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<p>ENFORCEMENT OF FAMILY LAW ORDERS AND AGREEMENTS: LAW AND PRACTICE Wilton & Miyauchi Release No. 4, September 2023</p>

This practice-oriented manual details the full range of family law enforcement remedies available under federal and provincial legislation. The work is divided into three parts: Support, Custody Orders and Separation Agreements. Under each part, available enforcement remedies are described in detail with an emphasis on practice and procedure points. The full text of all relevant federal, provincial and territorial enforcement legislation is included.

What's New in this Update

This release features updates to chapter 1 (Support).

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Highlights

- **Support—No Arrears Owning— Saskatchewan**—The payor’s application to set aside a notice of continuing seizure was upheld on appeal as he was unable to satisfy either criteria in s. 28(1)(a) of The Enforcement of Maintenance Orders Act, 1997 (Sask.); there was no evidence that the arrears had been paid or that there was no debt owing to him: *Morin v. Matheson*, 2018 SKCA 9, 2018 CarswellSask 62 (Sask. C.A.). The court stated (at para. 15) that the “term ‘maintenance order’ in the Act included maintenance orders that, although no longer encompassing prospective maintenance, were in force and are still the legal basis and foundation for any arrears sought to be enforced. Such orders are enforceable maintenance orders for the purposes of the Act.” In the case at bar, whether there was an enforceable maintenance order depended on the effect of the consent order that purported to vary ongoing and prospective obligations to pay, and continuing obligations to pay arrears. The court found that while the consent order may have ended maintenance going forward, it said nothing about expungement of arrears. Indeed, a term of the order setting the issue of expungement for trial affirmed that arrears continued to exist. No mention was made of suspending enforcement of those arrears. It was also clear from the terms of the order that the maintenance recipient was not abandoning the action insofar as her rights to collect arrears were concerned. Thus, the proceedings survived in respect of both the obligation to pay arrears and the outstanding variation issues.
- **Support—Payments Under a Pension Plan—Meaning of “Payable”—Ontario**—The Garnishment, Attachment and Pension Diversion Act only applies to the enforcement of support or maintenance orders, it does not empower a pension administrator under the Pension Benefits Division Act to split a pension in pay as a method of dividing family or matrimonial property: *Fawcett v. Fawcett*, 2018 ONCA 150, 2018 CarswellOnt 2201 (Ont. C.A.), affirming 2016 ONSC 5331, 2016 CarswellOnt 21893 (Ont. S.C.J.). In this case, the appellant’s pension under the Canadian Forces Superannuation Act with a commuted value of \$747,200 was in pay. However, rather than make a lump sum payment of \$313,002 to the respondent, the appellant wanted to pay the respondent monthly by having her pension payments split at source, claiming that GAPDA allowed pension payments to be split at source as family or matrimonial property. The trial judge, however, determined that the Pension Benefits Division Act under which the Canadian Forces pension was administered only allowed a lump sum division. Thus, the trial judge ordered that an application be made to the administrator of the Canadian Forces pension to transfer \$313,002 to satisfy the amount of the equalization payment. In dismissing the appellant’s appeal, the court rejected her argument that GAPDA gave the PBD administrator power to split pension payments as a method of dividing family property.

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