

Maintenance Enforcement Act

CHAPTER 6 OF THE ACTS OF 1994-95

as amended by

1995-96, c. 28; 1998, c. 30; 1998, c. 12, s. 11;
2002, c. 9, ss. 58, 59; 2004, c. 40; 2005, c. 53; 2006, c. 33
2007, c. 43; 2014, c. 37, ss. 22, 23; 2015, c. 44, s. 53-56



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**An Act to Provide for
the Enforcement of Payments Under
Maintenance 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 *Maintenance Enforcement Act*. 1994-95, c. 6, s. 1.

Interpretation

2 In this Act,

(a) “court” means the Family Court unless otherwise stated or required by law;

(b) “Director” means the Director of Maintenance Enforcement appointed pursuant to Section 5;

(c) “garnishment” means an execution order in the nature of garnishee;

(d) “income source” includes an individual, a corporation or entity that owes or makes payment to a payor of

(i) wages, salary or other remuneration,

- (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 fee for service,
 - (vii) rental income,
 - (viiia) a shareholder's loan or dividends on shares,
 - (viiib) money from a trust in which the payor holds a beneficial interest,
 - (viiic) income of a type prescribed by regulation;
- (e) "maintenance order" means a requirement in an order of a court in or outside the Province enforceable in the Province 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) a requirement for a spouse to pay for the repair and maintenance of a matrimonial home or to pay other liabilities arising in respect of it,
 - (iv) 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 recipient or a beneficiary,
 - (v) payment of support or maintenance in respect of a period before the date of the order,
 - (vi) payment of expenses in respect of a child's pre-natal care and birth,
 - (vii) the securing of payment under the order, by a charge on property or otherwise,
 - (viii) the payment of interest or the payment of legal fees or other expenses arising in relation to support or maintenance, or
 - (ix) a requirement to establish or maintain an interest in a benefit plan of the other spouse or a child as the beneficiary,

and includes such a requirement, in a pre-nuptial agreement, marriage contract, cohabitation agreement, paternity agreement, minutes of settlement or separation agreement that is registered with the court pursuant to the *Parent-*

ing and Support Act, but does not include a provisional order that has not been confirmed pursuant to the *Interjurisdictional Support Orders Act*;

(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;

(f) “payor” means a person required under a maintenance order to pay maintenance;

(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 jurisdiction pursuant to the *Interjurisdictional Support Orders Act* or similar reciprocal enforcement legislation;

(h) “recipient” means a person entitled under a maintenance order to receive maintenance on behalf of the recipient or on behalf of another person. 1994-95, c. 6, s. 2; 1995-96, c. 28, s. 1; 2002, c. 9, s. 58; 2004, c. 40, ss. 1, 16; 2015, c. 44, s. 53.

Act binds Provincial and federal Crown

3 This Act binds Her Majesty in right of the Province and in right of Canada. 1994-95, c. 6, s. 3.

Proceedings in Family Court

4 All court proceedings pursuant to this Act shall be in the Family Court unless otherwise stated or required by law. 1994-95, c. 6, s. 4.

Director of Maintenance Enforcement

5 There shall be a Director of Maintenance Enforcement who shall be appointed in accordance with the *Civil Service Act*, who shall be appointed in accordance with the hiring practices, including public advertisement of the position, of the Department of Human Resources and who shall receive remuneration as determined by that Department. 1994-95, c. 6, s. 5.

Duties and powers of Director

6 (1) The Director shall take all measures that the Director determines to be advisable to enforce maintenance orders that are enforceable by the Director pursuant to this Act.

(2) Where the Director decides to enforce a maintenance order, the Director shall take measures to enforce the order in the Director’s name as if the Director were a recipient under the order, including commencing, continuing or discontinuing proceedings to enforce a maintenance order and signing all documents in respect to the enforcement of a maintenance order.

(3) The Director may appear and give evidence at any hearing in any court in respect to the enforcement of an order or agreement filed with the Director.

(4) The Director may prescribe forms and may establish practices and procedures necessary for effectively carrying out the Director's functions pursuant to this Act. 1994-95, c. 6, s. 6.

Only Director may enforce order

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

(2) Subsection (1) does not apply where the parties have opted out of the enforcement program pursuant to subsection 10(1). 1994-95, c. 6, s. 7.

Enforcement officers and personnel

8 (1) There may be appointed in accordance with the *Civil Service Act* such enforcement officers and other persons as are necessary to carry out this Act.

(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 pursuant to this Act, and is subject to the direction of the Director. 1994-95, c. 6, s. 8.

Filing of orders with Director

9 (1) Every maintenance order made by the Family Court or the Supreme Court of Nova Scotia, other than a provisional order, shall be filed with the Director pursuant to this Act.

(2) The prothonotary or officer of the court that makes a maintenance order shall file it with the Director within five working days after it is issued. 1994-95, c. 6, s. 9.

Assignment of maintenance rights agreement

9A The Director may accept for enforcement an assignment of maintenance rights agreement as entered into between the recipient and a representative of the Department of Community Services. 1998, c. 30, s. 1.

Opting out and further provisions respecting filing

10 (1) Subject to subsection 11(1), the Director shall enforce a maintenance order filed with the Director unless the recipient files with the Director, within the time prescribed by the Director, a written consent signed by the recipient and the payor stating that they are opting out of the enforcement program.

(2) A payor or recipient may, at any time after having opted out of the enforcement program pursuant to subsection (1), opt back into the enforcement program by giving written notice to the Director stating that the payor or the recipient is opting into the enforcement program and the Director shall enforce the maintenance order unless the Director exercises the discretion referred to in subsection 11(1).

(3) Where a maintenance order has been assigned by the recipient to the Department of Community Services, the parties may not opt out of the enforcement program pursuant to subsection (1) unless the Minister of Community Services consents, in writing, to the opting out.

(4) A judge may, at the time of making or varying a maintenance order, provide in the order that the parties may not opt out of the enforcement program pursuant to subsection (1) if the judge believes it is in the best interests of those affected by the order.

(5) A provision in an order made pursuant to subsection (4) may be reviewed by a judge at any time upon application by a party to the maintenance order.

(6) A maintenance order may be filed with the Director by either a recipient or payor.

(7) A maintenance order may be filed with the Director by

(a) the Minister of Community Services where the recipient has assigned the maintenance order to the Department of Community Services; or

(b) a person or representative of a government department or agency, a city, an incorporated town, a municipality of a county or district or a regional municipality providing maintenance to a recipient entitled to make an application or variation in respect of a maintenance order pursuant to Section 23 of the *Parenting and Support Act*.

(8) Every maintenance order made by a court outside the Province that is received pursuant to the *Interjurisdictional Support Orders Act* for enforcement in the Province shall be filed with the Director unless the recipient files with the Director a written consent signed by the recipient and the payor stating that they do not want the order enforced by the Director.

(9) This Act applies to a maintenance order filed with the Director pursuant to subsection (8).

(10) All maintenance orders that are being paid to or through the Family Court or that are being enforced by the Family Court on the coming into force of this Act, are deemed to be filed with the Director.

(11) All maintenance orders made prior to the coming into force of this Act, that are not being paid to or through the Family Court or that are not being enforced by the Family Court on the coming into force of this Act may be filed with the Director pursuant to this Section. 1994-95, c. 6, s. 10; 2002, c. 9, s. 59; 2004, c. 40, ss. 16, 17; 2015, c. 44, s. 54.

Decision by Director not to enforce order

11 (1) The Director may decide not to enforce a maintenance order or a part of a maintenance order where

- (a) it appears to the Director that the recipient is taking measures to enforce the maintenance order;
- (b) the order is for an amount less than an amount prescribed by the Director;
- (c) the recipient accepts payments directly from the payor in relation to the maintenance order;
- (d) the recipient fails or refuses to provide information to the Director that the Director requires in order to enforce the order;
- (da) the amount of the support or maintenance cannot be determined from the face of the maintenance order or it is dependent on another variable that does not appear on the maintenance order;
- (e) the Director determines that it is not advisable to enforce the maintenance order; or
- (f) there is doubt or ambiguity on the part of the Director concerning the force, effect or meaning of the order.

(2) Where, pursuant to subsection (1), the Director decides not to enforce a maintenance order or a part of a maintenance order, any person may enforce the maintenance order or the part of the maintenance order not being enforced by the Director. 1994-95, c. 6, s. 11; 1998, c. 30, s. 2.

Withdrawal of order from enforcement

12 (1) A recipient or payor may apply, in writing, to the Director to have a maintenance order withdrawn from enforcement by the Director.

(2) Where a maintenance order has been assigned by the recipient to the Department of Community Services, the recipient or the payor may not apply to have a maintenance order withdrawn from enforcement pursuant to subsection (1) unless the Minister of Community Services consents, in writing, to the withdrawal.

(3) The Director, in determining whether to grant an application pursuant to subsection (1), shall make the determination on the basis of what is an effective method to ensure compliance with the order and having regard to the best interests of the parties and any beneficiaries under the order. 1994-95, c. 6, s. 12; 2004, c. 40, s. 17.

Resuming enforcement of withdrawn order

13 Where a maintenance order has been withdrawn from enforcement pursuant to Section 12, a recipient or payor may apply to the Director to have the enforcement of the order resumed and the Director shall resume enforcement of the

order unless the Director exercises the discretion referred to in subsection 11(1). 1994-95, c. 6, s. 13.

Notice to parties

14 The Director may give notice, by ordinary mail, to the parties to the order of the withdrawal of a maintenance order pursuant to Section 12 or the resumption of enforcement of a maintenance order pursuant to Section 13. 1994-95, c. 6, s. 14.

Enforcement of arrears

15 (1) The Director may enforce arrears of maintenance under a maintenance order even though the arrears were incurred before the order was enforceable by the Director pursuant to this Act or before the coming into force of this Act.

(2) The Director may refuse to enforce arrears incurred before the order was filed or before the coming into force of this Act where there is insufficient or unreliable evidence to substantiate the arrears, to locate the payor or to identify and locate the assets of the payor.

(3) Where the Director refuses to enforce arrears, a recipient may apply to the court for an order respecting the enforcement of arrears.

(4) Where the payor or recipient disputes the amount of the arrears, the payor or recipient may apply to the court for an order determining the amount of the arrears.

(5) The court in determining whether to grant an application pursuant to subsection (3), shall make the determination on the basis of whether the decision of the Director pursuant to subsection (2) was in conformity with the provisions of that subsection and the court may remit the matter to the Director with such direction as the court considers appropriate as to the amount of the arrears, the location of the payor or the assets of the payor. 1994-95, c. 6, s. 15.

16 *repealed 1998, c. 30, s. 3.*

Application for approval of payment plan

17 (1) A payor may, at any time, apply, in writing, to the Director for approval of an arrangement with the Director, on terms satisfactory to the Director, that establishes a method of making the payments required by the maintenance order or providing security for those payments.

(2) Where the Director is satisfied that the payor is complying with the arrangement made pursuant to subsection (1), the Director shall not take any action to enforce the maintenance order that the Director is authorized to take pursuant to this Act.

(3) Where the Director is satisfied that the payor is not complying with the arrangement made with the Director pursuant to subsection (1), the Director may take any action the Director is authorized to take pursuant to this Act to enforce the maintenance order, including negotiation with the payor of a revised arrangement. 1994-95, c. 6, s. 17.

Payments made to or through Director

18 (1) Notwithstanding the requirements of the maintenance order, where a maintenance order is being enforced by the Director, the payor shall, subject to subsection (3), make all required payments to or through the Director.

(2) Money paid to or through the Director in respect of a maintenance order is not attachable pursuant to any other enactment.

(3) Notwithstanding the requirements of the maintenance order, where a maintenance order is being enforced by the Director, the payor shall make all required payments at the time and in the manner prescribed by the Director.

(4) Money received by the Director may be paid to

(a) the recipient or to the beneficiaries under the order to the extent of the recipient or the beneficiaries' entitlement or otherwise pursuant to the maintenance order; or

(b) the Department of Community Services where money is owed to that Department pursuant to an assignment of maintenance rights agreement entered into between the recipient and a representative of the Department,

and then to cover the costs and fees of the Director and then to the payor, where a balance remains.

(5) The Director shall keep a record of all payments that, while a maintenance order is filed with the Director, become due to the recipient and that are received and forwarded by the Director on account of a maintenance order filed with the Director.

(5A) Where the Director forwards to the recipient an amount to which the recipient is not entitled under the maintenance order, the Director may deduct that amount from subsequent payments received on behalf of the recipient.

(6) The Director may, on the request of the recipient or payor and upon payment of any fees prescribed by the Director, provide an annual statement showing the current status of payments under a maintenance order being enforced by the Director.

(7) The Director shall, on the request of the proper officer of a reciprocating jurisdiction or a court of a reciprocating jurisdiction, provide a sworn or affirmed, itemized statement with respect to a maintenance order, showing all amounts that have become due and owing by the payor before the date of the state-

ment and all payments made to or through the Director by or on behalf of the payor during the same period.

(8) For greater certainty, where payments are being made to or through the Director, the maintenance order is deemed to be being enforced by the Director for the purpose of this Act, notwithstanding that the Director may not be taking any other action in relation to that maintenance order. 1994-95, c. 6, s. 18; 1998, c. 30, s. 4.

Garnishment

19 (1) Notwithstanding any enactment, an obligation to pay money under a maintenance order may be enforced by a garnishment issued by the Director requiring that one or more income sources of the payor deduct the amount as specified in the garnishment from any monies payable to the payor at the time the order is served on the income source or thereafter due, or accruing due.

(2) A garnishment binds every income source served by the Director with the order, whether or not the income source is named in the order.

(3) The Director may include in the amount required to be deducted and paid to the Director pursuant to subsection (1) any amount in arrears under a maintenance order, any costs of the Director and any fees of the Director prescribed pursuant to this Act.

(4) The Director may serve a garnishment by ordinary mail addressed to each income source from whom payment is sought.

(5) The Director shall send a copy of the garnishment to the payor by ordinary mail at the last address of the payor as shown on the records of the Director.

(6) Failure to comply with subsections (4) and (5) does not render the garnishment ineffective. 1994-95, c. 6, s. 19; 2004, c. 40, s. 2.

Further provisions respecting garnishment

20 (1) Upon service on an income source, a garnishment binds all money then due and from time to time accruing due from the income source to the payor, in the amount specified in subsection (2).

(2) On service of a garnishment, the garnishee shall

(a) hold the money then due and from time to time accruing due to the payor in an amount equal to

(i) the amount specified in the garnishment with respect to money accruing due during the thirty days immediately preceding the date of service, and

(ii) the amount specified in the garnishment, as each payment becomes due under the maintenance order; and

(b) provide the Director with such information as may be required in order to determine if the garnishee is making *bona fide* efforts to comply with the order.

(3) The garnishee shall forthwith pay to the Director, in accordance with the garnishment, the amount held pursuant to subsection (2).

(4) Where the amount of money paid pursuant to subsection (3) is insufficient to cover the amount then required to fulfil the amount specified in the garnishment, an amount equal to the difference between the amount that should have been paid and the amount that was actually paid is, for the purpose of this Section, to be added to and is considered to be part of the next payment due under the maintenance order.

(5) Where a maintenance order that is the subject of garnishment is varied after service of the garnishment, and the Director has been served by the court with the variation order

(a) a notice of variation in the form prescribed by the Director shall be served on the garnishee by the Director; and

(b) the garnishee shall, on service pursuant to clause (a), hold money due to the payor and pay to the Director in accordance with the notice of variation and in accordance with subsection (3).
1994-95, c. 6, s. 20.

Payment discharges garnishee

21 Payment made by the garnishee, pursuant to a garnishment, is a valid discharge to the garnishee against the payor to the amount paid or levied, notwithstanding that the judgment or order in respect of which the payment was made is later reversed. 1994-95, c. 6, s. 21.

Payments to Director

22 Until the income source begins deducting maintenance payments or where payments by an income source are interrupted or terminated, the payor shall pay the amounts owing under the maintenance order to the Director. 1994-95, c. 6, s. 22.

Notice to Director

23 Where an individual, corporation or entity served with a garnishment is not an income source of the payor, the individual, corporation or entity shall give written notice to the Director within ten days following receipt of the order. 1994-95, c. 6, s. 23.

Applications respecting income source

24 (1) The Director, the payor or the income source, individual, corporation or entity may bring an application to court to determine whether

- (a) the income source has failed to comply with the order;
- (b) the individual, corporation or other entity is an income source;
- (c) money owed under the maintenance order has been paid.

(2) In an application pursuant to subsection (1), the court shall determine the issue and make such order as it considers appropriate in the circumstances, including an order for contempt. 1994-95, c. 6, s. 24; 1995-96, c. 28, s. 2.

Failure of corporate income source to comply

24A (1) 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. 2004, c. 40, s. 3.

Notice of termination or interruption

25 (1) Within ten days of the termination or beginning of an interruption of payments by an income source to a payor, both the income source and payor shall give written notice to the Director of the termination or interruption, together with such other information as may be required by the Director.

(2) Where notice has been given or should have been given pursuant to subsection (1),

- (a) the payor and the income source, within ten days of the resumption of payments that have been interrupted, shall give written notice to the Director of the resumption; and
- (b) the payor, 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 of the new employment or the entitlement and of the name and address of the income source. 1994-95, c. 6, s. 25.

Employee protection

26 (1) A person shall not refuse to hire a person and shall not dismiss, suspend, lay off, penalize, discipline or discriminate against an employee for a reason relating to the issuing of a garnishment pursuant to this Act.

(2) Upon the application of an individual who alleges to have been the subject of a violation of subsection (1), the Supreme Court of Nova Scotia

may, if it finds the allegation to be true, make any order in favour of the individual that it considers just, including an order for reinstatement and an award of damages.

(3) A person who refuses to hire a person or dismisses, suspends, lays off, penalizes, disciplines or discriminates against an employee in respect of whom a garnishment has been issued pursuant to this Act while the garnishment is in effect or within six months after it has ceased to have effect shall, where an application is made pursuant to subsection (2), be required to show cause for such action, in default of which the action is deemed to have been in violation of subsection (1). 1994-95, c. 6, s. 26.

Garnishment order issued outside the Province

27 (1) On the filing with the Director of a garnishment or a document of similar effect that

- (a) is issued outside the Province and is directed to an income source in the Province;
- (b) states that it is issued in respect of support or maintenance;
- (c) states the amount of the support or maintenance due to the recipient; and
- (d) is written in or accompanied by a sworn, affirmed or certified translation into English or French,

the Director may issue a garnishment to enforce the support or maintenance obligation.

(2) A garnishment may be issued in respect of an income source that is outside the Province and shall

- (a) be signed by the Director;
- (b) state that it is issued in respect of support or maintenance;
- (c) state the amount of the support or maintenance due to the recipient; and
- (d) be written in or accompanied by a sworn, affirmed or certified translation into English or French. 1994-95, c. 6, s. 27.

Interpretation of Sections 27A to 27F

27A (1) In this Section and in Sections 27B to 27F,

- (a) “administrator” means a person charged with the administration of a pension plan and includes a financial or other institution that uses, underwrites or is a depository of
 - (i) benefits,

(ii) monies that have been transferred to another plan, to a prescribed registered retirement savings plan or to any other prescribed retirement plan that is registered pursuant to the *Income Tax Act* (Canada), including monies transferred before January 1, 1993, and

(iii) monies earned by those transferred monies referred to in subclause (ii);

(b) “pension entitlement” means

(i) the amount of money in a pension plan of a payor that is available for attachment pursuant to this Act, or

(ii) the funds in a pooled registered pension plan account that are available for attachment pursuant to this Act;

(c) “pension plan” means a pension plan governed by an Act and includes

(i) benefits,

(ia) funds in a pooled registered pension plan account of a payor that are available for attachment pursuant to this Act,

(ii) monies that have been transferred to another plan, to a prescribed registered retirement savings plan or to any other prescribed retirement plan that is registered pursuant to the *Income Tax Act* (Canada), including monies transferred before January 1, 1993, and

(iii) monies earned by those transferred monies referred to in subclause (ii).

(2) With respect to pooled registered pension plans, words or phrases used in the definitions in subsection (1) or in Sections 27B to 27F that have been defined in the *Pooled Registered Pension Plans Act* have the same meaning as in that Act. 1998, c. 30, s. 5; 2014, c. 37, s. 22.

Right to attach pension

27B Notwithstanding any enactment, the Director may enforce a maintenance order by attaching the pension entitlement of a payor pursuant to Section 27F where

(a) the payor is in arrears in an amount not less than three months’ payment respecting an obligation under a maintenance order that is filed in the office of the Director;

(b) in the opinion of the Director all reasonable steps have been taken to enforce the maintenance order;

(c) the Director has served the administrator and the payor with a notice of the Director’s intention referred to in Section 27C; and

(d) the payor has not, before the service of a notice of attachment on the administrator pursuant to Section 27F, made arrangements satisfactory to the Director to fulfil the obligation under the maintenance order. 1998, c. 30, s. 5.

Contents of notice

27C (1) The notice of the Director's intention to attach the payor's pension entitlement is to be in the prescribed form and is to

(a) direct the administrator to provide the Director and the payor, within thirty days, with prescribed information respecting the payor's pension entitlement;

(b) notify the payor, in accordance with the regulations, that the payor may apply to the court pursuant to Section 27E within thirty days of receipt of the information referred to in clause (a) for an order that the payor's pension entitlement is not to be attached; and

(c) notify the payor, in accordance with the regulations, of the costs, income tax implications and pension reductions that would result from the attachment of the payor's pension entitlement.

(2) The administrator may provide the information referred to in clause (1)(a) to the payor at the most recent address for the payor in the administrator's records.

(3) Failure of the administrator to provide the information referred to in clause (1)(a) to the payor does not render the attachment ineffective. 1998, c. 30, s. 5.

Restriction on right to enforce

27D (1) The Director shall not enforce a maintenance order by attaching the pension entitlement of a payor where

(a) the payor is a member of a pension plan and

(i) the payor is required to make contributions to the plan that the Director proposes to attach, or

(ii) the payor's employer is required by the plan to make contributions on the payor's behalf to the plan that the Director proposes to attach;

or

(b) the payor is receiving a pension benefit pursuant to the pension plan that the Director proposes to attach.

(2) Where an administrator is served with a notice of the Director's intention, the administrator shall not pay out any of the payor's pension entitlement at the direction of the payor until sixty days have elapsed from

- (a) where no application is made to the court, the date that the Director received the information referred to in clause 27C(1)(a); or
- (b) where an application is made to the court, the date that the court orders that the payor's pension entitlement may be attached. 1998, c. 30, s. 5.

Powers of court

27E (1) The court, on application by the payor, may order that the payor's pension entitlement is not to be attached where the court is satisfied that

- (a) the payor is not in arrears in an amount not less than three months' payments respecting an obligation under a maintenance order that is filed in the office of the Director;
- (b) the payor is a member of a pension plan and
 - (i) is required to make contributions to the plan that the Director proposes to attach, or
 - (ii) the payor's employer is required by the plan to make contributions on the payor's behalf to the plan that the Director proposes to attach; or
- (c) the payor is receiving a pension benefit pursuant to the pension plan that the Director proposes to attach.

(2) A payor applying to the court shall serve the Director and the administrator with notice of the application. 1998, c. 30, s. 5.

Notice to administrator

27F (1) The Director may serve the administrator with a notice of attachment of the payor's pension entitlement in the prescribed form where

- (a) an application pursuant to Section 27E
 - (i) has not been made to the court by the payor, or
 - (ii) has been made to the court by the payor but the court has not ordered that the payor's pension entitlement is not to be attached; and
- (b) not more than sixty days have elapsed from
 - (i) where no application is made to the court, the date that the Director received the information referred to in clause 27C(1)(a), or
 - (ii) where an application is made to the court pursuant to Section 27E, the date that the court orders that the payor's pension entitlement may be attached.

- (2) Where the Director serves a notice of attachment, the administrator shall
- (a) immediately deliver, personally or by ordinary mail, a copy of the notice to the payor; and
 - (b) comply with the notice of attachment within forty-five days of receiving the notice.
- (3) The administrator may deliver the notice of attachment to the payor at the most recent address for the payor in the administrator's records.
- (4) Failure of the administrator to comply with clause (2)(a) does not render the attachment ineffective. 1998, c. 30, s. 5.

Seizure and sale of money and property

- 28** (1) The Director may seize money in a deposit account of the payor to enforce an obligation to pay money under a maintenance order.
- (2) Subject to subsection (3), where a deposit account in the name of the payor and one or more other persons is seized pursuant to subsection (1), the money to the credit of that account is deemed to be monies of the payor.
- (3) Any person in whose name a deposit account is maintained along with the name of the payor, may make application, within sixty days of the seizure of the money, to the Supreme Court of Nova Scotia for an order declaring that some or all of the money in the said deposit account is in fact the property of that person and not the payor and not subject to seizure by the Director.
- (4) The Director may issue an order for the seizure and sale of real or personal property of the payor to enforce an obligation to pay money under a maintenance order.
- (5) An order issued by the Director pursuant to subsection (4) shall be filed by the Director with the Supreme Court of Nova Scotia and, upon being filed with the Supreme Court, becomes an order of the Supreme Court and may be enforced as an order of the Supreme Court.
- (6) Costs and fees associated with the carrying out of the provisions of this Section by public officers are not recoverable from the Director, but may be recovered from any surplus of funds remaining after the satisfaction of the maintenance order and the payment of the costs and fees of the Director. 1994-95, c. 6, s. 28; 1995-96, c. 28, s. 3.

Lien against real property

- 29** (1) Where a payor, under a maintenance order being enforced by the Director pursuant to this Act, owns real property situate in the Province, the Director may file a lien with respect to the maintenance order and any costs and fees

owed to the Director by the payor pursuant to this Act against the real property in the registry of deeds for the registration district in which the property is situate.

(2) A lien filed by the Director pursuant to subsection (1) binds the real property of the payor from the date the lien is registered until the maintenance order is discharged and all costs and fees owed to the Director by the payor pursuant to this Act have been paid and the lien has the same priority as a mortgage registered against the property.

(3) Notwithstanding subsection (2), a payor may apply to the Director or the court to have the lien released or vacated, as the case may be, and where the Director or the court, as the case may be, is satisfied that it is reasonable to do so, the Director or the court may release or vacate the lien. 1994-95, c. 6, s. 29; 2004, c. 40, s. 4.

Notice of maintenance obligation

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 designated 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. 2004, c. 40, s. 5.

Effective period and discharge of notice

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. 2004, c. 40, s. 5.

Suspension of driving privileges

30 (1) Where a payor is in default under a maintenance order being enforced by the Director, the Director may send a notice to the payor by mail to the address for the payor shown in the records of the Director informing the payor that if the payor does not, within the time prescribed by regulation, make arrangements satisfactory to the Director for complying with the maintenance order, any driver's licence, privilege of obtaining a driver's licence, right to operate a motor vehicle in the Province or any other licence, registration of a vehicle or any permit issued to the payor pursuant to the *Motor Vehicle Act* may be suspended or revoked.

(2) Where a payor does not make an arrangement with the Director pursuant to subsection (1) or where a payor fails to comply with any term of an arrangement made with the Director pursuant to subsection (1), the Director may request the Registrar of Motor Vehicles to suspend or revoke any driver's licence, privilege of obtaining a driver's licence, right to operate a motor vehicle in the Province or any other licence, registration of a vehicle or any permit issued to the payor by the Registrar and the Registrar shall suspend or revoke the driver's licence, privilege of obtaining a driver's licence, right to operate a motor vehicle in the Province or any other licence, registration of a vehicle or any permit.

(3) Notwithstanding subsection (2), where the Director is satisfied that the payor requires a licence for employment purposes, the Director may request the Registrar of Motor Vehicles to issue to the payor a conditional licence that authorizes the operation of a vehicle for employment purposes only and the Registrar shall issue the conditional licence unless the licence would otherwise not be issued pursuant to the *Motor Vehicle Act*.

(4) In addition to suspending or revoking a driver's licence, privilege of obtaining a driver's licence, right to operate a motor vehicle in the Province or any other licence, registration of a vehicle or any permit pursuant to subsection (2), the Registrar of Motor Vehicles shall not renew a driver's licence, privilege of obtaining a driver's licence, right to operate a motor vehicle in the Province or any other licence, registration of a vehicle or any permit issued to the payor pursuant to the *Motor Vehicle Act* or otherwise deal with the payor pursuant to that Act until such time as the Registrar of Motor Vehicles receives a request from the Director to lift the suspension or revocation. 1994-95, c. 6, s. 30; 2004, c. 40, s. 6.

Order to provide information

31 (1) For the purpose of enforcing a maintenance order or of obtaining information for a person performing similar functions in another jurisdiction, the Director may order a person, including the payor or a recipient, a corporation or public body, including Her Majesty, to provide 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, information respecting

- (a) the wages, salary or other remuneration;
- (b) sources of income;
- (c) the assets or liabilities;
- (d) the financial status;
- (e) copies of income tax returns;
- (f) changes in circumstances that affect the amount of maintenance to be paid under the order;
- (g) the location, address and place of employment; and
- (h) the location, address and place of residence,

of the payor or spouse of a payor that is within the knowledge of, or shown on a record in the possession or control of, the person, corporation or public body, including Her Majesty.

(2) A person, including the payor or a recipient, a corporation or public body, including Her Majesty, that receives a request for information shall provide it within fourteen days of the day on which the request is received.

- (3) Where, on application to a court, it appears that
- (a) the Director has been refused information after making a request pursuant to 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, including the payor or a recipient, corporation or public body, including Her Majesty, to provide the Director or the person named by the court with any of the information prescribed in subsection (1).

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

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

(6) No action lies against a person who provides information in accordance with this Section.

(7) Any person, including the payor or a recipient, a corporation or public body, including a servant or agent of Her Majesty, who knowingly withholds, misleads or gives false information to the Director 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 fine and imprisonment. 1994-95, c. 6, s. 31; 2004, c. 40, s. 7.

Information from court

31A Upon the request of the Director, a court shall provide to the Director, for the purpose of enforcing a maintenance order or of obtaining information for a person performing similar functions in another jurisdiction, such information in the possession of the court as, in the opinion of the Director, may assist in the enforcement of the maintenance order or obtaining of information. 2007, c. 43, s. 1.

Exceptions to Sections 31 and 31A

31B The following records are not required to be provided to the Director under Sections 31 or 31A:

- (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*. 2007, c. 43, s. 1.

Confidentiality of information

32 (1) Information received by the Director pursuant to this Act is confidential and shall not be disclosed except

- (a) for the purpose of this Act or enforcing a maintenance order filed with the Director;
- (ab) where the payor is in arrears, the Director may report that to any consumer reporting agency registered pursuant to the *Consumer Reporting Act*;
- (b) on request, to a person performing similar functions in another jurisdiction;
 - (ba) in accordance with an information sharing agreement entered into under and for the purpose of the administration of the *Employment Support and Income Assistance Act*, the *Social Assistance Act* or any other income assistance program administered by the Department of Community Services;
 - (bb) as authorized by the Minister of Justice; or
 - (c) by an order of the court.

(2) Where an order is made pursuant to subsection 31(3) or pursuant to 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.

(3) Notwithstanding subsection (1), the Director may disclose to a consumer reporting agency registered pursuant to the *Consumer Reporting Act*

- (a) the name of a payor who is in default on a maintenance order filed in the office of the Director;
- (b) the date of the maintenance order;
- (c) the amount and frequency of the payor's obligation under the maintenance order;
- (d) the amount of the arrears owing under the maintenance order at the time of the disclosure; and
- (e) such other information as may be prescribed.

(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. 1994-95, c. 6, s. 32; 1998, c. 30, s. 6; 2004, c. 40, s. 8; 2005, c. 53, s. 1.

Offence and penalty

33 Every person who releases information in contravention of this Act is 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 fine and imprisonment. 1994-95, c. 6, s. 33.

Information to be filed when in default

34 (1) Where the payor is in default under a maintenance order being enforced by the Director, the Director may require that the payor

- (a) file a statement of financial information with the Director in the form prescribed by the Director within fourteen days of the day that the payor receives the request; and
- (b) appear before the Director to be examined in relation to employment income, assets and financial circumstances generally.

(2) The Director may provide the recipient with copies of information obtained pursuant to subsection (1).

(3) The Director may extend the period within which the financial statement is required to be filed by the payor with the Director if the Director considers that appropriate in the circumstances.

(4) Where the payor fails to appear before the Director as required by clause (1)(b), the Director may apply *ex parte* to a court for a warrant for the arrest of the payor for the purpose of bringing the payor before the Director or the court.

- (5) A payor who
- (a) does not file a statement of financial information in accordance with this Section; or
 - (b) knowingly withholds, misleads or gives false information to the Director or the court pursuant to this Section or Section 35,

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 fine and imprisonment. 1994-95, c. 6, s. 34; 1995-96, c. 28, s. 4.

Examination of payor by Director or court

35 (1) Where a payor appears before the Director or before the court pursuant to Section 34, the payor may be examined on

- (a) the means or ability the payor has of complying with the maintenance order;
- (b) the disposal the payor 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 payor; and
- (d) the payor's assets, employment, income and financial circumstances generally.

(2) At the examination proceedings pursuant to subsection (1), unless the contrary is shown

- (a) the payor is 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 is presumed to be correct as to the arrears owing.

(3) At the conclusion of an examination conducted by the court pursuant to subsection (1), the court may make any order that it would make pursuant to subsection 37(3), or may refer the matter to the Director along with any information obtained by the court as a result of its examination of the payor. 1994-95, c. 6, s. 35.

Actions by Director after examination

36 (1) At the conclusion of an examination conducted by the Director pursuant to subsection 35(1), the Director shall take one or more of the following actions:

- (a) proceed to obtain an execution order;
- (b) require the payor to pay all or part of the arrears in such manner as the Director considers just;

- (c) proceed to obtain the appointment of a receiver pursuant to Section 40;
- (d) require the payor to post a bond or sureties;
- (e) require the payor to deposit a specified amount with the Director to be held as security for payments to the recipient where the Director is satisfied that there has been a default;
- (f) refer the matter to the appropriate officials to consider instituting proceedings with respect to a violation of this Act;
- (g) require the payor to report periodically to the Director;
- (h) require the payor to file with the Director such financial information as the Director may require and at such times as the Director may require;
- (i) apply for a judgment pursuant to Section 38;
- (j) issue a garnishment;
- (k) require the payor to apply to court pursuant to the *Parenting and Support Act* or the *Divorce Act* (Canada) by a specified date for a hearing before a judge in respect of the payor's ability to pay the arrears or to make subsequent payments.

(2) *repealed 1995-96, c. 28, s. 5.*

1994-95, c. 6, s. 36; 1995-96, c. 28, s. 5; 2004, c. 40, s. 16; 2015, c. 44, s. 55.

Court hearings

37 (1) Where a payor defaults in the payment of maintenance under a maintenance order or fails to comply with a requirement of the Director pursuant to clause 36(1)(k), the Director, in the case of a maintenance order being enforced by the Director, or the recipient may apply to the court for a hearing of the matter.

(2) At a hearing pursuant to this Section, unless the contrary is shown,

(a) the payor is 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 by the Director is presumed to be correct as to the arrears owing.

(3) At a hearing pursuant to this Section, the court, unless it is satisfied that the payor is unable for valid reasons to pay the arrears or to make subsequent payments under the maintenance order, may order that

(a) the payor pay all or part of the arrears in such manner as the court considers just;

(b) the payor pay the arrears in full by a specified date;

(c) the payor comply with the order to the extent of the payor's ability to pay;

(d) upon failure to make any payment by a date specified in the order, the payor be fined in an amount not exceeding three thousand dollars for each default;

(e) the payor deposit a specified amount in court, or with such person as the judge deems fit, to be held as security for payment to the recipient in the event of default;

(f) the payor enter into a bond in a specified amount, with or without sureties;

(g) the payor provide some other security for payment of any amount required to be paid under the order;

(h) the payor report periodically to the court, the Director or a person specified in the order;

(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;

(i) the payor 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;

(j) the payor be imprisoned continuously or intermittently for not more than six months unless the arrears are sooner paid;

(k) the payor be imprisoned continuously or intermittently for not more than ninety days on default in any payment ordered pursuant to this subsection;

(l) the matter be referred to the Director for consideration pursuant to Section 30;

(m) proceedings be commenced in the Supreme Court of Nova Scotia for the appointment of a receiver pursuant to Section 40;

(n) a judgment be entered pursuant to Section 38;

(o) a garnishment be issued by the Director pursuant to Section 19 or, where the maintenance order is not being enforced by the Director, issue a garnishment, in which case the provisions of this Act respecting garnishment apply *mutatis mutandis*;

(p) the payor pay any costs that the court considers just including fees of the Director;

(q) the payor be fined an amount not exceeding three thousand dollars;

(r) an execution order be issued.

(4) An order for partial payment pursuant to clause (3)(a) does not discharge any unpaid arrears.

(5) An order pursuant to clause (3)(e) does not affect the accruing arrears.

(6) Imprisonment of a payor pursuant to clauses (3)(j) or (k) does not discharge arrears under a maintenance order and does not preclude a subsequent imprisonment pursuant to subsection (3) for the same arrears.

(7) An order for security pursuant to subsection (3) 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. 1994-95, c. 6, s. 37; 2004, c. 40, s. 9.

Judgment entered by court

38 (1) Notwithstanding the provisions of any general or special Act, where, upon *ex parte* application by the Director or a recipient in respect of a maintenance order not being enforced by the Director, a judge is satisfied that there has been a failure to comply with a provision of a maintenance order for the payment of maintenance, the judge may enter a judgment for the outstanding amount, together with the amount of any costs and fees owed to the Director by the payor pursuant to this Act, against the person who has failed to pay as provided in the rules of court or pursuant to the *Civil Procedure Rules*.

(2) Once a judgment has been entered pursuant to this Section, the court may not excuse the payment of the debt in subsequent proceedings respecting the variation or enforcement of the maintenance order.

(3) Where a judgment for the payment of an outstanding sum has been entered pursuant to this Section, the judgment shall bear interest from the date of the judgment at the rate provided by the *Interest on Judgments Act*.

(4) Where a judgment for the payment of an outstanding sum has been entered pursuant to this Section, any party is entitled to have, for registration in the registry of deeds, a certificate of judgment in the form prescribed by the regulations.

(5) The certificate shall be registered by every registrar of deeds with whom it is placed for registration.

(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.

(6) A certificate of the discharge of a judgment shall be in the form prescribed by the regulations. 1994-95, c. 6, s. 38; 1995-96, c. 28, s. 6; 2004, c. 40, s. 10.

Variation of maintenance orders and filing of reports

39 (1) An application to vary a maintenance order being enforced by the Director pursuant to this Act shall be made pursuant to the *Parenting and Support Act* or the *Divorce Act* (Canada), whichever is applicable, and the application to vary does not stay any enforcement proceedings that have been commenced pursuant to this Act or prevent further enforcement proceedings pursuant to this Act.

(2) A hearing pursuant to Section 37 and a hearing of an application for variation of a maintenance order in default may be held together or separately.

(2A) Where, pursuant to subsection (2), a hearing of an application to vary is held at the same time as a default hearing, the default hearing shall be held first.

(3) Where a maintenance order that is filed with the Director is varied, the prothonotary or officer of the court shall, within five working days, file with the Director the order of the court that varies the maintenance order.

(4) Unless it is varied, rescinded or suspended, a judgment order or decree registered pursuant to subsection 43(2) of the *Parenting and Support Act* may be enforced pursuant to this Act.

(5) Where the court, that is asked to enforce a judgment, order or decree of the Supreme Court of Nova Scotia is satisfied that

- (a) the circumstances have changed; and
- (b) the judgment, order or decree should be varied, rescinded or suspended,

the court may file a report with the prothonotary or officer of the court that issued the judgment, order or decree or with such other person as the rules of the Supreme Court may provide.

(6) A court filing a report pursuant to subsection (5) shall advise the parties by providing to them a copy of the report and such other documents as the rules of the Supreme Court of Nova Scotia may require.

(7) The court that receives the report may deal with the report in the same manner as it would deal with the report of a referee made pursuant to the *Civil Procedure Rules*. 1994-95, c. 6, s. 39; 1995-96, c. 28, s. 7; 2004, c. 40, s. 16; 2015, c. 44, s. 56.

Receivers

40 (1) On an application to the Supreme Court of Nova Scotia by the Director or a recipient, a judge may, where the judge considers it just to enforce obligations under a maintenance order, with 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 payor.

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

(3) Where a receiver realizes money under an order made pursuant to subsection (1), the receiver shall, after deducting the costs of the receiver, pay the money to the Director or the recipient to satisfy the payor's obligation under the maintenance order, costs and fees, if any, and pay the balance, if any, to the payor. 1994-95, c. 6, s. 40.

Notice to Director of termination of order

41 (1) Each of the parties to a maintenance order filed with the Director shall give the Director notice of the termination of a maintenance obligation under the order, in the manner and at such time as the Director may prescribe. 1994-95, c. 6, s. 41.

Notice of change of address or employment

42 (1) A payor or recipient under a maintenance order being enforced by the Director shall advise the Director of a change of address within ten days of the date of the change.

(2) A payor under a maintenance order being enforced by the Director shall advise the Director of a change in location, address and place of employment, including the commencement or cessation of employment, within ten days of the date of the change. 1994-95, c. 6, s. 42.

Appeal

43 (1) An appeal lies to the Nova Scotia Court of Appeal from an order made pursuant to this Act by the court or the Supreme Court of Nova Scotia (Family Division), within thirty days of the date of the order appealed from.

(2) *repealed 1998, c. 12, s. 11.*

(3) An order under appeal remains in force pending the determination of the appeal, unless the court appealed to otherwise orders. 1994-95, c. 6, s. 43; 1998, c. 12, s. 11.

Application of money paid to Director

44 Money paid to the Director in respect of a maintenance order shall be credited

- (a) first to the periodic payment most recently due;
- (b) then to any balance of arrears outstanding;
- (c) then to any other amount payable and outstanding in respect of the maintenance order; and
- (d) lastly to costs and fees charged by the Director. 1994-95, c. 6, s. 44.

Priorities

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

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

(3) Maintenance orders and execution orders in respect thereof and garnishments rank equally with one another, regardless of when an enforcement process is issued or served.

(4) Where two or more maintenance orders in respect of the same payor are filed with the Director, the Director may prorate any money received in respect of any one of the maintenance orders among all the recipients or beneficiaries under the maintenance orders unless specified or required to be applied in respect of a particular order. 1994-95, c. 6, s. 45.

Recovery of payments

46 (1) Subject to subsection (4), there is no limitation as to time on a recovery of periodic payments or a lump sum payment in default under a maintenance order.

(2) Where a payor dies and at the time of death payments under a maintenance order being enforced pursuant to this Act 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.

(3) Where a recipient dies, the personal representative of the recipient may, subject to subsection (4), recover for the estate of the recipient any payments under a maintenance order in default at the time of the death.

(4) Where payment under a maintenance order is in default, a judge of the court that made the order may, on application, relieve the payor or the estate of the payor of the obligation to pay the whole or part of the amount in default if the judge is satisfied that

(a) having regard to the interests of the payor or the estate of the payor, it would be grossly unfair and inequitable not to do so; and

(b) having regard to the interests of the person entitled to the payments or the estate of that person, it is justified. 1994-95, c. 6, s. 46.

Fees and costs of Director

47 (1) The Director may charge fees for services under this Act or recover costs incurred by the Director in the amount and to the persons prescribed in the regulations.

(2) The Director shall not charge a fee to a recipient for services provided to the recipient pursuant to this Act.

(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. 1994-95, c. 6, s. 47; 2004, c. 40, s. 11.

Admissible in evidence

48 (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.

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

(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.

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

(5) In any proceeding pursuant to 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 print-out in evidence. 1994-95, c. 6, s. 48.

Guardian ad litem not required

49 A person under the age of majority may commence, conduct and defend a proceeding and initiate and complete steps for enforcement of a maintenance order without the intervention of a guardian *ad litem*. 1994-95, c. 6, s. 49.

Further powers of court

50 (1) Where the court is satisfied, upon *ex parte* application by the Director or a recipient, that the payor is hindering or defeating or is attempting to hinder or defeat the enforcement of a maintenance order by dissipation, gift or transfer of assets, funds or benefits, a court may make an order restraining or setting aside a dealing with, or gift or transfer of, the assets or make an order for the appointment of a receiver pursuant to Section 40.

(2) Where a court is satisfied, upon *ex parte* application by the Director or a recipient, that the payor 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 payor for the purpose of bringing the payor before the court to be examined with respect to the payor's ability to meet the obligations under the maintenance order and may make any order that a court could make pursuant to Section 37. 1994-95, c. 6, s. 50.

Where payor exercising authority over corporation or person

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. 2004, c. 40, s. 12.

Hearing respecting late payments

51 Whether or not any other enforcement proceedings have been taken or could be taken, where a person has made payments under an order after the due date thereof, the Director may issue a summons for that person to appear before a judge for a hearing to determine the cause of the late payments and, after the hearing, the judge may make any of the orders pursuant to Section 37. 1994-95, c. 6, s. 51.

Certain provisions of agreement not enforceable

52 A provision in an agreement or maintenance order by which a recipient agrees to, or that requires a recipient to,

(a) withdraw a maintenance order that is filed with the Director pursuant to this Act; or

(b) file with the court that made the maintenance order or the Director a notice stating that the recipient wishes to opt out of the enforcement program or does not wish to have a maintenance order enforced by the Director,

is not enforceable. 1994-95, c. 6, s. 52.

Enforcement of extra-Provincial order

53 (1) Where a person in another jurisdiction who is performing functions similar to the Director requests that the Director enforce a maintenance order on behalf of that person, the Director may enforce the order in accordance with this Act and has all the powers and privileges under this Act in respect of the enforcement of such an order.

(2) The Director may request such information as the Director reasonably requires from the person making the request pursuant to subsection (1) in order to enforce the order.

(3) The Director may refuse a request pursuant to subsection (1) where none of the parties are in the Province, there are no assets in the Province or for such other reasons as the Director may determine. 1994-95, c. 6, s. 53.

Proof of default

54 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. 1994-95, c. 6, s. 54.

Proof of service not required

55 Where a proceeding is brought to enforce a maintenance order, it is not necessary to prove the payor was served with the maintenance order provided a copy of such maintenance order has been sent by regular mail, addressed to the payor, at the payor's last known address. 1994-95, c. 6, s. 55.

Spouses competent and compellable witnesses

56 Notwithstanding the *Evidence Act*, spouses are competent and compellable witnesses against each other in a proceeding to enforce a maintenance order. 1994-95, c. 6, s. 56.

Offence and penalty

57 An individual, corporation or entity that fails to comply with a provision of this Act or that fails to comply with an order or direction of the Director or a court 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 fine and imprisonment. 1994-95, c. 6, s. 57.

Offence by corporation

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. 2004, c. 40, s. 13.

Offences prosecuted in Family Court

58 All offences prescribed in this Act shall be prosecuted in the Family Court. 1994-95, c. 6, s. 58.

Cheque not honoured by bank

59 Payment of a maintenance order, costs or fees by a payor with a cheque that is not honoured by the bank on which it is drawn because of insufficient funds constitutes a default notwithstanding the fact that the Director has made a payment to the recipient. 1994-95, c. 6, s. 59.

Existing rights not affected

60 The rights given pursuant to this Act are in addition to, and not in substitution for, any rights given pursuant to any other enactment. 1994-95, c. 6, s. 60.

Immunity from action

60A No action lies or shall be instituted against a person who is acting pursuant to the authority contained in this Act or the regulations for any loss or damage suffered by a person by reason of anything done in good faith or caused, permitted or authorized to be done by a person pursuant to any power conferred by this Act or the regulations or in carrying out any duty imposed by this Act or the regulations. 1998, c. 30, s. 7.

Wildlife Act

60B (1) The Minister of Fisheries and Aquaculture and the Minister of Natural Resources shall, no later than December 31, 2008, implement a system under which

(a) issuance of a licence or permit pursuant to the *Wildlife Act* may be refused to a payor who is in default under a maintenance order; and

(b) a licence or permit issued pursuant to the *Wildlife Act* to a payor who is in default under a maintenance order may be cancelled.

(2) The Governor in Council may make regulations implementing the system referred to in subsection (1).

(3) The exercise by the Governor in Council of the authority contained in subsection (2) is regulations within the meaning of the *Regulations Act*. 2006, c. 33, s. 1.

Atlantic Lottery Corporation

60C (1) The Minister of Finance shall enter negotiations with the Atlantic Lottery Corporation to implement a system under which

(a) screening of lottery winners who have won prizes of greater than one thousand dollars will take place to determine if those winners are payors in default of maintenance orders;

(b) a prize, referred to in clause (a) that is won by a payor who is in default under a maintenance order, is to be held by the Atlantic Lottery Corporation until it is dealt with in accordance with the regulations; and

(c) the Atlantic Lottery Corporation may be treated as an income source for the purpose of this Act.

(2) The Minister of Finance shall, no later than December 31, 2007, report to the Assembly on the outcome of the negotiations referred to in subsection (1). 2006, c. 33, s. 1.

Regulations

61 (1) The Governor in Council may make regulations

- (a) respecting the time and manner in which anything referred to be done pursuant to this Act, may be done;
- (b) respecting fees for services pursuant to this Act;
- (c) respecting fees to be charged by the Director or the Registrar of Motor Vehicles for actions taken or costs arising pursuant to Section 30;
- (d) respecting the disclosure of financial information;
- (e) respecting types of income for the purposes of subclause (viii) of the definition of “income source” in Section 2;
- (ea) respecting pooled registered pension plans;
- (f) providing for the withholding, suspension or revocation of licences, permits or certificates where a payor is in default under a maintenance order;
- (g) requiring an employer to report to the Director the names and addresses of persons hired by the employer;
- (h) respecting the publication of the names of defaulting payors, including the publication of pictures of those payors;
- (i) providing for the withholding, suspension or termination of a service, grant or loan provided by any government department, board, commission or agency;
- (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;
- (ib) respecting the manner in which prizes won from the Atlantic Lottery Corporation by payors who are in default under maintenance orders are to be held by the Atlantic Lottery Corporation and are to be dealt with by the Director for the purpose of any system to be implemented pursuant to Section 60C;
- (j) respecting any matter or thing that by this Act is to be prescribed by regulation;
- (k) defining any word or expression used but not defined in this Act; and
- (l) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 6, s. 61; 2004, c. 40, s. 14; 2006, c. 33, s. 2; 2014, c. 37, s. 23.

Collection of interest on arrears of maintenance

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). 2004, c. 40, s. 15.

Family Court Act amended

62 Sections 18 and 19 of Chapter 159 of the Revised Statutes, 1989, the *Family Court Act*, are repealed. 1994-95, c. 6, s. 62.

Maintenance and Custody Act amended

63 (1) Subsection 23(3) of Chapter 160 of the Revised Statutes, 1989, the *Maintenance and Custody Act*, is amended by striking out “or to apply for any remedy provided by this Act to enforce the order” in the sixth and seventh lines.

(2) Sections 40 and 42 of Chapter 160 are repealed.

(3) Subsection 43(3) of Chapter 160 is amended by adding “, subject to the *Maintenance Enforcement Act*,” immediately after “may” in the third line.

(4) Subsection 52(1) of Chapter 160 is amended by striking out “the parties” in the first and second lines and substituting “either party”.

(5) Subsection 54(1) of Chapter 160 is amended by

- (a) striking out “or” immediately after clause (a); and
- (b) striking out “maintenance,” in the first and second lines of clause (b). 1994-95, c. 6, s. 63; 2004, c. 40, s. 16.

Maintenance Orders Enforcement Act amended

64 Subsection 10(2) of Chapter 268 of the Revised Statutes, 1989, the *Maintenance Orders Enforcement Act*, is amended by adding “and the *Maintenance Enforcement Act*” immediately after “Act” in the second line. 1994-95, c. 6, s. 64.

Motor Vehicle Act amended

65 Chapter 293 of the Revised Statutes, 1989, the *Motor Vehicle Act*, is amended by adding immediately after Section 278 the following Section:

278A Upon receipt of a request from the Director of Maintenance Enforcement pursuant to the *Maintenance Enforcement Act*, to suspend or revoke a driver's license, privilege of obtaining a driver's license, right to operate a motor vehicle in the Province or any other license, registration of vehicle or any permit, the Registrar shall suspend or revoke the driver's license, privilege of obtaining a driver's license, right to operate a motor vehicle in the Province or any other license, registration of vehicle or any permit, as the case may be, and the provisions of this Act apply *mutatis mutandis* to the suspension or revocation.

1994-95, c. 6, s. 65.

Effective date

66 This Act has effect on and after January 1, 1996, or such earlier date as the Governor in Council orders and declares by proclamation. 1994-95, c. 6, s. 66.

In force - January 1, 1996
