

Delivering better enforcement of spousal and
child support payments:

Proposed changes to the Maintenance Enforcement Act

Public discussion

What we heard

June 2016

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Executive Summary

The Government of Nova Scotia sought input on proposed changes to the Maintenance Enforcement Act. Consultation began in April 2016 with a deadline of May 31, 2016, for submitting comments.

The majority of those participating in the consultation supported a proposal to use the Internet to seek the public's help in locating payors who have persistently failed to make support payments. However, a number of participants and key stakeholders expressed concerns about what they viewed as significant risks, including the potential for harm to the children or recipient.

The majority of those participating in the consultation also supported proposals for changing how we serve notice, including: permitting the Maintenance Enforcement Program (MEP) to serve notice electronically (for example, by email), as well as considering notice to be received 10 days after it is sent to the client's last known address.

The majority of those participating in the consultation also supported the proposal to allow MEP to hold money seized from a payor for future payments after outstanding arrears are paid when the payor has persistently failed to make payments.

The feedback received through this process is guiding government's efforts to improve the legislation and to assist MEP staff in their efforts to enforce court-ordered support payments.

The following chart summarizes the number of participants who answered “Yes”, “No” or “Undecided or No Answer” in writing to questions included in the discussion paper:

Subject	Yes	No	Undecided no answer
Using the Internet to publish names and photos of individuals who persistently fail to pay support	111	21	31
Requiring the recipient's permission before publishing the payor's identifying information	58	56	49
When a payor has not given MEP current address information, considering notice received by the payor 10 days after it is sent	113	17	33
When a recipient has not given MEP current address information, considering notice received by a recipient 10 days after it is sent	99	27	37
Sending notice by electronic means (for example, by email)	121	8	34
Holding money seized from a payor for future payments after outstanding arrears are paid, when the payor has persistently failed to make payments	117	14	32

Introduction

The MEP is a public service of the Nova Scotia Department of Justice. Its purpose is to help coordinate court-ordered support payments for families. The MEP's authority to coordinate and enforce payments is spelled out in the Maintenance Enforcement Act.

The Nova Scotia government has made it a priority to ensure that families are well served by the program. As part of a larger initiative to improve the program, the Department of Justice is considering changes to the Maintenance Enforcement Act.

One of the proposed changes to the Act would allow MEP to use a dedicated website to publish the names, photographs and other identifying information of payors who have persistently failed to make support payments and are unwilling to work with the program. The purpose of the website would be to ask for the public's help in finding these payors.

Another proposed change to the Act would recognize electronic communication (for example, email) as a legitimate way to serve notice, and would establish that 10 days after notice has been sent it is considered to be received. This would enable MEP to move forward with necessary steps on client files including being able to proceed with enforcement.

Another proposed change would be to permit MEP to hold money seized from a payor for future payments after outstanding arrears have been paid, if the payor has persistently failed to make support payments and is unwilling to work with the program. This would ensure that support payments can continue to be made to the recipient in cases where the payor is absent and unwilling to pay or to work with the program.

How we consulted

In late April and May 2016, the public and other stakeholders were invited to review a discussion paper and share their thoughts. The discussion paper focused on three key proposals:

1. Using the Internet to ask for the public's help in locating payors who have persistently failed to pay support
2. Strengthening notification provisions
3. Holding money seized from a payor for future payments

Nova Scotians were invited to visit the Nova Scotia Department of Justice website where an online form was available for comment. News of the consultation was shared via the media, including television, radio, Twitter and Facebook. A number of meetings were held with key stakeholders, including the MEP Client Consultation Group, the Nova Scotia Advisory Council on the Status of Women, family law lawyers and the legal community, staff of the Maintenance Enforcement Program, the Seniors' Advisory Council, and the Grandparents' Rights for Nova Scotia Association. The department also sent messages to additional key stakeholder groups informing them of the consultation.

Submissions were accepted until May 31, 2016, by e-mail, regular mail, TTY, and through discussions and meetings with staff. The discussion paper was made available in English and French.

162 written submissions were received from the public and other stakeholders. Eight face-to-face meetings and one telephone meeting were held with key stakeholders. A little over one third of the participants who submitted written feedback indicated they were from Halifax or Halifax Regional Municipality. Submissions were also received from the following counties: Annapolis, Cape Breton, Richmond, Colchester, Cumberland, Hants, Inverness, Kings, Lunenburg, Richmond, Yarmouth, Pictou, Shelburne, and Victoria.

We also asked people about themselves and based on those who responded to the question, we captured a range of perspectives, with the largest group represented being recipients. This is how the consultation participants who submitted written responses and completed the "About You" section broke down: recipients (86), payors (6), grandparents (9), children owed support (13), lawyers or legal professionals (6), concerned citizens (23), MEP staff members (3), government staff members (12), social service or other professional (10), and other (12).

PROPOSAL 1: Using the Internet to find payors

Questions asked

- Should Nova Scotia post on a dedicated website on the Internet the names, photographs and other identifying information of payors who are missing and have persistently failed to make payments, and ask the public for help in finding them?
- Should Nova Scotia get the permission of the recipient before posting the name, photo and other identifying information about a payor who has persistently failed to make payments - and only post that information if the recipient agrees?

What we heard

- The majority of those participating in the consultation were supportive of using the Internet to publish the names and photographs of payors who have persistently failed to make support payments as a way to seek the public's help in locating those payors. However, in meetings with key stakeholder groups, many expressed opposition to the proposal.

- Supporters of the proposal felt the existence of such a website might motivate some payors to start making and to continue to make court-ordered support payments. Some supporters of this proposal said they believed the existence of such a website might encourage a cultural shift in Nova Scotia where the public would no longer consider it acceptable for a parent to not support their child(ren). They felt the website would shame the payor into paying and that this would be an effective tool in enforcing court-ordered support. Some even suggested the website also be used for payors who have persistently failed to make payments, but are not necessarily “missing”.
- Some participants were supportive of this idea, with clarifying comments, such as a desire to ensure:
 - o this tool was used only as a last resort;
 - o safeguards were in place to protect recipients from any potential violence from abusive payors; and
 - o children were not negatively impacted.
- In relation to these various concerns, some participants suggested domestic violence risk assessments be done before publishing information about a payor and non-judgmental language be used on the website. There were differing opinions expressed about whether giving the recipient a voice in determining whether the payor is identified on such a website would increase or decrease the risk of violence against the recipient or children.
- A smaller number of participants in the public consultation and a significant number of key stakeholders with whom meetings were held expressed concerns about this proposal and what they viewed as its inherent risks. Those who opposed the proposal focused on ten main concerns:
 - o the significant potential for family violence against the recipient or the children;

- o the significant potential for emotional or reputational harm to the children ("If you publicly shame the payor, you publicly shame the payor's children", "Children are already struggling with cyberbullying and use of social media");
 - o the significant potential for emotional or reputational harm to the recipient;
 - o the significant potential for increasing strain on family relationships;
 - o loss of privacy rights of the children and the recipient;
 - o the inappropriateness of using public shame to motivate payors to comply with court orders to pay support;
 - o the permanency of the reputational damage to the payor and its potential impact on employment opportunities or career advancement;
 - o the potential for MEP to publish information about a payor in error;
 - o the resources required to create and maintain such a website; and
 - o the availability of other more effective enforcement tools that do not carry the identified risks.
- Feedback about whether the recipient's permission to publish information about the payor should be required was divided. Almost equal numbers of participants were supportive of and opposed to the concept of requiring the recipient's consent. Interestingly, both supporters and opponents of the idea indicated that the risk of family violence and the safety of the recipient and children was the reason for their support or opposition. Some participants, including the Nova Scotia Advisory Council on the Status of Women, believed that giving the recipient the choice to allow the publication of information about the payor placed the recipient at increased risk of violence from an abusive payor. Others believed that denying the recipient this choice placed the recipient at an increased risk of violence.
 - Those who felt the recipient's permission should be required also indicated that the recipient should have a choice because they may not wish to have the children impacted by the publication or may not want the potential social stigma themselves.

PROPOSAL 2: Changing the way we serve notice

Questions asked

- When a payor has not given current address or employer information to MEP, should any notice sent to the payor's last known mailing address or electronic address be considered received 10 days after it is sent?
- When a recipient has not given current address information to MEP, should any notice sent to the recipient's last known mailing address or electronic address be considered received 10 days after it is sent?
- What do you think of MEP sending notice by electronic means (for example, by email)?

What we heard

- The majority of participants were supportive of the proposals to consider notice received 10 days after it is sent to either a payor or a recipient. The majority of key stakeholders with whom we met also indicated their support.
- Supporters noted that it is the recipient's and payor's obligation to provide up-to-date contact information to MEP, that electronic communication can be a more reliable means of contact than regular mail, and that 10 days is a reasonable time in which to expect electronic communication to be received and read.

- The majority of participants also agreed with MEP sending notice by electronic means, including key stakeholders with whom we met. Participants in the consultation who supported the proposal noted that email and electronic communication is a very common and accepted method of communication, it is more efficient and convenient, and it is more cost-effective. A number of MEP clients indicated they would prefer this method of communication to be used.
- Many participants and key stakeholders indicated they would support MEP's ability to send notice by electronic means to a client only if the electronic address was provided directly to MEP by that client and they were advised by MEP of their obligation to check for correspondence and keep electronic address information current.
- A number of key stakeholders indicated support for these proposals, but stressed the need for a policy and procedure around electronic communication for MEP staff, including the need to monitor for bounce back messages.
- The few participants who did not agree with this proposal raised the following concerns:
 - o MEP may not know for certain if the person has read it unless there was a method for confirmation to the sender that the email or other electronic communication was opened;
 - o electronic communication, like email, is not as private as one might expect;
 - o there is the potential for MEP staff error; and
 - o email messages can end up in junk mailboxes.

PROPOSAL 3: Holding money for future payments

Questions asked

- Should MEP be permitted to hold money as security for future payments if the payor persistently fails to make payments and is unwilling to work with MEP?

What we heard

- The majority of those participating in the consultation were supportive of this proposal. The majority of key stakeholders with whom we met also indicated their support. Almost uniformly, they noted that if the payor has persistently failed to make payments and is unwilling to work with MEP, it would be reasonable for MEP to expect the non-payment to continue.
- A number of participants wanted to ensure that what constitutes “persistently fails” and what constitutes “unwilling to work with MEP” would be clearly indicated to payors and recipients.
- Others wanted to ensure there would be a mechanism for MEP to know that the payor still had enough money to live on before proceeding with holding money seized.

Additional comments

- Several participants in the consultation suggested that all the powers currently available in the legislation should be used by MEP before additional powers are added.
- A number of participants expressed frustration with the online MEP accounts and the MEP webpage, saying both need to be improved and updated. Some participants asserted that the program needs more case workers and that reaching a case worker to discuss issues is very difficult.
- A number of participants requested that: interest be charged on arrears; social insurance numbers be used to locate people; it be easier to get a court order changed; and payor's driver's licences and passports be suspended when they fail to make payments.
- Participants suggested MEP needs to be clear and upfront with clients regarding the types of enforcement steps that may be taken and the criteria for MEP taking those steps.
- A number of participants expressed concerns about a lack of accountability for recipients who do not use child support payments on the children.
- It was also suggested that MEP coordinate better with the other Canadian provinces and territories and other countries.

Next steps

The feedback received through this process will guide government in considering legislative changes to improve collection and assist MEP staff in their efforts to enforce court-ordered support payments.

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