situation. Aside from the resulting increase in unhappiness this may cause there is a more important cost to the children in these families who may go without sufficient food, clothing and other necessities of life because of missed or delayed maintenance payments. The problem of non-payment also imposes a cost on society in general because the government may be required to make up missed payments through social assistance to ensure that rent and food are available to the recipients. This means that all Nova Scotians contribute indirectly to the costs that arise from non-payment including the increased demand on the court and judicial system.

This Final Report contains a draft Act which reflects the recommendations proposed by the Commission in its Discussion Paper. These recommendations were amended in light of submissions received from the public, the government, groups representing people especially interested in the topic, and a review of the laws existing in other provinces and territories. The Final Report which proposes a government-run automatic enforcement system discusses the policy rationale for some of the choices made by the Commission in preparing this legislation for the Government of Nova Scotia to consider.

The draft Act provides a detailed consideration of the way in which this system might operate. It is the belief of the Commission that an automatic enforcement system will ultimately prove less costly to society and individuals. The proposed system will not add to but may alleviate

some of the personal distress that many people encounter in this situation. In this sense, then, the system will "neutralize" the maintenance payment process so that it does not in itself become a matter for further difficulties between the parties.

A matter of great concern for the Commission was the issue of whether the system should be mandatory for all court ordered maintenance and whether or not enforcement should be truly automatic or only after one default. It required considerations such as the autonomy of individuals and the availability of government resources as well as a concern for people who may be powerless and unable to exercise choice. Further, there was a concern that a "one default" system of enforcement might create a sense of penalization and stigmatization for the parties as opposed to a system which treats the maintenance obligation as an automatic deduction from an individual's salary or income. A majority of the Commissioners resolved the issue in favour of a system which allows people to "opt-out" with written consent of both parties. This system would be subject to the right of a judge to prohibit opting out where she or he is concerned about the ability of both parties to genuinely consent to opting out. Where the parties are part of the system, the automatic enforcement provisions apply as soon as there has been a single default.

The Commission's recommendations include the following:

The courts of Nova Scotia adopt guidelines to help provide consistent and equitable maintenance orders.

A Unified Family Court be created for Nova Scotia with all of the powers now available in Supreme Court.

An Office of Director of Maintenance Enforcement be established to assume sole responsibility for the enforcement of all maintenance orders in the province which are filed with the Director.

All court orders for maintenance contain a direction for the filing of the order with the Director of Maintenance Enforcement for automatic enforcement.

Individuals with court orders for maintenance made before the new program is implemented be permitted to file the orders with the Director for enforcement. This may be done by either person without the consent of the other party to the order.

All maintenance orders which are now enforced through Family Court be transferred to the Director of Maintenance Enforcement.

All maintenance recipients under an automatic system be treated equally.

Either party to an Agreement for maintenance may file for enforcement with the Director of Maintenance Enforcement. Once filed, the agreement is treated as an order of the court for the purposes of enforcement.

Parties to a court order for the payment of maintenance be permitted to "opt out" of the program if a written consent is signed by both parties.

Even if the parties to the maintenance order originally opted out of the enforcement program, either party will have the right to re-file a maintenance order at any time.

The court granting the original maintenance order will have discretion to prohibit opting out, if it is in the best interests of those affected by the order.

If a person misses a single maintenance payment, garnishment of any available income will automatically be imposed by the Director of Maintenance Enforcement without a default hearing.

Where an income source is not available, the Director may seize and sell assets under an execution order without a hearing or opportunity to explain a default.

Consequential changes should be made to the *Family Maintenance Act*; *Family Court Act*; *Testators' Family Maintenance Act*; *Workers' Compensation Act*; *Pension Benefits Act*; *Maintenance Orders Enforcement Act*; and *Family Orders Information Release Act* to fully implement the automatic enforcement system.

The recommendations contained in this Report be implemented by the adoption of a new law similar to the draft *Maintenance Enforcement Act* set out in Appendix A.

COMMISSION DE RÉFORME DU DROIT DE LA NOUVELLE-ÉCOSSE
RAPPORT FINAL SUR L'EXÉCUTION DES JUGEMENTS IMPOSANT
DES OBLIGATIONS ALIMENTAIRES

***SOMMAIRE**

Le Rapport Final de la Commission de réforme du droit de la Nouvelle-Écosse sur l'exécution des obligations alimentaires contient un certain nombre de recommandations adressées au Gouvernement de la Nouvelle-Écosse. Le Rapport suggère, de plus, un projet de *Loi sur l'exécution des obligations alimentaires* qui reflète ces recommandations. Au mois de juillet 1992, un Document de discussion a été publié et distribué en Nouvelle-Écosse par la Commission. Cette dernière y émettait un commentaire à l'effet que pour un grand nombre de personnes, le paiement d'une pension alimentaire entraîne des difficultés d'ordre personnel et affectif puisque l'obligation alimentaire résulte habituellement de changements au sein de la cellule familiale. Ces difficultés sont exacerbées lorsque le processus d'exécution des paiements alimentaires entraîne des effets financiers négatifs pour les parties et crée des problèmes émotifs sérieux.

La Commission de réforme croit que même si plusieurs des difficultés décrites précédemment ne peuvent être résolues par des lois ou par des changements apportés au système légal, le gouvernement doit s'assurer que le système légal lui-même n'ajoute pas aux difficultés que vivent déjà les parties. Dans le système légal actuel, la responsabilité et les frais d'exécution des obligations alimentaires sont généralement à la charge de la personne qui a droit à ces paiements. Le problème du non-paiement de la pension alimentaire devient alors une affaire personnelle entre les parties qui s'en servent, quelques fois, comme exutoire à leur colère et leur détresse. Non seulement ce problème rend les parties plus malheureuses, mais ses effets les plus sérieux touchent les enfants de ces familles éclatées qui souffrent du manque de nourriture, de vêtements et autres nécessités de la vie. Le problème du non-paiement de la pension alimentaire entraîne aussi des coûts pour la société en général puisque le gouvernement est appelé à aider financièrement les bénéficiaires de la pension par l'entremise du système d'aide sociale afin de leur procurer nourriture et gîte. Ceci signifie que tous(tes) les Néo-Écossais(es) contribuent indirectement au paiement de ces coûts, y compris les coûts reliés à l'intervention des tribunaux.

Ce Rapport Final contient un projet de Loi qui reflète les recommandations faites par la Commission dans son Document de discussion. Ces recommandations ont été modifiées en fonction des opinions émises par le public, le gouvernement et les groupes de personnes particulièrement intéressées par le sujet, de même qu'en fonction de l'étude des lois pertinentes existant dans les autres provinces et les territoires. Ce Rapport Final propose un système d'exécution automatique des obligations alimentaires et présente les raisons ayant mené aux

choix que la Commission a faits en préparant le projet de Loi qui sera soumis au Gouvernement de la Nouvelle-Écosse.

Le projet de Loi prévoit de façon détaillée le fonctionnement de ce système d'exécution automatique. La Commission croit qu'un tel système s'avérera moins coûteux pour la société et les parties. Le système proposé n'ajoutera en rien aux difficultés d'ordre personnel rencontrées par les parties aux prises avec une situation de non-paiement d'obligations alimentaires, mais contribuera plutôt à leur diminution. Dans une certaine mesure, le système rendra le processus de paiement plus impersonnel afin d'empêcher que la question de la pension alimentaire ne cause des tensions additionnelles entre les parties.

La Commission s'est longuement penchée sur la question du caractère obligatoire ou non du système d'exécution automatique pour tous les jugements imposant le paiement d'une pension alimentaire. La Commission s'est aussi demandée si l'exécution devrait être réellement automatique ou si elle ne devrait l'être qu'après un premier défaut de paiement de la part du débiteur. La Commission a considéré des facteurs tels que l'autonomie des individus, la disponibilité de ressources gouvernementales de même que la situation d'infériorité dans laquelle sont placés certains individus et l'impossibilité, pour eux, de faire les choix nécessaires. La Commission a aussi tenu compte du fait qu'un système d'exécution automatique basé sur l'existence d'un premier défaut de paiement pourrait impliquer un élément punitif, contrairement à un système qui traite les paiements alimentaires comme une déduction automatique du salaire ou revenu d'un individu. La majorité des commissaires a résolu le problème en choisissant un système permettant aux parties de renoncer, par écrit, au bénéfice de l'exécution automatique. Cette renonciation serait sujette au pouvoir d'un(e) juge d'interdire cette renonciation lorsque le ou la juge doute de la capacité des parties de consentir à la renonciation. Dans l'éventualité où les parties sont régies par le système, les articles portant sur l'exécution automatique s'appliqueront dès le premier défaut de paiement.

Voici quelques unes des recommandations de la Commission:

Que toutes les cours de la Nouvelle-Écosse adoptent des directives visant une plus grande uniformité et une plus grande justice dans les jugements portant sur les pensions alimentaires.

Que tous(tes) les bénéficiaires de paiements alimentaires régis(es) par un système d'exécution automatique soient traités(ées) de façon égale.

Qu'un tribunal unifié de la famille (Unified Family Court), possédant tous les pouvoirs détenus présentement par la Cour suprême (Supreme Court), en matière d'exécution d'obligations alimentaires, soit créé pour la province.

Qu'un poste de Percepteur des paiements alimentaires soit créé afin que seule cette personne ait la responsabilité de veiller à l'exécution des obligations alimentaires imposées par les jugements déposés auprès d'elle.

Que tous les jugements imposant des obligations alimentaires prévoient le dépôt du jugement auprès du Percepteur des pensions alimentaires en vue de son exécution automatique.

Qu'il soit permis à toutes les personnes bénéficiaires d'un jugement ordonnant le paiement d'une pension alimentaire rendu avant l'entrée en vigueur du nouveau programme, de déposer le jugement auprès du Percepteur des paiements alimentaires. Ceci pourra être fait sans le consentement des deux parties au jugement.

Que tous les jugements ordonnant le paiement d'une pension alimentaire présentement devant le tribunal de la famille (Family Court) pour exécution, soient transférés au Percepteur des paiements alimentaires.

Que toute personne partie à une entente prévoyant le paiement d'une pension alimentaire puisse déposer cette entente auprès du Percepteur des paiements alimentaires. Dès son dépôt, l'entente équivaut à jugement en ce qui concerne son exécution.

Que les parties à un jugement imposant le paiement d'une pension alimentaire puissent renoncer au programme à condition que cette renonciation se fasse par écrit et soit signée par les deux parties.

Qu'une des parties au jugement prévoyant le paiement d'une pension alimentaire puisse le déposer auprès du Percepteur des paiements alimentaires même si les parties avaient renoncé au programme d'exécution automatique.

Que le tribunal ordonnant le paiement d'une pension alimentaire ait le pouvoir d'interdire la renonciation au programme, s'il le juge dans le meilleur intérêt des parties au jugement.

Que la saisie de tout revenu saisissable du débiteur soit automatiquement ordonnée par le Percepteur des paiements alimentaires, dans le cas où le débiteur fait défaut de payer même un seul versement. Le débiteur n'aura pas droit à une audition.

Que, dans le cas d'absence de revenu saisissable, le Percepteur des paiements alimentaires puisse saisir et vendre les biens du débiteur après l'émission d'un bref de saisie, sans droit pour le débiteur de se faire entendre afin d'expliquer le défaut de paiement.

Que les amendements nécessaires à la mise en oeuvre du système d'exécution automatique soient apportés à la *Loi sur les obligations alimentaires (Family Maintenance*

Act); la *Loi sur le tribunal de la famille (Family Court Act)*; la *Loi sur les obligations alimentaires des testateurs (Testators' Family Maintenance Act)*; la *Loi sur l'indemnisation des travailleurs et travailleuses (Workers' Compensation Act)*; la *Loi sur les prestations de retraite (Pension Benefits Act)*; la *Loi sur l'exécution des jugements imposant des obligations alimentaires (Maintenance Orders Enforcement Act)*; et la *Loi*

sur l'accès à l'information relative à l'exécution des obligations alimentaires (Family Orders Information Release Act).

Que les recommandations contenues dans ce Rapport soient mises en vigueur par l'adoption d'une nouvelle loi, similaire au projet de *Loi sur l'exécution des obligations alimentaires* qui se trouve à l'annexe A.

* Traduit de l'anglais par Me Nathalie Bernard, LL.B (Université Laval), LL.M (Dalhousie University).

LAW REFORM KMISM WJIT NOPA SKO'SIA

MAWI WTEJKEWY RIPORT WJIT TLI-KTMOQJENATE WEN TA'N TLI APOQNMUATA WIKMA SULIEWEYIKTUK

*** NIKANATUEK**

Mawi-wtejkewey riport ta'n kisi wi'kmi'tij Law Rifom Kmisnaq wjit Nopa Sko'sia wesku'tk ta'n tli-ktmoqjenaten wen suliewey apankitmn wjit wikma'jl aq wnijink ta'n tujiw puni-tkweyati'tij aq elt kekinua'tuaji kapmnta wjit Nopa Sko'sia ta'n kisi tli-apoqnmamti'tiss. Kisi wi'kmi'tij wi'katikn teluisik MAINTENANCE ENFORCEMENT ACT wesku'tk ta'n tli-ktmoqjenaten wen apankitmn. Kmisnaq wi'katiknek kisi wi'kmi'tipnek aq tepi'ketu'tipnek Nopa Sko'sia Ju'layo'q 1992ek wesku'tkipnek ta'n mimajuinu'k teli-mtua'lukwi'tij apankituowey teli-pkije'k wejiaq ta'n tel-nikua'ti'tij. Me' aji-mtue'k ap weskittesk ta'n tujiw ketmoqjenut apankitmn wen ke'sk ki's metua'lukwi'tij ta'n tel-niktua'ti'tij mu pasik wkamlamunuaq katu elt sulieweyiktuk.

Tlia' kejitu'tij kmisnaq teplutaqn ma' kisi apoqnmamukw na telamu'k koqoey me' ki'kajiw kapmntaq wtlukwaquow ankaptmnew mu teplutaqn aji-mtua'lukunew mimajuinu'k ta'n telawsulti'tij. Ta'n teltek nike' koqoey mimajuinu ta'n nuta't apankituksin elte'muj nekm ntutman. Na na nike' teluemk ta'n tujiw suliewey mu ika'nukw weji-pqoji-wkwayiktatijik keltituatl wikma'jl aq suliewey eweketoq ta'n tli-ajkneiwatal. Na telasik koqoey mu pasik aji-mtue'nukw weskittesk wjit nekmow katu wnijanua mo'qi ajkneiwa'tiji ta'n jiptuk ma' tepianukw wilu'ow, wutapsunuow aq me' koqoey ta'n nuta'tiss mijua'ji'jk wjit wlo'timuow. Mejit ne'wt ap na ta'n tujiw mu apankitmukw wen suliey wjit wikma elmi kespiaq na msit wen miamuj apankitk teli-pkije'k kapmnt mnuqlaten apoqnmuan mimajuinu'l aq wnijink tpi'neweyiktuk kulaman tepiatew suliey mesnmi'tij wjit telqatmi'tij aq wilu'ow. Na na nike' nkutey teluemkel msit mimajuinu'k Nopa Sko'sia miamuj apankitualsewa'titl ula e'pilitl kisna ji'nml ta'n mu kitu'-apankitmlikwl aq piami-ksika'takwi'tij ta'n tel-la'lujik kort ta'n ap miamuj aji ilsumujik.

Mawi-wtejkewey riportmuow wiaqi wikasik draft act ta'n ewikasikl kisutmi'titl kmisnaq tiskasn pe'priktuk. Ula kisutmi'tipnn il-wi'kasikipnn teli-pkije'k mimajuinu'k aq ma'w elukowa'tiji kapmnta ewi'kikewa'tipni kmisna aq telua'tipnik ta'n tel-mnueke'tipnn teplutaqnn wesku'tkl ta'n tli-ntutmuaten wen aq kmisnaq ankaptmi'tipnn teplutaqnn ta'n teluekl ktikl pra'vnsl aq teritori'l. Wtejkewey riport wesku'tk ta'n kapmnt tli l'te'muaten pma'tun netutmamkewey aq wiaqi-wsku'tk wtlita'sutiwow kmisnaq wjit ta'n koqoey weji-mknmi'titl keknue'kl teplutaqnn aq ewi'kmi'titl lejisle'sniktuk wjit ta'n kapmntaq wjit Nopa Sko'sia kisi wli iloqaptitaqq.

Ula draft act kekinua'tekek menaqa ta'n tl-pmiass teplutaqn wjit netutmamkewey. Kmisnaq teli-ktlamsitmi'tij kapmntaq l'te'muj ntutmuanew wenl elmi kespiaq me' aji anawtitew wjit msit

mimajuinu'k Nopa Sko'sia aq wjit e'tasiw wskwijinu. Ta'n tel-wikasik teplutaqn ma' aji-

mtue'nukw kisi'sik wjit mimajuinu'k katu jiptuk awnaqa aji-nqamasa'lukutaqq ta'n tujiw

telamu'k ksm'teskakwi'tij. Na na nike' teluemk jiptueke'l naji-nqamasa'lukutew mimajuinu apankitk aq ma' nekmowey ap wjin'ti'kw.

Ta'n koqoey metua'lukwi'tip kmisnaq na ketloqo msit kortl, ksatmi'tij kisna mu, kapmntal l'te'muanew ta'n teli-ntutmalsewa'tij mimajuinu'l teli-nqase'k kisi korte'malij kisna skmatmnew ne'wt mu apankitmlikw tmk we'kayiw net tela'taqati'tij. Pikwelk ta'n koqoey ankite'tmi'tip miamuj staqe nike' teli alsumsij mimajuinu aq ketloqo kapmnt wskweiwanew lukowinu' net tl-lukutnew aq we'kayiw ankite'lma'tipni ta'n mu tepikna'tilikwi kisna tepaskma'tilikwi kisita'sultinew nekmow ta'n tla'taqatinew. Ap ta'n koqoey kmisnaq sespete'tmi'tip na ketloqo klu'lktn skma'tinew mi'soqo wen ne'wt o'pla'tekej teli-pkije'k jiptuk tli-ankamkutew mu newte' telo'tasulti'tikwek mimajuinu'k staqe nike' tle'ktiss nkutukwayiw wen telsumat te's kort eliet. Nutayiw me' atelknik kmisnaq me' aji-wlsitmi'tip iknmuanew mimajuinu' kisi mnui'kusinew ta'n telsumupnik kortiktuk aq lpa wikasin wi'katikniktuk ta'n kitu'-tli-mnui'kusijik. Na tltek, me' ku'kntew jaj mlkikno'ti kis-naqa'lan mimajuinu'l kisna mimajuinu'k mnui'kusinew tlite'tk mu wla'sin ta'n kitu'tla'teke'tij. Teli-pkije'k nike' e'pit aq ji'nm kitu'-niktua'tijik maliamkwi'tij kort ma' nkutukwayiw tsumat wen kapmntal ntutmakun wjit ta'n teli apankituaj wikma ke'sk mna'q ne'wt o'pla'tekelikw aq mu apankitmlikw. Na tujiw atel pqoji-ntutmakutal kapmntal.

Ula nike' kmisnaq kisutmi'titl pem-wikasikl:

Kortl Nopa Sko'sia apoqnmattmnew tetpa'luksin e'tasiw mimajuinu ta'n telsumat tli-apoqnmuan wikma sulieweyiktuk.

Apankitude'wk elt wijey nekmow tetpa'luksinew ta'n naspultijik "automatic system".

Maw-lukwek famli kort wjit msit Nopa Sko'sia aq tetpiknetmn Supri'm Kort.

Lpa ten a'ffis ta'n teluisik Director of Maintenance Enforcement aq nut-tlueken ntutmalsewan mimajuinu'k wjit Nopa Sko'sia ta'n wtuisnmual ewikasikl Trektrewiktuk.

E'tasiw ta'n telutasik kort wesku'tk apankituowey nespi-wikasitew kinua'taqn teluek nasui'kuksin wen Trektr wjit Maintenance Enforcement kulaman nkutukwayiw kisi-ntutmalsewatan.

Mimajuinu'k kissumupnik ta'n tl-apankittaqq ke'sk mna'q pro'kram ika'nukwek asite'lmuksinew wtuisnmual ika'tuksinew Trektrewiktuk kulaman kisi-ktmoqjenten ta'n tela'mati'tip wjit apankituowey. Ula kis-tla'teketew wen ke'sk mna'q kitk wel'te'tmi'tikw jel tlia' pasik newte'jit ktu'-nasui'kusit Trektrewiktuk.

Apankituowe'l nike' ta'n famli kort i'-ktmoqjenkipnn iknmuksin Trektr wjit teli-ntutmuet ktmoqjenmn weja'tekemk nike'.

Etu'k mimajuinu'k ta'n kisa'matipnik wjit apankituowey kis-lula'tital Trektral wjit nuji-ntutmuet aq nekml ntutmalsewkutal. Ne'wt nasui'kusit net kisa'matuti tli-wsua'tasitew staqe nike' jaj kisutkek. Kitk mimajuinu'k ta'n kisa'matipnik ta'n tla'sitew apankituowey kisi mnui'kusitaqq pro'kramiktuk lpa wi'katikniktuk tlue'tij aq wtuisnmual nasui'kmi'tij.

Teluemkiss nike' mimajuinu'k kisa'matipnik ta'n tla'sitew apankituowey menui'kuisnik pro'kramiktuk me' ki'kajiw kisi il-nasui'kusitew e'tasiw wen ta'n pa ketui-tle'k.

Kort ta'n kissutkip apankituowey ta'n tla'sitew mawi amskweseweyek wsco'ttew me' mlkikno'ti kis-naqa'lan wenl mnui'kusilin tlite'tk me' aji-wla'lukunew siawten wtuisnmual.

Mimajuinu pela'toq jel tlia' pasik ne'wt ta'n tel-apankitk kisi wji-mnkitmuaten wsulieweymk ta'n etl-lukwet jel ma' nuta'nukw kort miamuj il-lien.

Tlueness nike' mu wetapankituasip tami, Trektr kisi koqqa'tuatew wutmo'taqn aq ntui'sketutew ke'sk mna'q kort ela'laqw aji-wjikesin ketloqo kis-tla'teken.

Ne'wt sapa'sik ula kisutmi'tij kmisnaq na miamuj pa kiwa'skuikasital elt Famli Maintenance Act; Famli kort Act; Testators' Famli Maintenance Act; Workers' Compensation Act; Pension Benefits Act; Maintenance Orders Enforcement Act aq Famli Orders Information Release Act kulaman nkutukwayiw kisi-ntutmuaten wen aq lukwetew piley teplutaqn.

Kmisnaq kisutmi'titl u't ewikasikl riportiktuk kisi-wekasital teli-nqase'k piley teplutaqn kisitasik suel wijey telatuek aq Maintenance Enforcement Act ta'n ewikasik apendix A-iktuk.

* Mi'kmaq translation provided by Bernie Francis, Sydney, Nova Scotia.

I INTRODUCTION

1. The Project

The Law Reform Commission of Nova Scotia's project reforming the laws of Nova Scotia which deal with the enforcement of maintenance obligations was initiated in August, 1991. A committee was formed which consisted of Commission President William Charles, Commissioners Beverley Johnson and Mr. Justice John Davison and Legal Researcher, Anne Jackman. A resource committee was established by the Commission composed of individuals involved with the practice of family law which provided the Commission with feedback on its initial recommendations. The Commission would like to express its appreciation to the members of this committee who made a significant contribution to the project: Judge Connie Sparks, Halifax Family Court; Judge Jim Williams, Dartmouth Family Court; Professor Rollie Thompson, Faculty of Law, Dalhousie University; Kay Rhodenizer, Barrister and Solicitor and Doug Campbell, Barrister and Solicitor.

In order to obtain public participation, the Commission issued a Discussion Paper *Enforcement of Maintenance Obligations* in July, 1992. The Discussion Paper made 27¹ suggestions for reform of the law including a recommendation that a new law be passed to deal specifically with the enforcement of maintenance obligations. The Commission proposed that one of the ways to address some of the problems encountered by people who pay or receive maintenance would be to establish an automatic enforcement program. Automatic enforcement would shift the burden of enforcing a maintenance obligation from the recipient to a government office (the proposed office of Director of Maintenance Enforcement). The proposed legislation would require that all court orders for maintenance be enforced through the Director's office. However, people could exclude themselves from the automatic enforcement system (that is, "opt out" of the program) with the written consent of both parties to the maintenance order. Additionally, individuals with maintenance agreements, rather than court orders, would also have the option of filing their agreements with the Director's office for automatic enforcement.

The Discussion Paper, which invited comments from the public on the proposals and suggestions presented, was distributed throughout Nova Scotia.² To date, approximately 700 copies have been distributed.

By October, 1992, 26 written responses were received³. These came from the legal community, government departments and agencies, groups specifically interested in issues affecting women, and private citizens. The submissions were extremely helpful to the Commission and the Commission thanks all those who responded for taking the time and effort to make their views known.

¹ The recommendations reflected the views of a majority of the Commissioners on each issue.

² Appendix B to this Report sets out a list of persons who received copies of the Discussion Paper.

³ Appendix C to this Report sets out a list of persons who responded to the Discussion Paper.

This Report contains the final recommendations of the Commission to the Government of Nova Scotia including a draft *Maintenance Enforcement Act* which the Commission is recommending that the Government consider adopting. These recommendations are based on the Commission's research, consultation process and the deliberations of the Commissioners. While the decisions of the Commission are made as much as possible on the basis of consensus, there are some instances where the five Commissioners hold differing perspectives and are unable to reach consensus. In this case the final recommendations are made on the basis of a majority view. In order to accommodate the concerns of Commissioners who hold differing points of view and also to serve the broader educational purpose of law reform research, alternate points of view that are held by Commissioners are also part of this Report.

2. Terminology

This Report uses the same language to describe the issues as the Discussion Paper.

"Maintenance" describes the financial support owed to a spouse, ex-spouse or child during or after a relationship. This Report is concerned with the enforcement of maintenance orders for both spousal and child support but does not deal with orders which provide maintenance to a parent who may be financially dependent upon his or her children.

"Recipient" refers to the person entitled to receive maintenance under a maintenance order of the court or a maintenance agreement.

"Payor" refers to a person who is obliged to pay maintenance according to a maintenance order or a maintenance agreement.

"Maintenance debtor" refers to a person who owes maintenance to another according to a maintenance order or a maintenance agreement but who has not paid.

"Maintenance creditor" refers to a the person who should be receiving maintenance according to a maintenance order or a maintenance agreement but who has not received it.

"Variation" refers to an application which is made to a court to change or vary the amount of money to be paid as maintenance. The application may be started by either the recipient or payor. The person who applied must prove that there has been a change in the financial situation that justifies the suggested change.

II GENERAL PRINCIPLES AND POLICY DECISIONS

BACKGROUND

1. The financial effects of marital breakdown

The emotional and financial consequences of a marital breakdown⁴ cannot be understated. The financial consequences are especially serious for the parent given primary responsibility for the care of any children of the relationship (the "custodial parent"). It has been estimated that after divorce, women and minor children experience a 73% decline in their standard of living in the first year after divorce, while their former spouses experience a 42% rise in their standard of living⁵.

Evidence also suggests that the economic consequences of child raising continue long after women have re-entered the workforce. A recent report from the federal Department of Justice suggests that women who interrupt or reduce their labour force activity in order to assume child raising duties are likely to suffer a sizeable loss of earning capacity that may continue for many years after their re-entry to the labour force⁶. Furthermore, these losses are **in addition** to those which women in general suffer due to discrimination in the labour force⁷. It has long been known that women and children are over-represented among Canada's poor. The results of the 1986 Census showed that 82% of single parent families were headed by women⁸.

Although the roles of men and women in families with respect to child raising responsibilities are gradually changing, the reality remains that most maintenance recipients are women. According to 1988 Revenue Canada tax data, barely 2% of maintenance recipients in Canada were male⁹. In fact, the male maintenance recipients were excluded from the analysis of data in Statistics Canada's paper on support payments since men who head single-parent families generally have higher incomes than women who are single parents and it was feared that their

⁴ Although this report refers to "marital breakdown" we recognize that many relationships from which maintenance obligations flow are not marital in nature. This term includes a maintenance obligation which arises for individuals who may not have been legally married.

⁵ L. J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York : Free Press, 1985).

⁶ R. Kerr, *An Economic Model to Assist in the Determination of Spousal Support* (Prepared for the Department of Justice and Status of Women Canada, Spring 1992).

⁷ *Ibid.* at 1. The courts have recently adopted a new approach to spousal support cases based upon lost income potential.

⁸ Statistics Canada, *A Portrait of Children in Canada*, Reference no. 47017, (Ottawa, October, 1991).

⁹ D. Galereau, "Alimony and Child Support" (Summer, 1992) *Statistics Canada Perspectives* 10 at 10.

inclusion could inflate the data¹⁰.

When comparing the financial circumstances of maintenance payors and recipients, Statistics Canada found that the income of payors was much higher than that of recipients (roughly double). According to Revenue Canada tax data, the differential between payors and recipients is even greater than in the general population¹¹.

Recent data supports the view that maintenance payments are not adequately addressing the financial needs of maintenance recipients and their children.

In Canada, most custodial parents and children continue to suffer from a lower standard of living than non-custodial parents. As Professor Carol Rogerson states in her 1989 review of Canadian divorce cases¹²:

"Household incomes of the custodial parent are typically both below those of the non-custodial parent and shared between more persons (there are typically three persons in the custodial mother's household -- two children and herself-- and one person in the non-custodial parent's household, until new family relationships are formed). It is rare that household incomes are equalized, let alone standards of living". (p.3)

2. The need for maintenance guidelines

In June 1990, a federal/provincial/territorial Child Support Guidelines Project was initiated to define the rules for determining child support payments. The Discussion Paper which followed highlights the major problems relating to current child support awards as:

- inconsistency between awards;
- inadequacy of the award; and
- inequities in the system.¹³

The Law Reform Commission on Nova Scotia has had a great deal of difficulty separating the problem of the enforcement of maintenance obligations and the need for support guidelines. Numerous individuals consulted on the project expressed concerns about the inconsistency and inadequacy of maintenance awards in Nova Scotia. Many of the written submissions responding

¹⁰ *Ibid.* p.10.

¹¹ *Ibid.* note 9, p.19.

¹² C. J. Rogerson, *Review of Support Factors and Objectives in Case Law Decided Under the Divorce Act, 1985* (Report for the Department of Justice, Canada, Dec.'89) at 101.

¹³ J.D. Payne, *Spousal and Child Support Guidelines, Report for the Department of Justice Canada*, Oct. '88, p. I-22 as cited in *Child Support: Public Discussion Paper* (Report of Federal/Provincial/Territorial Family Law Committee, June 1991) at 1.

to the Commission's Discussion Paper also reflected dissatisfaction with the lack of guidelines to ensure uniformity of maintenance levels in Canada. This was a concern of maintenance payors and maintenance recipients alike.

The issue of deciding on the proper level of child and spousal support at an initial maintenance hearing is closely tied to the questions of when a maintenance order can be varied and when arrears can be forgiven. Since court hearings to enforce maintenance orders are often combined with applications to vary the amount of the order, the adoption of uniform support guidelines is critical to any serious upgrading of the present system of maintenance enforcement.

By way of illustration, the Commission has considered the problem of how a payor's second family impacts upon the financial obligation to the first family. Decisions on how a second family affects an order for maintenance varies from one part of the country to another and two lines of reasoning have emerged: the obligation to the first family can be interpreted as a debt which travels with the payor; or, the second family is seen to require a chance to flourish even if this is at the expense of the first family¹⁴. Regardless of which view is appropriate, without guidelines, payors and recipients do not know what to expect in court and lawyers are unable to advise their clients with any degree of confidence.

The Commission recognizes that a new method of determining support will not benefit recipients where financial resources are insufficient to provide adequate support. Nor will guidelines relieve many Nova Scotia women and children from poverty since this is dependent upon significant advances in other important areas such as shared parenting responsibilities between mothers and fathers, adequate and affordable daycare, and employment equity.

Better methods of determining the level of maintenance are necessary, however, to address the inequities in the system seen among individuals of similar means. If there is more consistency in awarding maintenance, payors may have more faith in the legal system and may be more inclined to comply with the orders or agreements.

Even if consistent and equitable maintenance guidelines are adopted by the courts in Nova Scotia, the need for reform in the area of enforcement will still be of great concern to maintenance recipients since a more realistic order will only be useful if it can be collected.

The Commission recommends that:

The courts of Nova Scotia adopt guidelines to help provide consistent and equitable maintenance orders.

¹⁴See, for example, *Northcott v. Northcott* (1986), 59 Nfld. & P.E.I. Reports 199 where the Newfoundland Trial Division held that since the first family had already broken down and could not become a viable unit the second family should be given a chance to prosper. In contrast, in *Doole v. Doole* (1992), 32 R.F.L. (3D) 283 the Alberta Court of Queen's Bench held that first families take precedence.

3. The enforcement problem

The rules, practices and procedures for enforcing maintenance orders were described by the Law Reform Commission of Canada in a 1976 study paper as the "... weakest link in the legal chain that comprise family law"¹⁵. The Law Reform Commission of Canada, at that time, estimated that default levels may reach 75% of all orders nationally¹⁶. Some would argue that the system has not improved greatly in the decade and a half since the time of that report.

In Ontario, for example, it has recently been estimated that there are 90,000 unpaid support orders, representing \$470 million in delinquent payments¹⁷.

Studies in the 1970s and 1980s examined the question of whether there are any indications of who defaults on maintenance orders. A British Columbia study which examined default cases in Vancouver concluded that fathers who had left the area tended to contribute only minimally and poorer fathers paid proportionately more than their wealthier counterparts.¹⁸ But the conclusion of the report was that no clear profile of the defaulter emerges. Similar conclusions were drawn in a Denver study on the success of enforcing out-of-state orders¹⁹.

Another study, conducted by the Canadian Institute for Research in Calgary, concluded that many individuals who default on maintenance payments do so not because they are unable to pay but because they refuse to pay²⁰. Other studies show that maintenance obligations are also evaded by spouses and parents who are easily able to support their families. A study conducted for the Victoria Family Court in 1977 uncovered numerous cases of prosperous maintenance

¹⁵ Law Reform Commission of Canada, *Family Law Enforcement of Maintenance Orders*, by Edward F. Ryan (Hull, Quebec: Supply and Services Canada, 1976) at 1.

¹⁶ *Ibid.* at 21.

¹⁷ "Payroll Deductions for Family Support to Start Next Spring" (1991) 4 *Canadian Human Rights Reporter*, no. 38, at 6.

¹⁸ A. Wachtel and B.E. Burtch, *Excuses, an Analysis of Court Interaction in Show Cause Enforcement of Maintenance Orders* (A joint research project with British Columbia Ministry of Attorney General Policy Planning Division, Research and Evaluation Unit, 1981) at vi.

¹⁹ L.M. Yee, "What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver Family Court" (1979) 57 *Denver Law Journal* at 21.

²⁰ Alberta, Canadian Institute for Research and Steering Committee: *Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved* (Prepared for the Institute for Law Research and Reform, 1981, Volume 1, Summary Report) at 2.

defaulters²¹.

Many of the maintenance payors who responded to the Discussion Paper indicated that for some people, the decision not to pay the court-ordered maintenance was linked very closely to their anger and frustration with the court order which determined custody and access. The Alberta research, however, indicated that there was no statistical evidence that dissatisfaction with access arrangements was associated with irregular or non-payment²². The position of the Commission on the issue of custody and access decisions is that while unhappiness with these decisions may, in fact, be the reason why many people do not obey the court orders or even agreements to pay maintenance, this is not a productive or useful way to deal with this anger since it imposes material and emotional harm on the children, a cost on society, and does not necessarily address the real source of anger or frustration.

Whatever the motives for evasion of maintenance obligations, successful evasion is possible only because enforcement remedies are inadequate.

While there do not appear to have been any empirical studies conducted in Nova Scotia with respect to the rate of default of maintenance orders, the Nova Scotia Task Force on Family and Children Services²³ received submissions with respect to the difficulty for women who are attempting to have maintenance orders enforced in the province and concluded that:

"The system for the enforcement of maintenance orders is generally dependant on having the defaulting spouse respond to mailed requests for payment or summonses ordering his appearance in court. Where warrants are issued, the speed with which they are served on the defaulting spouse is dependant on law enforcement officials who may have hundreds of other warrants to serve. So the wife must wait, and, in the meantime, try to obtain municipal social assistance to make up the difference in her income, or ask for an adjustment to her family

benefits payment. Through all of this, children may be hungry, inadequately dressed and without other necessities.

There are, then, some serious short- and long-term consequences for the woman who finds herself in this predicament. Briefly, a few of these are:

²¹ S. Morrison, Victoria Family Court Maintenance Project, Unpublished report (1977), cited in "Issues in the Determination and Enforcement of Child Support Orders" B. Burtch, Pitcher-LaPrairie and A. Wachtel (1980), 310 *Journal of Family Law* No.1 at 14.

²² See *Matrimonial Support Failures*, *supra*, note 20 at 4.

²³ *Report of the Task Force on Family and Children's Services* (Halifax: Queen's Printer, 1987), (Co-Chairs: B. Harris & D. Stevenson) at 28.

- A situation is created in which it is impossible to plan monthly finances and expenditures.
- The woman is unable to maintain consistent attendance at work or in a training program because of the frequent absences required to attend repeated court hearings. This decreases her ability to achieve or work toward independence, and therefore can lead to a longer dependence on social assistance.
- The woman may have to approach the municipal unit for assistance on a temporary basis, involving another element in an already complex scenario.
- The children in this family situation suffer too, particularly if there is insufficient money for clothing, food or special needs. Only in the years ahead will society feel the impact of their suffering, which is often eventually expressed in family violence, delinquency, mental illness, abuse and perpetuation of a cycle of poverty.

The Nova Scotia Department of Community Services Consolidated Statistics for the fiscal year 1990/1991²⁴ presents statistics with respect to the numbers of court orders for maintenance payments in the province and the amount of money collected on those orders. At the time of the report there were 11,912 active court orders in the province. Unfortunately, the report does not state the amount of money which the Family Court was unable to collect due to defaulting payors. It does note, however, that the number of default summonses (violations) issued for the year was 6,798 for the province. This figure leads one to conclude that the problem of non-payment of maintenance continues to be a significant one in Nova Scotia.

Where a person is receiving Family Benefits and a maintenance payment is missed, the Family Benefits Division of the Department of Community Services will make adjustments to the person's monthly Benefits cheque to reflect the unpaid maintenance up to the maximum available. This process of providing *ad hoc* cheques causes delay in receiving funds and places additional stress on the Family Benefits recipient. This matter was also discussed in the Task Force Report on Family and Children's Services and the recommendation was made that an assignment of maintenance program be implemented so that a maintenance order would be paid

²⁴ *The Nova Scotia Department of Community Services 1991 (27th Annual Report)* at 64.

to the province and enforced by the province. As the income is received directly by the province, the amount would not be charged as income to the person receiving Family Benefits payments.

In June, 1992 the Family Maintenance Income Support Program was introduced by the Nova Scotia Government which has an Assignment of Maintenance Program. The Commission is of the view that the Assignment of Maintenance Program does not establish the type of assignment recommended by the Family and Children's Services Task Force. The assignment, at present, is only an assignment of the maintenance payments and not the order and therefore the recipient remains responsible for enforcement. Additionally, the requirement that a recipient experience three consecutive missed payments before being eligible for an assignment does not allow the operation of an assignment program which applies to all Family Benefits recipients who receive or are entitled to receive maintenance.

The cost to the Family Benefits Division of the Department of Community Services as a result of non-payment of maintenance is approximately \$906,000 annually. Thus it can be seen, that any successful attempt to improve the system of maintenance enforcement will have a direct financial benefit to the province.

The Commission suggests that:

Improvements made to the system of maintenance enforcement will have a financial benefit to the province.

III MAINTENANCE ENFORCEMENT

PRESENT SYSTEMS OF ENFORCEMENT IN NOVA SCOTIA

1. Provincial

(a) General

In Nova Scotia, the remedies presently available to enforce a maintenance order are similar to those which other persons who are owed money must seek (eg. seizure and sale of assets, garnishment of wages, etc.). But there are additional enforcement procedures which are available only to maintenance creditors. These include default hearings, Family Court security orders, receivership and imprisonment.

(b) Default Hearings

When an individual who is required to pay maintenance fails to make the payment, the usual procedure in Family Court is that she or he will be summoned to appear in court to explain to a judge the reasons for the failure to pay. The hearing during which the explanation is heard is called a default hearing, or a show cause hearing.

If the judge finds that the maintenance debtor did not have a reasonable excuse for the default, the judge may:

- issue what is called an "execution order", an order to enforce the judgment usually by seizing and selling the assets of the debtor;
- enter a judgment for the outstanding amount; that is, order that the maintenance debtor owes a certain amount of money which can be enforced; or
- issue a warrant for imprisonment for a period of time not greater than three months (see section 42(1) of the *Family Maintenance Act*²⁵).

The judge also has the power to cancel or reduce the outstanding arrears where it appears to be in the best interests of the parties and their dependant children. For maintenance obligations created under Supreme Court orders, however, the Family Court judge may only make a recommendation to the Supreme Court to have the arrears forgiven since the Family Court does not have the power to amend orders of the Supreme Court.

The major problem with the use of default hearings in Family Court is the delays which are caused by repeated court appearances. The process often takes 4-6 months in order to collect on a default of payment. Once a maintenance payment is missed, a default summons is issued.

²⁵ 1989, R.S.N.S., c. 160.

This often takes 3-4 weeks after a payment is missed. The defaulter will be required to appear in court approximately 4-6 weeks after the summons is sent. This date may be adjourned for another 4-6 weeks if the defaulter shows up in court seeking an opportunity to hire a lawyer. When the default hearing finally occurs, as late as three or four months after the first non-payment, the hearing may be adjourned for yet another date if the defaulter wishes to attempt to change the amount of the original order. Even if the default hearing goes ahead without any adjournments, the defaulter may simply promise to pay and the whole cycle may begin again the following month if payment is not made.

(c) Execution Orders

Perhaps the most useful remedy available to enforce any judgment is that of garnishment or seizure of assets (usually wages). This is done through the use of an execution order. It may not always be a satisfactory remedy for a maintenance recipient, because the defaulter may not have wages or assets to be seized, or assets may be registered in the name of a third person.

To enforce a court order according to the Supreme Court Civil Procedure Rules, the maintenance order must be made by the Supreme Court of Nova Scotia. Under the *Divorce Act*²⁶, people involved in a divorce can ask the court for additional orders for custody, access or maintenance of a spouse or child. These orders are part of what is called the "corollary relief judgment." This means that a corollary relief judgment in a divorce is an order of the Supreme Court, and an execution order is consequently available as a means of enforcing the maintenance order which is in default. The maintenance creditor is required to file a sworn statement, or affidavit, with the court outlining the details of the default. The affidavit, together with other documents, are filed with the Supreme Court. The execution order is then forwarded to the sheriff's office along with any available information relevant to the maintenance debtor's financial circumstances (i.e. address, phone number, marital status, number of dependants, employer, salary or wages, bank account, ownership of property, etc.).

An execution order may also be issued by the Family Court for the orders or agreements which it has jurisdiction to enforce. A Family Court execution order has priority over all other execution orders except ones issued by the Supreme Court with respect to maintenance.

Once a person has obtained an execution order, a number of options are available to collect on the debt including the seizure of tangible personal property, bank accounts, rental income, and third party payments which most frequently take the form of salaries from employers. It often takes several months in some jurisdictions for a sheriff to seize a debtor's assets and sell them.

The nature of enforcement by execution differs in Family and Supreme Court. For example, in Supreme Court, garnishment of wages is limited to 15% of a debtor's income but, if the order

²⁶ R.S.C. 1985 (2nd Supp.), c. 3.

pertains to maintenance, an application may be made to court to have the amount increased²⁷. In Family Court, however, a garnishee order may be issued in the amount equal to 125% of the maintenance order if the order is already in arrears. Thus, for example if a person has not paid a \$100 a month maintenance order for three months and now owes \$300, a garnishment order can be issued from the Family Court in the amount of \$125 per month, which is 125% of the maintenance order. This allows the court to collect the monthly sum plus 25% towards payment of the arrears until the debt is cleared up.

(d) Registration Against Land

Once an order for payment of money is obtained in the Supreme Court (including an order for the payment of maintenance), a certificate of judgment for the order can also be obtained. A certificate of judgment is the legal document which proves that the judgment exists. Alternatively, if the order has been issued by the Family Court, it has jurisdiction to grant a judgment for the amount of the outstanding arrears. These judgments can be registered in the Registry of Deeds for any district where the maintenance debtor owns land. This effectively prevents the maintenance debtor from selling or mortgaging the property without satisfying the debt.

However, the likelihood that the maintenance debtor's interest in the land will be already be mortgaged, or registered in someone else's name often makes this remedy an ineffective one.

(e) Family Court Security Order

A Family Court judge may make an order for security to be paid into Family Court at the time of an original maintenance application. A security order can also be granted at a later hearing. The order may state that upon default of payment of maintenance, the property shall be sold to secure payment. The order may then be registered at the office of the Registrar of Deeds.

Application may later be made to the court for sale of the security should a default occur. From the information available to the Commission, this particular remedy appears to rarely be ordered by most judges of the Family Court.

(f) Receivership

One of the options available for a maintenance creditor who has tried all the other remedies is to apply to the Supreme Court for an order placing the maintenance debtor into receivership

²⁷ For example in *Kennedy v. Kennedy* (1989), 84 N.S.R. (2d) 265, a wife applied under Rule 53 for an Execution Order to garnishee her husband's wages for future monthly interim maintenance payments. Evidence was provided to show that the husband had continued to avoid paying maintenance in the past. The Supreme Court Trial Division held that the court had the discretion to order garnishment for future debts and to waive the 15% rule. The rule was waived to allow garnishment equal to the amount of the monthly interim award.

under Civil Procedure Rule 52.01(1)(b) and appoint the maintenance creditor as receiver of the salary.

A Supreme Court receivership order can allow the maintenance creditor to intervene for third party payments when the maintenance debtor is self-employed. This process is a long and expensive one which will be granted reluctantly due to the extreme nature of the remedy, but it may be an extremely useful and indeed the only remedy in some circumstances.

(g) Imprisonment/Contempt

Wilfully disobeying a court order to pay maintenance can result in imprisonment for a maintenance defaulter. Under the *Family Court Act*²⁸, a Family Court judge may use imprisonment as a means of enforcing Family Court orders and any maintenance agreements or Supreme Court maintenance orders registered with the Family Court. In other words, as long as the order or agreement is registered, a Family Court judge has authority to order imprisonment to enforce it.

The law is clear that a maintenance debtor must be given an opportunity to explain why she or he did not pay before imprisonment will be imposed.

From the information available to the Commission it appears that the attitude of Family Court judges in Nova Scotia about imprisonment for failure to pay maintenance varies greatly from one county to another and even from one court room to another.

If a Supreme Court order for maintenance has not been honoured, the maintenance creditor can apply to the court for a contempt order. Contempt is a wilful disobedience of a court order which is punishable by fine or imprisonment or both. The maintenance creditor must apply to the Nova Scotia Supreme Court to have a contempt order issued against the maintenance debtor.

The court must be satisfied that the maintenance debtor intentionally failed to comply with the maintenance order. The process itself is somewhat time consuming given that two court appearances are required. If the maintenance creditor is successful, the court may make an order for contempt which orders imprisonment upon failure to comply with certain terms (for example, payment of the arrears within a certain period of time) or it may simply order imprisonment. The order may also direct the maintenance debtor to pay a fine, or to provide money which is lost if he or she does not maintain good behaviour, or to pay legal costs and expenses. Additionally, it may direct the sheriff to take possession of the property of the maintenance debtor or to collect rents, profits or income until she or he complies with the terms of the order.

²⁸ R.S.N.S., 1989, c.159

(h) Tracing

The degree of difficulty which Family Court enforcement staff experience in locating maintenance creditors varies from one county to another. Fortunately, the ease with which information is made available to them has improved since the enactment of the *Family Orders Information Release Act*²⁹.

This law assists with the enforcement of custody and maintenance orders by authorizing the release of government information to assist the locating of children and maintenance debtors. Pursuant to the legislation, the Attorney General is authorized to release information to a person, service, agency, or body who is entitled to have a family order enforced or who is authorized by the Attorney General to assist with the enforcement.

A "family order" under this Act is broadly defined as:

A support order, a custody order or an order granting an access right and includes an order or judgment, or any interim order or judgment, relating to family support, custody or access that is enforceable in the province or in other provinces; (section 3(c))

An example of the type of information which may be released is the address of a maintenance debtor as well as the name and address of the maintenance debtor's employer. The most frequently accessed provincial information service is the motor vehicle registration databank.

The statute also allows for an agreement to be entered into with other provinces or the Government of Canada respecting the release of information from other provincial or federal databanks.

2. Federal

*(a) Family Orders and Agreements Enforcement Assistance Act*³⁰

The *Family Orders and Agreements Enforcement Assistance Act* is a federal law which is divided into two sections to deal with tracing of information and garnishment, and although the two parts operate independently, they both attempt to improve the enforcement of custody and support orders within Canada. The aim of the tracing provisions is to provide provincial enforcement agencies with information to help them locate people who have defaulted on Family Orders while the garnishment provisions allow for the garnishment of various federal money owing to the maintenance debtors.

²⁹ R.S.N.S., 1989, c. 161.

³⁰ R.S.C. 1985 (2nd Supp.), c. 4.

(i) Tracing

One of the problem areas which the Act attempts to address is that of confidentiality. To ensure that the information is released only to the appropriate authorities, the Act requires agreements between the federal government and the province or territory specifying which government organizations (for example, Family Court, police force, etc.) are authorized to receive the information.

The information available to be released is similar to that referred to in the provincial legislation above (that is, the address of the maintenance debtor and the name and address of the employer of the maintenance debtor). Indeed, the federal legislation requires that provincial databanks be searched before a request will be accepted to search the federal databanks unless there are reasonable grounds to believe that the missing person has already left the province or territory.

Unfortunately, the process itself is complicated. If the order requires payment directly to the maintenance creditor and she or he wishes to pursue the federal tracing procedure, an application must be made to court with a copy of the order and a sworn statement detailing the default and proof that provincial data banks have been searched unsuccessfully. The court then makes an application to the Department of Justice Enforcement Unit and the federal data banks of the Department of Health and Welfare Canada and the Canada Employment and Immigration Commission are searched. The information is then forwarded back to the court. Alternatively, the Family Court Enforcement Office may forward the application to the Department of Justice directly and the information is then released back to the office. The data banks maintained by these two federal departments are quite extensive. The following Health and Welfare information banks can be searched: Canada Pension Plan Computer Master Data; Canada Pension Plan Record of Earnings; Canada Pension Plan Record of Earnings Enquiries; Canada Pension Plan Social Insurance Number Validator; Canada Pension Plan Retirement and Survivor's Benefits (Individual); Canada Pension Plan Disability; and International Social Security - Domestic and Foreign Benefits - Computer Master Benefit Data.

The Canada Employment and Immigration Commission information banks which can be searched are: Record of Employment; Benefit and Overpayment Master File; and Social Insurance Number Registration³¹.

Although the instructional booklet provided by the federal Department of Justice, *Federal Orders and Agreements Enforcement Assistance, Tracing Information Service*³² states that it should take no more than 30 days between a request for information and a response, Family Court workers in Nova Scotia have noted that the process often takes several months.

³¹ See F.M. Steel, "An Overview of Federal and Provincial Maintenance Enforcement Legislation" (1989), 4 *Canadian Family Law Quarterly* 261 at 286.

³² Ottawa: Minister of Supply and Services Canada, 1987.

(ii) Garnishment

Part II of the *Federal Orders and Agreements Enforcement Assistance Act* permits garnishment of federal monies owed to a maintenance debtor. A maintenance creditor must first obtain a provincial garnishment from the appropriate court or authorized provincial enforcement agency (depending on the province or territory). An application form together with the original order and the provincial garnishment is forwarded to the federal Department of Justice Enforcement Unit within thirty days of issuance of the garnishment.

The Department then requests available funds from the source departments which include: income tax refunds; unemployment insurance benefits; interest on Canada Savings Bonds; Canada Pension Plan benefits and Old Age Security benefits. The garnisheed funds are transferred to the Department of Justice and a cheque is forwarded to the provincial enforcement agency or court.

Recent amendments to the Act have been introduced which will amend the provisions pertaining to garnishee summons and prohibit garnishment of more than 50% of some federal funds.³³

(b) *Garnishment, Attachment and Pension Diversion Act*³⁴

This Act allows for the garnishment of salaries of federal public servants. Prior to its enactment, salaries of federal public servants were protected by the Royal Prerogative.

Part I of the legislation provides for the garnishment of salaries of all federal employees including civil servants, Members of Parliament, federally appointed judges, Senators, and members of the Royal Canadian Mounted Police. Part II, on the other hand, allows for the diversion of payments owed to federal public servants pursuant to a pension plan and provides for the application of additional legislation to deal with armed forces personnel.

(c) *Armed Forces Personnel*

The *Garnishment, Attachment and Pension Diversion Act* does not apply to Armed Forces personnel and provincial garnishment laws apply subject to the terms and conditions of the *National Defence Act*³⁵ and the Queens Regulations and Orders promulgated pursuant to the Act. Essentially, the Act allows garnishment of a member's pay allotment (salary) if the maintenance order is enforceable under the laws of Canada or a province or territory. Garnishment of Armed

³³ Bill C-79, *An Act to Amend the Divorce Act and the Family Orders and Agreements Enforcement Assistance Act*, 3rd Sess., 34th Parl., 1992 (second reading June 15, 1992).

³⁴ R.S.C. 1985, c. G-2.

³⁵ R.S.C. 1985, c. N-5.

Forces personnel is, therefore, relatively straightforward and effective.

If an Armed Forces member is retired, the statute which enables a compulsory allotment for maintenance is the *Canadian Forces Superannuation Act*³⁶ which provides for much the same procedure.

Maintenance Enforcement in other Jurisdictions

1. General

Traditionally in Canada, a maintenance creditor was treated much the same as any other creditor and it was her or his responsibility to hire a lawyer, locate a maintenance debtor, institute proceedings and follow through to the appropriate remedy.

For the maintenance creditor, often a person who has few other financial resources, this procedure is an expensive and time-consuming one. As a result, most provinces and territories in Canada have adopted computerized, automatic, state-initiated maintenance enforcement programs. Under such programs, the provincial or territorial government assumes responsibility for enforcing both federal and provincial orders which are registered within its system. Once registered, the maintenance payments are usually made directly to the enforcement office (usually to the Director or Administrator of Enforcement) as opposed to directly to the recipient and the government office then sends the money to the recipient. In an automatic enforcement system, when default occurs, the Enforcement Office takes measures to remedy the situation or if the maintenance debtor has absconded, it uses provincial and federal data banks to locate her or him. If the enforcement agency wishes to bring the maintenance debtor to court for a default hearing, the maintenance creditor does not have to hire a lawyer since the agency will normally have crown counsel or representatives to advocate the interests of the maintenance creditor.

Section 18 of the Nova Scotia *Family Court Act* states that where an order is made payable to the Family Court, it is the Family Court Officers' responsibility to monitor and enforce the order for non-compliance. It could be argued that individuals "choose" whether to have money paid to the court and if they so choose, the order is automatically enforced by the Family Court. But this is not the same as the automatic enforcement systems in other parts of Canada, because there may not be a "choice" for many recipients since some payors will, during registration, simply refuse to pay through Family Court. Additionally, at a maintenance hearing some judges will give a payor an opportunity to demonstrate a good payment record prior to ordering payment through Family Court.

Thus, it cannot be said that Nova Scotia has a truly automatic enforcement program which takes

³⁶ R.S.C. 1985, c. C-17.

the legal burden off the family.

2. Examples of "Automatic Systems"

Two provinces have taken the automatic enforcement program one step further to implement their own unique versions of what has been called "automatic wage attachment" or "immediate income withholding".

(a) Ontario

On June 13, 1991, Bill 17: *An Act to Amend the Law Related to the Enforcement of Support and Custody Orders*³⁷ received Royal Assent. The most significant feature of this legislation is the introduction of automatic support deduction from a payor's income source. Income source is defined in section 1(1) as follows:

"'Income source' means an individual, a corporation or other entity that owes periodic payment at regular intervals to a payor of,

- (a) wages or salary,
- (b) a commission, bonus, piece work allowance or other amount if the payment is not recoverable by the income source from the payor should the payor fail to earn the commission or bonus or fail to meet any production target,
- (c) a benefit under an accident, disability or sickness plan,
- (d) a disability, retirement or other pension,
- (e) an annuity,
- (f) income of a type described in the regulations; ("Source de revenue")"

The legislation requires that when a court makes an order for support providing for payment on a periodic basis at regular intervals, it must also make a support deduction order for the payment of the support. A support deduction order is an order which requires an income source to pay the money owed to the payor directly to the Director of the Family Support Plan (in essence, a type of garnishment procedure). Under the law a support order deduction is required even if

³⁷ 1991, S.O., c.5.

the court has been unable to discern an income source at the time the order is made.

Every support order is automatically enforced by the Director unless it is withdrawn from the Director's office or the person entitled to support signs a written notice that she or he does not want the order enforced by the Director. An exception to this rule is that a person receiving welfare or public assistance or one who has applied and is eligible does not have the option with respect to enforcement.

The total amount deducted by the income source is not to exceed 50% "net amount", defined as the total owed with deductions for income tax, Canadian Pension Plan, unemployment insurance, and union dues. The court may order a higher deduction but this is not to be done unless the payor receives income from at least two sources. Additionally, deductions may not be made for money owing to a payor as reimbursement for expenses covered by a medical, health, dental or hospital insurance plan.

A court has the discretion to immediately suspend a support deduction order at the time it is made or at a later time if it finds it is unconscionable or the parties agree they do not want it and the court requires the payor to post security of a minimum equivalent of four months support. In considering whether or not a support deduction order would be unconscionable, the court cannot consider:

- (a) good payment history of debts;
- (b) that the payor had no opportunity to demonstrate voluntary compliance;
- (c) that the parties agreed to suspend the order;
- (d) that it thinks the order should be varied. (see section 3.4(4))

The Commission received a number of submissions which favoured using the same approach as Ontario. As noted in our Discussion Paper, a majority of the Commission continue to believe, however, that this approach has a number of problems associated with it. First of all, the program may increase the bureaucracy of maintenance enforcement by requiring wage garnishment even in cases where there may never be payment problems. In those cases it is an unnecessary expense for both the employers and the government office which must regulate the process. Secondly, it does not give the payor an opportunity to demonstrate a good payment history before her or his income is garnisheed. Most importantly, however, it allows only those individuals who can afford to post four months security to opt out. The reality is that only individuals who are financially well off will be allowed to opt out of the program. The Commission believes that this policy gives an unfair advantage to individuals with higher incomes or economic standing. For many individuals it would be difficult to deposit security for even one month yet she or he may be the type of person who would pay on a regular basis.

The Commission recommends that:

All maintenance recipients under an automatic system be treated equally.

(b) New Brunswick

New Brunswick also has a form of automatic income deduction. New Brunswick's Bill 68³⁸ does not mandate automatic income attachment, however, the onus placed upon a payor at the time an order is filed is similar, in some respects, to Ontario's new income attachment program. Section 1(b) of the Bill amends Section 111 of the *Family Services Act* to include a definition of "income source" which is virtually identical to the one found in Ontario's Bill 17.

The legislation requires that within 14 days from the date of filing a support order, a payor must provide information to the court and:

- (a) make an arrangement with an income source, in accordance with the regulations, whereby the income source agrees to pay the money payable under the support order into court;
- (b) request a court administrator to make a Payment Order; or
- (c) file with the court security in the manner and amounts set by regulation to secure payment of the support order.

A Payment Order is essentially a garnishment or attachment whereby the income source is directed to pay money to the court (or to a person named in the Payment Order) to be applied against the amount payable under the support order.

Thus, a payor has two choices: to file security; or, to have an income source attached (whether arranged personally or by the court administrator). This differs vastly from other maintenance enforcement legislation (with the exception of Ontario) in that there is no requirement for default prior to the imposition of these measures. They are imposed upon any payor within 14 days after filing. This differs from the Ontario approach, however, since it allows the payor the option of filing security in the event that she or he is opposed to any garnishment or attachment. Ontario allows filing of security for "opting out" only and thus requires the consent of the debtor.

IV PROPOSED AUTOMATIC ENFORCEMENT SYSTEM FOR

³⁸ *An Act to Amend the Family Services Act*, F-2.2 Acts of New Brunswick, 1980 (assented to May 9, 1991).

NOVA SCOTIA

1. Introduction

The present system of maintenance enforcement in Nova Scotia is confusing due to the fragmentation of family law practice between Family Court and the Supreme Court. In its Discussion Paper the Commission recommended that a Unified Family Court be created to address this jurisdictional problem³⁹. The Commission continues to believe that a Unified Family Court is an important aspect of an efficient system of maintenance enforcement and it encourages the Government of Nova Scotia to implement the recommendations of the Nova Scotia Court Structure Task Force with respect to Unified Family Court⁴⁰.

The Commission recommends that:

A Unified Family Court be created for Nova Scotia with all of the powers now available in Supreme Court.

The Commission favours the adoption of an automatic, government operated, maintenance enforcement program in Nova Scotia. In the Commission's opinion this would require new legislation which is presented in draft form in this Report (see Part V).

There are a number of reasons why the Commission has chosen to recommend an automatic maintenance enforcement system. First of all, it shifts the onus from the maintenance creditor to the government office. Most maintenance creditors simply do not have the financial (nor frequently, the emotional) resources to pursue enforcement remedies. Secondly, an automatic enforcement system would increase the number of maintenance orders registered for enforcement and therefore more individuals will be eligible for enforcement assistance. Thirdly, the community itself has a stake in the collection of maintenance since some of the money distributed through Family Benefits and Municipal Social Assistance would not be required if maintenance payments were made in a timely and consistent manner.

³⁹ For a summary of the recommendations of the Law Reform Commission in its Discussion Paper *Enforcement of Maintenance Obligations* please see Appendix D.

⁴⁰ See *Report of the Nova Scotia Court Structure Task Force* (Nova Scotia, March, 1991).

2. Office of Director

The Commission is of the opinion that the responsibility for enforcing maintenance obligations should not be with the maintenance recipient but rather should be with the Government of Nova Scotia. As a result, the Commission is recommending that a new office be created called the Director of Maintenance Enforcement. The Director would be responsible for enforcing maintenance obligations and for maintaining records of payments received and distributed. It is important to understand that the Director's power would relate only to the enforcement of court orders or agreements filed with the office of the Director. The Director would not have the authority to vary the court order itself. This means that questions relating to changes in financial circumstances or other matters relating to the content of the court order must still go before a court for any changes. The Director does not "go behind" the order to deal with matters relating to the size of the award or the relationship between custody/access and the maintenance obligations. These remain, as is appropriate, matters for the court to decide.

The Director would be given sole authority to enforce orders while they are filed with the Director's office. The Director's powers and duties would be delegated to the enforcement officers who are presently working in the Family Courts throughout the province. In this way, regional enforcement offices will be maintained.

The Commission recommends that:

An Office of Director of Maintenance Enforcement be established to assume sole responsibility for the enforcement of all maintenance orders in the province which are filed with the Director.

3. Automatic Filing of Maintenance Orders with Director's Office

The Commission believes it is desirable to have an enforcement program which automatically enforces all court ordered maintenance regardless of which court issues the order (ie. Family Court or Supreme Court). In its draft legislation, the *Maintenance Enforcement Act*, the Commission proposes that all court orders for maintenance include a direction that the order be automatically forwarded to the Director's Office for enforcement.

The Commission recommends that:

All court orders for maintenance contain a direction for the filing of the order with the Director of Maintenance Enforcement for automatic enforcement.

The draft Act also contains a clause which provides individuals who now have maintenance orders from either the Family Court or the Supreme Court an opportunity to register their orders with the Director's Office for enforcement. This option should be available to either party to the order and should not require the consent of both parties.

The Commission recommends that:

Individuals with court orders for maintenance made before the new program is implemented be permitted to file the orders with the Director for enforcement. This may be done by either person without the consent of the other party to the order.

For maintenance orders or agreements which are presently being enforced through the Family Court enforcement offices the transition to enforcement through the Director's office will be automatic and will occur on the coming into effect of the proposed legislation. In other words, individuals whose maintenance obligations are presently enforced through Family Court will not be required to re-file the orders or agreements with the Director's Office since the Act will require an automatic transfer of enforcement authority.

The Commission recommends that:

All maintenance orders which are now enforced through Family Court be transferred to the Director of Maintenance Enforcement.

Finally, any individual who is party to a maintenance agreement will have the option of filing the agreement with the Director of Maintenance Enforcement for automatic enforcement. This would not require the consent of both parties and would be at the option of either person.

The Commission recommends that:

Either party to an Agreement for maintenance may file for enforcement with the Director of Maintenance Enforcement. Once filed, the agreement is treated as an order of the court for the purposes of enforcement.

4. Opting Out of the Enforcement Program

One of the most difficult questions which the Commission has dealt with on this project is the issue of whether or not the new legislation should allow a maintenance creditor to "opt out" of the enforcement program if she or he so chooses. As mentioned above, Ontario allows opting out but only if the maintenance debtor can post four months security for the maintenance creditor in the event of default. The majority of the Commissioners is of the view that this type of opting out clause provides an advantage to individuals who have sufficient means to allow them to post security and may mean that only people with access to adequate financial resources can exercise this choice. The Commission does not agree with this result.

The majority⁴¹ of Commissioners decided that government should not intervene in the

⁴¹ Statement of Dissent by Commissioner Dawna Ring.

While I strongly support the recommendations of this Report to create a government operated system with more effective collection mechanisms for maintenance payments, I am of the view that this system should be universal and that deduction from income should be immediate and automatic.

A truly universal, automatic system is one in which the deduction of maintenance from a maintenance debtor's income would be a routine procedure similar to that used for unemployment insurance benefits, Canada Pension Plan and other mandatory dues. The Director of Maintenance Enforcement would advise an employer of the amount of maintenance required from each employee and at the end of each pay period the employer would provide one cheque to a central office of the Director consisting of the maintenance payments of all employees. The collection of payments could be received centrally, although parts of the enforcement could be done regionally.

I am concerned that a non-universal system may increase the violence experienced by women who are in the process of separating from an abusive relationship. It is estimated that 1 in 8 women are physically abused by their partners, although people who work with abused women suggest that this is a conservative estimate. Violence against women is a serious problem in our society. We must ensure that a system created must not by its design potentially increase abuse against women. It is often assumed that women are safe once they leave their relationships but, in fact, attacks against women actually increase during the period of separation. Fifty-two (52%) of all female homicide victims are family violence victims (Statistics Canada, Justice Statistics Division, *Homicide in Canada: A Statistical Synopsis* (Ottawa, Ontario (1982)). Statistics have shown that when the state is enforcing charges of assault, it reduces a further attack against a woman by more than 50% (Jaffe, P. Burris, C. "Wife abuse as a crime: the impact of police laying charges (1983) 25 *Canadian Journal of Criminology* 3, pp. 309-318). This would suggest that when the state is seen to be in full control of a situation it neutralizes the situation and protects the woman.

In the system proposed in this Report, the state will only deduct maintenance payments from an employee's wages or other income source after there has been a default in payment. This means that state intervention will be seen as a form of punishment and since this deduction is not routine for all employees paying maintenance, there may be some stigmatization or discrimination towards the employee. If the employee fears any of the above, there may be tremendous pressure placed on the recipient to consent to opting out of the program. For women separating from abusive relationships, this system does not neutralize the situation, rather it places her in a vulnerable position at a time when she may be subject to further physical attacks from her spouse. When society is looking for ways to reduce violence against women, the reasons expressed by my fellow Commissioners in support of their recommendations should be secondary.

Further, the system proposed by the majority of the Commission is not truly universal in that people are able to "opt out" of the system with the consent of both parties. Even for those orders which are within the system, there is no

enforcement process if maintenance is being paid regularly. Aside from concerns about providing state intervention where it is not necessary, it may require a significant allocation of government resources to regulate the payment of maintenance in circumstances where there are no collection problems. As a result, the Commission proposes that individuals be allowed to "opt out" of the maintenance enforcement program, but only if **both** parties to the order consent in writing.

The Commission recommends that:

Parties to a court order for the payment of maintenance be permitted to "opt out" of the program if a written consent is signed by both parties.

The Commission also proposes that an individual who has opted out of the enforcement program may later "opt in", or re-file, without the consent of the other party to the order and the Director will gain authority to enforce the order.

The Commission recommends that:

Even if the parties to the maintenance order originally opted out of the enforcement program, either party will have the right to re-file a maintenance order at any time.

The Commission received a number of written submissions in response to its Discussion Paper

automatic deduction from income until there has been a default. Although the proposals recommended in this Report would significantly reduce the delay for the maintenance recipients, there are still delays within the system. A universal, automatic enforcement program similar to what I have outlined would create virtually no delay in payment when there is a regular income source. For an order where payments are being voluntarily made through Family Court, there is a minimum 14 day delay before the family receives the money. In the interim, society may have to provide emergency food and shelter. When an order is first brought into the system further delays may occur if the Director utilizes the information sections of the proposed Act prior to issuing the garnishment. Again, society may have to intervene in the short term.

Finally, a non-universal system which does not have immediate, automatic deduction of wages may in fact not be less costly. The system suggested in this Report will not permit the Director to issue garnishment until there has been one default in payment. If people have chosen to be within the system then the Director is already incurring the costs of monitoring the voluntary payments coming through the Director's office. For payments that are not within the system, additional costs may be incurred if the information provisions of the draft Act are used. The costs of social assistance to provide emergency food and shelter while there is a delay in issuing the garnishment, and costs resulting from any violent attack on a woman and/or her children will still be present and operating to the detriment of Nova Scotian society under the proposed system.

which suggested that filing of maintenance orders should be mandatory and there should be no opting out provisions. It was suggested that opting out places a great deal of stress on maintenance recipients since many maintenance debtors may not want to be involved in the enforcement program. In situations where a maintenance recipient has been in an abusive situation, the consent itself could be tainted because of co-ercion. The Commission is aware of these potential problems and the majority recommend that a judge may forbid opting out at the time the order is made if, in her or his opinion, the consent is not given voluntarily. Although the Commission was concerned about the difficulty of accurately assessing genuine consent for opting out, the majority favoured less state intervention. The majority of Commission believes that this approach will protect the interests of recipients who may be subject to coercion without limiting the rights of other recipients who may not wish to be involved in a government operated enforcement program.

The Commission recommends that:

The court granting the original maintenance order will have discretion to prohibit opting out, if it is in the best interests of those affected by the order.

5. Garnishment After First Default

One of the key aspects of the draft Act proposed by the Commission is what is referred to as the "first default principle". The majority of the Commission concluded in its Discussion Paper that an individual should be given an opportunity to make regular payments prior to garnishment of any possible income sources. If, however, there is a single missed payment, the Director will be required to obtain an execution order in the nature of garnishee automatically without a court hearing and without an opportunity for the defaulter to explain the default. The garnishment will be mandatory and will attach wages or any other available income. This first default principle will give payors an opportunity to demonstrate a willingness to pay, while providing recipients with the knowledge that if a payment is missed, garnishment will be automatic.

The Commission recommends that:

If a person misses a single maintenance payment, garnishment of any available income will automatically be imposed by the Director of Maintenance Enforcement without a default hearing.

Additionally, the draft Act proposes that if a debtor does not have an income source to garnishee

the Director may enforce the maintenance obligation by the seizure and sale of assets of the debtor under an execution order. This may also be done without a hearing and without an opportunity to explain the default.

The Commission recommends that:

Where an income source is not available, the Director may seize and sell assets under an execution order without a hearing or opportunity to explain a default.

6. Amendments to Existing Legislation

(a) Family Maintenance Act

The maintenance enforcement procedures and remedies currently used in Family Court in Nova Scotia are found in various sections throughout the *Family Maintenance Act*. If the draft *Maintenance Enforcement Act* is adopted, those sections of the *Family Maintenance Act* pertaining to maintenance enforcement should be repealed.

Additionally, section 40 of the *Family Maintenance Act* gives a Family Court judge the power to cancel or reduce arrears of maintenance where it appears to be in the best interests of the children. The majority of Commissioners are of the opinion that this section should be repealed and the test for remission of arrears as set out in section 34(4) of the draft Act should be adopted⁴².

⁴² Statement of Dissent by Commissioner Dawna Ring.

In my view, the courts' ability to forgive arrears should be abolished as it effectively enables a person to ignore a court order. Since all other orders of the court are given full force, effect and support from the legal system, maintenance orders should be treated no differently. Until a person has made an application to the court and the court has varied the amount of maintenance, the court order should remain at the amount previously determined by the court. To forgive arrears effectively permits an order to be made retroactively, varying or discrediting the first order. The forgiveness of arrears does not acknowledge the realities of non-payment of maintenance. The maintenance recipient may have incurred a variety of debts in order to keep food and shelter for the children. They may have borrowed money from family and friends, from banks or may have required an extension of time for payment of rent, etc. Children will have gone without a number of things including food, clothing or activities which other children enjoy. Monies may be owed to a variety of sources and children should be entitled to the necessities they have missed in the months of non-payment."

(b) Family Court Act

Section 19 of the *Family Court Act* empowers a Family Court judge to order imprisonment:

Power to order imprisonment

19 Notwithstanding the provisions of any general or special Act, where a person is ordered to pay maintenance by a court of competent jurisdiction and is in default and fails to satisfy a judge of the Family Court that he has a reasonable excuse for such default, the judge may issue a warrant for imprisonment of such person for such term not to exceed three months as the judge thinks fit unless such sum or sums and the costs and charges attending the commitment and conveying such person to jail are sooner paid.

The draft Act states that a judge has the power to imprison "continuously or intermittently" (see section 23(3)(g) and (h)). The Commission recommends that section 19 of the *Family Court Act* be amended to specify that the power to imprison may be continuous or intermittent.

(c) Testators' Family Maintenance Act

The *Testators' Family Maintenance Act*⁴³ provides for the distribution of the estate of an individual who dies with a will but who has not adequately provided for dependents to whom the person owes a maintenance obligation. The definition of dependant in section 2(b) is as follows:

Interpretation

2 (b) "dependant" means the widow or widower or the child of a testator;

The Commission is concerned with a situation which may arise when a testator dies and does not provide adequate provision for a person who is being paid spousal maintenance at the time of death. The recipient is prevented from bringing an application pursuant to the *Testators' Family Maintenance Act* because of the restrictive definition of "dependant". Amending the definition to include an ex-spouse would not benefit an individual who may be owed maintenance arising from a non-marital relationship. The Commission recommends, therefore, that the definition of "dependent" be amended to include a person to whom maintenance is owed.

⁴³ 1989, R.S.N.S. c. 465.

(d) Workers' Compensation Act

Section 23 of the *Workers' Compensation Act*⁴⁴ prevents the seizure or assignment of compensation without the consent of the Workers' Compensation Board. It is the Commission's understanding that, in practice, the Board usually allows garnishment of compensation if it relates to family maintenance.

The Commission is of the opinion that the *Workers' Compensation Act* should be amended to permit the garnishment of compensation if the garnishment is pursuant to the draft Act.

(e) Pension Benefits Act

Section 71 of the *Pension Benefits Act*⁴⁵ also exempts money payable under a pension plan from execution, seizure or attachment. The Commission recommends that this legislation be amended to allow garnishment or seizure of pension plan income if the process is pursuant to the draft Act.

(f) Maintenance Orders Enforcement Act

The *Maintenance Orders Enforcement Act*⁴⁶ is the legislation which pertains to the reciprocal enforcement of maintenance orders. This type of legislation has been enacted in many jurisdictions throughout the world to avoid the conflicts of laws issues which arise whenever a court is asked to enforce an order made in another jurisdiction.

All provinces and territories in Canada have in place reciprocal enforcement of maintenance orders legislation which allows for the registration and enforcement of a maintenance order in another province, territory, foreign state or country.

The Commission is of the opinion that the name of this Act should be changed to better reflect the intent of the legislation and should be re-named the *Reciprocal Enforcement of Maintenance Orders Act*.

Section 10(2) of the *Maintenance Orders Enforcement Act* states that the provisions of the *Family Maintenance Act* for the enforcement of maintenance orders apply with the necessary changes to registered orders and interim orders made under the Act. The Commission recommends that section 10 be amended to refer to the draft *Maintenance Enforcement Act*.

⁴⁴ 1989, R.S.N.S., c. 508.

⁴⁵ 1989, R.S.N.S., c. 340.

⁴⁶ 1989, R.S.N.S., c. 268.

The Commission is of the opinion that responsibility for the reciprocal enforcement procedure should be assigned to the Director of Maintenance Enforcement (the procedure is presently the responsibility of the Attorney General). The Director's office will be in a better position to provide the necessary information with respect to arrears which the Attorney General presently has to request from the Family Court.

The Commission recommends, therefore, that the Director of Maintenance Enforcement be designated the recipient of maintenance orders from reciprocating states.

(g) Family Orders Information Release Act

The *Family Orders Information Release Act* is designed to assist with the enforcement of court orders respecting children and support obligations by providing for the release of information that may assist in locating children, defaulting spouses or other persons.

Section 6 of the Act allows the release of information as to the address of a defaulter and the name and address of the employer of the defaulter. The Commission is of the opinion that this section should be amended to allow the release of additional information as to the financial circumstances of the debtor requested under section 18 of the draft *Maintenance Enforcement Act*.

The Commission recommends that:

Consequential changes should be made to the *Family Maintenance Act*; *Family Court Act*; *Testators' Family Maintenance Act*; *Workers' Compensation Act*; *Pension Benefits Act*; *Maintenance Orders Enforcement Act* and *Family Orders Information Release Act* to fully implement the automatic enforcement system.

7. Implementation

In order to give effect to the recommendations of the Commission, a new law dealing with maintenance enforcement will be required. To better explain the details of its recommendations, the Commission has drafted a *Maintenance Enforcement Act* for the use of the Government of Nova Scotia. Part V of this Report contains the draft legislation with explanatory notes which discuss reasons for the sections and also describes the comparable sections of the legislation in other provinces. The draft Act is presented in a manner which is different in style from the one currently used in the Revised Statutes of Nova Scotia. The Commissioners believe that this style is a step towards creating legislation which is easier to read and accessible to more Nova Scotians. Appendix A contains the draft Act without comments.

The Commission recommends that:

The recommendations contained in this Report be implemented by the adoption of a new law similar to the draft *Maintenance Enforcement Act* set out in Appendix A.

**V DRAFT MAINTENANCE ENFORCEMENT ACT
(WITH COMMENTS)**

Table of Contents

Part 1		Section
Interpretation		
Interpretation		1(1)
Act binds Crown		1(2)
 Part 2		
Office of Director, Duties and Powers		
Director of maintenance enforcement		2
Duty of Director		3(1)
Powers of Director		3(2)
Enforcement by Director only		4
Delegation of Director's powers		5(1)
Powers of enforcement officers		5(2)
 Part 3		
Automatic Filing of Maintenance Orders		
Automatic filing of orders by court		6(1)
Option not to file		6(2)
Judge may refuse to allow opting out		6(3)
Filing of order by creditor or debtor		6(4)
Filing of orders by others		6(5)
Filing of orders made outside Nova Scotia		6(6)
Automatic filing of past orders enforced through Family Court		6(7)
Withdrawal of filing		7(1)
Refiling of order		7(2)
Notice of filing or withdrawal		7(3)
Enforcement by Director		8(1)

Arrears enforceable	8(2)
Payment to Director	9(1)
Director to pay money to creditor	9(2)
Record of payments	9(3)
Statement of current status	9(4)
Statement for reciprocating state	9(5)

Part 4

Enforcement Proceedings without a Hearing

Enforcement by garnishment proceedings	10(1)
Garnishment mandatory on first default	10(2)
Persons bounds by garnishment	10(3)
Notice to income source	10(4)
Notice to debtor	10(5)
First payment by income source	11(1)
Debtor's duty to pay	11(2)
Arrears	11(3)
When enforcement ends	11(4)
Person not an income source	12
Dispute	13
Duty to inform of termination or interruption of payments	14(1)
Notice	14(2)
Rights of employee protected	15(1)
Redress for employee	15(2)
When employer deemed in violation	15(3)
Recognition of extra-provincial garnishments	16(1)
Income source outside Nova Scotia	16(2)
Enforcement by seizure and sale of property	17(1)
Execution order obtained by Director	17(2)
Registration of certificate	17(3)
Civil Procedure Rules apply	17(4)

Part 5

Information Requirements and Confidentiality

Access to information	18(1)
Duty to provide information	18(2)
Order of court for access to information	18(3)
Costs	18(4)

Section prevails	18(5)
Confidentiality of information and disclosure	19(1)
Court order respecting confidentiality	19(2)
Offence	20
Financial information	21(1)
Extension of time	21(2)
Warrant for arrest	21(3)
Offence	21(4)

Part 6

Enforcement Proceedings before the Director or the Court

Enforcement proceedings before Director	22(1)
Presumptions	22(2)
Action by Director	22(3)
Summons for hearing before Judge	23(1)
Presumptions	23(2)
Powers of court	23(3)
Power to vary	23(4)
Imprisonment does not discharge arrears	23(5)
Realizing on security	23(6)
Filing of variation order	24(1)
Variation application does not stay enforcement	24(2)
Joinder of enforcement and variation hearings	24(3)
Appointment of receiver	25(1)
Appointment without formal application	25(2)
Duty of receiver	25(3)

Part 7

Administrative Matters

Termination of obligation	26
Duty to advise of address change	27
Right of appeal	28(1)
Further appeal by leave only	28(2)
Order remains in force	28(3)
Application of payments	29
Priority of maintenance over other unsecured debts	30(1)
Arrears of more than three years	30(2)
Equal ranking	30(3)

Payments to Director exempt from attachment	30(4)
Two or more maintenance orders	30(5)
Fees	31(1)
Creditor not to be charged	31(2)
Signature of Director as evidence	32(1)
Proof of filing of maintenance order	32(2)
Evidence of Director's signature	32(3)
Form of signature	32(4)
Computer printout as evidence	32(5)
Capacity of minor	33
No limitation on arrears	34(1)
Death of maintenance debtor	34(2)
Death of maintenance creditor	34(3)
Remission of maintenance payments	34(4)
Evasion by debtor	35(1)
Arrest of debtor	35(2)
Provision unenforceable	36
Proof of default or arrears	37
Proof of service	38
Presumption of debtor's ability to pay	39
Spouses compellable witnesses	40
Rights are additional	41
Regulations	42
Coming into force	43

DRAFT MAINTENANCE ENFORCEMENT ACT

Part 1 Interpretation

Interpretation

1 (1) In this Act,

- (a) "court" means the Supreme Court and the Family Court unless otherwise stated;

Comment

[This legislation will apply to orders of both Family Court and Supreme Court but there are sections which intentionally refer to one court only.]

receive
person;

- (b) "creditor" means a person entitled under a maintenance order to maintenance on her or his own behalf or on behalf of another
- (c) "debtor" means a person required under a maintenance order to pay maintenance;
- (d) "Director" means the Director of Maintenance Enforcement appointed under section 2;
- (e) "income source" includes an individual, a corporation or other entity that owes payment to a debtor of:
- (i) wages or salary,
 - (ii) a commission, bonus, piece-work allowance or other amount if the payment is not recoverable by the income source from the payor should the payor fail to earn the commission or bonus or fail to meet any production target,
 - (iii) a benefit under an accident, disability or sickness plan,

- (iv) a disability, retirement or other pension,
- (v) an annuity,
- (vi) a dividend, or
- (vii) income of a type described in the regulations;

Comment

[The definition of income source is intentionally drafted to include as many forms of income as possible. The definition is virtually identical to the one found in Ontario's legislation⁴⁷ except that the definition above uses the term "includes" instead of "means" in an attempt to ensure inclusion of income which may not be specifically listed.]

- (f) "maintenance order" means a requirement in an order of a court in or outside Nova Scotia enforceable in Nova Scotia for the payment of maintenance or support, including:
 - (i) 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,
 - (ii) a lump sum to be paid or held in trust,
 - (iii) property to be transferred to or in trust for or vested in a party, whether absolutely, for life or for a term of years,
 - (iv) one spouse to be given exclusive possession of a matrimonial home or part of it for life or for the lesser period that the court directs,
 - (v) a spouse to whom exclusive possession of a matrimonial home is given to make the periodic payments to the other spouse that

⁴⁷ Subsection 1(1) of *Support and Custody Orders Enforcement Act 1985, supra.*

are prescribed in the order,

- (vi) one spouse to be given exclusive possession of the contents of a matrimonial home or household goods or any part of them,
- (vii) a spouse to pay for the repair and maintenance of a matrimonial home or to pay other liabilities arising in respect of it,
- (viii) part or all of the money payable under the order to be paid into court or to another appropriate person or agency for the benefit of a party,
- (ix) payment of support or maintenance in respect of a period before the date of the order,
- (x) payment to an agency of an amount in reimbursement for a benefit or assistance provided to a party under a statute, including a benefit or assistance provided before the date of the order,
- (xi) payment of expenses in respect of a child's prenatal care and birth,
- (xii) 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,
- (xiii) the securing of payment under the order, by a charge on property or otherwise, or
- (xiv) interest or the payment of legal fees or other expenses arising in relation to support or maintenance,

and includes such a requirement, in a marriage contract, cohabitation agreement, paternity agreement or separation agreement that is enforceable under the laws of Nova Scotia but does not include a provisional order that has not been confirmed under the *Maintenance Orders Enforcement Act*;

Comment

[This definition is also drafted broadly to include all types of maintenance orders which may be enforced by the Director's office. If the Commission's recommendation to change the name of the Maintenance Orders Enforcement Act is adopted, reference throughout this Act will be changed to the Reciprocal Enforcement of Maintenance Orders Act.]

- (g) "provisional order" means an order of a court that has no effect in the jurisdiction where it was made until confirmed by a court in a reciprocating state pursuant to the *Maintenance Orders Enforcement Act* or similar reciprocal enforcement legislation.

Act binds Crown

- (2) This Act binds the Crown.

Part 2 Office of Director, Duties and Powers

Director of Maintenance Enforcement

- 2 There shall be a Director of Maintenance Enforcement who shall be appointed by the Lieutenant Governor in Council.

Duty of Director

- 3 (1) The Director shall take all steps that she or he considers advisable to enforce maintenance orders that are filed in the Director's office.

Powers of Director

- (2) Where the Director has made a determination under subsection (1), the Director shall, for the purpose of enforcing a maintenance order, begin and conduct a proceeding and take steps for the enforcement of an order in the Director's name as if the Director were a creditor under the order.

Comment

[This refers to a two-step process where the Director must decide if it is advisable to enforce an order. Once this decision has been made, enforcement is mandatory.]

Enforcement by Director only

- 4** No person other than the Director shall enforce a maintenance order during the time it is filed with the Director's office.

Comment

*[It is critical to the efficiency of the system that the Director have **exclusive** authority to enforce maintenance orders once they are filed with the Director's office. This will avoid the potential problem of double enforcement (by both the Director and the creditor). If the creditor wishes to pursue enforcement, an order must be withdrawn from the Director's office (see section 8 below).]*

Delegation of Director's powers

- 5** (1) The Director may designate employees of the Civil Service Commission to be enforcement officers for the purposes of this Act.

Powers of enforcement officers

- (2) An enforcement officer may act for and in the name of the Director with the same powers, duties or functions conferred or imposed on the Director under this Act.

Part 3

Automatic Filing of Maintenance Orders

Automatic filing of orders by court

- 6** (1) Every maintenance order made by a Nova Scotia court, other than a provisional order, shall state in its operative part that the order shall be filed with the Director's office pursuant to this Act.

Comment

[After the date that this Act comes into effect all maintenance orders made by any court in the province must be filed with the Director's office. Provisional orders, however, will not be automatically filed since they are of no effect until they are confirmed by a reciprocating state⁴⁸.]

Option not to file

- (2) The prothonotary or clerk of the court that makes a maintenance order shall file it with the Director's office within ten days after it is signed unless the creditor files with the court and the Director's office a written consent signed by the creditor and the debtor stating that they do not want the order enforced by the Director.

Comment

⁴⁸ See *Maintenance Orders Enforcement Act*, *supra*.

[This reflects the Commission's recommendation that individuals be given an opportunity to opt out of the enforcement program if a written consent is signed by both parties. An appropriately worded consent form is required.]

Judge may refuse to allow opting out

- (3) A judge may refuse to allow parties to a maintenance order to opt out of the enforcement program under subsection (2) if she or he believes it is in the best interests of those affected by the order.

Comment

[This attempts to address the concern for those creditors who may be in controlling relationships and who may not genuinely be consenting to the opt out procedure.]

Filing of orders by creditor or debtor

- (4) A maintenance order may be filed with the Director's office by either a creditor or debtor.

Comment

[Since the definition of maintenance order includes the maintenance provisions in a separation, paternity or cohabitation agreement, this subsection allows either party to the agreement to file it for enforcement with the Director. This, therefore, extends the enforcement program to individuals who do not have a court order for maintenance.]

Filing of orders by others

- (5) A maintenance order may be filed with the Director's office by:
- (a) the Minister of Community Services; or
 - (b) a person or a representative of a government department or agency, a city, an incorporated town or a municipality of a county or district providing maintenance to a creditor who made the original application for a maintenance order under section 23 of the *Family Maintenance Act*.

Filing of orders made outside Nova Scotia

- (6) Every maintenance order made by a court outside Nova Scotia that is received under the *Maintenance Orders Enforcement Act* for enforcement in Nova Scotia shall be filed promptly with the Director's office.

Automatic filing of past orders enforced through Family Court

- (7) All maintenance orders that are filed for enforcement in Family Court under the Family Maintenance Act shall automatically be filed with the Director's office for enforcement.

Comment

[At present, approximately 12,000 maintenance orders are enforced through Family Court in Nova Scotia. This subsection automatically brings those orders under the authority of the Director's office.]

Withdrawal of filing

- 7 (1) A maintenance order filed with the Director may be withdrawn:
- (a) by the Director, 14 days after a notice is mailed to the creditor advising that the Director will withdraw the maintenance order, where it appears that the creditor is taking steps to enforce the order;
 - (b) by the creditor, except where the maintenance order was filed by the debtor;
 - (c) by the debtor, except where the maintenance order was filed by the creditor.

Comment

[If the creditor attempts to enforce an order, the Director has the discretion to withdraw the order from the enforcement program. Since either party may file an order for enforcement, the party that files will have the option to withdraw at a later date. It will not be possible, however, for one party to file an order and for the other party to later withdraw the order.]

Refiling of order

- (2) A maintenance order that has been withdrawn may be refiled with the Director's office at any time.

Notice of filing or withdrawal

- (3) The Director shall give notice, by ordinary mail, of the filing or withdrawal of a maintenance order to the parties to the order.

Enforcement by Director

- 8** (1) A maintenance order filed with the Director's office shall be enforced by the Director and amounts owing under the order shall be paid to the Director, who shall pay them to the person to whom they are owed.

Arrears enforceable

- (2) The Director may enforce arrears of maintenance under a maintenance order even though the arrears were incurred before the order was filed with the Director's office or before the date this Act comes into effect.

Comment

[If a person opts out of the enforcement program and refiles at a later date it is most probable that

there will be arrears owing which were incurred before the refiling. The Director will have the authority to enforce those arrears under the Act.]

Payment to Director

- 9** (1) Despite the requirements of the maintenance order, if a maintenance order is filed with the Director, the debtor shall make all required payments to the Director.

Comment

[Even if a maintenance order states that payment is to be made directly to the creditor, once the order is filed with the Director's office payments must be made to the Director.]

Director to pay money to creditor

- (2) The Director shall pay to the creditor the money received in respect of a maintenance order to the extent of the entitlement of the creditor under that maintenance order.

Comment

[The creditor will receive money owed by the debtor to the extent of the creditor's entitlement. In other words, if costs to the Director are also collected, this money is not forwarded to the creditor.]

Record of payments

- (3) The Director shall keep a record of:
- (a) all payments received by the Director;
 - (b) all payments forwarded by the Director;

- (c) the persons from whom payments were received; and
- (d) the persons to whom payments have been forwarded.

Statement of current status

- (4) The Director shall, on the request of the creditor or debtor, provide a statement showing the current status of payments under a maintenance order filed with the Director.

Statement for reciprocating state

- (5) The Director shall, on the request of the proper officer of a reciprocating state or a court of a reciprocating state, provide a sworn or affirmed, itemized statement with respect to a support order, showing all amounts that have become due and owing by the debtor during the 24 months before the date of the statement, and all payments made through the Director's office by or on behalf of the debtor during that same period.

Part 4 Enforcement Proceedings Without a Hearing

Enforcement by garnishment proceedings

- 10** (1) An obligation to pay money under a maintenance order may be enforced by an execution order in the nature of garnishee directing that one or more income sources of the debtor deduct the amount as specified in the maintenance order from any remuneration of the debtor due at the time the order is served on the income source or thereafter due, or accruing due.

Garnishment mandatory on first default

- (2) Where a maintenance order has been filed with the Director for enforcement, the Director shall issue an execution order in the nature of garnishee where there has been a single default of payment by the debtor.

Comment

[This reflects the Commission's recommendation that enforcement by means of garnishment should occur

*on a single default of payment
without the necessity for a hearing.]*

Persons bound by garnishment

- (3) An execution order in the nature of garnishee binds every income source who is served by the Director's office with the order whether or not the income source is named in the order.

Notice to income source

- (4) The Director's office may serve an execution order in the nature of garnishee by ordinary mail addressed to each income source from whom it is seeking payment.

Notice to debtor

- (5) The Director shall send a copy of the execution order in the nature of garnishee to the debtor by ordinary mail at her or his last address as shown on the records of the Director.

First payment by income source

- 11** (1) An income source shall begin making payments to the Director's office within fourteen days of the day on which the income source receives the order.

Debtor's duty to pay

- (2) Until the income source begins deducting maintenance payments or if payments by an income source are interrupted or terminated, the debtor shall pay the amounts owing under the maintenance order to the Director or to the creditor where the creditor has initiated the garnishment proceedings.

Comment

[It is important for the debtor to realize that if payment is not being made by an income source, she or he must provide the amount owing to

the Director's office.]

Arrears

- (3) The Director may include in the amount required to be deducted and paid to the Director's office any amount in arrears under a maintenance order.

Comment

[The Commission has decided not to adopt a maximum amount of income available for garnishment (eg. in Ontario - 50% maximum) and has decided to leave the matter to the discretion of the Director since in some situations the original order may be in excess of 50%. The Director will, of course, be bound by federal legislation when dealing with federal income sources.]

When enforcement ends

- (4) The Director shall enforce an execution order in the nature of garnishee, subject to any variation of the order, until the maintenance order to which it relates is terminated and there are no arrears owing.

Comment

[Even when an obligation to pay maintenance has ended, the Director must enforce the order until there are no arrears owing under the order.]

Person not an income source

- 12** If an individual, corporation or other entity served with an execution order in the nature of garnishee is not an income source of the debtor, the individual, corporation or other entity shall give written notice to the Director within ten days following receipt.

Dispute

- 13** The Director, the debtor or the income source, individual, corporation or other entity may, on notice to the other, bring an application to court to determine:
- (a) whether the income source has failed to comply with the order;
 - (b) whether the amount the income source is deducting and paying to the Director is correct;
 - (c) whether the individual, corporation or other entity is an income source;
or
 - (d) whether money owed under the maintenance order has been paid.

Duty to inform of termination or interruption of payments

- 14 (1)** Within ten days of the termination or beginning of an interruption of payments by an income source to a debtor, both the income source and the debtor shall give written notice to the Director's office of the termination or interruption together with such other information as may be required by the regulations.

Notice

- (2)** If notice has been given or should have been given under subsection (1)
- (a) the debtor and the income source, within ten days of the resumption of payments that have been interrupted, shall give written notice to the Director's office of the resumption;
 - (b) the debtor, within ten days of beginning employment with another income source or of becoming entitled to payments from another income source, shall give written notice to the Director's office of the new employment or the entitlement and of the name and address of the income source.

Rights of employee protected

- 15 (1)** An employer shall not dismiss, suspend, lay-off, penalize, discipline or discriminate against an employee if the reason is in any way related to the issuing of an execution order in the nature of garnishee.

Redress for employee

- (2) Upon the application of an employee who alleges to have been the subject of a violation of subsection (1), the Supreme 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.

When employer deemed in violation

- (3) An employer who dismisses, suspends, lays off, penalizes, disciplines or discriminates against an employee in respect of whom an execution order in the nature of garnishee has been issued under this Act while the execution order is in effect or within 6 months after it has ceased to have effect shall, where an application is made under subsection (2), be required to show cause for such action, in default of which the action shall be deemed to have been in violation of subsection (1).

Comment

[The Commission is of the view that since garnishment is mandatory on a single default the Act should provide protection to an employee in addition to the protection offered by the Labour Standards Code⁴⁹. This section allows a court to give the employee remedies such as an award for loss of income as well as reinstatement.]

Recognition of extra-provincial garnishments

- 16** (1) On the filing of a garnishment process that
- (a) is issued outside Nova Scotia and is directed to a income source in Nova Scotia;
 - (b) states that it is issued in respect of support or maintenance;
 - (c) states the amount of the support or maintenance due to the creditor;

⁴⁹ 1989, R.S.N.S. c. 246.

and

- (d) is written in or accompanied by a sworn, affirmed or certified translation into English or French,

the Director shall issue an execution order in the nature of garnishee to enforce the support or maintenance obligation.

Income source outside Nova Scotia

- (2) An execution order in the nature of garnishee may be issued in respect of an income source who is outside Nova Scotia and shall:
 - (a) be signed and sealed by the clerk of the court;
 - (b) state that it is issued in respect of maintenance;
 - (c) state the amount of the support or maintenance due to the creditor; and
 - (d) be written in or accompanied by a sworn, affirmed or certified translation into English or French.

Enforcement by seizure and sale of property

- 17 (1) An obligation to pay money under a maintenance order may be enforced by an execution order for the seizure and sale of the debtor's real and personal property.

Execution order obtained by Director

- (2) Where a maintenance order has been filed with the Director for enforcement, the Director may, without a hearing, proceed to obtain an execution order and a certificate of judgment where there has been a single default of payment by the debtor.

Comment

[On a single default garnishment is the first option available to the Director. If there are no available income sources, however, and the

Director is aware of assets which are available for seizure then the Director will proceed to obtain an execution order. In the case of real property the Sale of Land under Execution Act applies, which forbids the sale of the property for one year⁵⁰.]

Registration of certificate

- (3) The certificate of judgment shall be registered by every registrar of deeds with whom the Director places it for registration and the judgment so registered shall operate as a lien upon the real property of the judgment debtor, situated within the registration district in which the same is registered.

Civil Procedure Rules apply

- (4) The provisions of the *Civil Procedure Rules* respecting the enforcement of execution orders shall apply.

Part 5 Information Requirements and Confidentiality

Access to information

- 18** (1) For the purposes of enforcing a maintenance order or of obtaining information for a person performing similar functions in another jurisdiction, the Director may request from a person, corporation, or public body, including the Crown, information as to
- (a) the wages, salary or source of income;
 - (b) the assets or liabilities;
 - (c) the financial status; and

⁵⁰ 1989, R.S.N.S. c. 409.

- (d) the location, address and place of employment

of the debtor that is within the knowledge of, or shown on a record in the possession or control of the person, corporation or body.

Comment

[Most maintenance enforcement legislation from other provinces and territories includes this type of provision. The Commission favours this wording taken from the Saskatchewan legislation⁵¹ which allows requests for specific information relating to the finances of the debtor.]

Duty to provide information

- (2) A person, corporation or public body, including the Crown, that receives a request for information shall provide it within 14 days of the day on which the request is received.

Order of court for access to information

- (3) Where, on application to Family Court, it appears that
- (a) the Director has been refused information after making a request under subsection (1); or
 - (b) a person needs information to enforce a maintenance order that is not filed with the Director,

the court may order a person, corporation or public body, including the Crown, to provide the court or the person named by the court with information as to

- (a) the wages, salary or source of income;

⁵¹ Section 11, *Enforcement of Maintenance Orders Act*, S.S. 1984-85-86, c.E-9.2 (amended in subsections (1), (2) and (3) by 1992, Bill 12, s.4, in force November 1, 1992.

- (b) the assets or liabilities;
- (c) the financial status; and
- (d) the location, address and place of employment

of the debtor that is within the knowledge of, or shown on a record in the possession or control of the person, corporation or body.

Costs

- (4) Where the Director obtains an order under subsection (3), the court shall award the costs of the application to the Director.

Comment

[The Commission believes that increased use of costs will encourage the release of information upon request by the Director.]

Section prevails

- (5) This section applies despite any other Act or regulation and despite any common law rule of confidentiality except solicitor-client privilege.

Confidentiality of information and disclosure

- 19** (1) Information received by the Director is confidential and shall not be disclosed except:
- (a) for the purpose of enforcing a maintenance order filed with the Director;
 - (b) on request, to a person performing similar functions in another jurisdiction; or
 - (c) by an order of the court.

Court order respecting confidentiality

- (2) Where an order is made under subsection 18(3) or under a similar provision in another Act or an Act of the Parliament of Canada, the court may make an order with respect to the confidentiality to be maintained in connection with the information released.

Offence

- 20** Every person who releases information that is not lawfully available to the public commits an offence and is liable on conviction to a fine of not more than \$2,000 or to imprisonment for not more than six months, or both.

Comment

[Since the Director is given broad powers to request information including information as to the assets and debts of the maintenance debtor, the Commission believes that there should be strong sanctions to prevent the release of this information.]

Financial information

- 21** (1) Where a debtor is in default under a maintenance order, the Director may require that the debtor:
- (a) file a statement of financial information in the prescribed form with the Director's office within 14 days of the day that she or he receives the Notice and a statement of arrears; and
 - (b) appear before the Director to be examined in relation to employment income, assets and financial circumstances for the purpose of enforcing the maintenance order.

Comment

[Enforcement under the Family Maintenance Act uses show cause hearings before a Family Court judge. If the Director is unable to garnishee an income source or seize assets then she or he may require the

*debtor to file financial information
and appear for examination before
the Director.]*

Extension of time

- (2) The Director may extend the period within which the financial statement is required to be filed by the debtor with the Director.

Comment

[The Director will have discretion to extend the time limit in appropriate circumstances, eg. if the debtor is out of town.]

Warrant for arrest

- (3) Where the debtor fails to appear before the Director as required by paragraph (1)(b), the Director may issue a warrant for her or his arrest for the purpose of bringing the debtor before the Director.

Comment

[This follows from the recommendation of the Commission that Enforcement Officers (as Justices of the Peace) issue warrants for arrest.]

Offence

- (4) A debtor who
- (a) does not file a statement of finances in accordance with this Act; or
 - (b) knowingly gives false information in a statement of finances filed with the Director or the court

is guilty of an offence and liable on summary conviction to a fine of not more than \$2000 or to imprisonment for a term of not more than 3 months, or to both.

Part 6
Enforcement Proceedings Before the Director or the Court

Enforcement proceedings before Director

- 22** (1) Where a debtor is required to appear before the Director pursuant to paragraph 21(1)(b), the Director shall examine the debtor on oath or affirmation about her or his finances, including:
- (a) the means or ability the debtor has of complying with the maintenance order;
 - (b) the disposal the debtor has made of property since the date on which the proceedings were started in which the maintenance order was made,
 - (c) the debts that are owing to or by the debtor; and
 - (d) the debtor's assets, income and financial obligations generally.

Presumptions

- (2) At the enforcement proceedings:
- (a) the debtor shall be presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order; and
 - (b) a statement of arrears prepared and served by the Director shall be presumed to be correct as to the arrears accruing while the order is filed with the Director's office.

Comment

[The debtor will be presumed to be able to pay and to continue to pay. A statement of arrears prepared by the Director's office will also be presumed to be correct. Arrears which accumulated when the order was not filed with the Director,

however, will have to be proven by the usual evidentiary means, eg. affidavit of the creditor.]

Action by Director

- (3) At the conclusion of an examination under subsection (1), the Director shall:
- (a) proceed to obtain an execution order;
 - (b) proceed to obtain the appointment of a receiver under section 25; or
 - (c) proceed to bring the person in default before a judge of the Family Court for a hearing under section 23.

Comment

[At the conclusion of the proceedings the Director must take action to enforce the order by one of the three methods above. If a situation arises where the Director hears evidence that the financial circumstances of the debtor have changed and that the debtor can no longer afford to pay, the Director must bring the debtor before a judge. It would also be appropriate for the Director to advise the debtor to apply to have the maintenance order varied. In this way, if a variation is appropriate is can be dealt with by the judge. The Director will not, however, have the power to vary the maintenance order.]

Summons for hearing before Judge

- 23** (1) If a debtor defaults in the payment of maintenance under a maintenance order, the Director, in the case of a maintenance order filed with the Director's office, or the creditor may procure a summons to require the debtor to attend at a hearing before a judge of the Family Court.

Comment

[This is similar to the show cause hearing which is currently used in Family Court but under this Act it is only used if other enforcement methods have been unsuccessful.]

Presumptions

- (2) At the enforcement hearing, unless the contrary is shown,
 - (a) the debtor shall be presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order; and
 - (b) a statement of arrears prepared and served by the Director shall be presumed to be correct as to the arrears accruing while the order is filed with the Director's office.

Powers of court

- (3) The court, unless it is satisfied that the debtor is unable for valid reasons to pay the arrears or to make subsequent payments under the order, may order that:
 - (a) the debtor pay all or part of the arrears by such periodic payments as the court considers just but an order for partial payment does not discharge any unpaid arrears;
 - (b) the debtor discharge the arrears in full by a specified date;
 - (c) the debtor 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) the debtor provide security in such form as the court directs for the arrears and subsequent payment;
 - (e) the debtor report periodically to the court, the Director or a person specified in the order;
 - (f) the debtor provide to the court, the Director or a person specified in the order particulars of any future change of address or employment as soon as they occur;

- (g) the debtor be imprisoned continuously or intermittently for not more than ninety days unless the arrears are sooner paid;
- (h) the debtor be imprisoned continuously or intermittently for not more than ninety days on default in any payment ordered under this subsection;
- (i) proceedings be commenced in Supreme Court for the appointment of a receiver under section 25;
- (j) a judgment be issued under section 17;
- (k) an execution order in the nature of garnishee be ordered under section 10;
- (l) the debtor pay any costs that the court considers just; and
- (m) the debtor be fined an amount not exceeding \$500⁵².

Comment

[The Commission believes that the court should have wide discretion to enforce the maintenance orders as appropriate, including the use of intermittent jail sentences. The ability to forgive arrears has been limited, however, and the test as set out in section 36(4) must be satisfied.]

Power to vary

- (4) The court that made an order under subsection (3) may vary the order on application if there is a material change in the debtor's circumstances.

⁵² The Commission as a group did not consider whether the court should have the power to award damages for non-payment of maintenance. Commissioner Dawna Ring, however, has expressed the view that the court should have the ability to right the wrong incurred by non-payment of maintenance through damages rather than through the use of fines. Commissioner Ring is of the opinion that the court should have the ability to order interest as well as special and general damages to compensate the women and children for their suffering and financial losses incurred because of the missed maintenance payments.

Imprisonment does not discharge arrears

- (5) Imprisonment of a debtor under paragraph (3)(g) or (h) does not discharge arrears under an order.

Realizing on security

- (6) An order for security under paragraph (3)(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 or for the release of all or part of the security.

Filing of variation order

- 24 (1) Where a maintenance order is varied the clerk or prothonotary of the court shall file with the Director the order of the court that varies the maintenance order.

Comment

[It is important that the Director's office be informed of any variations to a maintenance order so that the correct amount may be garnisheed as well as to prevent the Director from continuing enforcement where it may no longer be appropriate.]

Variation application does not stay enforcement

- (2) An application to vary a maintenance order does not stay any enforcement proceedings which have been commenced or prevent further enforcement proceedings.

Comment

[One of the concerns of the Commission is that the debtor not be given the opportunity to prevent enforcement procedures by commencing applications to vary the maintenance order and thereby

abuse the court process.]

Joinder of enforcement and variation hearings

- (3) An enforcement hearing and a hearing on an application for variation of the maintenance order in default may be held together or separately.

Appointment of receiver

- 25** (1) On an application to the Supreme Court by the Director or a creditor, a judge may, where she or he considers it just to enforce obligations under a maintenance order, on the consent of a person, make an order appointing that person as the receiver, either conditionally or unconditionally, of money due, owing or payable or to become due, owing or payable to, or earned or to be earned by the debtor.

Appointment without formal application

- (2) Where a person is before a judge of the Supreme Court for any purpose under this Act but other than under subsection (1), the judge, if satisfied that the person is in default under a maintenance order, may appoint a receiver under subsection (1), without prior application.

Duty of receiver

- (3) Where a receiver realizes money under an order made under subsection (1), the receiver shall, after deducting her or his costs, pay the money to the Director or the creditor to satisfy the debtor's obligation under the maintenance order and pay the balance, if any, to the debtor.

Comment

[Receivership may be an appropriate remedy in limited circumstances. A Supreme Court receivership order would allow the Director to intervene for third party payments, for example, when the maintenance

debtor is self-employed. The Director will have the authority to bring a receivership application on behalf of the maintenance creditor.]

Part 7 ADMINISTRATIVE MATTERS

Termination of obligation

- 26** Each of the parties to a maintenance order shall give the Director notice of the termination of a maintenance obligation under the order, in the manner and at such time as may be provided in the regulations, if the maintenance order is filed in the Director's office.

Duty to advise of address change

- 27** If a debtor or creditor changes address, she or he shall advise the Director's office of the new address within 10 days of the date of the change.

Comment

[Both the debtor and the creditor are obliged to keep the Director's office informed of any address changes.]

Right of appeal

- 28** (1) An appeal lies from an order made under this Act within 30 days of the date of the order appealed from
- (a) to the County Court where the order under appeal was made by a Family Court judge; or

- (b) to the Appeal Division of the Supreme Court where the order under appeal was made by a judge of the Supreme Court.

Further appeal by leave only

- (2) There is no appeal of an order made under paragraph 1(b) except by leave of the Appeal Division of the Supreme Court.

Order remains in force

- (3) An order under appeal remains in force pending the determination of the appeal, unless the court appealed to otherwise orders.

Application of payments

29 Unless the court orders otherwise, money paid on account of a maintenance order shall be credited:

- (a) first to the periodic payment most recently due;
- (b) then to any arrears outstanding;
- (c) then to any other amount payable and outstanding in respect of the maintenance order; and
- (d) lastly to costs and fees prescribed in the regulations.

Comment

[The benefit of enforcement will be for the creditor first and this section prevents the Director from collecting costs or fees before paying the money owed to the creditor.]

Priority of maintenance over other unsecured debts

30 (1) Despite 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.

Arrears of more than three years

- (2) The priority under subsection (1) does not apply to arrears of maintenance

owing under a maintenance order that were owing more than three years before the date on which the creditor or the Director first initiated the proceedings to enforce the maintenance order.

Comment

[Although the maintenance creditor will be entitled to collect arrears which have been owing for more than three years (subject to section 36(4)), a priority over other unsecured judgment debts will only last for three years. In other words, if proceedings have not been commenced to enforce arrears for more than three years the maintenance creditor will rank equally with other creditors.]

Equal ranking

- (3) Maintenance orders rank equally with one another, regardless of when an enforcement process is issued or served.

Payments to Director exempt from attachment

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

Comment

[This subsection prevents another creditor of the maintenance debtor from attaching monies which have been paid to the Director under a maintenance order.]

Two or more maintenance orders

- (5) If 2 or more maintenance orders in respect of the same debtor are filed with the Director, the Director may prorate any money received in respect of any one of the maintenance orders among all the creditors under the maintenance orders.

Comment

[There are situations where maintenance debtors owe maintenance to two or more maintenance creditors. This subsection allows the Director the discretion to prorate any money received in these circumstances.]

Fees

- 31** (1) The Director may charge fees for her or his services in the amount and to the persons prescribed in the regulations.

Creditor not to be charged

- (2) The Director shall not charge a fee to a creditor for services provided to the creditor under this Act.

Comment

[The Commission is of the opinion that a maintenance creditor should not be charged a fee for the enforcement program offered through the Director's office. This section does, however, permit the Director to charge a fee from persons other than the creditor.]

Signature of Director as evidence

- 32** (1) A statement of arrears signed by the Director is admissible in evidence, in the absence of evidence to the contrary, as proof of the arrears without prior notice to the other party.

Proof of filing of maintenance order

- (2) A statement signed by the Director that a maintenance order is filed in the Director's office is admissible in evidence as conclusive proof of the facts contained in the statement.

Evidence of Director's signature

- (3) A 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.

Form of signature

- (4) Where the signature of the Director is required for the purposes of this Act, the signature may be written, engraved, lithographed or reproduced by another mode of reproducing words in visible form.

Computer printout as evidence

- (5) In any proceeding under this Act a computer printout
- (a) showing, as of the date of the printout, the state of the account, as between the parties to the proceeding, in respect of the payments required to be made by one party to the other pursuant to an order; and
 - (b) certified by the Director as being a true copy of the record in respect of the state of that account as of that date

is admissible in evidence, on behalf of either party, as proof of the state of the account, without prior notice to the other party of the intention to submit the printout in evidence.

Comment

[The Manitoba and New Brunswick legislation contain this type of provision⁵³. Although at present the only Family Courts in Nova Scotia which are computerized are in Dartmouth and Kentville, it is anticipated that automation will be expanded and the use of computer printouts as evidence will be an important aspect of the new enforcement process.]

Capacity of minor

⁵³ Section 53(3), *Family Maintenance Act*, R.S.M. 1987, c. F20, as amended and section 123(2.1), *Family Services Act*, *supra* (amended by 1992, Bill 25, s.5; however this amendment is not yet in force).

- 33** 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.

No limitation on arrears

- 34 (1)** Subject to subsection (4), there is no limitation as to time on a recovery of periodic payments in default under a maintenance order.

Death of maintenance debtor

- (2) Where a person against whom an order was made dies and at the time of death any payments are in default, the amount in default is, subject to subsection (4), a debt of the estate and recoverable by the person entitled to the payments in the same manner as any other debt recoverable from the estate.

Death of maintenance creditor

- (3) Where the person entitled to receive payments under an order dies, the personal representative of the deceased may, subject to subsection (4), recover for the estate of the deceased any payments in default at the time of the death.

Remission of maintenance payments

- (4) Where payments under an order are in default, a judge of the court that made the order may, on application, relieve the debtor or the estate of the debtor of the obligation to pay the whole or part of the amount in default if the judge is satisfied:
- (a) that having regard to the interests of the debtor or the estate of the debtor it would be grossly unfair and inequitable not to do so; and
 - (b) that having regard to the interests of the person entitled to the payments or the estate of that person, it is justified.

Comment

[The Commission believes that there should not be a time limit during which arrears under a maintenance order can no longer be collected. The

Manitoba Law Reform Commission⁵⁴ was of the view that there should be an opportunity for judges to forgive arrears in limited situations since it would be unfair to do otherwise and it recommended that the maintenance debtor have the right to apply for remission of arrears with the onus to be borne by her or him to establish why it would be fair to do so. The above section is identical to the one found in the Manitoba Act⁵⁵.]

Evasion by debtor

- 35** (1) Where the court is satisfied, on application by the Director or a creditor, that the debtor is hindering or defeating or is attempting to hinder or defeat the enforcement of a maintenance order by dissipation, gift or transfer of assets, the court may make an order restraining or setting aside a dealing with, or gift or transfer of, the assets or make an order for appointment of a receiver under section 25.

Arrest of debtor

- (2) Where the court is satisfied, on application by the Director or a creditor, that the debtor is attempting to hinder or defeat the enforcement of arrears under a maintenance order by leaving the province, the court may issue a warrant for the arrest of the debtor for the purpose of bringing her or him before the court to be examined with respect to the debtor's ability to meet the obligations under the maintenance order.

Provision unenforceable

- 36** A provision in an agreement or maintenance order by which a creditor agrees to, or that requires a creditor to
- (a) withdraw a maintenance order that is filed with the Director under the Act; or

⁵⁴ *Report on the One Year Rule for Enforcement of Arrears in Maintenance*, (Winnipeg, Manitoba, Queen's Printer, 1980).

⁵⁵ *Family Maintenance Act (supra)*, section 61.

- (b) file with the court that made the maintenance order or the Director a notice stating that the creditor does not wish to have a maintenance order enforced by the Director

is not enforceable.

Proof of default or arrears

- 37** In an action brought on default of an obligation under a maintenance order, proof of the default or arrears may be made either by oral or affidavit evidence or by other evidence that the judge may allow.

Proof of service

- 38** Where a proceeding is brought to enforce a maintenance order, it is not necessary to prove the debtor was served with the maintenance order.

Presumption of debtor's ability to pay

- 39** In addition to the enforcement proceedings brought under sections 22 and 23, in any other enforcement proceedings brought under this Act, the debtor is presumed to have the ability to pay the arrears and to make subsequent payments pursuant to the maintenance order.

Spouses compellable witnesses

- 40** Despite the provisions of the *Evidence Act*, spouses are competent and compellable witnesses against each other in a proceeding to enforce a maintenance order.

Rights are additional

- 41** The rights given under this Act are in addition to and not in substitution for any rights given under any other law.

Regulations

- 42** The Lieutenant Governor in Council may make regulations:
- (a) respecting the filing and refiling of maintenance orders with the Director;
 - (b) respecting forms and their use;

- (c) respecting practices and procedures to be used in proceedings under this Act;
- (d) respecting fees for services under this Act;
- (e) respecting records to be kept by the Director;
- (f) respecting service of documents under this Act or the regulations;
- (g) respecting the disclosure of financial information;
- (h) respecting Crown employees who are to be served pursuant to this Act;
- (i) respecting types of income for the purposes of paragraph (e) of the definition of "income source" in subsection 1(1); and
- (j) respecting any other matter or thing that by this Act is to be prescribed in the regulations.

Coming into force

43 This Act comes into force on a day to be named by proclamation of the Lieutenant Governor in Council.

APPENDIX A

DRAFT MAINTENANCE ENFORCEMENT ACT

Table of Contents

	Section
Part 1	
Interpretation	
Interpretation	1(1)
Act binds Crown	1(2)
Part 2	
Office of Director, Duties and Powers	
Director of maintenance enforcement	2
Duty of Director	3(1)
Powers of Director	3(2)
Enforcement by Director only	4
Delegation of Director's powers	5(1)
Powers of enforcement officers	5(2)
Part 3	
Automatic Filing of Maintenance Orders	
Automatic filing of orders by court	6(1)
Option not to file	6(2)
Judge may refuse to allow opting out	6(3)
Filing of order by creditor or debtor	6(4)
Filing of orders by others	6(5)
Filing of orders made outside Nova Scotia	6(6)
Automatic filing of past orders enforced through Family Court	6(7)
Withdrawal of filing	7(1)
Refiling of order	7(2)

Notice of filing or withdrawal	7(3)
Enforcement by Director	8(1)
Arrears enforceable	8(2)
Payment to Director	9(1)
Director to pay money to creditor	9(2)
Record of payments	9(3)
Statement of current status	9(4)
Statement for reciprocating state	9(5)

Part 4 Enforcement Proceedings without a Hearing

Enforcement by garnishment proceedings	10(1)
Garnishment mandatory on first default	10(2)
Persons bound by garnishment	10(3)
Notice to income source	10(4)
Notice to debtor	10(5)
First payment by income source	11(1)
Debtor's duty to pay	11(2)
Arrears	11(3)
When enforcement ends	11(4)
Person not an income source	12
Dispute	13
Duty to inform of termination or interruption of payments	14(1)
Notice	14(2)
Rights of employee protected	15(1)
Redress for employee	15(2)
When employer deemed in violation	15(3)
Recognition of extra-provincial garnishments	16(1)
Income source outside Nova Scotia	16(2)
Enforcement by seizure and sale of property	17(1)
Execution order obtained by Director	17(2)
Registration of certificate	17(3)
Civil Procedure Rules apply	17(4)

Part 5 Information Requirements and Confidentiality

Access to information	18(1)
-----------------------	-------

Duty to provide information	18(2)
Order of court for access to information	18(3)
Costs	18(4)
Section prevails	18(5)
Confidentiality of information and disclosure	19(1)
Court order respecting confidentiality	19(2)
Offence	20
Financial information	21(1)
Extension of time	21(2)
Warrant for arrest	21(3)
Offence	21(4)

Part 6 Enforcement Proceedings Before the Director or the Court

Enforcement proceedings before Director	22(1)
Presumptions	22(2)
Action by Director	22(3)
Summons for hearing before Judge	23(1)
Presumptions	23(2)
Powers of court	23(3)
Power to vary	23(4)
Imprisonment does not discharge arrears	23(5)
Realizing on security	23(6)
Filing of variation order	24(1)
Variation application does not stay enforcement	24(2)
Joinder of enforcement and variation hearings	24(3)
Appointment of receiver	25(1)
Appointment without formal application	25(2)
Duty of receiver	25(3)

Part 7 Administrative Matters

Termination of obligation	26
Duty to advise of address change	27
Right of appeal	28(1)
Further appeal by leave only	28(2)
Order remains in force	28(3)
Application of payments	29

Priority of maintenance over other unsecured debts	30(1)
Arrears of more than three years	30(2)
Equal ranking	30(3)
Payments to Director exempt from attachment	30(4)
Two or more maintenance orders	30(5)
Fees	31(1)
Creditor not to be charged	31(2)
Signature of Director as evidence	32(1)
Proof of filing of maintenance order	32(2)
Evidence of Director's signature	32(3)
Form of signature	32(4)
Computer printout as evidence	32(5)
Capacity of minor	33
No limitation on arrears	34(1)
Death of maintenance debtor	34(2)
Death of maintenance creditor	34(3)
Remission of maintenance payments	34(4)
Evasion by debtor	35(1)
Arrest of debtor	35(2)
Provision unenforceable	36
Proof of default or arrears	37
Proof of service	38
Presumption of debtor's ability to pay	39
Spouses compellable witnesses	40
Rights are additional	41
Regulations	42
Coming into force	43

MAINTENANCE ENFORCEMENT ACT

Part 1 Interpretation

Interpretation

- 1** (1) In this Act,
- (a) "court" means the Supreme Court and the Family Court unless otherwise stated;
 - (b) "creditor" means a person entitled under a maintenance order to receive maintenance on her or his own behalf or on behalf of another person;
 - (c) "debtor" means a person required under a maintenance order to pay maintenance;
 - (d) "Director" means the Director of Maintenance Enforcement appointed under section 2;
 - (e) "income source" includes an individual, a corporation or other entity that owes payment to a debtor of:
 - (i) wages or salary,
 - (ii) a commission, bonus, piece-work allowance or other amount if the payment is not recoverable by the income source from the payor should the payor fail to earn the commission or bonus or fail to meet any production target,
 - (iii) a benefit under an accident, disability or sickness plan,
 - (iv) a disability, retirement or other pension,
 - (v) an annuity,
 - (vi) a dividend, or

- (vii) income of a type described in the regulations;
- (f) "maintenance order" means a requirement in an order of a court in or outside Nova Scotia enforceable in Nova Scotia for the payment of maintenance or support, including:
- (i) 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,
 - (ii) a lump sum to be paid or held in trust,
 - (iii) property to be transferred to or in trust for or vested in a party, whether absolutely, for life or for a term of years,
 - (iv) one spouse to be given exclusive possession of a matrimonial home or part of it for life or for the lesser period that the court directs,
 - (v) a spouse to whom exclusive possession of a matrimonial home is given to make the periodic payments to the other spouse that are prescribed in the order,
 - (vi) one spouse to be given exclusive possession of the contents of a matrimonial home or household goods or any part of them,
 - (vii) a spouse to pay for the repair and maintenance of a matrimonial home or to pay other liabilities arising in respect of it,
 - (viii) part or all of the money payable under the order to be paid into court or to another appropriate person or agency for the benefit of a party,
 - (ix) payment of support or maintenance in respect of a period before the date of the order,
 - (x) payment to an agency of an amount in reimbursement for a benefit or assistance provided to a party under a statute, including a benefit or assistance provided before the date of the order,
 - (xi) payment of expenses in respect of a child's prenatal care and birth,

- (xii) 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,
- (xiii) the securing of payment under the order, by a charge on property or otherwise, or
- (xiv) interest or the payment of legal fees or other expenses arising in relation to support or maintenance,

and includes such a requirement, in a marriage contract, cohabitation agreement, paternity agreement or separation agreement that is enforceable under the laws of Nova Scotia but does not include a provisional order that has not been confirmed under the *Maintenance Orders Enforcement Act*;

- (g) "provisional order" means an order of a court that has no effect in the jurisdiction where it was made until confirmed by a court in a reciprocating state pursuant to the *Maintenance Orders Enforcement Act* or similar reciprocal enforcement legislation.

Act binds Crown

- (2) This Act binds the Crown.

Part 2 Office of Director, Duties and Powers

Director of Maintenance Enforcement

- 2** There shall be a Director of Maintenance Enforcement who shall be appointed by the Lieutenant Governor in Council.

Duty of Director

- 3** (1) The Director shall take all steps that she or he considers advisable to enforce maintenance orders that are filed in the Director's office.

Powers of Director

- (2) Where the Director has made a determination under subsection (1), the Director shall, for the purpose of enforcing a maintenance order, begin and conduct a proceeding and take steps for the enforcement of an order in the Director's name as if the Director were a creditor under the order.

Enforcement by Director only

- 4 No person other than the Director shall enforce a maintenance order during the time it is filed with the Director's office.

Delegation of Director's powers

- 5 (1) The Director may designate employees of the Civil Service Commission to be enforcement officers for the purposes of this Act.

Powers of enforcement officers

- (2) An enforcement officer may act for and in the name of the Director with the same powers, duties or functions conferred or imposed on the Director under this Act.

Part 3 Automatic Filing of Maintenance Orders

Automatic filing of orders by court

- 6 (1) Every maintenance order made by a Nova Scotia court, other than a provisional order, shall state in its operative part that the order shall be filed with the Director's office pursuant to this Act.

Option not to file

- (2) The prothonotary or clerk of the court that makes a maintenance order shall file it with the Director's office within ten days after it is signed unless the creditor files with the court and the Director's office a written consent signed by the creditor and the debtor stating that they do not want the order enforced by the Director.

Judge may refuse to allow opting out

- (3) A judge may refuse to allow parties to a maintenance order to opt out of the enforcement program under subsection (2) if she or he believes it is in the best interests of those affected by the order.

Filing of orders by creditor or debtor

- (4) A maintenance order may be filed with the Director's office by either a creditor or debtor.

Filing of orders by others

- (5) A maintenance order may be filed with the Director's office by:
 - (a) the Minister of Community Services; or
 - (b) a person or a representative of a government department or agency, a city, an incorporated town or a municipality of a county or district providing maintenance to a creditor who made the original application for a maintenance order under section 23 of the *Family Maintenance Act*.

Filing of orders made outside Nova Scotia

- (6) Every maintenance order made by a court outside Nova Scotia that is received under the *Maintenance Orders Enforcement Act* for enforcement in Nova Scotia shall be filed promptly with the Director's office.

Automatic filing of past orders enforced through Family Court

- (7) All maintenance orders that are filed for enforcement in Family Court under the Family Maintenance Act shall automatically be filed with the Director's office for enforcement.

Withdrawal of filing

- 7 (1) A maintenance order filed with the Director may be withdrawn:
 - (a) by the Director, 14 days after a notice is mailed to the creditor advising that the Director will withdraw the maintenance order, where it appears that the creditor is taking steps to enforce the order;

- (b) by the creditor, except where the maintenance order was filed by the debtor;
- (c) by the debtor, except where the maintenance order was filed by the creditor.

Refiling of order

- (2) A maintenance order that has been withdrawn may be refiled with the Director's office at any time.

Notice of filing or withdrawal

- (3) The Director shall give notice, by ordinary mail, of the filing or withdrawal of a maintenance order to the parties to the order.

Enforcement by Director

- 8** (1) A maintenance order filed with the Director's office shall be enforced by the Director and amounts owing under the order shall be paid to the Director, who shall pay them to the person to whom they are owed.

Arrears enforceable

- (2) The Director may enforce arrears of maintenance under a maintenance order even though the arrears were incurred before the order was filed with the Director's office or before the date this Act comes into effect.

Payment to Director

- 9** (1) Despite the requirements of the maintenance order, if a maintenance order is filed with the Director, the debtor shall make all required payments to the Director.

Director to pay money to creditor

- (2) The Director shall pay to the creditor the money received in respect of a maintenance order to the extent of the entitlement of the creditor under that maintenance order.

Record of payments

- (3) The Director shall keep a record of:

- (a) all payments received by the Director;
- (b) all payments forwarded by the Director;
- (c) the persons from whom payments were received; and
- (d) the persons to whom payments have been forwarded.

Statement of current status

- (4) The Director shall, on the request of the creditor or debtor, provide a statement showing the current status of payments under a maintenance order filed with the Director.

Statement for reciprocating state

- (5) The Director shall, on the request of the proper officer of a reciprocating state or a court of a reciprocating state, provide a sworn or affirmed, itemized statement with respect to a support order, showing all amounts that have become due and owing by the debtor during the 24 months before the date of the statement, and all payments made through the Director's office by or on behalf of the debtor during that same period.

Part 4 Enforcement Proceedings Without a Hearing

Enforcement by garnishment proceedings

- 10** (1) An obligation to pay money under a maintenance order may be enforced by an execution order in the nature of garnishee directing that one or more income sources of the debtor deduct the amount as specified in the maintenance order from any remuneration of the debtor due at the time the order is served on the income source or thereafter due, or accruing due.

Garnishment mandatory on first default

- (2) Where a maintenance order has been filed with the Director for enforcement, the Director shall issue an execution order in the nature of garnishee where there has been a single default of payment by the debtor.

Persons bound by garnishment

- (3) An execution order in the nature of garnishee binds every income source who is served by the Director's office with the order whether or not the income source is named in the order.

Notice to income source

- (4) The Director's office may serve an execution order in the nature of garnishee by ordinary mail addressed to each income source from whom it is seeking payment.

Notice to debtor

- (5) The Director shall send a copy of the execution order in the nature of garnishee to the debtor by ordinary mail at her or his last address as shown on the records of the Director.

First payment by income source

- 11** (1) An income source shall begin making payments to the Director's office within fourteen days of the day on which the income source receives the order.

Debtor's duty to pay

- (2) Until the income source begins deducting maintenance payments or if payments by an income source are interrupted or terminated, the debtor shall pay the amounts owing under the maintenance order to the Director or to the creditor where the creditor has initiated the garnishment proceedings.

Arrears

- (3) The Director may include in the amount required to be deducted and paid to the Director's office any amount in arrears under a maintenance order.

When enforcement ends

- (4) The Director shall enforce an execution order in the nature of garnishee, subject to any variation of the order, until the maintenance order to which it relates is terminated and there are no arrears owing.

Person not an income source

- 12** If an individual, corporation or other entity served with an execution order in the nature of garnishee is not an income source of the debtor, the individual, corporation or other entity shall give written notice to the Director within ten days following receipt.

Dispute

- 13** The Director, the debtor or the income source, individual, corporation or other entity may, on notice to the other, bring an application to court to determine:
- (a) whether the income source has failed to comply with the order;
 - (b) whether the amount the income source is deducting and paying to the Director is correct;
 - (c) whether the individual, corporation or other entity is an income source; or
 - (d) whether money owed under the maintenance order has been paid.

Duty to inform of termination or interruption of payments

- 14 (1)** Within ten days of the termination or beginning of an interruption of payments by an income source to a debtor, both the income source and the debtor shall give written notice to the Director's office of the termination or interruption together with such other information as may be required by the regulations.

Notice

- (2)** If notice has been given or should have been given under subsection (1)
- (a) the debtor and the income source, within ten days of the resumption of payments that have been interrupted, shall give written notice to the Director's office of the resumption;
 - (b) the debtor, within ten days of beginning employment with another income source or of becoming entitled to payments from another income source, shall give written notice to the Director's office of the new employment or the entitlement and of the name and address of the income source.

Rights of employee protected

- 15** (1) An employer shall not dismiss, suspend, lay-off, penalize, discipline or discriminate against an employee if the reason is in any way related to the issuing of an execution order in the nature of garnishee.

Redress for employee

- (2) Upon the application of an employee who alleges to have been the subject of a violation of subsection (1), the Supreme 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.

When employer deemed in violation

- (3) An employer who dismisses, suspends, lays off, penalizes, disciplines or discriminates against an employee in respect of whom an execution order in the nature of garnishee has been issued under this Act while the execution order is in effect or within 6 months after it has ceased to have effect shall, where an application is made under subsection (2), be required to show cause for such action, in default of which the action shall be deemed to have been in violation of subsection (1).

Recognition of extra-provincial garnishments

- 16** (1) On the filing of a garnishment process that
- (a) is issued outside Nova Scotia and is directed to a income source in Nova Scotia;
 - (b) states that it is issued in respect of support or maintenance;
 - (c) states the amount of the support or maintenance due to the creditor;
and
 - (d) is written in or accompanied by a sworn, affirmed or certified translation into English or French,

the Director shall issue an execution order in the nature of garnishee to enforce the support or maintenance obligation.

Income source outside Nova Scotia

- (2) An execution order in the nature of garnishee may be issued in respect of an income source who is outside Nova Scotia and shall:
 - (a) be signed and sealed by the clerk of the court;
 - (b) state that it is issued in respect of maintenance;
 - (c) state the amount of the support or maintenance due to the creditor; and
 - (d) be written in or accompanied by a sworn, affirmed or certified translation into English or French.

Enforcement by seizure and sale of property

- 17** (1) An obligation to pay money under a maintenance order may be enforced by an execution order for the seizure and sale of the debtor's real and personal property.

Execution order obtained by Director

- (2) Where a maintenance order has been filed with the Director for enforcement, the Director may, without a hearing, proceed to obtain an execution order and a certificate of judgment where there has been a single default of payment by the debtor.

Registration of certificate

- (3) The certificate of judgment shall be registered by every registrar of deeds with whom the Director places it for registration and the judgment so registered shall operate as a lien upon the real property of the judgment debtor, situated within the registration district in which the same is registered.

Civil Procedure Rules apply

- (4) The provisions of the *Civil Procedure Rules* respecting the enforcement of execution orders shall apply.

Part 5 Information Requirements and Confidentiality

Access to information

- 18 (1)** For the purposes of enforcing a maintenance order or of obtaining information for a person performing similar functions in another jurisdiction, the Director may request from a person, corporation, or public body, including the Crown, information as to
- (a) the wages, salary or source of income;
 - (b) the assets or liabilities;
 - (c) the financial status; and
 - (d) the location, address and place of employment
- of the debtor that is within the knowledge of, or shown on a record in the possession or control of the person, corporation or body.

Duty to provide information

- (2)** A person, corporation or public body, including the Crown, that receives a request for information shall provide it within 14 days of the day on which the request is received.

Order of court for access to information

- (3)** Where, on application to Family Court, it appears that
- (a) the Director has been refused information after making a request under subsection (1); or
 - (b) a person needs information to enforce a maintenance order that is not filed with the Director,
- the court may order a person, corporation or public body, including the Crown, to provide the court or the person named by the court with information as to
- (a) the wages, salary or source of income;

- (b) the assets or liabilities;
- (c) the financial status; and
- (d) the location, address and place of employment

of the debtor that is within the knowledge of, or shown on a record in the possession or control of the person, corporation or body.

Costs

- (4) Where the Director obtains an order under subsection (3), the court shall award the costs of the application to the Director.

Section prevails

- (5) This section applies despite any other Act or regulation and despite any common law rule of confidentiality except solicitor-client privilege.

Confidentiality of information and disclosure

- 19** (1) Information received by the Director is confidential and shall not be disclosed except:
- (a) for the purpose of enforcing a maintenance order filed with the Director;
 - (b) on request, to a person performing similar functions in another jurisdiction; or
 - (c) by an order of the court.

Court order respecting confidentiality

- (2) Where an order is made under subsection 18(3) or under a similar provision in another Act or an Act of the Parliament of Canada, the court may make an order with respect to the confidentiality to be maintained in connection with the information released.

Offence

- 20** Every person who releases information that is not lawfully available to the public commits an offence and is liable on conviction to a fine of not more than \$2,000 or to imprisonment for not more than six months, or both.

Financial information

- 21** (1) Where a debtor is in default under a maintenance order, the Director may require that the debtor:
- (a) file a statement of financial information in the prescribed form with the Director's office within 14 days of the day that she or he receives the Notice and a statement of arrears; and
 - (b) appear before the Director to be examined in relation to employment income, assets and financial circumstances for the purpose of enforcing the maintenance order.

Extension of time

- (2) The Director may extend the period within which the financial statement is required to be filed by the debtor with the Director.

Warrant for arrest

- (3) Where the debtor fails to appear before the Director as required by paragraph (1)(b), the Director may issue a warrant for her or his arrest for the purpose of bringing the debtor before the Director.

Offence

- (4) A debtor who
- (a) does not file a statement of finances in accordance with this Act; or
 - (b) knowingly gives false information in a statement of finances filed with the Director or the court

is guilty of an offence and liable on summary conviction to a fine of not more than \$2000 or to imprisonment for a term of not more than 3 months, or to both.

Part 6
Enforcement Proceedings Before the Director or the Court

Enforcement proceedings before Director

- 22** (1) Where a debtor is required to appear before the Director pursuant to paragraph 21(1)(b), the Director shall examine the debtor on oath or affirmation about her or his finances, including:
- (a) the means or ability the debtor has of complying with the maintenance order;
 - (b) the disposal the debtor has made of property since the date on which the proceedings were started in which the maintenance order was made,
 - (c) the debts that are owing to or by the debtor; and
 - (d) the debtor's assets, income and financial obligations generally.

Presumptions

- (2) At the enforcement proceedings:
- (a) the debtor shall be presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order; and
 - (b) a statement of arrears prepared and served by the Director shall be presumed to be correct as to the arrears accruing while the order is filed with the Director's office.

Action by Director

- (3) At the conclusion of an examination under subsection (1), the Director shall:
- (a) proceed to obtain an execution order;
 - (b) proceed to obtain the appointment of a receiver under section 25; or
 - (c) proceed to bring the person in default before a judge of the Family Court for a hearing under section 23.

Summons for hearing before Judge

- 23** (1) If a debtor defaults in the payment of maintenance under a maintenance order, the Director, in the case of a maintenance order filed with the Director's office, or the creditor may procure a summons to require the debtor to attend at a hearing before a judge of the Family Court.

Presumptions

- (2) At the enforcement hearing, unless the contrary is shown,
- (a) the debtor shall be presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order; and
 - (b) a statement of arrears prepared and served by the Director shall be presumed to be correct as to the arrears accruing while the order is filed with the Director's office.

Powers of court

- (3) The court, unless it is satisfied that the debtor is unable for valid reasons to pay the arrears or to make subsequent payments under the order, may order that:
- (a) the debtor pay all or part of the arrears by such periodic payments as the court considers just but an order for partial payment does not discharge any unpaid arrears;
 - (b) the debtor discharge the arrears in full by a specified date;
 - (c) the debtor 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) the debtor provide security in such form as the court directs for the arrears and subsequent payment;
 - (e) the debtor report periodically to the court, the Director or a person specified in the order;
 - (f) the debtor provide to the court, the Director or a person specified in the order particulars of any future change of address or employment as

soon as they occur;

- (g) the debtor be imprisoned continuously or intermittently for not more than ninety days unless the arrears are sooner paid;
- (h) the debtor be imprisoned continuously or intermittently for not more than ninety days on default in any payment ordered under this subsection;
- (i) proceedings be commenced in Supreme Court for the appointment of a receiver under section 25;
- (j) a judgment be issued under section 17;
- (k) an execution order in the nature of garnishee be ordered under section 10;
- (l) the debtor pay any costs that the court considers just; and
- (m) the debtor be fined an amount not exceeding \$500.

Power to vary

- (4) The court that made an order under subsection (3) may vary the order on application if there is a material change in the debtor's circumstances.

Imprisonment does not discharge arrears

- (5) Imprisonment of a debtor under paragraph (3)(g) or (h) does not discharge arrears under an order.

Realizing on security

- (6) An order for security under paragraph (3)(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 or for the release of all or part of the security.

Filing of variation order

- 24** (1) Where a maintenance order is varied the clerk or prothonotary of the court shall file with the Director the order of the court that varies the maintenance order.

Variation application does not stay enforcement

- (2) An application to vary a maintenance order does not stay any enforcement proceedings which have been commenced or prevent further enforcement proceedings.

Joinder of enforcement and variation hearings

- (3) An enforcement hearing and a hearing on an application for variation of the maintenance order in default may be held together or separately.

Appointment of receiver

- 25** (1) On an application to the Supreme Court by the Director or a creditor, a judge may, where she or he considers it just to enforce obligations under a maintenance order, on the consent of a person, make an order appointing that person as the receiver, either conditionally or unconditionally, of money due, owing or payable or to become due, owing or payable to, or earned or to be earned by the debtor.

Appointment without formal application

- (2) Where a person is before a judge of the Supreme Court for any purpose under this Act but other than under subsection (1), the judge, if satisfied that the person is in default under a maintenance order, may appoint a receiver under subsection (1), without prior application.

Duty of receiver

- (3) Where a receiver realizes money under an order made under subsection (1), the receiver shall, after deducting her or his costs, pay the money to the Director or the creditor to satisfy the debtor's obligation under the maintenance order and pay the balance, if any, to the debtor.

Part 7 Administrative Matters

Termination of obligation

- 26** Each of the parties to a maintenance order shall give the Director notice of the

termination of a maintenance obligation under the order, in the manner and at such time as may be provided in the regulations, if the maintenance order is filed in the Director's office.

Duty to advise of address change

- 27** If a debtor or creditor changes address, she or he shall advise the Director's office of the new address within 10 days of the date of the change.

Right of appeal

- 28** (1) An appeal lies from an order made under this Act within 30 days of the date of the order appealed from
- (a) to the County Court where the order under appeal was made by a Family Court judge; or
 - (b) to the Appeal Division of the Supreme Court where the order under appeal was made by a judge of the Supreme Court.

Further appeal by leave only

- (2) There is no appeal of an order made under paragraph 1(b) except by leave of the Appeal Division of the Supreme Court.

Order remains in force

- (3) An order under appeal remains in force pending the determination of the appeal, unless the court appealed to otherwise orders.

Application of payments

- 29** Unless the court orders otherwise, money paid on account of a maintenance order shall be credited:
- (a) first to the periodic payment most recently due;
 - (b) then to any arrears outstanding;
 - (c) then to any other amount payable and outstanding in respect of the maintenance order; and

- (d) lastly to costs and fees prescribed in the regulations.

Priority of maintenance over other unsecured debts

- 30** (1) Despite 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.

Arrears of more than three years

- (2) The priority under subsection (1) does not apply to arrears of maintenance owing under a maintenance order that were owing more than three years before the date on which the creditor or the Director first initiated the proceedings to enforce the maintenance order.

Equal ranking

- (3) Maintenance orders rank equally with one another, regardless of when an enforcement process is issued or served.

Payments to Director exempt from attachment

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

Two or more maintenance orders

- (5) If 2 or more maintenance orders in respect of the same debtor are filed with the Director, the Director may prorate any money received in respect of any one of the maintenance orders among all the creditors under the maintenance orders.

Fees

- 31** (1) The Director may charge fees for her or his services in the amount and to the persons prescribed in the regulations.

Creditor not to be charged

- (2) The Director shall not charge a fee to a creditor for services provided to the creditor under this Act.

Signature of Director as evidence

- 32** (1) A statement of arrears signed by the Director is admissible in evidence, in the absence of evidence to the contrary, as proof of the arrears without prior notice to the other party.

Proof of filing of maintenance order

- (2) A statement signed by the Director that a maintenance order is filed in the Director's office is admissible in evidence as conclusive proof of the facts contained in the statement.

Evidence of Director's signature

- (3) A 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.

Form of signature

- (4) Where the signature of the Director is required for the purposes of this Act, the signature may be written, engraved, lithographed or reproduced by another mode of reproducing words in visible form.

Computer printout as evidence

- (5) In any proceeding under this Act a computer printout
- (a) showing, as of the date of the printout, the state of the account, as between the parties to the proceeding, in respect of the payments required to be made by one party to the other pursuant to an order; and
 - (b) certified by the Director as being a true copy of the record in respect of the state of that account as of that date

is admissible in evidence, on behalf of either party, as proof of the state of the account, without prior notice to the other party of the intention to submit the printout in evidence.

Capacity of minor

- 33** 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.

No limitation on arrears

- 34** (1) Subject to subsection (4), there is no limitation as to time on a recovery of periodic payments in default under a maintenance order.

Death of maintenance debtor

- (2) Where a person against whom an order was made dies and at the time of death any payments are in default, the amount in default is, subject to subsection (4), a debt of the estate and recoverable by the person entitled to the payments in the same manner as any other debt recoverable from the estate.

Death of maintenance creditor

- (3) Where the person entitled to receive payments under an order dies, the personal representative of the deceased may, subject to subsection (4), recover for the estate of the deceased any payments in default at the time of the death.

Remission of maintenance payments

- (4) Where payments under an order are in default, a judge of the court that made the order may, on application, relieve the debtor or the estate of the debtor of the obligation to pay the whole or part of the amount in default if the judge is satisfied:
- (a) that having regard to the interests of the debtor or the estate of the debtor it would be grossly unfair and inequitable not to do so; and
 - (b) that having regard to the interests of the person entitled to the payments or the estate of that person, it is justified.

Evasion by debtor

- 35** (1) Where the court is satisfied, on application by the Director or a creditor, that the debtor is hindering or defeating or is attempting to hinder or defeat the enforcement of a maintenance order by dissipation, gift or transfer of assets, the court may make an order restraining or setting aside a dealing with, or gift or transfer of, the assets or make an order for appointment of a receiver under

section 25.

Arrest of debtor

- (2) Where the court is satisfied, on unilateral application by the Director or a creditor, that the debtor is attempting to hinder or defeat the enforcement of arrears under a maintenance order by leaving the province, the court may issue a warrant for the arrest of the debtor for the purpose of bringing her or him before the court to be examined with respect to the debtor's ability to meet the obligations under the maintenance order.

Provision unenforceable

- 36** A provision in an agreement or maintenance order by which a creditor agrees to, or that requires a creditor to
- (a) withdraw a maintenance order that is filed with the Director under the Act; or
 - (b) file with the court that made the maintenance order or the Director a notice stating that the creditor does not wish to have a maintenance order enforced by the Director
- is not enforceable.

Proof of default or arrears

- 37** In an action brought on default of an obligation under a maintenance order, proof of the default or arrears may be made either by oral or affidavit evidence or by other evidence that the judge may allow.

Proof of service

- 38** Where a proceeding is brought to enforce a maintenance order, it is not necessary to prove the debtor was served with the maintenance order.

Presumption of debtor's ability to pay

- 39** In addition to the enforcement proceedings brought under sections 22 and 23, in any other enforcement proceedings brought under this Act, the debtor is presumed to have the ability to pay the arrears and to make subsequent

payments pursuant to the maintenance order.

Spouses compellable witnesses

- 40** Despite the provisions of the *Evidence Act*, spouses are competent and compellable witnesses against each other in a proceeding to enforce a maintenance order.

Rights are additional

- 41** The rights given under this Act are in addition to and not in substitution for any rights given under any other law.

Regulations

- 42** The Lieutenant Governor in Council may make regulations:
- (a) respecting the filing and refiling of maintenance orders with the Director;
 - (b) respecting forms and their use;
 - (c) respecting practices and procedures to be used in proceedings under this Act;
 - (d) respecting fees for services under this Act;
 - (e) respecting records to be kept by the Director;
 - (f) respecting service of documents under this Act or the regulations;
 - (g) respecting the disclosure of financial information;
 - (h) respecting Crown employees who are to be served pursuant to this Act;
 - (i) respecting types of income for the purposes of paragraph (e) of the definition of "income source" in subsection 1(1); and
 - (j) respecting any other matter or thing that by this Act is to be prescribed in the regulations.

Coming into force

- 43** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor in Council.

APPENDIX B

LIST OF PERSONS WHO RECEIVED COPIES OF THE DISCUSSION PAPER, JULY 1992

Family Court Enforcement Workers

Wayne White, Enforcement Officer, Amherst, Province of Nova Scotia
Donald Keigan, Enforcement Officer, Antigonish, Province of Nova Scotia
Peter Roberts, Senior Family Court Officer, Dartmouth, Province of Nova Scotia
Susan Mahar, Enforcement Officer, Dartmouth, Province of Nova Scotia
Jean Murphy, Enforcement Officer, Dartmouth, Province of Nova Scotia
Len Lipsett, Senior Family Court Officer, Halifax, Province of Nova Scotia
Wally Landry, Enforcement Officer, Halifax, Province of Nova Scotia
Don Rutherford, Enforcement Officer, Halifax, Province of Nova Scotia
Barry Lavallee, Enforcement Officer, Kentville, Province of Nova Scotia
Dena Benjamin, Enforcement Officer, Kentville, Province of Nova Scotia
Fraser Dorman, Enforcement Officer, Lunenburg, Province of Nova Scotia
Dan MacIsaac, Enforcement Officer, New Glasgow, Province of Nova Scotia
Francis Lukeman, Enforcement Officer, New Glasgow, Province of Nova Scotia
Fulton MacPherson, Enforcement Officer, Port Hawkesbury, Province of Nova Scotia
Terry Mosley, Enforcement Officer, Sydney, Province of Nova Scotia
Delores Horne, Enforcement Officer, Sydney, Province of Nova Scotia
Keith Mumford, Enforcement Officer, Truro, Province of Nova Scotia
Bob LeBlanc, Enforcement Officer, Yarmouth, Province of Nova Scotia

Family Court Regional Administrators

Joan MacKinnon, Regional Administrator, Halifax Regional Office, Province of Nova Scotia

Barry Costello, Regional Administrator, Department of Community Services, Kentville, Province of Nova Scotia

Gordon MacMaster, Regional Administrator, Department of Community Services, Liverpool, Province of Nova Scotia

Cyril Reddy, Regional Administrator, Department of Community Services, New Glasgow, Province of Nova Scotia

Frank Capstick, Regional Administrator, Department of Community Services, Sydney, Province of Nova Scotia

Harvey MacArthur, Regional Administrator, Department of Community Services, Truro, Province of Nova Scotia

F.A. Bowes, Regional Administrator, Department of Community Services, Yarmouth, Province of Nova Scotia

Crown Attorneys

James Gumpert, Regional Crown Attorney, Halifax, Province of Nova Scotia

Adrian C. Reid, Associate Regional Crown Attorney, Halifax, Province of Nova Scotia

T. Robert Parker, Q.C., Regional Crown Attorney, New Glasgow, Province of Nova Scotia

Frank C. Edwards, Regional Crown Attorney, Sydney, Province of Nova Scotia

Jack Buntain, Q.C., Regional Crown Attorney, Kentville, Province of Nova Scotia

Legal Aid Offices

P. MacNeil, Director, Legal Aid, Amherst, Province of Nova Scotia

Andrew Jonson, Director, Legal Aid, Annapolis Royal, Province of Nova Scotia

Douglas MacLellan, Director, Legal Aid, Antigonish, Province of Nova Scotia

Gregory Rafuse, Director, Legal Aid, Bridgewater, Province of Nova Scotia

Moira C. Legere, Director, Legal Aid, Dartmouth, Province of Nova Scotia

Barbara Beach, Director, Legal Aid, Halifax, Province of Nova Scotia

Stephen Matison, Director, Legal Aid, Kentville, Province of Nova Scotia

H. Bruce Holton, Director, Legal Aid, New Glasgow, Province of Nova Scotia

Robert McNeil, Director, Legal Aid, Sydney, Province of Nova Scotia

Anne Malick, Director, Legal Aid, Truro, Province of Nova Scotia

James Armour, Director, Legal Aid, Windsor, Province of Nova Scotia

Dell Wickens, Director, Legal Aid, Yarmouth, Province of Nova Scotia

Director, Dalhousie Legal Aid, Halifax, Province of Nova Scotia

Director, Metro Community Law Clinic, Halifax, Province of Nova Scotia

Other Government Staff

Martha Crowe, Department of Community Services, Halifax, Province of Nova Scotia

Peter Arnburg, Manager, Family Maintenance Income Support Program, Department of Community Services, Halifax, Province of Nova Scotia

Dr. Patricia Ripley, Deputy Minister, Department of Community Services, Halifax, Province of Nova Scotia

Bill Campbell, Director, Family Benefits Division, Department of Community Services, Halifax, Province of Nova Scotia

John T. MacKinnon, Director, Young Offender and Court Services, Department of Community Services, Halifax, Province of Nova Scotia

Libraries

Atlantic Provinces Economic Council Library, Halifax, Province of Nova Scotia

Nova Scotia Department of Community Services Library, Halifax, Province of Nova Scotia

Nova Scotia Department of Industry, Trade and Technology Library, Halifax, Province of Nova Scotia

Nova Scotia Department of Small Business Development Library, Halifax, Province of Nova Scotia

Ombudsman Library, Halifax, Province of Nova Scotia

University of Calgary, Faculty of Law, Calgary, Alberta

University of Alberta, Faculty of Law, Edmonton, Alberta

University of Victoria, Faculty of Law, Victoria, British Columbia

University of Manitoba, Faculty of Law, Winnipeg, Manitoba

University of New Brunswick, Faculty of Law, Fredericton, New Brunswick

York University, Faculty of Law, North York, Ontario

Queen's University, Faculty of Law, Kingston, Ontario

McGill University, Faculty of Law, Montréal, Quebec

University of Windsor, Faculty of Law, Windsor, Ontario

University of Saskatchewan, Faculty of Law, Saskatoon, Saskatchewan

University of Western Ontario, Faculty of Law, London, Ontario

University of British Columbia, Faculty of Law, Vancouver, British Columbia

Dalhousie University, Faculty of Law, Halifax, Province of Nova Scotia

University of Ottawa, Faculty of Law, Ottawa, Ontario

University of Ottawa, Law Library, Ottawa, Ontario

Bibliothèque de droit, Université de Montréal, Montréal, Québec

Bibliothèque générale, Université de Laval, Québec, Québec

Bibliothèque de droit, Université de Moncton, Moncton, Nouveau Brunswick

University of Toronto, Faculty of Law, Toronto, Ontario

Bibliothèque de droit, Université de Sherbrooke, Sherbrooke, Québec

Annapolis Valley Regional Library, Annapolis Royal, Province of Nova Scotia

Cape Breton Regional Library, Sydney, Province of Nova Scotia

Colchester-East Hants Regional Library, Truro, Province of Nova Scotia

Cumberland Regional Library, Amherst, Province of Nova Scotia

Dartmouth Regional Library, Dartmouth, Province of Nova Scotia

Eastern Counties Regional Library, Mulgrave, Province of Nova Scotia

Halifax City Regional Library, Halifax, Province of Nova Scotia

Halifax County Regional Library, Lower Sackville, Province of Nova Scotia

Pictou-Antigonish Regional Library, New Glasgow, Province of Nova Scotia

South Shore Regional Library, Bridgewater, Province of Nova Scotia

Western Counties Regional Library, Yarmouth, Province of Nova Scotia

Nova Scotia Barristers' Library, Halifax, Province of Nova Scotia

Native Council Library, Hants County, Province of Nova Scotia

Aquisitions Librarian, Department of Justice, Ottawa, Ontario

Supreme Court of Canada, Wellington Street, Ottawa, Ontario

Black Learning Centre, Dartmouth, Nova Scotia

Attorney General's Library, Halifax, Province of Nova Scotia

Canada Department of Justice Library, Halifax, Province of Nova Scotia

Nova Scotia Legislative Library, Province House, Halifax, Province of Nova Scotia

North End Library, Halifax, Province of Nova Scotia

Associations and Interested Persons

Douglas C. Campbell, Barrister and Solicitor, Halifax, Province of Nova Scotia

Professor Rollie Thompson, Barrister and Solicitor, Halifax, Province of Nova Scotia

Kay Rhodenizer, Barrister and Solicitor, Halifax, Province of Nova Scotia

Karen Hudson, Metro Community Law Clinic, Halifax, Province of Nova Scotia

Marilyn MacDonald, Custodial Parents for Fair Maintenance, Truro, Province of Nova Scotia

Canadian Pensioners Concerned Inc., Halifax Shopping Centre, Halifax, Province of Nova Scotia

Executive Director, Family SOS, Halifax, Province of Nova Scotia

Labour Standards Office, Province Building, Sydney, Province of Nova Scotia

Workers' Compensation Board, Sydney, Province of Nova Scotia

Labour Standards Office, Halifax, Province of Nova Scotia

Workers' Compensation Board, Halifax, Province Nova Scotia

Alan L. Barkhouse, President, Halifax Board of Trade, Halifax, Province of Nova Scotia

Afro Canadian Caucus of Province of Nova Scotia, Halifax, Province of Nova Scotia

Black United Front, Halifax, Province of Nova Scotia

Parent/Student Association of Preston, Dartmouth, Province of Nova Scotia

Black Business Consortium Society, YMCA Job Generation Project, Halifax, Province of Nova Scotia

Young Adult Employment Program, Halifax, Province of Nova Scotia

Dartmouth East Black Learning Center, Dartmouth, Province of Nova Scotia

Watershed Association Development Enterprises, Dartmouth, Province of Nova Scotia

Halifax North End Volunteers for Seniors, Halifax, Province of Nova Scotia

African United Baptist Association, Province of Nova Scotia

Louise MacPherson, Chair, Maintenance Enforcement Sub-Committee, Halifax, Province of Nova Scotia

Adella Miner, Liaison, Acadia University Women's Club, Wolfville, Province of Nova Scotia

Betty Thomas, East Preston Lionesses, Chair, Status of Women Committee, Wolfville, Province of Nova Scotia

Women's Centre, Acadia University, Wolfville, Province of Nova Scotia

Carol Wambolt, Adsum House, Halifax, Province of Nova Scotia

Lucille Harper, Antigonish Women's Resource Centre, Antigonish, Province of Nova Scotia

Barbara Feeney, Executive Director, Assoc. of Atlantic Women Business Owners, Halifax, Province of Nova Scotia

Athea Tolliver, President, Association of Black Social Workers, Halifax, Nova Scotia

Anne Bettes, PSAC Women's Committee, Halifax, Province of Nova Scotia

Karen Thomas, Executive Director, Bryony House, Halifax, Province of Nova Scotia

Shirley MacDonald, President, Business and Professional Women's Club, Province of Nova Scotia

Patricia Martin, Business and Professional Women's Club, Halifax, Province of Nova Scotia

CARAL Pictou County, New Glasgow, Province of Nova Scotia

Phyllis Price, Co-ordinator, CONNECT!, Bridgewater, Province of Nova Scotia

CARAL Halifax, Halifax, Province of Nova Scotia

Linda Randolph, Nova Scotia Director, Canadian Congress for Learning Opportunities for Women Province of Nova Scotia

Peggy Mahon, Canadian Congress for Learning Opportunities for Women, New Glasgow, Province of Nova Scotia

Linda Roberts, Canadian Congress for Learning Opportunities for Women, Halifax, Province of Nova Scotia

Joan Redmond, President, Women's Advisory Group, Canada Mortgage and Housing Corporation, Halifax, Province of Nova Scotia

Women's Committee, Canadian Pensioners Concerned, Halifax, Province of Nova Scotia

Theresa Robinson, Chair, Canso Women's Support Group, Canso, Province of Nova Scotia

Bea LeBlanc, Cape Breton Transition House, Sydney, Province of Nova Scotia

Elaine Ferguson, Executive Director, Child Care Connection, Halifax, Nova Scotia

Margie Vigneault, Childcare Advocacy Association of Province of Nova Scotia, Halifax, Province of Nova Scotia

Mary DeWolfe, Executive Director, Kentville, Province of Nova Scotia

Morah MacEachern, Social Planning Department, Halifax, Province of Nova Scotia

Barbara Harris, Status of Women Coordinator, Dalhousie University, Halifax, Province of Nova Scotia

Jerri Costa, Digby-Annapolis Women's Network, Digby, Province of Nova Scotia

Joan Glode, MicMac Family & Children Services, Eskasoni, Province of Nova Scotia

Canadian Advisory Council on the Status of Women, Ottawa, Province of Ontario

Province of Nova Scotia Advisory Council of the Status of Women, Halifax, Province of Nova Scotia

Supportive Action for Women, Bedford, Province of Nova Scotia

K. Pate, Executive Director, Canadian Association of Elizabeth Fry Society, Ottawa, Ontario

WASP, c/o Buchan Derrick & Ring, Halifax, Province of Nova Scotia

Bridgette Neumann, Women's Directorate, Halifax, Province of Nova Scotia

Major Slous, Director Women's Organizations, Halifax, Province of Nova Scotia

Margo Watt, Pictou County Women's Centre, New Glasgow, Province of Nova Scotia

Coalition for Immigrant Women in Nova Scotia, Halifax, Province of Nova Scotia

Dalhousie Association of Women & Law, Dalhousie Law School, Halifax, Province of Nova Scotia

Executive Director, Family & Child Welfare Association, Halifax, Province of Nova Scotia

Sister Joan O'Keefe, Single Parent Centre, Halifax, Province of Nova Scotia

Florence Bauld, President, Black Professional Women, Dartmouth, Province of Nova Scotia

Joan Jones, President, Congress of Black Women, Halifax, Province of Nova Scotia

Dolly Williams, President, Westphal Congress of Black Women, Dartmouth, Province of Nova Scotia

Kathleen Jennex, Executive Director, Coverdale Court Work Services, Halifax, Province of Nova Scotia

Ruthie Patriquin, Community Director, Cumberland Family Planning, Amherst, Province of Nova Scotia

Elizabeth Forestell, Elizabeth Fry Society of Halifax, Halifax, Province of Nova Scotia

Darlean Whiting, Elizabeth Fry Society of Cape Breton, Sydney, Province of Nova Scotia

Cathie Penny, Family Planning Resource Team, Sydney, Province of Nova Scotia

Family Life Coordinator, Family Service of Eastern Nova Scotia, Sydney, Province of Nova Scotia

Family Support Centre, CFB Greenwood, Province of Nova Scotia

Cecile Nadeau, Femmes d'Action du Halifax Metro, Dartmouth, Province of Nova Scotia

Nancy Wright, G.L.O.W., Guysborough, Province of Nova Scotia

Jean Covert, Executive Director, Harbour House, Bridgewater, Province of Nova Scotia

Rhonda Brennan, Helping Other Women, Wolfville, Province of Nova Scotia

Dr. Deborah Poff, Executive Director, Institute for the Study of Women, Halifax, Province of Nova Scotia

Lisa Nicholson, President, Junior League of Halifax, Province of Nova Scotia

Ruth Ann Deveau, Executive Director, Juniper House, Yarmouth, Province of Nova Scotia

Monique Jawed, L'Association des Acadiennes de la Nouvelle-Ecosse, Halifax, Province of Nova Scotia

Norma Cross, Executive Director, Lea Place, Port Hastings, Province of Nova Scotia

Les Acadiennes en Marche, Petit de Grat, N.E., Province of Nova Scotia

Donna Marshall, Low Income Network Committee, Dartmouth, Province of Nova Scotia

MATCH, Halifax, Province of Nova Scotia

Women's Group, Maritime School of Social Work, Halifax, Province of Nova Scotia

Diane MacDonald, Executive Director, Metro Area Family Planning Association, Halifax, Province of Nova Scotia

Joan Jones, Community Worker, Metro Community Law Clinic, Halifax, Province of Nova Scotia

Military Family Support Centre, CFB Halifax, Halifax, Province of Nova Scotia

Chairperson, Women's Studies Program, Mount St. Vincent University, Halifax, Province of Nova Scotia

Women's Committee, Nova Scotia Federation of Labour, Halifax, Province of Nova Scotia

Joann Lamey, Women's Rights Committee, New Democratic Party, Halifax, Province of Nova Scotia

Status of Women Committee, Province of Nova Scotia College of Art and Design, Halifax, Province of Nova Scotia

Dorothy Gilson, Naomi Society, Antigonish, Province of Nova Scotia

Dr. Marion Mathieson, NAC Representative, Sydney, Province of Nova Scotia

Joan Semple, Women's Marketing Rep., National Film Board, Halifax, Province of Nova Scotia

Clara Glode, Native Women's Association, Truro, Province of Nova Scotia

Peggy Nicholson, Equality Committee, Nova Scotia Government Employees Union, Halifax, Province of Nova Scotia

Winnifred Kettleson, Labour Relations Officer, Nova Scotia Nurses Union, Dartmouth, Province of Nova Scotia

Pandora, Halifax, Province of Nova Scotia

Pictou County Women's Centre, New Glasgow, Province of Nova Scotia

Pauline Raven, Executive Director, Planned Parenthood, Halifax, Province of Nova Scotia,

Diana Smith, Positive Options for Women, Windsor Junction, Province of Nova Scotia

Nadine Nichols, United Church Women, Bedford, Province of Nova Scotia

Claire MacDonnell, Provincial Council of Women, New Glasgow, Province of Nova Scotia

Elaine Shuttleworth, Executive Director, Registered Nurses Association, Dartmouth, Province of Nova Scotia

Second Story Women's Centre, Bridgewater, Province of Nova Scotia

Patricia McInnis, Women's Program Officer, Secretary of State, Halifax, Province of Nova Scotia

Ann Keith, Executive Director, Service for Sexual Assault Victims, Halifax, Province of Nova Scotia

Karen O'Hara, Executive Director, Tearmann Society, New Glasgow, Province of Nova Scotia

Barbara Tyrone, Ann Terry Project, Sydney, Province of Nova Scotia

Women in Education Committee of Halifax County, Province of Nova Scotia Teachers' Union, Dartmouth,
Province of Nova Scotia

Wendy Chappell, Executive Director, Third Place Transition House, Truro, Province of Nova Scotia

Judy Whitman, Coordinator, Transition House Association of Nova Scotia, New Glasgow, Province of Nova Scotia

Nancy Anderson, Director, Veith House, Halifax, Province of Nova Scotia

Carolyn Wallace, Voice of Women, Halifax, Province of Nova Scotia

Joan Brown-Hicks, Ward Three Women's Group, Halifax, Province of Nova Scotia

Glenda Doucet-Boudreau, Well Women and Health Awareness Association, Church Point, Province of Nova Scotia

Jane Robertson, West Branch Women's Group, Scotsburn, Province of Nova Scotia

Women Aware, Port Hawkesbury, Province of Nova Scotia

Barb Laird, WISH, Dartmouth, Province of Nova Scotia

Cheryl Aucoin, Women Unlimited, Sydney, Province of Nova Scotia

Trish MacIntosh, Women in Education, Dartmouth, Province of Nova Scotia

June Buchanan, Women in Education, Province of Nova Scotia

Dianne Jay, Women in Science and Engineering, Halifax, Province of Nova Scotia

Women's Action Coalition, Halifax, Province of Nova Scotia

Kathleen Gorman, Nova Scotia Women's Liberal Association, Halifax, Province of Nova Scotia

Jane MacMillan, Women's Committee, Nova Scotia Labour Council, Halifax, Province of Nova Scotia

Diana Graham, Women's Employment Outreach, Halifax, Province of Nova Scotia

Women's Faculty Association, Dalhousie University, Halifax, Province of Nova Scotia

Women's Health Education Network, Debert, Province of Nova Scotia

Sandy Savage, Executive Director, Women's Institutes of Nova Scotia, Truro, Province of Nova Scotia

Jean Gordon, Women's Inter-Church Council, Milton, Province of Nova Scotia

Dr. Ann Manicom, Coordinator, Women's Studies, Dalhousie University, Halifax, Province of Nova Scotia

Adele MacDonald, Executive Director, Women's World Finance, Sydney, Province of Nova Scotia

Executive Director, Halifax YWCA, Halifax, Province of Nova Scotia

Executive Director, YWCA, Halifax, Province of Nova Scotia

Rhonda MacCoy, Acting Coordinator, WITT, YW-NOW, Halifax, Province of Nova Scotia

Every Women's Centre, Sydney, Province of Nova Scotia

Harvey Brownstone, Director, Legal Services, Ministry of the Attorney General, Family Support Plan, Toronto, Ontario

Professor Mary Jane Mossman, Faculty of Law, University of Toronto, Toronto, Ontario

Brian Johnston, President, CBA - Nova Scotia Branch, Sydney, Province of Nova Scotia

Chair, Legislation and Law Reform Committee, Canadian Bar Association, Halifax, Province of Nova Scotia

Executive Director, Canadian Bar Association, Ottawa, Ontario

Lynn Reiersen, Chair, CBA Family Law Sub-section, Halifax, Province of Nova Scotia

Executive Secretary, Uniform Law Conference of Canada, Fredericton, New Brunswick

Katherine MacDonald, Executive Director, Public Legal Education, Halifax, Province of Nova Scotia

Honourable Judge Bertha Wilson, University of Ottawa, Ottawa, Province of Ontario

Honourable Justice M. Kirby, President, New South Wales Court of Appeal, Judge's Chambers, Supreme Court, Sydney, New South Wales, Australia

D. William MacDonald, Q.C. Deputy Attorney General, Halifax, Province of Nova Scotia

Douglas J. Keefe, Executive Director, Legal Services, Department of Attorney General Halifax, Province of Nova Scotia

J.D.F. Theakston, Q.C., Bridgewater, Province of Nova Scotia

John C. MacPherson, Halifax, Province of Nova Scotia

John P. Cochrane, Q.C., Kentville, Province of Nova Scotia

Frank Elman, Q.C., Sydney, Province of Nova Scotia

A. William Cox, Q.C., Halifax, Province of Nova Scotia

J.W.E. Mingo, Q.C., Halifax, Province of Nova Scotia

Suzanne M. Hood, Halifax, Province of Nova Scotia

Graham Walker, Q.C., Halifax, Province of Nova Scotia

Harry Wrathall, Q.C., Halifax, Province of Nova Scotia

George Khattar, President, Nova Scotia Barristers' Society, Halifax, Province of Nova Scotia

Darrel Pink, Q.C., Executive Director, Nova Scotia Barristers' Society, Halifax, Province of Nova Scotia

W. Bruce Gillis, Q.C., President, Annapolis County Barr Association, Middleton, Province of Nova Scotia

Richard A. Murtha, President, Greater Bedford/Sackville Lawyers Association, Lr. Sackville, Province of Nova Scotia

Jeanne Archibald, President, Colchester County Barr Association, Truro, Province of Nova Scotia

John A. Young, Q.C., President, Dartmouth County Barr Association, Dartmouth, Province of Nova Scotia

Barry J. Alexander, President, Hants County Bar Association, Windsor, Province of Nova Scotia

Nancy Peers, President, Lunenburg County Bar Association, Bridgewater, Province of Nova Scotia

Lorne J. MacDowell, President, Strait Area County Bar, Antigonish, Province of Nova Scotia

Donald L. Macdonald, President, Antigonish-Guysborough County Bar Association, Antigonish, Nova Scotia

Leo A. MacPhee, President, Cape Breton County Bar Association, Sydney Mines, Province of Nova Scotia

Celia J. Melanson, President, Cumberland County Bar Association, Amherst, Province of Nova Scotia

Michele J. Cleary, President, Digby County Bar Association, Digby, Province of Nova Scotia

Alan T. Tufts, President, Kings County Bar Association, Kentville, Province of Nova Scotia

E. Anne MacDonald, President, Pictou County Bar Association, Pictou, Province of Nova Scotia

Donald G. Harding, President, Western Counties Bar Association, Shelburne, Province of Nova Scotia

James Walsh, Dartmouth, Province of Nova Scotia

Sharon Davis Murdoch, Liberal Caucus Office, Halifax, Province of Nova Scotia

Elizabeth Jollimore, Barrister and Solicitor, Halifax, Province of Nova Scotia

Lynn Tolhurst, Head of Chezzetcook, Province of Nova Scotia

Louise Lussier, Federal Department of Justice, Ottawa, Ontario

Susan McBride-Wentzell, Halifax, Province of Nova Scotia

Charles MacDonald, Disabled Persons Committee, Halifax, Province of Nova Scotia

Karen Collacutt, Dartmouth, Province of Nova Scotia

Nova Scotia Government Book Store, Halifax, Province of Nova Scotia (14 copies)

Lloyd Berliner, Barrister and Solicitor, Truro, Province of Nova Scotia

Laurie MacKinley, Halifax, Province of Nova Scotia

Professor Faye Woodman, Weldon Law School, Dalhousie University, Halifax, Province of Nova Scotia

Peter Ineson, Halifax, Province of Nova Scotia

Janet Morris, Halifax, Province of Nova Scotia

Martha Gallup, Acquisitions Department, Bora Laskin Law Library, University of Toronto, Toronto, Ontario

Mr. Pat Casey, Dartmouth, Province of Nova Scotia

Professor Alastair Bissett-Johnson, Department of Law, University of Dundee

Clare Christie, Barrister and Solicitor, Halifax, Province of Nova Scotia

Karen Smith, P.C. Caucus, Halifax, Province of Nova Scotia

Terry W. Taylor, Barrister & Solicitor, Halifax, Province of Nova Scotia

Lisa Snyder, Sheet Harbour, Halifax County, Province of Nova Scotia

Brian Smith, Barrister and Solicitor, Dartmouth, Province of Nova Scotia

Gus Richardson, Barrister and Solicitor, Halifax, Province of Nova Scotia

Susan White, Dartmouth, Nova Scotia

Jutta Doyle, Musquodoboit Harbour, Province of Nova Scotia

Marc Hucko, Yarmouth, Province of Nova Scotia

Tilly Pillay, Nova Scotia Legal Aid, Halifax, Nova Scotia

Karen L. Kinley, Barrister & Solicitor, Mahone Bay, Province of Nova Scotia

Ms. Pamela Stewart, Barrister and Solicitor, Kentville, Province of Nova Scotia

Chris Bailey, Dartmouth, Province of Nova Scotia

Cynthia Murphy, Halifax, Province of Nova Scotia

Gene Keyes, Halifax, Province of Nova Scotia

Nancy J. Logeman, Legal Assistant (Library), Kentville, Province of Nova Scotia

Julia E. Cornish, Barrister & Solicitor, Dartmouth, Province of Nova Scotia

Mr. Martin Freeman, Advisory and Administrative Law, Ottawa, Ontario

Patsy Laybolt-Lavigne, Dartmouth, Province of Nova Scotia

Lindy Stephens, Halifax, Province of Nova Scotia

C.R. MacFadden, Halifax, Province of Nova Scotia

Margaret Reid, Library, Department of Transportation & Communication, Halifax, Province of Nova Scotia

Pam Mills, Halifax, Province of Nova Scotia

David Hayne, Guysborough County, Province of Nova Scotia

Peter Glenister, Bibliographic Services Librarian, Mount Saint Vincent University, Halifax, Province of Nova Scotia

Walter McMillan, Family Court, Sydney, Province of Nova Scotia

Bonita L. Belliveau, Acquisitions Department, Nova Scotia Agricultural College, MacRae Library, Truro, Province of Nova Scotia

C.R. MacFadden, Halifax, Province of Nova Scotia

Frank Kempster, Bedford, Province of Nova Scotia

Brenda Potter, Documents Section, Saint Mary's University, Halifax, Province of Nova Scotia

Simone Stewart, School of Justice, Charlottetown, Prince Edward Island

Clyde Mason, Halifax, Province of Nova Scotia

Susannah Starnes, Halifax, Province of Nova Scotia

Jennifer Fenton, Halifax, Province of Nova Scotia

Hank Saben, Halifax, Province of Nova Scotia

Wendy Roberts, Halifax Infirmary, c/o Social Work Department, Halifax, Province of Nova Scotia

Coleen Rosta, East Bay, Province of Nova Scotia

Andrew Poplawski, Coordinator of Library Services, Halifax County Regional Library, Province of Nova Scotia

Muriel Skinner, New Glasgow, Province of Nova Scotia

Rosemary MacDonald, Halifax, Province of Nova Scotia

John MacEachern, Glace Bay, Province of Nova Scotia

Gerald B. MacDonald, Barrister & Solicitor, Sydney, Province of Nova Scotia

Grace Janes, Halifax, Province of Nova Scotia

Anna L. Paton, Barrister & Solicitor, Dartmouth, Province of Nova Scotia

J. Wheeler, Eastern Passage, Halifax County, Province of Nova Scotia

Marilyn Burns, East Chezzetcook, Halifax County, Province of Nova Scotia

Ruth Girardin, Government Publications, Culture, Heritage and Citizenship, Winnipeg, Manitoba

Darlene Fichter, Government Publications Librarian, University of Saskatchewan Libraries, Saskatoon, Saskatchewan

Darla Fitch, Lower Sackville, Province of Nova Scotia

M. Gail Murphy, Instructor, Legal Assistant Program, Nova Scotia Community College, Springhill, Province of Nova Scotia

Linda Matte, Halifax, Province of Nova Scotia

Judith Benson, Documents Library Technician, Legislature Library, Edmonton, Alberta

Sylvia Parris, Antigonish, Province of Nova Scotia

Law Reform Commissions

Ontario Law Reform Commission, Toronto, Ontario

Alberta Law Reform Institute, Edmonton, Alberta

Law Reform Commission of British Columbia, Vancouver, British Columbia

Law Reform Division, Department of Justice, Fredericton, New Brunswick

Committee on Law Reform of the Northwest Territories, Yellowknife, N.W.T.

Manitoba Law Reform Commission, Winnipeg, Manitoba

Law Reform Commission, DUBLIN 2, IRELAND

Law Reform Commission of Hong Kong, HONG KONG

Media

Canadian Daily Newspaper Association, Legal Affairs Sub-Committee, Halifax, Province of Nova Scotia

The Aurora, Kingston, Province of Nova Scotia

The Citizen, Amherst, Province of Nova Scotia

The Annapolis Royal Spectator, Bridgetown, Province of Nova Scotia

The Casket, Antigonish, Province of Nova Scotia

The Kentville Teleguide, Kentville, Province of Nova Scotia

The Liverpool Advance, Liverpool, Province of Nova Scotia

The Lunenburg Progress Enterprise, Bridgewater, Province of Nova Scotia

The Middleton Mirror-Examiner, Bridgetown, Province of Nova Scotia

The Northside Tribune, North Sydney, Province of Nova Scotia

The Oxford Journal, Oxford, Province of Nova Scotia

The Pictou Advocate, Pictou, Province of Nova Scotia

The Reporter, Port Hawkesbury, Province of Nova Scotia

The Scotia Sun, Port Hawkesbury, Province of Nova Scotia

The Warrior, Shearwater, Dartmouth, Province of Nova Scotia

The Eastern Shore Sandpiper, Sheet Harbour, Province of Nova Scotia

The Coast Guard, Shelburne, Province of Nova Scotia

Springhill & Parrsboro Record, Springhill, Province of Nova Scotia

Micmac News, Sydney, Province of Nova Scotia

The Light, Truro, Province of Nova Scotia

The Hants Journal, Windsor, Province of Nova Scotia

Le Courrier de la Nouvelle-Ecosse, Yarmouth, Province of Nova Scotia

The Vanguard, Yarmouth, Province of Nova Scotia

The Halifax Herald, Halifax, Province of Nova Scotia

The Daily News, Amherst, Province of Nova Scotia

The Daily News, Halifax, Province of Nova Scotia

The Evening News, New Glasgow, Province of Nova Scotia

Cape Breton Post, Sydney, Province of Nova Scotia

The Daily News, Truro, Province of Nova Scotia

The Globe and Mail, Halifax, Province of Nova Scotia

Maritime Magazine, CBC Radio, Halifax, Province of Nova Scotia

John Chesal, News Director, CBI Radio (CBC Cape Breton), Sydney, Province of Nova Scotia

Geoff D'Eon, Executive Director, CBH Radio (CBC Halifax), Halifax, Province of Nova Scotia

Ian Porter, Producer, Maritime Magazine, CBC Radio, Halifax, Province of Nova Scotia

Rich Horner, News Director, CFDR Radio/Q104 FM, Dartmouth, Province of Nova Scotia

Peter Cotter, News Director, CHER Radio, Sydney, Province of Nova Scotia

Jim Crichton, News Director, CHNS Radio/CHFX FM, Halifax, Province of Nova Scotia

Sandy Hutton, News Director, CIEZ Radio (SUN FM), Bedford, Province of Nova Scotia

Bob MacEachern, News Director, CIGO Radio, Port Hawkesbury, Province of Nova Scotia

Claude Comeau, News Director, CISA Radio Clare, Saulnierville, Province of Nova Scotia

Dave Wilson, News Director, CJCB/CKPE FM Radio, Sydney, Province of Nova Scotia

Rick Howe, News Director, CJCH Radio/C100, Halifax, Province of Nova Scotia

John Hello, News Director, CJFX Radio, Antigonish, Province of Nova Scotia

Ray Zinck, CJLS Radio, Yarmouth, Province of Nova Scotia

Ed Boylan, News Director, CKBW Radio, Bridgewater, Province of Nova Scotia

Michael Trenholm, News Director, CKCL Radio/CKTO FM, Truro, Province of Nova Scotia

Geoff de Gannes, News Director, CKDH Radio, Amherst, Province of Nova Scotia

Kevin Reid, Senior Anchor, KKEC Radio, New Glasgow, Province of Nova Scotia

Bill Spurr, News Director, CKEN Radio/CKWM FM, Annapolis Valley Radio, Kentville, Province of Nova Scotia

Dean Beeby, Acting Bureau Chief, Broadcast News, Halifax, Province of Nova Scotia

Chris Stover, Atlantic Bureau Chief, Standard Broadcast News, Armdale, Province of Nova Scotia

Harris Sullivan, News Director, ATV/ASN, Halifax, Province of Nova Scotia

Randy MacDonald, News Director, ATV Cape Breton, Sydney, Province of Nova Scotia

Saleem Ahmed, Director TV/Programming, CBC TV/Halifax, Halifax, Province of Nova Scotia

John Chesal, Senior News Editor, CBC Cape Breton, Sydney, Province of Nova Scotia

Colin Gray, Producer, CTV, Halifax, Province of Nova Scotia

Bruce Graham, News Director, MITV, Dartmouth, Province of Nova Scotia

Stephen Dobson, Program Director, Able Cablevision Limited, Liverpool, Province of Nova Scotia

Ross Broughn, Program Director, Antigonish Cablevision Ltd., Antigonish, Province of Nova Scotia

Paul Power, Program Director, Cape Breton Cablevision Ltd., Sydney, Province of Nova Scotia

Tamara Ashe, Program Director, Central Cable Television Ltd., Amherst, Province of Nova Scotia

Ernestine Swinimer, Program Director, Central Cable Television Ltd., Blockhouse, Province of Nova Scotia

Cynthia Thompkins, Program Director, Dartmouth Cable T.V. Ltd., Dartmouth, Province of Nova Scotia

David Dickie, Program Director, Eastern Cablevision Ltd., Truro, Province of Nova Scotia

Brett Smith, Program Director, Halifax Cablevision Ltd., Halifax, Province of Nova Scotia

Eric Smith, Program Director, K-Right Communications Ltd., Windsor, Province of Nova Scotia

Lorne Seifred, Program Director, K-Vision Service Ltd., New Glasgow, Province of Nova Scotia

Stephen Atkinson, Program Director, Kings Kable Ltd., Kentville, Province of Nova Scotia

Lee Bailey, Program Director, Mid-Valley Cablevision Ltd., Aylesford, Province of Nova Scotia

Keith Curry, Program Director, Rush Air Services Ltd., Port Hawkesbury, Province of Nova Scotia

Lawrence Clarke, Program Director, Seaside Cable T.V. (1984) Ltd., Glace Bay, Province of Nova Scotia

Cindy Dover, Program Director, Shaw Cablesystems Ltd., Lower Sackville, Province of Nova Scotia

Strait of Canso Cable T.V. Ltd., Port Hawkesbury, Province of Nova Scotia

Uniacke Cablevision Ltd., Mount Uniacke, Province of Nova Scotia

Donald Parnell, Program Director, Viking Cable T.V. Limited, Yarmouth, Province of Nova Scotia

Members of the Judiciary

The Honourable Chief Justice Lorne Clarke, Halifax, Province of Nova Scotia

The Honourable Justice Hart, Halifax, Province of Nova Scotia

The Honourable Justice Malachi C. Jones, Halifax, Province of Nova Scotia

The Honourable Justice J. Doane Hallett, Halifax, Province of Nova Scotia

The Honourable Justice Kenneth M. Matthews, Halifax, Province of Nova Scotia

The Honourable Justice David R. Chipman, Halifax, Province of Nova Scotia

The Honourable Justice Gerald B. Freeman, Halifax, Province of Nova Scotia

The Honourable Madam Justice Elizabeth Roscoe, Halifax, Province of Nova Scotia

The Honourable Chief Justice C.R. Glube, Halifax, Province of Nova Scotia

The Honourable Justice A. Boudreau, Halifax, Province of Nova Scotia

The Honourable Justice J.M. Davison, Halifax, Province of Nova Scotia

The Honourable Justice Walter Goodfellow, Halifax, Province of Nova Scotia

The Honourable Justice William Grant, Halifax, Province of Nova Scotia

The Honourable Justice David W. Gruchy, Halifax, Province of Nova Scotia

The Honourable Justice William Kelly, Halifax, Province of Nova Scotia

The Honourable Justice A. David MacAdam, Halifax, Province of Nova Scotia

The Honourable Justice Robert MacDonald, Halifax, Province of Nova Scotia

The Honourable Justice Hilroy S. Nathanson, Halifax, Province of Nova Scotia

The Honourable Justice D. Merlin Nunn, Halifax, Province of Nova Scotia

The Honourable Justice K. Peter Richard, Halifax, Province of Nova Scotia

The Honourable Justice Jamie W.S. Saunders, Halifax, Province of Nova Scotia

The Honourable Justice Gordon A. Tidman, Halifax, Province of Nova Scotia

The Honourable Chief Judge Ian H.M. Palmeter, Halifax, Province of Nova Scotia

The Honourable Judge N.R. Anderson, Halifax, Province of Nova Scotia

The Honourable Judge F.A. Cacchione, Halifax, Nova Scotia

The Honourable Judge Nancy Bateman, Halifax, Nova Scotia

The Honourable Judge Hiram Carver, Bridgewater, Province of Nova Scotia

The Honourable Judge C.E. Haliburton, Digby, Province of Nova Scotia

The Honourable Judge Donald M. Hall, Berwick, Province of Nova Scotia

The Honourable Judge H.J. MacDonnell, New Glasgow, Province of Nova Scotia

The Honourable Judge Douglas L. MacLellan, Antigonish, Province of Nova Scotia

The Honourable Judge Murray J. Ryan, Sydney, Province of Nova Scotia

The Honourable Judge Simon J. MacDonald, Sydney, Province of Nova Scotia

Judge M.J. Stewart, Family Court, Kentville, Province of Nova Scotia

Judge R. White, Family Court, Antigonish, Province of Nova Scotia

Judge D. Hubley, Family Court, Truro, Province of Nova Scotia

Judge D. Milner, Family Court, Amherst, Province of Nova Scotia

Judge P. Niedermayer, Family Court, Dartmouth, Province of Nova Scotia

Judge J. Williams, Family Court, Dartmouth, Province of Nova Scotia

Judge T. Daley, Family Court, Halifax, Province of Nova Scotia

Judge C. Sparks, Family Court, Halifax, Province of Nova Scotia

Judge B. Levy, Family Court, Halifax, Province of Nova Scotia

Judge D. Glass, Family Court, Halifax, Province of Nova Scotia

Judge W. Dyer, Family Court, Halifax, Province of Nova Scotia

Chief Judge W.M. Black, Family Court, Kentville, Province of Nova Scotia

Judge R. Hebb, Family Court, Lunenburg, Province of Nova Scotia

Judge J. Wilson, Family Court, New Glasgow, Province of Nova Scotia

Judge R. White, Family Court, New Glasgow, Province of Nova Scotia

Judge R. Ferguson, Family Court, Sydney, Province of Nova Scotia

Judge V. MacDonald, Family Court, 360 Prince Street, Sydney, Province of Nova Scotia

Judge D. Wilson, Family Court, Sydney, Province of Nova Scotia

Judge J. Comeau, Family Court, Yarmouth, Province of Nova Scotia

Members of Legislative Assembly

Earl Rafuse, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Greg Kerr, Department of Tourism and Culture, Halifax, Province of Nova Scotia

Dr. John Savage, Leader of the Opposition, Halifax, Province of Nova Scotia

Honourable Neil LeBlanc, Department of Government Services, Halifax, Province of Nova Scotia

Honourable Kenneth Streach, Department of Transportation & Communication, Halifax, Nova Scotia

Russell MacNeil, Opposition Caucus Office, Halifax, Province of Nova Scotia

John MacEachern, Opposition Caucus Office, Halifax, Province of Nova Scotia

Bernie Boudreau, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Brian Young, Department of Municipal Affairs, Halifax, Province of Nova Scotia

Paul MacEwan, Opposition Caucus Office, Halifax, Province of Nova Scotia

Vincent J. MacLean, Opposition Caucus Office, Halifax, Province of Nova Scotia

Russell MacKinnon, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Guy LeBlanc, Department of Education, Halifax, Province of Nova Scotia

Edward Lorraine, Opposition Caucus Office, Halifax, Province of Nova Scotia

Dr. R. Colin D. Stewart, Government Caucus Office, Halifax, Province of Nova Scotia

David Nantes, Government Caucus Office, Halifax, Province of Nova Scotia

Guy Brown, Opposition Caucus Office, Halifax, Province of Nova Scotia

Ross Bragg, Opposition Caucus Office, Halifax, Province of Nova Scotia

Dr. James Smith, Opposition Caucus Office, Halifax, Province of Nova Scotia

Sandra Jolly, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Roland Thornhill, Department of Community Services, Halifax, Province of Nova Scotia

Joseph Casey, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Charles MacNeil, MD, Department of Finance, Halifax, Province of Nova Scotia

Robert Chisholm, Office of the New Democratic Party, Halifax, Province of Nova Scotia

Honourable Joel Matheson, Q.C., Department of Attorney General, Halifax, Province of Nova Scotia

Alexa McDonough, Leader of the New Democratic Party, Halifax, Province of Nova Scotia

Arthur Donahoe, Q.C., Government Caucus Office, Halifax, Province of Nova Scotia

Honourable Terence Donahoe, Q.C., Department of Environment, Halifax, Province of Nova Scotia

Honourable Thomas McInnis, Department of Economic Development, Halifax, Province of Nova Scotia

Gerald O'Malley, Opposition Caucus Office, Halifax, Province of Nova Scotia

Jack Lawrence, Government Caucus Office, Halifax, Province of Nova Scotia

Jack Hawkins, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Ronald Russell, Office of the Speaker, Halifax, Province of Nova Scotia

Charles MacArthur, Opposition Caucus Office, Halifax, Province of Nova Scotia

Danny Graham, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable George Archibald, Management Board, Halifax, Province of Nova Scotia

Derrick Kimball, Government Caucus Office, Halifax, Province of Nova Scotia

Honourable George Moody, Department of Health and Fitness, Halifax, Province of Nova Scotia

Al Mosher, Government Caucus Office, Halifax, Province of Nova Scotia

James Barkhouse, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Marie Dechman, Department of Housing and Consumer Affairs, Dartmouth, Province of Nova Scotia

J.A. (Jack) MacIsaac, Government Caucus Office, Halifax, Province of Nova Scotia

Honourable Donald W. Cameron, Office of the Premier, Halifax, Province of Nova Scotia

Honourable Donald P. McInnes, Department of Agriculture and Marketing, Halifax, Province of Nova Scotia

Honourable John G. Leefe, Department of Natural Resources, Halifax, Province of Nova Scotia

Richard Mann, Opposition Caucus Office, Halifax, Province of Nova Scotia

John Holm, Office of the New Democratic Party, Halifax, Province of Nova Scotia

Harold M. Huskison, Opposition Caucus Office, Halifax, Province of Nova Scotia

Donald Giffin, Q.C., Government Caucus Office, Halifax, Province of Nova Scotia

Kenneth MacAskill, Opposition Caucus Office, Halifax, Province of Nova Scotia

Honourable Leroy Legere, Department of Labour, Halifax, Province of Nova Scotia

APPENDIX C

LIST OF PERSONS WHO RESPONDED TO THE DISCUSSION PAPER, JULY 1992

Canadian Bar Association (Nova Scotia Branch), Family Law Section, Province of Nova Scotia
Credit Consultants Limited, Dartmouth, Province of Nova Scotia
Martha Crowe, Consultant, Legislation/Policy Division, Community Services, Province of Nova Scotia
Debi Forsyth-Smith, Nova Scotia Advisory Council on the Status of Women, Province of Nova Scotia
Bruce Gillis, Q.C., Durland, Gillis & Parker, Province of Nova Scotia
Edith Gosbee-Lumsden, Guysborough, Province of Nova Scotia
David G. H. Hayne, Guysborough County, Province of Nova Scotia
Judith Hitchens, Shelburn County, Province of Nova Scotia
Mark Hucko, Lower East Pubnico, Province of Nova Scotia
Sandy Jolly, MLA, Liberal Caucus Office, Halifax, Province of Nova Scotia
Dr. Gene Keyes, Halifax, Province of Nova Scotia
Jeannine Kurtz, Halifax, Province of Nova Scotia
Dennis Mason, Halifax, Province of Nova Scotia
Rosemary MacDonald, Halifax, Province of Nova Scotia
Dr. John MacEachern, Berwick, Province of Nova Scotia
Linda MacLeod, Sydney, Province of Nova Scotia
Louise MacPherson, Chair, Halifax Transition House Association, Province of Nova Scotia
Brian S. Norton, Q.C., Department of Attorney General, Province of Nova Scotia
Karen O'Hara, Executive Director, Tearmann Society for Battered Women, Province of Nova Scotia

Ombudsman, Province of Nova Scotia

Muriel G. Skinner, New Glasgow, Province of Nova Scotia

Patricia Deal Thies, Windsor, Province of Nova Scotia

Professor R. Thompson, Dalhousie Legal Aid, Province of Nova Scotia

Judge James C. Wilson, New Glasgow, Province of Nova Scotia

APPENDIX D

SUMMARY OF RECOMMENDATIONS RELEASED IN THE DISCUSSION PAPER, JULY 1992

- (1) A Unified Family Court be created to serve all the province with all of the powers now available in Supreme Court.
- (2) A Maintenance Enforcement statute be passed which will create a Maintenance Enforcement Office to provide automatic maintenance enforcement for all court-ordered maintenance.
- (3) An Office of Director of Maintenance Enforcement be established to assume responsibility for the enforcement of all court-ordered maintenance in the province.
- (4) Enforcement Officers now working in the Family Courts be made designates of the Director of Maintenance Enforcement with power to hold default hearings and grant all of the enforcement remedies available under the new law with the exception of imprisonment.
- (5) Clear policy guidelines be written with respect to the appropriate process to be followed by the Director's Office when enforcing maintenance obligations.
- (6) The government designate sufficient staff within the Office of Director of Maintenance Enforcement to actively enforce the maintenance obligations filed, and guarantee adequate funding to train the staff of the Director's office to carry out the new enforcement procedures.
- (7) All court orders for maintenance contain a direction for the filing of the order with the Director of Maintenance Enforcement for automatic enforcement.
- (8) Individuals with court orders for maintenance made before the new program began be permitted to file the orders with the Director for enforcement. This may be done without the consent of both parties to the order.
- (9) Either party to an agreement for maintenance may file for enforcement with the Director of Maintenance Enforcement. Once filed, the agreement is treated as an order of the court for the purposes of enforcement.
- (10) Parties to a court order for the payment of maintenance be permitted to "opt out" of

the program if a written consent is signed by both parties.

- (11) The court granting the original maintenance order will have discretion to prohibit opting out, if it is in the best interests of those affected by the order.
- (12) Even if the parties to the maintenance order originally opted out of the enforcement program, either party will have the right to re-file a maintenance order at any time.
- (13) A broad definition of "maintenance order" be contained in the new legislation and that the Director of Maintenance Enforcement be given authority to enforce all types of maintenance orders.
- (14) The present Family Court Enforcement Offices be converted to regional offices of the Director of Maintenance Enforcement.
- (15) The Director of Maintenance Enforcement hire lawyers to litigate matters, where necessary, on behalf of maintenance recipients.
- (16) If a person misses one maintenance payment a garnishment of any available income will automatically be imposed by the Director of Maintenance Enforcement without a default hearing.
- (17) "Income source" be defined as broadly as possible in the new legislation to include, among other things, salary and wages, commissions, dividends, annuities, accident and disability benefits, and pension or retirement income.
- (18) The *Workers' Compensation Act* and the *Pension Benefits Act* be amended to allow garnishment of accident and disability benefits as well as pension or retirement income.
- (19) Substantial fines be ordered against income sources which do not forward maintenance deductions within the specified time as required by the new legislation.
- (20) The new legislation contain a requirement for filing financial and employment information with the Director's Office, with penalties for failure to file or for filing information which is false or misleading.
- (21) The new legislation require payors and income sources to provide information to the Director's Office whenever there is a change in financial circumstances, with penalties for failing to do so.
- (22) If there are no available sources of income to garnishee that the Enforcement

Officer issue a summons to bring the defaulter to the Enforcement Office to obtain additional financial information to enforce the maintenance obligation.

- (23) If the defaulter fails to appear after a summons has been sent that the Enforcement Officer issue a warrant for arrest.
- (24) The Enforcement Officers be given authority to grant execution orders for the seizure and sale of assets if there are insufficient income sources available for garnishment.
- (25) The Enforcement Officers be given authority to trace defaulters through federal and provincial data banks where necessary.
- (26) When no other enforcement remedies are satisfactory and in the opinion of the Enforcement Officer a defaulter has an ability but refuses to pay, that the Enforcement Officer bring the defaulter before a Family Court judge for a hearing which may result in imprisonment.
- (27) The authority of the Enforcement Officers be limited to enforcing maintenance obligations and that they will not have the authority to dismiss, cancel or suspend arrears or to change the amount of the original order or agreement.