

# CONSOLIDATION OF FAMILY SUPPORT ORDERS ENFORCEMENT ACT

S.Nu. 2012,c.16

In force April 15, 2013: SI-002-2013

*(Current to: April 24, 2013)*

The following provisions have been deleted for the purposes of this consolidation:  
s.56 to 69 (Consequential Amendments)

## **AS AMENDED BY:**

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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**FAMILY SUPPORT ORDERS ENFORCEMENT ACT**

## INTERPRETATION

## Definitions

1. (1) In this Act,

"approved form" means a form approved by the Manager under subsection 42(3);  
(*formule approuvée*)

"child", in relation to a support order, includes a youth as defined in the *Child and Family Services Act*; (*enfant*)

"child of the recipient" means a child who is a subject of a support order in favour of a recipient, whether the recipient is:

- (a) a parent of the child;
- (b) a person who has lawful custody of the child; or
- (c) another person with whom the child lives; (*enfant du bénéficiaire*)

"Clerk" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier*)

"court", unless otherwise specified, means the Nunavut Court of Justice, and in relation to a support order, includes a justice of the peace authorised to make an order for support under any enactment; (*tribunal*)

"credit reporting agency" means a person whose business includes supplying information to third parties about the financial circumstances or creditworthiness of other persons;  
(*agence d'évaluation du crédit*)

"default hearing" means a hearing held pursuant to subsection 31(1) or (3); (*audience pour défaut de paiement*)

"Director of Child and Family Services" means the Director of Child and Family Services for Nunavut appointed under the *Child and Family Services Act*; (*directeur des services à l'enfance et à la famille*)

"Director of Social Assistance" means the Director of Social Assistance for Nunavut appointed under the *Social Assistance Act*; (*directeur de l'assistance sociale*)

"domestic contract" has the meaning assigned to it by section 2 of the *Family Law Act*;  
(*contrat familial*)

"family support officer" means a family support officer appointed under subsection 43(1); (*agent*)

"garnishee" means a person required to pay under a payment order issued under section 15 or a garnishee summons issued by the Clerk; (*tiers saisi*)

"immediate family member" means a spouse, former spouse, child, grandchild, parent, grandparent, step-parent, parent-in-law, sibling, half-sibling or step-sibling of a payer; (*membre de la famille immédiate*)

"income", with respect to a payer, means any money that is or will become payable to or on behalf of the payer by any person, including

- (a) wages, salary, vacation pay, termination pay, severance pay or other financial benefit of employment;
- (b) a commission, bonus or other payment, if it is not recoverable by the employer or other person from the payer if the payer fails to earn the commission or bonus or to meet any production target;
- (c) piece-work payment;
- (d) benefits payable under the *Employment Insurance Act* (Canada);
- (e) accident, disability or sickness plan benefits;
- (f) retirement, old age security or other pension benefits;
- (g) an annuity;
- (h) a fee for service;
- (i) rental income;
- (j) a debt owing to the payer or to a corporation, if the corporation to which the debt is owed is effectively controlled, directly or indirectly, by the payer or the payer and immediate family members of the payer;
- (k) funds held on deposit in a financial institution in which the payer has an interest;
- (l) funds held in any court in which the payer has an interest;
- (m) dividends on shares;
- (n) an employee loan or a shareholder loan, if the organisation or corporation that made the loan is effectively controlled, directly or indirectly, by the payer or the payer and immediate family members of the payer;
- (o) an insurance settlement payable to the payer;
- (p) an inheritance received by the payer;
- (q) a prize in a lottery, as defined in section 25, payable to the payer;
- (r) money from a trust in which the payer holds a beneficial interest;
- (s) a refund under the *Income Tax Act* (Canada); (*revenu*)

"Manager" means the Manager of the Family Support Office appointed under subsection 42(2); (*administrateur*)

"payer" means a person required under a support order to pay money for support; (*payeur*)

"persistent arrears" means a payer is in arrears under a support order for

- (a) an amount exceeding \$3000; and
- (b) a period exceeding three months; (*être en défaut de façon répétée*)

"person" includes

- (a) an individual;
- (b) a department, branch or office of the Government of Nunavut;
- (c) a statutory body specified in Schedule A or a territorial corporation specified in Schedule B or C to the Financial Administration Act;
- (d) a trade union;
- (e) a corporation, including a municipal corporation and a society incorporated under the *Societies Act*;
- (f) an unincorporated sole proprietorship operating under a business name;
- (g) an unincorporated organization or association of persons;
- (h) a partnership;
- (i) any legal entity that has or asserts a legal personality or status separate from its members;
- (j) an Inuit organization established or recognized under the Nunavut Land Claims Agreement, or any other entity in Nunavut that exists primarily to govern or represent Inuit people;
- (k) the heirs, executors, administrators or other legal representatives of a person; (*personne*)

"recipient" means a person entitled under a support order to receive money for support or maintenance on his or her own behalf, or on behalf of another person; (*bénéficiaire*)

"Sheriff" means the Sheriff appointed under the *Judicature Act*; (*shérif*)

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*; (*conjoint*)

"support" means support, maintenance or alimony payable for the financial support of a recipient or a child of a recipient or payer under a support order, and includes

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) periodic payments to be made to a spouse by the spouse to whom exclusive possession of a family home, within the meaning of the *Family Law Act*, has been given;
- (d) all or any of the moneys payable under a support or maintenance order to be paid to the Manager or into court or to any other appropriate person or agency for the benefit of a party;
- (e) an amount payable for support or maintenance in respect of any period before the date of the support or maintenance order;
- (f) an amount payable to the Director of Social Assistance in reimbursement for a benefit or assistance provided to a recipient,

- including an amount in reimbursement for such benefit or assistance provided before the date of the support or maintenance order;
- (g) an amount payable to the Director of Child and Family Services in reimbursement for a benefit or assistance provided to support a child under the *Child and Family Services Act*, including an amount in reimbursement for such benefit or assistance provided before the date of the support or maintenance order;
  - (h) an amount payable under an order made under the *Dependants Relief Act*;
  - (i) an amount payable for expenses in respect of the pre-natal care and birth of a child; and
  - (j) interest or the payment of legal fees or other expenses arising in relation to support or maintenance; (*aliments*)

"support order" means

- (a) an order or an interim order of the court that has a provision requiring the payment of support;
- (b) an order, other than a provisional order that has not been confirmed, that is registered under the *Interjurisdictional Support Orders Act* and that has a provision requiring the payment of support;
- (c) a provision for support or maintenance in a domestic contract that is enforceable under the laws of Nunavut;
- (d) a maintenance or support order made before this Act came into force. (*ordonnance alimentaire*)

Lawyers

(2) Anything required by this Act to be signed or done by a person, or referred to in this Act as signed or done by a person, may be signed or done by a lawyer acting on the person's behalf.

Government bound

**2.** This Act binds the Government of Nunavut.

## PART I

## SUPPORT ORDERS

## Filing of Orders

## Filing by Clerk

3. (1) The Clerk shall file with the Manager,
- (a) every support order made by the court, other than a provisional order, as soon as possible after it is signed;
  - (b) every application made to the court to vary a support order;
  - (c) every order made by the court varying a support order; and
  - (d) every support order made by a court outside Nunavut that is received pursuant to the *Interjurisdictional Support Orders Act* for enforcement in Nunavut, as soon as possible after it is received, unless the order is accompanied by a written notice signed by the person seeking to enforce the order stating that he or she does not wish to have the order enforced by the Manager.

## Information required

(2) Every order or application filed under paragraphs (1)(a), (b) or (c) must include or have attached to it the following information in respect of both the recipient and the payer, to the extent the information is available at the time the order or application is made:

- (a) financial statements or information on which the order or application is based;
- (b) full name;
- (c) date of birth;
- (d) residential address;
- (e) mailing address, if different from the residential address;
- (f) home telephone, facsimile, and e-mail addresses;
- (g) name and place of employment; and
- (h) name and contact information of a lawyer representing a party.

## Filing by parties

(3) Either a recipient or payer may file a support order not filed with the Manager, including a domestic contract or a support order made before this Act came into force, with the Manager.

## Information to be provided

(4) A recipient or payer filing a support order under subsection (3) shall provide the Manager with the information set out in subsection (2) in respect of both the recipient and payer, to the extent the information is available to the person filing the support order.

#### Filing by Director of Social Assistance

(5) The Director of Social Assistance may, whether or not a notice referred to in paragraph 3(1)(d) has been given, file a support order and a copy of the assignment of the order with the Manager if the recipient

- (a) is receiving or has received assistance under the *Social Assistance Act*; and
- (b) has assigned the support order to the Director of Social Assistance.

#### Termination of assignment of order

(6) The Director of Social Assistance shall notify the Manager if an assignment of a support order to the Director under the *Social Assistance Act* ceases to be in effect, but such notice shall not affect the filing of the support order.

#### Filing by Director of Child and Family Services

(7) The Director of Child and Family Services may file an order made under section 28 or 29.1 of the *Child and Family Services Act* with the Manager if the order requires a parent or person who stands in the place of a parent of a child to make a financial contribution to the costs incurred by the Director in maintaining and supervising the child during the term of the order.

#### Notice of filings and withdrawals

(8) The Manager shall give notice, in writing, within 14 days after the filing, re-filing, withdrawal or receipt of a request for withdrawal of a support order, to each of the following persons:

- (a) the recipient;
- (b) the payer;
- (c) the Director of Social Assistance, where the Manager is aware that assistance is being provided to the recipient under the *Social Assistance Act*; and
- (d) the Director of Child and Family Services, where the Manager is aware that support and assistance are being provided to a child of the payer under the *Child and Family Services Act*.

#### Lack of receipt of notice

(9) In a proceeding to enforce an order filed or re-filed with the Manager, it is not necessary to prove that the payer received notice under subsection (8).

### Payment Arrangements

#### Payments to Manager

**4.** (1) Once a support order is filed with the Manager, every payment required under the order must be made to the Manager for the benefit of the recipient or any other person entitled to the payments.



### Payment arrangements

(2) The notice to a payer that a support order has been filed may require the payer to arrange, within 30 days after receipt of the notice, for the required payments to be made on a timely basis.

### Payment options

(3) The arrangements described in subsection (2) may include one or more of the following:

- (a) arrangements that are acceptable to the Manager for an employer, financial institution, or other person who is or may become liable to make any income payment to the payer, to pay the amount payable under the support order;
- (b) a request that the Manager issue a payment order to an employer, financial institution, or other person who is or may become liable to make any income payment to the payer;
- (c) the filing of security with the Manager in the manner and amount required by the support order to secure payment of the support order;
- (d) election of a method of payment approved by the Manager.

### Financial information and payment conference

**5.** (1) If a financial statement of the payer was not included with a support order at the time of filing, the notice to a payer that a support order has been filed may require the payer

- (a) to complete and file with the Manager, within 30 days after receipt of the notice, a financial statement including the prescribed information and documents; and
- (b) if satisfactory payment arrangements are not made in accordance with subsection 4(2), to attend a payment conference at the time and place specified.

### Payment conference

(2) The Manager and the payer may, by agreement,

- (a) conduct a payment conference by telephone or another means of telecommunication that includes an audio transmission;
- (b) change the time or place for the conference; or
- (c) adjourn the conference and resume it at a later time at the same or a different place.

### Payment conference after default

(3) If a payer is in arrears under a support order filed with the Manager, the Manager may deliver a statement of arrears including the prescribed information, and a notice to the payer requiring the payer to

- (a) complete and file with the Manager an additional financial statement including the prescribed information and documents; and

- (b) attend a payment conference at the time and place specified in the notice, to review the statement of arrears and financial statement, and to arrange for payment of the arrears and future payments under the order.

#### Default hearing

(4) If a payer neglects or refuses to comply with the requirements of a notice under subsection 4(2), 5(1) or 5(3), the Manager may serve a statement of arrears and a notice to the payer requiring the payer to attend a default hearing in accordance with section 31.

#### Up-dates of financial statements

(5) The Manager may request a financial statement under this section

- (a) annually; or
- (b) once in any six-month period if support payments are in arrears.

#### Correction of information

(6) A payer shall deliver corrected information to the Manager within 10 days after discovering that any information in a financial statement filed with the Manager is incomplete or wrong.

#### Change of information

(7) A payer shall advise the Manager in writing of any change in contact information provided with a financial statement filed with the Manager within 10 days after the change.

#### Change of employment

(8) A payer shall, within 14 days after commencing or ceasing employment with an employer,

- (a) notify the Manager, in writing; and
- (b) revise the arrangements made under paragraph 4(3)(a) or (b) if the payer's previous employer was subject to a payment order.

#### Payments in goods

**6.** (1) A payer may satisfy a support payment, in whole or in part, by delivering goods directly to a recipient, or to a third party on behalf of a recipient, if all of the following conditions are satisfied:

- (a) the support order provides that a support payment may be satisfied, in whole or in part, by the delivery of goods to or on behalf of the recipient;
- (b) the support order provides a method for determining the value of goods delivered; and
- (c) if the order is filed with the Manager, the Manager receives satisfactory evidence that goods have been delivered in accordance with the order.

### Payments to third parties

(2) A payer may satisfy a support payment, in whole or in part, by making payments to a third party for goods or services to be provided to the recipient, or a child of the recipient who is named in the support order, if all of the following conditions are satisfied:

- (a) the support order provides that a support payment may be satisfied, in whole or in part, by payment to a third party for goods or services provided to the recipient or a child of the recipient;
- (b) the support order provides a method for determining the value of goods or services to be provided; and
- (c) if the order is filed with the Manager, the Manager receives satisfactory evidence that goods or services have been provided in accordance with the order.

### Value credited as payment

(3) Where a payer makes a payment under subsection (1) or (2) with respect to a support order filed with the Manager, the payer shall deliver to the Manager evidence satisfactory to the Manager of the value of the goods or services to be credited as a payment to the account of the payer.

### Distribution by Manager

7. (1) The Manager shall distribute all moneys received in respect of a support order to

- (a) the recipient, to the extent of the recipient's interest, where the order was filed by the recipient or the Clerk;
- (b) a person who provides goods or services to the recipient, to the extent of the recipient's interest in the payment and on the written direction of the recipient or pursuant to the terms of the support order;
- (c) the Director of Social Assistance, where the order or an assignment of the order was filed by or on behalf of the Director of Social Assistance;
- (d) the Director of Child and Family Services, where the order was filed by or on behalf of the Director of Child and Family Services;
- or
- (e) a person in another jurisdiction performing functions similar to those of the Manager, where the order was filed by that person or the Clerk.

### Payments with respect to child

(2) Despite subsection (1) or the provisions of a support order, the Manager may distribute any amount received on account of a support order respecting a child to the following persons:

- (a) a person having actual care and custody of a child named in the support order, if:

- (i) the Manager is notified that the person has the care and custody of the child; and
- (ii) the Manager confirms to his or her satisfaction that the child is residing with that person;
- (b) a child named in the support order, if the child no longer resides with the recipient and is enrolled at a secondary or post-secondary educational institution; or
- (c) the Director of Child and Family Services, if the child is receiving support from the Director.

### Enforcement of Support Orders

#### Enforcement of support orders

**8.** (1) Only the Manager or a family support officer may enforce a support order filed with the Manager, and for this purpose the Manager may commence and conduct a proceeding and take steps for the enforcement of an order in the name of the Manager for the benefit of the person entitled to enforcement of the order or of a child of that person.

#### Past orders and arrears

(2) The Manager may enforce arrears of support under a support order even though the arrears accrued before the order was filed with the Manager or before this Act came into force.

#### Enforcement of unfiled orders

(3) A recipient may enforce a support order made in Nunavut but not filed with the Manager.

#### Application to court

(4) Where a notice referred to in paragraph 3(1)(d) has been given, a recipient resident in Nunavut may apply to the court for an order to enforce the support order.

### Withdrawal of Orders

#### Withdrawal by Manager

**9.** (1) The Manager may withdraw a support order filed with the Manager, in whole or in part, in any of the following circumstances:

- (a) the recipient repeatedly accepts payments directly from the payer in relation to the support order;
- (b) the recipient takes steps to enforce the support order without the consent of the Manager;
- (c) the amount payable under the support order is not readily verifiable from information in the order;
- (d) the amount payable under the support order is nominal;
- (e) there is doubt or ambiguity on the part of the Manager concerning the force, effect or meaning of the support order;

- (f) the recipient fails or refuses to provide information to the Manager that the Manager requires to enforce the support order; or
- (g) the recipient cannot be located after reasonable efforts have been made to do so.

#### Notice to parties

(2) The Manager shall serve the recipient and payer with notice of the Manager's intent to withdraw a support order under subsection (1), and the order shall be withdrawn 30 days after the date of service, unless satisfactory arrangements are made or required information is provided to enable the Manager to administer or enforce payments under the support order.

#### Withdrawal by recipient

(3) A recipient may request, in writing, the withdrawal of a support order filed with the Manager by the recipient or by the Clerk, unless the order provides otherwise.

#### Considerations for withdrawal

(4) In deciding whether to grant a request for the withdrawal of a support order under subsection (3), the Manager may consider,

- (a) the payer's payment and arrears history;
- (b) any previous withdrawal or re-filing of a support order by the recipient;
- (c) any security or enforcement measures in place to ensure compliance with the order;
- (d) whether arrangements for compliance with the order are likely to ensure compliance;
- (e) the payer's agreement to the withdrawal; and
- (f) any other factor that the Manager considers relevant.

#### Withdrawal by payer

(5) A payer may request, in writing, the withdrawal of a support order filed with the Manager by the payer, and such order shall be withdrawn by the Manager if the recipient does not object to the withdrawal in writing within 30 days after receiving notice of the proposed withdrawal.

#### Withdrawal by Directors

(6) The Director of Social Assistance or the Director of Child and Family Services may request the withdrawal of a support order filed with the Manager under subsection 3(5) or (7) respectively, and such order shall be withdrawn by the Manager on receipt of the request.

#### Re-filing

**10.** (1) A support order that has been withdrawn may be re-filed, with the consent of the Manager, by any person entitled to file the order under section 3.

#### Arrears accrued on re-filed order

(2) If a support order is withdrawn and subsequently re-filed with the Manager, the Manager may decline to enforce part or all of the arrears that accrued while the order was withdrawn.

#### Non-enforcement of support order

**11.** (1) The Manager may decline to enforce a support order, in whole or in part, in any of the following circumstances:

- (a) if the support order is for the support of a child, and the Manager is satisfied that the child is no longer living with or dependent on the recipient and is living with or dependent on the payer; or
- (b) the Manager has determined that it is impractical to enforce the support order.

#### Payment of reduced amount

(2) The Manager may temporarily authorize payment of a lesser amount of support than that set out in a support order in any of the following circumstances:

- (a) the payer is receiving assistance under the *Social Assistance Act*;
- (b) the payer is incarcerated;
- (c) the payer's income has decreased significantly and the Manager is satisfied that the payer has insufficient means to pay the amount of support ordered;
- (d) a variation hearing is pending and the Manager is satisfied that the payer is actively pursuing the application, that the chances of the payer's success are reasonable and that the application appears to have been made in good faith; or
- (e) the recipient consents in writing to a lesser amount of support.

#### Notice of reduction

(3) If the Manager authorizes payment of a lesser amount of support under paragraphs (2)(a), (b), (c) or (d), the Manager shall notify the recipient of the change in the amount of support paid or to be paid, the reasons for the change, and if known, of the duration of the change.

#### Accrual of arrears

(4) If the Manager authorizes payment of a lesser amount of support under subsection (2), arrears shall accrue under the support order for the amount of support that the Manager does not require to be paid.

#### Non-enforcement of arrears

(5) The Manager may decline to enforce a support order with respect to arrears accrued under subsection (4), in whole or in part, in any of the following circumstances:

- (a) the recipient consents in writing to arrears not accruing under the support order for the amount of support that the Manager does not require to be paid;

- (b) the Manager has determined that it is impractical to enforce the support order with respect to the arrears;
- (c) the Manager has determined that it would be inequitable to the payer to enforce the support order with respect to the arrears.

#### Access to Information by Manager

##### Information available to Manager

**12.** (1) For the purpose of enforcing a support order filed with the Manager or obtaining information for a person performing a similar function in another jurisdiction, the Manager may request from a person any of the following information concerning the payer that is, or is believed to be, within the knowledge of, or in a record, other than personal correspondence between immediate family members, in the possession or control of that person:

- (a) location, address or place of employment;
- (b) wages, salary or other income;
- (c) name and location of any other person who is or may become liable to make any income payment to the payer;
- (d) assets and liabilities, including assets transferred or disposed of in the two years prior to the making of the support order;
- (e) location of assets, including account numbers with financial institutions;
- (f) financial status;
- (g) copies of income tax returns for the current and three preceding tax years;
- (h) a name, alias or variation of a name used by a payer other than the name on a support order;
- (i) a photograph of the payer;
- (j) social insurance number;
- (k) date of birth;
- (l) location, address or place of residence;
- (m) telephone and facsimile numbers and e-mail address;
- (n) drivers license number;
- (o) motor vehicle or all-terrain vehicle registration information;
- (p) any other information that the Manager considers necessary for the enforcement of the support order.

##### Provision of information

(2) Despite any other Act or requirement concerning the confidentiality of information, a person shall, within 14 days after receiving a request under subsection (1),

- (a) provide the requested information to the Manager; or
- (b) advise the Manager in writing that the requested information is not within the knowledge of, or in a record in the possession or control of, the person.

#### Solicitor-client privilege

(3) This section does not apply to information within the knowledge, possession or control of a solicitor if the solicitor acquired the information as the result of a solicitor-client relationship.

#### Information from data banks

(4) Subject to subsection (5), for the purpose of enforcing a support order filed with the Manager or obtaining information for a person performing a similar function in another jurisdiction, the Manager may have access to all records that may contain the information described in subsection (1) and that are in the possession or control of any department, branch or office of the Government of Nunavut or any statutory body or territorial corporation specified in Schedules A, B and C to the *Financial Administration Act*, to search for and obtain required information with respect to a payer.

#### Agreements on security measures

(5) Before accessing records pursuant to subsection (4), the Manager shall enter into an agreement with the affected department, branch or office of the Government of Nunavut or statutory body or territorial corporation specified in Schedules A, B and C to the *Financial Administration Act*, to ensure that appropriate security measures are taken in connection with

- (a) searching records;
- (b) the use and maintenance of information obtained by the Manager; and
- (c) the release of information to any other person.

#### Advertising for information

(6) If the Manager is unable to obtain reliable information concerning a payer under subsection (1) or (4), the Manager may advertise by any means he or she considers appropriate to obtain information as to the location, assets, employment and financial circumstances of a payer, and may disclose identifying information about the payer that the Manager considers necessary to make the advertisement effective.

#### Order of court for access to information

(7) The court may order any person to provide to the court, or a person that the court directs, information referred to in subsection (1) that is in a record, other than personal correspondence between immediate family members, in the possession or control of the person, if it appears to the court that

- (a) the Manager has been refused information after making a request under subsection (1); or
- (b) a person has need of information to enforce a support order that is not filed with the Manager.

#### Information to other enforcement agencies

(8) The Manager may release information obtained under this section to a person performing similar functions in another jurisdiction if the Manager is satisfied that confidentiality of the information will be preserved.



#### Agreements with Government of Canada

**13.** (1) The Minister may, on behalf of the Government of Nunavut, enter into an agreement with the Government of Canada concerning the searching for and release of information pursuant to Part I of the *Family Orders and Agreements Enforcement Assistance Act* (Canada).

#### Manager may administer agreement

(2) The Manager may administer any agreement entered into pursuant to subsection (1) on behalf of the Government of Nunavut.

#### Confidentiality

**14.** (1) The Manager shall not disclose information obtained under section 12 or pursuant to the *Family Orders and Agreements Enforcement Assistance Act* (Canada) except to the extent necessary for the enforcement of a support order.

#### Paramountcy

(2) Where there is a conflict or inconsistency between sections 12 or 13 of this Act and any provision of the *Access to Information and Protection of Privacy Act*, those sections of this Act shall prevail to the extent of the conflict or inconsistency.

## PART II

### GARNISHMENT BY PAYMENT ORDERS

#### Issuance of payment order

**15.** (1) Unless other satisfactory arrangements have been made under section 4 for payments to be made under a support order or an order made under paragraph 32(2)(a), or where payments are in arrears under a support order, the Manager may issue and serve a payment order on an employer of a payer in respect of wages, salary or other income payable, and to any other person who is or may become liable to make any income payment,

- (a) to a payer individually; or
- (b) subject to section 16, to a payer jointly or jointly and severally with another person or persons.

#### Effect of payment order

(2) A payment order issued by the Manager has for all purposes the same effect as a garnishee summons issued by the Clerk under the Rules of the Nunavut Court of Justice, and may be enforced by any means that a garnishee summons may be enforced.

#### Terms of payment order

(3) A payment order must include the prescribed information and shall direct the garnishee named in the order to

- (a) deduct from money due and owing to the payer, or that shall become due and owing, the amount specified in the payment order in accordance with the schedule set out in the payment order; and
- (b) forward to the Manager the amount deducted in accordance with the payment order.

#### Service of payment order

(4) A payment order issued by the Manager shall be personally served on the employer or other person named as garnishee in the payment order.

#### Copy to payer

(5) The Manager shall deliver a copy of the payment order to the payer, but the validity of the payment order is not affected by the inability of the Manager to deliver a copy to the payer.

#### Payment orders to financial institutions

(6) A financial institution that holds a deposit account in the name of a payer, either individually or jointly with another person or persons, may be issued a payment order under subsection (1).

#### Joint debts or accounts

**16.** (1) A sum of money owed jointly or jointly and severally to two or more persons or on deposit in an account owned by two or more persons is presumed, in the absence of evidence to the contrary, to be owed in equal portions to each of the joint or joint and several creditors or account holders.

#### Action by garnishee of joint debt or account

(2) Within 10 days after being served with a payment order under subsection 15(1) or (6) in relation to a sum of money owed to or on deposit in favour of the payer jointly or jointly and severally with another person or persons, the garnishee shall

- (a) pay to the Manager that portion of the money owed or on deposit presumed to be owed to the payer that is necessary for the garnishee to comply with the payment order;
- (b) notify the Manager, in writing, that the money owed or on deposit is owed jointly or jointly and severally to two or more persons; and
- (c) notify the co-creditors or joint account holders who are not named in the payment order, in writing, that the money has been paid to the Manager.

#### Application to Manager

(3) Where the payer or a co-creditor of the sum of money or a joint account holder of the deposit account satisfies the Manager, within 30 days after receipt of a notice under paragraph (2)(b) or (c), that the payer is owed a lesser portion of the money than was paid to the Manager under paragraph (2)(a), the Manager will refund to the garnishee the difference between the amount paid and the portion of the account owing to the payer.

#### Application to court

(4) Where the Manager is not satisfied under subsection (3) that the payer is owed a lesser portion of the money than was paid to the Manager under paragraph (2)(a), the Manager, the payer or a co-creditor of the sum of money or a joint account holder of the deposit account may apply to the court, within 45 days after receipt of a notice under paragraph (2)(b) or (c), for a determination that the payer is owed either a greater or lesser portion of the money than was paid to the Manager.

#### Delay in distribution

(5) If the Manager has received a notice under paragraph (2)(b), the Manager shall not distribute the money received under paragraph (2)(a) until

- (a) the Manager, the payer and the other co-creditors or joint account holders have agreed on the portion of the account owed to the payer, under subsection (3);
- (b) the court has disposed of the application, if an application is made under subsection (4); or
- (c) 45 days after being notified, if no application is made under subsection (3) or (4).

#### Payment order in effect

**17.** (1) A payment order remains in effect until

- (a) the termination date specified in the payment order;
- (b) a notice of revocation is delivered to the garnishee under paragraph 18(2)(a) or (6)(a) or subsection 18(8); or
- (c) the court orders the payment order to be set aside under subsection 18(5).

#### Where employment terminated

(2) An employer to whom a payment order is issued shall, as soon as possible, notify the Manager if the payer leaves the employment of the employer before the amounts payable under subsection 15(3) are fully satisfied.

#### Application of payment

(3) Subject to subsection 44(2), an amount received pursuant to a payment order shall be applied against amounts owed in relation to the support order to which the payment order relates, including any interest, security or fees allowed or imposed under this Act.

#### Application for revocation of payment order

**18.** (1) A payer or a garnishee may apply to the Manager, on an approved form, for the revocation of a payment order on the grounds that

- (a) the garnishee is not or will not become liable to pay a sum of money to the payer; or
- (b) the payment order contains or is based upon a material error.

#### Manager's decision

- (2) Upon application under subsection (1), the Manager may
- (a) revoke the payment order by delivering a notice of revocation to the garnishee if the Manager determines that
    - (i) the garnishee is not or will not become liable to pay a sum of money to the payer, or
    - (ii) the payment order contains or is based upon a material error; or
  - (b) refuse to revoke the payment order.

#### Application to court

(3) If the Manager refuses to revoke a payment order under paragraph (2)(b), the payer or the garnishee may apply in accordance with the Rules of the Nunavut Court of Justice to have the payment order set aside.

#### Notice of application

(4) An applicant under subsection (3) shall serve notice of the application on the Manager.

#### Court order

(5) Upon application under subsection (3), the court may make any order that could be made in proceedings related to a garnishee summons issued by the Clerk.

#### Cessation of obligation

(6) If the obligation of a garnishee to a payer ceases, the garnishee shall, within 10 days after the obligation ceases, notify the Manager in writing, and the Manager shall do one of the following:

- (a) revoke the payment order by delivering a notice of revocation to the garnishee; or
- (b) if the cessation of the obligation is temporary, suspend the payment order by delivering a notice of suspension to the garnishee.

#### Notice of suspension

(7) A notice under paragraph (6)(b) shall include instructions to the garnishee respecting when or the circumstances under which the garnishee's obligations under the payment order shall resume.

#### Notice of revocation

(8) The Manager may revoke a payment order by delivering a notice of revocation to the garnishee if the Manager is of the opinion that it would be appropriate to revoke the payment order having regard to all of the circumstances.

**Copy to payer**

(9) The Manager shall provide a copy of a notice of revocation under this section to the payer.

**Exemption from garnishment**

**19.** (1) Subject to subsection (2), a payment order issued to an employer of a payer shall provide that 50% of wages or salary payable to the payer, after the employer has deducted all amounts required to be deducted by or under an Act of Canada or an Act of Nunavut, is exempt from garnishment for each calendar month in which the wages or salary are payable and the payment order is in effect.

**Exemption of more or less than 50%**

(2) The Manager may specify an exemption of more or less than 50% of the wages or salary payable to a payer in a payment order if the Manager determines that

- (a) a greater exemption is required to avoid undue hardship for the payer or dependants of the payer; or
- (b) a lesser exemption is reasonable based on other sources of income of the payer or a request of the payer.

**Priority of attachment**

**20.** Despite any other enactment, a payment order issued to an employer in respect of wages or salary owing to a payer has priority over any other garnishment, attachment, assignment of, or claim against the wages or salary, except another payment order or garnishee summons issued with respect to another support order against the payer.

**Prohibition on termination or discipline**

**21.** No employer shall terminate the employment of a payer or discipline a payer because

- (a) a payment order has been issued to the employer in respect of amounts owing to the payer; or
- (b) the payer or the employer is involved in proceedings under this Act.

### PART III

#### ADDITIONAL ENFORCEMENT REMEDIES

**Enforcement alternatives**

**22.** The Manager, with respect to a support order filed with the Manager, or the recipient, with respect to a support order not filed with the Manager, may commence any proceedings available to a creditor to enforce a judgement debt or order under the laws of Nunavut, including but without limiting the generality of this power, one or more of the following:

- (a) proceedings for garnishment of any debt, account or income payable to a payer, including any lottery prize having a value of more than \$1000;

- (b) proceedings to obtain a writ of execution;
- (c) registration of and proceedings to realize on a charge against real property of the payer, or a corporation jointly and severally liable with the payer under section 40 or 41, under the *Land Titles Act*;
- (d) registration of and proceedings to realize on a security interest in personal property of the payer, or a corporation jointly and severally liable with the payer under section 40 or 41, under the *Personal Property Security Act*;
- (e) proceedings to have property seized and sold pursuant to a writ of execution;
- (f) proceedings to realize on any bond or security deposited under this or any other Act;
- (g) proceedings to bring a payer in default before a court for a default hearing under sections 31 and 32;
- (h) proceedings for the appointment of a receiver under section 35;
- (i) proceedings to obtain a restraining order under section 36;
- (j) proceedings to obtain a warrant for the arrest of an absconding payer under section 37;
- (k) proceedings for the imposition of a penalty under this Act.

### Garnishment Proceedings

#### Garnishment by Manager

**23.** (1) An obligation to pay money under a support order filed with the Manager, including all arrears of payment under the support order, may be enforced by garnishment by the Manager in accordance with the payment order provisions of this Act.

#### Payment order is garnishee summons

(2) A payment order issued by the Manager is a garnishee summons for the purposes of the *Family Orders and Agreements Enforcement Assistance Act* (Canada), the *Garnishment, Attachment and Pension Diversion Act* (Canada), and the *Public Service Garnishee Act*.

#### Garnishment by recipient

(3) An obligation to pay money under a support order not filed with the Manager, including all arrears of payment under the support order, may be enforced by the recipient by garnishment in accordance with the Rules of the Nunavut Court of Justice.

#### Recognition of extraterritorial summons

(4) The Clerk shall issue a garnishee summons on the filing of a garnishee summons that

- (a) is issued outside Nunavut;
- (b) states that it is issued in respect of support or maintenance; and
- (c) is written in or accompanied by a sworn or certified translation into one of the Official Languages of Nunavut.

### Priority

(5) Despite any other enactment, a garnishment of money in respect of support payments by the Manager under this Act or a recipient under the Rules of the Nunavut Court of Justice has priority over any other garnishment of such money except garnishment under another support order.

### Failure to pay under payment order

**24.** (1) Unless a garnishee files an application for revocation of a payment order under subsection 18(1), where the garnishee does not pay to the Manager the amount due from the garnishee to the payer or the amount required to be paid by the garnishee under a payment order, the Manager is entitled to judgment against the garnishee by filing with the court the payment order and an affidavit stating that the garnishee has not made payments required by this Act and has not filed an application for revocation under subsection 18(1).

### Failure to pay under garnishee summons

(2) If the Clerk has issued a garnishee summons on application by a recipient, the recipient may apply to the court if the garnishee fails to pay money into court or file an answer in accordance with the Rules of the Nunavut Court of Justice, and the court may, on notice to the garnishee, order that judgment be entered against the garnishee in such amount as the court considers proper.

### Order of court

(3) A judgment under subsection (1) or (2) shall include the amount of the default under the payment order or garnishee summons, together with the costs of the application.

### Discharge of garnishee

(4) An amount paid by or execution levied on a garnishee under a payment order or garnishee summons discharges, to the extent of the payment or levy, the debt owing by the garnishee to the payer, even if the payment order or garnishee summons is subsequently set aside or the judgment or order is later reversed.

## Garnishment of lottery prizes

### Definitions

**25.** In this section and sections 26 and 27,

"Corporation" means the Western Canada Lottery Corporation, as defined in the *Western Canada Lottery Act*; (*Soci t *)

"lottery" means a lottery organised and conducted by the Corporation; (*loterie*)

"prize" means money or goods having a value of more than \$1000, payable to an individual claimant resident in Nunavut pursuant to a single winning ticket as a prize in a lottery. (*prix*)

#### Notice to Manager

- 26.** The Corporation shall, before paying any prize,
- (a) provide the Manager with the name of the prize winner and all information related to the identity of the prize winner in the possession of the Corporation; and
  - (b) withhold payment of the prize for a period of not less than three business days after giving such information unless the Manager notifies the Corporation that the prize may be paid before that time.

#### Payment order to Corporation

- 27.** (1) If a payer in arrears under a support order filed with the Manager is a prize winner, the Manager shall, within three business days after receipt of notice from the Corporation under section 26, issue a payment order to the Corporation with respect to the amount owing by the payer.

#### Payment to Manager

- (2) If the Corporation has received a payment order under subsection (1), it shall
- (a) deduct from the prize owing to the payer the amount owing under the support order as set out in the payment order, or the amount of the prize, whichever is less; and
  - (b) pay the amount deducted to the Manager.

#### Delivery of goods or services

- (3) If a prize consists of goods or services without an option for the prize winner to take the cash value of the prize, the Manager may direct
- (a) the Corporation to deliver the prize or documents entitling the payer to the prize to the Sheriff; and
  - (b) the Sheriff to sell the goods or services in accordance with paragraph 28(2)(b).

#### Discharge of Corporation

- (4) Payment of an amount by the Corporation to the Manager as required under subsection (2) or delivery of a prize or documents entitling a payer to a prize under subsection (3) discharges the obligation of the Corporation to the payer to the extent of the payment made or the value of the goods or services so delivered.

### Writ of Execution

#### Filing with Sheriff

- 28.** (1) The Manager may file a support order in default and a statement of arrears with the Sheriff.



### Writ of execution

(2) A support order filed under subsection (1) is deemed to be a writ of execution for the amount that payment ordered is in arrears from time to time, and the Manager may at any time instruct the Sheriff to:

- (a) levy the money due and payable under the order;
- (b) on failure of the payer to pay the amount due and payable, seize and sell property of the payer to satisfy the amount owing, in accordance with the *Seizures Act* and the *Creditors Relief Act*;
- (c) file the support order as a writ of execution with the Registrar of Land Titles in the land titles office for any registration district under the *Land Titles Act* in which the payer has an interest in real property.

### Further statements

(3) The Manager may file a further statement of arrears with the Sheriff from time to time, and such further statement is deemed to be a renewal of the writ of execution for all purposes.

### Priority

(4) Despite any other enactment, a support order filed under this section takes priority over any other writ of execution against a payer for the full amount of support payments in arrears, except a writ of execution issued with respect to another support order against the same payer, which shall rank equally, no matter which was filed first.

### Variation

(5) Where a support order filed under this section is varied, the variation order may be filed with a Sheriff, and any subsequent statement of arrears filed must be in accordance with the amount of arrears under the support order as varied.

## Charges on Property

### Charges on real property

**29.** (1) In accordance with subsection 61(1) of the *Family Law Act* or subsection 74(1) of the *Children's Law Act*, or in any case where a payer is in arrears of payment under a support order, the Manager may register in the land titles office established under the *Land Titles Act*, against real property of a payer, or a corporation jointly or jointly and severally liable with the payer under section 40 or 41, in respect of which a certificate of title has been issued,

- (a) a support order filed with the Manager; and
- (b) a statement of the Manager setting out the information required under subsection 113(3) of the *Land Titles Act*.

### Special encumbrance

(2) A support order registered under subsection (1) is deemed to be a special encumbrance executed by the payer in the form prescribed under the *Land Titles Act*, and creates a charge on the property in favour of the recipient securing

- (a) the amount of arrears of support and interest accrued before the support order is registered; and
- (b) the amount of any arrears of support that accrues while the support order is registered.

#### Variation order

(3) If a support order registered under this section is varied, the support order as varied is deemed to be registered and has the same priority as the registered support order.

#### Application to cancel or postpone

(4) A person against whose real property a support order is registered may apply to the court for an order directing the Registrar under the *Land Titles Act* to cancel the registration of the support order, or postpone the charge created by the registration, on any terms as to security or other matters the court considers just.

#### Court order

(5) On application under subsection (4), the court may make an order directing the Registrar under the *Land Titles Act* to cancel or postpone the registration of a support order under subsection (1) against all or part of the estates and interests of the payer or any other person, under such terms and conditions the court considers appropriate.

#### Notice to Manager

(6) Notice of an application under subsection (4) shall be served on the Manager.

#### Charges on personal property

**30.** (1) In accordance with subsection 61(2) of the *Family Law Act* or subsection 74(2) of the *Children's Law Act*, or in any case where a payer is in arrears of payment under a support order filed with the Manager, the Manager may register a financing statement or the support order in the Personal Property Registry as defined in the *Personal Property Security Act*.

#### Corporation jointly liable with payer

(2) If a corporation is jointly or jointly and severally liable under section 40 or 41 with a payer who is in arrears under a support order, the Manager may include the corporation as an additional debtor when registering the support order in the Personal Property Registry under subsection (1).

#### Effect of registration

- (3) A financing statement or support order registered under subsection (1)
- (a) creates a perfected security interest in favour of the recipient in the described property of the payer or corporation liable with the payer, and has priority over any subsequently registered financing statement; and

- (b) may be enforced by sale of the property against which it is perfected, in the same manner as a sale to realize on a security interest.

#### Lien for arrears

- (4) The security interest is a lien for the total of
  - (a) the amount of arrears of support and interest accrued before the financing statement or support order is registered; and
  - (b) the amount of any arrears of support that accrues while the financing statement or support order is registered.

#### Priority

(5) The security interest has priority for the total determined under subsection (4) over any other security interest that is perfected or registered after the financing statement or support order is registered.

#### Equal priority of support orders

(6) Despite subsection (5), the security interest created by registration of a financing statement or support order under subsection (1) ranks in equal priority to a security interest created by the registration of a financing statement or support order with respect to another support order of the payer, no matter which was registered first, and the recipients under each order share on a pro rata basis in the proceeds of any enforcement of the security interest, unless the court orders otherwise on the application of the Manager or a recipient or the payer.

#### Voluntary cancellation or amendment

(7) The Manager may agree, at the request of a payer and subject to any terms or conditions the Manager considers appropriate, to cancel or amend the registration of a financing statement or support order or register a financing change statement with respect to a particular item of property charged by a financing statement or support order.

#### Court application

(8) A person against whose personal property a financing statement or a support order is registered may apply to the court for an order directing the Registrar of the Personal Property Registry to cancel or amend the registration of the financing statement or support order, or requiring the Manager to register a financing change statement.

#### Court order

- (9) On an application under subsection (8), the court may make an order
  - (a) directing the Registrar of the Personal Property Registry to cancel or amend the registration under subsection (1) of a financing statement or a support order against all or part of the interests of the payer or any other person, under such terms and conditions the court considers appropriate; or
  - (b) directing the Manager to register a financing change statement in respect of all or part of the property of the payer or any other

person charged under the financing statement or support order, under such terms and conditions the court considers appropriate.

### Default Hearing

#### Court appearance

**31.** (1) The Manager may, by notice served on a payer, require the payer to file a financial statement with the Manager and to appear before the court to explain the default in any of the following circumstances:

- (a) the payer is in default under a support order filed with the Manager;
- (b) the payer has neglected or refused to make arrangements for payment of a support order under section 4, or to appear at a payment conference requested by the Manager;
- (c) the payer at a payment conference has refused
  - (i) to discuss information that is or should be included in a financial statement or a statement of arrears, or
  - (ii) to make reasonable arrangements for payment of amounts owing under a support order, including any accrued arrears;
- (d) the payer has failed to comply with arrangements agreed to at a payment conference or otherwise for payment of the support order or any arrears.

#### Statement of arrears

(2) A notice under subsection (1) must be accompanied by a statement of arrears prepared by the Manager, setting out the amounts owing by the payer to the date of the notice, including arrears that may have accrued before this Act came into force.

#### Filing statement of arrears by recipient

(3) The Clerk shall, by notice served on a payer together with a statement of arrears, require the payer to file a financial statement and to appear before the court to explain the default, if

- (a) an obligation to pay money under a support order that is not filed with the Manager is in default; and
- (b) the recipient files with the Clerk
  - (i) a request, and
  - (ii) a statement of arrears.

#### Arrest of payer

(4) If a payer fails to file a financial statement or to appear as required by a notice issued under subsection (1) or (3), the court may issue a warrant for the arrest of the payer for the purpose of bringing the payer before the court.

### Presumptions at hearing

- 32.** (1) At a default hearing, unless the contrary is shown,
- (a) a payer is presumed to be able to pay the arrears and to make subsequent payments under a support order; and
  - (b) a statement of arrears prepared and served by the Manager is presumed to be correct.

### Powers of court

- (2) The court may, unless satisfied that there are no arrears or that a payer is unable for valid reasons to pay the arrears or to make subsequent payments under the support order, order that the payer
- (a) discharge the arrears by periodic payments that the court considers just;
  - (b) discharge the arrears in full by a specified date;
  - (c) comply with the support order to the extent of the ability of the payer to pay;
  - (d) provide security in the form that the court directs for the arrears and subsequent payments;
  - (e) complete and provide a financial statement to the Manager or a person specified in the order, including the required information about the financial affairs of the payer or of a corporation owned or controlled by the payer or by the payer and his or her immediate family members;
  - (f) surrender his or her driver's licence to the Manager, or a person designated by the Manager, pending the making of arrangements satisfactory to the Manager for payment of amounts owing under the support order;
  - (g) report periodically to the court, the Manager or a person specified in the order;
  - (h) provide as soon as possible to the court, the Manager or a person specified in the order particulars of any future change of address or employment;
  - (i) be imprisoned continuously or intermittently for not more than 90 days unless the arrears are sooner paid; and
  - (j) be imprisoned continuously or intermittently for not more than 90 days on default in any payment ordered under this subsection.

### Accruing of arrears

- (3) An order made under paragraph (2)(c), (i) or (j) does not affect the accruing of arrears.

### Additional witnesses

- (4) If the court is satisfied that a person is able to give evidence material to the enforcement of a support order that is the subject of a default hearing, the court may require the person to do one or more of the following:

- (a) appear before the court to give evidence;
- (b) file a financial statement with the court;
- (c) file with the court a written report, either under oath or not, on information referred to in subsection 12(1) within the person's knowledge or shown on a record within the person's possession or control;
- (d) produce for the court's inspection documents within the person's possession or control that show information referred to in subsection 12(1);
- (e) file with the court copies of documents within the person's possession or control that show information referred to in subsection 12(1).

#### Admissibility of evidence

(5) In a default hearing under this section, the court may admit as evidence testimony or documents related to the income and assets of a person, notwithstanding that the testimony or document would not otherwise be admissible as evidence, and may determine any matter on that evidence.

#### Joint hearings

(6) A default hearing under this section and a hearing on an application for variation of a support order in default may be heard together or separately.

#### Variation of default order

(7) The court may vary an order made under subsection (2) if there is a material change in the circumstances of a payer.

#### Realizing on security

(8) An order for security made under paragraph (2)(d) or a subsequent order of the court may provide for the realization of the security by seizure, sale or other means, as the court directs, but this provision does not affect the ability of the Manager or recipient to realise any security in accordance with its terms and the law relating to such security, without requiring a court order.

#### Suspension of licence

(9) If a payer fails to make arrangements satisfactory to the Manager for payment of amounts owing under a support order within three business days of the surrender of a licence in accordance with an order made under paragraph (2)(f), the Manager shall return the licence to the Registrar of Motor Vehicles with a notice that the licence is to be suspended immediately and remain suspended until the Manager gives notice in accordance with subsection 38(5) that the licence may be reinstated.

#### Liability on conveyance of property

**33.** (1) On application by the Manager, or a recipient in the case of a support order not filed with the Manager, or in a default hearing under section 32, the court, if it determines that the payer has gifted or transferred property to or otherwise conferred a

benefit on any person for the purpose of evading an obligation to pay support, and further determines that the person knew or ought to have known of that purpose, may, on notice to the person, order that

- (a) the person is, to the extent that the value of the property or benefit exceeds the consideration paid by the person for the property or benefit, jointly and severally liable with the payer for the support payments and any arrears;
- (b) the gift or transfer of property be set aside; or
- (c) the property or part of the property be sold to realize the amount owing under the support order.

#### Liability of corporate officers or directors

(2) If the person to whom property is gifted or transferred or a benefit is conferred referred to in subsection (1) is a corporation, and the court determines that any officers or directors of the corporation knew or ought to have known of the purpose for the gift or transfer or benefit, the court may, in addition to any order made under subsection (1), order that the officers or directors of the corporation are, to the extent that the value of the property or benefit exceeds the consideration paid by the corporation for the property or benefit, jointly and severally liable with the payer for the support payments in arrears.

#### Presumption of intent of payer

(3) A payer who makes a gift or a transfer of property for substantially less than the fair value of the property is presumed to have made the gift or transfer for the purpose of evading an obligation to pay support, in the absence of satisfactory evidence to the contrary.

#### Presumption of knowledge

(4) A person to whom a payer gifts or transfers property for substantially less than the fair value of the property, and who knows that the payer has obligations under a support order, is presumed to know that the gift or transfer was made for the purpose of evading an obligation to pay support, in the absence of satisfactory evidence to the contrary.

#### Exception – family gifts

(5) This section does not apply to an individual gift to an immediate family member of property having a value of not more than \$200.

#### Warrant of committal

**34.** (1) If an order is made under paragraph 32(2)(i) or (j), the court shall issue a warrant of committal to a peace officer who shall arrest the person against whom it is issued.

#### Effect of imprisonment

(2) Imprisonment of a payer pursuant to an order made under paragraph 32(2)(i) or (j) does not discharge arrears under a support order.

## Appointment of Receiver

### Appointment of receiver

**35.** (1) The Court, on an application under the Rules of the Nunavut Court of Justice, may, by order, appoint a receiver, to the extent of any payments due or accruing due under a support order, for any of the following purposes:

- (a) to collect any income due, owing or payable to, or to become due, owing or payable to, or earned or to be earned by, the payer;
- (b) to take all steps necessary to apply for and receive any benefit, credit, interest or entitlement available to the payer;
- (c) to take all steps necessary to take possession of and realize upon property in which the payer has an interest or entitlement;
- (d) to take all steps necessary to pursue any action that is available to the payer;
- (e) to take any other steps or be given any other authority that the judge considers necessary or advisable.

### Appointment in default hearing

(2) The court conducting a default hearing under section 32 may, if satisfied that the payer is in default under a support order, appoint a receiver in the course of the hearing, without prior application.

## Evasion by Payer

### Restraining order

**36.** (1) The court, on application, may make an interim or final order restraining the disposition or wasting of assets of a payer, or a person jointly or jointly and severally liable under section 40 or 41 with a payer, that may hinder or defeat the enforcement of a support order.

### Order in default hearing

(2) The court conducting a default hearing under section 32 may, if satisfied that the payer is in default under a support order, make an order restraining the disposition or wasting of assets in the course of the hearing, without prior application.

### Arrest of absconding payer

**37.** If it appears that a payer is about to leave Nunavut in order to evade or hinder enforcement of a support order against the payer, a court on application may

- (a) issue a warrant for the arrest of the payer for the purpose of bringing the payer before the court; and
- (b) make any order provided for in section 32, 33, 35 or 36.



## PART IV

## OTHER ENFORCEMENT MEASURES

## Suspension of Drivers' Licences

Notice of action under *Motor Vehicles Act*

**38.** (1) If a payer is in persistent arrears under a support order filed with the Manager, the Manager may serve a notice on the payer stating that if the payer does not, on or before the date specified in the notice, comply with the support order or make arrangements satisfactory to the Manager to comply with the order, the Manager may direct the Registrar to do one or more of the following:

- (a) suspend a driver's licence issued to the payer; and
- (b) refuse to issue to or renew a driver's licence of the payer.

Specified date

(2) The date specified in the notice referred to in subsection (1) must be not less than 14 days after the effective day of service.

Manner of service

(3) The Manager may serve the notice referred to in subsection (1) at the payer's most recent address known to the Manager or the Registrar by any manner set out in section 50.

Action by Registrar

(4) If the payer does not comply with the support order or make arrangements satisfactory to the Manager for complying with the support order by the date specified in the notice, the Manager shall, in writing, direct the Registrar to

- (a) suspend a driver's licence issued to the payer; and
- (b) refuse to issue to or renew a driver's licence of the payer.

Period of suspension or non-renewal

(5) If a driver's licence has been suspended or its issuance or renewal has been refused under subsection (4), the suspension or refusal remains in effect until the Registrar receives a notice from the Manager to end it.

Definitions

(6) In this section,

"driver's licence" means a driver's licence, as defined by and issued under the *Motor Vehicles Act*; (*permis de conduire*)

"Registrar" means the Registrar as defined in the *Motor Vehicles Act*. (*registraire*)

### Information to Credit Reporting Agencies

#### Report to credit reporting agencies

**39.** (1) The Manager may report a payer who is in persistent arrears to a credit reporting agency in accordance with subsection (2).

#### Disclosure of information

(2) The Manager may disclose the following information to a credit reporting agency:

- (a) the name of the payer in default under the support order;
- (b) the date of the support order;
- (c) the amount and frequency of the payer's obligations under the support order;
- (d) the amount of arrears owing under the support order at the time of the disclosure; and
- (e) any other prescribed information.

#### Information in reports

(3) A credit reporting agency may include information respecting arrears under a support order in a report on judgment debts or liabilities of a payer.

#### Further information to agency

(4) The Manager shall notify the credit reporting agency when a payer who is the subject of a report under subsection (1) is no longer in arrears under the support order.

### Liability of Corporation Owned or Controlled by Payer

#### Corporation owned by payer

**40.** (1) A corporation in which a payer is the sole shareholder and has the sole beneficial interest in the shares of the corporation shall be jointly and severally liable with a payer who is in persistent arrears for payments required under a support order filed with the Manager if the Manager serves the corporation with a notice stating

- (a) that the corporation is jointly and severally liable with the payer for payments required under the support order; and
- (b) the amount owing by the payer under the support order.

#### Effects of joint and several liability

(2) If a corporation is jointly and severally liable under subsection (1),

- (a) the corporation continues to be liable as long as the payer is liable for payments required under the support order;
- (b) an enforcement measure that may be taken under this Act against the payer may be taken against the corporation; and
- (c) the amount of any payment made by the corporation under the support order is a debt owed by the payer to the corporation.

### Change of ownership

(3) Despite subsection (2), a corporation is not liable for payments under a support order that come due on or after the date the Manager is served with written notice from the corporation including

- (a) evidence satisfactory to the Manager that the payer no longer has a beneficial interest in any shares of the corporation and the date this took effect;
- (b) the name and address of the person who acquired the beneficial interest in the payer's shares; and
- (c) if known to the corporation, the nature and the amount of consideration the payer received or will receive for transferring his or her beneficial interest in the shares.

### Risk of insolvency

(4) For the purpose of an enforcement proceeding against a corporation jointly and severally liable under this section, the Manager shall

- (a) consider if a significant risk to the continued solvency of the corporation arises or will arise from the enforcement proceeding; and
- (b) if the Manager determines that a significant risk has arisen or will arise, proceed in a manner that will, in the Manager's opinion, reduce the risk and allow for enforcement under this Act to be effective.

### Corporation controlled by payer and immediate family

**41.** (1) The Manager, in respect of a support order filed with the Manager, or a recipient, in respect of a support order not filed with the Manager, may apply to the court for an order that a corporation controlled by a payer or by a payer and his or her immediate family members is jointly and severally liable with a payer who is in persistent arrears for payments required under the support order if the applicant serves the corporation with notice of the claim for joint and several liability and the amount owing by the payer under the support order.

### Effect of order

(2) If a court orders that a corporation is jointly and severally liable under subsection (1),

- (a) the corporation continues to be liable as long as the payer is liable for payments required under the support order;
- (b) an enforcement measure that may be taken under this Act against the payer may be taken against the corporation; and
- (c) the amount of any payment made by the corporation under the support order is a debt owed by the payer to the corporation.

### Change of control

(3) Despite subsection (2), a corporation is not liable for payments under a support order that come due on or after the date the Manager or the recipient, as the case may be, is served with written notice from the corporation including

- (a) evidence satisfactory to the Manager or the recipient that the payer no longer has a beneficial interest in any shares of the corporation and the date this took effect;
- (b) the name and address of the person who acquired the beneficial interest in the payer's shares; and
- (c) if known to the corporation, the nature and the amount of consideration the payer received or will receive for transferring his or her beneficial interest in the shares.

### Risk of insolvency

(4) For the purpose of making an order under this section, the court shall

- (a) consider if a significant risk to the continued solvency of the corporation will arise from enforcement proceedings taken pursuant to the order; and
- (b) if the court determines that a significant risk will arise, make an order that will, in the court's opinion, reduce the risk and allow for enforcement under this Act to be effective.

### Definition – "control"

(5) In this section, "control" means, with respect to a corporation, to hold, other than by way of security only, by or for the benefit of a person or a group of persons not dealing with each other at arm's length, shares in a corporation that in an election of the directors of the corporation carry, in total, sufficient voting rights to elect 50% or more of the directors or to otherwise effectively control the operations and direction of the corporation. (*contrôler*)

## PART V

### GENERAL

#### Administration

#### Office

**42.** (1) A Family Support Office is established, for the purpose of ensuring compliance with support orders for the benefit of families in Nunavut.

#### Manager

(2) The Minister may appoint a Family Support Manager, who is responsible for the administration of the Family Support Office and this Act.

#### Forms and procedures

(3) The Manager may approve forms and may establish practices and procedures necessary for effectively carrying out the Manager's functions pursuant to this Act.

#### Family support officers

**43.** (1) The Manager may appoint family support officers for the purposes of this Act.

#### Power of family support officers

(2) A family support officer may act for and in the name of the Manager.

### Application of Payments

#### Application of payments

**44.** (1) Subject to subsection (2), and unless a court orders otherwise, money paid on account of a support order must be credited

- (a) first to current periodic payments or payments coming due within 15 days of receipt of a payment;
- (b) then to arrears outstanding; and
- (c) lastly to other amounts payable and outstanding.

#### Multiple support orders

(2) If there is more than one support order filed with the Manager with respect to the same payer, the Manager may, in his or her discretion, apportion payments received on account of a support order among the recipients under all or some of the support orders on a pro rata basis.

#### Records of payments

(3) The Manager shall keep records, in accordance with the financial management directives issued by the Financial Management Board, of support orders filed with the Manager and payments made in respect of the support orders as will enable him or her to ascertain at any time the currency of payment or the occurrence of any default in payment under an order, including records of:

- (a) all amounts of money received by the Manager;
- (b) all amounts of money paid out by the Manager;
- (c) all amounts credited as payments to the account of a payer under section 6;
- (d) the recipient to whom or on whose behalf goods or services have been provided under section 6; and
- (e) all amounts in arrears under a support order.

#### Funds not attachable

(4) Despite any other enactment, payments received by the Manager under a support order are not attachable by any other creditor of the payer or the recipient.

## Minors

### Capacity of minor

**45.** A minor may commence, conduct and defend a proceeding and initiate and complete steps for enforcement of a support order without the intervention of a litigation guardian.

## Fees

### No fees to recipient

**46.** (1) The Manager shall not charge a fee to a recipient for the Manager's services in enforcing a support order.

### Fees for withdrawals and re-filings

(2) The Manager may charge prescribed fees to a recipient or a payer in respect of any second or subsequent withdrawal or re-filing of a support order under section 9 or 10.

### Fees to other parties

(3) The Manager may charge prescribed fees to a payer or a person jointly or jointly and severally liable with a payer or to a garnishee in respect of any proceedings taken to enforce a support order or payment order.

### Amounts paid to other parties

(4) The Manager may recover from a payer, a person jointly or jointly and severally liable with a payer, or a garnishee under a payment order any amount paid by the Manager to any other person in respect of any proceedings taken to enforce a support order or payment order.

### Collection of fees and amounts paid

(5) Any amount that a payer or other person is required to pay to the Manager under subsection (2), (3) or (4) may be collected in the same manner as support may be enforced under this Act.

### No fees in respect of payment orders

(6) Except as provided in the *Family Support Orders and Agreements Garnishment Regulations* made under the *Family Orders and Agreements Enforcement Assistance Act* (Canada), a person to whom a payment order is issued shall not charge a fee for complying with the order.

### No fees in respect of request for information

(7) A person to whom a request for information is issued by the Manager shall not charge a fee for complying with the request.

## Default Hearings and Other Court Proceedings

### Proceedings before the court

**47.** (1) Where the Manager initiates or responds to proceedings under this Act, the Manager shall have carriage of the proceedings on behalf of the recipient.

### Service on Manager

(2) The moving party shall serve the Manager with notice of any motion pertaining to a support order filed with the Manager.

### Proof of service on payer

(3) Proof of service of a support order on the payer is not necessary for the purpose of a default hearing.

### Enforcement of Manager's orders

(4) An order made by the Manager may be enforced in any manner that an order of the court may be enforced.

### Lack of co-operation

(5) The Manager may report a lack of co-operation or compliance by a payer to the court in any proceedings for enforcement under this Act, and the court may take the lack of cooperation or compliance into account in making its order, if a payer

- (a) has neglected or refused to make arrangements for payment of a support order under section 4 or to appear at a payment conference requested by the Manager;
- (b) at a payment conference has refused
  - (i) to discuss information that is or should be included in a financial statement or a statement of arrears, or
  - (ii) to make reasonable arrangements for payment of amounts owing under a support order, including any accrued arrears;
- (c) has failed to comply with arrangements made for payment of the support order or any arrears.

### Costs

(6) The court may award the costs of any action or proceeding to the Manager where the Manager has commenced the action or proceeding in connection with the enforcement of a support order under this Act.

### Evidence of Manager's documents

**48.** (1) A statement of arrears signed by the Manager is admissible in evidence as *prima facie* proof of the arrears without prior notice to any party.

### Evidence of filing of support order

(2) A statement of the Manager that a support order is filed with the Manager is admissible as conclusive proof of the fact.

### Signature of Manager admissible without proof

(3) Any document signed by the Manager with respect to the enforcement of a support order is admissible in evidence without proof of the signature or official character of the Manager.

### Reproduction of signature

(4) If the signature of the Manager is required for the purposes of this Act, the signature may be written, engraved, lithographed or reproduced by any other mode of reproducing words in visible form.

## Delivery and Service of Documents

### Delivery of documents to Manager

**49.** (1) A notice, document, payment, request, consent or information not requiring personal service under this Act or the regulations shall be served on or delivered to the Manager or filed with him or her at the Family Support Office in one of the following ways:

- (a) by ordinary mail;
- (b) by registered mail;
- (c) by prepaid courier;
- (d) by electronic transmission that meets the information technology standards and acknowledgement rules established by the Manager;
- (e) by personal delivery; or
- (f) by any other means agreed to by the Manager and the person delivering a required or requested document or information.

### Delivery of documents by Manager

(2) A notice, document, payment, request, consent or information not requiring personal service under this Act or the regulations shall be served or delivered by the Manager on or to the appropriate person, at the most recent address on record with the Manager, or to that person's solicitor of record, in one of the following ways:

- (a) by ordinary mail;
- (b) by registered mail;
- (c) by prepaid courier;
- (d) by electronic transmission that meets the information technology standards and acknowledgement rules established by the Manager;
- (e) by personal delivery; or
- (f) by any other means agreed to by the Manager and the person to whom a required or requested document is being delivered.

### When personal service required

**50.** (1) Personal service of documents under this Act is required only in the following cases:

- (a) a notice under subsection 3(8), concerning the filing or withdrawal of a support order;



- (b) a notice to appear at a default hearing, under subsection 5(4) or 31(1) or (3);
- (c) a payment order issued by the Manager or a garnishee summons issued by the Clerk;
- (d) a notice under paragraph 16(2)(b) or (c), concerning joint debts or accounts;
- (e) a notice of application under section 29, 35, or 36;
- (f) a notice of intention to suspend a driver's license under section 38;
- (g) a notice under paragraph 40(1)(b) or subsection 41(1), concerning joint and several liability of a corporation and a payer.

#### Additional means of personal service

(2) In addition to the methods of service provided in Rule 30 of the Rules of the Nunavut Court of Justice, personal service may be made:

- (a) by any means by which the sender receives a written or electronic delivery receipt from the addressee or a person authorized to accept the service;
- (b) by registered mail or prepaid courier if the sender receives from the carrier one of the following documents:
  - (i) a written confirmation attesting that the document was delivered to its destination, or
  - (ii) a copy of an electronic delivery receipt;
- (c) on the Manager,
  - (i) by leaving a copy of the document with an employee of the Family Support Office in Iqaluit, or
  - (ii) by delivery of an electronic document that meets the information technology standards and acknowledgement rules established by the Manager; or
- (d) by the Manager on any other person, by any other means agreed to by the Manager and the person on whom a document is to be served.

#### Acceptance of service by solicitor

(3) Despite subsection (1), personal service of a document is not required when a solicitor accepts service on behalf of the person on whom the document is to be served.

#### Service or delivery by mail – deemed effective

(4) Service or delivery by ordinary mail, registered mail or prepaid courier shall be deemed to be effective seven days after the document was sent.

#### Electronic service or delivery – deemed effective

(5) Service or delivery by electronic transmission shall be deemed to be effective on the date on which the sender receives an electronic delivery receipt from the addressee or a person authorized to accept the service or receive the document.

### Rules of court apply

(6) If not provided otherwise in this Act and the regulations, the Rules of the Nunavut Court of Justice apply to the service of a document required under this Act and the regulations.

## Unenforceable Agreements

### Unenforceable agreements

**51.** No provision in an agreement that constitutes a support order is enforceable which requires a recipient to, or by which a recipient agrees to,

- (a) withdraw a support order filed with the Manager under this Act; or
- (b) file with the Court or the Manager a notice stating that the recipient does not wish to have the support order enforced by the Manager.

## Death of a Party

### Death of payer

**52.** (1) An amount owing under a support order at the date of death of a payer is a debt of the estate of the payer, whether or not the support order binds the estate of the payer.

### Action by Manager

(2) The Manager may take any action required to collect a debt referred to in subsection (1) from the executor or administrator of the estate of a payer on behalf of a recipient.

### Death of recipient or child

(3) An amount owing under a support order at the date of death of a recipient or a child of the recipient who is the subject of the order is a debt due to the recipient or the estate of the recipient, as the case may be.

### Collection by Manager

(4) On request of the recipient or the executor or administrator of the estate of a recipient, as the case may be, the Manager may take any action authorized to be taken under this Act to enforce a support order to collect a debt referred to in subsection (3) on behalf of the recipient or the estate of the recipient.

### Application for relief

(5) Despite subsections (1) and (3), on application, the court may relieve the estate of a payer or the payer, as the case may be, from liability for all or part of any amount owing under a support order at the date of death of the payer, the recipient or a child of the recipient if the court is satisfied that it would be grossly unfair to the estate or to the payer not to do so.

### Limitation of Liability

#### Immunity for acts or omissions in good faith

**53.** (1) No action or proceeding may be commenced or costs assessed against the Manager, a family support officer, or any other public officer for an act done in good faith in the performance of a duty or the exercise of a power under this Act, or for any neglect or default in the performance of the duty or the exercise of the power in good faith.

#### Immunity for providing information

(2) No action or proceeding may be commenced or costs assessed against any person for providing information or documents to the Manager or any person directed by the court in responding in good faith to an advertisement or request for information under this Act.

### Offences and Punishment

#### Offences and punishment

**54.** A person is guilty of an offence and liable on summary conviction to a fine not exceeding \$5000 or to imprisonment for a term not exceeding 90 days or to both who

- (a) contravenes or fails to comply with an order of the Manager or the court;
- (b) knowingly provides misleading or false information under this Act to the Manager, the Clerk or the court; and
- (c) being an employer of a payer, contravenes section 21.

### Regulations

#### Regulations

**55.** The Commissioner, on the recommendation of the Minister, may make regulations

- (a) respecting filing, withdrawal and re-filing of support orders with the Manager;
- (b) prescribing any form or respecting the contents of any form, and any documents to be filed with any form required by this Act to be prescribed;
- (c) prescribing fees that may be charged by the Manager under this Act;
- (d) prescribing any other matter or thing that by this Act may or is to be prescribed; and
- (e) respecting any other matter that the Commissioner considers necessary for carrying out the purposes and provisions of this Act.

**Note**

**The following provisions have been deleted for the purposes of this consolidation:  
s.56 to 69 (Consequential Amendments)**

**TRANSITIONAL PROVISIONS****Former Act**

**70.** (1) In this section and section 71, "former Act" means the *Maintenance Orders Enforcement Act*, R.S.N.W.T. 1988, c.M-2, as amended for Nunavut under section 76.05 of the *Nunavut Act* (Canada).

**Family Support Manager**

(2) The person appointed as the Maintenance Enforcement Administrator under the former Act immediately before the coming into force of this Act is deemed to have been appointed as the Family Support Manager under subsection 42(2).

**Family support officers**

(3) A person appointed as an enforcement officer under the former Act immediately before the coming into force of this Act is deemed to have been appointed as a family support officer under subsection 43(1).

**Order under former Act**

**71.** (1) A maintenance order filed under the former Act is deemed to be a support order filed under this Act, and continues to be valid and may be varied, enforced or otherwise dealt with under this Act.

**Proceedings under former Act**

(2) Any proceeding for the enforcement of a maintenance order commenced under the former Act, on the coming into force of this Act, is deemed to have been commenced under this Act, and shall be continued in accordance with this Act.

**REPEAL AND COMMENCEMENT*****Maintenance Orders Enforcement Act***

**72.** The *Maintenance Orders Enforcement Act*, R.S.N.W.T. 1988, c.M-2, as amended for Nunavut under section 76.05 of the *Nunavut Act* (Canada), is repealed.

**Coming into force**

**73.** This Act or any portion of this Act comes into force on a day or days to be fixed by order of the Commissioner.