



# **BILL NO. 102**

*Government Bill*

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*1st Session, 59th General Assembly  
Nova Scotia  
53 Elizabeth II, 2004*

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## **An Act to Amend Chapter 6 of the Acts of 1994-95, the Maintenance Enforcement Act**

CHAPTER 40  
ACTS OF 2004

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
OCTOBER 18, 2004**

The Honourable Michael G. Baker, Q.C.  
*Minister of Justice*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 6  
of the Acts of 1994-95,  
the Maintenance Enforcement Act**

Be it enacted by the Governor and Assembly as follows:

**1 Section 2 of Chapter 6 of the Acts of 1994-95, the *Maintenance Enforcement Act*, as amended by Chapter 28 of the Acts of 1995-96 and Chapter 9 of the Acts of 2002, is further amended by**

**(a) adding “or makes” immediately after “owes” in the second line of clause (d);**

**(b) adding immediately after subclause (d)(vii) the following subclauses:**

(viiia) a shareholder’s loan or dividends on shares,

(viiib) money from a trust in which the payor holds a beneficial interest,

**and**

**(c) adding immediately after clause (e) the following clause:**

(ea) “Minister of Community Services” includes a person assisting the Minister of Community Services in the administration of the *Employment Support and Income Assistance Act* designated by the Minister of Community Services for the purpose of this Act;

**2 Subsection 19(1) of Chapter 6 is amended by striking out “remuneration of the payor due” in the fifth and sixth lines and substituting “monies payable to the payor”.**

**3 Chapter 6 is further amended by adding immediately after Section 24 the following Section:**

24A Where the court determines under Section 24 that a corporation that is an income source has failed to comply with a garnishment order, the court may order that the directors of the corporation are jointly and severally liable for payment of the money that the corporation failed to hold and pay to the Director.

**4 (1) Subsection 29(1) of Chapter 6 is amended by adding “and any costs and fees owed to the Director by the payor pursuant to this Act” immediately after “order” in the fourth line.**

**(2) Subsection 29(2) of Chapter 6 is amended by adding “and all costs and fees owed to the Director by the payor pursuant to this Act have been paid” immediately after “discharged” in the fourth line.**

**5 Chapter 6 is further amended by adding immediately after Section 29 the following Sections:**

29A (1) In this Section and Section 29B,

(a) “notice of maintenance obligation” means the data authorized by the regulations made pursuant to the *Personal Property Security Act* to be registered in the Personal Property Registry to effect a registration pursuant to this Act and, where the context permits, includes the data authorized to be registered to effect an amendment, renewal or discharge of a registration;

(b) “personal property” means personal property as defined in the *Personal Property Security Act*.

(2) Where a payor is in default under a maintenance order being enforced by the Director, the Director may register a notice of maintenance obligation in the name of the Director on behalf of the recipient in the form prescribed by the Director in the Personal Property Registry in accordance with the regulations made pursuant to the *Personal Property Security Act*.

(3) The registration of the notice of maintenance obligation creates in favour of the Director a security interest in the personal property of the payor that is deemed to have attached to all the personal property of the payor and to have been perfected when the notice is registered in the Personal Property Registry.

(4) The security interest referred to in subsection (3) is a lien for the total of

(a) the amount that the payor is in default of payment under the maintenance order that accrued before the registration of the notice of maintenance obligation;

(b) the amount of any arrears of maintenance that accrues while the notice of maintenance obligation is registered; and

(c) all costs and fees owed to the Director by the payor pursuant to this Act.

(5) The security interest referred to in subsection (3) has the same priority as any other security interest that is perfected or registered for the total amount determined under subsection (4).

(6) Notwithstanding subsection (5), the security interest created by registration of a notice of maintenance obligation ranks in equal priority to any other security interest created by the registration of a notice of maintenance obligation, regardless of which was registered first, and the Director may prorate any money received in respect of any enforcement of the security interest among all the recipients or beneficiaries under each, unless the court orders otherwise on the application of the Director or a recipient or a payor.

(7) The security interest referred to in subsection (3) continues until it is discharged or the total amount determined under subsection (4) is paid, whichever happens first.

(8) Registration of the notice of maintenance obligation entitles the Director to all the rights of a secured party under the *Personal Property Security Act* and, upon registration of a notice of maintenance obligation under subsection (2), the Director is deemed to be a secured party under the *Personal Property Security Act*, the payor is deemed to be a debtor under that Act and the Director or a person desig-

nated by the Director may seize and dispose of the personal property of the payor in the same manner as a secured party may seize and dispose of collateral under that Act.

29B (1) Registration of a notice of maintenance obligation is effective for the period of years specified in the registration.

(2) A registration may be amended or renewed by registering an amendment or renewal of the notice of maintenance obligation at any time before the registration expires.

(3) The Director shall discharge the registration of a notice of obligation within thirty days after the total determined under subsection 29A(4) has been satisfied.

(4) Where the Director fails or refuses to comply with subsection (3), the payor or any other person with an interest in the personal property of the payor may make a written demand to the Director to discharge the registration within fifteen days after the demand is made.

(5) Where the Director fails to comply with a demand made pursuant to subsection (4) within fifteen days after it is made or fails to give to the person making the demand an order of the Supreme Court of Nova Scotia confirming that the registration need not be discharged, the person making the demand may register the discharge.

(6) On application by the Director or payor or any other person with an interest in the personal property of the payor, the Supreme Court of Nova Scotia may order that a registration of a notice of maintenance obligation be maintained on any condition and for any period of time or may order that the registration be discharged.

**6 (1) Subsection 30(1) of Chapter 6 is amended by adding “by mail to the address for the payor shown in the records of the Director” immediately after “payor” the first time it appears in the third line.**

**(2) Subsection 30(2) of Chapter 6 is amended by adding “or where a payor fails to comply with any term of an arrangement made with the Director pursuant to subsection (1)” immediately after “(1)” in the second line.**

**7 Subsection 31(1) of Chapter 6 is amended by adding “any financial, employment or address information that, in the opinion of the Director, may assist in the enforcement of the maintenance order or obtaining of information including, without limiting the generality of the foregoing.” immediately after “provide” in the fifth line.**

**8 (1) Clause 32 (1)(ba) of Chapter 6, as enacted by Chapter 30 of the Acts of 1998, is amended by striking out “*Family Benefits*” in the fourth line and substituting “*Employment Support and Income Assistance*”.**

**(2) Section 32 of Chapter 6 is further amended by adding immediately after subsection (3) the following subsection:**

(4) Notwithstanding subsection (1), the Director may release information respecting the location, address and place of residence or employment of a payor to a designated authority or a delegate of a designated authority under the *Interjurisdictional Support Orders Act* for the purpose of that Act.

**9 Subsection 37(3) of Chapter 6 is amended by adding immediately after clause (h) the following clauses:**

(ha) the payor forthwith provide to the Director any information with respect to real and personal property that is legally owned or otherwise held by a corporation or another person and that

(i) the payor, or another person on behalf of the payor, is using or otherwise dealing with or is in a position to use or otherwise deal with in a manner similar to that of a person who legally owns or otherwise holds the property, or

(ii) the payor, or another person on behalf of the payor, is in a position to compel or otherwise influence the corporation or other person to

(A) use or deal with as directed by the payor, or other person on behalf of the payor, or

(B) permit the payor, or other person on behalf of the payor, to use or otherwise deal with in a manner similar to that of a person who legally owns or otherwise holds the property;

(hb) where the court has reason to believe that, with respect to real and personal property that is legally owned or otherwise held by a corporation or another person, the payor or another person on behalf of the payor is exercising or has exercised authority over that corporation or person within the meaning of Section 50A, the corporation or that other person forthwith provide to the Director any information concerning that property and the relationship of the corporation or that other person to the payor;

**10 (1) Subsection 38(1) of Chapter 6, as amended by Chapter 28 of the Acts of 1995-96, is further amended by adding “, together with the amount of any costs and fees owed to the Director by the payor pursuant to this Act,” immediately after “amount” in the seventh line.**

**(2) Section 38 of Chapter 6 is further amended by adding immediately after subsection (5) the following subsection:**

(5A) Where a certificate of judgment has been recorded pursuant to the *Land Registration Act*, any party may record a certificate of renewal of the judgment pursuant to that Act.

**11 Section 47 of Chapter 6 is amended by adding immediately after subsection (2) the following subsection:**

(3) The fees and costs referred to in subsection (1) and any costs ordered by the court to be paid to the Director by a payor may be collected by the Director in the same manner as a maintenance order may be enforced under this Act and the enforcement provisions available to the Director under this Act where a payor is in default under a maintenance order being enforced by the Director apply *mutatis mutandis* notwithstanding that the payor may not be in default under the order.

**12 Chapter 6 is further amended by adding immediately after Section 50 the following Section:**

50A (1) In this Section, a reference to a payor, or another person on the payor's behalf, "exercising authority over a corporation or other person" is a reference to a situation in which, with respect to any real and personal property that is legally owned or otherwise held by that corporation or other person,

(a) the payor, or another person on the payor's behalf, is using or otherwise dealing with or is in a position to use or otherwise deal with the property in a manner similar to that of a person who legally owns or otherwise holds the property; or

(b) the payor, or another person on the payor's behalf, is in a position to compel or otherwise influence the corporation or other person

(i) to use or deal with the property as directed by the payor or another person on the payor's behalf, or

(ii) to permit the payor, or another person on the payor's behalf, to use or otherwise deal with the property in a manner similar to that of a person who legally owns or otherwise holds the property.

(2) Where

(a) a payor has defaulted with respect to a payment under a maintenance order filed with the Director; and

(b) with respect to property legally owned or otherwise held by a corporation or other person, the Director is of the opinion that the payor, or another person on the payor's behalf, is exercising authority over the corporation or other person,

the Director may apply to the court for an order directing that the property is subject to garnishment or seizure and sale, as the case may be, for the purpose of paying the amount in default under the maintenance order and any costs and fees owed to the Director by the payor pursuant to this Act.

(3) An application made under subsection (2) may be made without notice.

(4) Where, on hearing an application, the judge finds that

(a) a payor has defaulted in a payment under a maintenance order filed with the Director; and

(b) with respect to the property that is legally owned or otherwise held by a corporation or other person, the payor, or another person on the payor's behalf, is exercising or has exercised authority over the corporation or other person as defined in subsection (1),

the judge may by order

(c) declare that the property legally owned or otherwise held by a corporation or other person is property of the payor and direct that the property or any specific portion of the property is subject to garnishment, an order for seizure and sale or an order of receivership, including an order of receivership under subsection 60(1), as the case may be, for the purpose of paying the amounts in default under the maintenance order and any costs and fees owed to the Director by the payor pursuant to this Act;

(d) give such other direction or make such other order as the judge considers appropriate in the circumstances;

(e) award costs.

**13 Chapter 6 is further amended by adding immediately after Section 57 the following Section:**

57A Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable on summary conviction to the punishment for the offence, whether or not the corporation has been prosecuted.

**14 Subsection 61(1) of Chapter 6 is amended by adding immediately after clause (i) the following clause:**

(ia) respecting the charging of interest on arrears of maintenance owing under maintenance orders filed with the Director, and penalties for default under maintenance orders filed with the Director and the manner in which amounts of money collected by the Director are to be paid to recipients;

**15 Chapter 6 is further amended by adding immediately after Section 61 the following Section:**

61A (1) Any amounts owing by a payor under regulations made pursuant to clause 61(1)(ia) may be collected by the Director in the same manner as a maintenance order may be enforced under this Act and the enforcement provisions available to the Director under this Act, where a payor is in default under a maintenance order being enforced by the Director, apply *mutatis mutandis* notwithstanding that the payor may not be in default under the order.

(2) Any amounts collected by the Director pursuant to subsection (1) shall be paid to recipients to whom the payor owes money pursuant to maintenance orders as provided for in this Act and in the manner set out in the regulations made pursuant to clause 61(1)(ia).



**16** Chapter 6 is further amended by striking out “*Family Maintenance*” wherever it appears in Chapter 6 and substituting in each case “*Maintenance and Custody*”.

**17** Chapter 6 is further amended by striking out “Director of Family Benefits appointed pursuant to the *Family Benefits Act*” wherever it appears in Chapter 6 and substituting in each case “Minister of Community Services”.

**18** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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