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**MLA Review  
of the  
Maintenance  
Enforcement  
Program  
and Child Access**

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May 28, 1998

Honourable Jon Havelock, Q.C.  
Minister of Justice and Attorney General  
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T5K 2B6

Dear Colleague:

**RE: MAINTENANCE ENFORCEMENT AND CHILD ACCESS REVIEW**

When you first asked me to undertake a review of the Maintenance Enforcement Program and the arrangements currently in place to ensure access to children, I was aware that such a review would be challenging and contentious. Over the past months, my colleagues, Denis Ducharme, MLA Bonnyville-Cold Lake, and Victor Doerksen, MLA Red Deer South, and I, have been impressed with not only the complexities of the issues involved, but the very strong feelings expressed by the many and varied participants in our review. We have attempted a balanced evaluation of both subjects.

With the assistance of their MLAs, interested members of the public, as well as special interest groups, made submissions to our Committee concerning both maintenance enforcement and access. Our Committee also travelled to both Calgary and Edmonton to hear presentations from invited groups and individuals. Having now completed our review, the Committee has come to a number of conclusions.

The Maintenance Enforcement Program is worthwhile and has considerable support from the public for the work it does. It is also clear that while there is support for the program, it is not without its problems in a number of areas, including client communication, management practices, and program administration. While the collection of court ordered maintenance is still a priority, a new emphasis must be made by the program to incorporate better client service practices. There are also a number of innovations that can be made to improve service and internal administration that have been outlined within our review, which we hope will contribute to the improvement of what is essentially a good program.

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- 2 -

The solutions to access problems are less straight forward. Like maintenance, problems of access strike at the heart of families and involve powerful emotions. We have come to the conclusion that access issues cannot be resolved by a focus on enforcement alone. We have concluded that children should have a right to the continued involvement of both parents, and that parents should be required to develop a plan to guide the shared parenting arrangements which they determine will be best for their family. We believe that the role of government is to support restructuring families through counselling, parenting support groups, and mediation, all of which give people a chance to find their own solutions tailored to their needs as opposed to having one imposed upon them. Government can also improve the conditions under which the judicial system is accessed by those seeking family law remedies, and government can make improvements in the way that breaches of access are dealt with by the judicial system.

From the level of interest shown by the public in this area, and the thoughtful contributions made by many individuals and groups, we are confident that these matters will remain on the social agenda for some time. It is our sincere hope that our recommendations in these areas are of value to the Department of Justice.

Sincerely,

A handwritten signature in cursive script that reads "Marlene Graham".

Marlene Graham, Q.C., MLA  
Chairman, Maintenance Enforcement Program

cc: Denis Ducharme, MLA  
Victor Doerksen, MLA



# Table of Contents

<b>Summary</b>	<b>I</b>
<b>The Committee</b>	<b>I</b>
The Program	I
Client Relations	I
Management Issues	I
Resource Issues	2
Enforcement Issues	2
<b>Access Enforcement</b>	<b>2</b>
Making Custody and Access Orders	2
Access to the Law and Courts	3
Access Enforcement	3
<b>Part I</b>	
<b>Maintenance Enforcement— Review and Recommendations</b>	<b>4</b>
<b>1. The Maintenance Enforcement Program</b>	<b>4</b>
Program Description	4
Continuation of the Maintenance Enforcement Program	5
The Role of Government	6
<b>2. Client Relations</b>	<b>7</b>
Client Satisfaction to Become a Program Objective	7
Evaluation of Client Satisfaction	8
The Need for Better Communication	8
Communication with Clients—Staff Training	9
Communication with Clients—Disclosure	10
Communication with Clients—Complaint Mechanisms	11
Communication with Clients—The Inquiry Line	12
Communication with Clients—Real Time File Access	12
Service to Clients—Extended Hours	13
Service to Clients—Credit Card Payments	13
<b>3. Management</b>	<b>14</b>
Management Environment	14
Commitment to Excellence	14
Research	15
Business Planning	15
<b>4. Resources</b>	<b>16</b>
Budget Constraints	16
Staff	16

<b>5. Enforcement</b>	<b>18</b>
Special Investigations Unit	18
Increasing the Effectiveness of Licence Suspensions	19
Piercing the Corporate Veil and Tracing Assets	20
The Director of Maintenance Enforcement as Receiver	20
Stays of Enforcement	21
Expanding the Coverage of Maintenance Enforcement	21
Locating Debtors and Publishing Names of Debtors	22
Credit Bureau	22
Fees for Collections	23
Default Hearings	23
<b>6. Policies and Procedures</b>	<b>24</b>
Registration and the Commencement of Enforcement	24
Registration by Debtors	25
The Holding of Cheques	25
Tracking Systems and Quality Control	26
Out of Province Enforcement	26
<b>7. Technology</b>	<b>28</b>
Continuing to Invest in Technology	28
National Data Requirements	28
New Hires Registry	29
<b>8. Access to Courts and Language of Enforcement</b>	<b>30</b>
Accessing the Courts	30
Language Capable of Enforcement	31

## Part II

<b>Child Access—Review and Recommendations</b>	<b>32</b>
<b>1. Introduction — Child Access</b>	<b>32</b>
<b>2. A New Model</b>	<b>33</b>
<b>3. Making Orders For Custody and Access in the Best Interests of Children</b>	<b>35</b>
Shared Parenting—A Child’s Right	35
Determining Parenting Arrangements	36
Contact With Other Family Members	37
The Best Interest Test	38
Language of Shared Parenting	38
Mediation	39
<b>4. Access to the Law and to the Courts</b>	<b>40</b>
Alberta Family Legislation	40
A Single Family Law Forum	41
Better Information and More Help	42
<b>5. Enforcement</b>	<b>44</b>

	Timely Access to Remedies	45
	Failure to Exercise Access	46
	Mediation, Counselling and Parenting After Separation	46
	Language Capable of Enforcement	47
	Incarceration	48
	Supervised Access	48
	Continuity	49
	The “Walking Wallet” Issue	49
	Interprovincial Enforcement	50
<b>APPENDIX I</b>	<b>TERMS OF REFERENCE FOR THE REVIEW</b>	<b>52</b>
	Part I: The Maintenance Enforcement Program	52
	Part II: Child Access	53
<b>APPENDIX II</b>	<b>SUMMARY OF RECOMMENDATIONS</b>	<b>54</b>
	Part I: The Maintenance Enforcement Program	54
	Part II: Child Access	57
<b>APPENDIX III</b>	<b>SURVEY RESULTS</b>	<b>60</b>
	<b>A. Employee Survey Results</b>	<b>60</b>
	Management	60
	Morale, Workloads, Absenteeism	60
	The Training of Staff, Updating Skills and Knowledge	61
	Job Descriptions, Employment Status, and Pay	61
	Courtesy	61
	Commitment to Quality	62
	Employee Safety	62
	Conclusion	62
	<b>B. Client Survey Results</b>	<b>63</b>
	Initial Data Analysis Without Error Calculations	63
	Client Understanding of the Program and its Function	64
	Ultimate Responsibility for Paying Support	64
	Program Information and Registration Procedures	64
	Enforcement Actions	64
	Communication	65
	Delivery of Services	65
	Quality of Services	66
	Conclusion	66
<b>APPENDIX IV</b>	<b>METHODOLOGY OF THE REVIEW</b>	<b>68</b>
	Initial Preparations	68
	Consulting the Public	68
	Public and Employee Questionnaires	69



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## SUMMARY

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### The Committee

The Maintenance Enforcement and Child Access Committee was established by the Honorable Jon Havelock, Minister of Justice and Attorney General. The mandate of the Committee was to review the Maintenance Enforcement Program (MEP) and issues relating to child access. With the assistance of MLAs and special interest groups, written submissions were requested from the public. Interested members of the public were then invited to make presentations before the Committee in Edmonton and Calgary. Surveys of staff and clients of the Maintenance Enforcement Program were conducted.

The Committee's report is in two parts, one dealing with maintenance, and one dealing with access. The Committee's principle conclusions and recommendations are as follows:

#### The Program

- The program continues to play an important social role and there is widespread public support for the program. The program should be continued and should continue to be operated by government.

#### Client Relations

- Relations with program clients are a major concern. Clients are both creditors and debtors. Client satisfaction should become a basic program objective and should be monitored to determine program success.
- Recommendations to improve client relations and service include providing more information about the program, better training for staff, providing more information to clients about their files, establishing a formal complaint mechanism, improving telephone access, extending office hours and allowing payment by credit cards.

#### Management Issues

- Management problems must be addressed, a new corporate culture must be developed, and the program should develop a research and expanded business planning capability.

#### Resource Issues

- A cost benefit analysis of enhancing the program's budget should be conducted.

- Staffing levels and program facilities should be reviewed as they have not kept up with an increasing file load.

### **Enforcement Issues**

- A special investigations unit should be established to deal with problem files. Some files may be sent to the private sector for enforcement. The program should have power to suspend driver's licenses at the time a default occurs.
- Other enforcement recommendations include new powers to attach corporate assets, as well as revenue sources such as pensions and Workers Compensation benefits. Greater use of default hearings and the imposition of service fees on the accounts of chronic debtors are suggested. Support is given to federal provincial initiatives such as a New Hires Registry to track relocating debtors through their employment.

## **Access Enforcement**

Because of the complexity of the issues involved, the Committee did not simply look at access enforcement, but also examined the basis upon which custody and access orders are made in the first instance, as well as how access to the family law and the family court system can be improved.

### **Making Custody and Access Orders**

- The Committee suggests that two fundamental changes to federal and provincial law be made to provide the Courts with a better way of dealing with custody and access issues. The first change would be to establish in law that the child has a right to the continued involvement of both parents in his or her life following a divorce or separation. The second change would be to require the parties to enter into a parenting plan as a pre-condition to obtaining a divorce or legal separation. A parenting plan will allow parents to design their own shared-parenting arrangements.
- Ancillary recommendations are also made dealing with the child's right to a continuing relationship with other family members, defining the 'best interest of the child', and use of the language of shared parenting. The Committee is supportive of the growing use of mediation in all areas of family law, and recommends that resources be provided to ensure that there is access to mediation in appropriate circumstances.

### **Access to the Law and Courts**

- In the area of access to the law and to the Courts, the Committee notes that family law in Alberta is found in a number of overlapping statutes and

recommends that family law legislation be consolidated as much as possible into one Act.

- The Committee believes that overlapping jurisdictions of the Court of Queen's Bench and the Provincial Court create a barrier to access. The Committee believes that a single family law forum with province-wide access, and which is accessible to unrepresented persons, would best meet the needs of Albertans.
- Ancillary recommendations are made to improve the information and assistance which is available to members of the public trying to access the Courts.

### **Access Enforcement**

- The Committee recommends that Alberta codify the remedies and defences which are available to the Courts to deal with custody and access issues. Remedies must be available on a timely basis, even during periods such as statutory holidays when the Courts might not ordinarily be sitting. Remedies should also be available in situations where a parent has failed to exercise access.
- Ancillary recommendations are made to provide mediation, counselling and parenting courses as part of an enforcement mechanism, as well as with respect to the use of incarceration, clarity of language, supervised access, case continuity, the relationship between maintenance and access, and interprovincial enforcement.

## **PART I      The Maintenance Enforcement Program— Review and Recommendations**

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# **1. The Maintenance Enforcement Program**

### **Program Description**

The Maintenance Enforcement Program was established in 1985-1986 to ensure that court orders for child support and spousal maintenance were enforced, and that payments were collected and paid to the appropriate individuals. Collection of maintenance payments was viewed as a positive alternative to a situation where individuals could ignore their obligations and force their former spouses and their children to rely on social assistance. When it was established, it was the first program of its kind to be administered on a province-wide basis.

The Maintenance Enforcement Program is delivered through the Corporate Services Division of the Department of Justice through a central office located in Edmonton. Over the twelve years of its existence, Maintenance Enforcement has grown from 9,000 to 39,972 active files and in the 1997-98 fiscal year collected approximately \$118 million for active files. There are 55,403 children who are the subject of support orders with the program.

Maintenance Enforcement is the intermediary between creditors (those receiving collected monies through the program) and debtors (those paying monies to the program). The program serves as a clearing house for the economic relationship between these two parties, receiving the payments and issuing government cheques from a trust fund where the monies are collected and held. The program monitors each account to ensure that payments are up to date and keeps a record for each party.

The Maintenance Enforcement Program has access to a wide variety of information to assist in the collection of money from defaulting debtors. In cases of default, Maintenance Enforcement may access information sources such as the Alberta Registries' motor vehicle database, Alberta Health Care, Alberta Family and Social Services, and the Personal Property Registry databases. In spite of its resources, the program is unable to collect on some files. In some cases, debtors can't be located, in others income or assets can't be located, and in still others, the debtors may actually have no income or assets. On its active files, the program has a success rate of around 70 per cent when the rate is defined in terms of files in which at least some money was collected within a 90 day period.

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## Continuation of the Maintenance Enforcement Program

*“I do not believe it is up to the government, or anyone else, to support my children. I just want what (sic) coming to them, legally.”*

### — Maintenance Enforcement/Access Review Correspondence

*84.8 per cent of respondent creditors and 79.3 per cent of respondent debtors believe the ultimate financial responsibility to pay support lies with the debtor.*

### — Client Survey, 1998

Although no program with a collection mandate can claim to be 100 per cent effective, from many perspectives the Maintenance Enforcement Program is a success. Of particular importance is the fact that the program collected about \$118 million in support payments in the fiscal year 1997-98 for creditors in Alberta.

Of secondary but significant importance is the fact that the Maintenance Enforcement Program effects a net cost savings for government through its collection of subrogated claims. Prior to the establishment of the program, government did not collect aggressively from defaulting individuals whose former spouses and children were being supported by social assistance. Today, when creditors draw social assistance, they assign the right of collection to the Department of Family and Social Services. Maintenance Enforcement then is given the responsibility of collecting the maintenance. The amount of money collected for the government in this manner is over twice the cost to government of operating the Maintenance Enforcement Program itself.

A related but unquantified benefit is the fact that because the existence of the program results in voluntary payment or because the program succeeds in collecting maintenance, many families who might otherwise have required help, never have to go on social assistance. Although a figure has never been established, the amounts saved by taxpayers because creditors don't go on social assistance is thought to be considerable.

Finally, the program plays an important role in upholding the rule of law and enforcing society's beliefs in parents' responsibility for their children. The enforcement role of the program emphasizes the need to obey court orders, and our collective belief that parents must be responsible for the support of their children

## Recommendation I

**The Committee believes that the Maintenance Enforcement Program continues to play an important social role and recommends that the program be continued.**

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## The Role of Government

The Committee's terms of reference directed it to look at privatization of the program. One of the major questions the Committee wished to answer in this review was whether or not government still has a role to play in the Maintenance Enforcement Program. If it does, what should that role be?

The Committee reviewed the background to the establishment of the program, including the Alberta Institute of Law Research and Reform study conducted in 1981. At that time, it was noted that relatively few debtors made any attempt to pay court ordered maintenance and even fewer totally met their obligations. In 1985, legislation was passed to give government, through the Director of Maintenance Enforcement, a broad range of powers to collect on court orders on the behalf of creditor spouses.

As a part of our review, we asked several stakeholder groups whether or not the private sector could play a role in the provision of these services. The clear answer from both creditors and debtors was that government should continue to play a major part in the Maintenance Enforcement Program. There seems to be general agreement that the presence of government ensures fairness, equity, and dignity to all parties. We heard no view to the contrary.

The Committee believes that there are convincing reasons to keep the Maintenance Enforcement Program within government:

First, there is the problem of maintaining confidentiality of the information that is currently provided to the Director of Maintenance Enforcement for collection purposes. The Director has access to government databanks which are not available to private sector agencies, and enjoys powers under legislation that may not be available to other agencies. It might not be possible to build a sufficient firewall between MEP collections and private collections to ensure that confidentiality and privacy concerns would not arise.

Second, if the program was turned over entirely to the private sector, some components of the program which the Committee believes to be important, might not be offered at all, or might only be offered on a reduced scale. The cost effectiveness of things such as client relations programs and client information programs might become an issue in private sector delivery.

Third, the program as it currently operates, is cost effective for government. Collections of subrogated claims—those claims payable to the government to offset social assistance payments—more than meet the costs of the program.

## Recommendation 2

**The Committee recommends that the program be retained in the public sector.**

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## 2. Client Relations

### Client Satisfaction to Become a Program Objective

The Committee believes that, for the majority of cases, the Maintenance Enforcement Program has done an effective job in fulfilling its collection mandate. The Committee believes that the program must continue to be assessed in terms of the effectiveness of its collection regime. However, the Committee believes that there are other elements which should be considered in measuring the success of the Maintenance Enforcement Program.

The program has a difficult mandate. The *Maintenance Enforcement Act* places the program between two parties who often have developed strong feelings against each other and against the justice system in the course of their divorce. Creditors may feel that the program's collection activities are never enough, while debtors may feel that they are all too much.

The problems faced by creditors are clear. Single parents raising children on low or moderate incomes depend on the timely arrival of maintenance payments. The need to juggle financial obligations, or to deprive children of things taken for granted by their peers can be disheartening when maintenance payments do not arrive.

Debtors may resent the involvement of government, seeing in it an implied statement that they are not responsible or trustworthy parents. Debtors who fail to make payments may do so for compelling reasons such as loss of employment or illness. Enforcement of their obligations towards their first family may affect their second families. Debtors may not understand that the Maintenance Enforcement Program is only an enforcement program and not a court and that the program cannot change their court order to reflect changes in the debtor's circumstances.

Many of the program's clients are not happy with their circumstances or with the program. This is often reflected in how clients deal with program staff. In turn, public feedback in the form of written submissions, oral presentations, and survey returns, has suggested unhappiness with the way that program staff deal with clients. The spectrum of concern ranges from a lack of courtesy, to inability to obtain information, to abrupt dealings, to actual rudeness. The Committee feels strongly that since client relations is one of the reasons for keeping the program in government, client relations must be emphasized by the program.

### Recommendation 3

**The Committee recommends that good client relations become one of the fundamental objectives of the program. Program clients include both creditors and debtors.**

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## Evaluation of Client Satisfaction

The Department of Justice Business Plan has identified a client satisfaction survey as a key Ministry measurement of whether the program is reaching its goals. While this review was underway, a survey of client satisfaction was undertaken by the department as a part of its accountability framework and to assist our Committee in our deliberations. We support the notion of client satisfaction measurement as an important element of the accountability structure of the program.

### Recommendation 4

**The Committee recommends that assessments of client satisfaction be considered to be a fundamental measurement of program success.**

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## The Need for Better Communication

*52.2 per cent of respondent creditors and 91.3 per cent of respondent debtors report that they did not receive any information pamphlets from the program at the time of registration. 41.9 per cent of respondent creditors did not know if employees of the program took actions to get the debtors to pay, after they registered with Maintenance Enforcement.*

— *Client Survey, 1998*

We believe that the key element to improving client relations is better communication. The Committee heard repeatedly that the Maintenance Enforcement Program does not communicate well with creditors or with debtors. Most of the concerns expressed were either related to the lack of information provided, or to the way in which clients felt they had been treated by staff. However, it became clear to the Committee that part of the problem was that creditors and debtors often did not clearly understand what the program could or couldn't do. Creditors sometimes thought that Maintenance Enforcement could replace a failed payment by a debtor with a government payment. (The program does not do this for reasons of cost, and to eliminate the potential for collusion between creditor and debtor). Debtors did not always understand the relationship between the program and the Courts, or the fact that the program was there to enforce a court order, but was not a court itself and had no power to change or vary a court order. Confidentiality provisions in the legislation sometimes limit the information which can be released to either a creditor or a debtor.

In order to try and reduce frustrations resulting from a misunderstanding of the program, the Committee suggests that the program make a greater effort to explain the program and its limitations to clients at the outset of their involvement. As well as explaining what the program does, the Committee believes that it would be useful if the program could explain its standards for providing service in

terms of timeliness and courtesy. Such a client service statement would be useful to both clients and staff in establishing appropriate expectations of the program.

## **Recommendation 5**

**The Committee recommends that clients be advised of the functions and limitations of the Maintenance Enforcement Program at the beginning of their involvement with the program. Client service standards should be developed that will provide clients with a clear statement of service goals and objectives. This advice should be in the clearest language possible and should also be featured prominently in general communications and literature.**

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## **Communication with Clients—Staff Training**

*“They don’t return calls! Or their sheer rudeness on the telephone gets rid of clients who have little or no self-esteem left after a divorce!”*

### **– Maintenance Enforcement/Access Review Correspondence**

*Only 69.6 per cent of respondent creditors report having been either “always” or “often” treated in a courteous manner by Maintenance Enforcement employees when making contact and only 57.2 per cent of respondent debtors report having been either “always” or “often” treated in a courteous manner by Maintenance Enforcement employees.*

### **– Client Survey, 1998**

Program clients have reported that staff often do not seem knowledgeable about the program and that sometimes staff cannot help them because of this. The Committee is concerned that training for new employees may be deficient and that Maintenance Enforcement may lack policies and procedures to ensure that callers are provided with information related to accounts, actions which might be taken on the file, or general information about the Maintenance Enforcement Program.

Committee members have heard many complaints from both creditors and debtors about the nature of the service provided by the program. In a distressingly large proportion of these complaints, the issue of lack of courtesy is cited. In particular, debtors report that the staff are especially rude to their inquiries, whether they are made by telephone or in person at the Maintenance Enforcement office in Edmonton. Such complaints suggest that staff within the program have developed negative and generalized assumptions about debtors.

The Committee is of the view that Maintenance Enforcement employees do not receive adequate training in telephone etiquette, stress management with regard to clients, or any other support that would enable them to deal more effectively and more courteously with clients. The Committee believes that the program must develop a corporate culture of service delivery similar to models found in the

private sector. This could include training programs in areas such as stress management and client support, and the recognition of staff who have exhibited the desired behaviour and attitudes towards clients.

## **Recommendation 6**

**The Committee recommends that employee training programs, as well as information policies and procedures, be reviewed to ensure that they will complement the development of an appropriate corporate culture of service delivery.**

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### **Communication with Clients—Disclosure**

*50.2 per cent of respondent creditors do not know if the debtor has ever been served a summons, warrant or subpoena to require their attendance in court to deal with failing to pay previously ordered support payments. 58.5 per cent of respondent creditors do not know if the debtor has ever been refused motor vehicle registration services for failing to pay support. 17 per cent of respondent creditors believe that Maintenance Enforcement made arrangements with the debtor to reduce the amount of support collected.*

#### **— Client Survey, 1998**

A significant source of creditor unhappiness with the program is the perception that the program makes “deals” with debtors that change the amount of court ordered payments. The fact that “deals” are made by enforcement officers based on information provided to them by the debtor, without consultation with the creditor, increases creditor unhappiness with this practice.

Although enforcement officers cannot vary a court order, often debtors can only afford to pay a certain amount for a particular month. The officer may accept the offered payment but inform the debtors that they are still legally responsible for paying the ordered amount. The unpaid portion is added to arrears. Similarly, although only a Court can vary the amount of arrears owed, in the absence of a court order dealing with arrears, the enforcement officer may negotiate payment arrangements on the arrears. All the creditor sees is the discrepancy between what the court ordered and what the Maintenance Enforcement Program is collecting, and the perception of making a deal is created.

Creditors told the Committee that they are rarely advised of what actions are being taken on their file, unless they have specifically asked. If they have asked, creditors have indicated that the response to letters directed to the program is slow, with delays that sometimes involve weeks of waiting. There are also problems related to telephone contact, and a poorly designed voice-mail system that serves to anger those who are seeking information from the program.

The Committee believes that lack of information can lead to lack of credibility and

loss of faith in the program if creditors believe that their file is remaining untouched for long periods of time, or if debtors believe that actions taken by the program are arbitrary and capricious. As well, the policy of not providing statements of account or action summaries causes clients to contact the program and increases the demands made on the already overloaded communication systems.

The Committee recognizes that there may be constraints on disclosure because of confidentiality provisions in the *Maintenance Enforcement Act* and the *Freedom of Information and Protection of Privacy Act*, and does not recommend any change to the Director's discretionary powers over enforcement. However, the Director of Maintenance Enforcement is collecting on behalf of creditors and creditors should be kept informed of activity on their file to the greatest extent possible. The Committee suggests that consideration be given to establishing a policy of providing routine account advice, perhaps on a quarterly or semi-annual basis, as well as timely communication and full disclosure when significant action such as accepting a reduced payment is to be taken on an account.

### **Recommendation 7**

**The Committee recommends that the program investigate the feasibility of establishing a routine “client report” to inform creditors and debtors of the status of their accounts, and the actions that have been taken on the accounts.**

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### **Recommendation 8**

**The Committee recommends that creditors be kept informed of arrangements made for decreased payments, as well as the reasons for the decision, to the greatest extent possible.**

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## **Communication with Clients—Complaint Mechanisms**

Many stakeholders felt that either there was no way to make effective comments or complaints to anyone within the program or that complaints made against the program were never investigated or acted upon. Such beliefs contribute to a sense of extreme frustration and animosity against Maintenance Enforcement as clients do not feel that their concerns are being dealt with in an effective way.

### **Recommendation 9**

**The Committee recommends that Maintenance Enforcement look at creating a formal complaints procedure to record and investigate complaints made by clients against the program. Clients should be advised of the disposition of their complaint.**

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## Communication with Clients—The Inquiry Line

The inquiry line was established to serve the needs of clients seeking information about the program or an individual file. In October 1997, the inquiry line fielded over 18,000 calls but clients reported experiencing extreme frustration in attempting to reach the program via the telephone. The existing inquiry line format has become a barrier to access and alternatives to the inquiry line should be investigated.

### Recommendation 10

**The Committee recommends that a review of current communication technology be conducted, including voice mail and the use of identification numbers so clients of the program can access their balances quickly and easily, 24 hours a day, while maintaining their privacy.**

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## Communication with Clients—Real Time File Access

An issue that was repeatedly raised by stakeholders was the fact that they could not obtain information over the phone in a timely manner. This is due in part to the manner in which file information is processed by the current Maintenance Enforcement computer system. The “batch system” requires that all information input on a given day be backed up that evening by the mainframe. This means that payments or actions taken on a file are not generally displayed on the Maintenance Enforcement system until the following day when the system has updated itself. Clients must phone back repeatedly to get information because the system may not be showing any new actions at the time of their call.

The alternative to the “batch system” is “real time” processing in which computer operators have immediate access to any changes input to the system. Although the Committee understands that the cost of “real time” processing is higher than the cost of “batch” processing, we believe that the higher costs could be justified by the improvements in client service which would result.

### Recommendation 11

**The Committee recommends that Alberta Justice consider the implementation of “real time” technology in the computer system of the Maintenance Enforcement Program to facilitate better and more timely service to clients.**

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### **Service to Clients—Extended Hours**

The Maintenance Enforcement Program currently operates during regular office hours. This imposes some challenges for clients who wish to communicate with the program but cannot afford to take time off because of job responsibilities, etc. In addition, enforcement staff often find it difficult to get in contact with creditors and debtors who hold regular day jobs. It would, therefore, seem appropriate to examine the benefits of extending hours into the early evening, so that Program services can be accessed.

#### **Recommendation 12**

**The Committee recommends that the Maintenance Enforcement Program examine the feasibility of extending office hours.**

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### **Service to Clients—Credit Card Payments**

Several payment options have evolved over the past 12 years of the program's existence. Direct withdrawal and deposits are only two of the options now available to facilitate the transfer of funds to and from the program. Clients expressed an interest to the Committee in the ability to use credit or debit cards to make maintenance payments. The convenience factor was cited as the reason for wanting such an option.

#### **Recommendation 13**

**The Committee recommends that expanding payment options, including the use of credit and debit cards, be examined.**

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## 3. Management

### Management Environment

In the course of its review of the Maintenance Enforcement Program, the Committee has noted problems with client relations, problems with staff morale, problems with the implementation of technology, and problems with policies and procedures. The Committee believes that program management has been slow to recognize problems or to take appropriate measures in response.

In arriving at this conclusion, the Committee had the opportunity of reviewing the 1995 KPMG report on the Maintenance Enforcement Program. We believe that our observations are consistent with the findings of the KPMG report. It is our view that management must develop procedures and practices that will support a corporate culture which stresses the importance of staff and a sense of cooperative enterprise.

During the course of our review, we were advised that program management had conducted its own internal review to address the KPMG report and that the report of our Committee, once it was available, was also to be addressed in that context. We wish to emphasize our belief that such an examination is crucial to the effective future functioning of the program. We do not believe that the status quo is acceptable.

### Recommendation 14

**The Committee recommends that Alberta Justice place a priority on the review and reform of the management environment of the Maintenance Enforcement Program.**

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### Commitment to Excellence

Just as corporations have adopted a commitment to excellence in their operations, so should providers of government services. The Committee would encourage the Maintenance Enforcement Program to borrow ideas from industry and from other areas of government. Concepts such as staff empowerment and quality circles could be considered as ways of improving quality of work and staff morale.

### Recommendation 15

**The Committee recommends that a culture of organizational innovation and excellence be fostered in the Maintenance Enforcement Program.**

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## Research

Most western democracies have established maintenance enforcement programs. All of the programs face similar challenges and the experiences of other jurisdictions may have real application to the problems faced by the Alberta Maintenance Enforcement Program. We believe that the Maintenance Enforcement Program should establish a program of research to examine how other jurisdictions are dealing with their challenges and to monitor program and legislative changes across the world. The Maintenance Enforcement Program of Alberta should be aggressively examining how other programs are delivered and assessing their merits and cost benefits for inclusion into the Alberta context.

Research staff could also support new efforts to develop and articulate policy, support external communications with clients and stakeholders, and support internal communication with government through a more effective business planning process.

### Recommendation 16

**The Committee recommends that the Maintenance Enforcement Program establish a research capability to support program objectives.**

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## Business Planning

In the 1992/93 budget year, the Government of Alberta introduced a business planning methodology at the ministerial level. The proposed initiatives of government in the coming three years are identified along with the budget, performance measures are stated, and targets are set for program functioning. In assessing the Maintenance Enforcement Program, we were disappointed to see that there does not seem to be comparable business planning at the program level. The Committee is of the view that enhanced planning at the program level which is linked to budget development would provide the appropriate forum for discussion about program change and innovation. In conjunction with the establishment of a research capability, program management would have a means of identifying innovative practices, of allocating resources, and of assessing their outcome.

### Recommendation 17

**The Committee recommends that the Maintenance Enforcement Program enhance its business planning activity.**

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## 4. Resources

### Budget Constraints

The budget of the Maintenance Enforcement Program has been constrained over the past several years, as have those of those of other government programs. Adjustments to staff complements have not kept pace with the increasing volume of files on the system. File loads have increased about 30 per cent over the last three years, without an increase in manpower.

The Committee has noted elsewhere that the Maintenance Enforcement Program makes a net positive contribution to government accounts by virtue of its collections on subrogated accounts and its preventative contributions by reducing the numbers of persons on social assistance. The Committee questions whether the full application of restraint measures on the Maintenance Enforcement Program is in the public interest, for the more resources Maintenance Enforcement has, the more funds it should collect for government. We are not aware of any Treasury Board cost-benefit analysis that examined the benefits of increasing program resources or the costs associated with reducing them.

### Recommendation 18

**The Committee recommends that Treasury and Justice examine the benefits associated with more funding to the program for improved enforcement in relation to the costs of enforcement.**

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### Staff

There are strong indications that stress is significantly affecting Maintenance Enforcement personnel. The Committee believes that case load, physical facilities, and employment status are significant causes of stress.

When the Maintenance Enforcement Program was started in 1985-86, the staff complement was 57 to handle 9,000 files. Today, the program operates with a total of 125 staff, including managers, who oversee nearly 40,000 active files. In 1985-86, 15 enforcement officers carried an average case load of 600 files. Currently, 39 enforcement officers carry a case load of approximately 1000 files each.

A second factor affecting staff is the physical facility of the Maintenance Enforcement Program. Although staff numbers have more than doubled, and file volume has more than quadrupled, the physical space occupied by the program has remained the same. The program occupies the original office space it did in 1986.

A third factor contributing to a sense of dissatisfaction is job status. In the fall of 1997, out of a total of 125 full time equivalent positions, 36 employees were wage staff (paid hourly with no benefits) and an additional 15 were hired externally, on a temporary basis from an employment agency. None of these positions had the security of permanent status within the government employment structure. Morale is adversely affected by this lack of security amongst staff and it is a contributing factor to the staff turn-overs that occur within the program.

### **Recommendation 19**

**The Committee recommends that Alberta Justice review staffing levels and physical facilities associated with the Maintenance Enforcement Program.**

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### **Recommendation 20**

**The Committee recommends that the program strongly consider conversion of project and wage positions to permanent positions.**

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## 5. Enforcement

The Committee believes that for routine files the Maintenance Enforcement Program administers an effective collections and enforcement system. We believe however that there are a number of changes which could be made to increase the effectiveness of the program.

### Special Investigations Unit

*29.3 per cent of respondent creditors are “very dissatisfied” overall that Maintenance Enforcement has assisted them to obtain support payments.*

— *Client Survey, 1998*

An area that draws a significant number of complaints relates to the enforcement of “difficult” files—those where no collections have occurred over a long period of time, or where the debtor is moving assets or hiding behind a corporate veil.

There are two main reasons why collections may not occur in the usual manner on difficult files:

- The debtor cannot be located. Many delinquent debtors are self-employed and move from position to position frequently, thus making tracing very difficult by conventional sources. When debtors leave the province, the difficulty of collection is compounded.
- Assets cannot be located. Many delinquent debtors do not file income tax returns so little information about income or assets is available, or assets have been transferred or otherwise disposed of.

A difficult file may require extensive investigation of various provincial data banks such as vehicle licensing, health care, bank accounts, or other sources of information. Federal Revenue Canada data banks cannot be accessed until provincial sources have been exhausted.

Although these accounts represent only a small proportion of the over-all account volume, they consume a great deal of resources, the most significant of which is enforcement officer time. Either a disproportionate amount of time must be spent on these files, to the detriment of other, more routine files, or little time is spent on the difficult files.

The Committee suggests that a special investigations unit should be established within the Maintenance Enforcement Program. This unit should receive difficult cases from elsewhere in the program, allowing other areas of the program to concentrate on the higher volume, less resource intensive case. This unit, and this unit only, should have the ability to refer cases to the private sector. Outsourcing to private sector agencies could occur when criteria for referral are met. Criteria for referral could include the need to employ special skills available in the private

sector, or cases where the expenditure of public resources has not resulted in any significant enforcement.

In our consultations, stakeholders gave cautious endorsement to use of the private sector for assistance in selected cases, provided that the main program remained in the public sector and continued to be a responsibility of government.

### **Recommendation 21**

**The Committee recommends that difficult cases be removed from the mainstream of the Maintenance Enforcement collection practice and referred to a special investigations unit. The Maintenance Enforcement Program should establish a special investigations unit for difficult cases.**

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### **Recommendation 22**

**The special investigations unit of the Maintenance Enforcement Program should be authorized to refer difficult cases meeting defined criteria to private sector collection agencies.**

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## **Increasing the Effectiveness of Licence Suspensions**

The current system does not provide for an immediate suspension of the debtor's license, but instead provides that, after being notified to do so by the Director of Maintenance Enforcement, the Registrar of Motor Vehicles will refuse to issue a license or registration at the time of renewal. It can take up to five years for this to become effective. Little immediate relief is provided to the creditor, and the passage of time may have placed the debtor into a position of overwhelming debt. Stakeholders have said that this collection tool would be more effective if it could be employed sooner.

The Committee believes that the Director of Maintenance Enforcement should have more active powers of license suspension. The Committee suggests that the Director be required to give notice of his intention to direct suspension of a license within 30 days of a default having occurred, and that the suspension then occur within a prescribed period after notice has been given.

### **Recommendation 23**

**The Committee recommends that the program review legislation and practice dealing with licence suspension so that suspension may occur within a prescribed period of time closely following a default.**

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## Piercing the Corporate Veil and Tracing Assets

Currently, some defaulting debtors are able to shield their income and assets from attachment by the Director of Maintenance Enforcement by transferring assets to a family member or member of the debtor's household, or by using a corporation wholly or substantially owned by the debtor, his family, or a member of his household. Enforcement by the Director may be thwarted by such sheltering of assets, or by the appearance that no monies are owed by the corporation to the debtor, even though the debtor may be actively operating or working for such a corporation and have no other visible means of support.

The Committee believes that it would be useful to consider ways of tracing assets which may have been transferred in an attempt to defeat Maintenance Enforcement and notes that the Province of Ontario has proposed legislation to allow courts to obtain information from persons who are financially connected to the debtor and to make orders against the sheltered assets held by those persons.

### Recommendation 24

**The Committee recommends that legislation be enacted to allow the Director to “pierce the corporate veil” to recover maintenance where corporations are used to shield income and assets. The Committee also recommends that consideration be given to providing Courts with the power to obtain information from persons financially connected to the debtor and to make orders against sheltered assets.**

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## The Director of Maintenance Enforcement as Receiver

At present, the legislation authorizing the appointment of the Director of Maintenance Enforcement as a receiver is limited to the assets of the debtor personally and does not extend to assets such as those of a wholly owned company. While the Director may apply to the Court for appointment as an equitable receiver, the circumstances in which the application can be made, and the results of the application are uncertain. It would be useful if the legislation authorizing the appointment of the Director as receiver were expanded to allow the Director to make more effective use of receivership as a tool for enforcement.

### Recommendation 25

**The Committee recommends that legislation establish a statutory right for the Director to be appointed as a “receiver of rents” of any corporation wholly or substantially owned by the debtor or his/her family.**

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## Stays of Enforcement

As the legislation stands, stays of enforcement granted against the Director of Maintenance Enforcement vary depending upon the type of enforcement proceeding involved. The Act itself only deals with stays in the case of garnishment or continuing attachment and no other type of enforcement proceedings. Frequently, there are no time limits included in these stays of enforcement, leaving Maintenance Enforcement unsure as to when they may once again take action against the debtor. An additional complication is the occasional readiness of some judges to reinstate automobile licences suspended due to delinquent payments on the debtor's part, despite the wording of the current legislation and case law interpreting it.

### Recommendation 26

**The Committee recommends that the Maintenance Enforcement legislation be amended to clarify the powers of the Court with regard to the stays of enforcement granted against the Director of Maintenance Enforcement.**

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## Expanding the Coverage of Maintenance Enforcement

Due to specific statutory provisions, the Director of Maintenance Enforcement is presently unable to issue a Notice of Continuing Attachment against entities such as the Workers Compensation Board, various pension plans, and Alberta Health for physicians' income from medical services to patients.

### Recommendation 27

**The Committee recommends that legislation be enacted expanding the numbers of entities against which a Notice of Attachment may be issued.**

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## Locating Debtors and Publishing Names of Debtors

While it is trite to suggest that the Internet offers new possibilities to almost every type of business, the Committee notes that consideration could be given to innovative ways of using the Internet to locate debtors. For example, a website could be used to obtain public help in locating major debtors.

In many jurisdictions in the United States, the names and pictures of noteworthy debtors are publicized. This practice sends two messages: first, that the program is serious about collecting, and second, that there could be significant embarrassment to a debtor who knowingly refuses to make payments. The feasibility of such an

approach should be examined, while keeping in mind the responsibility of the program to remain fair and balanced in its treatment of clients.

### **Recommendation 28**

**The Committee recommends that the program examine different methods to identify and/or search for debtors who knowingly avoid meeting their payment obligations. Options include establishing an identification Internet website to assist Maintenance Enforcement personnel in tracking defaulting debtors through public interaction, and examining the feasibility of publishing the names of chronically defaulting debtors.**

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### **Credit Bureau**

Payments owing by a debtor for child support have priority among unsecured creditors in any civil enforcement proceeding. This means that other lending agencies, for example, would get paid from a seizure of property only after arrears to a creditor spouse are eliminated. It would seem appropriate that these debts be registered, since they can materially affect the credit-worthiness of a debtor. If debtors ran the risks of not being able to secure loans because of large outstanding arrears, it would seem to be a major incentive to them to reduce arrears. Not only would it act as an incentive, but it would also serve to protect other lending agencies that would otherwise be unaware of the debtor's financial obligations.

### **Recommendation 29**

**The Committee recommends that the program examine a policy of reporting chronically defaulting debtors to the credit bureau.**

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### **Fees for Collections**

Collecting maintenance orders is a costly business. Staff have to be paid, offices have to be provided, computers supported, and phones manned in order to make the program work. Some chronic debtors force the program to use a large number of resources at no cost to themselves, for once they are found, they merely pay the court ordered support and none of the costs of enforcement. The program should examine the feasibility of charging chronic debtors with the cost of enforcement, both as a means to offset the program costs, but also to encourage compliance by those debtors who choose not to pay, though they have the means to do so.

### **Recommendation 30**

**The Committee recommends that the program explore the utility of charging debtors the cost of enforcement in appropriate cases.**

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## Default Hearings

A default hearing is a procedure whereby a debtor in default is summonsed before the Court of Queen's Bench (usually to Masters' Chambers) to explain why maintenance hasn't been paid. On a default hearing, the Court may do a number of things, including appointing a receiver, requiring a debtor to provide security, and jailing the debtor for up to 90 days.

Although the default hearing would seem to be a powerful tool for enforcement, it is the Committee's observation that in many cases it does not seem to be very effective. We have heard suggestions that insufficient information is provided to counsel by the program, or that it is provided too late in the process. We have heard that many cases set for default hearing are adjourned, creating a perception that cases are being "dealt" off. Finally, it appears that default hearings are only used as a last resort in the cases of chronic debtors. The Committee questions whether a more flexible use of default hearings—such as their use earlier in the enforcement process—might be more effective.

### Recommendation 3 I

**The Committee recommends that the program review its practices and procedures for default hearings to ensure that are being conducted as efficiently as possible. The Committee recommends as well that the program consider making more frequent use of default hearings earlier in the enforcement process.**

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## 6. Policies and Procedures

The Committee had the opportunity to review basic administrative procedures of the Maintenance Enforcement Program, including registrations, collections, and issuing cheques.

### Registration and the Commencement of Enforcement

*69.9 per cent of respondent creditors were either “very satisfied” or “somewhat satisfied” overall with the program information and registration procedures.*

*55 per cent of respondent debtors were either “somewhat dissatisfied” or “very dissatisfied” overall with the program information and registration procedures.*

*62.9 per cent of respondent creditors were not satisfied that the program started enforcement action within a reasonable period of time when their payment was not received.*

#### — Client Survey, 1998

Most court orders for child or spousal support are automatically referred to the Maintenance Enforcement Program for potential enforcement. However, the actual enforcement of court orders received by Maintenance Enforcement does not begin until the creditor completes and returns a registration package that is sent to them by the program. Initial delays in the commencement of enforcement depend on the amount of time that a creditor takes to return the registration package, and whether the package contains all the necessary documentation once it is returned.

Upon receipt of a registration package, with all pertinent documentation included, the program estimates an average waiting period of three weeks. This includes a three to five day wait while letters are sent to both creditor and debtor informing them of the registration of the order with Maintenance Enforcement, and a 14 day period in which the debtor must make their first payment. If a payment is not made by the debtor within the 14 day period then the file is flagged in the system for the attention of an enforcement officer who will begin to make inquiries.

Creditors and their lawyers have complained that there is too long a wait between the time a debtor is in default and the time that enforcement activities commence. Even longer delays occur if an old order is being registered for the first time as information must be updated.

### Recommendation 32

**The Committee recommends that Maintenance Enforcement examine its current registration and enforcement process to determine if they can be improved to ensure quicker registration of court orders, and to reduce the time lag between default and commencement of enforcement.**

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## Registration by Debtors

At present, only creditors are allowed to initiate registration with the program. However, a number of stakeholders suggested that debtors should also have the option of registering with Maintenance Enforcement to provide benefits such as third party accounting of their maintenance payments, or to prevent the necessity of contact with a former partner.

### Recommendation 33

**The Committee recommends that the option of allowing debtors to register under the program be examined by Maintenance Enforcement.**

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## The Holding of Cheques

The Maintenance Enforcement Program holds all personal cheques and pre-authorized withdrawals for 10 banking days (usually about 14 calendar days) to ensure that they clear before a cheque is issued to a creditor. This practice ensures that the program does not become a guarantor of maintenance payments and does not become responsible for reimbursing the bank for any NSF cheques or withdrawals. The practice is however a source of great frustration to creditors.

The Committee does not recommend a change to the practice of holding cheques. However, the Committee suggests that the program consider two measures to try to deal with creditors' frustrations:

- (1) Encourage payments to be made in a way that does not require a 10 day hold. At present, the program has a number of options available for payment that do not require the 10 banking day hold, including certified cheques, money orders, and payments made through personal computer banking or telephone banking;
- (2) Ensure that the 10 day hold remains consistent with banking technology. As banking technology improves, it may be possible to reduce the 10 day waiting period .

### Recommendation 34

**The Committee recommends that the program encourage the use of payment options that do not require a 10 day hold, and that the 10 day holding period be reduced as improvements in banking technology permits.**

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## Tracking Systems and Quality Control

Paper processing constitutes a central element in everything Maintenance Enforcement does and is closely tied to communication procedures within the program. Even in this computer age, it is still an integral part of record keeping for Maintenance Enforcement and crucial to instituting any actions on a file. There does not however appear to be any formal internal tracking measures or standards in place for the various files that circulate throughout the program area, nor is it known how long it takes a file to move a form from point A to point B within Maintenance Enforcement. Such practices mean that the processing of forms or other administrative paper becomes a series of estimations based on whoever has a form or file at any given time.

Nor do there appear to be any quality control measures in place to ensure that forms are filled out correctly, or that procedures are undertaken according to appropriate methods. The potential for a mistake to result in a delay or some other more costly consequence is increased, especially given the number of people who handle the various forms throughout the program.

### Recommendation 35

**The Committee recommends that Maintenance Enforcement consider establishing an internal tracking system for its paper flow and that consideration be given to creating a quality control program for its administrative procedures.**

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## Out of Province Enforcement

*“It seems all a ‘dead-beat Dad’ has to do is step over one of our provincial borders and he’s home free.”*

— **Maintenance Enforcement/Access Review Correspondence**

The jurisdiction of the Alberta Maintenance Enforcement Program stops at the borders of the province. Alberta must rely on other jurisdictions to pursue debtors living in those jurisdictions just as they must rely on Alberta when debtors reside here.

Alberta has no authority and little influence over enforcement or court process in another jurisdiction and has only the information that the other jurisdiction chooses to send. Since creditors are supposed to deal with the Maintenance Enforcement Program in the province in which they live, this can prove very frustrating for both the creditor and the Alberta Maintenance Enforcement Program.

The Committee suggests that Alberta seek a leadership role in national forums to improve the reciprocal enforcement of maintenance orders.

### **Recommendation 36**

**The Committee recommends that the province aggressively seek more cooperative measures nationally with regard to the reciprocal enforcement of maintenance orders with the goal of reducing delays and alleviating other difficulties associated with the reciprocal enforcement system.**

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## 7. Technology

### Continuing to Invest in Technology

When the Maintenance Enforcement Program was established in 1985, the anticipated volume of files required the development of an automated enforcement system. From the program's inception, it was understood that technology would be an important part of service delivery. The Maintenance Enforcement Program continues to rely heavily on technology.

During the course of this review, the Committee became aware of major problems encountered in the rehosting of the present mainframe technology to a client server. While it is beyond the scope of this review to look in detail at specific information technology issues, we have concerns about the length of time it has taken for this system to come on-line as well as the loss of productivity due to the necessity of removing personnel from their regular duties in order to test various aspects of the computer rehosting program. Accordingly, we urge the Ministry to closely examine the rehosting initiative, so that costs are reduced and benefits increased to the greatest degree possible, given the investment made in technology to support the program.

### Recommendation 37

**The Committee recommends that the Maintenance Enforcement Program review the way it deals with information technology to ensure that proper systems and procedures are in place to protect and update its investments in technology.**

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### National Data Requirements

In order for enforcement programs to work effectively with other jurisdictions, it is necessary that their computers have a compatible means of communication. The federal government and the provincial governments across Canada have cooperated in creating the *National Data Requirements*, which is an attempt to coordinate and standardize programming, data placement, data sets, software, and file contents from the computer systems of one Maintenance Enforcement Program to another. The purpose is to ensure that information from one system can travel to another without difficulty and that all systems have the same type of information available for access.

The Committee supports the concepts of a *National Data Requirement*. We would recommend that all appropriate measures be taken to support the incorporation of the *National Data Requirements* into the Maintenance Enforcement computer system.

### **Recommendation 38**

**The Committee recommends that the Maintenance Enforcement Program ensure that its computer system accommodate the National Data Requirements when they become applicable.**

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### **New Hires Registry**

Because Canadians freely relocate within their own province, or to other provinces, a debtor who moves from place to place and from job to job may be quite successful in evading enforcement agencies. A proposed solution is the development of a *New Hires Registry* to record places of employment for those who begin a new job. Such records could then be accessed by Maintenance Enforcement Programs across the country searching for delinquent debtors.

The federal government is conducting a feasibility study of the concept and is looking at similar registries in countries such as the United States, Great Britain, and New Zealand. Once the feasibility study is completed (slated for the end of May, 1998), it will be reviewed by the federal government and the provinces.

### **Recommendation 39**

**The Committee recommends that the Province support the efforts of the Federal Department of Justice in assessing the feasibility of establishing a New Hires Registry.**

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## 8. Access to Courts and Language of Enforcement

### Accessing the Courts

*21.7 per cent of respondent debtors have gone to court to change the amount of their support order or to attempt to cancel some amount of the arrears.*

— *Client Survey, 1998*

The court order is the basic document affecting the collection of maintenance. It directs Maintenance Enforcement as to what its duties are with regard to individual creditors and debtors. It can only be varied by the Court. Maintenance Enforcement has no authority to make any changes in the amount to be collected as directed by the Court.

Creditors and debtors seeking to vary the original court order must return to the Court of Queen's Bench at their own cost. When someone is forced to return several times, it can become extremely expensive if a lawyer is used. If a person attempts to bring or defend a variation application without the help of a lawyer, the trip through the court system can be a frustrating experience.

The costs and difficulties of accessing the judicial system are matters which are beyond the mandate of this Committee's review of the Maintenance Enforcement Program. The Committee has dealt with those issues in greater detail in its review of access enforcement. We are of the view though, that at a minimum, greater attention should be paid to helping those persons who are attempting to resolve maintenance matters in the courts without the assistance of counsel.

### Recommendation 40

**The Committee recommends that Alberta Justice examine the feasibility of providing information to assist people seeking or defending variations for maintenance without a lawyer. Information should be packaged and available through places such as courthouses or Family and Social Services Mediation and Family Court Services.**

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## Language Capable of Enforcement

The wording of court orders forms the basis of all actions taken by the Maintenance Enforcement Program. The use of imprecise language makes enforcement difficult and imposes a burden on the program that need not exist. The Maintenance Enforcement Program has noted difficulties in the following situations:

- Use of vague or general terms such as “reasonable” or “fair”;
- Failure to specify dollar costs of matters to be enforced. This problem is increasing due to implementation of the Child Support Guidelines orders, which may specify pro rata sharing of additional expenses, rather than specific dollar amounts;
- Failure to specify termination dates for payments for such things as child care expenses; and,
- A particular problem with language exists with respect to the post-secondary education of children of the marriage. The *Divorce Act* provides that a “child of the marriage” is entitled to support until he or she reaches the age of majority (in Alberta, age 18). The child is entitled to be supported past the age of majority if unable to withdraw from the care of the parents, for reasons that include a period of attendance at a post-secondary institution. There are often disagreements between spouses as to what constitutes reasonable post-secondary education, as well as issues as to whether or not a child is continuing in school and still subject to support.

The Maintenance Enforcement Program cannot vary an order. If the order is not subject to reasonable interpretation, the parties must return to court for clarification with all of the attendant costs and inconveniences.

### Recommendation 41

**The Committee recommends that government, the legal profession, and the judiciary encourage the use, wherever possible, of specific language capable of enforcement.**

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## PART II Child Access—Review and Recommendations

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### 1. Introduction—Child Access

Issues of custody and access are two of the most emotionally charged areas of law. For a number of reasons, access can become a contest of rights between adults where the best interests of the child take second stage. For those involved in a dispute, resolution of access arrangements through the courts can be costly, time consuming, and emotionally draining.

Yet, for all the tension that surrounds access issues, it appears that, for the most part, the majority of those involved are able to settle their differences through informal channels. The 1992 report on *Access to Children following Parental Relationship Breakdown in Alberta* found that problems of access were usually worked out by parents talking to each other, or through the assistance of friends, a counsellor, or a mediator, and least often by going to court, which was felt to be too expensive and uncertain. The same study found that only 19 per cent of custodial parents felt their experiences were very difficult and strained, compared to 45 per cent of non-custodial parents. In addition, it was learned that 70 per cent of custodial parents and 64 per cent of non-custodial parents reported that denial of access seldom occurred.

Clearly, the findings of the 1992 report suggest that the majority of those concerned with access issues were able to discover their own solutions. However, the fact that the majority of parents are able to find solutions without the need to go to court does not diminish the problems faced by the significant minority for whom the courts may be the only option. The fact that a majority of people do not experience problems with access, or can resolve them on their own, does not mean that there are not social costs or that the situation should be ignored.

In its review of access issues, the Committee quickly developed an appreciation for the complex environment in which these issues are supposed to be addressed. The fact that issues involving children are so emotionally laden, and the fact that it is very difficult to generalize from one family situation to the next creates an initial complexity which can never be overcome. However, if one adds to this complexity the fact that family law issues are governed by two levels of government, the fact that in Alberta family law issues may be dealt with in two levels of court, and the fact that Alberta family law is found in a number of often overlapping statutes, one can quickly gain an appreciation for the frustration with the status quo expressed by so many to the Committee.

## 2. A New Model

Throughout this review, we have received a great deal of advice as to how the administration of family law in the Province could be modified. The challenge for our Committee was to pull these divergent and sometimes conflicting ideas into a model that would protect the interests of Alberta's children, their parents, and their families.

What government can do to facilitate this includes changing legislation, providing resources where warranted, and encouraging dialogue between parties. What it should not do is intervene unnecessarily in families or attempt to impose a single "one size fits all" solution. There is no such thing. If one existed, it would already have been discovered in the course of all of the litigation that has occurred and continues to occur over issues of custody and access.

Because of the legal and social dynamics involved in these issues, and because of the complexity of the system in which they are handled, the Committee has not restricted its review to "access enforcement." We have taken a broad approach to our review and we have examined how custody and access orders are made in the first place, how access to the family courts can be improved, and how custody and access orders can be better enforced. Throughout our review, we have been impressed by the fact that access works when parents work together, and we have been equally impressed by the numerous things that either parent can do to ensure that access doesn't work.

During the review process, the Committee has had the opportunity of reviewing literature on custody and access, of consulting with experts and interest groups, and of canvassing the experiences of other provinces across the country. Most importantly, we have met with or heard from parents who have so eloquently conveyed to us their love for their children, and their frustration and unhappiness with the way the system currently operates.

As a result of these experiences, the Committee has come to believe the following:

- we believe that there must be an integrated approach to access which provides a continuum of service to families;
- we believe that each family is unique and that the system must be flexible enough to accommodate the individual needs of families rather than the reverse;
- we believe that cooperation, rather than coercion is the fundamental element that we should strive for in all aspects of access;
- we believe, however, that in those cases where cooperation has proved to be impossible, the law should provide direction to the parties, and where necessary, should provide effective and timely means to ensure compliance with the Court's directions.

- underlying everything, we believe that it is the best interests of the children which must be served, and that the interests of both parents must be secondary to those of their children where there is a conflict.

In our view, reform of the custody and access system must start with how custody and access orders are made. We will propose changes that will give real force to the concept of a child focussed system. We will suggest ways in which the energies of parents can be directed away from the current contest of rights, towards common planning designed to ensure the continued involvement of both parents in the lives of their children. We will recommend the continuation and expansion of mediation programs and parenting courses. We will suggest ways of improving access to the family law and to the family court system, and we will suggest improvements to the way in which access orders are enforced.

Our goals are to develop a child custody and access system which is devoted to the best interests of the child, and which is fair and equitable to both parents. Our goal is to emphasize cooperation and conciliation whenever possible, but to provide fast and effective remedies when they are necessary.

### 3. Making Orders For Custody and Access in the Best Interests of Children

*“It has been noted that legal means of enforcing access disputes appear to be unsuccessful. Courts cannot simply order successful or meaningful access if parents fail to recognize the advantages to the child and continue to disagree about access arrangements.”*

— ***Custody & Access: Public Discussion Paper***  
***Department of Justice, Canada 1993 (Justice, 1993)***

We believe that changes should be made in the way that custody is currently established. Under the *Divorce Act*, an order for custody or access is to be determined in the best interests of the child. Under the provincial *Domestic Relations Act*, an order for custody or access is to be made with regard to the welfare of the minor, the conduct of the parents, and the wishes of the parents.

The problem with the current system is that instead of requiring parents to consider mutually acceptable ways to raise their child and to continue the involvement of both parents following the end of the marriage, it initiates and encourages a fight to the finish. Opposing custody applications are common; the winner in the case is rewarded custody, and the loser is to be consoled with access.

The Committee believes that it would be in the best interests of children and their parents if alternatives to fighting over custody were provided to the greatest extent possible, so that parents’ talents, energies, and residual goodwill could be channelled towards agreement on the ways in which the child’s right to the continued involvement of both parents in their lives could be met.

The Committee believes that two changes can be made to the law, both federally and provincially, to establish a better way of dealing with custody and access issues. The first change would be to establish in law that the child has a right to the continued involvement of both parents in his or her life following a divorce or separation. The second change would be to require the parties to enter into a parenting plan as a pre-condition to obtaining a divorce or legal separation.

#### **Shared Parenting—A Child’s Right**

Although the Committee acknowledges that there is debate on some aspects of the literature, we have found that there is a body of literature that suggests that the absence of a parent, usually the father, is related to many social dysfunctions. It is clear that children are often hurt deeply by divorce, and that that hurt is only compounded by the absence or relative absence of one of their parents from their lives. There are some limited circumstances in which children either may not benefit from substantial contact with a parent, or must even be protected from contact with a parent—for example, where the parent is proved to have abused the

children, or where the parent is addicted to drugs or alcohol and would be a danger to the children. Aside from these limited circumstances, the Committee unequivocally believes that children are entitled to the substantial and significant involvement of both parents throughout their lives.

We therefore suggest that legislation be changed so that it becomes the right of the child to involvement with his parents which is protected rather than the right of the parent to involvement with the child. We believe that the right of the child to a continued, substantial and significant involvement with both parents should be enacted in legislation. We envision a process that would see either parent being able to bring an action on behalf of the child to enforce the right, but the action would have to be brought, or defended in terms of the child's best interest.

## **Recommendation 1**

**It is recommended that the federal and provincial government amend legislation to provide a statutory right for children to the continued significant and substantial involvement of both parents in their lives.**

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## **Determining Parenting Arrangements**

*91.4 per cent of respondents felt that mediation and counselling services should be available to assist parents in resolving child access problems.*

— **Canadian Research Institute for Law & the Family:  
Access to Children Following Parental Relationship Breakdown in Alberta,  
1992 (Canadian Research Institute for Law and Family, 1992)**

The second change would be to require the preparation of a parenting plan by the parties as a mandatory condition to obtaining a divorce, or legal separation, and corollary relief such as an access or maintenance order. The Committee suggests that a standard form of parenting plan be developed which would deal with such issues as how decisions on religion, education, health, social activities, etc. are to be made, how and when the non-custodial parent is to exercise access, and how disputes between the parents are to be resolved.

The parenting plan would be a binding agreement between the parents and would be incorporated into the court order for divorce and corollary relief, or for judicial separation and corollary relief. All of the parenting plan should be enforceable as a court order. If necessary, legislation should ensure that the Court has jurisdiction to incorporate all aspects of the parenting plan into its order.

The parenting plan would not be mandatory in situations where the parties should not or cannot develop a plan. The Committee would suggest that an exemption from the requirement of entering into a plan be available pursuant to a judge's order, either based on the evidence of a party, or the certificate of a qualified counsellor or mediator.

The Committee envisions a process which would see most parents able to devise parenting plans on their own, or with the assistance of friends, clergyman, or counsel. As we will recommend the development of a standard form of a parenting plan, it may in fact become easier for parents to address the issues of post-divorce parenting. Other parents will not be able to agree on a parenting plan without the specialized assistance of mediators or counsellors. Existing mediation plans may have to be expanded to cover the additional demand.

Finally some parents may not be able to complete a parenting plan at all—either because an exemption has been granted, perhaps in the case of abuse, or because the differences between the parents are so great that no agreement is possible. These cases will still have to go to court on a contested basis, but it is the Committee's thought that orders for corollary relief made by the Court would cover, to the extent applicable, the matters which would have been dealt with in a parenting plan. In this way, even in a contested case, parents might have a detailed code to govern their relationships with their children.

## **Recommendation 2**

**The Committee recommends to the federal government and to the province that, with certain exceptions, parenting plans be made a mandatory pre-condition to obtaining a divorce, legal separation, or corollary relief. Parenting plans should be binding agreements between parents and should be fully incorporated into the Court's order for divorce and corollary relief.**

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## **Recommendation 3**

**The Committee recommends that a standard format for parenting plans be developed.**

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## **Contact With Other Family Members**

We believe that the child's rights to continuing relationships should extend beyond his or her parents. In our consultations with parents and interest groups, we were told of the often unhappy consequences to siblings who are separated, for whatever reason, as the result of a dissolution of an adult relationship. We believe that there is a need to consider the emotional needs of children in maintaining sibling relations, and relationships with other extended family members, even after their parents have ended their relationship. We believe that in making custody and access orders Courts should consider the right of a child to maintain relationships with siblings and other family members.

One of the factors that we would like to see included in a definition of a child's best interest is a consideration that the best interests of the child should be viewed

as much as possible in the context of his family and include the promotion of positive and continuing relationships with family members.

#### **Recommendation 4**

**That both federal and provincial legislation provide that one of the factors to be considered by Courts in making custody and access orders is the child's right to maintain relationships with siblings and extended family members, and that the legislation provide a mechanism for enforcing such a right.**

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### **The Best Interest Test**

*“ . . . the child is not usually legally represented and, in many cases, the child's views are not known to the Court . . . they have no legally enforceable right to participate.”*

— *Custody & Access: Public Discussion Paper*  
*Department of Justice, Canada 1993 (Justice, 1993)*

The *Divorce Act* provides that orders for custody and access are to be made in the best interests of the child. The best interest test is criticized for being uncertain and inviting litigation, and for requiring the assistance of expert witnesses in determining the best interests of the child.

The Committee believes that the talent, energy, and residual goodwill of the parents would be better used in developing plans for shared parenting following a divorce or separation, than in bitter custody disputes. We believe that greater certainty in the best interest test would reduce the incentive for litigation.

#### **Recommendation 5**

**The Committee recommends that legislation define the best interest test with greater certainty so as to avoid an incentive for unnecessary litigation.**

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### **Language of Shared Parenting**

Language is important. The Committee believes that the words “custody” and “access” have in a large sense come to mean “winner” and “loser” in the mind of the public. Worse, we believe that the separation of the post-divorce family into the custodial parent and the access parent has come to suggest that the access parent should be a fringe player or an intermittent visitor in the lives of the children.

The Committee strongly believes that both parents must play a substantial and significant role in the lives of their children. To the extent that language defines the reality of the post-divorce familial relationship, we are of the view that the terms in which we describe such a relationship should be changed. We suggest

that the law recognize a primary and a secondary residence, rather than custody and access. We suggest that instead of speaking about the incidents of custody and access, the law speak of shared parenting and parenting plans which will define and record the way in which both parents' continuing responsibilities to their children are to be exercised.

### **Recommendation 6**

**The Committee recommends that legislation be amended to replace references to custody and access with language reflecting residence and the ways in which the continuing responsibilities of both parents are to be exercised.**

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### **Mediation**

We are of the view that the adversarial approach found in the Courts does not serve the best interests of children, nor of most parents that appear before them. We believe that recourse to the Courts should truly be the last resort of parents who cannot resolve their difficulties in another fashion. We believe that the best solution to access problems is one which the parties have worked out together; a solution 'owned' by the parties will have far greater chance of success, than a solution imposed by the Courts.

The Committee wishes to acknowledge the valuable service provided by government's existing mediation services in the family law area. We believe, however, that more negotiation and mediation should be done prior to the granting of orders. We believe that as the post-marriage relationship develops and changes and issues of access arise, more negotiation and mediation be done either prior to, or in the course of, enforcement actions. Finally, we believe that mediators will be required to assist some parents in the development of parenting plans.

### **Recommendation 7**

**The Committee recommends that resources be provided to ensure that access to mediation facilities are available to assist in the resolution of family law dispute at any stage.**

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## 4. Access to the Law and to the Courts

Most people are not going to come into contact with the criminal justice system, except perhaps in the context of a traffic ticket. Nor are most people going to be involved in corporate or commercial dealings, except for the purchases of major items such as a home or a vehicle, and these dealings do not generally result in disputes or litigation. Almost anyone, however, may come into contact with family law, or find themselves involved in the Courts on a family law matter.

It is, therefore, a matter of concern to the Committee that this area of the law is also one of the most complicated to understand, and difficult to access. Access to the family law and the legal system is complicated by the fact that there are two levels of government involved, there are two levels of courts involved, and there are several overlapping family law statutes.

### Alberta Family Legislation

As a piece of legislation central to the entire process of the dissolution of relationships, *The Domestic Relations Act* is seen by many stakeholders as confusing and outdated. It is felt that this piece of legislation is long overdue for both a simplification and an update.

Many jurisdictions have consolidated their family law into one statute. Alberta has not done this and family law is found in a number of statutes, including the *Child Welfare Act*, the *Domestic Relations Act*, the *Maintenance Orders Act*, the *Parentage and Maintenance Act*, and the *Provincial Court Act*. Most of the common family law remedies may be accessed through more than one statute. Sometimes an order under one statute has to be obtained before an application can be made under another, and in some cases provisions from one statute are simply made applicable to another. Many of the same remedies may be obtained either through the Provincial Court or the Court of Queen's Bench, but there may be provisions which restrict where the application should be made.

The Committee believes that this has resulted in a number of problems:

- Complexity causing a barrier to access to justice—while the complexity of the system may not pose a problem to the legal professional, it is a barrier to access to the legal system to the ordinary person trying to address a family law problem without the assistance of a lawyer;
- Delay may result, either because the litigant has inadvertently sued in the wrong Court, or under the wrong Act, or because a litigant is able to delay proceedings under one Act by commencing proceedings under another;
- In the extreme case, one parent may use the ability to proceed under different Acts and in different Courts as a means of harassment by litigation.

The Committee, therefore, believes that it is time to rationalize Alberta's family law legislation as much as possible into one consolidated Act. We recognize that

complete consolidation will not be possible. The constitution gives power over divorce to the federal government. The *Divorce Act* is, and will continue to be, federal legislation. Similarly, as long as there are two levels of court dealing with family law matters, there will be some things, such as variation of a superior court order, which will be beyond the jurisdiction of the Provincial Court. The Committee, however, strongly encourages the greatest degree of rationalization possible.

## Recommendation 8

**The Committee recommends that all provincial statutes pertaining to family law be consolidated into a single, up-to-date, and simplified piece of legislation to the greatest extent possible.**

### A Single Family Law Forum

*“[only] 50.3 per cent of respondents felt that the current legal system deals effectively with child access cases.”*

— *(Canadian Research Institute for Law and Family, 1992)*

Both the Court of Queen’s Bench and the Provincial Court deal with family law matters and it often may not be clear to anyone, other than a lawyer, to which court one should go in which situation. The problems of confusion and delay which exist as a result of too many statutes, also exist because two levels of court are dealing with the same matters.

The Committee believes that the ideal system would have a single forum for the resolution of family law disputes. The forum would be made accessible to the unrepresented person by providing flexibility in terms of rules and procedures, and by the use of oral evidence where appropriate. It would be accessible throughout the province.

A number of the other provinces have implemented unified family courts. Consolidation of the courts in Alberta may be required to complement the consolidation of family law legislation. Such a court could be established:

- in the Court of Queen’s Bench if accessibility issues were addressed;
- in the Provincial Court, by placing all matters under provincial jurisdiction not requiring the exercise of Section 96 powers into this Court (e.g. divorce); this would mean that two levels of court would continue to be required;
- in a unified family law forum based on some consolidation of the two courts.

We believe that it is beyond the mandate of our Committee to make specific recommendations. It is our observation, however, that the court system does not serve the people of Alberta as well as it should in the family law area, and we

express the hope that all parties in the justice system can consider whether, and to what extent, reforms might be possible.

## **Recommendation 9**

**The Committee views a single family law forum with province-wide access, which is accessible to unrepresented persons, as the system which would best meet the needs of Albertans. We recommend that all parties in the justice system consider the feasibility of making changes which would increase access to and decrease the complexity of the court system relating to family law.**

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## **Better Information and More Help**

Many people are intimidated by the legal system. Our Committee was told that people had to rely almost completely on their lawyers for information about the law and about the judicial process. This inability to understand much of the law or procedure without the assistance of counsel resulted in feelings of loss of control over the case and contributed to the frustration felt by persons already immersed in a high stress situation. The problem is compounded when parents do not have lawyers and try to represent themselves. This is particularly a problem with access issues which often are not resolved after a single appearance. When numerous appearances are required, many people simply cannot afford the assistance of a lawyer.

The Committee is aware that pamphlets and brochures cannot replace a law school education and recognizes that legal advice can only be given by a lawyer. However, we are of the view that the more information about laws and procedures that can be provided, the better served the citizens of Alberta will be. If people have to represent themselves in family matters we should attempt as much as possible to have the system accommodate those people.

Stakeholders have advised us that there is little information available to the lay person about what documents are required for a court action, or how they are to be filed, or how the court process works. Assistance from court clerks varied considerably depending on the individual contacted—some were helpful and some were not.

There are some notable exceptions to the air of mystery which seems to shroud the Court of Queen's Bench. In Edmonton, a package of family law precedents is available from the Clerk's office for a nominal fee. In both Edmonton and Calgary, Child Support Information Centres have been established by the province, with federal funding, as part of implementation of the federal child support guidelines.

## **Recommendation 10**

**It is recommended that Alberta Justice work with the public, the legal profession, and the judiciary to develop plain language information packages that will outline legislation, jurisdiction, and process to assist persons in dealing with the family courts, as well as providing standardized forms for applications.**

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## **Recommendation 11**

**It is recommended that in its evaluation of the Child Support Guideline Information Centres, Alberta Justice consider the possible expansion of the “Centre” concept into providing information on issues of access and custody.**

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## 5. Enforcement

*“I have a court order in place but I found that my attempt to find the mother in contempt was a waste of time . . . The judge only assigns that this should be worked out.”*

### — MEP Review Correspondence

In the consolidated family statutes of other jurisdictions, many provinces have listed the sanctions which a court can impose for breach of a custody and access order. Alberta has not done this to date, although codification has been the subject of private members’ bills on both sides of the Legislature in recent years. In Alberta, section 32(8) of the *Provincial Court Act* sets a fine of \$1000 or four months imprisonment for breach of a custody or access order. The Court of Queen’s Bench relies upon its general ability to punish for contempt of court, which also contemplates fines and imprisonment.

There are occasions on which fines or imprisonment may be the appropriate sanction, but there are many occasions on which they are not. The effect of a fine may be either to license bad behaviour, or to impair the financial well-being of the children. The effect of imprisonment may be to deprive the children of a caregiver and to impair the children’s relationship with the parent whose complaint led to imprisonment.

Stakeholders have advised the Committee that, in the absence of codification, many people do not know what they could expect to occur in an enforcement action. The Committee believes that there would be advantages to codifying remedies for breaches of custody and access:

- it would expand or clarify the jurisdiction of Courts by stating the remedies which could be exercised (care would be taken not to limit any inherent jurisdiction the Courts now have);
- it would assist parents trying to enforce an order by giving them an idea of what sanction or remedy might be appropriate in their particular case.
- it could act as a deterrent by advising people of the range of sanctions and penalties which they might face should they breach a custody or access order;

There is a fairly long list of remedies and sanctions which could be included in a codification. Depending on the jurisdiction of the Court, these could be such things as orders for supervised access, orders for police to locate and take a child, support payments to trustees on terms, posting of bonds with or without sureties, fines and imprisonment, variation of access or custody orders, orders for compensatory access, appointment of mediators, attendance at parenting courses, and reimbursement of costs. The Committee does not intend this list to be definitive but would suggest that the Department of Justice review legislation from other jurisdictions and private members’ bills from the Alberta Legislature in developing a codification of appropriate remedies and sanctions. The Committee

also suggests that there needs to be provision for relief from sanctions, or defences to enforcement actions in appropriate circumstances.

## **Recommendation 12**

**It is recommended that Alberta codify remedies and sanctions available to the Courts for breaches of custody and access. The codification should include exceptions or defences in appropriate cases.**

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## **Timely Access to Remedies**

*92.9 per cent of respondents stated that if a custodial parent disobeys a court issued order by denying access, they should have their actions reviewed in Court.*

**— (Canadian Research Institute for Law and Family, 1992)**

Many stakeholders complained of the delay inherent in the current enforcement process. They stated that what they want is access to their children, not the ability to have a court hearing weeks or months down the road. Access delayed is, most often, access denied. Particular concern was expressed about the denial of access on statutory holidays when even the possibility of bringing a court action does not realistically exist. The remedy urged on the Committee by some stakeholders was the establishment of an Access Enforcement Office with powers to intervene in such situations.

The Committee does not believe that the establishment of a new government program is necessary to achieve the aim of timely and effective intervention in an access dispute. An access co-ordinator would, in many respects mirror the Court, but with reduced powers. It is our view that the better solution is to clarify and expand the powers available to the Courts to enforce access orders, and thus provide people with real ability to assist themselves in the Courts. We believe that in conjunction with the clarification and expansion of powers, there should be provision either through legislation or the Rules of Court setting strict time lines within which these applications must be heard. Finally, provision must be made for access to the judicial system during holiday periods when the need for judicial intervention into access disputes may be at its highest.

## **Recommendation 13**

**The Committee recommends that provision be made for strict time lines to ensure that access enforcement applications are heard on a timely basis, and that provision be made for access to the judicial system during holiday periods.**

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## Failure to Exercise Access

*Over one-third of custodial and non-custodial parents felt that the non-custodial parent was not visiting the child(ren) as much as they would have liked.*

— (Canadian Research Institute for Law and Family, 1992)

Although most of the advice the Committee had was from parents who had been unable to exercise their right of access, the Committee heard as well from custodial parents who spoke of the disappointment suffered by children, and the disruption to family life, which occurred when access did not take place, as ordered or agreed upon. The Committee believes that access should be viewed as the right of the child, and that there should be a range of consequences for failing to exercise access, just as there is for failing to provide access.

## Recommendation 14

**The Committee recommends that there be a codification of sanctions and remedies for failure to exercise access, as well as for failure to comply with an access order.**

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## Mediation, Counselling and Parenting After Separation

Although we do not wish to attempt to provide an exhaustive list of remedies and defences which should be available, there are some matters which we feel strongly should be included. We have stressed the importance of mediation in assisting parents to create a workable access order at the outset of the process. We believe that as the relationship between former spouses and children evolves following the divorce or separation, or when changes are required to parenting plans or conflicts arise in the access relationship, mediation should continue to be a preferred way of proceeding. Mediation programs could be augmented by counselling where appropriate.

After speaking with participants and course organizers, we are particularly convinced of the value of the *Parenting After Separation* course. The *Parenting After Separation* course was developed as a pilot project in Edmonton through the coordinated efforts of the Court of Queen's Bench, the Department of Family and Social Services, and the Department of Justice. The course is designed to help parents understand the effect of their divorce on their children and to provide insights to parents on how shared parenting can continue to operate in the post-divorce environment. The course is mandatory unless exempted by the Court for parents proceeding to a divorce. The course has recently been expanded so that it is offered in eight centres throughout Alberta.

It is the Committee's understanding that judges in the Family Division of the Provincial Court are sending parents to this course on a case by case basis. We understand that one of the problems with access through the Provincial Court is

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that judges are only able to order applicants to attend; the nature of the course is that it requires the attendance of both parents to have the most impact.

### **Recommendation 15**

**The Committee endorses the Parenting After Separation course and recommends:**

- **that the requirement for attendance or re-attendance at the course become a remedy available to the Court in enforcement proceedings;**
  - **that a legislative basis be provided for the use of the course in Provincial Court;**
  - **that sufficient resources be provided to ensure access to the course by all who require it.**
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### **Recommendation 16**

**The Committee recommends that mediation, education, and counselling programs be available to the Court as a part of an access enforcement regime.**

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## **Language Capable of Enforcement**

*“ . . . a lack of consistency, in language and direction . . . becomes an issue, particularly when the order uses broad terminology such as ‘reasonable time/access’, and interpretation between respondent and plaintiff differ. Peace Officers are then called on to mediate the ensuing disputes, and are required to attempt to resolve confrontational situations that might have been alleviated by more precise language in the order itself.”*

#### **— Maintenance Enforcement/Access Review Correspondence**

The Committee was made aware of a number of situations where parents had difficulty enforcing access orders because they weren't clear enough or specific enough. Even though at the time of the divorce or separation parents think that phrases such as “reasonable access” or “generous access” or “access as agreed upon between the parties” will be sufficient to safeguard their interests, they often, ultimately, are not. The Committee would caution against reliance on such general phrasing alone and would encourage the inclusion of a fall-back position which specifies terms of minimum access.

### **Recommendation 17**

**The Committee recommends that government, the legal profession, and the judiciary encourage the use, where ever possible, of specific terms of access.**

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## **Incarceration**

The ultimate sanction for contempt of court is incarceration. It is a sanction which is very little used by the Courts. Interested persons on both sides of the access issue pointed out that incarceration of the offending parent was an extremely serious consequence which carried great potential for harming the children, and even for harming the child's relationship with the non-custodial parent. Practical questions of child care would also arise during the period of incarceration. While we believe that incarceration must exist as the ultimate sanction in some cases, the Committee is of the view that the current limited use which is made of incarceration is appropriate.

### **Recommendation 18**

**The Committee recommends that incarceration continue to be used only in those cases where the most compelling reasons exist.**

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## **Supervised Access**

In the course of its review of the experiences of other jurisdictions, several provinces suggested that one of the most useful services provided was that of supervised access. There are two kinds of supervised access. The first is simply a supervised transfer facility so that a child can be transferred into the care of the other parent without contact between the parents. The second kind occurs when there is a concern for the safety or well-being of the child to the extent that access must be exercised under supervision.

The Committee knows of no infrastructure which presently exists to support supervised transfers or supervised access. One option might be to try and access community resources through the regional children's authorities being developed by the Department of Family and Social Services. Another might be to involve suitable parents' rights groups in the delivery of such services.

The Committee notes that this can be a difficult service to provide through volunteers, since most of the access would occur on weekends when volunteers might not be available. Government augmentation of volunteer resources might be required.

### **Recommendation 19**

**The Committee recommends that government determine the need for and the feasibility of providing supervised transfer and access facilities.**

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## Continuity

A problem cited by parents and interest groups was that, unless a judge seizes himself of a matter, each appearance on a family law matter is likely to be before a new judge. This is particularly problematic in the family law area for the following reasons:

- issues do not arise in isolation—each appearance is likely linked to what has happened in the past;
- it may be very difficult to sort out a complicated history based on very different versions of events in the limited time available for chambers matters, particularly when parties are unrepresented;
- the institutional memory of the court file may be a poor substitute for the personal experience of the judge with the parties when sorting out hostile accusations and counter accusations.

## Recommendation 20

**The Committee endorses the case management system which has been developed by the Courts and suggests that it be used to the greatest extent possible in the family law area.**

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## The “Walking Wallet” Issue

*92.9 per cent of custodial and 90.9 per cent of non-custodial parents reported that financial arrangements had no effect on access plans or activities.*

— **(Canadian Research Institute for Law and Family, 1992)**

*“I am writing to you in my capacity as a walking wallet and my experience clearly shows I am a disposable father.”*

— **Maintenance Enforcement/Access Review Correspondence**

Many access fathers seemed to strongly hold the view that the emotional role a father plays in the life of his children is ignored in favour of considering the father an economic provider and nothing else. Access parents see an inequity in strong government involvement in maintenance enforcement and the lack of any assistance provided for access enforcement.

Access parents unhappy with the level of court ordered, government collected maintenance payments detect a financial advantage to having custody of the children. Clearly such a claim would be rejected by custodial parents struggling to make ends meet through government subsidies or low wage employment.

The relationship between maintenance and access is not as clear cut as one would think. While the law is fairly clear that they are separate issues and there is no

connection between the two in most cases, in the real world people deny access because maintenance has not been paid, and people try to withhold maintenance because they have not had access.

Common sense suggests that the two are linked. Why should a parent who voluntarily places himself in a position such that he cannot or will not pay for his children's support enjoy full access to his children? Why should the custodial parent who unjustifiably denies access expect that maintenance should simply continue to be paid? On the one hand, the Committee agrees that the child should not become an object in a financial tug-of-war; on the other, the Committee does not think that any person should simply be able to walk away from a court order without consequence.

The Committee thinks it important to distinguish between problems in the way that maintenance is determined and enforced, and access. If we have a system which routinely orders maintenance payments which are too high or too low, we should address that problem, and if we have a system where people are able to routinely ignore court orders, we should address that problem as well. The Committee believes that while individuals should not be allowed to disregard court orders at will, the Courts should have the power to use maintenance payments to enforce access, and vice versa, where circumstances warrant.

## **Recommendation 21**

**The Committee recommends that Alberta examine the impact of the federal child support guidelines and other maintenance regimes to ensure that they are providing an appropriate level of maintenance and are not contributing to problems of enforcement.**

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## **Recommendation 22**

**The Committee recommends that the justice system reinforce the separation of maintenance issues from access issues, but in such a way that the separation does not become a license to ignore ones obligations under a court order.**

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## **Interprovincial Enforcement**

The retrieval of abducted children from another province is a complicated matter which generally requires the registration of an order from one province with the courts of the second before the police are willing to enforce the court order. This is despite the fact that Section 20 of the *Divorce Act* states that an order is to have effect throughout Canada.

Currently a parent will have more government assistance in retrieving an abducted

child from a foreign country than from another province within Canada. The *Hague Convention Against International Child Abduction*, which Canada has signed, commits governments to a limited form of reciprocal assistance in the return of abducted children. Within Canada, the *Extra-Provincial Enforcement of Custody Orders Act* simply provides for the recognition of custody orders from other provinces. Stakeholders involved in searching for missing children report that they can locate 96 per cent of the children registered with them as missing. Achieving a reunion with the lawful custodial parent can be very difficult and can take years.

Extra-provincial enforcement of access is as difficult legally, and often more difficult logistically, than extra-provincial enforcement of custody. When a parent arrives from another province to exercise access, and is refused, the access parent may have the difficulty of trying to register and enforce an out of province order in the limited time allowed to him for access.

### **Recommendation 23**

**That Alberta work with the federal government and the other provinces to develop uniform legislation or procedures to simplify and expedite the process, and minimize the costs, of retrieving children from other Canadian jurisdictions in cases of parental abduction, and of enforcing orders for custody and access from the other jurisdictions.**

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## **APPENDIX I TERMS OF REFERENCE FOR THE REVIEW**

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A review of the Maintenance Enforcement Program and child access will be conducted by Ms. Marlene Graham, MLA, Chair of the Minister's Maintenance Enforcement Program and Child Access Review Committee. Assisting her will be Mr. Victor Doerksen, MLA, and Mr. Denis Ducharme, MLA.

This review will provide advice to the Minister of Justice about:

### **Part I: The Maintenance Enforcement Program**

How well the Maintenance Enforcement Program is meeting its objectives, with suggestions as to how the program can be improved. It will include an assessment of the program's effectiveness and a review of whether innovations such as:

- changes in the automatic registration system;
- privatization of any part of the program;
- charges to debtors for the cost of collection;
- skip tracing;
- specialized provisions for handling of difficult files;
- establishment of an appeal process;
- removal of any legislative barriers to collection;
- establishment of an Ombudsman to deal with debtor or creditor complaints;
- or the establishment of pilot projects

would improve delivery of services to the public.

## **Part II: Child Access**

A review of issues relating to child access will be undertaken. This will include:

- identification of the nature and extent of problems relating to the exercise of access;
- identifying the causes of problems relating to access;
- identifying what actions are taken or methods are used by divorced or separated parents to facilitate access and avoid conflict;
- investigation of legislation, programs, policies, and initiatives from other jurisdictions which have been implemented to deal with access issues, and assessment of the success and costs of these initiatives; and,
- the development of recommendations as to how the interests of children and their parents relating to access can be accommodated and protected in a positive and cooperative manner, including: dispute resolution mechanisms that centre on the child's best interests which have the most potential to provide long term solutions for children and their parents; and the ways in which community based services can be used to resolve problems relating to access.

## APPENDIX II SUMMARY OF RECOMMENDATIONS

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### Part I: The Maintenance Enforcement Program

1. The Committee believes that the Maintenance Enforcement Program continues to play an important social role and recommends that the program be continued
2. The Committee recommends that the program be retained in the public sector.
3. The Committee recommends that good client relations become one of the fundamental objectives of the program. Program clients include both creditors and debtors.
4. The Committee recommends that assessments of client satisfaction be considered to be a fundamental measurement of program success.
5. The Committee recommends that client's be advised of the functions and limitations of the Maintenance Enforcement Program at the beginning of their involvement with the program. Client service standards should be developed that will provide clients with a clear statement of service goals and objectives. This advice should be in the clearest language possible and should also be featured prominently in general communications and literature.
6. The Committee recommends that employee training programs, as well as information policies and procedures be reviewed to ensure that they will complement the development of an appropriate corporate culture of service delivery.
7. The Committee recommends that the program investigate the feasibility of establishing a routine "client report" to inform creditors and debtors of the status of their accounts, and the actions that have been taken on the accounts.
8. The Committee recommends that creditors be kept informed of arrangements made for decreased payments, as well as the reasons for the decision, to the greatest extent possible.
9. The Committee recommends that Maintenance Enforcement look at creating a formal complaints procedures and appointing a complaints officer to record and investigate complaints made by clients against the program. Clients should be advised of the disposition of their complaint.
10. The Committee recommends that a review of current communication technology be conducted, including voice mail and the use of identification numbers so clients of the program can access their balances quickly and easily, 24 hours a day, while maintaining their privacy.
11. The Committee recommends that the Ministry consider the implementation of "real time" technology in the computer system of the Maintenance Enforcement Program to facilitate better and more timely service to clients.

12. The Committee recommends that the Maintenance Enforcement Program examine the feasibility of extending office hours.
13. The Committee recommends that expanding payment options, including the use of credit and debit cards, be examined.
14. The Committee recommends that the Department of Justice place a priority on the review and reform of the Maintenance Enforcement Program.
15. The Committee recommends that a culture of organizational innovation and excellence be fostered in the Maintenance Enforcement Program.
16. The Committee recommends that the Maintenance Enforcement Program establish a research capability to support program objectives.
17. The Committee recommends that the Maintenance Enforcement Program enhance its business planning activity.
18. The Committee recommends that Treasury and Justice examine the benefits associated with more funding to the program for improved enforcement in relation to the costs of enforcement.
19. The Committee recommends that the Department of Justice review staffing levels and physical facilities associated with the Maintenance Enforcement Program.
20. The Committee recommends that the program strongly consider conversion of project and wage positions to permanent positions.
21. The Committee recommends that difficult cases be removed from the mainstream of Maintenance Enforcement collection practice and referred to a special investigations unit. The Maintenance Enforcement Program should establish a special investigations unit for difficult cases.
22. The Committee recommends that the special investigations unit of the Maintenance Enforcement Program should be authorized to refer difficult cases meeting defined criteria to private sector collection agencies.
23. The Committee recommends that the program review legislation and practice dealing with licence suspension so that suspension may occur within a prescribed period of time closely following a default.
24. The Committee recommends that legislation be enacted to allow the Director to “pierce the corporate veil” to recover maintenance where corporations are used to shield income and assets. The Committee also recommends that consideration be given to providing the Courts with the power to obtain information from persons financially connected to the debtor and to make orders against sheltered assets.
25. The Committee recommends that legislation establish a statutory right for the Director to be appointed as a “receiver of rents” of any corporation wholly or substantially owned by the debtor or his/her family.

26. The Committee recommends that the Maintenance Enforcement legislation be amended to clarify the powers of the Court with regard to the stays of enforcement granted against the Director of Maintenance Enforcement.
27. The Committee recommends that legislation be enacted expanding the numbers of entities against which a Notice of Attachment may be issued.
28. The Committee recommends that the program examine different methods to identify and/or search for debtors who knowingly avoid meeting their payment obligations. Options include establishing an identification Internet website to assist Maintenance Enforcement personnel in tracking defaulting debtors through public interaction, and examining the feasibility of publishing the names of chronically defaulting debtors.
29. The Committee recommends that the program examine a policy of reporting chronically defaulting debtors to the credit bureau.
30. The Committee recommends that the program explore the utility of charging debtors the cost of enforcement in appropriate cases.
31. The Committee recommends that the program review its practices and procedures for default hearings to ensure that are being conducted as efficiently as possible. The Committee recommends as well that the program consider making more frequent use of default hearings earlier in the enforcement process.
32. The Committee recommends that Maintenance Enforcement examine its current registration and enforcement process to determine if they can be improved to ensure quicker registration of court orders, and to reduce the time lag between default and commencement of enforcement.
33. The Committee recommends that the option of allowing debtors to register under the program be examined by Maintenance Enforcement.
34. The Committee recommends that the program encourage the use of payment options that do not require a 10 day hold, and that the 10 day holding period be reduced as improvements in banking technology permits.
35. The Committee recommends that Maintenance Enforcement consider establishing an internal tracking system for its paper flow and that consideration be given to creating a quality control program for its administrative procedures.
36. The Committee recommends that the province aggressively seek more cooperative measures nationally with regard to the reciprocal enforcement of maintenance orders with the goal of reducing delays and alleviating other difficulties associated with the reciprocal enforcement system.
37. The Committee recommends that the Maintenance Enforcement Program review the way it deals with information technology to ensure that proper systems and procedures are in place to protect and update its investments in technology.

38. The Committee recommends that the Maintenance Enforcement Program ensure that its computer system accommodate the National Data Requirements when they become applicable.
39. The Committee recommends that the province support the efforts of the Federal Department of Justice in assessing the feasibility of establishing a New Hires Registry.
40. The Committee recommends that the Department of Justice examine the feasibility of providing information to assist people seeking or defending variations for maintenance without a lawyer. Information should be packaged and available through places such as courthouses or Family & Social Services Mediation and Family Court Services.
41. The Committee recommends that government, the legal profession, and the judiciary encourage the use, wherever possible, of specific language capable of enforcement.

## **Part II: Child Access**

1. The Committee recommends that the federal and provincial government amend legislation to provide a statutory right for children to the continued significant and substantial involvement of both parents in their lives.
2. The Committee recommends to the federal government and to the province that, with certain exceptions, parenting plans be made a mandatory pre-condition to obtaining a divorce, legal separation, or corollary relief. Parenting plans should be binding agreements between parents and should be fully incorporated into the Court's order for divorce and corollary relief.
3. The Committee recommends that a standard format for parenting plans be developed.
4. The Committee recommends that both federal and provincial legislation provide that one of the factors to be considered by Courts in making custody and access orders is the child's right to maintain relationships with siblings and extended family members, and that the legislation provide a mechanism for enforcing such a right.
5. The Committee recommends that legislation define the best interest test with greater certainty so as to avoid an incentive for unnecessary litigation.
6. The Committee recommends that legislation be amended to replace references to custody and access with language reflecting residence and the ways in which the continuing responsibilities of both parents are to be exercised.
7. The Committee recommends that resources be provided to ensure that access to mediation facilities are available to assist in the resolution of family law dispute at any stage.

8. The Committee recommends that all provincial statutes pertaining to family law be consolidated into a single, up-to-date, and simplified piece of legislation to the greatest extent possible.
9. The Committee views a single family law forum with province-wide access, which is accessible to unrepresented persons, as the system which would best meet the needs of Albertans. We recommend that all parties in the justice system consider the feasibility of making changes which would increase access to and decrease the complexity of the court system relating to family law.
10. The Committee recommends that the Ministry of Justice work with the public, the legal profession, and the judiciary to develop plain language information packages that will outline legislation, jurisdiction, and process to assist persons in dealing with the family courts, as well as providing standardized forms for applications.
11. The Committee recommends that in its evaluation of the Child Support Guideline Information Centres, the Ministry of Justice consider the possible expansion of the “Centre” concept into providing information on issues of access and custody.
12. The Committee recommends that Alberta codify remedies and sanctions available to the Courts for breaches of custody and access. The codification should include exceptions or defences in appropriate cases.
13. The Committee recommends that provision be made for strict time lines to ensure that access enforcement applications are heard on a timely basis, and that provision be made for access to the judicial system during holiday periods.
14. The Committee recommends that there be a codification of sanctions and remedies for failure to exercise access, as well as for failure to comply with an access order.
15. The Committee endorses the Parenting After Separation course and recommends:
  - that the requirement for attendance or re-attendance at the course become a remedy available to the Court in enforcement proceedings;
  - that a legislative basis be provided for the use of the course;
  - that sufficient resources be provided to ensure access to the course by all who require it.
16. The Committee recommends that mediation, education, and counselling programs be available to the Court as a part of an access enforcement regime.
17. The Committee recommends that government, the legal profession, and the judiciary encourage the use, where ever possible, of specific terms of access.
18. The Committee recommends that incarceration continue to be used only in those cases where the most compelling reasons exist.

19. The Committee recommends that government determine the need for and the feasibility of providing supervised transfer and access facilities.
20. The Committee endorses the case management system which has been developed by the Courts and suggests that it be used to the greatest extent possible in the family law area.
21. The Committee recommends that Alberta examine the impact of the federal child support guidelines and other maintenance regimes to ensure that they are providing an appropriate level of maintenance and are not contributing to problems of enforcement.
22. The Committee recommends that the justice system reinforce the separation of maintenance issues from access issues, but in such a way that the separation does not become a license to ignore ones obligations under a court order.
23. The Committee recommends that Alberta work with the federal government and the other provinces to develop uniform legislation or procedures to simplify and expedite the process, and minimize the costs, of retrieving children from other Canadian jurisdictions in cases of parental abduction.

## APPENDIX III SURVEY RESULTS

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### A. Employee Survey Results

There were 125 surveys distributed to the staff of Maintenance Enforcement, including managers. Of that number, 58 were returned to Corporate Support Services, for a total response rate of 46 per cent.

Themes identified within the survey were:

#### **Management**

Of respondents, 57 per cent somewhat disagree or strongly disagree that their employer seeks their input when planning business improvements. When asked whether they received recognition for their contributions to progress that Maintenance Enforcement makes with its business goals, 69 per cent somewhat disagree or strongly disagree. The percentage who classified the overall quality and effectiveness of work related communication between themselves and the program as fair to poor was 53 per cent. Responses indicate that there are serious communication problems within the Maintenance Enforcement management structure. Respondents felt that they had little if any input in the way decisions were being made within the program. Written comments elaborated on the sense of frustration, and in some cases anger, towards previous management organizational decisions (made without consultation of staff) that have proven to be unsuccessful and negatively affected the efficiency of Maintenance Enforcement procedures. Administrative procedures, such as staff evaluation, promotions, and a lack of disciplinary actions for inappropriate behaviour in staff members also contribute to a sense that management is detached from the concerns and priorities of the employees.

#### **Morale, Workloads, Absenteeism**

Morale was not something directly measured by the statistical accounts of the Employee Survey; however, it was an area of specific concern mentioned repeatedly in written comments. The poor morale among Maintenance Enforcement employees was commented on by 31 out of 58 respondents (53 per cent). Closely linked to poor morale, and mentioned even more frequently, was the concern over increasing workloads, due to increasing file numbers and fewer staff. The problem of staff shortages appears to have two major causes: First, that hiring at Maintenance Enforcement has not kept pace with the increasing demands upon its services and second, that the increase in workloads, and therefore stress, has resulted in more staff making use of sick-days. This practice has become prevalent enough to create resentment in other staff who find their

workloads increased due to occasional staff shortages. It should be noted that 39 out of 58 respondents (67 per cent) commented on the increasing workloads.

## **The Training of Staff, Updating Skills and Knowledge**

An area of particular concern was the lack of proper training and updating for staff. The percentage of respondents who considered the development of knowledge and skills through the assistance of an employer to be very important was 57 per cent, and 74 per cent considered receiving skills and developing knowledge to be very important. However, when asked if respondents felt that they received support in order to acquire these skills, only 45 per cent strongly agreed or somewhat agreed that Maintenance Enforcement was offering the support necessary to acquire skills for the job. Of those who responded, 43 per cent somewhat disagreed or strongly disagreed.

Written comments reflect a desire by respondents to see training programs set up for new employees and updating courses made available to experienced personnel in order to stay current with new directives and policies.

## **Job Descriptions, Employment Status, and Pay**

The percentage of respondents who felt that the work they do is not adequately reflected by their job description is 49 per cent, a statistic supported by written comments that describe situations where people are doing work other than what they were actually hired to do. This reflects upon the use of employee designations currently used by the government (such as Admin level I or Admin level II). Since pay is determined according to these designations, people are resentful that they are undertaking the responsibilities of higher designations without the compensating wage structure (a sore spot especially with those in wage or temporary designations). In general, written comments reflect that employees are not happy with their current wage level. Many feel it does not reflect the importance of what they do, nor does it compensate for the high stress associated with working in Maintenance Enforcement. Furthermore, it appears that many in the program have reached the top of their wage designations and can expect no further increases except those negotiated by a collective agreement.

## **Courtesy**

When respondents were asked which of five aspects was the most important to them when providing a service, 47 per cent stated that being knowledgeable about the services they provide to people was most important; 19 per cent felt that prompt service was most important; 17 per cent felt responsiveness to the needs of people was most important; and 14 per cent felt that courtesy was most important. Only four per cent felt that showing an interest in the needs of people was most important. Of total respondents, 98 per cent strongly agreed or somewhat agreed

that they were courteous as part of their providing of services. This contrasts with public feedback that placed a higher priority on consistent courtesy, which they feel they do not receive as a regular part of Maintenance Enforcement's service to them.

## **Commitment to Quality**

Of respondents, 95 per cent strongly agreed or somewhat agreed that they are responsive to the needs of Maintenance Enforcement clients while 94 per cent strongly agreed or somewhat agreed that they show interest in the needs of people they serve. The percentage of respondents who strongly agree or somewhat agree that they provide prompt service to people they serve was 88 per cent. Outside of the statistical responses, respondents have clear concerns relating to quality and efficiency within Maintenance Enforcement. Of great concern is the apparent inconsistency of file handling within the program. Files are said to disappear, or be re-routed to places they should not be. There also appears to be inconsistency in the way each file is handled, something that is dependant upon who handles each file. Respondents attribute this to a lack of procedure and direction within Maintenance Enforcement. There is also concern that existing policy is not applied equally across the file structure, making for additional inconsistency from one file to another, or in some cases within the same file over time.

## **Employee Safety**

Safety emerged as a concern within the written comments section of the survey. That 81 per cent of the respondents were women, should be noted. The practice of face to face dealings with walk-in clients, the practice of giving partial names to phone clients, and the increasing incidence of verbal abuse by clients were viewed as a cause for concern. Some respondents said that they no longer felt comfortable identifying their place of work in social situations due to the negative reaction from some members of the public.

## **Conclusion**

Over the past three years the staff of Maintenance Enforcement have been consulted and surveyed and there is some indication that they are becoming disillusioned with the lack of progress in change. Only 46 per cent of the staff responded to the survey. What cannot be ascertained is the significance of the 53 per cent who did not respond. There are some suggestions from written comments that poor morale and a sense that nothing changes might be a contributing factor; however, this is speculation.

It is obvious that management is a major area of discontent. Other key areas include morale, staffing levels, employee training, skill upgrading, resourcing, job designation, and employment safety. Of those who responded, a majority

demonstrate a realization of the importance of the program and support its goals. It is interesting to note that 58 per cent of respondents believe that creditors are either very satisfied or somewhat satisfied (17 per cent very satisfied, 41 per cent somewhat satisfied) with the service that is provided by employees. That debtors are very satisfied or somewhat satisfied (nine per cent very satisfied, 38 per cent somewhat satisfied) with the service provided by employees was believed by 47 per cent of respondents. Of course, a comparison with the Maintenance Enforcement client survey will be required in order to arrive at a balanced conclusion.

## **B. Client Survey Results**

### **Initial Data Analysis Without Error Calculations**

A group of 1,600 active clients (800 creditors and 800 debtors) were randomly selected from the Maintenance Enforcement Program active files and sent a survey questionnaire, covering letter, and a prepaid return mail envelope. As of March 10, 1998, there were 330 surveys returned (236 clients and 94 debtors), a response rate of 20.6 per cent. An additional 133 (8.3 per cent) were returned because of incorrect address information that made them undeliverable.

The low response rate of clients to this survey is a major impediment in interpreting the data. It can be said that the lower the response rate, the higher the degree of "self-selection" that occurs among those who choose to answer the survey. In other words, in a situation of low response, those who respond have a greater influence upon the findings out of proportion to their actual numbers because, by inference, their opinions become representative of those who did not respond.

There are several consequences of low response rates that may affect the findings. For example, what are the characteristics of those who chose to respond? Were they those who had complaints or were they those who supported the program? What role does apathy have in the response rate and what does that mean? Is it valid to say that those who do not respond believe that their responses have no purpose? Is it accurate to infer that clients who do not respond do not believe that improvements are forthcoming and therefore did not wish to spend the time to complete the survey? Based on the low response rate, the incomplete sample received cannot be said to be representative of the Maintenance Enforcement client base; however, it can be said to represent the views of those clients who returned the questionnaire and as such, these responses reinforce much of what the Committee heard from the public through written submissions and verbal presentations.

The following percentages are a combined average of both creditors and debtors except where indicated.

Themes identified within the survey were:

### **Client Understanding of the Program and its Function**

When asked if they understood what work Maintenance Enforcement is required to carry out on their behalf, 53.6 per cent of responding creditors and 54.5 per cent of responding debtors answered no. Based on the responses, it appears that responding clients are unsure about the operations and what they may realistically expect from the program. The importance of this figure is two fold; it suggests both a level of public ignorance about Maintenance Enforcement itself, and that this ignorance may contribute to the dissatisfaction that certain clients feel for particular aspects of Maintenance Enforcement. Due to a lack of information, client expectations may be unrealistic. In both cases the message is clear: the Maintenance Enforcement Program needs to communicate its mandate much better to its clients and the public at large.

### **Ultimate Responsibility for Paying Support**

Debtors were felt to have the ultimate responsibility for paying support by 84.8 per cent of creditors and 79.3 per cent of debtors felt that debtors had. Given such figures it is obvious that the majority of responding clients recognize the importance of maintenance support payments and the obligations involved in fulfilling them.

### **Program Information and Registration Procedures**

Of total respondents, 62.6 per cent were very satisfied or somewhat satisfied with program information and registration procedures. However, when the respondent rates are separated into creditors and debtors there is a notable difference between the satisfaction level. Of responding debtors, 55 per cent were somewhat dissatisfied or very dissatisfied with information and registration procedures as compared with 30 per cent of creditors. What this may reflect is the lack of information that debtors receive once they become a part of the Maintenance Enforcement collection program. When asked whether they received any information pamphlets from the program during the registration procedures, 52.2 per cent of responding creditors and 91.3 per cent of responding debtors answered no. The lack of information in this area seems to reinforce the response that a majority of responding clients feel they do not understand what work is carried out on their behalf by Maintenance Enforcement.

## Enforcement Actions

Regarding the enforcement actions taken by employees of Maintenance Enforcement to recover any arrears and get new support payments made, 57.7 per cent of respondents indicated they were either somewhat or very dissatisfied, while 42.3 per cent indicated that they were somewhat or very satisfied. Again, when separated into debtor and creditors responses, debtors appear more dissatisfied with 62.4 per cent compared to 56 per cent of creditors.

When asked if on the occasion when a payment was not received were they satisfied that the program started enforcement action within a reasonable period of time, 62.9 per cent of responding creditors said no. Of the responding debtors asked if they were satisfied that the program allowed them a reasonable period of time to make their payments before enforcement actions started, 54.5 per cent said yes.

## Communication

Communication was divided into several parts within the survey, the first being telephone services. Concerning overall satisfaction with telephone services provided by employee of Maintenance Enforcement, 63.1 per cent of respondents reported being either very satisfied or somewhat satisfied. When asked to agree or disagree that their telephone contacts with Maintenance Enforcement provided them with information they needed 60 per cent of responding debtors and 52.8 per cent of responding creditors either strongly agreed or somewhat agreed.

With regard to written communication, 52.4 per cent of respondents were either somewhat satisfied or very satisfied overall. When separated, 56.5 per cent of debtors and 48.4 per cent of creditors were either very satisfied or somewhat satisfied with written communication services provided by Maintenance Enforcement employees.

## Delivery of Services

The question of courtesy was a major theme in oral presentations and written submissions, as well as in the Maintenance Enforcement Employee survey. In their past contacts with Maintenance Enforcement employees, 69.6 per cent of responding creditors and 57.2 per cent of responding debtors indicated that they were either always or often treated in a courteous manner. The indication is that effort to be courteous is not consistent and that the practise may vary according to the individual employee and, equally as important, according to the situation. The slight difference between creditors and debtors may also indicate that there is some variance in the way in which debtors are treated by staff.

To the question of whether employees were helpful in past contacts with Maintenance Enforcement, creditors and debtor responses were nearly equal, with 52.4 per cent and 52.8 per cent indicating either always or often helpful,

respectively. When asked if employees appeared knowledgeable about the services they were providing, 62.2 per cent of responding creditors and 59.5 per cent of responding debtors indicated either always or often. These response rates seem to reinforce feedback that has come from other sources, such as the written submissions and verbal presentations, as well as comments received through the Maintenance Enforcement employee survey. Feedback from these sources imply that, as with courtesy, the maintenance of service quality is subject to whom a client is speaking and the nature of the information sought.

The survey asked whether Maintenance Enforcement employees have the necessary attitudes, knowledge, and skills to do their jobs effectively. In this case, 68.5 per cent of creditors and 63 per cent of debtors either strongly or somewhat agreed. The indication is that roughly 30 per cent of clients disagree either somewhat or strongly that employees do not have these attributes. It suggests another area of concern for the maintenance of service delivery to clients by Maintenance Enforcement.

## Quality of Services

Regarding the quality of services overall provided by Maintenance Enforcement employees, 64.5 per cent of respondents are either somewhat or very satisfied. Of some interest is that the response for creditors and debtors were almost the same with 61.3 per cent of debtors and 65.7 per cent of creditors being either very or somewhat satisfied.

As for the assistance Maintenance Enforcement has provided in dealing with or to obtain support payments, 56.2 per cent of respondents are either very satisfied or somewhat satisfied. Once again, the percentage of satisfaction for creditors and debtors is close with 57.2 per cent of creditors and 51.7 per cent of debtors being either very or somewhat satisfied.

When asked about the level of satisfaction relating to the manner in which Maintenance Enforcement has handled their file, 54.9 per cent of respondents indicated that they were either somewhat satisfied or very satisfied. Once again, debtor and creditor responses were close with 50.6 per cent of debtors and 56.3 per cent of creditors indicating they were either somewhat or very satisfied.

## Conclusion

With a number of approval ratings hovering in the 60 per cent range, it can be said that Maintenance Enforcement is supported by a majority of its responding clients. However, the level of support indicates a number of things. First, that there are a number of areas where Maintenance Enforcement can and should improve its services to clients. Communications with the public on a variety of levels—from simple information responses, to educating the public on the purpose and mandate of the program, to ensuring that they understand what can and cannot be done for

them—must be improved. Second, there is a need to increase consistency of service throughout Maintenance Enforcement so that clients are better served.

An unforeseen finding of the survey involved the number of “bad addresses” that were indicated by the return of unopened survey packages. Of the surveys returned to Corporate Support Services, 8.3 per cent of were returned undelivered due to incorrect addresses. As the addresses, chosen at random, were taken from the active file base of the Maintenance Enforcement Program, there is a suggestion that the information base itself contains many incorrect addresses, which of course would make the enforcement of such files very difficult. It also raises a number of questions. Is Maintenance Enforcement aware of the number of bad addresses in their system? How do these incorrect addresses affect the overall expenditure of resources within the system since an unenforceable file necessitates a great expenditure of resources on it? Are these “bad addresses” the result of an oversight, or are they related to a growing administrative backlog that has not allowed the program to keep pace with its shifting client base? Are these addresses a constant within the system? In other words, is it correct to say that at any given time 8.3 per cent of the client base cannot be contacted due to incorrect address information? Whether Maintenance Enforcement itself knows exactly how many bad addresses exist within its active file base is unknown.

## APPENDIX IV METHODOLOGY OF THE REVIEW

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Input was sought through a number of ways consistent with the desire to keep the conduct of the review within the parameters as requested by the Minister. To that end, the identification of stakeholders was divided into internal sources, such as the Maintenance Enforcement itself and the Family Law Section of Alberta Justice, and external sources, primarily the public who, at the request of their various MLAs, were invited to submit written presentations to be forwarded to Chairman Marlene Graham.

### Initial Preparations

In June, 1997, Maintenance Enforcement provided the Committee with a walk through overview of their operations in order to facilitate an understanding and a familiarity with procedure and methods. Consultations with John Booth, Senior Manager, Civil Law Division, and Peggy Hartman, Director, Civil and Family Legal Services, began in July, 1997. At the request of the Committee, they provided initial briefings and reports on the questions of access and custody as well as additional information specific to the concept of a unified court system for family law. In addition to their function as information sources, the Family Law Section was also able to provide a draft list of organizations with a potential interest in the areas identified in the Committee's mandate, which could then be contacted and invited to make a written submission to the Committee. At the suggestion of John Booth and Peggy Hartman, the lists were augmented by suggestions from Social Services as well as suggestions from the MLAs themselves in order to achieve the balance of representation necessary for effective feedback. Letters to interest groups were sent out in July and August. In total, 56 organizations and individuals were invited to submit a response by the deadline of September 15, 1997.

### Consulting the Public

In addition to the input of interest groups, the general public was invited to make submissions through their MLAs. Media interest in the Committee's activities, in the form of radio interviews as well as newspaper stories, generated additional exposure for the Maintenance Enforcement review. By the deadline of September 15, approximately 48 responses had arrived for review by the Committee. These were reviewed and summarized for content and concerns by Corporate Support Services, and presented to the members of the MLA Committee for reference. Submissions continued to arrive after the specified deadline. As of October 10, 1997, the total number of submissions was 102. Out of these, 80 were from private citizens, 22 from organizations.

Public presentations were scheduled for September 26 in Calgary (McDougall Centre, Chinook Room) and September 30 in Edmonton (Legislative Annex, 6th

floor boardroom). Participation for both dates was drawn from the list of public groups invited to submit a response, as well as from members of the general public whose written responses had identified particular problems within Maintenance Enforcement or access areas and offered practical solutions to these problems. Potential invitees were selected and then, for reasons of time conservation, contacted by phone and invited to either date or location convenient for them. Eight individuals and groups were scheduled for Calgary, and 14 for Edmonton. Additions were made at the discretion of Marlene Graham and her Committee to fulfil the desire to balance the representation between individuals and groups, access and maintenance issues, as well as male and female representation. In general, presenters were well organized and reasonably clear in their concerns and problems.

## **Public and Employee Questionnaires**

In addition to the written submissions and verbal presentations, two questionnaires were requested in order to provide additional, more specific, information concerning maintenance enforcement.

For several years it has been the intention of the Ministry of Justice to design a client satisfaction survey to measure the performance of the Maintenance Enforcement Program and to facilitate the desired streamlining of programs for greater efficiency. Taking advantage of the opportunity provided by the Maintenance Enforcement and Child Access Review, the MLA Committee requested that a survey be designed to seek additional feedback from Maintenance Enforcement clients (creditors and debtors subject to registered maintenance orders) to augment and supplement the information they were receiving from public submissions and presentations. It is important to note that the questionnaires have the potential to sample the public attitude towards Maintenance Enforcement in a manner quite different from the submissions and presentations. By contacting a broader spectrum of clients, and requesting information on specific issues concerning the operation of Maintenance Enforcement, the survey will hopefully solicit a more accurate assessment of the true satisfaction with the program by tapping those who felt no motivation to write or present to the Committee.

In order to fulfil the request of the Committee, Corporate Support Services, and the Maintenance Enforcement staff, produced an in-house survey that would sample a variety of opinions from creditors and debtors registered with Maintenance Enforcement. As the survey was produced in-house, it was resource intensive and time consuming, and as a result there were impediments to getting it underway within the time frames of the report. Compilation began in mid-August 1997, with research and question design continuing into October, 1997. The questionnaire was sent to approximately 600 clients at the beginning of January, 1998. Taking into account an estimate of six weeks for turn-over (from the period of mailing to the receiving back of completed forms), it is expected that basic summaries will be available in mid-March, 1998.

The questionnaire is organized into six sections as follows:

1. Program Information and Registration Procedures
2. Attempted Enforcement Actions
3. Telephone Communication Services and Creditor Inquiries Telephone Number
4. Written Communication Services
5. Employee Delivery of Program Services
6. Payment of Support

A survey of all Maintenance Enforcement employees, to complement what would be heard from public sources, was designed with the intention of accessing internal opinions and information necessary to facilitate the streamlining of the program. Again, Corporate Support Services was asked to design this questionnaire.