

*Alimony and Maintenance*

The justification under law for the old immunity was founded on the ancient concept of the Royal Prerogative which holds that since a court cannot make a binding order against Her Majesty's moneys and properties, a garnishment order may not be made in respect of a debt due by the Crown to a third person. As a consequence of this immunity of the Crown's purse, the salaries of civil servants and others who receive payment from the Crown have traditionally been exempt from garnishment or attachment. One of the most serious effects of this has been in the enforcement of maintenance orders where it has been very difficult until now to require a federal public servant to pay family support in cases of desertion, separation or divorce.

Most of the Provinces have now enacted legislation enabling the salaries of civil servants to be garnisheed. These legislative initiatives have received wide support and will assist in the enforcement of maintenance orders against those who receive their pay or benefits from the federal or provincial Crown.

The procedure under the federal law is designed to generate effective results as quickly as possible. If a person is owed family support payments and has a valid and enforceable family support order from a Canadian court, there are two possible ways in which the Act can assist. If the spouse or a former spouse owing the payment is a federal employee, the Act allows his or her salary to be garnisheed. To effect a garnishee, the person must have obtained a valid court order to judgment ordering the employee to pay money for family support or another type of debt. The person must ensure that the court order or judgment can be enforced under provincial laws. The next step is to send a notice of intent to the Department of Justice or one of its agents, as set out in the regulations. The notice includes the employee's name, employing department, place of work and other information that will locate him. There is then only a 30-day waiting period after which an application may be made to the court to have a garnishee summons issued, presuming, of course, the person is employed. The garnishment order is served by registered mail for personal service at the same place as the original notice of intent. The federal Government pays the money into court and the court will then make the appropriate payments. If the spouse or former spouse receives a pension from the federal Government, the Act may allow a portion of that pension to be taken. However, the Act does not apply to all federal pensions. For example, it does not affect veterans' pensions, old age security, Canada Pension Plan benefits or disability allowances. It also does not apply to unemployment insurance benefits or income tax refunds. To get a pension diversion the person must also have obtained a valid family support order from a Canadian court and ensure that it is enforceable under provincial law.

● (1620)

Another proposal which has recently been studied by the Government is of especial interest in the context of the Hon. Member for Capilano's Bill relating to variations of a divorce maintenance order.

Currently, Section 11(2) of the Divorce Act reads as follows:

An order made pursuant to this Section may be varied from time to time or rescinded by the court that made the order if it thinks it is fit and just to do so having regard to the conduct of the parties since the making of the order or any change in the condition, means or other circumstances of either of them.

Section 11(2) has been interpreted so as to prevent variation of a maintenance order by any court other than the originating court. Due to the mobility of the Canadian population, particularly after divorce, this interpretation has caused considerable difficulty for the applicant seeking a variation. It requires returning to the previous Province of residence, often entailing lengthy trips with attendant cost and delay. If the section could be amended or at least clarified, considerable savings in terms of time and money for both the applicant and the family members could be realized.

I hope I have added something to the debate which indicates there is need for further study before this Bill is enacted.

**Hon. Bud Cullen (Sarnia-Lambton):** Mr. Speaker, I like the basic thrust of the amendments. One of the propositions that I put forward is that what we are talking about here is money. It struck me that what we should be looking to and asking the Ministers of Justice for the federal and provincial Governments to do is to establish a federal-provincial revolving fund. All payments made under Family Court decisions, whether they are made in British Columbia or Ontario, should be paid into a revolving fund. Where an individual is delinquent in making payments—in most cases it is his payments rather than hers—then it would be the court that would go after the individual who was delinquent. But the woman looking after herself and her children would not have to be waiting and wondering about filing judgment summonses, show cause summonses, getting a new court order or getting an amendment of an order. She would have the assurance that the money would be coming in on a regular monthly or weekly basis, according to whatever the terms of the particular divorce decree were.

In dealing with this matter as I did in my own law practice, I found that the vast majority of individuals required to pay do, in fact, pay. It is those few who abscond or leave a particular jurisdiction who do not make their payments. In order to get those payments you have to get another Province to recognize your court order. Then you have to get a judgment summons issued. The court makes an order that the person shall pay. Then, if they do not pay, the individual comes up on a show cause summons. All of this sounds very simple but it can take months to get this kind of an operation rolling.

It strikes me that what we are looking at here is to assure a person who already has a court order, who is entitled to rely on that court order, that he or she will be receiving funds on a regular scheduled basis. They cannot do that at the present time. Why should Ministers of Justice, federal and provincial, not get together, set up this fund and have the people know they are going to have regular payments coming in to them? If there is an application made to vary a court order, that can be done. If an individual is laid off and cannot keep up the