

# Maintenance and Custody Act

CHAPTER 160 OF THE REVISED STATUTES, 1989

*as amended by*

1990, c. 5, s. 107; 1994-95, c. 6, s. 63; 1997 (2nd Sess.), c. 3;  
1998, c. 12, s. 2; 2000, c. 29, ss. 2-8; 2012, cc. 7, 25



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 1998, c. 12, s. 2; 2000, c. 29, ss. 2-8; 2012, cc. 7, 25

**An Act Respecting the Maintenance  
 of Spouses, Common-law Partners  
 and Dependants**

title amended 2000, c. 29, s. 2

**Table of Contents**

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

	Section
Short title.....	1
Interpretation.....	2
Court order.....	3
Priority.....	3A
Factors considered.....	4
Obligation of maintained spouse or partner.....	5
Reduction or forfeiture of maintenance.....	6
Order respecting occupation of residence.....	7
Duty of parent or guardian.....	8
Maintenance order.....	9
Powers of court.....	10
Maintenance for child of unmarried parents.....	11
Agreement by father to maintain.....	13
Limitation period.....	14
Maintenance for dependent parent.....	15
Factors considered.....	16
Several obligation.....	17
Powers of court.....	18
Report.....	19
Order for child to appear.....	20
Proceedings and costs.....	21
Practice and procedure.....	22
Application by claimant.....	23
Certificate of pregnancy.....	24
Bond by possible father.....	25
Addition of possible father.....	26
Blood test.....	27
Statement to social worker inadmissible.....	28
Filing of statement of income and expenses.....	29
Power to require information.....	29A
Other aid not to be considered.....	30
Court not bound by agreement.....	31
Person to whom maintenance is paid.....	32
Periodic or lump sum payment.....	33
Contents of maintenance order.....	34
Garnishee order.....	35
Security for maintenance.....	36
Powers of court.....	37
Deemed cost of living increases.....	38
Review of order by court.....	39
Power to require appearance.....	41
Enforcement of judgment.....	43
Right to appeal.....	44
Appeal by stated case.....	46
Child of void marriage.....	47

Child of voidable marriage .....	48
Civil rights and privileges of legitimated child .....	49
Status and capacity of legitimated child .....	50
Prior rights unaffected .....	51
Registration and effect of agreement .....	52
Death or adoption of child for whom money paid .....	53
Access to record of address .....	54
Agreement with Government of Canada .....	54A
Regulations .....	55
Existing order preserved .....	56

### Short title

**1** This Act may be cited as the *Maintenance and Custody Act*. R.S., c. 160, s. 1; 2000, c. 29, s. 2.

### Interpretation

**2** In this Act,

(a) “application” means an application made in accordance with the rules of the Family Court;

(aa) “common-law partner” of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least two years;

(b) “court” means the Family Court unless the context otherwise requires;

(c) “dependent child” means a child who is under the age of majority or, although over the age of majority, is unable, by reason of illness, disability or other cause, to withdraw from the charge of the parents or obtain the necessaries of life;

(d) “dependent parent” means a parent who by reason of age, disease or infirmity is unable to provide himself with reasonable needs;

(da) “family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes

(i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or

(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,

(A) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,

(B) placing unreasonable restrictions on, or preventing the exercise of, a family member's financial or personal autonomy,

(C) stalking, or

(D) intentionally damaging property,

but does not include acts of self-protection or protection of another person;

(e) "guardian" includes a head of a family and any other person who has in law or in fact the custody or care of a child;

(f) "judge" means a judge of the Family Court unless the context otherwise requires;

(g) "maintenance" means financial support;

(ga) "Guidelines" means the Child Maintenance Guidelines adopted pursuant to the regulations;

(h) "Minister" means the Minister of Community Services or a person designated by him;

(i) "parent" includes, in the case of a child of unmarried parents, a person who has been ordered by a court of any law district to pay maintenance for the child;

(j) "possible father" includes any one or more persons who have had sexual intercourse with a single woman who is the mother of a child and by whom it is possible that she was pregnant;

(k) "reasonable needs" means whatever is reasonably suitable for the maintenance of the person in question, having regard to the ability, means, needs and circumstances of that person and of any person obliged to contribute to such reasonable needs;

(l) "single woman" means a mother or expectant mother who, at the date of conception, was not married to the father of the child;

(m) "spouse" means either of a man or woman who are married to each other. R.S., c. 160, s. 2; 1997 (2nd Sess.), c. 3, s. 1; 2000, c. 29, s. 3; 2012, c. 25, s. 1.

### **Court order**

**3 (1)** The court may, on application by either or both spouses or common-law partners, make an order requiring a spouse or common-law partner to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the maintenance of the other spouse or common-law partner.

**(2)** Where an application is made pursuant to subsection (1), the court may, on application by either or both spouses or common-law partners, make an interim order requiring a spouse or common-law partner to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic

sums, as the court thinks reasonable for the maintenance of the other spouse or common-law partner, pending the determination of the application under subsection (1).

(3) The court may make an order pursuant to subsection (1) or an interim order pursuant to subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just. 1997 (2nd Sess.), c. 3, s. 2; 2000, c. 29, s. 8.

### Priority

3A (1) Where the court is considering an application for a child maintenance order and an application for a spousal or common-law partner maintenance order, the court shall give priority to child maintenance in determining the applications.

(2) Where the amount of a spousal or common-law partner maintenance order is less than it otherwise would have been as a result of giving priority to child maintenance, any subsequent reduction or termination of that child maintenance constitutes a change of circumstances for the purposes of an application for a variation order in respect of the spousal or common-law partner maintenance order. 1997 (2nd Sess.), c. 3, s. 2 2000, c. 29, s. 4.

### Factors considered

4 In determining whether to order a person to pay maintenance to that person's spouse or common-law partner and the amount of any maintenance to be paid, the court shall consider

- (a) the division of function in their relationship;
- (b) the express or tacit agreement of the spouses or common-law partners that one will maintain the other;
- (c) the terms of a marriage contract or separation agreement between the spouses or common-law partners;
- (d) custodial arrangements made with respect to the children of the relationship;
- (e) the obligations of each spouse or common-law partner towards any children;
- (f) the physical or mental disability of either spouse or common-law partner;
- (g) the inability of a spouse or common-law partner to obtain gainful employment;
- (h) the contribution of a spouse or common-law partner to the education or career potential of the other;
- (i) the reasonable needs of the spouse or common-law partner with a right to maintenance;

- (j) the reasonable needs of the spouse or common-law partner obliged to pay maintenance;
- (k) the separate property of each spouse or common-law partner;
- (l) the ability to pay of the spouse or common-law partner who is obliged to pay maintenance having regard to that spouse's or common-law partner's obligation to pay child maintenance in accordance with the Guidelines;
- (m) the ability of the spouse or common-law partner with the right to maintenance to contribute to his own maintenance. R.S., c. 160, s. 4; 1997 (2nd Sess.), c. 3, s. 3; 2000, c. 29, ss. 5, 8.

#### **Obligation of maintained spouse or partner**

**5** A maintained spouse or common-law partner has an obligation to assume responsibility for his own maintenance unless, considering the ages of the spouses or common-law partners, the duration of the relationship, the nature of the needs of the maintained spouse or common-law partner and the origin of those needs, it would be unreasonable to require the maintained spouse or common-law partner to assume responsibility for his maintenance, and it would be reasonable to require the other spouse or common-law partner to continue to bear this responsibility. R.S., c. 160, s. 5; 2000, c. 29, s. 8.

#### **Reduction or forfeiture of maintenance**

**6 (1)** Maintenance to which a spouse or common-law partner would otherwise be entitled may be reduced where the spouse or common-law partner entitled to maintenance engages in conduct that arbitrarily or unreasonably prolongs the needs upon which maintenance is based or that arbitrarily or unreasonably prolongs the period of time required by the person maintained to prepare himself to assume responsibility for his own maintenance.

**(2)** Maintenance to which a spouse or common-law partner would otherwise be entitled may be reduced or eliminated where the spouse or common-law partner entitled to maintenance

- (a) persistently engages in a course of conduct that constitutes a repudiation of that spouse's marriage relationship;
- (b) persistently engages in a course of conduct which, if the common-law partners were married and living together, would constitute a repudiation of their marriage relationship;
- (c) marries;
- (d) remarries;
- (e) cohabits with another person in a conjugal relationship.

**(3)** *repealed 2000, c. 29, s. 6.*

R.S., c. 160, s. 6; 2000, c. 29, s. 6.

### **Order respecting occupation of residence**

7 Where a judge makes an order under this Act for maintenance of a spouse or common-law partner, notwithstanding that the family residence is owned or leased by one spouse or common-law partner or by one spouse or common-law partner as a joint tenant or as a tenant-in-common, the judge may provide in the order that either spouse or common-law partner has the right to occupy or use the family residence, subject to the conditions imposed by the judge, until the rights of the spouses or common-law partners in the family residence are determined by agreement or by a court having jurisdiction in those matters. R.S., c. 160, s. 7; 2000, c. 29, s. 8.

### **Duty of parent or guardian**

8 Every one

- (a) who is a parent of a child that is under the age of majority; or
- (b) who is a guardian of a child that is under the age of majority where the child is a member of the guardian's household,

is under a legal duty to provide reasonable needs for the child except where there is lawful excuse for not providing the same. R.S., c. 160, s. 8.

### **Maintenance order**

9 Upon application, a court may make an order, including an interim order, requiring a parent or guardian to pay maintenance for a dependent child. 1997 (2nd Sess.), c. 3, s. 4.

### **Powers of court**

10 (1) When determining the amount of maintenance to be paid for a dependent child, or a child of unmarried parents pursuant to Section 11, the court shall do so in accordance with the Guidelines.

(2) The court may make an order pursuant to subsection (1), including an interim order, for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as the court thinks fit and just.

(3) A court may award an amount that is different from the amount that would be determined in accordance with the Guidelines if the court is satisfied that

- (a) special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses or common-law partners, or the division or transfer of their property, directly or indirectly benefit a child, or special provisions have otherwise been made for the benefit of a child; and

(b) the application of the Guidelines would result in an amount of child maintenance that is inequitable given those special provisions.

(4) Where the court awards, pursuant to subsection (3), an amount that is different from the amount that would be determined in accordance with the Guidelines, the court shall record its reasons for doing so.

(5) Notwithstanding subsection (1), a court may award an amount that is different from the amount that would be determined in accordance with the Guidelines on the consent of both spouses or common-law partners or parents if satisfied that reasonable arrangements have been made for the maintenance of the child to whom the order relates.

(6) For the purpose of subsection (5), in determining whether reasonable arrangements have been made for the maintenance of a child, the court shall have regard to the Guidelines, but the court shall not consider the arrangements to be unreasonable solely because the amount of maintenance agreed to is not the same as the amount that would otherwise have been determined in accordance with the Guidelines. 1997 (2nd Sess.), c. 3, s. 4; 2000, c. 29, s. 8.

#### **Maintenance for child of unmarried parents**

**11 (1)** Upon application during the pregnancy of a single woman or after a single woman gives birth to a child, or at any adjournment thereof, a court may order the possible father or the single woman or both of them to pay

(a) towards the expenses incidental to the lying-in, maintenance of the mother during lying-in and expenses of the birth of the child;

(b) towards the maintenance of the child for so long as the child is a dependent child;

(c) the expenses of the funeral of the child if the child has died prior to the date of the order; and

(d) the expenses of the funeral of the mother if she has died at or in consequence of the birth of the child.

(2) Where there are two or more possible fathers, a court may order each of them to make payments in accordance with subsection (1). R.S., c. 160, s. 11; 1997 (2nd Sess.), c. 3, s. 5.

**12** *repealed 1997 (2nd Sess.), c. 3, s. 6.*

#### **Agreement by father to maintain**

**13 (1)** Where a man admits the paternity of the child and enters into an agreement, to which the Minister or an agency under the *Children's Services Act* is a party, to provide adequately for the maintenance of the child, either by lump

sum or periodic payments or a combination thereof, and to pay other expenses he might be ordered to pay under this Act, no proceedings shall be instituted or continued against him in that regard while he is carrying out the terms of the agreement.

(2) A copy of every agreement made pursuant to subsection (1), or any amendment to that agreement, shall be filed with the Minister and, with the consent of the parties, may be registered with a judge.

(3) An agreement, including amendments, registered pursuant to this Section shall for all purposes have the effect of an order for maintenance made under this Act. R.S., c. 160, s. 13.

#### **Limitation period**

14 (1) Except as provided in subsection (2), no application under Section 11 shall be made after the expiration of two years from the date of the birth of the child.

(2) An application under Section 11 may be commenced at any time within one year after

(a) the return to the Province of a father who left the Province before the expiration of two years from the date of the birth of the child;

(b) the last payment made by the father for the maintenance of the child; or

(c) the date of an admission in writing of paternity of the child. R.S., c. 160, s. 14.

#### **Maintenance for dependent parent**

15 Upon the hearing of an application, a court may order a child who is of the age of majority to pay maintenance for his dependent parent. R.S., c. 160, s. 15.

#### **Factors considered**

16 When determining the amount of maintenance to be paid for a dependent parent the court shall consider

(a) the reasonable needs of the dependent parent;

(b) the ability of the dependent parent to contribute to his own maintenance; and

(c) the reasonable needs and ability to pay of the child obliged to pay maintenance. R.S., c. 160, s. 16.

#### **Several obligation**

17 An order may be made against a child of a dependent parent whether or not an order is in force in respect of any other child of the parent. R.S., c. 160, s. 17.

**Powers of court**

**18 (1)** In this Section and Section 19, “parent” includes the father of a child of unmarried parents unless the child has been adopted.

**(2)** The court may, on the application of a parent or guardian or, with leave of the court, a grandparent, other member of the child’s family or another person make an order

(a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or

(b) respecting access and visiting privileges of a parent or guardian or authorized person.

**(3)** This Section does not apply

(a) where there is an adoption agreement respecting the child pursuant to the *Children and Family Services Act*, that has not expired or been terminated except with leave of the court upon application of a parent who is not a party to the adoption agreement;

(b) where the child has been placed for adoption and adoption proceedings under the *Children and Family Services Act* have not been dismissed, discontinued or unduly delayed; or

(c) where there is an order respecting custody of or access to the child made pursuant to the *Divorce Act (Canada)* or by the Supreme Court or the county court or a judge thereof.

**(4)** Subject to this Act, the father and mother of a child are joint guardians and are equally entitled to the care and custody of the child unless otherwise

(a) provided by the *Guardianship Act*; or

(b) ordered by a court of competent jurisdiction.

**(5)** In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

**(6)** In determining the best interests of the child, the court shall consider all relevant circumstances, including

(a) the child’s physical, emotional, social and educational needs, including the child’s need for stability and safety, taking into account the child’s age and stage of development;

(b) each parent’s or guardian’s willingness to support the development and maintenance of the child’s relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child’s physical, emotional, social and educational needs;

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;

(e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;

(g) the nature, strength and stability of the relationship between the child and each parent or guardian;

(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child; and

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

(7) When determining the impact of any family violence, abuse or intimidation, the court shall consider

(a) the nature of the family violence, abuse or intimidation;

(b) how recently the family violence, abuse or intimidation occurred;

(c) the frequency of the family violence, abuse or intimidation;

(d) the harm caused to the child by the family violence, abuse or intimidation;

(e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and

(f) all other matters the court considers relevant.

(8) In making an order concerning care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j). R.S., c. 160, s. 18; 1990, c. 5, s. 107; 2012, c. 7, s. 2; 2012, c. 25, s. 2.

#### **Report**

19 At the hearing of an application under Section 18 or an application to vary or rescind an order respecting care and custody or access and visiting privileges, a court may request the Minister to cause a written report to be made to the court respecting the child and his parents or guardian. R.S., c. 160, s. 19.

#### **Order for child to appear**

20 Where an application respecting care and custody or access and visiting privileges is pending before the court, the court may order that the child be brought before the court at any time, and for this purpose may make such order as the court deems proper. R.S., c. 160, s. 20.

#### **Proceedings and costs**

21 (1) Except as otherwise provided in this Act or in the rules of the Family Court, the *Summary Proceedings Act* shall apply to proceedings under this Act.

(2) Costs may be ordered in the discretion of the court hearing a proceeding pursuant to this Act and the amount shall be determined in accordance with the rules of the Family Court. R.S., c. 160, s. 21.

#### **Practice and procedure**

22 Where any matter of practice or procedure is not provided by the rules of the Family Court or the *Summary Proceedings Act*, the rules of the Supreme Court relating to matrimonial causes shall apply with any necessary modification. R.S., c. 160, s. 22.

#### **Application by claimant**

23 (1) An application may be made by a person claiming maintenance on his own behalf or on behalf of his dependent child or dependent parent.

(2) An application may be made by

(a) a person; or

(b) a representative of a government department or agency, a city, an incorporated town or a municipality of a county or district,

providing maintenance for a spouse or common-law partner, dependent child, single woman or dependent parent.

(3) Where an order for maintenance has been made or registered under this Act, a person, a representative of a government department or agency, a city, an incorporated town or a municipality of a county or district entitled to make the original application is entitled to apply to vary, rescind or suspend the order, whether or not that person, representative of a government department or agency, city, town or municipality made the original application.

(4) Where

(a) an application is made pursuant to this Act to grant, vary, rescind or suspend an award of maintenance; and

(b) a party to the application is in receipt of benefits pursuant to the *Family Benefits Act* or assistance pursuant to the *Social Assistance Act*,

the Department of Community Services may be notified of the application and a representative may appear and be heard in court in respect of the matter. R.S., c. 160, s. 23; 1994-95, c. 6, s. 63; 1997 (2nd Sess.), c. 3, s. 7; 2000, c. 29, s. 8.

#### **Certificate of pregnancy**

24 An application, made for lying-in expenses or for maintenance of a single woman who is pregnant, shall have appended to it a certificate of a qualified medical practitioner that the single woman is pregnant. R.S., c. 160, s. 24.

#### **Bond by possible father**

25 (1) In proceedings against a possible father pursuant to Section 11, the court may require the possible father to enter into a bond, with or without a surety or sureties, in the sum of one thousand dollars

(a) conditioned on his appearance at the time and place to which a hearing is adjourned;

(b) conditioned upon the making of payments the possible father is ordered to make.

(2) A bond given under this Section shall be made

(a) to the applicant where it is given in respect of an adjournment of a hearing;

(b) to the person to whom payments are ordered to be made where it is given in respect of an order for making of payments. R.S., c. 160, s. 25.

#### **Addition of possible father**

26 (1) Where a possible father produces, at a hearing to determine paternity, evidence of a witness who admits to having sexual intercourse with the mother and this evidence indicates that it is possible that the mother is pregnant by the witness, the witness may be added to the application as a possible father.

(2) Where, at a hearing to determine paternity, the judge hears evidence indicating that the mother may be pregnant by a man who is not named in the application, the judge may order the man to be added to the application as a possible father.

(3) A possible father added to an application pursuant to subsection (1) or (2) shall be given the opportunity to respond to the application. R.S., c. 160, s. 26.

#### **Blood test**

27 (1) In any proceeding concerning maintenance for a child of unmarried parents the court or judge, upon the application of any party, may order the mother, her child and the possible father to submit to one or more blood-grouping tests to be made by a duly-qualified medical practitioner or other person designated in the order to determine whether or not the possible father can be excluded as being the father of the child.

(2) Where an order has been made under subsection (1), if the mother refuses to submit to a blood-grouping test or to permit a blood-grouping test to be made of her child, the court or judge may infer from the refusal that the test would have established that the possible father could not be the father of the child.

(3) The results of such tests shall be admissible in evidence only where the results establish definite exclusion of the possible father as the father of the child.

(4) Unless the court or judge otherwise orders, the costs of making the tests shall be payable by the party who applies for them. R.S., c. 160, s. 27.

#### **Statement to social worker inadmissible**

28 Where a person has made a statement or given information to a social worker employed by the Department of Community Services or by an agency under the *Children's Services Act* while the social worker was engaged in carrying out his duties, the statement or information is not admissible in evidence against the person in proceedings under Section 11 of this Act. R.S., c. 160, s. 28.

#### **Filing of statement of income and expenses**

29 (1) Upon application for maintenance under this Act, the applicant and the respondent shall file

(a) in the case of an application for spousal or common-law partner maintenance, a statement of income and expenses and such other documents as required by the court, the regulations or rules of court; or

(b) in the case of an application for child maintenance, the information required by the Guidelines, the court or the rules of court.

(2) A party who objects to filing a statement of income and expenses may apply to a court for an exemption from subsection (1) upon the ground that such a statement is unnecessary for a proper determination of the application or that the application is frivolous or vexatious.

(3) Notwithstanding that a statement has not been filed pursuant to subsection (1), a court may conduct the hearing of an application and make such order as the case requires. R.S., c. 160, s. 29; 1997 (2nd Sess.), c. 3, s. 8; 2000, c. 29, s. 7.

#### **Power to require information**

**29A (1)** Upon application for maintenance under this Act in those circumstances prescribed by regulation, including a variation order or a review, the court or a court officer may request a person, including the applicant or respondent, a corporation or public body, including Her Majesty, to provide information respecting

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

of the applicant or respondent and including

- (h) copies of income tax returns;
- (i) financial statements of a corporation of which the applicant or respondent is a shareholder, officer or director; and
- (j) such other information as required by the court, a court officer, the regulations or rules of court,

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 applicant or respondent, a corporation or a 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 it appears that a court officer has been refused information after making a request pursuant to subsection (1), the court may order a person, including the applicant or respondent, a corporation or a public body, including Her Majesty, to provide the court officer with any of the information prescribed in subsection (1).

(4) Where the court officer obtains an order pursuant to subsection (3), the court may award costs.

(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 applicant or respondent, a corporation or public body, including a servant or agent of Her Majesty, who knowingly withholds, misleads or gives false information to the court or a court officer or in response to an order of the court pursuant to this Section is guilty of an offence. 1997 (2nd Sess.), c. 3, s. 9.

#### **Other aid not to be considered**

**30** An order may be made under this Act whether or not the single woman, spouse or common-law partner, dependent child or dependent parent is receiving aid from any government or from any city, town or municipality or from any public, local or private body, organization or institution, or is being cared for in any sanatorium, hospital, home or other charitable or public institution and such aid shall not be considered in making the order. R.S., c. 160, s. 30; revision corrected 1999; 2000, c. 29, s. 8.

#### **Court not bound by agreement**

**31** In proceedings under this Act, a court may consider the terms of any agreement respecting maintenance payable for a party or respecting custody of or access to a child but the court is not bound by the agreement if the court is of the opinion that the terms of the agreement are not in the best interests of a party or the child. R.S., c. 160, s. 31.

#### **Person to whom maintenance is paid**

**32** The court may order maintenance to be paid to the person for whose benefit the payment is ordered, to that person's parent or child, to some other responsible person or to the court. R.S., c. 160, s. 32.

#### **Periodic or lump sum payment**

**33** A court may order maintenance to be paid periodically or in a lump sum or in a combination thereof. R.S., c. 160, s. 33.

#### **Contents of maintenance order**

**34** An order for payment of maintenance shall specify

- (a) the amount to be paid;
- (b) when payment is to be made;

- (c) where or to whom payment is to be made;
- (d) a breakdown of the amount as between spousal [or common-law partner maintenance] and child maintenance;
- (e) the names and birth dates of the children, if child maintenance is ordered; and
- (f) such other information as prescribed by the Guidelines or rules of court. R.S., c. 160, s. 34; 1997 (2nd Sess.), c. 3, s. 10.

**Garnishee order**

**35 (1)** Where the court considers it appropriate in a proceeding under this Act, the court may make an execution order in the nature of garnishee directing an employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is specified in the order and to pay the amounts deducted in the manner prescribed in the order.

**(2)** The provisions of the *Civil Procedure Rules* respecting the payment of wages to a sheriff under an execution order shall apply to an execution order in the nature of garnishee issued pursuant to this Section except to the extent the court otherwise orders.

**(3)** Upon application, the court may discharge, vary or suspend any term of an order made under this Section.

**(4)** An order made under this Section has priority over any other seizure or attachment of wages arising before or after the service of the order except an execution order issued by the Supreme Court which relates to maintenance.

**(5)** Unless a court otherwise orders, an execution order in the nature of garnishee issued pursuant to this Section may be served on any employer of the debtor. R.S., c. 160, s. 35.

**Security for maintenance**

**36 (1)** Where a court of competent jurisdiction orders the payment of maintenance pursuant to this or any other enactment, the court may require the person obliged to pay maintenance to give such security, including a charge on property, that the court orders, for the performance of the order respecting maintenance.

**(2)** A court which requires a person to give security pursuant to subsection (1), may, on application, direct the sale or other realization of the security upon such terms and conditions as the court considers appropriate. R.S., c. 160, s. 36.

**Powers of court**

**37 (1)** The court, on application, may make an order varying, rescinding or suspending, prospectively or retroactively, a maintenance order or an

order respecting custody and access where there has been a change in circumstances since the making of the order or the last variation order.

(2) When making a variation order with respect to child maintenance, the court shall apply Section 10. R.S., c. 160, s. 37; 1997 (2nd Sess.), c. 3, s. 11.

#### **Deemed cost of living increases**

38 Where an order for the periodic payment of maintenance is made for the benefit of a person who is in receipt of family benefits paid by the Province pursuant to the *Family Benefits Act* or municipal assistance paid pursuant to the *Social Assistance Act*, the amount of the payment specified in the order shall be deemed to be varied in accordance with increases in the cost of living once in every twelve month period in the manner prescribed by the regulations. R.S., c. 160, s. 38.

#### **Review of order by court**

39 (1) Where an order for the periodic payment of maintenance is made for the benefit of a person who is in receipt of family benefits paid by the Province pursuant to the *Family Benefits Act* or municipal assistance pursuant to the *Social Assistance Act*, the court, upon its own motion, at the time and in the manner prescribed by the regulations, shall cause notice to be given to the parties and at a hearing shall review the adequacy of the amount of the payment for maintenance in the circumstances existing at the time the review is made, and the court may vary, rescind or suspend the order.

(2) An order to vary, rescind or suspend an order in accordance with this Section shall be treated in all respects, including an appeal, as if it was made upon the application of one of the parties. R.S., c. 160, s. 39.

40 *repealed, 1994-95, c. 6, s. 63.*

#### **Power to require appearance**

41 (1) Where it is made to appear under oath that a person has failed to comply with an order pursuant to this Act, the court may require the person to appear to explain the failure to comply or a party to the order may make an application to bring the matter before the court for determination.

(2) In an application pursuant to subsection (1), the court shall determine the issue and may make any additional order the court deems necessary to ensure the order of the court is complied with, including an order for contempt which may include imprisonment continuously or intermittently for not more than six months.

(3) Nothing in this Section affects the application of the *Maintenance Enforcement Act* where a party under a maintenance order has failed to comply with that order. 1997 (2nd Sess.), c. 3, s. 12.

42 *repealed, 1994-95, c. 6, s. 63.*

### **Enforcement of judgment**

43 (1) For the purpose of this Section, a reference to a judgment, order or decree of the Supreme Court includes a reference to a judgment, order or decree of the Court for Divorce and Matrimonial Causes or of a county court.

(2) A person entitled to alimony or maintenance or to care and custody or access and visiting privileges in relation to a child under a judgment, order or decree of the Supreme Court, or an order of any other superior court in Canada registered in the Supreme Court, may register the judgment, order or decree with a judge.

(3) Unless it is varied, rescinded or suspended, a judgment, order or decree registered under subsection (2) may, subject to the *Maintenance Enforcement Act*, be enforced in the same manner as an order made under this Act.

(4) Where a court, which is asked to enforce a judgment, order or decree of the Supreme Court 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 clerk of the court which issued the judgment, order or decree or with such other person as the rules of the Supreme Court may provide.

(5) A court filing a report under subsection (4) shall advise the parties by providing to them a copy of the report and such other documents as the rules of the Supreme Court may require.

(6) The court which 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 rules of the Supreme Court. R.S., c. 160, s. 43; 1994-95, c. 6, s. 63.

### **Right to appeal**

44 An appeal lies to the Nova Scotia Court of Appeal from any decision, judgment or order made pursuant to this Act by the court or the Supreme Court of Nova Scotia (Family Division). 1998, c. 12, s. 2.

45 *repealed 1998, c. 12, s. 2.*

### **Appeal by stated case**

46 (1) The court may of its own motion or upon the application of any party, and upon such security being given as the court directs, state a case in

writing for the opinion of the Appeal Division of the Supreme Court upon any question which in the opinion of the court is a question of law.

(2) The Appeal Division of the Supreme Court shall hear and determine the question or questions of law arising thereon and remit the matter to the court with its opinion. R.S., c. 160, s. 46.

**Child of void marriage**

47 The child of a void marriage, whether born before or after the first day of October, 1980, is deemed to be the legitimate child of his mother and father if the mother and father have at any time celebrated a marriage in accordance with the laws of the place in which the marriage was celebrated and if either the mother or father or both believed that the marriage was valid. R.S., c. 160, s. 47.

**Child of voidable marriage**

48 For the avoidance of doubt, it is declared that where before or after the first day of October, 1980, a decree of nullity is granted in respect of a voidable marriage, a child who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being annulled continues to be legitimate notwithstanding the annulment. R.S., c. 160, s. 48.

**Civil rights and privileges of legitimated child**

49 Where the mother and father of any child born out of lawful wedlock intermarry, the child shall be deemed to have had from the date of his birth and to have for all purposes within the Province all the civil rights and privileges of a child born in lawful wedlock, including, but not so as to restrict the generality of the foregoing, the right to inherit property upon an intestacy in the same manner and to the same extent as a child born in lawful wedlock. R.S., c. 160, s. 49.

**Status and capacity of legitimated child**

50 Where the mother and father of any child born out of lawful wedlock intermarry, the child shall for all purposes have and be deemed to have had the status and capacity of a child born in lawful wedlock of the mother and father from the date of birth and for all purposes to be a lawful lineal descendant and a child of the mother and father. R.S., c. 160, s. 50.

**Prior rights unaffected**

51 Nothing in Sections 48, 49 and 50 shall affect any right, title or interest in or to property if such right, title or interest has been vested in any person

(a) prior to the first day of October, 1980, in the case of any intermarriage which has taken place; or

(b) prior to the intermarriage in the case of any intermarriage which takes place on or after the first day of October, 1980. R.S., c. 160, s. 51.

**Registration and effect of agreement**

**52 (1)** A judge may, with the consent of either party, register in the court an agreement entered into between the parties respecting maintenance or respecting care and custody or access and visiting privileges or any amendment made to that agreement.

**(2)** Before registering an agreement pursuant to subsection (1), a judge may inquire into the merits of the agreement and, after giving the parties an opportunity to be heard, may vary its terms as he deems fit.

**(3)** An agreement, including amendments registered pursuant to this Section, shall for all purposes have the effect of an order for maintenance or respecting care and custody or access and visiting privileges made under this Act. R.S., c. 160, s. 52; 1994-95, c. 6, s. 63.

**Death or adoption of child for whom money paid**

**53** If a child, on whose behalf money has been paid pursuant to an agreement filed or registered or an order made under this Act, dies or is adopted, any balance of money remaining with the person to whom it was paid shall be returned to the person who made the payment or his heirs, executors, administrators or assigns except where the death of a child is unlawfully caused by the person who made the payment in which case the money is forfeited to the Minister of Finance. R.S., c. 160, s. 53.

**Access to record of address**

**54 (1)** Where it appears to the court or a court officer that, for the purpose of a proceeding pursuant to this Act it is necessary to learn or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court or court officer may order an individual, corporation or entity, including a public agency, to provide particulars of the address contained in records in its custody and the individual, corporation or entity shall provide whatever particulars it is able to provide.

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

**(3)** No action lies against a person who gives information in accordance with subsection (1). R.S., c. 160, s. 54; 1994-95, c. 6, s. 63; 1997 (2nd Sess.), c. 3, s. 13.

**Agreement with Government of Canada**

**54A** The Minister of Justice on behalf of the Government of the Province, may, with the approval of the Governor in Council, enter into an agreement with the Minister of Justice on behalf of the Government of Canada for a child support service established by the regulations under this Act, to conduct the administrative recalculation of the amount of child support orders under the *Divorce Act* (Canada). 2012, c. 25, s. 3.

## Regulations

- 55 (1) The Governor in Council may make regulations
- (a) prescribing forms and providing for their use;
  - (aa) respecting the way in which the amount of an order for child maintenance is to be determined;
  - (ab) respecting the circumstances in which discretion may be exercised in the making of an order for child maintenance;
  - (ac) authorizing a court to require that the amount payable under an order for child maintenance be paid in periodic payments, in a lump sum or in a lump sum and periodic payments;
  - (ad) authorizing a court to require that the amount payable under an order for child maintenance be paid or secured, or paid and secured, in the manner specified in the order;
  - (ae) respecting the recalculation at prescribed intervals of the amount payable under orders for child maintenance;
  - (aea) respecting the recalculation at prescribed intervals of the amount of child support orders under the *Divorce Act* (Canada);
  - (af) respecting the circumstances that give rise to the making of a variation order in respect of a child maintenance order;
  - (ag) respecting the determination of income for the purpose of the application of the Guidelines;
  - (ah) authorizing a court to impute income for the purpose of the application of the Guidelines;
  - (ai) respecting the production of income or financial information from an individual, corporation or entity and providing for sanctions when that information is not provided;
  - (b) respecting the investment and manner of disbursement of funds paid into court;
  - (c) respecting the calculation of cost of living adjustments to be made to maintenance orders, the timing of the adjustments and the manner in which it is to be done;
  - (d) respecting the automatic review of maintenance orders, the timing of the review and the manner in which it is to be done;
  - (da) respecting the automatic review of child support orders under the *Divorce Act* (Canada), the timing of the review and the manner in which it is to be done;
  - (daa) respecting the disclosure of financial information;
  - (db) respecting costs and fees for services pursuant to this Act;

(dc) respecting mediation and alternate dispute-resolution mechanisms;

(e) defining any word or expression used in this Act and not defined herein;

(f) respecting any matter 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 set forth in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 160, s. 55; 1997 (2nd Sess.), c. 3, s. 14; 2012, c. 25, s. 4.

#### **Existing order preserved**

**56** An order for the payment of maintenance or expenses made under the former *Children of Unmarried Parents Act*, the former *Children's Maintenance Act*, the former *Parents' Maintenance Act* or the former *Wives' and Children's Maintenance Act*, or an order respecting care and custody or access and visiting privileges in relation to a child made under the former *Wives' and Children's Maintenance Act*, shall continue in force according to its terms, and may be enforced, varied, rescinded or suspended in the same manner as an order made pursuant to this Act. R.S., c. 160, s. 56.

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