

*Alimony and Maintenance*

to the many victims of the inadequacies of the current enforcement of maintenance and custody orders relating to divorce. I would also like to draw to the attention of the House the remarks that have just been made by the Hon. Member for Cariboo-Chilcotin (Mr. Greenaway). He encapsulated very well and quite graphically, I thought, the gravity of the problem which this Bill seeks to address.

The enforcement of financial support orders continues to be one of the major problem areas in family law in the country. Indeed, it is a problem not only in this country but in other jurisdictions as well. Jurisdictions both here in Canada at the provincial and federal levels as well as jurisdictions outside of the country are seeking to develop new and more effective methods of enforcing these monetary obligations in an attempt to promote the welfare of the family and respect for the legal system.

The current process for enforcing maintenance orders obtained pursuant to divorce is uniform across Canada and is found in Sections 14 and 15 of the Divorce Act. Section 14 reads as follows:

A decree of divorce granted under this Act or an order made under Sections 10 or 11 has legal effect throughout Canada.

Section 15 reads as follows:

An order made under Sections 10 or 11 by any court may be registered in any other superior court in Canada and may be enforced in like manner as an order of that superior court or in such other manner as is provided for by any rules of court or regulations made under Section 19.

By virtue of these sections of the Divorce Act, each maintenance creditor, in whichever Province of Canada he or she may live, under Section 10 interim maintenance order under the Divorce Act, wherever in Canada that order is made, automatically has available to him or her all superior court remedies of every Province for enforcement. These include, for example, the remedy of garnishment proceedings. It is worth noting that today, in the last half hour, the House took an action on the first reading of a Bill relating to garnishment of wages, a Bill standing in the name of the Minister of Justice and Attorney General of Canada (Mr. MacGuigan). Other such remedies include equitable receivership, examination as a judgment debtor, attachment of debts and bank accounts, seizure of personal property, execution against land and proceedings for committal.

In addition, in most Provinces of the country, provincial legislation permits the filing of superior court maintenance orders in provincial Family Courts to make available the enforcement procedures of that court. These procedures include traditional show cause hearings whereby the defaulting debtor must explain his default or face imprisonment on summary conviction and continuing attachment of wages.

Indirectly in this way, maintenance orders made pursuant to the Divorce Act in a superior court of one Province may be enforced by the Family Court of either that Province or of any other Province in the country. Enforcement by the provincial Family Courts is becoming increasingly more productive through the development of automatic systems of enforcement under which enforcement is processed by the court with money

being paid directly into court to the benefit of the dependent family members.

In certain Provinces, orders made for maintenance upon a divorce are programmed into a computerized monetary system within the Province. In some Provinces, the superior court maintenance orders may also be filed in small claims courts so that summary enforcement mechanisms which are peculiar to these courts, such as judgment summonses and summary garnishments, may be used.

● (1540)

Enforcement procedures under the Divorce Act nevertheless have not been without some difficulties. A number of proposals have been suggested for changes to the Divorce Act to improve enforcement of orders. One of these proposals is to use the Federal Court of Canada as an enforcement mechanism. Maintenance orders differ from other civil judgments in that they tend to create continuing liability based on the means of the debtor and the needs of the creditor, and are subject to variation because of the circumstances of the parties may change. It is suggested that new Federal Court rules could provide for garnishment orders which would effect collection and minimize cost and effort for the creditor while, at the same time, avoiding any injustice to the debtor. Like most garnishment orders, the order could be obtained *ex parte* and payment could be made directly to the creditor. This is not unlike the proposal contained in the Bill before us now which has been put down by the Hon. Member for Capilano. Both of these concepts are being studied within Government with a view to determining their implications.

Mr. Speaker, much of the difficulty in enforcement of maintenance orders arises as a result of inability to locate the delinquent debtor. The current Divorce Act does not deal with the problems relating to the tracing of a person in order to obtain or enforce a maintenance order. The only federal law which partly deals with support and enforcement of custody orders is the Garnishment, Attachment and Pension Diversion Act. That Act provides that provincial laws will apply to procedures taken under the Act. There is a specific provision indicating that where any inconsistency or conflict exists between a provincial garnishment law and any Act or regulation of the Parliament of Canada, the federal law will prevail. Therefore, in proceedings against federal employees, provisions in federal laws, such as income tax laws, unemployment insurance, or the Canada Pension Plan, that secure the confidentiality of records will prevail over tracing provisions of any provincial garnishment law.

Certain Provinces have passed legislation requiring their government offices to release address particulars or information which could lead to the determination of the whereabouts of those debtors. The federal Government is now canvassing a number of options for development of a tracing mechanism within the federal data bank system. Federal statutes, such as the Income Tax Act and the Unemployment Insurance Act, which prohibit access to federal data banks, are being reviewed with a view to possible amendments. The Government is also