

Interjurisdictional Support Orders Act

CHAPTER 9 OF THE ACTS OF 2002

as amended by

2002, c. 30, s. 9; 2012, c. 24; 2012, c. 62; 2015, c. 40;
2015, c. 44, s. 46-48



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CHAPTER 9 OF THE ACTS OF 2002
amended 2002, c. 30, s. 9; 2012, c. 24; 2012, c. 62; 2015, c. 40;
2015, c. 44, s. 46-48

**An Act to Facilitate the Making,
Recognition, Enforcement and Variation
of Interjurisdictional Support Orders**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Interjurisdictional Support Orders Act*.
2002, c. 9, s. 1.

PART I

GENERAL

Interpretation

2 In this Act,

- (a) “appropriate authority”, when used in reference to a reciprocating jurisdiction, means the person in that jurisdiction who corresponds to the designated authority in the Province;

- (b) “claimant” means a person who applies under this Act for support;
- (c) “clerk” means a person who has the authority of a clerk or registrar of the court;
- (d) “designated authority” means the person appointed under subsection 43(1) and includes a person to whom a power or duty is delegated under subsection 43(2);
- (e) “former Act” means the *Maintenance Orders Enforcement Act*;
- (f) “Nova Scotia court” means a court designated under Section 3;
- (g) “prescribed” means prescribed by the regulations, if any, or by the rules of court;
- (h) “provisional order” means
- (i) a support order of a Nova Scotia court that has no effect until confirmed by a court in a reciprocating jurisdiction, or
- (ii) a similar order made in a reciprocating jurisdiction and received for confirmation in the Province;
- (i) “provisional variation order” means
- (i) an order of a Nova Scotia court that varies a support order and that has no effect until confirmed by a court in a reciprocating jurisdiction, or
- (ii) a similar order made in a reciprocating jurisdiction and received for confirmation in the Province;
- (j) “reciprocating jurisdiction” means a jurisdiction prescribed as such in the regulations made under subsection 54(1);
- (k) “support” includes support, maintenance or alimony payable for a person or for the child of a person or both;
- (l) “support order” means an order made by a court or an administrative body requiring the payment of support, and includes
- ~~(a)~~[(i)] the provisions of a written agreement requiring the payment of support, if those provisions are enforceable in the jurisdiction in which the agreement was made as if they were contained in an order of a court of that jurisdiction; and
- ~~(b)~~[(ii)] the recalculation by an administrative body of the payment of support for a child, if the recalculation is enforceable in the jurisdiction in which the recalculation was made as if it were an order of, or was contained in an order of, a court of that jurisdiction.
- 2002, c. 9, s. 2; 2002, c. 30, s. 9; 2012, c. 24, s. 1.

Designation of court

3 (1) The Attorney General may designate a court or courts in the Province for the purpose of proceedings under this Act.

(2) The exercise by the Attorney General of the authority contained in subsection (1) is not a regulation within the meaning of the *Regulations Act*. 2002, c. 9, s. 3; 2012, c. 62, s. 1.

PART II

NEW ORDERS

Interpretation

4 In this Part, “respondent” means the person against whom support is sought. 2002, c. 9, s. 4.

Application of Part

5 This Part applies only if there is no support order in effect requiring the respondent to pay support for the claimant or for any children for whom support is claimed or for both. 2002, c. 9, s. 5.

Application by claimant residing in Province

6 (1) A claimant who resides in the Province and believes that the respondent habitually resides in a reciprocating jurisdiction may start a process in the Province that could result in a support order being made in the reciprocating jurisdiction.

(2) To start the process, the claimant shall complete a support application that includes

- (a) the claimant’s name and address for service;
- (b) a copy of the specific statutory or other legal authority on which the application is based unless the claimant is relying on the law of the jurisdiction where the respondent habitually resides;
- (c) the amount and nature of support claimed;
- (d) a sworn document setting out:
 - (i) the respondent’s name and any other information known to the claimant that can be used to locate or identify the respondent,
 - (ii) the respondent’s financial circumstances, to the extent known by the claimant,
 - (iii) the name of each person for whom support is claimed and the date of birth of any child for whom support is claimed, and

(iv) the evidence in support of the application that is relevant to establishing entitlement to or the amount of support, including

(A) where support is claimed for a child, details of the child's parentage and information about the child's financial and other circumstances, and

(B) where support is claimed for the claimant, information about the claimant's financial and other circumstances and the claimant's relationship with the respondent; and

(e) any other information or documents required by the regulations.

(3) The claimant is not required to notify the respondent that a proceeding has been started under this Section. 2002, c. 9, s. 6; 2012, c. 24, s. 2.

Submission of application to designated authority

7 (1) The claimant shall submit the support application to the designated authority, accompanied by a certified translation if required by the appropriate authority in the reciprocating jurisdiction in which the claimant believes the respondent is habitually resident.

(2) On receiving a support application, the designated authority shall

(a) review the application to ensure that it is complete; and

(b) send a copy of the completed application, as soon as practicable, to the appropriate authority in the reciprocating jurisdiction in which the claimant believes the respondent habitually resides.

(3) On receiving a request for further information or documents from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to clause 11(2)(a), the claimant shall provide the further information or documents within the time referred to in the request and in accordance with the regulations.

(4) On receiving a certified copy of an order and reasons, if any, from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to Section 16, the designated authority shall provide a copy of the order and reasons, if any, to the claimant and the Nova Scotia court in accordance with the regulations. 2002, c. 9, s. 7; 2012, c. 24, s. 3.

Provisional order

8 (1) Where the respondent is habitually resident in a reciprocating jurisdiction that requires a provisional order, the Nova Scotia court may, on application by a claimant and without notice to and in the absence of a respondent, make a

provisional order taking into account the legal authority on which the claimant's application for support is based.

(2) Evidence in an application under subsection (1) may be given orally, in writing or as the court may allow.

(3) Where a provisional order is made, the court shall send it to the designated authority which shall send to the reciprocating jurisdiction

- (a) three certified copies of the provisional order; and
- (b) a support application referred to in subsection 6(2).

(4) Where, during a proceeding for confirmation of a provisional order, a court in a reciprocating jurisdiction sends a matter back for further evidence to the Nova Scotia court that made the provisional order, the Nova Scotia court shall, after giving notice to the claimant, receive further evidence.

(5) Where evidence is received under subsection (4), the clerk of the Nova Scotia court shall send to the court in the reciprocating jurisdiction

- (a) a certified copy of the evidence; and
- (b) where the Nova Scotia court considers it appropriate to modify its provisional order, three certified copies of the order as modified.

(6) Where a provisional order made under this Section comes before a court in a reciprocating jurisdiction and confirmation is denied in respect of one or more persons for whom support is sought, the Nova Scotia court that made the provisional order may, on motion within six months after the denial of confirmation, reopen the matter, receive further evidence and make a new provisional order for a person in respect of whom confirmation was denied. 2002, c. 9, s. 8; 2012, c. 24, s. 4.

Application of Sections 10 to 16

9 (1) Sections 10 to 16 apply in respect of

- (a) provisional orders referred to in subclause 2(h)(ii); and
- (b) documents from reciprocating jurisdictions corresponding to a support application described in subsection 6(2).

(2) In Sections 10 to 16, "support application" refers to the orders and documents described in subsection (1). 2002, c. 9, s. 9.

Application by claimant from another jurisdiction

10 (1) Where the designated authority receives a support application from an appropriate authority in a reciprocating jurisdiction with information that

the respondent habitually resides in the Province, it shall serve on the respondent, in accordance with the regulations,

- (a) a copy of the support application; and
- (b) a notice requiring the respondent to appear at a place and time set out in the notice and to provide the information or documents required by the regulations.

(1A) For greater certainty, the claimant is not required to be served with the notice, information or documents referred to in clause (1)(b).

(2) Where the designated authority knows or believes that the respondent is habitually resident in another reciprocating jurisdiction in Canada, the designated authority shall forward the support application to the appropriate authority in that other reciprocating jurisdiction and shall notify the appropriate authority in the originating reciprocating jurisdiction that it has done so.

- (3)** Where the designated authority
- (a) is unable to determine where the respondent resides;
 - (b) is unable to serve the respondent in accordance with subsection (1); or
 - (c) knows or believes that the respondent is habitually resident in a jurisdiction outside Canada,

the designated authority shall return the support application to the appropriate authority in the originating reciprocating jurisdiction with any available information respecting the location and circumstances of the respondent. 2002, c. 9, s. 10; 2012, c. 24, s. 5; 2015, c. 40, s. 1.

Information to be considered by court

11 (1) In dealing with a support application, the Nova Scotia court shall consider

- (a) the evidence provided to the Nova Scotia court; and
- (b) the documents sent from the reciprocating jurisdiction.

(2) Where the Nova Scotia court needs further information or documents from the claimant to consider making a support order, the Nova Scotia court shall

- (a) send the designated authority a direction to request the information or documents from the claimant or the appropriate authority in the reciprocating jurisdiction; and
- (b) adjourn the hearing.

(3) When the Nova Scotia court acts under subsection (2), it may also make an interim support order.

(4) Where the Nova Scotia court does not receive the information or documents requested under subsection (2) within twelve months after the request is made, it may dismiss the support application and terminate any interim support order made under subsection (3).

(5) The dismissal of the application under subsection (4) does not preclude the claimant from commencing a new support application. 2002, c. 9, s. 11; 2012, c. 24, s. 6.

Parentage

12 (1) Where a child's parentage is in issue and has not previously been determined, the Nova Scotia court may determine the matter.

(2) A determination of parentage under this Section has effect only for the purpose of proceedings relating to support for the child. 2002, c. 9, s. 12.

Choice of law rules

13 The following rules apply with respect to determining entitlement to support and the amount of support:

(a) in determining a child's entitlement to support, the Nova Scotia court shall first apply Nova Scotia law but, where the child is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the child is habitually resident;

(b) in determining the claimant's entitlement to and the amount of support, the Nova Scotia court shall first apply Nova Scotia law but, where the claimant is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the claimant and the respondent last maintained a common habitual residence;

(c) in determining the amount of support for a child, the Nova Scotia court shall apply Nova Scotia law, including, for greater certainty, the *Child Support Guidelines*, as amended from time to time, made under the *Parenting and Support Act*. 2002, c. 9, s. 13; 2012, c. 24, s. 7; 2015, c. 44, s. 46.

Order

14 (1) On the conclusion of a hearing, the Nova Scotia court may, in respect of a claimant, a child or both,

(a) make a support order;

(b) make an interim support order and adjourn the hearing to a specified date;

(c) adjourn the hearing to a specified date without making an interim temporary support order; or

(d) refuse to make a support order.

- (2) The Nova Scotia court may make a retroactive support order.
- (3) A support order may require support to be paid in periodic payments, as a lump sum or both.
- (4) Where the Nova Scotia court refuses to make a support order, it shall give written reasons for its decision and send them to the designated authority.
- (5) Where it is not apparent on the face of an order made pursuant to this Section which law the Nova Scotia court applied in accordance with Section 13, it is presumed that the court applied Nova Scotia law. 2002, c. 9, s. 14; 2012, c. 24, s. 8.

Order where notice not complied with

15 (1) Where the respondent does not appear as required in the notice or does not provide the information or documents required under clause 10(1)(b), the Nova Scotia court may make an order in the absence of the respondent or of the information or documents and, in making the order, may draw any inference it considers appropriate.

(2) Where the Nova Scotia court makes an order under subsection (1), it shall send copies of the order to the designated authority and to the respondent in accordance with the regulations. 2002, c. 9, s. 15.

Sending order to reciprocating jurisdiction

16 When the designated authority receives an order that is made under Section 14 or 15, it shall promptly send a certified copy of it, with reasons, if any, to the appropriate authority in the reciprocating jurisdiction that sent the claimant's support application. 2002, c. 9, s. 16.

PART III**REGISTRATION AND ENFORCEMENT OF
ORDERS MADE OUTSIDE THE PROVINCE****Application of Part**

17 This Part applies in respect of support orders, interim support orders and orders varying support orders made in reciprocating jurisdictions in and outside Canada, but not in respect of provisional orders or provisional variation orders. 2002, c. 9, s. 17.

Receipt of order from reciprocating jurisdiction

18 (1) To enforce an order to which this Part applies, a certified copy of the order must be sent to the designated authority, together with information about the location and circumstances of any party who is believed to habitually reside in the Province.

(2) On receiving the certified copy, the designated authority shall send the copy, in accordance with the regulations,

(a) to the clerk of the Nova Scotia court sitting nearest the place where the party is believed to reside; or

(b) where there is no party who is believed to habitually reside in the Province, to the clerk of any Nova Scotia court. 2012, c. 24, s. 9.

Registration

19 (1) On receiving the order under subsection 18(2), the clerk of the Nova Scotia court shall register it as an order of the court.

(2) From the date of registration, the order has the same effect as a support order made by a Nova Scotia court.

(3) Where the order was made outside Canada, notice of its registration shall be given in accordance with Section 20, but there is no requirement to give notice of the registration of an order made in Canada.

(4) The registered order may be enforced or varied under this Act with respect to arrears accrued before registration as well as with respect to obligations accruing after registration.

(5) Subsections (2), (3) and (4) apply whether the registered order is made before, on or after the day on which this Act comes into force.

(6) When an order has been registered under subsection (1), the clerk of the Nova Scotia court shall

(a) file a copy with the Director of Maintenance Enforcement and, where the order is so filed, the order shall be enforced in the Province in accordance with the *Maintenance Enforcement Act*; and

(b) send a copy to the designated authority.

(7) Notwithstanding subsection (6), where the registered order was made outside Canada, copies shall not be filed with the Director of Maintenance Enforcement or sent to the designated authority until

(a) the thirty-day period described in subsection 20(2) has expired without an application being made to set aside the registration; or

(b) where such an application is made during the thirty-day period, the application has been finally disposed of.

(8) Unless otherwise stated in the order, the duration of the support obligation in an order registered under subsection (1) is governed by the law of the jurisdiction pursuant to which the order was made.

(9) Notwithstanding subsection (8), where the Director of Maintenance Enforcement is unable to determine the duration of the support obligation based on information received from the appropriate authority in the reciprocating jurisdiction, the Director may apply Nova Scotia law to determine the duration of the support obligation. 2002, c. 9, s. 19; 2012, c. 24, s. 10.

Notice of registration

20 (1) After the registration of an order made in a reciprocating jurisdiction outside Canada, the clerk of the Nova Scotia court shall, in accordance with the regulations, notify

(a) any party to the order believed to habitually reside in the Province; and

(b) any party required to pay support under the order even if that party is not believed to habitually reside in the Province.

(2) Within thirty days after receiving notice of the registration of the order, a party to the order may make an application to the Nova Scotia court to set aside the registration.

(3) A party who makes an application under subsection (2) shall give notice of it to the designated authority and to the claimant in accordance with the regulations.

(4) On an application under subsection (2), the Nova Scotia court may

(a) confirm the registration; or

(b) set aside the registration if the Nova Scotia court determines that

(i) in the proceeding in which the order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,

(ii) the order is contrary to public policy in the Province, or

(iii) the court that made the order did not have jurisdiction to make it.

(4A) For the purpose of subclause (4)(b)(iii), the Nova Scotia court shall not determine that the court that made the order did not have the jurisdiction to make the order if

(a) both parties to the order were habitually resident in the jurisdiction in which the order was made; or

(b) a party who was not habitually resident in the jurisdiction in which the order was made was subject to the jurisdiction of

the court that made the order under the Province's conflict of laws rules.

(5) Where the Nova Scotia court sets aside the registration, it shall give written reasons for its decision and send them to the designated authority.

(6) For the purpose of subclause (4)(b)(iii), a court has jurisdiction where

(a) both parties to the order ordinarily reside in the reciprocating jurisdiction outside Canada; or

(b) a party does not ordinarily reside in the reciprocating jurisdiction outside Canada but is subject to the jurisdiction of the court that made the order.

(7) The clerk of the Nova Scotia court shall give notice of a decision or order of that court to the parties and the designated authority in accordance with the regulations. 2002, c. 9, s. 20; 2012, c. 24, s. 11.

Effect of setting aside

21 (1) Where the registration of an order made in a reciprocating jurisdiction outside Canada is set aside under Section 20, the order shall be dealt with under this Act as if it were a document corresponding to a support application received under subsection 10(1) or a support variation application received under subsection 34(1).

(2) Where the order does not contain the necessary information or documents required for a support application or support variation application, the designated authority shall request them from the claimant or from the appropriate authority of the reciprocating jurisdiction in which the order was made, and no further steps shall be taken in the proceeding until the designated authority has received the required material. 2002, c. 9, s. 21.

Conversion to Canadian currency

22 Where an order made in a reciprocating jurisdiction outside Canada that has been registered and filed in accordance with Section 19 refers to an amount of support that is not expressed in Canadian currency, the conversion of the amount into Canadian currency shall be determined by the designated authority in accordance with the regulations. 2002, c. 9, s. 22.

Translation of foreign order not in English or French

23 (1) Where an order or other document from a reciprocating jurisdiction outside Canada is written in a language other than English or French, the order or document must be accompanied by a translation of the order or document into the English or French language.

(2) A translation required under subsection (1) must be authenticated as being accurate by a certificate of the translator. 2002, c. 9, s. 23.

PART IV

VARIATION OF ORDERS

Interpretation of Part

24 In this Part,

- (a) “applicant” means the party applying to vary a support order;
- (b) “respondent” means the party who is the respondent in a support-variation application. 2002, c. 9, s. 24.

Application of Part

25 This Part applies in respect of support orders that are made in the Province or made in a reciprocating jurisdiction and registered in a Nova Scotia court under Part III or the former Act, but not in respect of provisional orders or provisional variation orders. 2002, c. 9, s. 25.

Not necessary to re-register varied order

26 It is not necessary to re-register an order that is registered under Part III and subsequently varied under this Part. 2002, c. 9, s. 26.

Variation in reciprocating jurisdiction

27 Where a support order originally made in the Province is varied in a reciprocating jurisdiction under provisions that correspond to Sections 34 to 40, it is deemed to be so varied in the Province. 2002, c. 9, s. 27.

Restrictions

28 (1) Nothing in this Part

- (a) authorizes a judge of the Family Court for the Province of Nova Scotia to vary a support order made in Canada by a federally appointed judge; or
- (b) allows a support order originally made under the *Divorce Act* (Canada) to be varied except as authorized by a federal enactment.

(2) Notwithstanding subsection (1), a judge of the Family Court for the Province of Nova Scotia may make a provisional order to vary a support order made in Canada under a provincial enactment by a federally appointed judge. 2002, c. 9, s. 28.

Support-variation application

29 (1) An applicant who habitually resides in the Province and believes that the respondent habitually resides in a reciprocating jurisdiction may start a process in the Province that could result in a variation order being made in the reciprocating jurisdiction.

(2) To start the process, the applicant shall complete a support-variation application that includes

- (a) the applicant's name and address for service;
- (b) a certified copy of the support order;
- (c) a copy of the specific statutory or other legal authority on which the application is based, unless the applicant is relying on the law of the jurisdiction where the respondent habitually resides;
- (d) details of the variation applied for, which may include a termination of the support order; and
- (e) the affidavit described in subsection (3).

(3) The affidavit shall set out

- (a) the respondent's name and any information known to the applicant that can be used to locate or identify the respondent;
- (b) the respondent's financial circumstances, to the extent known by the applicant, including whether the respondent is receiving social assistance;
- (c) whether the support order was assigned and any details of the assignment known to the applicant;
- (d) the name of each person, to the extent known by the applicant, for whom support is payable or who would be affected by the variation;
- (e) the evidence in support of the application, including
 - (i) where support to the applicant or respondent is an issue, information about their relationship, and
 - (ii) where the variation would affect support for a child, information about the child's financial and other circumstances;
- (f) the prescribed information about the applicant's financial circumstances; and
- (g) any other prescribed information or documents.

(4) The applicant is not required to notify the respondent that a proceeding has been started under this Section. 2002, c. 9, s. 29; 2012, c. 24, s. 12.

Submission of variation application

30 (1) The applicant shall submit the support-variation application to the designated authority in the Province, accompanied by a certified translation if required by the appropriate authority in the reciprocating jurisdiction in which the applicant believes the respondent is habitually resident.

(2) On receiving a support-variation application, the designated authority shall

- (a) review the application to ensure that it is complete; and
- (b) send a copy of the completed application, as soon as practicable, to the appropriate authority in the reciprocating jurisdiction in which the applicant believes the respondent habitually resides.

(3) On receiving a request for further information or documents from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to clause 36(2)(a), the applicant shall provide the further information or documents, within the time referred to in the request and in accordance with the regulations.

(4) On receiving a certified copy of an order and reasons, if any, from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to Section 38, the designated authority shall provide a copy of the order and reasons, if any, to the applicant, in accordance with the regulations. 2002, c. 9, s. 30; 2012, c. 24, s. 13.

Where respondent not in reciprocating jurisdiction

31 Where the applicant habitually resides in the Province and the respondent either

- (a) no longer habitually resides in a reciprocating jurisdiction; or
- (b) habitually resides in a reciprocating jurisdiction that cannot, under its laws, or will not, facilitate the determination of a support-variation application,

the applicant may apply directly to the Nova Scotia court to vary the support order, and the court may make a variation order if the respondent has been given notice of the proceeding. 2012, c. 24, s. 14.

Provisional variation order

32 (1) Where the applicant reasonably believes that the respondent habitually resides in a reciprocating jurisdiction that requires a provisional variation order, the Nova Scotia court may, on the applicant's application and without notice to the respondent, make a provisional variation order taking into account the legal authority on which the applicant's application for variation is based.

(2) Evidence on an application under subsection (1) may be given orally, in writing or as the court may allow.

(3) Where a provisional variation order is made, the court shall send it to the designated authority which shall send to the reciprocating jurisdiction

- (a) three certified copies of the provisional variation order;
- and

(b) a support-variation application referred to in subsection 29(2).

(4) Where, in considering whether to confirm a provisional variation order, a court in a reciprocating jurisdiction sends a matter back for further evidence to the Nova Scotia court that made the provisional variation order, the Nova Scotia court shall, after giving notice to the applicant, receive further evidence.

(5) Where evidence is received under subsection (4), the clerk of the Nova Scotia court shall send to the court in the reciprocating jurisdiction

(a) a certified copy of the evidence; and

(b) where the Nova Scotia court considers it appropriate to modify its provisional variation order, three certified copies of the order as modified.

(6) Where a provisional variation order made under this Section comes before a court in a reciprocating jurisdiction and confirmation is denied in respect of one or more persons for whom support is payable, the Nova Scotia court that made the provisional variation order may, on application within six months after the denial of confirmation, reopen the matter, receive further evidence and make a new provisional variation order for a person in respect of whom confirmation was denied. 2002, c. 9, s. 32; 2012, c. 24, s. 15.

Application of Sections 34 to 40

33 (1) Sections 34 to 40 apply in respect of

(a) provisional variation orders referred to in subclause 2(i)(ii); and

(b) documents from reciprocating jurisdictions corresponding to a support-variation application described in subsection 29(2).

(2) In Sections 34 to 40, “support-variation application” refers to the orders and documents described in subsection (1). 2002, c. 9, s. 33.

Variation application from another jurisdiction

34 (1) Where the designated authority receives a support-variation application from an appropriate authority in a reciprocating jurisdiction with information that the respondent habitually resides in the Province, it shall serve on the respondent, in accordance with the regulations,

(a) a copy of the support-variation application; and

(b) a notice requiring the respondent to appear at a place and time set out in the notice and to provide the information or documents required by the regulations.

(1A) For greater certainty, the applicant is not required to be served with the notice, information or documents referred to in clause (1)(b).

(2) Where the designated authority knows or believes that the respondent is habitually resident in another reciprocating jurisdiction in Canada, the designated authority shall forward the support-variation application to the appropriate authority in that other reciprocating jurisdiction and shall notify the appropriate authority in the originating reciprocating jurisdiction that it has done so.

- (3) Where the designated authority
- (a) is unable to determine where the respondent resides;
 - (b) is unable to serve the respondent in accordance with subsection (1); or
 - (c) knows or believes that the respondent is habitually resident in a jurisdiction outside Canada,

the designated authority shall return the support-variation application to the appropriate authority in the originating reciprocating jurisdiction with any available information respecting the location and circumstances of the respondent. 2002, c. 9, s. 34; 2012, c. 24, s. 16; 2015, c. 40, s. 2.

Notice of hearing

35 (1) When the Nova Scotia court receives a support-variation application under Section 34, the clerk shall serve on the respondent, in accordance with the regulations,

- (a) a copy of the support-variation application; and
- (b) a notice requiring the respondent to appear at a place and time set out in the notice and to provide the prescribed information or documents.

(2) For greater certainty, the applicant is not required to be served with the notice, information or documents referred to in clause (1)(b). 2002, c. 9, s. 35; 2015, c. 40, s. 3.

Information to be considered by court

36 (1) In dealing with a support-variation application, the Nova Scotia court shall consider

- (a) the evidence provided to the Nova Scotia court; and
- (b) the documents sent from the reciprocating jurisdiction.

(2) Where the Nova Scotia court needs further information or documents from the applicant to consider making a support variation order, the Nova Scotia court shall

- (a) send the designated authority a direction to request the information or documents from the applicant or the appropriate authority in the reciprocating jurisdiction; and
- (b) adjourn the hearing.

(3) When the Nova Scotia court acts under subsection (2), it may also make an interim support-variation order.

(4) Where the Nova Scotia court does not receive the information or documents requested under subsection (2) within twelve months after the request is made, it may dismiss the support-variation application and terminate any interim support-variation order made under subsection (3).

(5) The dismissal of the application under subsection (4) does not preclude the applicant from commencing a new support-variation application. 2002, c. 9, s. 36; 2012, c. 24, s. 17.

Choice of law rules

37 The following rules apply with respect to determining entitlement to receive or to continue to receive support and the amount of support:

(a) in determining a child's entitlement to receive or to continue to receive support, the Nova Scotia court shall first apply Nova Scotia law but, where the child is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the child is habitually resident;

(b) in determining the amount of support for a child, the Nova Scotia court shall apply Nova Scotia law, including, for greater certainty, the *Child Support Guidelines*, as amended from time to time, made under the *Parenting and Support Act*;

(c) in determining the entitlement of a party other than a child to receive or continue to receive support, the Nova Scotia court shall first apply Nova Scotia law but, where the party is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply

(i) the law of the jurisdiction in which the party habitually resides, or

(ii) where the party is not entitled to support under the law of the jurisdiction in which the party habitually resides, the law of the jurisdiction in which the parties last maintained a common habitual residence;

(d) in determining the amount of support for a party other than a child, the Nova Scotia court shall apply Nova Scotia law. 2002, c. 9, s. 37; 2012, c. 24, s. 18; 2015, c. 44, s. 47.

Order

38 (1) On the conclusion of a hearing, the Nova Scotia court may, in respect of the applicant, a child or both,

(a) make a support-variation order;

(b) make an interim support-variation order and adjourn the hearing to a specified date;

- (c) adjourn the hearing to a specified date without making an interim support-variation order; or
 - (d) refuse to make a support-variation order.
- (2) The Nova Scotia court may make a retroactive support-variation order.
- (3) A support-variation order may require support to be paid in periodic payments, as a lump sum or both.
- (4) Where the Nova Scotia court refuses to make a support-variation order, it shall give written reasons for its decision and send them to the designated authority.
- (5) Where it is not apparent on the face of an order made under this Section which law the Nova Scotia court applied in accordance with Section 37, it is presumed that the court applied Nova Scotia law. 2002, c. 9, s. 38; 2012, c. 24, s. 19.

Order where notice not complied with

- 39 (1) Where the respondent does not appear as required in the notice or does not provide the information or documents required under clause 35(b), the Nova Scotia court may make an order in the absence of the respondent or of the information or documents and in making the order may draw any inference it considers appropriate.
- (2) Where the Nova Scotia court makes an order under subsection (1), it shall send copies of the order to the designated authority and to the respondent in accordance with the regulations. 2002, c. 9, s. 39.

Sending order to reciprocating jurisdiction

- 40 When it receives an order that is made under Section 38 or 39, the designated authority shall, as soon as practicable, send a certified copy of it with reasons, if any, to the appropriate authority in the reciprocating jurisdiction in which the applicant resides and, where the support order was originally made in another reciprocating jurisdiction, to the appropriate authority in that jurisdiction. 2002, c. 9, s. 40; 2012, c. 24, s. 20.

Variation of registered orders

- 41 (1) This Section applies to the variation of a support order or a support-variation order referred to in subsection (2), other than a variation that has been commenced by a support-variation application under Part IV.
- (2) The Nova Scotia court may, on a party's application, after taking into account any right of a government under Section 47, vary a support order or

a support-variation order made or registered in the Province under this Act or the former Act if

- (a) both the applicant and respondent accept the Nova Scotia court's jurisdiction;
- (b) both the applicant and respondent habitually reside in the Province; or
- (c) the respondent habitually resides in the Province and the support order was registered by the applicant under Part III or the former Act.

(3) The *Parenting and Support Act* applies for the purpose of varying a support order or a support-variation order under the circumstances referred to in subsection (2) as if the order being varied were an order for support under that Act. 2012, c. 24, s. 21; 2015, c. 44, s. 48.

PART V

APPEALS AND MISCELLANEOUS

Appeal

42 (1) Subject to subsections (2) and (4), a claimant, applicant or respondent or the designated authority may appeal any decision of the Nova Scotia court under this Act to the Nova Scotia Court of Appeal.

(2) An appeal shall be commenced within ninety days after the date the Nova Scotia court's decision is entered as a judgment.

(3) Notwithstanding subsection (2), the Nova Scotia Court of Appeal may extend the appeal period even after it has expired.

(4) A person responding to an appeal under subsection (2) may appeal a decision in the same proceeding within thirty days after receiving notice of the appeal.

(5) An order under appeal remains in force pending the determination of the appeal unless the court that made the order or the Nova Scotia Court of Appeal orders otherwise.

(6) The registrar of the Nova Scotia Court of Appeal shall send a copy of that court's decision on the appeal to the designated authority which shall notify the appropriate authority in the reciprocating jurisdiction of the decision on the appeal. 2002, c. 9, s. 42.

Appointment of designated authority

43 (1) The Attorney General may appoint one or more persons to act as the designated authority in the Province for the purpose of this Act.

(2) The person appointed under subsection (1) may, in writing, delegate any power or duty under this Act to any other person or persons.

(3) No proceeding for damages shall be commenced against the designated authority or any employee of the designated authority's office for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. 2002, c. 9, s. 43.

Sending of documents by designated authority

44 On receipt of an order or document to be sent under this Act to a reciprocating jurisdiction, the designated authority shall send the order or document to the appropriate authority of the reciprocating jurisdiction. 2002, c. 9, s. 44.

Translation of orders and documents

45 Where a reciprocating jurisdiction requires an order or other document to be translated into a language other than English or French, the person for whom the order or document is being transmitted shall provide the required translation together with a certificate of the translator authenticating the accuracy of the translation. 2002, c. 9, s. 45.

Designated authority to carry out currency conversion

46 Where a support order or an application made in a reciprocating jurisdiction outside Canada and received by the Nova Scotia court under this Act refers to an amount of support that is not expressed in Canadian currency, the designated authority shall convert the amount into Canadian currency in accordance with the regulations. 2002, c. 9, s. 46.

Right of subrogation

47 (1) In this Section, "assistance" means a benefit, assistance or income support under the *Social Assistance Act* and *Employment Support and Income Assistance Act*.

(2) Any government or agency of government that is providing or has provided assistance to or on behalf of a person who is entitled to make a claim for support has the rights of a claimant or applicant under this Act for the following purposes:

- (a) obtaining support or a variation of support in the name of the government or the agency of the government;
- (b) obtaining reimbursement of the assistance provided to or on behalf of that person by the government or the agency of government;
- (c) sending an order to the designated authority for registration.

(3) Where a person who is required to pay support makes an application for a variation under Part IV, a government or agency of government has the rights of the respondent with respect to the application for the following purposes if the government or the agency of government is providing or has provided assistance to or on behalf of the respondent:

(a) to respond to the application for variation of the support order for that person;

(b) to obtain reimbursement of the assistance provided to or on behalf of that person by the government or the agency of government. 2002, c. 9, s. 47.

Terminology

48 Where, in a proceeding under this Act, a document from a court in a reciprocating jurisdiction contains terminology different from the terminology in this Act or contains terminology or is in a form different than that customarily in use in the Nova Scotia court, the Nova Scotia court shall give a broad and liberal interpretation to the terminology or form so as to give effect to the document. 2002, c. 9, s. 48.

Judicial notice of law of reciprocating jurisdiction

49 (1) In a proceeding under this Act, the Nova Scotia court shall take judicial notice of the law of a reciprocating jurisdiction and, where required, apply it.

(2) An enactment of a reciprocating jurisdiction may be pleaded and proved for the purposes of this Act by producing a copy of the enactment received from the reciprocating jurisdiction. 2002, c. 9, s. 49.

Proof of appointment

50 In a proceeding under this Act, a document purporting to be signed by a judge, officer of a court or public officer in a reciprocating jurisdiction is, unless the contrary is proved, proof of the appointment, signature and authority of the person who signed it. 2002, c. 9, s. 50.

Receipt in evidence

51 (1) Statements in writing sworn to by the maker, depositions or transcripts of evidence taken in a reciprocating jurisdiction may be received in evidence by a Nova Scotia court under this Act.

(2) Default in paying support or arrears of support may be proved by a sworn document made by a person who declares that the person has knowledge of, or information and belief concerning, the default or arrears. 2002, c. 9, s. 51.

Spouses as witnesses

52 Spouses are competent and compellable witnesses against each other in proceedings under this Act. 2002, c. 9, s. 52.

Other remedies not impaired

53 This Act does not impair any other remedy available to a person, the Province, a province of Canada, a jurisdiction outside Canada or a political subdivision or official agency of the Province, of a province of Canada or of a jurisdiction outside Canada. 2002, c. 9, s. 53.

Request to locate

53A (1) In this Section,

(a) “interjurisdictional application” means a support application, a support-variation application or a request to register a support order made in a reciprocating jurisdiction under this Act;

(b) “request to locate” means a written request to locate a person for the purpose of facilitating a proceeding relating to the establishment, variation, registration or enforcement of a support order.

(2) This Section binds Her Majesty in right of the Province.

(3) Where the designated authority receives a request to locate from an appropriate authority in a reciprocating jurisdiction, the designated authority may request a public body, including Her Majesty in right of the Province, to provide in writing any information in the possession or control of the public body, including Her Majesty, respecting the whereabouts of a person who is named in the request to locate to enable the appropriate authority to determine if an interjurisdictional application should be sent to the Province.

(4) Where the designated authority receives a request to locate from an appropriate authority in a reciprocating jurisdiction, the designated authority may respond to the request by advising the appropriate authority whether the person has been located in the Province, but the designated authority may not disclose specific information concerning the person’s location.

(5) Upon receiving an interjurisdictional application, the designated authority may request a public body, including Her Majesty in right of the Province, to provide in writing any information in the possession or control of the public body, including Her Majesty, respecting the whereabouts of a person named in the application, to the designated authority to locate the person for the purpose of facilitating service of notice of the interjurisdictional application on the person.

(6) Information received or disclosed under this Section by the designated authority or another person may be used or disclosed for the purpose of carrying out duties and powers in accordance with this Act and the regulations but is otherwise confidential.

(7) A public body, including Her Majesty in right of the Province, that receives a request for information under this Section shall provide the information within fourteen days of the day on which the request is received.

(8) Where, on application to a court, it appears that the designated authority has been refused information after making a request pursuant to this Section, the court may order a public body, including Her Majesty in right of the Province, to provide the designated authority with the information.

(9) This Section applies notwithstanding any other Act or regulation and notwithstanding any common-law rule of confidentiality except solicitor-client privilege.

(10) No action lies against any person or public body, including Her Majesty in right of the Province and a servant or agent of Her Majesty, who provides information in accordance with this Section.

(11) Any person or public body, including Her Majesty in right of the Province and a servant or agent of Her Majesty, who knowingly withholds, misleads or gives false information to the designated authority or in response to an order of the court pursuant to this Section is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for not more than six months, or to both a fine and imprisonment.

(12) The following records are not required to be provided to the designated authority under this Section:

- (a) a record of a person acting in a judicial or quasi-judicial capacity, such as a note, communication or draft decision;
- (b) any record sealed by court order or judicial direction;
- (c) a judicial administration record as defined in the *Freedom of Information and Protection of Privacy Act*. 2012, c. 24, s. 22.

Regulations respecting reciprocating jurisdictions

54 (1) Where the Governor in Council is satisfied that laws are or will be in effect in a jurisdiction for the reciprocal enforcement of support orders made in the Province on a basis substantially similar to this Act, the Governor in Council may make regulations declaring that jurisdiction to be a reciprocating jurisdiction.

(2) In declaring a jurisdiction to be a reciprocating jurisdiction under subsection (1), the Governor in Council may impose any conditions with respect to the enforcement and recognition of support orders made or registered in that jurisdiction.

(3) The Governor in Council may, by regulation, revoke a declaration made under subsection (1), and the jurisdiction to which the revocation relates ceases to be a reciprocating jurisdiction for the purpose of this Act. 2002, c. 9, s. 54.

Regulations

- 55** The Governor in Council may make regulations
- (a) respecting notices, information and documents required by this Act;
 - (b) respecting the serving or giving of notices, information and documents under this Act;
 - (c) respecting proceedings under this Act;
 - (d) respecting conversion into Canadian currency for the purpose of Sections 22 and 46;
 - (e) respecting forms for the purpose of this Act;
 - (f) prescribing anything that is referred to in this Act as being prescribed;
 - (g) defining any word or expression used but not defined in this Act;
 - (h) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.
- 2002, c. 9, s. 55; 2012, c. 62, s. 2; 2012, c. 24, s. 23.

Regulations Act

56 The exercise by the Governor in Council of the authority contained in Sections 54 and 55 is regulations within the meaning of the *Regulations Act*. 2002, c. 9, s. 56.

Application of former Act

57 (1) An order that was made or registered under the former Act remains effective and may be varied, enforced or otherwise dealt with as if it had been made or registered under this Act.

(2) Where the respondent received notice of a hearing to consider a provisional order or a provisional variation order or notice of registration of a final order under the former Act before the coming into force of this Act, the matter shall be dealt with in accordance with the former Act as if it had not been repealed.

(3) Where a person who habitually resides in the Province applied for a provisional order or a provisional variation order under the former Act before the coming into force of this Act, the application continues under the former Act as if it had not been repealed.

(4) Where a final order was received for registration under the former Act before the coming into force of this Act but, on that day, has not yet been registered, the order shall be dealt with in accordance with this Act as if it had been received under Part III.

(5) Where a provisional order or a provisional variation order was received under the former Act before the coming into force of this Act but, on that day, the respondent had not received notice of the hearing to consider the order, the order shall be dealt with in accordance with this Act as if it had been received under Part III or Part IV, as the case may be. 2002, c. 9, s. 57; 2012, c. 24, s. 24.

Maintenance Enforcement Act amended

58 and 59 *amendments*

Reciprocal Enforcement of Judgments Act amended

60 *amendments*

Repeal of former Act

61 Chapter 268 of the Revised Statutes, 1989, the *Maintenance Orders Enforcement Act*, is repealed. 2002, c. 9, s. 61.

Proclamation

62 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2002, c. 9, s. 62.

Proclaimed - March 28, 2003
In force - March 31, 2003
