

**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES
BRIEFING NOTE**

TOPIC:

Arrears on cases enrolled in the Family Maintenance Enforcement Program (FMEP)

PURPOSE OF NOTE:

- FOR INFORMATION OF: Attorney General
- MEETING REQUIRED: No

ISSUE:

The amount of unpaid support for children and families

EXECUTIVE SUMMARY:

The FMEP has 45,500 enrolled cases. The average case has a court order for just under \$400 per month, and 97% of the orders are for child support, while 3% are for spousal support. About \$205 Million was due in 2010/11, with \$179.7 Million paid. British Columbia's support enforcement program has Canada's 3rd highest payment rate. As virtually all new cases enrolled in FMEP have arrears, some with very high arrears, and not all orders are complied with, the total arrears continues to grow. In many cases, the arrears will be recovered over time. In some cases, the arrears will never be fully paid as the payor does not have the means to pay regardless of enforcement actions taken. BC's FMEP has 178,000 administrative enforcement measures in place at any given time, and 550 active court enforcement cases. Each year, about 50 payors are incarcerated for failing to make payments even though they had the ability to do so.

IMPACT ON OTHER MINISTRIES OR BRANCHES:

Ministry of Social Development: Families receiving income assistance must obtain a support order and have it enrolled in FMEP. Through FMEP, MAG collects over \$17 million per year for these families, saving an equivalent amount in income assistance costs for MSD.

BACKGROUND:

1. At any given time, 45,500 cases are enrolled in FMEP: in 39,000 cases, the paying parent lives in BC and FMEP is responsible for all case management, enforcement and payment processing activities; in 5,000 cases the paying parent lives elsewhere in Canada or in another country and FMEP is responsible for case management and payment processing on funds sent by the other jurisdiction; in 1,500 cases FMEP is collecting default fees payable to government.
2. Each year about 5,000 cases are withdrawn from FMEP and 5,000 new cases are enrolled; cases are withdrawn either because the child/ren are no longer eligible for support and all

arrears and interest have been paid (order fully satisfied), or the recipient simply wishes to withdraw from the program.

3. On average, cases remain enrolled for over 7 years.
4. Virtually all new cases enrolled have arrears (unpaid support payments). Families not in receipt of income assistance can choose to enroll in FMEP. The primary reason for enrolment is that support obligations are not being complied with. Some other Canadian programs require all orders to be enrolled, resulting in a mix of cases in compliance with cases not in compliance. Virtually all cases enrolled in BC are not in compliance.
5. Families receiving income assistance are required to obtain a support order and have that order enrolled in the FMEP. It is a legislated requirement that these families assign the right to maintenance to the Crown.
6. The payment rate within FMEP has increased over the past 10 years, from less than 80% to about 89%. Total payments have increased from \$141 Million to almost \$180 Million. Payments in the current fiscal year will be the highest ever.
7. In spite of these increases, total arrears remain high and will likely increase until the payment rate (amount received in a year/amount due in a year) exceeds 100%. No support enforcement program in Canada, the United States or Europe has reached that level.
8. Each year, the Canadian Centre for Justice Statistics has produced a report on Canada's support enforcement programs. British Columbia's program has the 3rd highest payment rate.
9. In the 39,000 cases where the paying parent lives in British Columbia, FMEP is responsible for all enforcement activities. At any given time:
 - 27% of these cases are in full compliance (no outstanding arrears, all interest paid);
 - about 67% are partially paid (outstanding arrears and/or interest due); and
 - about 6% have not received any payments.
10. Many of the fully paid cases have ongoing enforcement measures, such as wage attachments, federal payment interceptions, licence denial restrictions or other administrative enforcement. These measures have resulted in the payments to bring support obligations into compliance.
11. Of the cases in partial compliance:
 - 22% have arrears that total less than \$500;
 - 19% have arrears between \$500 and \$3,000;
 - The remaining 60% have arrears over \$3,000.
12. The \$3,000 arrears level has important legislative significance as it is the threshold for driver's licence and vehicle licence restrictions in BC and federal licence restrictions, including passport suspension.
13. About 7,500 cases are not subject to full enforcement because:
 - The court has issued a stay of enforcement;
 - The payor is on income assistance (about 10% of cases) and can only be subject to the interception of federal payments;

- The payor is incarcerated for a significant period of time; or

14. These 7,500 cases have 30% of the total arrears (\$154 Million in arrears).
15. Another 6,200 cases are enrolled for collection of arrears only. In these cases, the regular support payments for children are no longer due as the child is not eligible for support. As long as the payor has the ability to make payments, the arrears will be collected over time.
16. BC has taken steps in legislation to “incent” payors to comply with their support obligations:
 - A default fee is charged if any two full payments are missed within a calendar year, and interest is charged on arrears. This fee is collected after all support payments and interest have been paid to the recipient. About \$1.5 Million is collected each year and is government revenue.
 - Interest is charged on arrears. BC was the only jurisdiction to charge interest until 2009 when Alberta started a similar measure. All interest is paid to the recipient as partial compensation for missed payments.
17. As virtually all cases have arrears at some point during enrolment in FMEP, the number of enforcement measures taken is high:
 - About 178,000 individual enforcement actions are in effect at any given time including:
 - 24,000 wage attachments are active;
 - 24,000 bank attachments are active;
 - 7,000 WorkSafe attachments are active;
 - 7,500 ICBC attachments are active;
 - 22,000 federal fund interceptions (tax refund, EI payments, pensions) are active;
 - 12,000 federal licence denials are active;
 - 56,000 credit bureau reports are active;
 - 10,600 BC driver’s licence and motor vehicle restrictions are in place;
 - 2,800 land registrations are in place; and
 - 9,000 personal property liens are in place.
18. If administrative enforcement does not work and the payor clearly has the means to make payments, court enforcement is used:
 - About 400 default hearings are active at any given time;
 - 150 committal hearings are active at any given time; and
 - Each year about 50 payors are incarcerated for failing to make support payments.
19. Court enforcement is used throughout the province, in part through FMEP staff lawyers and in part through contracted legal counsel. All contracted court enforcement services have been fully restored this year.
20. A small number of cases with extremely high arrears can skew the statistical average of arrears. For example:

21. FMEP clients are almost all from low income communities:

- Almost 10% of payors are on income assistance – enforcement on these cases is restricted to the interception of federal payments;
- 2/3 of payors are employed but most have annual income levels below \$60,000;
- About 15% of payors are self employed and do not have wages that are subject to attachment;
- Most recipients are employed (75%) but have annual income levels below \$40,000;
- About 17% of recipients are on income assistance.

22.

Not Responsive

23. While no support enforcement program can guarantee payments to recipients, good case administration and active management can offer the best opportunity that payments will be made. FMEP has established a number of standards to ensure such action, including:

- Cases are enrolled quickly – within 28 days from receipt of court documents and required information;
- Cases are actively reviewed – every 90 days or more frequently if payments are missed;
- Payments are quickly processed – within 48 hours from receipt to disbursement. Most of the 2,000 payments processed each day are disbursed within 24 hours;
- Clients are responded to – with 48 hours in writing, within 4 hours if using web services, within 90 seconds if phoning.

Prepared by:

Chris Beresford
Executive Director
Maintenance Enforcement and Locate Services

Approved by:

Jay Chalke QC
Acting Deputy Attorney General

Date: January 16, 2012