



BILL NO. 37

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

An Act to Amend Chapter 9 of the Acts of 2002, the Interjurisdictional Support Orders Act

CHAPTER 24
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 17, 2012**

The Honourable Ross Landry
Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 9
of the Acts of 2002,
the Interjurisdictional Support Orders Act**

Be it enacted by the Governor and Assembly as follows:

1 Clause 2(l) of Chapter 9 of the Acts of 2002, the *Interjurisdictional Support Orders Act*, is repealed and the following clause substituted:

(l) “support order” means an order made by a court or an administrative body requiring the payment of support, and includes

(a) the provisions of a written agreement requiring the payment of support, if those provisions are enforceable in the jurisdiction in which the agreement was made as if they were contained in an order of a court of that jurisdiction; and

(b) the recalculation by an administrative body of the payment of support for a child, if the recalculation is enforceable in the jurisdiction in which the recalculation was made as if it were an order of, or was contained in an order of, a court of that jurisdiction.

2 (1) Subsection 6(1) of Chapter 9 is amended by

(a) striking out “ordinarily” in the first line; and

(b) striking out “ordinarily” in the second line and substituting “habitually”.

(2) Clause 6(2)(b) of Chapter 9 is amended by striking out “ordinarily” in the fourth line and substituting “habitually”.

3 (1) Subsection 7(1) of Chapter 9 is amended by striking out “ordinarily” in the last line and substituting “habitually”.

(2) Clause 7(2)(b) of Chapter 9 is amended by striking out “ordinarily” in the last line and substituting “habitually”.

(3) Subsection 7(4) of Chapter 9 is amended by striking out “15” in the fourth line and substituting “16”.

4 Subsection 8(1) of Chapter 9 is amended by striking out “ordinarily” in the first line and substituting “habitually”.

5 (1) Subsection 10(1) of Chapter 9 is amended by striking out “ordinarily” in the fourth line and substituting “habitually”.

(2) Subsection 10(2) of Chapter 9 is amended by striking out “ordinarily” in the second line and substituting “habitually”.

(3) Clause 10(3)(c) of Chapter 9 is amended by striking out “ordinarily” in the second line and substituting “habitually”.

6 Subsection 11(4) of Chapter 9 is amended by striking out “eighteen” in the third line and substituting “twelve”.

7 Section 13 of Chapter 9 is amended by

(a) striking out clause (a) and substituting the following clause:

(a) in determining a child’s entitlement to support, the Nova Scotia court shall first apply Nova Scotia law but, where the child is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the child is habitually resident;

and

(b) adding “, including, for greater certainty, the *Child Maintenance Guidelines*, as amended from time to time, made under the *Maintenance and Custody Act*” immediately after “law” in the third line of clause (c).

8 Section 14 of Chapter 9 is amended by adding immediately after subsection (4) the following subsection:

(5) Where it is not apparent on the face of an order made pursuant to this Section which law the Nova Scotia court applied in accordance with Section 13, it is presumed that the court applied Nova Scotia law.

9 Section 18 of Chapter 9 is repealed and the following Section substituted:

18 (1) To enforce an order to which this Part applies, a certified copy of the order must be sent to the designated authority, together with information about the location and circumstances of any party who is believed to habitually reside in the Province.

(2) On receiving the certified copy, the designated authority shall send the copy, in accordance with the regulations,

(a) to the clerk of the Nova Scotia court sitting nearest the place where the party is believed to reside; or

(b) where there is no party who is believed to habitually reside in the Province, to the clerk of any Nova Scotia court.

10 Section 19 of Chapter 9 is amended by adding immediately after subsection (7) the following subsections:

(8) Unless otherwise stated in the order, the duration of the support obligation in an order registered under subsection (1) is governed by the law of the jurisdiction pursuant to which the order was made.

(9) Notwithstanding subsection (8), where the Director of Maintenance Enforcement is unable to determine the duration of the support obligation based on information received from the appropriate authority in the reciprocating jurisdiction,

the Director may apply Nova Scotia law to determine the duration of the support obligation.

11 (1) Subsection 20(1) of Chapter 9 is repealed and the following subsection substituted:

(1) After the registration of an order made in a reciprocating jurisdiction outside Canada, the clerk of the Nova Scotia court shall, in accordance with the regulations, notify

(a) any party to the order believed to habitually reside in the Province; and

(b) any party required to pay support under the order even if that party is not believed to habitually reside in the Province.

(2) Section 20 of Chapter 9 is further amended by adding immediately after subsection (4) the following subsection:

(4A) For the purpose of subclause (4)(b)(iii), the Nova Scotia court shall not determine that the court that made the order did not have the jurisdiction to make the order if

(a) both parties to the order were habitually resident in the jurisdiction in which the order was made; or

(b) a party who was not habitually resident in the jurisdiction in which the order was made was subject to the jurisdiction of the court that made the order under the Province's conflict of laws rules.

12 (1) Subsection 29(1) of Chapter 9 is amended by

(a) striking out “ordinarily” in the first line; and

(b) striking out “ordinarily” in the second line and substituting “habitually”.

(2) Clause (2)(c) of Chapter 9 is amended by striking out “ordinarily” in the fourth line and substituting “habitually”.

13 (1) Subsection 30(1) of Chapter 9 is amended by striking out “ordinarily” in the fifth line and substituting “habitually”.

(2) Clause 30(2)(b) of Chapter 9 is amended by striking out “ordinarily” in the last line and substituting “habitually”.

14 Section 31 of Chapter 9 is repealed and the following Section substituted:

31 Where the applicant habitually resides in the Province and the respondent either

(a) no longer habitually resides in a reciprocating jurisdiction; or

(b) habitually resides in a reciprocating jurisdiction that cannot, under its laws, or will not, facilitate the determination of a support-variation application,

the applicant may apply directly to the Nova Scotia court to vary the support order, and the court may make a variation order if the respondent has been given notice of the proceeding.

15 Subsection 32(1) of Chapter 9 is amended by striking out “ordinarily” in the second line and substituting “habitually”.

16 (1) Subsection 34(1) of Chapter 9 is amended by striking out “ordinarily” in the fourth line and substituting “habitually”.

(2) Subsection 34(2) of Chapter 9 is amended by striking out “ordinarily” in the second line and substituting “habitually”.

(3) Clause 34(3)(c) is amended by striking out “ordinarily” in the second line and substituting “habitually”.

17 Subsection 36(4) is amended by striking out “eighteen” in the third line and substituting “twelve”.

18 Clauses 37(1)(a) to (c) of Chapter 9 are repealed and the following clauses substituted:

(a) in determining a child’s entitlement to receive or to continue to receive support, the Nova Scotia court shall first apply Nova Scotia law but, where the child is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the child is habitually resident;

(b) in determining the amount of support for a child, the Nova Scotia court shall apply Nova Scotia law, including, for greater certainty, the *Child Maintenance Guidelines*, as amended from time to time, made under the *Maintenance and Custody Act*;

(c) in determining the entitlement of a party other than a child to receive or continue to receive support, the Nova Scotia court shall first apply Nova Scotia law but, where the party is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply

(i) the law of the jurisdiction in which the party habitually resides, or

(ii) where the party is not entitled to support under the law of the jurisdiction in which the party habitually resides, the law of the jurisdiction in which the parties last maintained a common habitual residence;

19 Section 38 of Chapter 9 is amended by adding immediately after subsection (4) the following subsection:

(5) Where it is not apparent on the face of an order made under this Section which law the Nova Scotia court applied in accordance with Section 37, it is presumed that the court applied Nova Scotia law.

20 Section 40 of Chapter 9 is amended by striking out “ordinarily” in the fifth line.

21 Section 41 is repealed and the following Section substituted:

41 (1) This Section applies to the variation of a support order or a support-variation order referred to in subsection (2), other than a variation that has been commenced by a support-variation application under Part IV.

(2) The Nova Scotia court may, on a party’s application, after taking into account any right of a government under Section 47, vary a support order or a support-variation order made or registered in the Province under this Act or the former Act if

(a) both the applicant and respondent accept the Nova Scotia court’s jurisdiction;

(b) both the applicant and respondent habitually reside in the Province; or

(c) the respondent habitually resides in the Province and the support order was registered by the applicant under Part III or the former Act.

(3) The *Maintenance and Custody Act* applies for the purpose of varying a support order or a support-variation order under the circumstances referred to in subsection (2) as if the order being varied were an order for support under that Act.

22 Chapter 9 is further amended by adding immediately after Section 53 the following Sections:

53A (1) In this Section,

(a) “interjurisdictional application” means a support application, a support-variation application or a request to register a support order made in a reciprocating jurisdiction under this Act;

(b) “request to locate” means a written request to locate a person for the purpose of facilitating a proceeding relating to the establishment, variation, registration or enforcement of a support order.

(2) This Section binds Her Majesty in right of the Province.

(3) Where the designated authority receives a request to locate from an appropriate authority in a reciprocating jurisdiction, the designated authority may request a public body, including Her Majesty in right of the Province, to provide in writing any information in the possession or control of the public body, including Her Majesty, respecting the whereabouts of a person who is named in the request to locate to enable the appropriate authority to determine if an interjurisdictional application should be sent to the Province.

(4) Where the designated authority receives a request to locate from an appropriate authority in a reciprocating jurisdiction, the designated authority may respond to the request by advising the appropriate authority whether the person has been located in the Province, but the designated authority may not disclose specific information concerning the person's location.

(5) Upon receiving an interjurisdictional application, the designated authority may request a public body, including Her Majesty in right of the Province, to provide in writing any information in the possession or control of the public body, including Her Majesty, respecting the whereabouts of a person named in the application, to the designated authority to locate the person for the purpose of facilitating service of notice of the interjurisdictional application on the person.

(6) Information received or disclosed under this Section by the designated authority or another person may be used or disclosed for the purpose of carrying out duties and powers in accordance with this Act and the regulations but is otherwise confidential.

(7) A public body, including Her Majesty in right of the Province, that receives a request for information under this Section shall provide the information within fourteen days of the day on which the request is received.

(8) Where, on application to a court, it appears that the designated authority has been refused information after making a request pursuant to this Section, the court may order a public body, including Her Majesty in right of the Province, to provide the designated authority with the information.

(9) This Section applies notwithstanding any other Act or regulation and notwithstanding any common-law rule of confidentiality except solicitor-client privilege.

(10) No action lies against any person or public body, including Her Majesty in right of the Province and a servant or agent of Her Majesty, who provides information in accordance with this Section.

(11) Any person or public body, including Her Majesty in right of the Province and a servant or agent of Her Majesty, who knowingly withholds, misleads or gives false information to the designated authority or in response to an order of the court pursuant to this Section is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for not more than six months, or to both a fine and imprisonment.

(12) The following records are not required to be provided to the designated authority under this Section:

- (a) a record of a person acting in a judicial or quasi-judicial capacity, such as a note, communication or draft decision;
- (b) any record sealed by court order or judicial direction;
- (c) a judicial administration record as defined in the *Freedom of Information and Protection of Privacy Act*.

23 Clause 55(e) of Chapter 9 is amended by striking out “prescribing” in the first line and substituting “respecting”.

24 Subsection 57(3) of Chapter 9 is amended by striking out “ordinarily” in the first line and substituting “habitually”.

25 Subsection 4A(2) of Chapter 5 of the Acts of 1993, the *Freedom of Information and Protection of Privacy Act*, as enacted by Chapter 11 of the Acts of 1999 (Second Session) and amended by Chapter 4 of the Acts of 2004 and Chapter 35 of the Acts of 2008, is further amended by adding immediately after clause (g) the following clause:

(ga) Section 53B of the *Interjurisdictional Support Orders Act*;

26 Notwithstanding any other enactment,

(a) subsection 11(4) of the *Interjurisdictional Support Orders Act* continues to apply as if not amended by this Act with respect to any information or document requested pursuant to Section 11 of that Act on or before the coming into force of Section 6;

(b) Section 13 of the *Interjurisdictional Support Orders Act* continues to apply as if not amended by this Act with respect to any support application received pursuant to Section 10 of that Act on or before the coming into force of Section 7;

(c) subsection 36(4) of the *Interjurisdictional Support Orders Act* continues to apply as if not amended by this Act with respect to any information or document requested pursuant to Section 36 of that Act on or before the coming into force of Section 17; and

(d) subsection 37(1) of the *Interjurisdictional Support Orders Act* continues to apply as if not amended by this Act with respect to any support-variation application received pursuant to Section 34 of that Act on or before the coming into force of Section 18.

27 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
