



# FAMILY RESOLUTION SERVICE MAINTENANCE ENFORCEMENT PROGRAM

PRESENTATION TO THE MBA FAMILY LAW  
SECTION  
FEBRUARY 24, 2021

# FAMILY RESOLUTION SERVICE: MEP BACKGROUND

- Historically the MEP's authorities have been limited to the enforcement of maintenance orders as they are written with some discretion to determine the type of enforcement activities taken. Full enforcement of the support terms in a maintenance order continued unless/until the MEP was in receipt of an order signed by a judge
- Bill 9 - The Family Law Modernization Act introduced on March 9, 2019 provided for enhancement to the authorities and discretion of the Maintenance Enforcement Program to provide clients with out of court options for the enforcement of their maintenance orders(came into force July 1, 2019).
- The corresponding changes made to *The Family Maintenance Act* provides the MEP with administrative authorities to alter enforcement and consider their circumstances with respect to enforcement of their maintenance orders.
- These authorities are purely administrative and do not change court orders, just how the orders are being enforced. In some cases, parties may still require court involvement to meet their desired results.

# WHERE IS ENFORCEMENT INFO FOUND ON FAMILY LAW MANITOBA

Family Law Manitoba has a section devoted to child support that provides information on the Child Support Guidelines and including a section relating to Enforcing Support .

- Child support can be accessed through the tab 'Money' at:
  - <https://www.manitoba.ca/familylaw/money/child-support.html>.
- The Enforcing Support section provides general information about the enforcing of support and communication with the MEP as well as a link to the MEP website <https://www.gov.mb.ca/justice/courts/mep/index.html> that provides additional information about the MEP and MEP activities.

# WHAT'S NEW MAINTENANCE ENFORCEMENT PROGRAM

- The most impactful changes:
  - Administrative Suspensions of Enforcement - suspend enforcement without court involvement
  - Child Support Enforcement Eligibility - cease enforcement for adult children
  - Maintenance Agreements - alter the support being administered by the MEP based upon written agreement from the parties
  - The waiving or cancelling of Late Payment Penalties (LPPs) by the creditor

## **What this means for the MEP, MEP clients and stakeholders**

- In general, these administrative authorities provides clients with additional options for the enforcement needs of their maintenance orders and allows the MEP to be more responsive to client needs without the time and expense of court activity.
- Additionally, these activities relieves the courts from the time and resources involved with participating in these administrative activities.
- The MEP is able to focus resources on files that require additional attention as opposed to files where the parties circumstances are not reflective of their maintenance orders.

# MEP: WHAT'S NEW

## CHILD SUPPORT ENFORCEMENT ELIGIBILITY

Maintenance Orders for child support are generally enforceable by the MEP until “further order of the court” unless, they contain specific terminating clauses that allows the MEP to cease enforcement outside of a new court order or if a creditor opts-out of MEP services.

- As of July 1, 2019 section 53.9 of *The FMA* provides the MEP with the authority to undertake reviews to determine the status of adult children and to cease enforcing support for them.
  - Section 53.8 places the onus on the creditor to advise MEP when their child is no longer eligible to receive support. MEP correspondence including the letter a creditor receives at registration as well as website information advises creditors of that responsibility.
- As of July 1, 2019 , the MEP managed approximately 12,500 files with approximately 28,000 dependants while enforcing support for approximately 7,000 dependants that were over the age of 18. Additionally, approximately 2000 dependants turn 18 each year and will be form part of this MEP activity.

# MEP: WHAT'S NEW

## CHILD SUPPORT ENFORCEMENT ELIGIBILITY

### How does MEP manage eligibility reviews

- MEP may request information from a creditor as it relates to an adult child or, a debtor may request that the MEP make a request to a creditor.
- The MEP is able to do this periodically (section 53.9(1)). Specific timing is not set out in the legislation.
  - Information is requested from a creditor by regular mail 60 days before the adult child's birthday and then annually 60 days prior to their next birthdate.
  - A creditor is provided with 21 days to respond (a reminder letter is sent if no response on day 21). If no response received, the MEP will cease enforcement for that dependent and adjust the file accordingly.

# MEP: WHAT'S NEW

## CHILD SUPPORT ENFORCEMENT ELIGIBILITY

### How the MEP goes about determining eligibility

- Section 53.9(2) provides for considerations that the MEP can make to determine the ceasing of enforcement including, whether the child is unable to live independently because of illness, disability or other reason, such as attending secondary or post-secondary studies. Additional criteria is if the child is married or over the age of 24.
  - A Child Support Enforcement Eligibility form is sent to creditors and provides them with a format to present information supporting the continued enforcement for an adult child.
    - Note that the upper area of the form includes notification that the form may be provided to the debtor party (at their request) and section 53.9(9) allows for that disclosure.

### Eligibility Criteria disclosure

- Attending school - The MEP will accept a variety of records or documents from a creditor to support continued enforcement.
- Disability or illness – the MEP will accept the creditors form and does not require that they provide medical documentation. If a creditor identifies that a child is experiencing a temporary illness/disability, the MEP will send further requests. If a permanent disability is identified, the MEP does not send any further requests.

# MEP: WHAT'S NEW CHILD SUPPORT ENFORCEMENT ELIGIBILITY

## MEP Management of Child Support Enforcement Eligibility

- If a creditor party is unable to provide information to support continued enforcement for the adult child, or identifies a date they no longer require enforcement, section 53.10 provides for the authority to cease enforcement and to adjust the file to cease enforcement for that child.
- In cases where there are multiple dependants on a file and enforcement continues for any remaining dependents, section 53.11(1) provides for the MEP to adjust enforcement for any remaining dependants based upon the child support guidelines that were in effect at the time the order was made.
- The MEP cannot cease enforcement and adjust a file for a non-guideline order unless all of the children in the order do not meet the criteria to cease enforcement.
- The MEP will cease enforcement of any corresponding Section 7 expenses if there is/are:
  - One dependant
  - Multiple dependants and the order provides for a per month per child amount.



# MEP: WHAT'S NEW

## CHILD SUPPORT ENFORCEMENT ELIGIBILITY

### Notice to Clients

- Upon completing an eligibility review, the MEP is required to provide written notice to both parties.
- If an adjustment is made to cease enforcement for a dependent, a letter is provided to the parties advising of:
  - specifics of the file adjustment along with a Statement of Account.
  - new payment amount being enforced.

### Reinstatement of Support

- A creditor can reinstate enforcement of support (Section 53.9(11)) if they subsequently provide a completed eligibility form and information or documents to resume enforcement.
  - This limits enforcement of payments to 60 days prior to the creditor providing information.
  - Re-instatement is subject to section 53.9(3) where the MEP will not reinstate enforcement if the child is 24 years of age or over.

### If parties disagree with the MEP's decision

- They may apply to the court for further determination as to whether an adult child is entitled to maintenance.

# MEP: WHAT'S NEW

## ADMINISTRATIVE SUSPENSIONS

Prior to July 1, 2019, the MEP was not able to make enforcement considerations for debtors experiencing a change in circumstances. Their only recourse was to obtain a Suspension of Enforcement Order through court.

The MEP is now able to consider their circumstances and provide them with temporary enforcement relief if suitable. This administrative authority has been vital to allowing options to clients adversely affected by COVID-19.

### **Debtor responsibilities and Involvement – request for suspension**

- If a debtor feels that that a maintenance order being administered by the MEP no longer reflects their current circumstances, they can make a request for an administrative suspension and provide the necessary information that supports that request. This request is made in writing using the Request for Administrative Suspension form along with any corresponding documentation that supports the request. The form can be obtained from the MEP office or the MEP website.
  - In cases where the debtor has a lawyer, the MEP will accept the request from their lawyer and results will be provided in writing to both the debtor and the lawyer.
- **Creditor involvement**
  - Sec 61.1.1(4) allows for the creditor to provide information to the MEP to cancel or modify a suspension

# MEP: WHATS NEW ADMINISTRATIVE SUSPENSIONS

## General Information

- MEP currently receives approximately 60-70 requests per month/Approximately 70% of suspension requests are granted.
  - Processing times 2-5 business days (up to 5-7 business days when a higher volume is received)
  - Administrative Suspension requests are reviewed by the MEP's Special Investigation Unit (SIU) and managed through their duration by the SIU if a suspension is granted.

## Suspension of Enforcement Orders

- A debtor cannot make application to the court for an order suspending enforcement unless they have made a request to the MEP for an Administrative Suspension.
  - If the MEP denies their Administration Suspension they can then proceed with activities to obtain a Suspension of Enforcement Order.

# MEP: WHAT'S NEW ADMINISTRATIVE SUSPENSIONS

## File Management

### **General circumstances where the MEP will grant an administrative suspension**

- Change in debtor's financial circumstances and primarily a reduction of income compared to the income represented in their maintenance order.
  - Long term - A debtor's financial circumstances have been permanently reduced and their ultimate form of relief is to vary their order.
  - Short Term - A debtor is experiencing a significant change in their financial circumstances as a result of an illness, medical issue or temporary loss of income. i.e. 2020-2021 – COVID-19

## Suspension Duration

- The duration of a suspension is limited to a 6 month maximum (Sec 61.1(2))
  - A suspension cannot be extended beyond 6 months but upon expiry, a debtor may submit a further request for a new suspension.

# MEP: WHAT'S NEW ADMINISTRATIVE SUSPENSIONS

## File and Administrative Suspension Management

- If a suspension is granted, enforcement may be suspended or modified based upon the debtor's circumstances.
  - Complete cessation of enforcement
    - Examples, debtor on EIA, incarcerated, nil income
  - Conditional payment – enforcement of a reduced payment amount based upon the debtor's current income.
    - Payment amount restricted to an amount that coincides with the debtor's current financial circumstances and income.
    - If the conditional payments are not met the suspension is ended.
- Suspension of specific enforcement activities
  - MEP has a active passport hold (Federal Licence Denial)
  - Debtor provides information to support that they need to travel outside of Canada for medical care
- Other conditions - Information to monitor and manage the suspension.
  - Examples - update on court activity/employment(change of income)/updated medical certificate/filing of income tax

# MEP: WHAT'S NEW ADMINISTRATIVE SUSPENSIONS

## Notice to Clients

- Upon completing a review of a suspension request, the MEP is required to provide written notice parties.
  - Suspension granted - written notice provided to both parties including:
    - The duration of the suspension and any conditions.
  - Suspension not granted – written notice provided just to the debtor with reasons why the request for suspension was denied.
- **Disclosure of information**
  - As of April 2020 the MEP is allowed to share the request for suspension form and any associated information with the other MEP party.
  - The boxed area of the form includes a disclaimer that any associated information provided may be provided to the other party (Sec 61.1.1(8.1))
  - This activity supports the creditor's ability to provide information to the MEP to cancel or modify a suspension.
    - Any information the creditor discloses can also be shared with the debtor.

# ADMINISTRATIVE SUSPENSIONS

## Notice to Queen's Bench

- Upon completing a review of a suspension request, the MEP provides a copy to Queen's Bench for filing on the Queen's Bench Parties file.
  - This copy has all personal information of the debtor redacted (i.e. address)
- Provides for the debtor to more seamlessly proceed with activities to obtain a Suspension of Enforcement Order.

# MEP: WHAT'S NEW MAINTENANCE AGREEMENTS

Effective July 1, 2019 and subject to Section 53.2 of *The FMA*, the parties to an order (debtor and creditor) can change the maintenance obligations in their order for enforcement purposes if they both complete and submitting Agreement to Change the Maintenance Obligations form. The Agreement to Change Maintenance Obligations form allows the MEP to administer the support as represented in the Agreement.

## **Maintenance Agreement vs Separation Agreement**

- A Separation Agreement is a maintenance order as defined under *The Family Maintenance Act* and is administered by the MEP similarly to a court order.
  - If a debtor is in default of a separation agreement, the MEP must continue to administer the support until further court order or addendum to the agreement.
- A Maintenance Agreement is an administrative tool that allows the parties to have the MEP administer their maintenance order as they desire. This agreement must be submitted in the format on the MEP website.
  - The Maintenance Agreement does not change the maintenance/court order, just what the MEP is administering.
  - If at any point either party disagrees with the Maintenance Agreement, they can withdraw in writing.



# MEP: WHAT'S NEW MAINTENANCE AGREEMENTS

- **Management of a Maintenance Agreement**

- Upon receipt of a Maintenance Agreement the MEP will adjust the file as represented in the agreement.
  - The Maintenance Agreement is intended to be used on a “go forward” basis and not for retro-active payments or payment of arrears.
  - There is a separate Maintenance Agreement form for:
    - Spousal support
    - Child support and Section 7 expenses.
  - A Maintenance Agreement cannot be accepted for any support payments assigned to Employment and Income Assistance.
  - A Maintenance Agreement can both increase or decrease payments administered by the MEP.

# MEP WHAT'S NEW MAINTENANCE AGREEMENTS

## **Notice to clients**

- Once reviewed and processed the MEP provides written confirmation to both parties:
  - Agreement Accepted – letter provides details of the new support amounts being administered as well as a Statement of Account.
  - Agreement rejected – letter provides details of why the agreement was not accepted and additional information that would assist with the MEP accepting an updated agreement.

## **Maintenance Agreement filed with Queen's Bench**

- If accepted, the MEP is required to provide a copy to the courts and the agreement is filed on parties' QB file.

## **Maintenance Agreements and the Child Support Service**

- If accepted, the MEP is required to provide a copy to the CSS.

# MEP: WHAT'S NEW MAINTENANCE AGREEMENTS

## Terminating a MEP Agreement

- At any point either party to the agreement can have the agreement terminated by providing their request in writing.
  - A Termination of Maintenance Agreement form is available on the MEP website.
- The MEP will revert to administering the support terms of the presiding maintenance order.
- Any payments that cycled and were paid during the period covered by the active Maintenance Agreement will be treated in line with the terms of the Maintenance Agreement.

## Notice to parties at termination

- The MEP provides letters to both parties with details of the
  - The date the maintenance agreement was terminated
  - The updated support amounts and arrears being administered as well as a Statement of Account

# MEP: WHAT'S NEW MAINTENANCE AGREEMENTS

## **Maintenance Agreement Termination filed with Queen's Bench**

- Upon termination, the MEP is required to provide a copy to the courts and the termination is filed on parties QB file.

## **Maintenance Agreements/Terminations and the Child Support Service**

- the MEP is required to provide a copy of both a Maintenance Agreement and a Maintenance Agreement termination to the CSS

# MEP: WHAT'S NEW

## WAIVING LATE PAYMENT PENALTIES

- The Maintenance Enforcement Program (MEP) is required to assess Late Payment Penalties (LPPs) against outstanding support arrears owed to a creditor on a MEP file. LPPs are assessed against the daily support arrears balance on a file at a rate of 18% per annum and are payable to the creditor on that MEP file.
- As of July 1, 2019 creditors have the option to opt-out or waive LPPs. Opting out of LPPs stops the assessment of LPPs on any support arrears that accumulate on their file.

### Opting out of LPPs

- At the time a maintenance order is registered for enforcement, or at any subsequent time, the creditor may opt out of the assessment of penalties. At registration, a creditor can opt out of LPPs as identified in the creditor registration forms.
  - Subsequent to registration a creditor can request to opt out of LPPs by completing and submitting the Waive/Opt Out of Late Payment Penalties form.(available on the MEP website)

### Waiving LPPs

- A creditor also has the option to waive the right to receive a portion or all of the LPPs already assessed on their file. A request to waive LPPs that already exist on their file can be made by completing the Waive/Opt Out of Late Payment Penalties form. (available on the MEP website)

# MEP: WHAT'S NEW OPTING-OUT/WAIVING LATE PAYMENT PENALTIES

- **File management**

- **Opting out of LPPs**

- The MEP will not assess any LPPs, or further LPPs on the file unless a request is made to cancel the opt-out of LPPs .
  - Any existing LPPs not affected by the opt-out of LPPs remain enforceable unless “waived” and will be collected by the MEP.

- **Waiving of LPPs**

- The MEP will adjust the file to remove the corresponding amount of LPPs or LPPs for the time period identified in the waiver form.
  - Unless there is an opt-out of LPPs, further LPPs will be assessed and collected.

- **Cancelling the opt-out of LPPs**

- Cancelling opt-out of LPPs – the MEP will reinstate the assessment of LPPs on a “go forward ” basis.
- The MEP will not collect any LPPs that would have been assessed after the opt-out period.

- **Cancelling Waived LPPs**

- The MEP will not collect any LPPs that have been waived.

# QUESTIONS?

Questions about *the Maintenance Enforcement Program* can be made to:

Family Resolution Service

Maintenance Enforcement Program

100 - 352 Donald St, Winnipeg, Manitoba R3B 2H8

T- 204-945-7133 or 1-866-479-2717 toll free in Canada

Fax - 204-948-5449, Email: [manitobaMEPinquiries@gov.mb.ca](mailto:manitobaMEPinquiries@gov.mb.ca)