

Chapter 10

Maintenance Enforcement

1.0 MAIN POINTS

The Ministry of Justice and Attorney General (Justice) administers the maintenance enforcement program under *The Enforcement of Maintenance Orders Act, 1997*. Justice monitors and collects support payments ordered by the courts or agreed to by the two parties.

This chapter reports the results of our audit of Justice's processes to enforce maintenance payments for the twelve-month period ended January 31, 2012. With a collection rate of 91.3% for the year ended March 31, 2011, Justice has the second highest annual collection rate in Canada.¹ We concluded that Justice had effective processes with the following exceptions.

Justice needs to:

- › Register clients for maintenance enforcement promptly
- › Keep maintenance enforcement client information up-to-date
- › Document timely review of information from maintenance enforcement clients
- › Respond to telephone inquiries from maintenance enforcement clients promptly
- › Generate and review reports that show who owes maintenance support payments, how much is owed, and how long amounts have been outstanding

Implementing these actions would improve Justice's processes for enforcing maintenance payments.

2.0 INTRODUCTION

Under its mandate Justice is required to provide "legal services and justice policy advice to Government in order to protect the legal rights of citizens and to promote social and economic order for Saskatchewan residents. Justice provides support for the courts system, prosecutorial services, civil law services, and marketplace regulation."² This includes administering the maintenance enforcement program in the province. Justice monitors and collects support payments ordered by the court or agreed to the by the two parties. If necessary, Justice also enforces the payments under court orders or agreements for maintenance.

¹ Ministry of Justice and Attorney General. *10-11 Annual Report*, p. 20.

² *Ibid.*, p. 7.



3.0 BACKGROUND

Individuals continue to be responsible to provide financial support for their spouses or children following a divorce or separation. However, some individuals do not always pay the support as required by the court order or separation agreement. When someone (the payer) stops paying all or some of the required support payments, a debt is owed to the person (the recipient) who is entitled to the payments. The money owed to the recipient but not yet received is often referred to as “arrears”. Recipients can collect arrears from payers in two ways: enforce the order or agreement in the courts, or get help from the maintenance enforcement program.

The maintenance enforcement program is funded and administered by the Provincial Government with no cost to those who use it. The Provincial Government, at recipients’ requests, monitors support payments and enforces court orders and separation agreements where support (i.e., spousal or child support) must be paid.

Under *The Enforcement of Maintenance Orders Act, 1997 (Act)*, Justice is responsible for administering the maintenance enforcement program. The Minister of Justice and Attorney General has appointed a director and created a Maintenance Enforcement Office (Office) to record and enforce court orders and agreements registered with the Office pursuant to the Act.

The Office was established in 1986 and has approximately 40 employees (20 of these employees are enforcement officers). Each year, Justice collects payments from about 9,000 payers and pays to recipients approximately \$35 million in support payments.

3.1 Enforcing Support Payments

In some provinces, such as Ontario, Quebec, and Nova Scotia, all court orders for child and/or spousal support are automatically registered with the maintenance enforcement programs and those programs monitor the receipts and payments of all court-ordered support payments. However, in Saskatchewan, registering court orders or separation agreements with Justice is voluntary. Individuals must register with Justice if they wish Justice to take enforcement action on their court orders or agreements. Management told us that Justice enforces approximately 40% of court orders related to maintenance enforcement in Saskatchewan.

Individuals who register with Justice, called clients³, provide a copy of a court order or a court-filed agreement (also referred to as a maintenance order) outlining payment conditions. The recipients agree that Justice will process all support payments and they will not attempt to collect the payments themselves. The Act gives Justice powers (e.g., garnishment of wages, suspension of driver’s license) to enforce payment of maintenance orders in arrears. If payers do not make payments regularly, Justice will take the action it believes is in the long-term best interest of the recipients.

Justice must adequately enforce support payment compliance, safeguard money received on behalf of recipients, and pay money received in a timely manner. Single parents raising children on low or moderate incomes depend on the timely receipt of maintenance payments. The need to juggle financial obligations and perhaps deprive

³ Justice uses the term clients for payer, recipients, and children collectively.

children of things taken for granted by peers is disheartening when maintenance payments are delayed. In addition, some recipients come to Justice as a last resort. Justice told us approximately 300 individuals who have court orders or agreements enforced by Justice also collect social assistance, often because their former spouse or partner fails to pay spousal or child support.

When Justice succeeds in collecting maintenance, many families who might have otherwise required help may not have to seek social assistance.

4.0 AUDIT OBJECTIVE, CRITERIA, AND CONCLUSION

The objective of this audit was to assess whether the Ministry of Justice and Attorney General had effective processes to enforce maintenance payments for the twelve-month period ended January 31, 2012.

To conduct this audit, we followed the *Standards for Assurance Engagements* published in the *CICA Handbook - Assurance*. To evaluate Justice's processes, we used criteria based on the work of other auditors and current literature listed in the selected references. Justice's management agreed with the criteria (see Figure 1).

Figure 1—Audit Criteria

To have effective processes to enforce maintenance payments, the Ministry of Justice and Attorney General should:

- 1. Register clients**
 - a. Set standards for registration
 - b. Process registrations promptly
 - c. Notify clients of registration promptly
 - d. Keep client information up-to-date
- 2. Track maintenance payments**
 - a. Develop plans for monitoring receipt of payments
 - b. Properly record and safeguard payments
 - c. Forward payments to recipients in a timely manner
 - d. Identify non-compliance
- 3. Take enforcement action**
 - a. Investigate complaints
 - b. Take timely corrective action
 - c. Report results

We concluded that, for the twelve-month period ended January 31, 2012, the Ministry of Justice and Attorney General had effective processes to enforce maintenance payments, except for:

- › **Registering maintenance enforcement clients promptly**
- › **Keeping accurate and up-to-date information for maintenance enforcement clients**
- › **Documenting review and timely monitoring of maintenance enforcement clients not complying with payment terms**
- › **Responding to maintenance enforcement clients inquiries promptly**



› **Reviewing reports that show who owes maintenance support payments, how much is owed, and how long amounts have been outstanding**

In 2010-11, Justice reported that it had a maintenance collection rate of 91.3%.⁴ Justice has reported a collection rate over 80% for the last seven years. However, as of January 31, 2012, Justice has over \$80 million in accumulated support payments outstanding from about 6,900 clients. Therefore, Justice must continue to take appropriate steps to ensure that spouses and children get the financial support they are entitled to under the court orders or agreements.

5.0 KEY FINDINGS AND RECOMMENDATIONS

In this section, we set out our key findings and recommendations for each criterion.

5.1 Prompt Registration of Clients Needed

We expected Justice to:

- › *Set out policies for maintenance enforcement registration including requirements for a client's acceptance*
- › *Promptly process client registrations and promptly notify clients of their registration*
- › *Keep client information up-to-date*

Justice has established policies for registering individuals for maintenance enforcement. Individuals who want Justice to collect support payments on their behalf must submit completed enrollment forms outlining information about themselves and the payers and provide current court orders or court-filed agreements that outline required spousal and/or child support. Justice does not accept court orders or agreements that have variable support amounts⁵ (e.g., amount of support to be paid is a percentage of the payer's income or a percentage of the recipient's expenses).

As previously noted, the program had about 9,000 active files for each of the past seven years. Over 1,000 new clients join the program each year and about an equal number exit the program. During the audit period, approximately 1,400 new clients were registered with the maintenance enforcement program at Justice. Justice received all of the required registration information for new clients that we tested. When new potential clients did not provide the required information, Justice followed up on a timely basis to try to receive the appropriate information.

Upon registration of a client, an enforcement officer is assigned to the file. Client information is entered into a maintenance enforcement IT system. The payer and the recipient receive a registration package informing them of their registration in the maintenance enforcement program. The registration package identifies the enforcement officer responsible for the file, the monthly support payment amount, and the date the first payment is due.

⁴ Ministry of Justice and Attorney General. *10-11 Annual Report*, p. 21.

⁵ Variable support amounts in court orders are rare.

While Justice has policies for registering clients, it has not set out any guidelines on timelines for completing maintenance enforcement registrations. Justice told us it strives to have a registration processed and a registration package sent out within two months of receiving an enrollment form. However, for over half of the files we tested, staff did not complete registration within two months of receiving the enrollment form. Rather, we found registration took between three to six months. Many clients register with Justice because of delays or non-payments of spousal or child support. It is important that Justice process client registrations promptly, so that recipients start receiving payments owed to them.

- 1. We recommend that the Ministry of Justice and Attorney General establish a formal performance standard for prompt processing of maintenance enforcement registrations and monitor compliance with this standard.**

It is essential for proper enforcement that Justice have the most up-to-date information on both the payers and recipients. Client information resides in the maintenance enforcement IT system. Justice has access to a wide variety of information to assist in the collection of money from defaulting payers. For example, Justice has access to social assistance information to verify if a payer or recipient is on social assistance. Justice must know if a recipient is on social assistance because in such cases Justice forwards any payments received from the payer to the Ministry of Social Services instead of paying the recipient. If a payer is on social assistance, Justice will take a “soft enforcement” approach, as the payer does not have the means to pay the support payments. An example of “soft enforcement” would be requesting suspension of the payer’s passport.

During our audit, we asked for, but Justice could not generate, a report from the maintenance enforcement IT system showing all payers receiving social assistance. In addition, we found some payers who were no longer receiving social assistance were flagged in the IT system as still receiving social assistance. Having up-to-date payer information helps enable appropriate enforcement action. Periodically comparing payers receiving social assistance to information in the maintenance enforcement IT system would provide a ready check to ensure information in the IT system is accurate.

- 2. We recommend that the Ministry of Justice and Attorney General keep accurate and up-to-date information for its maintenance enforcement clients.**

Management told us Justice is in the process of developing a new maintenance enforcement IT system planned for implementation in the summer of 2012. The current IT system has been in place since the program began in 1986 and is no longer supported.



5.2 Evidence of File Monitoring Needed

We expected Justice would:

- › *Have developed plans for monitoring receipt of support payments*
- › *Properly record, safeguard, and forward payments to recipients in a timely manner*
- › *Identify when payers are not complying with the payments terms set out in the court order or agreement*

Justice has approximately 20 enforcement officers. Each enforcement officer is responsible for over 400 clients. To fulfill their responsibility to clients, the officers need an efficient method for reviewing all of their client files in a timely manner. This would help ensure officers pursue appropriate and timely enforcement action on all files in arrears.

At January 31, 2012, the maintenance enforcement IT system produced two reports to help enforcement officers monitor client files: a Default Listing and a Master List. The Default Listing shows payers who have outstanding support payment amounts that enforcement officers have determined can be collected and therefore, are more actively pursued. The Master List shows clients assigned to each enforcement officer without any information on outstanding amounts. We did not see evidence of enforcement officers' reviews of these reports to monitor their clients. Maintenance officers track maintenance enforcement actions they took in the maintenance enforcement IT system but do not leave evidence of periodic monitoring. Because they do not leave evidence of their review, we do not know if enforcement officers monitor, on a timely basis, all payers not complying with payment terms. For example, a payer may reside out of the country. The enforcement officer should confirm and then document this periodically to support why no enforcement action has been taken.

As of January 2012, for Default Listing for the entire maintenance enforcement program included over 2,400 clients with arrears totalling approximately \$30 million. The Default Listing shows the amounts in arrears that Justice believes are collectible (i.e., payers who will likely resume payments).

The maintenance enforcement IT system allows enforcement officers to set an exception flag in the IT system that will take any payer off of the Default Listing. Unless the enforcement officers review all files in a frequent and systematic manner, there is a risk that the IT system flags will remain in place despite changes in the status of payers. We identified payers flagged in the IT system who should have had flags removed because of changes in those payers' circumstances. It is important that information in the IT system is accurate (see recommendation #2) so that reports generated are accurate to allow appropriate monitoring and enforcement actions.

At our request, Justice generated a listing of all clients in arrears as of January 2012 from the maintenance enforcement IT system. This listing showed approximately 6,900 clients,⁶ with arrears totalling approximately \$80 million. Justice does not generate such a listing on a regular basis.

⁶ The 6,900 clients include the 2,400 clients on the Default listing.

The accumulated outstanding amount of \$80 million is due from about 6,900 clients who have not been paying full support payments. The amount is large because Justice does not close any client files until death, a client opts out of the program, or the amount in arrears is fully paid. This amount includes payers where Justice is unable to directly enforce amounts owing because the payer resides outside the province. It also includes payers who are currently receiving social assistance and therefore have no income.

We discussed with enforcement officers the frequency of client file reviews. Some officers stated that they review all of their client files as often as every two months, while others review client files “when time permits”. With 400 client files to monitor, the enforcement officers need to review client files in a timely and efficient manner. Justice needs to set requirements for enforcement officers on when and how they must review clients’ files. Consistent periodic review of all files will help ensure any changes in circumstances are updated in the IT system and appropriate enforcement action is taken.

3. We recommend that the Ministry of Justice and Attorney General establish a formal performance standard for the timely documented review of maintenance enforcement client files not complying with payment terms and monitor compliance with this standard.

Justice receives payments from payers on a daily basis and accepts payments in the form of cash, money order, cheque or direct withdrawal from the payer’s bank account. It also receives cheques addressed to recipients. Justice has adequate controls to safeguard money received. For example, there is adequate segregation of duties between employees receiving and recording money received. However, Justice did not prepare and review bank reconciliations on a timely basis during our audit period. Our 2011 Report – Volume 2 (Chapter 17, pp. 352-353) reported this matter and made a recommendation for timely reconciliations of all bank reconciliations.

Once Justice receives payments, distribution to the recipients occurs in a timely manner. Justice’s policy requires staff to forward cash, cheques made payable to the recipients, money orders, and direct withdrawals within one day of their receipt to recipients. If the payment is in the form of a cheque made payable to the Director of maintenance enforcement, Justice holds the cheque in its bank account for 14 days to ensure the cheque clears the bank account to avoid any fees or charges. During the audit period, Justice forwarded payments to recipients in a timely manner.

5.3 Prompt Responses to Clients’ Inquiries Needed

We expected Justice to:

- › *Investigate complaints from clients*
- › *Take timely corrective action when payers do not comply with the payment terms set out in the court order or agreement*
- › *Review periodic reports on support payment compliance results and trends*



Justice receives numerous client inquiries on a daily basis. Client calls are logged when further subsequent action is required. Examples of calls received include recipients inquiring about when they will receive their next payment or potential clients asking how they can enrol in the program. Justice's unwritten guidance to staff requires them to return calls within 48 hours. In addition, for every call from a client, there must be two attempts to contact the person back. For over half of the phone calls we tested, staff did not call the person back within 48 hours. Justice should establish and implement standards for prompt response to telephone inquiries.

4. We recommend that the Ministry of Justice and Attorney General establish a formal performance standard for prompt response to telephone inquiries from maintenance enforcement clients and monitor compliance with this standard.

Justice also reports support payment information to its clients. Justice has an automated telephone service for clients to call to inquire of the status of their account. Justice provides each client with a pin number when the client registers with the program. When the clients call Justice's automated telephone service to inquire about the balance of their account or the date of the last payment, they use their pin number to obtain that information.

When payers default on their support payments, Justice has the authority under the Act to pursue enforcement actions in order to collect the amounts owing. Some enforcement measures that the Act allows Justice to pursue include:

- › Lump sum and continuing garnishments against the payer's salary
- › Federal Government garnishments such as employment insurance, CPP, OAS, income tax refunds, and GST credits
- › Seizing personal property and bank accounts
- › Putting a claim against the payer's pension fund
- › Suspending the payer's driver's license or passport

Justice looks for new ways to ensure successful collection. For example, management has considered charging interest on outstanding balances to provide incentive to pay. As of January 31, 2012, Justice has proposed legislative changes that will permit an interest charge on arrears balances.

Justice requires enforcement officers to take enforcement action when payers remain in arrears for at least one month. For payers in arrears, Justice may access information sources such as motor vehicle registration, social services, and the personal property registry. In spite of these resources, Justice may still be unable to collect because, for example, some payers cannot be located, income or assets cannot be located, or payers may have no income or assets.

Justice is generally taking appropriate enforcement action when payers are in arrears. However, we noted instances where delays in monitoring may have resulted in delayed

enforcement action. For example, some enforcement officers conducted searches of federal data only once a year, while others did so every three months. As noted earlier, having a standard that outlines the required frequency of file review would help address this inconsistency.

Justice's annual report includes information on the maintenance enforcement program. For 2010-11, Justice reported a collection rate of 91.3%. This collection rate is based on the number of payers required to make monthly support payments during the year and the actual number of payers who made monthly payments (in part or in whole). This number includes clients who made partial payments. Justice also reports to the Canadian Centre for Justice Statistics (CCJS).⁷ Justice uploads its statistical information on collection rates, client numbers and registrations to CCJS monthly. With an annual collection rate around 90%, Justice has the second highest annual collection rate out of all of the provinces in Canada.⁸ While the maintenance enforcement IT system indicates \$80 million of cumulative support arrears owed to clients, the IT system also shows \$590 million in total collections for the program since inception, which gives an overall collection rate around 88%.

Justice produces internal reports for each of its enforcement officers. Monthly, management prepares reports showing the non-collection rate of each enforcement officer. This report compares the number of expected monthly payments to the actual number of monthly payments received (in part or in whole). If management begins to note over a period of a few months that the enforcement officer's non-collection rate remains high, it discusses any issues with the officer. Once Justice establishes a standard around monitoring of all client files, Justice should utilize a complete payment arrears report to assess effectiveness of its processes and monitor enforcement action taken on payers in arrears. Once the new maintenance enforcement IT system is implemented, Justice should generate reports that show who owes money, how much is owed, and how long amounts have been outstanding. Complete and comparative arrears information could help decide changes in enforcement actions. This may assist in determining the steps needed to collect the approximately \$80 million of cumulative support arrears owed to clients.

5. We recommend that the Ministry of Justice and Attorney General periodically review reports that show who owes outstanding maintenance support payments, how much is owed, and how long amounts have been outstanding.

6.0 SELECTED REFERENCES

Auditor General of Nova Scotia. (June 2007). Chapter 5: Maintenance Enforcement Program. In *Report of the Auditor General of Nova Scotia House of Assembly*. Nova Scotia: Author.

Auditor General of Ontario (2010). Chapter 3, Section 3.03: Family Responsibility Office. In *2010 Annual Report of the Office of the Auditor General of Ontario*. Ontario: Author.

⁷ The Canadian Centre for Justice Statistics is an online database used to produce a website where the provinces of Canada publish their justice statistics, including maintenance enforcement.

⁸ Information from the Canadian Centre for Justice Statistics' website.

