

1985 BILL 63

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Third Session, 20th Legislature, 34 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 63**

## **MAINTENANCE ENFORCEMENT ACT**

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MRS. KOPER

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 63*  
*Mrs. Koper*

## **BILL 63**

1985

### **MAINTENANCE ENFORCEMENT ACT**

*(Assented to , 1985)*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

**1(1)** In this Act,

- (a) “creditor” means a person entitled under a maintenance order to receive money for maintenance on his own behalf or on behalf of another person;
- (b) “debtor” means a person required under a maintenance order to pay money for maintenance;
- (c) “Director” means the Director of Maintenance Enforcement appointed under section 4;
- (d) “maintenance” includes support and alimony;
- (e) “maintenance order” means an order or interim order of a court in Alberta or an order, other than a provisional order that has not been confirmed, registered under the *Reciprocal Enforcement of Maintenance Orders Act* that has a provision requiring the payment of money as maintenance, including a provision requiring
  - (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) the payment of a lump sum,
  - (iii) the payment of expenses in respect of prenatal care and the birth of a child,
  - (iv) the securing of a payment under the order by a charge on property or otherwise, or
  - (v) the payment of interest or the payment of legal fees or other expenses arising in relation to maintenance.

(2) An agreement entered into under section 10 or 51 of the *Maintenance and Recovery Act* is deemed to be a maintenance order under this Act.

(3) A maintenance agreement entered into under the *Child Welfare Act* is deemed to be a maintenance order under this Act.

Maintenance order

**2(1)** Only that part of a maintenance order that relates to the payment or security of payment of maintenance may be enforced under this Act.

(2) Arrears of maintenance payable under a maintenance order may be enforced under this Act whether the arrears accrued

- (a) before or after the maintenance order is filed with the Director, or
- (b) before or after the coming into force of this Act.

Binds the Crown

**3** This Act binds the Crown in right of Alberta.

Director of  
Maintenance  
Enforcement

**4(1)** The Attorney General shall appoint a person as the Director of Maintenance Enforcement for the purposes of this Act.

(2) The Director may delegate any power, duty or function conferred or imposed on him under this Act, including the power to delegate or subdelegate, to any person for any purpose.

Enforcement  
by Director

**5(1)** Subject to subsection (2), if the Director considers it practicable to do so, the Director shall enforce a maintenance order that is filed with him in the manner he considers appropriate and the Director, for that purpose, may commence and conduct a proceeding in the name of the Director as if he were a creditor under the maintenance order.

(2) The Director may refuse to enforce more than 3 years of the arrears of maintenance payable under a maintenance order.

(3) The period of 3 years under subsection (2) begins 3 years before the date on which the Director initiates the current proceedings to enforce the payment of maintenance under the maintenance order.

Filing of orders

**6(1)** If a debtor defaults in the payment of maintenance under a maintenance order entered into, made by a court or registered under the *Reciprocal Enforcement of Maintenance Orders Act* before January 1, 1987, a creditor under the order or the Minister of Social Services and Community Health in respect of a creditor under the order who is eligible for or has received a benefit under the *Social Development Act* may file the order with the Director.

(2) A maintenance order may be filed with the Director under subsection (1) whether

(a) the order is made, entered into or registered before or after the coming into force of this Act, or

(b) the default occurs before or after the coming into force of this Act.

Orders made  
after December  
31, 1986

**7(1)** Unless the creditor files with the court and the Director a notice in writing stating that the creditor does not wish to have the maintenance order enforced by the Director, every maintenance order made by a court in Alberta after December 31, 1986, shall

(a) state in the order that the amounts owing under the order shall be paid to the creditor through the Director unless the order is withdrawn from the office of the Director, and

(b) be filed with the Director by the clerk of the court that made the order, forthwith after it is filed with the clerk.

(2) Unless the creditor files with the Court of Queen's Bench and the Director a notice in writing stating that the creditor does not wish to have the maintenance order enforced by the Director, every maintenance order made by a court outside Alberta that is registered with the Court of Queen's Bench under the *Reciprocal Enforcement of Maintenance Orders Act* after December 31, 1986, shall be filed by the clerk of the Court of Queen's Bench with the Director forthwith after it is registered.

	<p>(3) A maintenance order made after December 31, 1986 that is not filed with the Director by the clerk of the court under subsection (1) or (2) may be filed at any time with the Director by a creditor under the order or by the Minister of Social Services and Community Health in respect of a creditor under the order who is eligible for or has received a benefit under the <i>Social Development Act</i>.</p> <p>(4) Subsection (1) does not apply to a maintenance order made under the <i>Child Welfare Act</i>.</p>
Withdrawal of filing	<p><b>8(1)</b> Subject to section 9(3), a creditor may withdraw a maintenance order filed with the Director by filing with the Director at any time a notice in writing stating that the creditor does not wish to have the maintenance order enforced by the Director.</p> <p>(2) Subject to the regulations, a maintenance order that has been withdrawn may be refiled with the Director.</p>
Notice by Director	<p><b>9(1)</b> The Director shall give notice of the filing or withdrawal of a maintenance order to all the parties to the order.</p> <p>(2) The Minister of Social Services and Community Health may notify the Director that the Crown in right of Alberta is subrogated to the creditor's rights of maintenance pursuant to the <i>Social Development Act</i>.</p> <p>(3) If the Director has received notice under subsection (2), or if the Minister of Social Services and Community Health filed the maintenance order with the Director, the maintenance order shall not be withdrawn under section 8 without the consent of the Minister of Social Services and Community Health.</p> <p>(4) Notice under this section may be effected by mail.</p> <p>(5) The validity of proceedings under this Act is not affected by the inability of the Director, after reasonable effort, to give notice to a party under subsection (1).</p>
Enforcement by Director exclusive	<p><b>10(1)</b> No person other than the Director shall take proceedings to enforce a maintenance order that is filed with the Director.</p> <p>(2) Subject to subsection (1), nothing in this Act prohibits the Director or a creditor from taking proceedings pursuant to another Act to enforce a maintenance order.</p>
Access to information	<p><b>11(1)</b> Notwithstanding any other Act, the Crown in right of Alberta, a Provincial agency as defined in the <i>Financial Administration Act</i> and a statutory agent of the Crown in right of Alberta shall provide to the Director, on request and for the purpose of enforcing a maintenance order under this Act, the address or the location of a debtor that is shown on a record in the possession or control of the Crown in right of Alberta, the Provincial agency or the agent.</p> <p>(2) The Director may provide information as to the address and location of a debtor that is in the records of the Director to a person in a position similar to that of the Director in a reciprocating state under the <i>Reciprocal Enforcement of Maintenance Orders Act</i>.</p> <p>(3) Information received by the Director under this Act may be used only for the purpose of enforcing a maintenance order and is otherwise confidential.</p>

enforcement

**12(1)** The Director or a creditor may file with the Court of Queen's Bench a maintenance order that is not otherwise filed with the Court and, on being filed, the parts of the maintenance order that relate to maintenance are deemed to be parts of a judgment of the Court of Queen's Bench.

(2) If a maintenance order filed under subsection (1) was made by the Provincial Court, the Court of Queen's Bench may from time to time vary the order either by altering the times of payment or by increasing or decreasing the amount, or may temporarily suspend the order as to the whole or any part of the money so ordered to be paid and may again revive the order wholly or in part, as the Court of Queen's Bench considers appropriate.

Continuing  
attachment

**13(1)** The clerk of the Court of Queen's Bench shall issue a notice of continuing attachment in accordance with the regulations forthwith on the Director's filing with the clerk

(a) notice that the debtor has defaulted in the payment of maintenance under a maintenance order, and

(b) any other material required by the regulations.

(2) Service in accordance with the regulations of a notice of continuing attachment on the person required to pay under the notice binds in accordance with the regulations and without further service

(a) all money owing or payable on the date of service to the debtor by the person required to pay, and

(b) all money, including wages or salary, that becomes owing or payable from time to time after the date of service to the debtor by the person required to pay.

(3) A notice of continuing attachment remains in effect without further service until

(a) the date shown on the notice of continuing attachment,

(b) notice terminating the continuing attachment is given by the Director in accordance with the regulations, or

(c) the Court of Queen's Bench orders otherwise,

whichever occurs first.

(4) The person required to pay under a notice of continuing attachment shall pay the money as it becomes payable to the Director in accordance with the notice.

(5) Payment by a person to the Director in accordance with a notice of continuing attachment served on that person discharges the obligation of that person to the debtor to the extent of the payment.

(6) If a person fails to pay in accordance with a notice of continuing attachment served on that person or fails to respond to the notice of continuing attachment in accordance with the regulations,

(a) the Court of Queen's Bench may order payment by that person of the amount unpaid,

(b) the order of the Court under clause (a) may be enforced in any manner that an order of the Court may be enforced, and

(c) the Court shall award costs of the order and its enforcement against that person.

Priority

**14(1)** Notwithstanding any other Act, a maintenance order, whether filed with the Director or not, takes priority over any other judgment debt of the debtor, other than another maintenance order.

(2) Notwithstanding any other Act, a notice of continuing attachment takes priority over any other enforcement proceeding in respect of any other judgment debt of the debtor, including another maintenance order, from the date on which the notice of continuing attachment is served on the person required to pay under it.

(3) The priority under subsections (1) and (2) does not apply to arrears of maintenance payable under a maintenance order that were payable more than 3 years before the date on which the Director or the creditor initiated the current proceedings to enforce the maintenance order.

(4) Money paid to the Director in respect of a maintenance order is not attachable under any other Act.

Registration  
of orders

**15(1)** A maintenance order may be registered in any land titles office and the registration, so long as the order remains in force,

(a) binds the estate and interest of every description that the debtor has in any land in the land registration district where the registration is made, and

(b) operates on those estates or interests in the same manner and with the same effect as a registration of a charge by the person ordered to pay maintenance of a life annuity on the land of that person.

(2) The Registrar under the *Land Titles Act* shall discharge or register the postponement of a maintenance order registered under this section only if the discharge or postponement is signed by the person entitled to the benefit of the maintenance order.

(3) Notwithstanding subsection (2) and the *Land Titles Act*, if, at the time of registration or subsequent to registration of the maintenance order, the Director notifies in the prescribed form the Registrar under the *Land Titles Act* that a maintenance order is filed with the Director, the Registrar shall discharge or register the postponement of the maintenance order registered under this section only if the discharge or postponement is signed by the Director.

(4) The person against whose land a maintenance order is registered under subsection (1) may apply to the Court of Queen's Bench for an order directing the Registrar under the *Land Titles Act* to cancel the registration of the maintenance order.

(5) The Court of Queen's Bench may make an order directing the Registrar under the *Land Titles Act* to cancel the registration under subsection (1) of a maintenance order against part or all of the estates and interests of the debtor under any terms and conditions the Court considers appropriate.

Statement of  
finances required  
by Director

**16(1)** If the debtor has defaulted in a payment required under a maintenance order that is filed with the Director, the Director by notice served on the debtor together with a statement of arrears in the prescribed form may require the debtor to file a statement of finances with the Director.

(2) Service under subsection (1) may be effected by mail sent to the last known address of the debtor.

(3) The statement of finances required by subsection (1) shall be in the form prescribed by the regulations and shall be filed by the debtor with the Director not more than 15 days after the debtor is served with a notice under subsection (1).

(4) The Director may extend the period within which the statement of finances is required to be filed by the debtor with the Director.

Statement of  
finances required  
by Court

**17(1)** If the debtor defaults in a payment required under a maintenance order that is not filed with the Director, the creditor may file a statement of arrears in the prescribed form with the clerk of the Court of Queen's Bench and by notice served on the debtor together with the statement of arrears require the debtor to file a statement of finances with the Court.

(2) Service under subsection (1) may be effected by mail sent to the last known address of the debtor.

(3) The statement of finances required by subsection (1) shall be in the form prescribed by the regulations and shall be filed by the debtor with the Court of Queen's Bench not more than 15 days after the debtor is served with a notice under subsection (1).

(4) The debtor shall serve the creditor with a copy of the statement of finances filed with the Court of Queen's Bench.

(5) Service under subsection (4) may be effected by mail sent to the address of the creditor on the notice served under subsection (1).

(6) The Court of Queen's Bench may extend the period within which the statement of finances is required to be filed by the debtor with the Court.

Offence

**18** A debtor who

(a) does not file a statement of finances in accordance with this Act, or

(b) knowingly gives false information in a statement of finances filed with the Director or the Court of Queen's Bench

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

Summons

**19(1)** If a debtor defaults in the payment of maintenance under a maintenance order, the Director, in the case of a maintenance order filed with him, or the creditor may procure a summons to attend at a default hearing from the clerk of the Court of Queen's Bench.

(2) The summons shall require the debtor to appear at a default hearing before the Court of Queen's Bench at a time and place set out in the summons

- (a) to show the Court why the maintenance order should not be enforced,
- (b) to be examined on oath about his finances, including
  - (i) the means or ability he has of complying with the maintenance order,
  - (ii) the disposal he has made of any property since the date on which the proceedings were commenced in which the maintenance order was made,
  - (iii) any and all debts that are owing to him or by him, and
  - (iv) his assets, income and financial obligations generally,
- and
- (c) to show why he should not be committed to prison on the ground that he has wilfully defaulted in the payment of maintenance under a maintenance order.

(3) The summons shall be served personally on the debtor unless the Court of Queen's Bench directs otherwise.

Default hearing

**20(1)** At a default hearing the Court shall inquire into

- (a) the resources of the debtor,
- (b) his means and ability to comply with the maintenance order,
- (c) the disposal he has made of any property since the maintenance order was made,
- (d) any and all debts that are owing to him or by him,
- (e) the circumstances under which he defaulted in paying under the maintenance order, and
- (f) any other matter the Court considers relevant,

and for that purpose may examine on oath the creditor and the debtor and any witness produced on behalf of either of them.

(2) At a default hearing, unless the contrary is shown,

- (a) the debtor shall be presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order, and
- (b) a statement of arrears prepared and served by the Director shall be presumed to be correct.

Warrant for arrest

**21(1)** If a debtor

- (a) who has been served with a summons under section 19, or
- (b) who has been bound over to appear pursuant to subsection (2),

does not appear at the time and place stated and no just excuse is offered for his non-appearance, the Court of Queen's Bench may issue a warrant for the arrest of the debtor to have him brought before the Court.

(2) When a debtor is brought before the Court on a warrant, the Court may bind him over to appear at a default hearing and

(a) require that a surety or sureties be procured or produced and join the recognizance,

(b) require that a sum of money be deposited with the Court sufficient to ensure the appearance of the debtor at the default hearing, or

(c) commit the debtor to jail until the default hearing.

Court order

**22(1)** The Court of Queen's Bench, unless it is satisfied that there are no arrears payable under the maintenance order, or that the debtor is unable because of illness, unemployment or other valid reasons to pay the arrears or to make subsequent payments required under the maintenance order, may do one or more of the following:

(a) require the debtor to discharge the arrears payable by such periodic payments as the Court directs;

(b) require the debtor to discharge the arrears payable in full by a specified date;

(c) require the debtor to comply with the maintenance order to the extent of the ability of the debtor to pay, but an order under this clause does not affect the accruing of arrears payable under the maintenance order;

(d) require the debtor to provide security in such form, including an assignment of debt or wages, as the Court directs for payments in arrears and subsequent payments;

(e) require the debtor to provide forthwith to the Court, the Director or a person specified in the order particulars of any change of address or employment as soon as it occurs;

(f) imprison the debtor continuously or intermittently for not more than 90 days unless the arrears payable are sooner paid;

(g) imprison the debtor continuously or intermittently for not more than 90 days if the debtor defaults in any payment ordered under this subsection;

(h) appoint the Director or another person as a receiver of money owing or payable to, or to become owing or payable to, or earned or to be earned by the debtor to the extent of the default and, in addition, to the extent of any periodic payments payable or to become payable under the maintenance order or an order under this subsection.

(2) The Court of Queen's Bench may vary an order made under subsection (1) if there is a material change in the circumstances of the debtor.

(3) An order for security under subsection (1)(d) or a subsequent order of the Court may provide for the realization of the security by seizure, sale or other means, as the Court directs.

(4) Imprisonment of a debtor under subsection (1)(f) or (g) does not discharge arrears payable under the maintenance order.

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

(6) If a debtor defaults in payment under an order made under subsection (1), the default is deemed to be a default in payment under the maintenance order.

Suspension

**23(1)** If garnishment or continuing attachment proceedings are taken by the Director or the creditor, the debtor may apply by notice of motion to the Court of Queen's Bench for an order suspending the garnishment or continuing attachment on any condition the Court considers appropriate for a period specified in the order.

(2) An order suspending garnishment or continuing attachment shall be made only if the Court is satisfied that the debtor is unable for valid reasons to make the payments required under the maintenance order.

(3) If the maintenance order can be varied by a court in Alberta, the period of suspension in an order made under subsection (1) shall not be more than 3 months.

(4) The period of suspension in an order made under subsection (1) to which subsection (3) applies may be extended by the Court of Queen's Bench on application by the debtor before the order expires for 1 further period of not more than 3 months.

(5) If an order is made under this section, the Court of Queen's Bench may order that any money paid into the Court of Queen's Bench in respect of the garnishment or to the Director in respect of the continuing attachment be paid to the debtor.

Restraining order

**24** The Court of Queen's Bench may make an order restraining the disposition or wasting of assets that may hinder or defeat the enforcement of a maintenance order.

Arrest of  
absconding  
debtor

**25(1)** If the Director or a creditor has reasonable and probable grounds to believe that a debtor who

(a) has defaulted in the payments required under a maintenance order, or

(b) is in breach of an order made under section 22,

is about to leave Alberta in order to evade or hinder the enforcement against him of a maintenance order, the Court of Queen's Bench may issue a warrant for the arrest of the debtor to have him brought before any judge of the Court.

(2) When a debtor is brought before a judge on a warrant, the judge may order the release of the debtor if the debtor provides security in a form satisfactory to the judge for any arrears payable and subsequent payments under the maintenance order or the order made under section 22.

Application  
of payments

**26(1)** Notwithstanding the provisions of the maintenance order, if a maintenance order is filed with the Director, the debtor under the maintenance order shall make to the Director all payments required to be made to the creditor.

	<p>(2) Money paid to the Director under a maintenance order shall be credited</p> <p>(a) first to the current periodic payment,</p> <p>(b) next to any arrears outstanding, and</p> <p>(c) last to any other amount payable and outstanding.</p> <p>(3) The Director shall pay to the creditor under the maintenance order all money received by the Director in respect of the maintenance order.</p> <p>(4) If 2 or more maintenance orders in respect of the same debtor are filed with the Director, the Director may prorate any money received in respect of any one of the maintenance orders among all the creditors under the maintenance orders.</p> <p>(5) Subsections (3) and (4) do not apply to</p> <p>(a) taxed costs and disbursements received by the Director in respect of the enforcement of a maintenance order, or</p> <p>(b) money received under a maintenance order in respect of a creditor under the order who has received a benefit under the <i>Social Development Act</i>.</p>
Capacity of minor	<b>27</b> A minor may file a maintenance order with the Director or commence, conduct and defend a proceeding and initiate and complete steps for the enforcement of a maintenance order, notwithstanding that he does not have a guardian ad litem or a next friend.
Limitation	<p><b>28(1)</b> No person shall enforce the payment by a debtor of more than 10 years of the arrears of maintenance payable under a maintenance order.</p> <p>(2) The period of 10 years under subsection (1) begins 10 years before the date on which the person initiates the current proceedings to enforce the payment of maintenance under the maintenance order.</p>
Variation	<p><b>29(1)</b> If an application is made to a court to vary a maintenance order, the clerk of the court shall notify the Director of the application.</p> <p>(2) The clerk of a court that varies a maintenance order shall file with the Director the order of the court varying the maintenance order.</p>
Employers	<p><b>30(1)</b> No employer shall dismiss, suspend, lay off, penalize, discipline or discriminate against an employee if the reason for doing so is in any way related to the service of a garnishee summons or a notice of continuing attachment on the employer.</p> <p>(2) On the application of an employee who alleges that he is the subject of a violation of subsection (1), the Court of Queen's Bench may, if it finds the allegation to be true, make any order in favour of the employee that it considers just, including an order for reinstatement and an award of damages.</p> <p>(3) If an application is made under subsection (2), an employer who dismisses, suspends, lays off, penalizes, disciplines or discriminates</p>

against an employee in respect of whom a garnishee summons or a notice of continuing attachment is served on the employer while the garnishee summons or notice of continuing attachment is in effect or within 6 months after it has ceased to have effect shall be required to show cause for the action and, if the employer does not show cause, the action shall be deemed to have been in violation of subsection (1).

(4) Notwithstanding and in addition to an order made under subsection (2), a person who is in violation of subsection (1) is guilty of an offence and subject to a fine of not more than \$5000 and in default of payment to imprisonment for a term of not more than 6 months.

**Spouse** **31** For the purposes of the *Income Tax Act* (Canada) a spouse includes a person who is required to make periodic payments in respect of maintenance under a written agreement or a maintenance order.

**Provision unenforceable** **32** A provision in an agreement or maintenance order by which a creditor agrees to, or that requires a creditor to

- (a) withdraw a maintenance order that is filed with the Director under this Act, or
- (b) file with the Court of Queen's Bench or the Director a notice stating that the creditor does not wish to have a maintenance order enforced by the Director

is not enforceable.

**Regulations** **33** The Lieutenant Governor in Council may make regulations

- (a) respecting the filing and refiling of maintenance orders with the Director;
- (b) respecting continuing attachment;
- (c) respecting forms and procedures to be used in proceedings under this Act;
- (d) respecting records to be kept by the Director.

**Repeal** **34** *The Alimony Orders Enforcement Act is repealed.*

**Amends RSA 1980 cC-29** **35** *The Court of Queen's Bench Act is amended by adding the following after section 9(2):*

(2.1) Notwithstanding subsection (2), the master in chambers has the same power and may exercise the same jurisdiction as the Court under sections 12, 13 and 19 to 23 of the *Maintenance Enforcement Act*.

**Amends RSA 1980 cD-37** **36** *The Domestic Relations Act is amended by repealing sections 28 to 38.*

**Amends RSA 1980 cM-2** **37** *The Maintenance and Recovery Act is amended*

- (a) *by repealing section 26;*
- (b) *in section 51(2) by striking out "sections 27 to 36 of the Domestic Relations Act apply" and substituting "section 27 of the Domestic Relations Act applies";*

(c) *by repealing section 54 and substituting the following:*

**54** In this Part,

(a) “order” means an order made pursuant to Part 3 of this Act, whether or not varied by a further order;

(b) “agreement” means an agreement entered into pursuant to section 33, whether or not varied by an order.

Amends  
RSA 1980 cR-7.1

**38** *The Reciprocal Enforcement of Maintenance Orders Act is amended in section 9(2) by striking out “Domestic Relations Act” and substituting “Maintenance Enforcement Act”.*

Amends  
RSA 1980 cS-16

**39** *The Social Development Act is amended in section 15 by striking out “section 28 of the Domestic Relations Act” and substituting “section 19 of the Maintenance Enforcement Act”.*

Coming into  
force

**40** *This Act comes into force on Proclamation.*