

1992 BILL 289

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 289

**MISCELLANEOUS MAINTENANCE STATUTES
AMENDMENT ACT, 1992**

MS LAING

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 289
Ms Laing

BILL 289

1992

MISCELLANEOUS MAINTENANCE STATUTES AMENDMENT ACT, 1992

(Assented to , 1992)

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

*1(1) The Maintenance Enforcement Act is amended by this
section.*

(2) Section 1(1) is amended

(a) by adding the following after clause (c):

(c.1) "income source" means an individual, a corporation
or other entity that owes periodic payment to a debtor of:

- (i) wages or salary,
- (ii) a commission, bonus, piece-work allowance
or other amount if the payment is not recoverable by
the income source from the debtor should the debtor
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,

Explanatory Notes

1 This section will amend chapter M-0.5 of the *Revised Statutes of Alberta, 1985* to improve enforcement of maintenance orders, including separation agreements, and to extend priority of claims beyond the present 3-year period of arrears.

(v) an annuity,

(vi) income of a type described in the regulations.

(b) by adding the following after clause (d):

(d.1) "maintenance deduction order" means an order of the Court pursuant to section 13 et seq.

(3) Section 1 is amended by adding the following after subsection (3):

(4) A maintenance agreement entered into by 2 spouses who have separated by mutual agreement and who have agreed in writing that one of them accept from the other specified periodic amounts for support and maintenance is deemed to be a maintenance order under this Act.

(4) Section 5 is repealed and the following is substituted:

5 The Director shall enforce a maintenance order that is filed with him 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.

(5) Sections 13, 14, and 15 are repealed and the following is substituted:

13 An Alberta Court that makes a maintenance order, other than a provisional order, shall also make a maintenance deduction order in respect of the debtor under the maintenance order.

14(1) A maintenance deduction order shall be in the form prescribed by the regulations.

(2) The maintenance deduction order shall be completed by the Court and signed at the time the maintenance order is made even though the maintenance order may not have been settled or signed at that time.

(3) The clerk or registrar of the Court that makes a maintenance deduction order shall file it with the Director's office promptly after it is signed.

2. The Director will be required to enforce all maintenance orders filed with him.

3. The Court must make an order that maintenance payments be deducted from a debtor's income by the debtor's employer.

15 (1) A maintenance deduction order binds every income source served by the Director's office with notice of the order whether or not the income source is named in the order.

(2) Unless the operation of a maintenance deduction order has been suspended by the Court that made it, it shall be enforced by the Director and the amounts collected by the Director under an order shall be paid by the Director to the person to whom they are owed.

(3) The Director's office may serve notice of a maintenance deduction order by sending a notice by prepaid ordinary mail addressed to each income source from which it is seeking payment, and new notices may be served when the amount to be paid under a maintenance order changes or arrears are owing.

(4) The notice shall be deemed to have been served on the addressee on the 5th day following mailing unless the contrary is proved.

(5) The notice shall state the name of the debtor and the amount required to be deducted and paid to the Director's office.

(6) The Director may include in the amount required to be deducted and paid to the Director's office any amount in arrears under the maintenance order but the amount deducted for arrears shall not exceed 50% of the amount that is payable on a periodic basis under the maintenance order.

(7) An income source shall begin making payment to the Director's office not later than the later of 14 days after the income source is served with the notice and the day the first payment is to be paid to the debtor after the income source is served with the notice.

(8) Subject to subsections (9) and (10), an income source shall pay to the Director's office the lesser of

(a) the amount claimed in the notice, and

(b) 50% of the net amount owed by the income source to the debtor at the time each payment is to be made to the Director's office, which net amount shall be calculated

in accordance with the following formula:

$$\text{Net amount} = T - S$$

where

T = the total amount owed by the income source to the debtor at the time payment is to be made to the Director's office

S = the total of all deductions required to be made from T under any statute.

(9) Subject to subsection (10), a Court when it makes a maintenance deduction order or on the motion of the Director may order that 1 or more income sources named in the order pay an amount that is higher than the amount described in subsection (8)(b), and that income source shall pay to the Director's office the amount set out in the order.

(10) An income source is not required to pay to the Director's office more than the income source owes to the debtor at the time of the payment.

(11) If a person served with a notice is not an income source of the debtor named in the notice, that person shall give written notice in the prescribed form of that fact to the Director's office within 10 days following service of the notice.

(12) If the Director disagrees with an income source as to the amount being deducted and paid to the Director's office or as to whether a person is an income source, or if an income source fails to comply with a maintenance deduction order, the Director, on notice to that person or income source, may bring a motion in the Court of Queen's Bench to determine the issue, and Court shall determine the issue in a summary manner and make such order as it considers appropriate in the circumstances.

(13) An income source is personally liable to pay to the Director's office any amount that it fails without proper reason to deduct and pay to that office after receiving notice to do so, and in a motion under subsection (12) the Court may order the income source to pay to the Director's office the amount that it ought to have deducted and paid.

(14) In addition to any other method available to enforce an order in a civil proceeding, a maintenance deduction order and any order made under subsection (12) or (13) may be enforced under this Act in the same manner and with the same remedies as a maintenance order.

(15) Within 10 days following the termination or interruption of payments by an income source to a debtor, both the income source and the debtor shall give written notice to the Director's office of the termination or interruption, together with such other information as may be required by the regulations.

(16) If notice has been or should have been given under subsection (15):

(a) the debtor and the income source, within 10 days following the resumption of payments that have been interrupted, shall give written notice to the Director's office of the resumption;

(b) the debtor, within 10 days of beginning employment with another income source or becoming entitled to payments from another income source, shall give written notice to the Director's office of the new employment or entitlement and the name and address of the income source.

(17) Information about a debtor obtained by an income source or a person believed to be an income source as a result of the application of this section shall not be disclosed by the income source or person believed to be an income source, or by any director, officer, employee or agent thereof, to any other person except as necessary for the purposes of complying with a maintenance deduction order or this Act.

15(1) Notwithstanding any other Act, a maintenance order and a maintenance support order, whether filed with the Director or not, take priority over any unsecured judgment debt of the debtor, other than another maintenance order or maintenance support order.

(2) If an income source is required to make payments to the Director's office under a maintenance deduction order and the income source receives a garnishment notice related to the

same maintenance obligation, the income source shall make full payment under the maintenance deduction order before making any payment in respect of the garnishment.

(3) A maintenance deduction order may be enforced despite any provision in any other Act protecting from attachment or other process for the enforcement of a judgment debt any periodic payment owed by an income source to a debtor.

(4) A maintenance deduction order shall not be used to make deductions from any amount payable to a debtor as a benefit under the Social Development Act.

(6) *Section 16(6) is amended by deleting "for the latest 3-year period".*

(7) *Section 25 is repealed and the following is substituted:*

25(1) A Court that makes a maintenance deduction order may immediately suspend its operation.

(2) A Court that made a maintenance deduction order may, on motion, suspend its operation if it is satisfied that there has been a material change in the circumstances of any of the parties since the order was first made.

(3) The Court may suspend a maintenance deduction order under subsection (1) or (2) only if it finds that it would be unconscionable, having regard to all of the circumstances and following the guidelines set out in the regulations, to require the debtor to make maintenance payments through a maintenance deduction order.

(4) The Court may when making an order under subsection (3) require the debtor to post such security as it considers adequate and as provided in the regulations.

(5) A suspension order shall be completed by the Court and signed at the time it is made.

(6) The clerk or registrar of the Court that makes a suspension order shall file it with the Director's office promptly after it is made.

(7) A suspension order shall be in the form prescribed by the

regulations and takes effect only when it is filed in the Director's office and every income source affected by the order has received notice of the suspension.

(8) A suspension order is automatically terminated if the debtor fails to post security of the type or within the time period set out in the suspension order or if the debtor fails to comply with the maintenance order.

(9) When a suspension order is terminated under subsection (8), the maintenance deduction order is reinstated and the Director may immediately realize on any security that was posted:

(8) *The following is added after section 25:*

25.1(1) A debtor, on motion to the Court that made a maintenance deduction order,

(a) may dispute the amount being deducted by an income source under a maintenance deduction order on the basis of a mistake of fact;

(b) may dispute whether he or she has defaulted in paying maintenance after a suspension order has been made under section 25;

(c) may seek relief regarding the amount which is being deducted under a maintenance deduction order for arrears under a maintenance order.

(2) The Court shall determine the issue in a summary manner and make such order as it considers appropriate in the circumstances.

(3) On a motion under subsection (1)(c), the debtor shall be presumed to have the ability to pay the amount being deducted for arrears and the Court may vary the amount being deducted only if it is satisfied that the debtor is unable for valid reasons to pay that amount, but this does not affect the accruing of arrears.

(9) *Section 31 is repealed.*

(10) *The following sections are added after section 32:*

32.1(1) Despite any other provision of this Act, when a Court varies a maintenance order it may vary the amount to be paid under a maintenance deduction order by such amount as it considers appropriate to enforce the maintenance order.

(2) A Court to which an application to vary a maintenance order has been made may make an interim order varying a maintenance deduction order.

32.2 An agreement by the parties to a maintenance order to vary a maintenance deduction order and any agreement or arrangement to avoid or prevent enforcement of a maintenance deduction order are of no effect.

32.3(1) The Director shall continue to enforce a maintenance order filed in the Director's office until he or she is satisfied that the maintenance order is terminated or until it is withdrawn from the Director's office, whichever occurs first.

(2) The Director shall continue to enforce a maintenance deduction order, subject to any suspension order or variation, until the maintenance order to which it relates is terminated and despite the fact that the maintenance order to which it relates has been withdrawn from the Director's office.

(3) Notice of the termination of a maintenance obligation under a maintenance order filed in the Director's office or under a maintenance deduction order where the maintenance order has been withdrawn shall be given to the Director in the manner and by the persons prescribed by the regulations.

(4) The Court that made a maintenance order shall on the motion of a party to the order decide if a maintenance obligation has terminated.

(5) The Director shall continue enforcement until he or she receives a copy of the Court's decision.

(6) The parties to the maintenance order are the parties to a motion under this section.

32.4 The Director is not a party to any proceeding to determine the entitlement of any person to maintenance under a maintenance order.

(11) *Section 33(1) is amended by deleting "garnishee summons or a notice of continuing attachment on the employer" and substituting "maintenance deduction order".*

(12) *Section 33(3) is amended by deleting "garnishee summons or a notice of continuing attachment" and "garnishee summons or notice of continuing attachment" and substituting "maintenance deduction order".*

(13) *The following is added after section 35:*

35.1 If a debtor changes address, he or she shall advise the Director's office of the new address within 10 days of the change.

(14) *Section 36(b) is repealed and the following is substituted:*

36(b) respecting maintenance deduction orders.

(15) *Section 36 is amended by adding the following after subsection (e):*

(f) prescribing types of income for the purposes of clause (vi) of the definition of income source in subsection 1(1) (c.1).

2(1) *The Domestic Relations Act is amended by this section.*

(2) *Part 1 is renumbered as Part 1.1 and the following is added before Part 1.1:*

PART 1 COHABITANT SUPPORT

1.1(1) In this Part, "cohabitant" means:

(a) in relation to a man, a woman who is living or formerly lived with the man on a bona fide domestic basis although not married to him; and

(b) in relation to a woman, a man who is living or formerly lived with the woman on a bona fide domestic basis although not married to her.

(2) In this Part, "cohabitational relationship" means the current or former relationship between a male and a female

4 This section will amend chapter D-37 of the *Revised Statutes of Alberta, 1980* to provide for cohabitant support for common-law spouses.

cohabitant, being the relationship of living or having lived together on a bona fide domestic basis although not married to each other.

1.2(1) On application by a cohabitant for an order under this Part for maintenance, a Court may make an order for maintenance as the Court thinks reasonable for the support of

- (a) the other cohabitant;
- (b) any or all children of the cohabitational relationship; or
- (c) the other cohabitant and any or all children of the cohabitational relationship.

(2) In determining whether to make an order under this Part for maintenance and in fixing any amount to be paid pursuant to such an order, the Court shall take into consideration the condition, means, needs and other circumstances of each cohabitant, including

- (a) the length of the cohabitational relationship;
- (b) the functions performed by the cohabitants during cohabitation;
- (c) any other agreement or arrangement relating to support of the cohabitant.

(3) In making an order under this Part the Court shall not take into consideration any misconduct of a cohabitant in relation to the cohabitational relationship.

(4) An order made under this Part that provides for the support of a cohabitant should

- (a) recognize any economic advantages or disadvantages to the cohabitant arising from the care of any child of the cohabitational relationship, or of a child of either party that is in the care and control of the other, over and above the obligation to pay child support; and
- (b) apportion between the cohabitants any financial consequences arising from the care of any child of the cohabitational relationship, or of a child of either party that is

in the care and control of the other, over and above the obligation to pay child support; and

(c) relieve any economic hardship of the cohabitants arising from the breakdown of the cohabitational relationship.

(5) A Court may make an order under this Part that terminates on the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

1.3 Where on an application by a cohabitant for an order under this Part for maintenance it appears to a Court that the applicant is in immediate need of financial assistance, but it is not practical in the circumstances to determine immediately what order, if any, should be made, the Court may order the payment by the respondent, pending the disposal of the application, of such sum or sums as the Court considers reasonable.

1.4(1) A Court may make an order varying, rescinding or suspending, prospectively or retroactively, a support order or any provision thereof on application by either or both cohabitants.

(2) The Court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

(3) Before the court makes a variation order in respect of a support order, the Court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either cohabitant since the making of the support order or the last variation order in respect of that order, as the case may be, and, in the variation order, the Court shall take into consideration that change.

(4) In making a variation order the Court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

(5) A variation order varying a support order that provides for the support of a cohabitant should

(a) recognize any economic advantages or disadvantages to the cohabitants arising from the cohabitational relationship or its

breakdown;

(b) apportion between the cohabitants any financial consequences arising from the care of any child of the cohabitational relationship or of a child of either party that is in the care and control of the other, over and above the obligation to pay child support; and

(c) relieve any economic hardship of the cohabitants arising from the breakdown of the cohabitational relationship.

(6) Notwithstanding section 5(1), where a support order provides for continuation for a definite period or until the happening of a specified event, a Court may not, on an application instituted after the expiration of that period or the happening of that event, make a variation order for the purpose of resuming that support unless the Court is satisfied that

(a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (3) that is related to the cohabitational relationship; and

(b) the changed circumstances, had they existed at the time of the making of the support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

3 *This Act comes into force on Proclamation.*