

BILL 6

2006

MAINTENANCE ENFORCEMENT AMENDMENT ACT, 2006

(Assented to _____, 2006)

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

Amends RSA 2000 cM-1

1 The *Maintenance Enforcement Act* is amended by this Act.

2 Section 10.1 is amended

- (a) in subsection (1) by adding “, or the Director on behalf of either party,” after “either party”;
- (b) in subsection (2)(b) by adding “or if the Director filed the agreement on behalf of one of the parties, the Director giving notice to the other party,” after “the Director.”

3 Section 17.1 is amended by adding the following after subsection (2):

- (2.1) The amount required to be paid in accordance with a support deduction notice referred to in subsection (2) is net of
- (a) the contractual payment that may be payable to the financial institution as a result of the institution’s compliance with the support deduction notice, and
 - (b) the tax that the financial institution is required to withhold on account of the debtor’s income tax liability

in order to comply with the institution's legal obligations in that regard.

(2.2) For the purposes of section 17(2)(a), on service of a support deduction notice the aggregate of the following is deemed to be owing and payable to the debtor or an agent of the debtor by a financial institution in respect of a debtor's entitlement in relation to a retirement savings vehicle:

- (a) the amount required to be paid in accordance with the support deduction notice;
- (b) the tax the financial institution is required to withhold on account of the debtor's income tax liability in order to comply with the institution's legal obligations in respect of the amount referred to in clause (a);
- (c) the contractual payment payable to the financial institution as a result of the institution's compliance with the support deduction notice.

4 Section 24 is amended

(a) by adding the following after subsection (5):

(5.1) The Director may apply ex parte to the Court of Queen's Bench for an order for alternative arrangements for the examination of a debtor in relation to the matters set out in subsection (1)(b), and the Court may make any order with

respect to the examination of the debtor that it considers appropriate in the circumstances.

(b) by adding the following after subsection (8):

(9) The Director in the Director's discretion may adjourn the financial examination of a debtor

- (a) to allow the debtor more time to provide the information required by the Director under subsection (1),
- (b) when in the opinion of the Director it is not practical or possible to complete the examination within the time stated in the notice, or
- (c) when the debtor requests an alternative date or time for the examination and in the Director's opinion it would be reasonable in the circumstances to grant the request.

(10) If the Director directs or grants an adjournment under subsection (9), further service on the debtor under subsection (1) is not required.

(11) If in the opinion of the Director prompt personal service of a notice under this section on a debtor is impractical for any reason, the Director may apply ex parte to the Court of Queen's Bench for an order for substitutional service.

5 Section 36 is amended

(a) in subsection (2)

(i) in clause (a) by striking out "periodic payment" and substituting "payment or payments";

(ii) by repealing clause (d);

(b) in subsection (2.1) by striking out "periodic payment" and substituting "payment or payments".

Explanatory Notes

1 Amends chapter M-1 of the Revised Statutes of Alberta 2000.

2 Section 10.1 presently reads in part:

10.1(1) Where persons who are eligible to be parties to a maintenance order enter into an agreement that contains provisions providing for the payment of maintenance, either party may file that agreement with the Court of Queen's Bench.

(2) On

(a) an agreement being filed with the Court under subsection (1), and

(b) the party filing the agreement giving notice of the filing to the other party and the Director,

that agreement, subject to the regulations and during the time that the agreement remains filed with the Court, may be enforced and dealt with under this Act with respect to maintenance in the same manner as if the agreement were a maintenance order.

3 Section 17.1 presently reads:

17.1(1) In this section,

(a) "financial institution" means the financial institution that administers the retirement savings vehicle in question;

(b) "LIF" means a retirement income arrangement, known as a life income fund, that is a RRIF that will not commence before the person entitled to it attains the age of 50 years;

(c) "LIRA" means a locked-in retirement account as defined in the Employment Pension Plans Act;

- (d) *“LRIF” means a retirement income arrangement, known as a locked-in retirement income fund, that is a RRIF that will not commence before the person entitled to it attains the age of 50 years;*
- (e) *“retirement income arrangement” means a retirement income arrangement as defined in the Employment Pension Plans Act;*
- (f) *“retirement savings vehicle” means a LIF, LIRA or LRIF;*
- (g) *“RRIF” means a retirement income fund within the meaning of the Income Tax Act (Canada) that is registered under the Income Tax Act (Canada).*

(2) Notwithstanding any other law, the Director may enforce a maintenance order by serving the financial institution with a support deduction notice in respect of the debtor’s entitlement under a retirement savings vehicle.

(3) Except as otherwise provided in the regulations, the provisions of this Act and the regulations relating to support deduction notices apply to a support deduction notice under this section.

4 Section 24 presently reads in part:

24(1) If a debtor has defaulted in a payment required under a maintenance order that is filed with the Director, the Director may, by notice served on the debtor together with a statement of arrears in the prescribed form, require the debtor to do one or both of the following:

- (a) file a statement of finances with the Director;*
- (b) appear before the Director to be examined in relation to employment, income, assets and financial circumstances generally, and to produce any records, documents or objects respecting the debtor’s employment, income, assets and financial circumstances referred to in the notice.*

(5) If the debtor fails to appear before the Director as required under subsection (1)(b), the Director may apply ex

parte to the Court of Queen's Bench for an order compelling the debtor to appear before the Director.

(6) If the debtor fails to comply with an order under subsection (5), the Director may apply ex parte to the Court of Queen's Bench for a warrant for the arrest of the debtor to have the debtor brought before the Court.

(7) If the debtor appears before the Director but refuses to answer any questions before the Director or to produce any records, documents or objects referred to in the notice under subsection (1), the Director may apply ex parte to the Court of Queen's Bench for an order compelling the debtor to answer those questions or to produce those records, documents or objects.

(8) If the debtor fails to comply with an order under subsection (7), the Director may on notice to the debtor apply to the Court of Queen's Bench for an order committing the debtor for contempt.

5 Section 36 presently reads in part:

(2) Money paid to the Director under this Act shall be credited in the following order:

- (a) to the current periodic payment under a maintenance order;*
- (b) to any arrears outstanding under a maintenance order;*
- (c) to any fees or charges payable to the Director;*
- (d) to any other amount payable and outstanding except for any interest owed to the creditor under a maintenance order;*
- (e) to any interest owed to the creditor under a maintenance order.*

(2.1) Notwithstanding subsection (2), if there is not sufficient money to fully credit both the outstanding arrears under subsection (2)(b) and the fees and charges payable to the Director under subsection (2)(c), any money remaining

after crediting the current periodic payment shall be apportioned as follows:

- (a) 90% of the remaining money shall be credited to any arrears outstanding;*
- (b) 10% of the remaining money shall be credited to any fees or charges payable to the Director.*