

**A Guide To The
Family Maintenance
Enforcement Program**

A Handbook for Lawyers

Revised June 2006

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Section I: Family Maintenance Enforcement Program

Family Maintenance Enforcement Act

The *Family Maintenance Enforcement Act* (*FMEA*) was enacted in 1988 (and amended in 1994 and 1997). The legislation sets out the procedures for monitoring, collecting and enforcing Maintenance Orders in British Columbia.

Section 1(1) of the *FMEA* defines Maintenance Orders as:

- orders of a court in British Columbia;
- Agreements filed under sections [121](#) and [122](#) of the *Family Relations Act* (*FRA*);
- orders and Agreements for the payment of maintenance under the *Family and Child Service Act* and the *Child Paternity and Support Act*; or,
- registered orders and Agreements from reciprocal jurisdictions.

FMEP uses the terms of “payor” and “recipient” rather than “debtor” and creditor.”

The terms “maintenance” and “support” are used as one and the same in this handbook.

The Family Maintenance Enforcement Act Regulations

The *FMEA Regulations* were also enacted in 1988 and have been subsequently amended. The *Regulations* detail many aspects of enforcement including: the prescribed forms, interest, default fees, service of and response to a Notice of Attachment and the amounts that can be garnished from a variety of income sources.

The Director of Maintenance Enforcement

The *FMEA* establishes the position and defines the responsibilities of the Director of Maintenance Enforcement.

The Director is a civil servant who is appointed by the Attorney General and has delegated all powers and duties in the *FMEA* to the Family Maintenance Enforcement Program, except the Director’s authority to demand location, employment, assets and source of income information about payors.

The Family Maintenance Enforcement Program (FMEP)

The Family Maintenance Enforcement Program (FMEP) is a service of the British Columbia Ministry of Attorney General. FMEP is responsible for monitoring and enforcing all Maintenance Orders and Maintenance Agreements that are enrolled with it. FMEP will:

- calculate, receive, record and forward payments to the person receiving maintenance; and,
- undertake enforcement action, if maintenance is not being paid or if arrears exist from prior to enrollment, to try to ensure the person who is supposed to pay maintenance makes the required payments.

To decide what enforcement action to take, FMEP looks at each case individually. What FMEP chooses to do depends on the payor's history, how much money the payor owes (some actions require the payor to owe a certain amount before they can be used), and what FMEP knows about the payor's current situation. In all cases, FMEP will choose the enforcement action or actions that is believed to have the best chance of success.

Some payors, however, make it very difficult for FMEP to collect. Others may have no income or assets, which means it may take a long time to collect what is owed to the recipient. If income assistance is the payor's sole source of income, FMEP cannot by law attach that income and will need to look for other assets or resources.

Where appropriate, FMEP can request searches of federal and provincial databases for information about a payor's location, employment and assets to allow for enforcement action.

My client's order is enrolled with FMEP, how do I communicate with FMEP about enforcement that the Program is taking?

If administrative enforcement has been taken, such as a driver's license withhold or a garnishment of wages, you should contact FMEP and ask to speak to the Enforcement Officer who is responsible for your client's case.

If a maintenance lien has been registered against your client's property and your client wishes to register a mortgage or sell the property, you should contact FMEP and ask to speak to the FMEP Legal Counsel (each individual FMEP office has a Solicitor assigned to deal with these matters). In this way you can negotiate directly with the lawyer and arrange for a priority Agreement or a discharge – whatever is appropriate in the circumstances.

Counsel are also encouraged to contact FMEP legal counsel at the appropriate regional office to obtain detailed information on FMEP enforcement, including relevant case law.

Section II: FMEP - Terminology

Account Statement: This is a record of financial transactions related to a Maintenance Order or Agreement. The statement shows what has been paid and when, as well as what (if anything) is owed in ongoing maintenance payments or arrears. Payors or Recipients may request a copy of their Account Statement at any time, either by phoning FMEP's general numbers or through the InfoLine.

Administrative Enforcement: Any non-court action FMEP may take to try to make sure that the terms of a Maintenance Order or of an Agreement are met. This includes restricting the renewal of a payor's driver's licence, attaching a payor's income, and placing a lien on a payor's land or personal property.

Application to Change: An application made to the court under [section 96](#) of the *Family Relations Act* asking it to either increase or decrease the amount of maintenance the payor is required to pay, or forgive all or part of the arrears owed by the payor. FMEP does not have the authority to change a Maintenance Order or Agreement. Only the payor and the recipient (with the involvement of the Ministry of Employment and Income Assistance if the recipient is receiving income assistance) can either come to an agreement as to what payments should be changed and/or arrears forgiven – either by way of a new Maintenance Order or a new Maintenance Agreement. If the payor and recipient cannot agree, then the party wishing the change must make an application to the court to change the Order or Agreement. It is important to note that:

- application must be made to the level of court where the Maintenance Order originated (Provincial Court or British Columbia Supreme Court);
- FMEP must be served with the application;
- the Ministry of Employment and Income Assistance must also be served with the application if the recipient is receiving income assistance;
- the applicant must serve the other party (i.e. payor or recipient) as FMEP is not authorized to receive service on behalf of the other party; and,
- if the payor or recipient is residing outside of BC, the individual applying for the change must determine if the other jurisdiction is a reciprocating one and whether the new rules under the [Interjurisdictional Support Orders Act](#) apply.

Arrears: Maintenance that has not been paid.

Attachee: An individual, a company or financial institution who owes the payor money; the person or company named in a Notice of Attachment.

Attachment or Notice of Attachment (NOA): The Notice of Attachment is an enforcement action that requires the attachee to deduct a specific amount from the payor's wages or other income, and send that amount to FMEP. This is called

"attaching" or "garnishing" and may be applied to virtually any income, including wages, pensions, workers' compensation benefits, bank accounts or rental income.

Child Support Guidelines: The [Federal Child Support Guidelines](#) provide for the payment of two types of child support. There is a table amount as to what a payor must pay in child support to the recipient according to his or her income based upon where the payor resides and the number of children who are eligible for support. The guidelines also provide for the payment of special and extraordinary expenses, which are divided between the two parties in proportion to their respective incomes. These expenses may include: day care costs, medical and dental expenses, educational expenses and extracurricular expenses.

Committal Hearing: If a payor fails to comply with the Order to make the payments to the arrears as set out by the Court in the Default Hearing, FMEP will apply to the Court for the payor to be summoned back to the Court for a Committal Hearing. At the committal hearing, the payor will be asked to explain - under oath - why he or she has not complied with the Court's default order. After hearing from the payor, the judge may then decide:

- to change the Default Hearing order - without reducing or canceling what the payor owes in arrears - if the Court believes the payor's circumstances have changed since the Default Hearing and the payor is unable to pay the amount ordered towards the arrears; or,
- order the payor to go to jail immediately.

Court Enforcement: After administrative enforcement options have been exhausted, FMEP has the legislated authority to apply to the Court to enforce the arrears.

Credit Report: If a payor owes more than \$2,000.00 in maintenance, FMEP may report the payor to a credit-reporting agency. Once it receives a credit report, the credit reporting agency will inform potential credit grantors - and anyone else authorized to ask about the payor's credit history - of the amount the payor owes in arrears. The report will form part of the payor's credit history until he or she has paid off the arrears and kept payments up to-date for six years.

Default Fee: If a payor misses a payment or is late on two payments within the same calendar year, FMEP will automatically charge that payor a legislated Default Fee. The default fee is equal to one month's maintenance, up to a maximum of \$400.00. The fee goes to the BC government, not to the recipient, to help the government cover the costs of operating FMEP.

Default Hearing: If a payor does not pay the maintenance he or she owes, FMEP can apply to the Court for the payor to be summoned to a Default Hearing. At this hearing, the Court will determine the manner in which the arrears will be

repaid. The Court may also decide to include a provision which will impose jail time if the payor does not make the payments as ordered.

Driver's Licence Withholding: If a payor owes more than \$3,000.00 in maintenance, FMEP may direct ICBC to refuse to issue or renew the payor's driver's licence until the arrears are paid.

Enforcement Against Corporations: In situations where payors own all or a major part of a corporation, FMEP can act to have the payor's corporation found liable for the payor's maintenance payments.

Enforcement Manager: Enforcement Managers supervise enforcement staff, respond to complaints regarding customer service, review decisions and authorize certain types of enforcement.

Enforcement Officer: Enforcement Officers have the delegated authority to make enforcement decisions as to the best way to enforce Maintenance Orders and Maintenance Agreements.

Enquiry Representative: Enquiry Representatives respond to all telephone inquiries made to the FMEP's general numbers, including receiving information and providing both case-specific and general information to payors and recipients.

FMEP Legal Counsel: Legal Counsel are located in each of the three FMEP offices and provide advice to Enforcement Officers. In all applications before the Courts, whether they are initiated by FMEP or by the payor concerning enforcement, FMEP legal counsel represent the Director of Maintenance Enforcement.

Family Maintenance (Program) Worker: The Ministry of Employment and Income Assistance operates the Family Maintenance Program (FMP) to assist its Income assistance clients. Family Maintenance Workers help Income assistance clients enroll in the FMEP and obtain or change Maintenance Orders or Agreements. Though the two names are similar, FMP and FMEP are completely separate government agencies. These agencies each require separate notification and service of variation or arrears reduction applications. Both agencies are also bound by the *Freedom of Information Act* as to what type and form of information that can be shared between them.

Family support: See "Maintenance".

Federal Interception (NOFI): FMEP has the legislated authority to intercept money owed by the federal government to any payor who falls behind in his or her scheduled maintenance payments, and have it paid directly to FMEP instead

of the payor. Interception of income can come from one or more sources, including:

- Employment Insurance benefits;
- Canada Pension Plan or Old Age Security payments;
- GST credits; and,
- Canada Customs and Revenue Agency income tax refunds.

Federal Licence or Passport Denial: If a payor owes more than \$3,000.00 in maintenance arrears, FMEP may request the federal government to suspend, refuse to issue or renew the payor's passport and/or federal aviation or marine licence until the payor has made an arrangement with FMEP to pay the arrears.

Garnishing or Garnishment: See "Attachment/Notice of Attachment".

InfoLine: This is FMEP's automated telephone system. In the Lower Mainland (1-800-663-9666), Greater Victoria (1-800-663-3455) and elsewhere in BC (1-800-663-3933), InfoLine is available 24 hours a day, seven days a week. Through InfoLine, payors and recipients may request an Account Statement listing all payments made to date, find out when the most recent payment was received, and how much the payor may owe in missed payments. Recipients may also use InfoLine to report a direct payment, and to check the status of any enforcement action. InfoLine also offers detailed recorded information on all aspects of the FMEP in general, including the various enforcement actions FMEP has the authority to take.

Interest: FMEP has the legislated authority to charge payors daily interest on the current balance of unpaid maintenance, except for those payors receiving Income assistance. The rate of interest is set out in [section 6.1\(1\)](#) of the *FMEA Regulations*. The interest is simple, not compound interest. Interest is added at the end of each month and becomes part of the arrears owed to recipients. FMEP can only enforce interest that has accrued since the Maintenance Order or Maintenance Agreement was enrolled with FMEP. Any other interest may be enforced directly by the recipient, either with written authorization from FMEP, or after withdrawing from the FMEP.

Land Registration or Maintenance Lien: FMEP may register a lien (a legal hold or claim) against any land or personal property that a payor may own. This can include liens against a car, boat, trailer or manufactured home. If there is a lien, the payor:

- may have difficulties selling or transferring ownership of the land or the personal property until the maintenance is paid;
- will likely have to use all or part of the proceeds from the sale of the land or personal property to help pay the maintenance debt; and,
- in the case of a manufactured home, the payor cannot move the home from one location to another without FMEP approval.

Maintenance: This is also called “support” and consists of spousal maintenance and/or child maintenance to be paid under a court ordered Maintenance Order or a Maintenance Agreement negotiated between the payor and recipient.

Maintenance Order or Maintenance Agreement: This written document specifies how much the payor must pay the recipient in child and/or spousal support. If it is a Court Order it can be enforced by FMEP once it is entered into the court registry. In order for an Agreement to be enforced by FMEP, it must be filed with either the British Columbia Supreme Court or the Provincial Court under sections [121](#) and [122](#) of the *Family Relations Act (FRA)*.

Material Error: This is a specific legal term that has been interpreted by the courts to mean a significant error made by FMEP in a Notice of Attachment.

Notice of Filing: When a Maintenance Order or an Agreement is enrolled with FMEP, a letter goes out to both the recipient and the payor, stating that their Maintenance Order or Agreement is enrolled with FMEP and that FMEP is now responsible for monitoring and enforcing the support payments. The Notice of Filing sets out how much the regular maintenance payments are and when they are due and how much, if any, arrears are owing to the recipient.

Payor: The person paying maintenance. Also known as the “debtor”.

Personal Identification Number or PIN: This is a private number given to the payor and recipient. The payor and recipient will have the same FMEP case number but will have different personal identification numbers assigned to them. If this PIN is lost, FMEP will provide it again by mail if so requested.

Personal Property Registry: It is in this registry that FMEP registers a maintenance lien against a payor's personal property. This also includes the Manufactured Homes Registry.

Recipient: The person receiving maintenance. Also known as the "creditor".

Reciprocal Agreements or Reciprocating Jurisdictions: Maintenance Orders or Agreements filed with FMEP can be enforced even in situations when the payor or the recipient lives outside of BC. BC has reciprocal Agreements with all Canadian provinces, the United States and several other countries (they are called "reciprocating jurisdictions"). This means that FMEP can ask the other province, territory, state or country to take enforcement action on behalf of FMEP. Reciprocating jurisdictions can also ask FMEP to take enforcement action for one of their clients.

Special and Extraordinary expenses; Section 7 Expenses: This is money that the recipient is entitled to, in addition to the table amount of child support, provided such expenses are set out in the Maintenance Order or Agreement.

Such expenses include childcare expenses, certain medical and educational expenses and extracurricular activities.

[Statement of Finances](#): This is the sworn legal document that the payor must complete for the court in a Default Hearing. This document sets out detailed information regarding a payor's financial circumstances.

Subrogated Arrears; Assigned Arrears: This is unpaid maintenance that is owed to a provincial government, rather than the recipient, because at the time it should have been paid, the recipient was receiving income assistance.

Voluntary Payment Arrangement (VPA): This is a plan developed in cooperation between the payor and the FMEP that structures how the payor will make payments on his or her arrears in addition to making ongoing maintenance payments.

Warrant for Arrest; Bench Warrant: When a payor does not obey a summons to appear in court at a specific time and place, then the Court may make an order that a warrant for his or her arrest be issued. In situations where such a court order has been issued, the police will arrest the payor and bring him/her to court to explain why he/she missed the court hearing.

Warrant of Execution: This is a court order authorizing the sheriff or bailiff to seize a payor's personal property – such as a car or boat – and sell it to help pay off any arrears.

Section III: Maintenance Orders and Agreements Enrolled with FMEP

Who Can Enroll

FMEP is an “opt in” program. This means that either a payor or a recipient can choose to enroll, provided that they have a valid Maintenance Order from, or a Maintenance Agreement filed with, any court in Canada, the United States or other country with which BC has a reciprocal agreement.

There is only one exception: the BC Ministry of Employment and Income Assistance is authorized by law to require maintenance recipients to “assign” their maintenance rights to the government as a condition of receiving Income assistance. Under such an assignment, the Family Maintenance Worker can enroll Orders or Agreements.

FMEP enforces assigned cases in exactly the same way as all others; however, information concerning the case and payments received will be provided by the FMEP directly to MEIA.

An assigned recipient will need the approval of his or her Family Maintenance Worker to withdraw from FMEP. FMEP will continue to monitor and enforce an assigned recipient’s order or agreement even after the recipient has stopped receiving income assistance, unless the recipient chooses to withdraw.

How to Enroll

Anyone who wishes to enroll in FMEP must complete an Enrollment Package and send it to FMEP along with a copy of his or her Maintenance Order or Maintenance Agreement.

Enrollment Packages are available by telephone or mail from:

**The Family Maintenance Enforcement Program
Enrollment Office
Box 5100, Victoria, BC V8R 6N3
Phone: 250-220-4040
Toll-free: 1-800-663-7616**

The Enrollment Packages are also available from:

- the FMEP website www.fmep.gov.bc.ca;
- [provincial courthouses](#);
- [Government Agent’s Offices](#); and,
- Ministry of Employment and Income Assistance, [Family Maintenance Program offices](#) – whether the individual is on Income Assistance or not.

Notice of Filing

Once an Enrollment Package arrives, FMEP enrollment staff will open a file, obtain certified copies of the Maintenance Order or Maintenance Agreement, and send out a formal Notice of Filing to both parties.

The Notice of Filing states that the FMEP is now responsible for monitoring all payments and for taking enforcement action when required, and provides a payment schedule showing when ongoing maintenance payments (and any arrears) are due.

The Notice of Filing will include:

- the FMEP case number assigned to the file;
- the payor or recipient's personal identification number; and
- a booklet describing how the FMEP works and the payor or recipient's responsibilities as an FMEP client.

If the recipient indicates that there are arrears, the payor will also receive a copy of the List of Payments Form, completed by the recipient. This is a record of all payments due and received since the order or agreement was made, or from the date the court fixed arrears.

The payor will have the opportunity to dispute any arrears claimed by the recipient on the List of Payment Form, or make payments, before FMEP begins enforcement action. As documentation may be required, such as bank records, to dispute the arrears, it is in the best interests of the payor to contact FMEP immediately after receiving the List of Payments Form and set out his or her concerns. The EO will try to resolve the issue of the arrears but if it is not possible, the payor will need to make an application to the Court.

Enrollment usually takes about four to six weeks, unless there are complicated legal issues around the Maintenance Order or Agreement.

Making Payments

[Section 10](#) of the *FMEA* requires that, where an order or agreement is filed with FMEP, the payor must send all payments to FMEP. The requirement to direct the payment to FMEP overrides the provisions of any court order unless the order was made under the [Divorce Act](#) and requires payment to be made through the Court. Payments are to be payable to the recipient, unless FMEP or the court specifies otherwise.

**Payment Services
Box 5599
Victoria, BC V8R 6T7**

FMEP encourages payors to pay:

- through on-line or telephone banking; or
- by post-dated cheques.

Money orders are not recommended, as they are difficult to replace if lost in the mail.

Set-Offs

FMEP will not agree to set-offs or other payments made by a payor to be applied against maintenance owing to a recipient, unless there is an order specifically providing for that set-off or the recipient and the payor agree in writing that such a set-off should be applied. A recipient in receipt of income assistance should discuss this with his or her Family Maintenance Worker, as these types of 'payments' will affect the amount of income assistance provided to the recipient by MEIA. In most cases, the Family Maintenance Worker for MEIA will not approve of set-offs in lieu of regular support payments.

Address and Phone Number Changes

The recipient is responsible for providing FMEP with any changes to his or her address or telephone number, or to the eligibility of a child to receive maintenance under an order or agreement.

To assist FMEP with enforcement action, the recipient is also responsible for providing FMEP with all available information about the payor's current address, employment, and bank accounts. FMEP may also ask the recipient for additional information (particularly if FMEP needs to locate the payor), such as the kind of work the payor usually does, his or her mother's maiden name, social insurance number and birth date.

If the recipient does not cooperate in providing up-to-date information, FMEP may not be able to enforce the order or agreement, and may withdraw it from FMEP.

Communicating with FMEP

The recipient and the payor can provide information by calling or writing FMEP office handling his or her file (the office is identified in the Notice of Filing). In some cases, FMEP may ask the individual to confirm in writing information given over the telephone.

FMEP's website or InfoLine, the automated telephone system, is the easiest way to find out a range of

FMEP encourages payors to provide address and phone number changes to FMEP. Otherwise, important warnings of possible enforcement will not be received by payors. The legislation provides only that FMEP send out such warnings (driver's licence withholds, for instance) to the payor's last known address. If a payor has moved, the fact that he or she did not receive the warning is not a valid reason to dispute the enforcement action.

*FMEP website: www.fmep.gov.bc.ca
InfoLine Numbers:
Lower Mainland 1-800-663-9666
Greater Victoria 1-800-663-3455
Rest of Province 1-800-663-3933*

information. This includes requesting an Account Statement listing all payments made to date, finding out when the most recent payment was received, and how much the payor may owe in missed payments. The recipient can also use InfoLine to report a direct payment (see below), and to check the status of any enforcement action. InfoLine also offers detailed recorded information on all aspects of FMEP in general, including the various enforcement actions FMEP has the authority to take.

Accepting Direct Payments

FMEP works on a pay-through system: in virtually all cases, payors send their cheques or money orders to FMEP, payable to the recipient. The FMEP then records the payments and forwards them to the recipient, usually the same day. In exceptional cases only – where there are no arrears, for example, and provided the recipient agrees – FMEP may allow a payor to make payments directly to the recipient.

FMEP understands, however, that sometimes payors simply hand over money to recipients directly, without FMEP's prior approval. FMEP does not expect a recipient to refuse that money, but the recipient does need to report it to FMEP as soon as possible.

If a payor makes a payment directly to the recipient, and the recipient does not report that payment, FMEP will think the payor has missed a payment and may start unnecessary enforcement action. This is not only unfair to the payor, it can also waste a great deal of time and effort, and it may mean that FMEP will not be able to act on the recipient's behalf in the future.

The FMEP's basic rule is this: if a recipient accepts two direct payments without reporting them, FMEP will make the case "inactive". That means FMEP will keep a record of all payments owing to the recipient, but will not take any enforcement action on the recipient's behalf. If the recipient is an Income assistance client, not reporting payments could also affect his or her future income assistance payments.

The best way for a recipient to report a direct payment is through the FMEP website or InfoLine, FMEP's automated telephone system. The recipient may also report direct payments by phone or letter. Income assistance clients must also report all direct payments to a Family Maintenance Worker.

Section IV: Obtaining an Enforceable Order

The role of FMEP is to collect and enforce court-ordered Maintenance Orders or Maintenance Agreements. FMEP's ability to effectively enforce for the payment of support depends on clear wording in Orders and Agreements.

If there are clear, legal and workable terms in an Order or Agreement, FMEP will enforce it as it is written. If, however, a key element does not exist or is ambiguous, FMEP will apply existing policies in deciding how to enforce it. This may result in it being enforced in a manner that was not contemplated either by the payor or by the recipient.

To ensure that the Agreement or Order is enforceable by FMEP, it should clearly state the following:

- that one party is to pay the other party;
- the date that payments are to commence;
- the dates that payments are due;
- the amount of each payment;
- the income of the payor upon which the amount of the child support is based upon as per the [Child Support Guidelines](#); and,
- what dates or events would make the children or spouse ineligible for maintenance.

As the terms of a Maintenance Order or Maintenance Agreement are being drafted, lawyers should consider the following:

What Constitutes “Maintenance”?

Maintenance Orders or Maintenance Agreements that require the payment of a specific sum at a specific time for maintenance are clearly Maintenance Orders or Agreements. They may, however, require the payment of such things as sports and orthodontic expenses, or private school fees or a mortgage – without clearly identifying whether those payments are in fact maintenance.

If the intention is that such payments are to be maintenance (or a part of maintenance), this fact must be specified in the Order or Agreement, with a clear statement of how the recipient will establish the amount due. Keep in mind that, if the payor does not make the maintenance payments as so expressed in the Order or Agreement, the resulting arrears will attract interest charges and default fees.

Special and Extraordinary Expenses

Section 7 of the *Child Support Guidelines* allows for special and extraordinary expenses in addition to child support. If you are including any of these expenses in your order or agreement, they must be specifically identified as special and extraordinary expenses under the guidelines, separate from regular maintenance payments. Ensure also that this is a clear statement as to how the recipient will establish the amount(s) due.

Lawyers should be careful in how they describe special and extraordinary expenses. A balance must be struck between being too restrictive and too general. Either may lead to disputes later. For example, allowing for \$400.00 for “tap dance” versus “dance” precludes a change to “jazz dance”. On the other hand, simply stating “after school activities” without a payment amount and detail as to what activities were contemplated is unenforceable.

Avoid Orders with Proportional Payments

The *Child Support Guidelines* allow a Court, under both the *Family Relations Act* and the *Divorce Act*, to make an order for extraordinary expenses that is paid in proportion to the parties' incomes. One example would be that the payor is to pay 67% of the children's hockey expenses. This determination is based on the payor having an annual income that is approximately 30% higher than that of the recipient's. If the division of the expenses is to remain constant, FMEP can enforce this clause. The problem, however, is that most of these types of arrangements are predicated upon an annual review that re-divides the expenses based on the payor's and the recipient's yearly incomes. It is this type of clause that cannot be enforced by FMEP because the FMEP lacks the mandate to compel the payor to provide the annual income information necessary to determine the amount due. FMEP also lacks the resources to enforce these types of clauses, as they require manual calculation and entry each month.

If there is any likelihood that the Order or Agreement will have to be enforced by FMEP, lawyers should not put proportional payment clauses into them or at least make them as straightforward as possible.

Amounts Payable and Dates Payments are Due

Within any Maintenance Order or Maintenance Agreement, be sure to specify:

- the date that the maintenance commences;
- the date or dates in each month on which future payments are payable; and
- the amount of each maintenance payment.

Ongoing or regular maintenance should be set out in actual dollar

Orders or Agreements which direct that payments are due according to the payor's paydays are difficult to administer and are open to dispute. If this is what the parties want, the pay periods must be set out and direction given as to what should occur if a 3rd pay period occurs in a month.

figures with specific references to the calculation of the payor's annual income under the *Child Support Guidelines*. This is particularly important in cases where a payor derives his or her income from self-employment. If the Order or Agreement contains this level of detail, the amount of support set out in as global child support can be adjusted according to the *Child Support Guidelines*. This will allow FMEP to monitor for a lesser amount of total child support in situations where there is more than one child and one of those children has become independent of the recipient.

It is also important to consider the impact of an interim order when a final Maintenance Order is being drafted. If there is a change in the payment due date, for example from the first of each month to the 15th, be sure to specify in what month the change is to commence so that the maintenance is only payable once in the change-over month (if that is the intention of the parties). The final order should also address any arrears outstanding under the interim order. Arrears that have accumulated under an Interim Order can either be varied or cancelled; however, if the final Order is silent, FMEP will enforce arrears remaining from the earlier Order.

Further, if the intention is to have maintenance due retroactively, this should be clearly stated as well as the retroactive date. Lawyers should keep in mind that a retroactive commencement date triggers interest – unless that is addressed in the Maintenance Order or Agreement.

Minimize the Use of Set-Offs

FMEP can only monitor set-offs, that is payments made by a payor designed to be applied against maintenance owing to a recipient, when the order specifically provides for that set-off or the recipient and the payor agree in writing that such a set-off should be applied. Legal counsel should be aware that if a recipient goes onto income assistance, these types of 'payments' will reduce the amount of income assistance provided to the recipient by MEIA.

Avoid Clauses that are Conditional or Variable

Counsel should avoid drafting clauses that make payments conditional on certain events. An example of a conditional clause would be one that set a different rate of maintenance based upon whether or not the payor is employed. Another one might be a clause that varies the amount of maintenance when the children are with the payor for an extended time or during the summer months. If counsel has to include a variable amount, the clause should be sufficiently

If there is a variable amount of maintenance and the amount to be paid depends on information that only the payor can provide, or the Order or Agreement is not clear about exactly when payments are to vary and by how much, FMEP may consider that the regular or higher amount is owing.

detailed and put a specific onus on either the recipient or the payor to provide clear evidence to the other party.

Orders that are conditional or variable may lead to disputes between the recipient and the payor and can cause delays in enforcement if it becomes necessary to have the parties return to court to determine an issue. Counsel, therefore, who draft Maintenance Orders or Maintenance Agreements that contain conditional or variable clauses may find that they are setting their clients up for further litigation when it comes time to enforce the order.

Children Leaving the Recipient's Home

If the intention of the parties is that the payor should only be obliged to provide financial support for a child when the child is “in the care and control” of the recipient, counsel may wish to define that according to residence, education or employment. In cases where it is likely that the child’s residency may change in the foreseeable future (for example, where a child is in post-secondary education), counsel should state clearly in the order whether it is intended that the maintenance be reduced, and by how much, when the child leaves home.

Counsel should be careful to not be too restrictive in the clauses that they draft. If, for example, the parents wish for support to continue for a child attending post-secondary school but insist that support is only payable if the child resides with the recipient, this may be self-defeating if the recipient is living in a location where post-secondary education does not exist.

Inclusion of a Detailed Cost of Living Adjustment Clause

FMEP can most easily enforce a Cost of Living Adjustment (COLA) clause contained in a Maintenance Order or Maintenance Agreement if it:

- specifies a periodic calculation date (annual is the most common) based on the Consumer Price Index for a specific, published location (for example, the Consumer Price Index for the City of Vancouver); and,
- is automatic, rather than requiring one spouse to notify the other spouse that he or she is relying on the COLA provisions.

Maintenance for Children Over the Age of 19

Under both the [Family Relations Act](#) and the [Divorce Act](#), the right of a child to receive financial support generally continues until the child reaches the age of majority (19 years of age). If, however, the child is still dependent at age 19 – owing to illness or disability, for example, or because the child is still in school – then that right to financial support may continue beyond age 19.

If the parties intend that maintenance should be payable for an “adult child” in certain circumstances only – only if the child is attending school, for example – the Order or Agreement should state that explicitly. This will help avoid any

disputes about whether or not a child continues to be eligible for child support. In the absence of sufficient and specific detail, FMEP will apply its policies to determine if it will continue to enforce for maintenance after the child has turned 19. If either the payor or recipient disagrees with FMEP's decision(s), that party will have to take the matter back before the court to determine whether the child remains eligible for support.

Clauses that Preclude FMEP's Enforcement

There are situations when a payor wishes a new Maintenance Order or Maintenance Agreement to contain a clause to prevent the recipient from enrolling with FMEP. Legal Counsel should be aware that [section 45](#) of the *FMEA* makes such clauses unenforceable by the Courts including those that:

- prevent the recipient from filing the Order or Agreement with FMEP;
- have the recipient agree to withdraw from FMEP; or,
- would have the recipient file a notice with the Court or the Director of Maintenance Enforcement setting out that the recipient does not wish for the maintenance payments to be enforced.

Ensure that the Order is Entered

Although an Order is effective from the date it is pronounced, it cannot be enforced by the FMEP until it has been drafted up and entered by the Court that issued it. Counsel should ensure that this is undertaken without delay – particularly when the support has been changed from an earlier order and enforcement is ongoing.

Sample Clauses

a) Children Becoming Ineligible

Upon the Court being advised that there are three children of the marriage, namely:

Child No 1	Name, birth date
Child No 2	Name, birth date
Child No 3	Name, birth date

Upon this Court finding that the Plaintiff's income for the purposes of the Child Support Guidelines is ***** per annum.

The Court orders that:

- The Plaintiff (name), shall pay to the Defendant, (name), the sum of "X" per month, commencing on the 1st day of *****, 2004 and continuing on the first day of each and every month thereafter until such time as the children are no longer children of the marriage as defined by the *Divorce Act*, 1985.

- Upon the parties agreeing that there are only two children remaining eligible for support as being children of the marriage, the Plaintiff, (name), shall pay to the Defendant, (name), the sum of “Y” per month, commencing the first of the month after the agreement between the parties and continuing on the first day of each and every month thereafter until such time as the children are no longer children of the marriage as defined by the *Divorce Act*, 1985.
- Upon the parties agreeing that there is only one child eligible for support as being a child of the marriage, the Plaintiff, (name), shall pay to the Defendant, (name), the sum of “Z” per month commencing on the first day of the month after the agreement between the parties has been reached and continuing on the first day of each and every month thereafter until the child is no longer a child of the marriage as defined by the *Divorce Act*, 1985.
- Notwithstanding paragraphs 2 and 3 above either party is at liberty to apply to the Court to determine the amounts payable for the children of the marriage as each child ceases to be a child of the marriage as defined by the *Divorce Act*, 1985.

b) Special and Extraordinary Expenses

This Court Orders that pursuant to Section 7(1) of the Child Support Guidelines, the Plaintiff, (name), shall pay to the Defendant, (name), the sum of “X” per month, the particulars of which include:

- “Y” dollars per month for the extracurricular activities of the child, (name).
- “Z” dollars per month for the childcare expenses for the child, (name).

Section V: Administrative Enforcement

Enforcement Officers (“EOs”) at FMEP employ a range of administrative tools to enforce the compliance of a payor with a Maintenance Order or Maintenance Agreement. EOs choose the enforcement that is appropriate based on the extent of the arrears, the amount of information available to the EO and what enforcement will be most effective.

The FMEP has the sole discretion as to when, how and if it will enforce an order. Recipients cannot take their own enforcement action while they are enrolled in the FMEP unless authorized in writing by FMEP. FMEP will usually consider giving this authorization in situations where there is other court action pending which makes it more practical to have the recipient or the recipient’s counsel deal with the issue of enforcement or maintenance arrears.

Interest

FMEP has the legislated authority under [section 11.1](#) of the *FMEA* to charge payors daily interest on the current balance of unpaid maintenance. Interest is not charged when a payor is in receipt of income assistance; however, proof of this must be provided to FMEP so the accounts can be adjusted.

[Section 6.1\(1\)](#) of the *FMEA Regulations* establishes the rate of interest that is charged on arrears. It is simple rather than compound interest and is added at the end of each month and becomes part of the arrears owed to recipients. FMEP can only enforce interest that has accrued since the Maintenance Order or Maintenance Agreement was enrolled with FMEP. Any other interest may be enforced directly by the recipient, either with written authorization from FMEP, or after withdrawing from the FMEP.

If a payor initiates a court application under section 96 of the *Family Relations Act (FRA)* to vary the monthly maintenance amount, or, to reduce or cancel arrears, the payor can also ask that the court to consider reducing interest that has accrued on the arrears. The court may cancel the interest under section [96\(3.2\)](#) of the *FRA* but only if it were satisfied that it would be grossly unfair not to make the order.

Default Fees

Under [section 14.4](#) of the *FMEA*, if a payor misses or is late on two payments within the same calendar year, FMEP must automatically charge the payor a legislated Default Fee.

The Default Fee is equal to one month’s maintenance, up to a maximum of \$400.00. The fee will only be recovered after all maintenance owing to the recipient has been paid, and will go to the BC government, not to the recipient, to

help the government cover the costs of operating this program. The fee will not be charged where a payor is receiving income assistance.

The court has the ability to cancel or reduce the Default Fee under section [14.4\(6\)](#) of the *FMEA* when it has reduced or cancelled the arrears in an application under section 96 of the *Family Relations Act*. A recipient does not have the ability to forgive or reduce the Default Fee.

Voluntary Payment Arrangement

Whether and what enforcement action is taken and/or subsequently removed depends on whether the payor is able to negotiate a satisfactory voluntary payment arrangement (“VPA”) with the EO. In order to do so, the payor will be required to complete an Income and Expense Form which details the payor’s current income and sets out monthly expenses. Policy sets out that a payor’s proposal, in order to effect the removal of administrative enforcement, must set out how he or she will pay the regular monthly maintenance due and pay off the arrears in a reasonable amount of time. The ‘reasonable amount of time’ is something that is negotiated between EO and payor and is linked to the notice of attachment exemption formula, or the amount that legislation allows to be garnished off of an individual’s pay. If a payor follows through with the VPA, either by paying off the arrears all at once or through a series of post-dated cheques, the EO will in most instances remove the administrative enforcement.

Legal counsel retained by the payor can negotiate a Voluntary Payment Arrangement with the EO in the same way that the payor can, as long as the payor completes the Income and Expense Form and provides the required proof of income.

Registration Against Land

FMEP will register a lien against land owned by a payor:

- in cases where there are arrears of maintenance; and,
- in cases without arrears where the recipient requests it.

The lien does not prevent the payor from selling the land, but the payor must talk to FMEP first. Specifically, the payor, either directly or through legal counsel, should contact FMEP well in advance of the closing date and make the necessary arrangements with FMEP legal counsel.

If FMEP agrees to remove or postpone the registration so the payor can sell the land, FMEP will usually require the payor to pay all arrears out of what he or she receives from the sale, and may also require that a portion of the money from the sale be held as security for future payments. In situations where the recipient applied for the registration prior to enrolling with FMEP, the recipient also must agree to remove the registration from the title.

If FMEP does not agree to remove or postpone the registration, the payor choose to apply to either the British Columbia Supreme Court or the Provincial Court to have the registration removed or postponed.

As set out in [section 17](#) of the *FMEA Regulations*, FMEP must charge all payors who are in arrears a fee of \$150.00 when a discharge is provided. The fee is normally taken out of the proceeds of the land sale. This fee is not charged when payors are not in arrears.

Notice of Federal Interception (NOFI)

Any payor who is in arrears in his or her maintenance payments, and has not contacted FMEP to work out a Voluntary Payment Arrangement, will have his or her file reviewed to determine if FMEP should issue a Notice of Federal Interception (“NOFI”). If an EO decides that this action is appropriate, the federal government is sent a “Notice of Attachment to Her Majesty the Queen in Right of Canada”. A copy is also sent to the payor.

Federal government staff cannot decide to remove the NOFI – only FMEP can. If a payor’s federal funds have been intercepted through a NOFI, contact FMEP directly to discuss how the NOFI may be changed or removed.

The NOFI will intercept federal funds from a variety of sources including: income tax returns, GST credits, employment insurance benefits, Canada Pension Plan and Old Age Security payments. The amount of the funds that is taken by way of a NOFI depends on the source of the money. If it is an income tax or GST refund, 100% of the funds will be intercepted. If it is Canada Pension Plan or Employment Insurance payments, 25% will be intercepted.

The full amount of the intercepted funds will be applied to the payor’s arrears and will be forwarded to the recipient; however, the federal government does charge the payor a fee to help cover the costs of the interception. The fee (effective March 4, 1999) is \$38.00 per annum. The federal government will not deduct this fee in situations where 100% of the federal funds are sent to the recipient (income tax return; GST credit). This can, therefore, result in a number of years of accumulated fees being taken off, for instance, the first payment due to the payor from the Canada Pension Plan.

Subject to a Voluntary Payment Arrangement and the payor paying off his or her arrears, a NOFI will remain in place for five years or until the payor’s Maintenance Order or Maintenance Agreement is no longer enrolled with FMEP. If the payor continues to owe arrears after five years, the NOFI will be automatically renewed.

As set out in [section 16\(2\)](#) of the *FMEA*, a payor or the payor's legal counsel can apply to FMEP to reconsider its decision to issue the NOFI. If the NOFI contains or is based upon a material error, FMEP will withdraw the NOFI.

If the internal review does not provide the relief that the payor seeks, an application can be made to the Provincial Court, under [section 16\(4\)](#) of the *FMEA*, to have the NOFI set aside. If the court determines that the NOFI contains or is based upon a material error, it will order that the NOFI has no effect and that FMEP must withdraw it. Alternatively, an application can be made to the Provincial Court to increase the amount exempted from interception. Section [13.1\(3\)](#) of the *FMEA Regulations* sets out that the court can increase the amount that is exempted if the payor is able to demonstrate that he or she is unable to meet her or her basic needs for food, shelter and clothing.

Personal Property Registry / Maintenance Lien

[Section 26.1](#) of the *FMEA* allows the FMEP to register a lien in the Personal Property Registry against personal property owned by the payor. Section 26 of the *FMEA* allows FMEP to register a lien against the title of land owned by the payor. In both instances, FMEP's lien takes priority over other claims, except those security interests perfected before the maintenance lien was filed. The maintenance lien will remain in place until the arrears under the Order or Agreement are paid.

If the payor wants the lien removed in order to sell the property, the payor must first come to a voluntary payment arrangement with FMEP to pay off the arrears in addition to making ongoing maintenance payments.

If a third party has purchased the property and requires the lien to be removed, that party must be in touch with FMEP and discuss how this can be done. The starting basis is that the purchasing party owes FMEP the amount of the payor's arrears or what was paid for the property to the payor (whichever is the lower amount). FMEP may, however, be willing to come to a negotiated resolution with the third party – particularly in instances where the third party is not perceived as assisting the payor to avoid his or her maintenance obligations.

Where the lien is filed against a manufactured home, the Registrar of Manufactured Homes may not issue a permit to transport the home, and the registry may not register a transfer or agreement for sale, without the consent of the Director of Maintenance Enforcement.

Credit Bureau Report

Where a payor's arrears exceed \$2,000, FMEP may, under [section 43](#) of the *FMEA*, make a report to a credit reporting agency (credit bureau) concerning the maintenance arrears.

The credit report is automatic, and applies to any payor who has been enrolled with the FMEP for 90 days or more – even a payor who has been making regular arrears payments – who is more than \$2,000.00 in arrears. The initial report will include the payor's name, date of birth, address, social insurance number and the amount of arrears. FMEP sends monthly updates showing the current amount of arrears and, as the arrears are paid, the updates will show the balance going down.

The court has no authority to remove a credit report, and the Credit Reporting Act limits FMEP's ability to alter the report once it has been made. As required by the [Credit Reporting Act](#), the report will remain on the payor's credit record for six years.

Notice of Attachment

If a payor is in arrears, [section 15](#) of the *FMEA* allows the FMEP to issue a Notice of Attachment against any funds belonging to or owing to a payor. These can include:

- wages;
- Insurance Corporation of BC payments;
- Workers' Compensation Board payments;
- a benefit from an estate;
- settlement funds; and,
- bank accounts.

As with the Notice of Federal Interception (NOFI), the amount that FMEP can attach is determined by the source of the funds. If the attachment is against a bank where the payor has accounts, an amount can be taken equal to the full amount of the arrears and the regular maintenance payment(s).

Alternatively, if the attachment is against the payor's wages or income replacement payments (a pension or workers' compensation benefits, for example), then the amount

FMEP can attach is determined by a formula set by [section 13](#) of the *FMEA Regulations*. This formula ensures the payor is left with a reasonable portion of each payment.

*In 1997, the federal government introduced changes to the [Income Tax Act](#) to make child support non-taxable for recipients, and non-deductible for payors. At the same time, the BC government changed the *FMEA Regulations* to take into account the new, after-tax impact of an attachment on a payor. All FMEP attachments reflect the tax status of each individual maintenance order or agreement, based on the date of that order or agreement.*

A payor who finds that the exemption allowed does not leave sufficient funds to meet his or her basic needs for food, shelter and clothing may apply to FMEP to have the amount varied. If FMEP agrees to deduct a lower amount, the attachee

and the payor will be advised in writing. If FMEP does not agree to change the amount exempted, the payor may then apply to the Provincial Court to vary the exemption.

An attachment will stay in place for five years, or until FMEP is able to work out a voluntary payment arrangement with the payor for paying the arrears over time, in addition to making regular maintenance payments. If the payor still owes arrears after five years, FMEP will automatically renew the attachment.

Driver's Licence Withholding

Under [section 29.1](#) of the *FMEA*, FMEP may ask ICBC to withhold the payor's driver's licence when the arrears are \$3000.00 or more.

This will only take place after FMEP has provided to the payor written notice of FMEP's intention 30 days prior to contacting ICBC. The payor then has the opportunity either to pay the arrears or to enter into a Voluntary Payment Arrangement with the EO to pay the arrears over time in addition to making regular maintenance payments.

FMEP encourages payors to provide address and phone number changes to FMEP. Otherwise, important warnings of possible enforcement will not be received by payors. The legislation provides only that FMEP send out such warnings (driver's licence with holds, for instance). If a payor has moved, the fact that he or she did not receive the warning is not a valid reason to dispute the enforcement action.

Once the hold is in place, ICBC has no authority to release it, and the payor will need to contact his or her Enforcement Officer to discuss arrangements for having the hold removed.

Under [section 29.2\(1\)](#) of the *FMEA*, the payor can ask FMEP to review its decision if the payor believes:

- the notice was based on a material error;
- that the hold would significantly reduce his or her ability to pay maintenance and the payor is prepared to enter into an arrangement that is satisfactory to FMEP to report his or her financial circumstances; or,
- the payor is prepared to enter into a voluntary payment arrangement that is satisfactory to FMEP.

If FMEP refuses to withdraw the restriction, the payor may apply to Provincial Court to have FMEP's decision reviewed.

Passport and Federal Licence Denial

Under the *Federal Family Orders and Agreements Enforcement Assistance Act (Part III)*, where a payor is \$3,000 or more in arrears, FMEP may ask the

Once the hold is in place, the federal government cannot release it and the payor will need to contact his or her EO to discuss arrangements for having the hold removed.

federal government to deny the payor a federal marine or aviation licence and/or revoke the payor's passport.

FMEP will notify the payor 30 days in advance of advising the federal government of FMEP's intention to request the licence or passport denial. The payor will then have the opportunity to either pay the arrears or to make arrangements for paying them over time in addition to making regular maintenance payments.

The payor can ask FMEP to review its decision if the payor:

- believes he or she was less than \$3,000.00 in arrears at the time FMEP sent the notice;
- can prove that the denial would significantly reduce his or her ability to pay maintenance and is prepared to enter into a voluntary payment arrangement that is satisfactory to FMEP;
- arranges full payment of arrears; or,
- can demonstrate that his or her current situation, such as being in receipt of income assistance, precludes any possibility of paying the arrears at this time.

If FMEP refuses to withdraw the restriction, the payor may apply to the Supreme Court of British Columbia for a judicial review of FMEP's decision under the [Judicial Review Procedure Act](#). It has also been suggested that a payor may be able to apply to the Supreme Court for a mandatory injunction to force FMEP to request that the federal government withdraw the restriction.

Enforcement Against Corporations

If a payor's arrears exceed \$3,000, the *FMEA* allows the FMEP to take enforcement against a corporation solely owned by the payor, or owned by the payor together with members of his or her immediate family.

Under [section 14.1](#) of the *FMEA*, if a corporation is solely owned by the payor and FMEP has previously issued a Notice of Attachment against the corporation, FMEP may proceed directly to make the corporation jointly and separately liable with the payor for the maintenance owing under the order or agreement. This means that the FMEP can enforce directly against the corporation's assets. This enforcement includes all forms of administrative enforcement available to FMEP under the *FMEA* as can be utilized against a payor.

In situations where a payor has a controlling interest in a corporation, or the payor and his or her immediate family together control a corporation, FMEP can apply to the Court under [section 14.2](#) of the *FMEA* for a declaration that the corporation be made jointly and separately liable for the maintenance under a Maintenance Order or Maintenance Agreement. Again, this would result in FMEP being able to enforce directly against the corporation's assets.

FMEP will, however, only use these sections where there is evidence that indicates that the payor is improperly using a corporate identity as a means to avoid paying family maintenance. Further, under [section 14.3](#) of the *FMEA*, FMEP is constrained in its actions under sections 14.1 and 14.2 to not act in a manner that jeopardizes the financial solvency of the corporation. Where a corporation believes that enforcement against it would create a hardship, the corporation should contact the payor's Enforcement Officer and provide financial documentation supporting the claim. If FMEP accepts this information as sufficiently detailed and valid, the enforcement will be adjusted accordingly.

Section VI: The Courts and Enforcement of Maintenance

Enforcement Officers (“EOs”) at FMEP can decide to utilize the courts to enforce the compliance of a payor with a Maintenance Order or Maintenance Agreement. The *FMEA* provides the EOs with the means to initiate a forced property sale (land or other property), obtain a court order against an Attachee who has not complied with a Notice of Attachment, and apply to the court for the payor to be summoned before the court for a Default or Committal Hearing.

Counsel should be aware that EOs can and will continue to utilize administrative tools available in the *FMEA* in conjunction with applications to the court. If counsel intend on requesting that the court issue a stay of enforcement, either as a separate application or as part of a larger application (such as an Application to Change), FMEP must be served with this application as it directly involves the powers of the Director under the *FMEA* to enforce Maintenance Orders and Maintenance Agreements.

FMEP’s position is that a stay of enforcement is not available to Provincial Courts as there is no legislation that provides the court with this authority. The Supreme Court is, therefore, the only court that can grant this form of relief.

Forced Sale of Land or Other Property

FMEP is informed when a foreclosure proceeding has been commenced for the sale of land that it has registered a lien against. FMEP legal counsel will review the foreclosure documents and determine if there will be sufficient equity left in the property after all the prior encumbrances, taxes and Court costs have been covered. If there will be sufficient equity, FMEP may apply for an Order for Conduct of Sale of the payor’s property. In such a situation, FMEP legal counsel is interested in having the payor’s arrears paid off (or an amount towards the arrears) and, if possible, obtaining additional monies as security for future payments.

FMEP can also apply under [section 92](#) of the *Court Order Enforcement Act* (“COEA”) to the British Columbia Supreme Court for an Order for Sale of the payor’s property. FMEP will consider commencing this process, much as with applying for Conduct of Sale, in situations where there is sufficient equity to justify such an action. FMEP legal counsel will try to obtain monies to pay off a payor’s arrears and obtain monies as security for future payments.

The procedure to obtain an Order for Sale is set out in [section 94](#) of the COEA. FMEP legal counsel first applies to the Supreme Court of British Columbia for an Order to Sell the Property. The matter is then referred to the Registrar to

determine the value and equity of the property and then the Registrar's report is taken back to the Court to be confirmed. Once an Order for Sale has been confirmed under [section 96](#) of the COEA, FMEP will refer the Order to the Court Bailiff and the Bailiff will undertake the actual sale and provide the proceeds to FMEP, minus costs.

If the payor has personal property of sufficient value, FMEP legal counsel can make an *ex parte* application to the Provincial Court for a Warrant of Execution against that property. The authority for this is set out in [section 27](#) of the FMEA. If FMEP obtains the Warrant of Execution, it will be referred to the Court Bailiff who has the authority to seize the property and sell it. Alternatively, FMEP can apply to the British Columbia Supreme Court for a Writ of Seizure and Sale under [Rule 42](#) of the British Columbia Supreme Court Rules. The personal property exemptions under the COEA apply when a payor's property is seized.

Action Against an Attachee

If an Attachee, who has been served with a Notice of Attachment, does not comply with the requirements of section 16 of the FMEA, FMEP can make an application to the Provincial Court under [section 16\(3\)](#) of the FMEA and obtain an Order against the Attachee.

The non-compliance of an Attachee includes not responding in writing to the service of the Notice of Attachment or failing to pay the amount due under the Notice of Attachment to FMEP.

Legal counsel tend to become involved when the Attachee has been served with a Notice of Motion for a section 16(3) hearing. Counsel should consider contacting FMEP legal counsel immediately to discuss the situation. This is particularly important in situations where counsel believes that the Notice of Attachment contains a material error or that the Attachee has simply made an error in what it has or has not remitted to FMEP and wishes to rectify the situation. Counsel should be aware that, if FMEP obtains an order against an Attachee, [section 16\(7\)](#) of the FMEA provides that FMEP can enforce such an order with all the same enforcement tools that a Maintenance Order or Maintenance Agreement can be enforced. For instance, FMEP can issue a lien against an Attachee's property or issue a Notice of Attachment against its bank accounts.

Default Hearing

Under [section 21](#) of the FMEA, FMEP is authorized to apply to the court to issue a summons requiring the payor to attend a Default Hearing. In most instances, a Default Hearing will only occur in

FMEP will continue to enforce a maintenance order, even where an Application to Change is pending before the court. If the payor needs immediate relief from enforcement, legal counsel or the payor should contact the payor's Enforcement Officer to discuss payment arrangements while the matter is before the court.

Provincial Court. If, however, a payor is applying to vary the Maintenance Order or Maintenance Agreement and/or reduce or cancel the arrears in the British Columbia Supreme Court, FMEP may decide to apply to that level of court for both matters to be heard at the same time.

At a Default Hearing, the court will consider the payor's financial circumstances and his or her reasons for non-compliance. Under [section 12](#) of the *FMEA*, FMEP can demand that a payor provide a [Statement of Finances](#) in the prescribed form accompanied by a number of prescribed documents. These documents are set out in [section 7](#) of the *FMEA Regulations* and include:

- copies of the three most recent years of income tax returns and Revenue Canada assessments for the payor;
- documentation which fully shows the payor's income, from all sources, for the previous six months;
- copies of the most recent property assessments for all properties which the payor owns or has an interest in; and,
- copies of the last twelve (12) months of statements from all financial institutions and credit card companies that the payor deals with.

*Counsel should be aware that the Statement of Finances required in a Default Hearing is **NOT** the same document as the [Financial Statement](#) used in an original application for maintenance or in an application to vary. Filling out the incorrect form will result in additional time and expense for a client.*

The [Statement of Finances](#) requires the payor to provide a detailed account to the court of his or her monthly expenses, assets, assets disposed of, all debts and the financial situation of a new spouse or individual that he or she shares expenses with. This assists the court to properly ascertain what the payor's current legitimate financial obligations are and what the best re-payment plan is for the payor to pay off his or her arrears.

In order to enforce these payments, the court will usually impose default time for subsequent missed payments. What this means is that, if a payor does not comply with the payment schedule as ordered by the court at the Default Hearing, default time will be calculated as a certain number of days of jail time per default. For instance, if the Court has ordered that a payor will have five default days per default, and he or she misses three payments, the payor will be at risk of going to jail for fifteen days (15). It should be noted, however, that under the *FMEA*, if a final order has been obtained by FMEP legal counsel in a Default Hearing, a provision settling out default time can only be acted upon by way of a further hearing, that of a Committal Hearing, before the court.

Where the hearing is held in Supreme Court, FMEP will consider seeking court costs. The Provincial Court also has the legislated ability to award costs in a Default Hearing under [section 15](#) of *FMEA Regulations*. FMEP will ask for costs if the Court finds that the payor could have avoided the default.

Committal Hearing

Once a final order has been obtained in a Default Hearing, the EO will monitor the payor's compliance with that order. Legal counsel acting for the payor should note that section [21\(1\)\(10\)](#) of the *FMEA* sets out that any payments received from the payor are first credited to a payor's regular maintenance and then to the arrears payments ordered in a Default Hearing. This means that a payor should not believe that he or she can avoid being in default of the Court Order by simply paying the amount due in arrears payments (the exception is of course when regular maintenance is no longer due).

If the EO determines that the payor has not made the payments required by the default Order, FMEP may ask the Court to issue a summons requiring the payor to attend a Committal Hearing.

The Committal Hearing procedures are set out in [section 23](#) of the *FMEA*. At this hearing, the Court will consider the payor's circumstances and will send the payor to jail unless:

- the payor pays the full amount owing under the Default Order (the arrears payments and regular payments to the date of the Committal Hearing);
- the payor's circumstances have changed since the Default Order was made and the change has resulted in the payor's inability to pay what was ordered; or,
- it would be a grave injustice to imprison the payor.

In preparing for a Committal Hearing, legal counsel should consider the fact that onus is on the payor to demonstrate to the court why he or she could not comply with the Default Order. Therefore, while there are no disclosure provisions set out in the *FMEA* as there is with a Default Hearing, it is advisable for a payor to compile much of the same type of information to demonstrate how his or her circumstances have changed, or, that it would be a grave injustice to imprison him or her for failing to comply with the Default Order. The evidence from the Default Hearing will normally have been filed with the court and, thus, will be available to the court at a Committal Hearing.

Section VII: Changing a Maintenance Order / Maintenance Agreement

Changing a Maintenance Order

FMEP's legislated role is to enforce Court Orders. It cannot change a Maintenance Order to a different amount or agree to a different payment schedule. Only the court that issued the Order has the authority to change the amount of ongoing maintenance, set up a new payment schedule, or, reduce or cancel a payor's arrears.

If the payor's circumstances have either improved or worsened since the Maintenance Order was made, it is up to the party wishing the Order to be changed to apply to the Court under [section 96](#) of the *Family Relations Act*. The same applies when either party is questioning the eligibility of one or more of the children for continued support. FMEP only makes the decision whether to continue monitoring for the payment of maintenance based upon information provided to it. FMEP does not decide whether or not a child remains eligible for support.

*FMEP will continue to enforce a Maintenance Order, even where an **Application to Change** (Provincial Court) or Application to Vary (BC Supreme Court) has been initiated by the payor. If the payor needs immediate relief from enforcement, legal counsel or the payor should contact the payor's Enforcement Officer to discuss payment arrangements while the matter is before the Court.*

Changing a Maintenance Agreement

As with a Maintenance Order, FMEP cannot increase or reduce the amount of the regular maintenance payment required under a Maintenance Agreement or agree to change the dates that payments are due.

If the payor's financial circumstances have changed since the Maintenance Agreement was arrived at, it is the responsibility of the recipient and the payor to come to a new Agreement that reflects the changed circumstances. As with the original Agreement, FMEP cannot enforce the changes until it has been enrolled with the Court under sections [121](#) or [122](#) of the *FRA*.

If the parties cannot come to a new agreement, it is up to the party seeking the change to apply to the Court to see if the Maintenance Agreement can be changed.

Serving an Application to Change

Whichever party initiates an Application to Change his or her Maintenance Order or Maintenance Agreement or to Vary/Cancel arrears, [section 7](#) of the *FMEA*

requires that that party must serve the Director of Maintenance Enforcement. FMEP will accept service of the application, either by registered mail or fax to the office handling the file. The *FMEA* requires that the Director be served so that FMEP will be aware that there may be a change in the Order or Agreement and have the opportunity, if necessary, to defend the application. Service of an Application to Change on the Director does not, however, constitute service on the other party, be it payor or recipient.

FMEP's legal counsel do not represent recipients. This means that FMEP legal counsel are not authorized to accept service on behalf of recipients and such service, without a substitute service order, is not valid service upon recipients. It should be remembered that FMEP does not necessarily have an address or telephone number for the recipient, who may be a resident of a reciprocating jurisdiction that has forwarded the order to British Columbia for enforcement. Even when FMEP does have an address for the recipient, [section 43](#) of the *FMEA* prevents FMEP from disclosing this information.

If your payor client does not know where the recipient is living, the following routes for effecting service are possible:

- 1. Contact FMEP and determine if the recipient will accept service through FMEP or allow FMEP to provide his or her address to counsel;*
- 2. If the recipient will not accept service through FMEP, apply to the Court for a sub-service order; or,*
- 3. If other party is living in an ISO jurisdiction, work through the ISO office in BC and the other jurisdiction.*

Defending an Application to Change

Under [section 35\(2\)](#) of the *FMEA*, FMEP may defend an Application to Change a Maintenance Order brought by a payor if the order is in default at the time that the Application to Change is brought.

FMEP will, however, rarely exercise the right to become involved and usually only chooses to do so when the variation application also involves a challenge to the enforcement of the order.

FMEP defends very few applications each year but will provide information to assist recipients to obtain legal assistance and advice provided by the [Family Justice Centres](#) and other alternative self-help and community resources. An extremely helpful resource is the [website](#) provided by the Legal Services Society. Recipients who are in receipt of income assistance will be referred back to MEIA for assistance.

Section VIII: Interjurisdictional Support Orders (ISO) ¹

Background

The [Interjurisdictional Support Orders Act](#) (“ISO”) has replaced Part 8 of the *Family Relations Act (FRA)*. It streamlines the process for obtaining, varying, registering and enforcing support orders if one party lives in British Columbia and the other party lives in a reciprocating jurisdiction. The *ISO Act* came into effect on January 31, 2003.

The Purpose of ISO

ISO is a uniform statute that all Canadian jurisdictions have agreed to pass. It is intended to:

- allow parties residing in different jurisdictions to obtain and vary maintenance orders under provincial legislation more quickly and easily;
- facilitate speedier enforcement of Canadian maintenance orders; and,
- benefit families by increasing the likelihood of entitlement to maintenance.

This section uses the terminology used in ISO. “Claimant” means a person who applies under ISO to obtain support or to change an existing order. A “respondent” is the person who responds to the application made by the claimant.

ISO is also intended to increase the likelihood of entitlement to maintenance while maintaining a balance between the needs of both parties. One of the difficulties under the former procedure was the delay posed for applicants where respondents, although they have been served, did not appear at the scheduled hearing or did not produce the required information or documents. *ISO* provides that in these cases, the court must make a support order based on the information supplied by the claimant and any inferences the court considers appropriate. The exception to this is where the court has **no** information about the respondent's financial or employment circumstances.

Application of ISO

ISO eliminates the two-step process (used under the Reciprocal Enforcement Sections in *FRA*), which required the obtaining of a provisional order from one jurisdiction and a confirmation hearing in the other. In most instances, one court hearing held in the respondent's jurisdiction will now decide matters.

The *ISO Act* applies in situations where:

¹ This section draws on materials written and provided by Melanie Herbin, Counsel with the Interjurisdictional Support Orders Unit (Ontario), and on “A Lawyer's Guide to the Maintenance Enforcement Program” produced by the Alberta Maintenance Enforcement Program.

- one party (either the claimant or the respondent) resides in British Columbia, and the other party resides in another jurisdiction;
- one of the parties makes either an initial application for maintenance, or an application to vary an existing maintenance order; and,
- the application is made under the *Family Relations Act*.

Unless the respondent lives in a jurisdiction that is not a reciprocating jurisdiction or one that continues to require a provisional order, there will be no court hearing in the claimant's jurisdiction. Instead, a claimant who resides in British Columbia:

*The designated authority in BC is:
 RECIPROCAL OFFICE
 VANCOUVER MAIN OFFICE BOXES
 P.O. BOX 2074
 VANCOUVER BC V6B 3S3*

- if applying for an original order, will complete a support application as outlined in section 5 of [ISO](#) and submit it to the designated authority; or,
- if varying an existing Maintenance Order/Agreement, will complete an application to vary a support order under section 25 of [ISO](#) and submit it to the designated authority.

The designated authority will then forward the sworn application to the respondent's jurisdiction for a determination. **The claimant is neither required to notify nor serve the respondent of his or her application.**

In situations where the respondent resides in British Columbia and the claimant does not (but does live in an *ISO* jurisdiction):

- the designated authority will receive the claimant's sworn application package from the other jurisdiction;
- the designated authority will then forward the application to the British Columbia court; and,
- the court will then serve the respondent with a copy of the application and a notice requiring him or her to appear at a time and place to provide information and/or documents.

At the hearing, the British Columbia court will read the claimant's application package, hear from the respondent (either by way of oral testimony or sworn material) and make a determination. The court may:

- make a support order;
- request further evidence from the claimant in the other jurisdiction;
- adjourn the matter to a specified date with or without making an interim order; or,
- refuse to make an order.

As was the case under the REMO provisions of FRA, the Provincial Court will hear all applications for support or support variations whenever it has jurisdiction. The ISO Act provides that only the Supreme Court of British Columbia can vary an order granted by a federally appointed judge.

If the court refuses to make an order, *ISO* requires that reasons be given for the court's decision. If the court has requested

additional evidence and it is not received within 18 months, the application may be dismissed.

Under *ISO*, the appeal periods have been increased to 90 days (from 75 days) for the appellant and to 30 days (from 15) for the respondent.

Situations When *ISO* Does NOT Apply

The process of Provisional and Confirmation Orders has not entirely disappeared under *ISO*. If the jurisdiction where the respondent resides still requires a provisional order and a confirmation hearing, the provisional order process must continue to be followed.

The reciprocating jurisdictions that require provisional orders are the United Kingdom, Guernsey, Jersey, the Isle of Man, New Zealand, Hong Kong and any Canadian jurisdictions that have not yet proclaimed its *ISO* legislation. As of the date of this publication, all Canadian jurisdictions have passed and proclaimed *ISO* legislation, with the exception of Quebec, Yukon, NWT and New Brunswick.

Legal counsel should also be aware that *ISO* does not apply to applications made under the *Divorce Act*. If the claimant seeks a variation of such an order and the respondent resides in another jurisdiction, the court in the claimant's jurisdiction will continue to grant a provisional order that may be confirmed by the respondent's jurisdiction.

Applications, which were commenced under the former provisions of the *FRA* prior to the proclamation of *ISO*, may be continued as if Part 8 had not been repealed and replaced.

Reciprocating Jurisdictions

British Columbia has the same reciprocal enforcement agreements with [Reciprocating Jurisdictions](#) under *ISO* that it had under the former sections of the *FRA*. Reciprocal agreements exist with all other provinces and territories of Canada, the United States and the other following jurisdictions:

American Samoa	Guernsey	Puerto Rico
Australia	Hong Kong	Singapore
Austria	Isle of Man	South Africa
Barbados	Jersey	United Kingdom
Fiji Islands	New Zealand	Virgin Islands
Germany	Norway	Zimbabwe
Gibraltar	Papua New Guinea	
Guam	Poland	

If a claimant wishes to vary a support order and the respondent no longer lives in a reciprocating jurisdiction, *ISO* provides that the court in British Columbia can hear the variation application if the respondent has been given notice of the proceeding.

Enforcement of Support

In addition to outlining procedures for obtaining or varying court orders where the parties reside in different jurisdictions, *ISO* deals with the registration for enforcement in British Columbia of orders granted in other jurisdictions.

Under the former provisions of the *FRA*, payors living in British Columbia were given one month to apply to the registration court to set the registration aside. In contrast, *ISO* does not allow the registration of orders from other Canadian jurisdictions to be set aside. Instead, it extends 'full faith and credit' to other Canadian jurisdictions; that is, it assumes that proper notice and other procedures were followed when a Canadian support order or variation order was made. This means that all Canadian support orders are enforceable immediately upon filing with the British Columbia court. Under *ISO*, only orders granted outside of Canada will be given a grace period of 30 days after filing to allow the respondent an opportunity to apply to set aside the registration of the order. After the 30 days have passed, it will be enforced as if it were a Canadian order.

There are three grounds to set aside the registration of non-Canadian orders:

- i) the party did not have proper notice or a reasonable opportunity to appear or be represented when the order was made;
- ii) the order is against public policy in BC; or,
- iii) the Court that made the order did not have jurisdiction to have made it.

The Role of Legal Counsel

Uniform court forms have been developed for use in Canada as *ISO* support and support variation applications. These forms are available [on-line](#) at the Attorney General's web site in the family justice section. You may also have the forms you require sent to you by requesting the forms from:

RECIPROCAL OFFICE
VANCOUVER MAIN OFFICE BOXES
P.O. BOX 2074
VANCOUVER BC V6B 3S3

Legal counsel should advise applicants on the *ISO* process and determine, depending on the complexity of the issues, whether legal assistance should be provided to complete the forms. All applications must be duly sworn.

Claimants do not, however, require legal counsel to appear at court hearings (if there is a formal one in the other *ISO* jurisdiction) on their behalf. This is because

ISO provides that there is not a court hearing in the applicant's jurisdiction and claimants are not expected to be represented when the respondent provides her or her response to the application in the respondent's jurisdiction.

Legal counsel who are acting for the respondent should confirm with the registry whether the British Columbia court will require a hearing or whether the matter will be decided solely on a written response. *ISO* allows this to be determined by the court that holds the hearing and makes the determination.

If the order to be changed is from an *ISO* jurisdiction outside of Canada, such as an American State, legal counsel might consider contacting the enforcement program in that jurisdiction in order to obtain the forms that courts in that location are familiar with. The US is increasingly moving towards processes that allow documents to be registered by mail or fax and having hearings conducted by way of tele-conference.

Counsel are encouraged to contact FMEP's Victoria office (250-220-4040) if they have any questions about or require any assistance in dealing with other jurisdictions.

Section IX: Complaints

FMEP has worked in collaboration with the BC Ombudsman and the Director of Maintenance Enforcement to develop a process for reviewing and responding to complaints quickly and effectively.

If you have a client with a complaint or concern, please ensure that the client contacts FMEP directly to discuss the issue first before going to the Director of Maintenance Enforcement or asking you to intervene.

If your client has already contacted his or her EO at FMEP and has been unable to resolve the issue and you wish to discuss the case with FMEP, please call the appropriate FMEP office and ask to speak to the Enforcement Manager:

Lower Mainland Client Office

Phone: 604-678-5670
Toll-free: 1-800-663-9666

Victoria Client Office

Phone: 250-220-4040
Toll-free: 1-800-663-3455

Northern and Interior Client Office

Phone: 250-434-6020
Toll-free: 1-800-663-3933

If you are unable to resolve a complaint directly with FMEP, please call or write the Director of Maintenance Enforcement at:

Director of Maintenance Enforcement

Ministry of Attorney General
203 - 865 Hornby St.
Vancouver BC V6Z 2G3
Phone: 604-660-2528
Fax: 604-660-3728

Section X: Family Maintenance Enforcement Program Offices

FMEP's three regional client offices handle the monitoring and, if necessary, the enforcement of Maintenance Orders and Maintenance Agreements enrolled with FMEP:

Lower Mainland Client Office

Box 80449
Burnaby, BC V5H 3X9

Phone: 604-678-5670
Fax: 604-678-5679
Toll-free: 1-800-663-9666 (InfoLine)

Victoria Client Office

Box 5100
Victoria, BC V8R 6N3

Phone: 250-220-4040
Fax: 250-220-4050
Toll-free: 1-800-663-3455 (InfoLine)

Northern and Interior Client Office

Box 830
Kamloops, BC V2C 5N1

Phone: 250-434-6020
Fax: 250-424-6033
Toll-free: 1-800-663-3933 (InfoLine)

FMEP's Enrollment Office distributes and processes Enrollment Packages:

Enrollment Office

Box 5100
Victoria, BC V8R 6N3

Phone: 250-220-4040
Fax: 250-220-4053
Toll-free: 1-800-663-7616

FMEP Payment Services records and forwards payments to recipients:

Payment Services

Box 5599
Victoria, BC V8R 6T7