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Via Email (Natalie.Barnes@gov.bc.ca)

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Dear Natalie Barnes,

Thank you for the opportunity to provide comment on Bill 27, the *Money Judgment Enforcement Act* (“Bill 27” or “MJEA”). The observations below outline the findings of Rise Women’s Legal Centre and West Coast LEAF’s joint review of the MJEA and its potential impact on family law litigants.

### **Rise Women’s Legal Centre and West Coast LEAF**

Rise Women’s Legal Centre is a pro bono community legal clinic and teaching facility serving women and gender diverse people all over BC. We provide unbundled legal services for clients otherwise unable to access legal help. Our clients include people who are economically disadvantaged, members of marginalised groups, and people seeking protection from family violence. In addition to providing direct service to clients we conduct original research into family violence and the legal system and provide support and training to provincial advocacy programs.

West Coast LEAF is a BC-based legal advocacy organization working to dismantle gender-based discrimination against women and all people who are marginalised on the basis of their gender identity and gender expression. We use legally rooted advocacy strategies to promote and intersectional and inclusive vision of gender justice, including litigation, law reform, research, public legal education and community engagement.. Our areas of focus include advancing access to justice, healthcare and economic security, promoting freedom from gender-based violence, supporting child and family well-being, and ensuring protection for the rights of those who are criminalized.

### **The MJEA and Access to Justice**

As organizations with deep commitments to making law, policies and justice systems accessible and meaningful to the people they impact, our review of the MJEA is especially attuned to the interplay between the proposed legislation and access to justice in British Columbia. This requires accounting for the reality that the majority of people in our province will be navigating any new legal processes without the assistance of a lawyer. Drawing on

the CBA-BC's [2021 Agenda for Justice](#), we take as a starting point that access to justice is about people navigating everyday problems. As such, when the system does not work as it should, people suffer.

It is trite to observe that we are in an access to justice crisis and have been so for many decades. In an [external review of legal aid](#) in BC conducted for the Ministry of the Attorney General, Jamie Maclaren, KC, observed that “[y]ears of underfunding and shifting political priorities have taken their toll on the range and quality of legal aid services, especially on the people who need them.”<sup>1</sup> As a result of cuts to Legal Aid BC in the early 2000s, there is no longer legal aid coverage for poverty law matters, and extremely limited coverage for family law litigants, including survivors of family violence. The [BC Provincial Court in 2021/22](#) indicated that 40% of family matter appearances were made by self-represented litigants and 66% of small claims matter appearances were made by self-represented litigants. As a result, it is important to consider whether individuals without legal training can understand and use the proposed *MJEA*.

We have also given consideration to specific concerns that may arise for survivors of family violence who may be trying to enforce judgments in circumstances where they remain at risk or have asymmetrical access to information about family property. Special concerns also arise for individuals with limited economic means when it comes to practical questions around the the registration and enforcement of money orders under the *MJEA*.

To register a money judgment under the *MJEA*, a creditor must either pay a prescribed fee or make satisfactory arrangements for the payment of the fees. Recipients of child and spousal support are often without financial resources and the inability to pay even modest court fees is already a barrier for many family law litigants. We are concerned these individuals may also not have the ability to pay the fees as required by section 24. It is unclear based on the proposed language in the *MJEA* what might be considered in a “satisfactory arrangement” for payment. The inability to pay fees in the event of family breakdown and family violence will disproportionately impact people of marginalised genders.

In addition to the potential financial burden highlighted above, the *MJEA* is a relatively complex legal regime and will likely be difficult for self-represented litigants without legal training to navigate. Section 45(1) of the *MJEA* allows the judgment creditor to provide instructions to a civil enforcement officer, but such instructions must follow the procedure set out in section 45(2). Currently, section 45(2) contains prescribed information and a prescribed fee to accompany instructions, which will presumably be explained in proposed regulations. Without knowing what procedure the regulations will prescribe, it is difficult to know how challenging it will be for litigants to provide enforcement instructions to a civil enforcement officer. Based on our experience supporting people navigating legal processes in family matters, how the *MJEA* regime is explained to and ultimately understood by the people it is intended to serve should be at the forefront of developing regulations.

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<sup>1</sup> Maclaren, J KC, An External Review of Legal Aid Services Delivery in British Columbia, conducted for the Attorney General of BC (2019) [https://s3.amazonaws.com/tld-documents.llnassets.com/0010000/10759/roads\\_to\\_revival-maclaren\\_legal\\_aid\\_review-25feb19.pdf](https://s3.amazonaws.com/tld-documents.llnassets.com/0010000/10759/roads_to_revival-maclaren_legal_aid_review-25feb19.pdf)

Finally, as described in detail below, there remains significant uncertainty about how the *MJEA* and matters arising under BC's *Family Law Act* and/or the federal *Divorce Act* will be reconciled where the potential exists for the *MJEA* regime to impact the rights and responsibilities of separating spouses to one another and to their children. The application of the *MJEA* to family law litigants will require careful consideration, especially if – as is currently the case – legal aid representation services for support and family property division remains unavailable. We routinely see the immense burden borne by self-represented litigants whose legal problems involve multiple legislative regimes, hearings in different courts and the interplay of, for instance, the criminal justice, immigration, family law and/or child protection systems.

### **Comparison to *Family Maintenance Enforcement Act***

Refusal to pay child or spousal support is a tactic often used by payors to continue their financial abuse and control of the recipient. It is important that recipients of support payments have mechanisms to enforce such orders or agreements. Currently, recipients can file a maintenance order under the *Family Maintenance Enforcement Act* (“*FMEA*”) to enforce an order or an agreement that contains provisions for support payments.

As it currently stands, the *MJEA* conflicts with the *FMEA* and there are no provisions to indicate which legislation would prevail when such conflict arises. For example, section 6 of the *MJEA* provides that a debtor must not be arrested or imprisoned for default in payment of a money judgement. This is contrary to sections 20, 21(1)(c), 22(2)(b), 23(2)(b), 23(4), and 31 of the *FMEA*, which allows the court to either order that the debtor be imprisoned or issue a warrant for the arrest of the debtor for the purposes of bringing the debtor before the court. Many payors disregard court orders because the court is lenient to family litigants and there are often insignificant consequences for disobeying court orders. However, the ability of a court to issue an arrest warrant or order that the debtor be imprisoned can be a compelling reason to pay child and spousal support. Without the ability to arrest or imprison the payor, it is likely that some payors will continue to disregard their responsibility to pay child and spousal support. We recommend that money judgments regarding child support and/or spousal support be exempt from section 6 of the *MJEA*.

*FMEA* poses another barrier for recipients to effectively use *MJEA* to enforce support payments. Recipients who have maintenance orders filed with the Director of Maintenance Enforcement must seek authorization from the Director to enforce the order themselves, as per s. 5 of the *FMEA*. Without the Director's authorization, a recipient can only use the *MJEA* to enforce a money judgement order if they withdraw from the Family Maintenance Enforcement Program (“*FMEP*”).

Many recipients who are enrolled with *FMEP* are not aware that they can seek authorization from the Director to enforce a maintenance order on their own. Others would prefer not to withdraw from *FMEP* to take action against the payor. We recommend that a provision be included in Bill 27 to allow creditors to use *MJEA* against a debtor without withdrawing from *FMEP* or seeking authorization from the Director.

## Limitation Periods (s. 12)

The way the *MJEA* is currently drafted, a “money judgment” could include family law orders, including orders about child support, spousal support, property division, and/or costs. However, the definition makes room for excluded judgments that will be prescribed, presumably by regulation later.

In the *MJEA*, there is a two-year limitation date for registering money judgments. It indicates that a money judgment must not be registered more than 15 years after the date on which the money judgment was granted.

If the *MJEA* applies to family law orders, then this would apply limitation periods to those orders when they would otherwise not be subject to them.

Currently, the BC *Limitation Act* prescribes limitation periods but explicitly says that it does not apply to a claim for arrears of child support or spousal support payable under a judgment or an agreement filed with the court under section 148(2) or 163(3) of the *Family Law Act* (sections 148(2) and 163(3) deal with written agreements that are filed with the court about child support and spousal support, respectively).

We recommend that the same exemption be applied to the limitation period regarding a claim for arrears of child support or spousal support.

## Dependants’ Property under Section 165

The treatment of dependants’ property under section 165 of Bill 27 is inconsistent and prejudicial to the spouses and children of judgment debtors.

While exceptions under sections 165(a), (b), (c), and (k), are extended to property or use of property by the judgment debtor’s dependants, the remaining subsections under section 165 do not. This is particularly concerning with respect to the following subsections:

- i. Section 165(e) allows for exemption claims in relation to the judgment debtor's interest in the judgment debtor's principal residence, including a house, condominium, manufactured home, or houseboat, up to the exemption value prescribed for that type of property. There is no exemption allowed for the principal residence of the judgment debtor’s dependants. In the case of spouses who have separated, or in the case of adult children with special needs or circumstances such as illness, disability, or participation in post-secondary education, it is possible that a spouse or child of the judgment debtor may be principally residing in a house, condominium, manufactured home, or houseboat held in the name of the judgement debtor that is not the principal residence of the judgment debtor themselves. Seizure of such a residence could cause significant harm to the interests of a child or spouse of the judgment debtor who may face financial or practical barriers to obtaining other housing without the assistance of the judgment debtor.

- ii. Relatedly, section 165(d) allows for exemption claims in relation to household furnishings, utensils, equipment and appliances that collectively have a realizable value not greater than the exemption value prescribed for that type of property. We recommend that further exemption claims be allowed in relation to the same categories of property, where that property is located or used in a principal residence of a dependant of the judgment debtor that is separate from the principal residence of the judgment debtor themself.
- iii. Section 165(f) allows for exemption claims in relation to the judgement debtor's interest in one motor vehicle within the meaning of the *Motor Vehicle Act* up to the exemption value prescribed for that type of property. There is no exemption allowed for other motor vehicles held in the judgment debtor's name that may be needed for use by the judgment debtor's dependants, for example due to a need to transport children to school and other activities, attend medical appointments, attend education activities, or use a vehicle for work-related purposes. Seizure of such a vehicle could cause significant harm to the interests of a child or spouse who requires access to a vehicle separate from the vehicle used by the judgment debtor themself.
- iv. Section 165(g) allows for exemption claims in relation to items of personal property that are regularly used by the judgment debtor for the purpose of earning income, and collectively have a realizable value not greater than the exemption value prescribed for that type of property or as may be otherwise determined in accordance with the regulations. No exemption claim is available with respect to items of personal property that are regularly used by the judgment debtor's dependants. Seizure of such items could cause significant harm to the child or spouse of judgment debtor who requires the items for work or regular personal use.

We recommend that sections 165(d), (e), (f), and (g) be clarified to allow for exemption claims by or on behalf of dependants of the judgment debtor, and that special consideration be paid in reviewing the *MJEA* to the impact of the Act on property that is in regular use by dependants of the judgment debtor.

### **Possible Consequential Amendments to *the Family Law Act***

We note that consequential amendments to sections 97, 98, and 100 of the *Family Law Act* may be necessary as a result of the proposed *MJEA*, in a manner similar to the references in those sections to the *Personal Property Security Act*. Similarly, amendments may need to be made to the *MJEA* in a manner similar to section 56(4) of the *Personal Property Security Act*.

### **Connection with Claims under Part 5 of the *Family Law Act***

Pursuant to section 81(b) of the *Family Law Act* (“*FLA*”), upon separation each spouse has a right to an undivided half interest in all family property as a tenant in common and is equally responsible for family debt.

Family property is defined at section 84 of the *FLA*. In brief, it is defined to include any property acquired by either spouse during the relationship between the spouses, subject to certain exceptions under sections 84 and 85. Family debt is defined at section 86 and includes all financial obligations incurred by a spouse during the period of time between the start of the relationship and the time when the spouses separate. It also includes debt incurred after the date of separation if the debt is incurred for the purpose of maintaining family property.

Additionally, section 95 of the *FLA* permits a court to order unequal division of family property or family debt, or both, if it would be significantly unfair to equally divide family property or family debt, or both, or to divide family property as required under Part 6 of the *FLA*, which deals with pension division.

It appears that there is a potential for conflict between the entitlement of a judgment debtor’s spouse to an equal share of family property under the *FLA* and the application of the *MJEA* to property that is in issue in a proceeding under the *FLA*.

This conflict can occur when a debt of the judgment debtor that is not a family debt, or that is a family debt to be borne to a greater extent by the judgment debtor, can be satisfied under the proposed *MJEA* by seizure of family property to which the former spouse of the judgment debtor is, as a starting point, equally entitled. Seizure of such property would serve to satisfy the debt of the judgment debtor out of property that may properly belong to the judgment debtor’s spouse. This is highly prejudicial to the interests of the judgment debtor’s spouse in a family law matter and the ability of the judgment debtor’s spouse to regain their financial footing after separation.

We recommend an exemption be created with respect to property that is at issue in a family law matter, where the debt of the judgment debtor has been (a) incurred after the date of separation between the judgment debtor and the judgment debtor’s former spouse, (b) determined by court order not to be a family debt within the meaning of section 86 of the *FLA*, or (c) unequally divided between the parties by court order under section 95 of the *FLA* such that the judgment debtor bears greater responsibility for the debt than does the former spouse of the judgement debtor.

### **Prescribed Classes and Proposed Regulations**

As observed earlier, it is unclear from the *MJEA* whether orders or agreements with clauses for child or spousal support will meet the definition of “money judgments” as set out in section 1 of Bill 27. The current definition of “money judgment” identifies:

a) an order or judgment of the Supreme Court, the Court of Appeal, the Provincial Court or

b) an instrument that is, under an enactment, enforceable as if it were an order or judgment of a court.

However, the definition states that “money judgment” does not include a prescribed class or type of order or judgment referred to in paragraph (a) or (b). Such definitions would presumably be clarified within the proposed regulations of the *MJEA*. Without reviewing the regulations, it is unclear whether maintenance orders, as defined by section 1 of the *FMEA*, are included in the *MJEA*, and whether recipients of child or spousal support can utilize the *MJEA* to enforce payments.

It is also unclear from the draft *MJEA* whether specific goods will require serial numbers to be registered with the money judgment registry. Section 9 of the *MJEA* defines “serial numbered good” as having the prescribed meaning. The serial numbered goods listed under section 15(2) will not be registered in the money judgment registry if there is a “seriously misleading error” in the serial number of the serial numbered goods, making the registration invalid and not enforceable.

Many individuals fleeing abusive relationships will not have the opportunity to document serial numbers, for example the serial numbers of their motor vehicles or other goods that have monetary value. It is common for spouses engaged in coercive and controlling behaviours to withhold financial information from survivors, and it is often unsafe for survivors to obtain such information. In family court this often manifests as asymmetrical knowledge about family assets and their values.

While the *FLA* and associated court rules allow litigants to obtain this information post-separation through the exchange of financial disclosure, the reality is that this process is often both expensive and ineffective. The lack of financial information prevents survivors from seeking enforceable orders for child and spousal support. It is not realistic to require money judgment creditors fleeing violence to obtain serial numbers prior to registering the property in the money judgment registry. We recommend that the *MJEA* be changed to allow registration and enforcement of any personal property in a money judgment order without a mandatory requirement for providing the serial numbers on valued goods.

## **Conclusion**

While there are many positive changes being proposed in the *MJEA*, our review has found some areas where the *MJEA* may conflict with existing family law provisions. Some of these conflicts have the potential to unintentionally prejudice recipients of support, who are disproportionately women and people of marginalised genders and their children. Some provisions may also have consequences for survivors of family violence.

We thank you for the opportunity to highlight these concerns and hope that these submissions will be of value to you in identifying areas of the legislation that may require clarification.

Sincerely,



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