



There are processes for collecting unpaid family maintenance orders and for asking the Court to change a maintenance order.

Getting legal advice

If you have problems with a support order, you are a debtor and are unable to pay arrears or you are required to appear at a committal hearing, you should consult a lawyer or the Duty Counsel lawyers for family law matters.

[Finding a lawyer or getting legal advice](#)

[Duty counsel lawyers for family law matters \(Legal Aid BC\)](#)

If support payments have been ordered but not paid

If someone has been ordered to pay maintenance for you or your child, you can register the court order with the BC Family Maintenance Agency (BCFMA). Then, if support is not paid, BCFMA will take action to enforce the order and collect the money you are owed. BCFMA is a free, voluntary program that monitors and enforces maintenance orders. If you don't register your order, you may still take steps to enforce your order, but you will not have as many tools available to you as BCFMA does.

You will also need to provide financial information if you must attend a BCFMA hearing because you are behind on child or spousal support payments.

Court action to collect unpaid maintenance

The BCFMA or the creditor can ask the Court to enforce arrears (collect unpaid maintenance payments) owing under a child or spousal support order. If you have registered your order with BCFMA, they will act for you or you can obtain written permission from BCFMA to make a court application yourself.

Most applications to enforce arrears will involve the BC *Family Maintenance Enforcement Act*. The most common forms of enforcement action in the Court are default hearings and committal hearings.

If you have to attend a hearing because there is an application to enforce a support order you will need to provide a Statement of Finances (Form 73). You may be able to get a legal aid lawyer to represent you in the hearing.

[*Family Maintenance Enforcement Act*](#)

[How to apply for legal aid \(Legal Aid BC\)](#)

Default hearings

At a default hearing, the BCFMA or creditor (the person receiving payments) must first prove the amount of support that is owing (the arrears). Then the debtor must give evidence about their finances to prove that they are not able to pay all the arrears at once. If a debtor can show this, the judge will consider what they can or should be able to pay, and usually order them to pay a certain amount towards the arrears each month on top of ongoing support payments.

In some circumstances a judge will also order that a debtor may be imprisoned for up to 90 days for each missed payment. Going to jail is usually not automatic when a payment is missed. Instead, it is decided in a second hearing, called a committal hearing.

Committal hearings

A committal hearing is held when a debtor fails to make arrears payments required by a court order and the order provides jail time for any missed payment. The judge must order their imprisonment unless the debtor can satisfy the judge that one of the following conditions is met:

- They have made the missed payments
- A change of circumstances since the order was made makes them unable to pay

- Imprisoning them would be a grave injustice

Being sent (committed) to jail does not mean that payment of the maintenance is excused. Ongoing monthly support and arrears payments must still be paid.

[Attend a committal hearing \(Legal Aid BC\)](#)

Changing the maintenance order

If you are a debtor whose circumstances have worsened since you were ordered to pay support in Provincial Court and you cannot pay for a good reason, you may wish to ask a judge to change or cancel the maintenance order and/or to cancel or reduce maintenance arrears that have built up. To do this, you must file the appropriate form, such as an *Application about a Family Law Matter* and a sworn Financial Statement with supporting financial records such as tax returns and bank statements. You must deliver (serve) copies of these documents to the person to whom support must be paid and to BCFMA.

The law says support orders can be changed if circumstances justify it, but arrears can only be reduced or cancelled if it would be “grossly unfair not to do so”. If you are truly unable to pay support for an extended period of time, don't ignore it and let the debt build up. You should apply to the Court to change the order.

If your maintenance order was made by a BC Supreme Court judge, you have to apply in that court to change your order.

Maintenance orders involving people outside BC

When spouses or parents live in different provinces or countries, they must follow special procedures to get or change child support and spousal support orders. BC has made agreements with all the Canadian provinces and territories and several foreign countries to recognize each other's child and spousal support orders and agreements. The other places that BC has agreements with are called reciprocating jurisdictions.

If you live in BC and the other party is in a reciprocating jurisdiction, you can apply for a support order or apply to change an existing support order in the place where the other party lives without having to go there. It works the other way around too. If you live outside of BC in a reciprocating jurisdiction, you can apply for an order in BC without having to come here.

The Interjurisdictional Support Services (IJSS) is the designated authority in BC that administers, sends and receives applications between BC and reciprocating jurisdictions. You can find lists of reciprocating jurisdictions on the IJSS website.

BC has also implemented the *Hague Child Support Convention* which will increase the number of jurisdictions that BC can co-operate with for cross-border child support matters.

If the other party does not live in a reciprocating jurisdiction or jurisdiction that has signed the Hague Convention, your options will be more limited. It will be important to seek legal advice.

[Inter-Jurisdictional Support Orders \(Government of BC\)](#)

[British Columbia Interjurisdictional Support Orders \(Government of BC\)](#)

[When more than one province or country is involved \(Legal Aid BC\)](#)

BCFMA

BCFMA enforcement action outside court

The BCFMA has the authority to take steps outside court to enforce payment of maintenance orders. BCFMA can garnish wages or other money owed to a debtor, prevent the debtor from renewing their driver's license or motor vehicle license, prevent them from obtaining a passport or register a charge (a financial claim) on land they own.

Challenging BCFMA enforcement actions taken outside court

If you are a debtor and you have issues with enforcement actions taken outside court by BCFMA, you may be able to ask a judge to review those actions.

In most cases, your first step is to contact the BCFMA to explain your circumstances, ask them to change their enforcement actions, and provide any financial or medical documents they may request. The *Family Maintenance Enforcement Act* specifically requires that you first contact the BCFMA to request a release of any hold on your driver's license or motor vehicle license, the setting aside of a notice of attachment, or a change in the amount being taken by a notice of attachment. If you have not done this, the Court will likely not be able to deal with your case.

In fact, it is always a good idea to contact your BCFMA enforcement officer before going to court because you may be able to reach an agreement without having to go to court.

If you cannot reach an agreement with the BCFMA, then you can apply to court to challenge certain BCFMA enforcement actions by filing an *Application for Order Under the Family Maintenance Enforcement Act*, and delivering a copy of your application to the BCFMA. In some cases, you will need to support your application with a Statement of Finances form, plus the supporting financial documents listed on page 1 of the form.

An application to challenge BCFMA enforcement actions can be made in Provincial Court even if the maintenance order was made by the Supreme Court. However, the Provincial Court does not have the power to interfere with certain forms of BCFMA enforcement. For instance, if BCFMA is blocking your application for a passport, you can only challenge their action using a special application (called judicial review) in the BC Supreme Court.

Remember that a challenge of BCFMA enforcement action does not mean that the maintenance order will be changed, so if you want your order changed you must also file the appropriate form, such as an *Application about a Family Law Matter*.

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