

立法會
Legislative Council

LC Paper No. CB(2)2518/06-07(04)

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**Background brief prepared by Legislative Council Secretariat
for the Bills Committee on the Attachment of Income Order
(Application to Government and Miscellaneous Amendments) Bill 2007**

Purpose

This paper gives an account of views gauged by various committees of the Legislative Council (LegCo) on issues relating to the collection and enforcement of maintenance payments.

Deputations' views on the system for the collection and enforcement of maintenance payments

2. The problem of maintenance arrears and improvements to the administrative system for the collection and enforcement of maintenance payments, including the setting up of an intermediary body, were discussed by various committees of LegCo. The Panel on Home Affairs considered written submissions during its discussion on "difficulties encountered by divorcees in collecting maintenance payments" and "intermediary body for the collection of maintenance payments" on 14 June 1999 and 2 June 2000 respectively. The Bills Committee on Interest of Arrear of Maintenance Bill 2001 met with representatives from eight organisations on 23 September 2002. Major views given by the deputations are highlighted below –

- (a) the Attachment of Income Order Scheme could not cover cases where the default maintenance payers were self-employed or had no attachable income;
- (b) maintenance payers who failed to make any payment pursuant to a maintenance order should be prohibited from leaving Hong Kong;
- (c) to address the problem of maintenance arrears, measures should be taken to improve the existing administrative system such as setting up a task force to follow up individual cases of arrears;

- (d) an intermediary body should be set up for the collection and enforcement of maintenance payments. The proposal would help shield maintenance payees from emotional turmoil when confronting their ex-spouses, encourage divorcees to claim maintenance instead of relying on financial support under the Comprehensive Social Security Assistance Scheme and relieve the pressure on legal aid. Moreover, it would be more effective and efficient for an intermediary body to recover arrears from maintenance payers than by the maintenance payees themselves.
3. Members may wish to refer to the attached submissions for details.

Council Business Division 2
Legislative Council Secretariat
19 July 2007

CB(2)2196/98-99(07)號文件

香港基督教女青年會屬下婦女自強同學會，對民政事務局就檢討扣押入息令計劃所提出的問題有以下的回應：

- (甲) 我們一直認為扣押入息令只適用於有固定收入及工作的贍養費支付者，對於很多從事散工、自僱行業、經常轉職（如的士司機、小販、三行工人、自己是僱主、自由推銷員等）的人士則沒有作用。至於扣押入息令實施至今已一年，只收到二十二宗申請，而追討贍養費欠款的申請則超過三百宗，證明了拖欠贍養費的情況未有因為扣押入息令而改善了。據我們了解，很多婦女在離婚後因為前夫不願意合作，故意隱瞞工作地點，使贍養費的追討更加困難。在此，我們質疑扣押入息令的成效。
- (乙) 扣押入息令並未能達到預期的功效，原因如下：
1. 如甲項所述，扣押入息令並不適用於所有贍養費的支付者，當中更出現不少蓄意拖欠的情況，贍養收款人根本得不到任何保障，是項政策只是形同虛設。
 2. 據我們接觸所得，雖然有些婦女在離婚後因為前夫拖欠贍養費，而曾經考慮申請扣押入息令，但期間因遭前夫警告，不得將其婚姻狀況向僱主透露，所以最後放棄申請，反而透過傳票方式向前夫追討拖欠的贍養費。而事實上，有部份婦女也因為上述的原因，又不想與前夫交惡，因可能會為自己帶來麻煩，所以沒有申請扣押入息令。
 3. 我們得悉曾經有僱主在收到法庭扣押入息令指示後，因為要依足手續做事，平添了一些行政工作，因而對有關僱員稍有微言。我們擔心扣押入息令可能會間接造成對有關僱員的歧視和不便。
- (丙) 目前扣押入息令須由贍養費收款人（或代表律師）向法庭申請頒令，待該令批出後，再由收款人（或代表律師）將扣押入息令直接交予贍養費付款人的僱主，該令才能正式執行。我們認為現時的做法頗為費時失事，應該可以將有關程序簡化。我們建議在離婚訴訟中，如贍養費收款人選擇透過扣押入息令收取贍養費，可以在家事法庭中直接向法官提出，付款人必須透露其僱主的通訊地址，待法庭頒令後，直接送交有關僱主。此舉既可避免付款人故意隱瞞僱主資料，使文件無法送遞，又可減省訴訟費的開支。

最後，我們必須強調，扣押入息令的做法對於贍養費收款人的保障只是杯水車薪。從扣押入息令申請個案數目奇少，而因未能取得贍養費而轉為申請綜援的個案卻不斷增加的事例看來，此種不負責任的個人行為已經轉嫁到社會資源上。政府應該正視這個問題，重新考慮設立贍養費局的建議，將合資格追討贍養費個案的債權轉到局方名下，由贍養費局負責追收及發放贍養費，杜絕蓄意拖欠及省卻收款人直接與付款人交涉的法律訴訟和精神壓力。

香港明愛家庭服務婚外情問題支援服務的信頭

CB(2)2195/99-00(01)號文件

支持“設立追討贍養費的組織”

各立法會議員：

由於愈來愈多的單親家庭在離婚後，因為知道現行追討贍養費困難而放棄申請和追討贍養費；與此同時，支付贍養費的人士，因為知道法例的漏洞及並無任何監察及執行機掣，故此，亦用盡各種方法，逃避支付的責任，結果造成大部份單親家庭放棄申請贍養費（九七年的調查顯示有約 55%），而這些單親家庭大部份需倚賴綜援過活（九七年調查約 65%），另外，申請贍養費亦大部份因不能準時收到贍養費而最終需領取綜援。

在去年，政府推出入息扣押令以取代立法局於九七年曾通過成立贍養費局的議案。實施一年以來，向法院申請裁決傳票以追討贍養費共有三百四十五宗，而只有廿四個扣押入息令的申請，其中僅兩宗獲頒布扣押令，這數字顯示入息扣押令的成效甚低。

根據所接觸的個案，沒有透過扣押入息令來追討贍養費的原因包括：一）收款人無法知道支付人的居住及工作詳情；二）收款人受到支付人的恐嚇及滋擾；三）計劃只適用於固定收入而同時需要僱主及支付人願意提供資料。對於那些沒有固定收入及工作的支付人，自願或蓄意逃避支付贍養費的人士則未能收阻嚇之效。

因此，如果沒有中介組織負責執行、監察和跟進，就算如何修訂現時的條例或改善程序，例如即時將入息扣押令的機掣引入並生效，也無法改善那些在離婚裁決時或日後因個人、生活或工作環境改變，而沒有固定收入及工作的人士，自願者或蓄意逃避支付贍養費的人士的拖欠情況。

另一方面，若政府在發放援助金給因贍養費被拖欠的人士而沒有中介組織負責追討欠付贍養費的人士，則只會間接鼓勵更多支付人士逃避責任。政府或可考慮因贍養費被拖欠的申請綜援人士，必需同時申請追討贍養費，此措施會明確令支付人知道無法逃避責任。

就著以上的情況，政府應成立贍養費局為單親家庭有效處理收取、追討、發放、監察及有關管理工作。構思中的運作模式，是將每一個合資格贍養費的個案在離婚令頒布之後，即時將債權轉至局方名下，而贍養費收款人可向此局申請代收及追討贍養費。至於其職權範圍可以詳細研究。

對於那些暫未能成功追討贍養費的個案，贍養費局可轉介這些個案至社會福利署申請綜援；另外，所支付的綜援在成功追討贍養費後是需要發還給政府。

總結：

針對愈來愈多的離婚個案及贍養費所引起的爭議，贍養費局設立的建議。是可以：

- 一) 完全附合民意。
- 二) 有效解決贍養費所引起的問題和扣押入息令的失效而同時具成本效益（可以節省綜援、法援、司法程序的開支）。
- 三) 提升父母在離婚後仍需肩負養兒育女的責任，而令孩子可以活得尊嚴一點。
- 四) 可以免卻由納稅人士承擔的拖欠贍養費的後果。
- 五) 減少家庭衝突。

明愛婚外情問題支援服務

註：(1) 「離婚人士收贍養費的困難」調查報告一九九七年二月，關注贍養問題聯席。

在《2001年贍養費欠款利息條例草案》委員會2002年9月23日會議上考慮的意見書
Submissions considered at the meeting of the
Bills Committee on Interest on Arrears of Maintenance Bill 2001 on 23 September 2002

Paper No. CB(2)2611/01-02(01)

Practitioners Affairs

FL0204/02/55668
HAB/CR/1/19/96 II

16 January, 2002

The Chairman
Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Sir/Madam,

Re: Legislative Council Brief for the Interest on Arrears of Maintenance Bill 2001

The Law Society's Family Law Committee was consulted by the Home Affairs Bureau on the policy of awarding interest on arrears of maintenance payment. The Law Society endorsed the policy and suggested it would be appropriate to adopt judgment rate to calculate interest on arrears.

After perusal of the Bill concern has been expressed by practitioners on the calculation of interest. I attach an example of the complications that practitioners, and indeed members of the Legal Aid Department, will face in calculating the interest on arrears of maintenance payment. The Law Society is of the opinion that additional provisions are required on apportionment of arrears of principal to assist with the calculation of principal and interest. This is obvious when the judgment debtor has a long history of either defaulting on payment, or habitually making irregular payment of maintenance. The Bill as currently drafted is not user-friendly. The computation of the interest on arrears will be a complicated and time consuming exercise with serious cost implications for the class of people the legislation is intended to benefit.

The Law Society would be willing to discuss this matter further.

Yours sincerely,

Joyce Wong
Director of Practitioners Affairs
e-mail: dpa@hklawsoc.org.hk

cc Betty Chan, Legal Aid Department
Mr. Andrew Cheung, Home Affairs Bureau

Encl.



Interest on Arrears of Maintenance Bill 2001 ("the Bill")

The Law Society of Hong Kong's Family Law Committee has the following observations on the Bill as follows:

1. Arrears of Maintenance

Arrears of maintenance are not like other judgment debts as the amount of arrears may vary from time to time. These payments are usually paid on a monthly basis and so when arrears occur any payment by the judgment debtor will require an apportionment exercise. The payment will have to be apportioned to repay the arrears on the outstanding maintenance first and then any surplus will be apportioned to subsequent maintenance outstanding. It should be acknowledged that many maintenance payers make irregular payments of maintenance.

The Bill does not contain any provision for apportionment of arrears, only the formula to calculate the interest on the arrears. The following example will serve as an illustration of the difficulties private practitioners and the staff of the Legal Aid Department will face when attempting to calculate interest on arrears of maintenance.

The example is hypothetical but in fact is a rather typical situation assuming that the provisions in the current Bill has been in force at all material times:

- i) The Maintenance Payer (JD) was ordered to pay the Maintenance Payee (JC) periodical payments at the rate of \$5000 per month commencing from 1.6.2000 and thereafter payment on the 1st day of each and every succeeding month.**
- ii) JD has failed to make adequate payments since the date of the Order. A Judgment Summons was issued against JD and was heard on 25.2.2001. Payments made by JD from 1.6.2000 to 25.2.2001 were as follows:**

Dates of payment	13.6.2000	\$3000
	26.8.2000	\$2000
	9.10.2000	\$8000
	23.12.2000	\$2000
Total amount paid:		\$15,000

Amount due:	\$45,000
Total arrears	\$30,000
Interest:	?

- iii) Upon hearing the Judgment Summons on 25.2.2001 the Judge made a committal order against JD, and an interest order in favour of the JC.

The committal order was suspended on condition that:

JD settle the arrears of periodical payments together with interest thereon at judgement rate from their respective due dates of payment. The JD was also ordered to pay fixed costs for the enforcement proceedings in the sum of \$5000. The arrears were to be paid by monthly instalments of \$2000 each commencing from 1.3.2001 and thereafter payment on the 1st day of each and every succeeding month until full payment.

The Judge reminded JD that the \$2000 per month was to be paid by him on top on the recurring maintenance of \$5000 per month due under the original maintenance order.

- iv) JD made the following payments during the period from 1.3.2001 to 1.2.2002:

Dates and amount of payment:

1.3.2001	\$7000
3.4.2001	\$5000
6.5.2001	\$7500
3.7.2001	\$8000
1.9.2001	\$3000
15.10.2001	\$2000

- v) Questions for consideration:
- What is the amount of arrears of maintenance and interest payable by JD as at 25.2.2001?
 - What is the amount of arrears of maintenance and interest owing by JD as at 1.2.2002?
2. The Law Society considers that further consideration is required on the practical problem of apportionment which the current Bill has failed to address.

The Law Society of Hong Kong
Family Law Committee
15 January 2002
55697

The Hong Kong Family Welfare Society

Paper No. CB(2)2786/01-02(02)

Secretary
Bills Committee on Interest on
Arrears of Maintenance Bill 2001
Legislative Council
Hong Kong Special Administrative Region
of the People's Republic of China
(Attention : Ms. Mary So)

11th September, 2002

Dear Ms. So,

Re : Interest on Arrears of Maintenance Bill 2001

Thank you for your letter of the 1st August, 2002, inviting the views of the Hong Kong Family Welfare Society on the captioned Bill.

Being a charitable, non-governmental welfare agency, the Hong Kong Family Welfare Society has been providing a wide range of 23 social welfare services for families and individuals in Hong Kong for about 53 years. In our counseling service, we have handled more than 5,000 cases each year, a large number of families have been troubled by marital problems. More than 20% of the families receiving our counseling service are single parent families. Many of them are divorcees and some cases are receiving our divorce mediation service. We have conducted a study of divorcees on the issue of collecting maintenance, a sharing forum was also held in December, 2000. Furthermore, an Outcome Study on Divorce Mediation was completed in July, 2001. Based on our experience and all the relevant surveys, this submission will highlight the views observed by our professional staff and the users on the captioned Bill as well as the observations from the afore-mentioned studies.

1. Maintenance payees may apply for interest in legal proceedings instituted to recover maintenance arrears and the court shall have a discretionary power to award interest at judgement rates

- 1.1 We basically agree to the proposal and perceive it as an additional measure to help enforce maintenance payments. In determining whether to require the maintenance payers to pay interest and, if so, the amount of interest, we support the court to take into account the circumstances of individual cases which are specified from (a) to (e) on P.4, P.7, P.10 & P.13 to be added to the four Ordinances relating to maintenance orders. This can help balance the interests of both the payees and the payers.
 - 1.2 The effect of the proposal with the interest payments at judgement rates as a deterrent, however, may need further review. Besides, with this additional measure, it may not imply better assurance of the monitoring of the regular and punctual payment made by the maintenance payers. For any system to work, the cooperation of the payers is necessary and should be obtained at the outset. As a preventive measure, mechanism to help increase the awareness of the payers on their rights and responsibilities and the possible consequences of default payment is necessary. Besides, they should be encouraged to update their financial situations in case they could not afford to pay in view of the current economic downturn. This can help save cost in legal proceedings.
 - 1.3 Public education measures to inform maintenance payees about the proposal is significant. However, their perception of the helpfulness of the proposal may need to be addressed. In the study conducted by the Society in December, 2000 on the views of divorcees on collecting maintenance, of the 336 single parents involved, nearly 20% were receiving maintenance as all / part of family income. Of them 58% could not collect the payments regularly or on time. Half of them had gone through legal proceedings to recover arrears. However, only 8% could collect the payments regularly as a result; 30% could initially receive payments from the payers but the payment was defaulted again after some time; about 47% viewed that legal proceedings could not help much to recover arrears due to “missing of payers”, “inability of payers to afford payments” and “failure to obtain cooperation of payers e.g. intentionally not to receive judgement summon”, etc.. For another half respondents not choosing legal actions to recover arrears, the reasons included “not knowing the whereabouts of the payers”, “lacking of knowledge about proper legal procedures”, “anticipating the appeal would be unsuccessful”, “not able to afford legal charges”, “the payers having no stable income”, “not prefer to worsen the relationship with the payers”, etc.. These can reflect some of their attitude to make use of the available measures for recovery of maintenance arrears, which are perceived as ineffective to certain extent.
 - 1.4 While the effectiveness of the proposal and whether it can help reduce the number of single parent families who have to apply for CSSA due to failure in receiving maintenance payment need to be further observed, we would like to reiterate that a child’s best interests should not be put at risk because of parental financial disputes over maintenance. Safety net by CSSA payment to sustain living for the families with difficulties to collect / enforce maintenance payment should always be available.
- 2. The court may make, in respect of a lump sum maintenance order, an attachment of income order (A.I.O.) regardless of whether the lump sum is**

to be paid in one amount or by instalments

2.1 We support the proposal.

2.2 **The effectiveness of the A.I.O. to help collect maintenance payment for the payees is suggested to be reviewed.** Again, the common issues e.g. payers are casually employed, frequent changing jobs and with variation in income, etc. are still the blocks leading to not able to apply the Order.

3. Recommendations

Based on our experience in handling divorce cases and the issue about maintenance payment, we suggest Divorce Mediation to prevent this problem.

According to overseas experience, Divorce Mediation was an effective measure to ensure high compliance to the agreed settlement. The mediation process also helps the parties to acquire a positive communication pattern and conflict resolution skills which entails cooperative efforts in future dispute.

The Interim Report of the 3-year Pilot Scheme on Family Mediation, which was published in April 2002, reflected very positive outcome of the service. Followings are some finding related to maintenance payment directly or indirectly:

- 77% of respondents showed satisfaction to the service
- Among the mediated cases, 79.9% have reached agreement on divorce settlement
- 82.3% of the female party and 81.0% of the male party stated that they reached agreement on financial support for the children
- 78.5% of the female party and 75.2% of the male party stated that they reached agreement on financial support for the spouse
- 63% of the 231 respondents showed very satisfied or satisfied with the settlement on issues of dispute through mediation
- 66.7% very much agreed or agreed that they were able to discuss disputed issues with their spouse through mediation in a peaceful manner.
- 61.1% - were very much agreed or agreed that they were able to discuss disputed issues with their spouse through mediation in a sensible and reasonable manner.
- 78.5% would recommend mediation to their friends and relatives.

Our Society has introduced Divorce Mediation to assist in divorce settlement since 1997. Our 3-year built-in research study has also proved the effectiveness of the service with 82% of cases with agreement reached and more than. Hence, mediation can be part and parcel of the divorce proceeding and legal aid should be granted. In fact, as shown by research studies, this ADR can save legal cost on the one hand, and protect the best interests of all parties, especially the children, on the other.

- 83% of respondents showed satisfaction to the service
- Among the mediated cases, 82% have reached agreement on divorce settlement

- 90% were satisfied with the financial support for the children
- 86% were satisfied with the financial support for the spouse
- 86% of respondents were satisfied that the decisions reached in mediation were fair.
- 90% would return to mediation if they have a similar problem in future
- 92% would highly recommend mediation to a friend who were getting divorce

Our Society will also follow up these cases to see the compliance rate of the settled agreement in due course.

The above findings have supported Divorce Mediation as the primary dispute resolution process to enable the couple to settle and even follow up the issue of maintenance payment. It is recommended that the service to be integrated into all the procedural processes of matrimonial cases. We also proposed for a mandatory information session on Divorce Mediation so that all petitioners could be informed about this service.

I hope that the above views may be helpful.

Thank you

Yours sincerely,

Cecilia Kwan (Mrs.)
Assistant Director

回應《贍養費欠款利息條例草案》 意見書

敬啓者：

各議員，你們好，我們是一群來至東九龍區單親婦女，一向關心追討贍養費的問題，我們於 1999 年 10 月成立，每月有定期聚會，討論有關政策及互相分享支持，亦曾就著贍養費問題向立法會及民政事務局反映意見，例如《入息扣押令》，最近得悉立法會將討論《贍養費欠款利息條例草案》，本小組經過詳細討論後，有以下的意見及建議，敬希各議員細閱並明白受款人的處境及困難，協助我們能盡快追討贍養費及利息。

受款人處境

近年離婚數字不斷上升，對於我們這群長期擔任家庭主婦的婦女來說，沒有入息及積蓄，而且我們大多數亦需要單獨照顧年幼子女，無法出外工作，同時亦未能按時取得贍養費，生活極其困難，加上追討贍養費時需要經過繁瑣的法律程序，所需的時間甚長，我們曾有姊妹追討贍養費逾十年亦未能取得，過程中令我們身心疲累，亦大大增加了精神壓力，我們同時要面對離婚的失意、照顧子女的責任、經濟的困難，感受真是難以言喻，我們亦有姊妹在困境中曾有輕生的念頭，幸好都及時改變主意重新振作，並且積極爭取改善贍養費等法例，期望能討回應有的生活保障。

我們的基本立場：

1. 追討利息或會拖延處理追討贍養費的訴訟，間接增加受款人的壓力。
2. 利息是應有的，付利息並不能代替懲罰，應另有懲罰。
3. 不依規定繳付贍養費是違反法庭判令，理應受罰，不單止罰利息，還要負上法律上的刑事責任。
4. 現時追討贍養費已困難重重，追收利息更是不容易，所以應改善追討贍養費的程序並盡快設立贍養費管理局。

收取欠款利息建議：

1. 申請「入息扣押令」的同時可提出索取利息，不需另行辦理手續。
2. 欠款人若未能如期繳款，利息則由該日起即時計算，法庭不應給予欠款人酌情權作辯解。
3. 欠款人應主動申報個人入息狀況，並非遭追討才被動的提出辯解或被法庭要求才應訊。

總結：

欠款人應負刑事責任

若欠款人違反法庭判令達三次或以上，則屬刑事責任，理應按時報到，甚至不准離境，刑責程度可考慮以「社會服務令」等懲罰作量刑的起點。

成立專責小組跟進

加強現有贍養費執行小組的職能、權責及人手，並應增設專責小組跟進受款人個案，協助追討並計算贍養費及利息。

盡快成立贍養費管理局

應設有完善系統協助受款人，如受款人仍未取得贍養費而出現經濟困難，政府應墊支款項予受款人以解燃眉之急，其後透過法庭判令向欠款人追收贍養費，同時可縮短受款人訴訟時間，可減輕受款人在追討過程中的壓力。

此致
立法會議員

關注追討贍養費小組

謹啓

日期：2002年9月12日

香港公教婚姻輔導會

【2001年贍養費欠款利息條例草案】意見書

本會基於以下的數點理由，讚同通過「2001年贍養費欠款利息條例草案」：

- (一) 在本會輔導員處理的個案中，有些案主反映前配偶上完庭後，付了一兩個月贍養費便停止繼續支付。無論案主用何種方式（例如：寫信、致電、甚至哀求）追討都不得要領，為撫養子女，案主被逼要領取綜援渡日。對方見案主解決了問題，便輕易地將養育子女的責任交托給政府。
- (二) 即使有些案主因前配偶不遵循法庭命令支付贍養費而採取法律行動，前配偶亦透過各種途徑去逃避責任，例如：不接信件，轉工等。他們以為逃避了，便可以不再負責任。
- (三) 有些案主反映前配偶雖然肯定期支付贍養費給她，但他會自動削減所供給的費用，而不是依循法庭命令的數目。例如：有案主的前配偶因自己要買樓而削減一半贍養費，令到孩子交學費也有困難。這種將自己的利益放在首位而妄顧子女需要的行為是有違公義的。
- (四) 訂定贍養費欠款利息條例可以令該判定債務人清楚知道不依從法庭判令準時支付贍養費給前配偶及子女會承擔甚麼後果。例如：要支付相當的利息。主要是令該判定債務人明白欠付贍養費是一項拖欠債務，而不是他可以隨己喜好而可任意為之。亦令他們了解到拖欠債務的後果，使他們不能刻意去迴避責任。



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致：陳曼玲女士
法案委員會秘書
立法會秘書處
議會事務部 (2)

CB(2)2786/01-02(05)號文件

敬啟者：

群福婦女權益會回應《2001年贍養費欠款利息條例草案》意見書

我們群福婦女權益會原則上支持有關的修訂，但是，作為一個關注被虐婦女權益的自助團體，我們必須指出，有關條例即使得到修訂和實施，依然未能保障真正有需要的婦女。以下，我們將就著條例草案及整體政策提出我們的意見。

1. 徵收罰款

我們認為，只針對有心拖欠贍養費者徵收欠款利息，實在不足夠。拖欠贍養費不止是家事，相反，負起責任撫養未成年子女和支援需要照顧子女不能出外工作的前妻，是一個社會責任的問題。故意拖欠贍養費者其實是將自己的責任推卸給社會和政府，現行制度下追討贍養費過程更加勞民傷財，浪費政府及民間大量資源，所以實在應該加收罰款，以收阻嚇作用。

欠款利息交予收取贍養費的一方，罰款則交給政府以補貼追討的支出，這個作法更能夠向社會大眾表明一個訊息：準時支付贍養費不止是個人家事，更是一個社會責任問題。

2. 欠款利息條例聊勝於無

正如我們和其他婦女團體一直反映的，現行制度下最迫切的問題是婦女追討贍養費困難重重，不但要到不同部門四出奔走，更要經過漫長的法律程序，對婦女造成沉重的精神、心理壓力。更多的婦女因為前夫從事的工作並不穩定，甚至根本無法找到前夫，連扣押入息令都無法申請。若連基本的贍養費都追討不到，又何況利息呢！有關條例又怎能真正有需要的婦女受益呢？！

3. 現行制度有名無實

本會自扣押入息令政策實施以來，一直都反映有關制度不能真正發揮作用，到今天亦都引證了我們的看法，能成功藉扣押入息令追討到贍養費的，寥寥可數。扣押入息令只適用於有固定收入的贍養費拖欠者，即使如此，現行政策對僱主並無約束力，所謂扣押入息令更是形同虛設。



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現時，合約制、散工化已經成為勞動市場的大趨勢，但是，對於從事自僱行業、散工等工作的拖欠人，扣押入息令根本起不了什麼作用。政府再一意孤行，等於變相鼓勵贍養費支付人拖欠款項！

另一方面，現行政策只針對有拖欠記錄的贍養費追討個案，對於無理延遲付款卻無解決方案。本會有個案顯示，前夫不遵守贍養令，每月延遲支付贍養費，婦女仍需要長期承受收入不定時的壓力，卻無計可施。

對於我們這群曾被前夫虐待的低收入及綜援單親婦女來說，贍養費是我們的經濟支柱，一旦前夫拖欠，生活頓成問題。通常，法援處在前夫拖欠一個月贍養費後才會為婦女登記追討，待婦女將法援登記交予社會保障部後也需一個月的時間才可獲發還所欠數額。所以，綜援婦女需要捱過最少兩個月的拮据生活。

即使最後捱過重重困難循法律途徑追討，申請扣押入息令需要我們提交拖欠者最後居住的地址和入息來源資料。但我們當初是逃亡般出走，為了保護自己的家人不再受前夫的騷擾侵犯，根本無法再去面對前夫，故此根本無法提交前夫最後居住的地址和入息來源資料去申請扣押入息令。

在追討無門的情況下，無可奈何下唯有倚靠一份微薄的綜援金生活，同時又要承受巨大的社會壓力，令我們和子女都受到深深的精神困擾。誰又知道，若果有完善的贍養費追討機制，根本我們就不需要承受這些痛苦！

本會多年來一直爭取成立一個中介的組織代為追討及支付贍養費，以確保贍養費支付人負起責任以及保障贍養費收受人的生活，得到立法局兩度通過，但一直不獲政府確實執行，以致勞民傷財，浪費大量資源。每年更在立法會反復討論有關贍養費的政策，更加是浪費立法局的資源！本會有個案顯示，前夫兩年多來拖欠了共十多萬贍養費，婦女及子女一直以來需要依賴綜援金生活，到現在都追討無門。若成功追討，單單這一個個案政府已可節省十多萬的綜援金額！

故此，本會唯有再次促請政府真正面對追討贍養費的政策問題，從整體的機制對症下藥，落實立法局的議決。我們更要促請諸位立法局的議員，不要再任由政府漠視議會的議決，督促政府儘速成立贍養費的中介機構，才能真正解決到我們這群被虐婦女的需要！

群福婦女權益會

二零零二年九月十二日

致： 立法會《二零零一年贍養費欠款利息條例》委員會

由： 香港明愛家庭服務

日期： 18/09/2002

本人謹代表明愛家庭服務就贍養費欠款利息條例有以下的意見：

- 1) 根據目前之法例，入息扣押令只適用於定期及有保證定期付款和以分期支付的整筆款項。(Periodical payment / Secured & Lump sum payment by installments)

因此，《條例草案》是擴大法庭之權力至可扣押整筆款項令(lump sum order)及利息，其修改是正確的，因為支付的人，若沒有其他資產而只有每月固定入息，也可透過扣押令追討整筆款項，而無須透過繁複的判決傳票等的法庭程序處理。

- 2) 支付利息其實只不過是附合現行追討債項權利的一般做法，故所得的利息判予受款人也是正確的。

但這些修改在針對欠付贍養費問題上其作用有限。從二零零零年至二零零二年六月份為止，有關扣押令的申請分別只有 60、80 及 25 宗；而成功發出扣押令分別是二零零零年的 23 宗；二零零一年的 23 宗以及二零零二上半年度的 18 宗，可見「入息扣押令」之局限性。但相對「判決傳票」，「入息扣押令」之申請較為簡化，能擴大法庭之權限，對受款人而言，是一個小小的「喜訊」。

現今在申請贍養費或追討贍養費欠款時，所遇到的困難可綜合以下原因：

- 1) 申請人或付款人其實在法庭還未頒令贍養令之前已失蹤或逃避聆訊，因此法庭無法判出可令付款人支付贍養費的命令或追查其住處。
- 2) 現時扣押令只適用於有固定僱主及新金的支付人，但那些自僱者或散工則難以作出扣押令。
- 3) 現時仍是由申請人或受款人舉証支付人能夠支付贍養費，但卻是困難重重。

因此，較理想的處理方法是由有法定地位的中介組織－贍養費局負責監察和執行所有法庭頒令的贍養令個案。

支付人若有任何資料改變，便須自動向贍養費局作出通知，如受款人未能定收取贍養費，受款人只須通知贍養費局，贍養費局便向支付人發出通知要求作出合理解釋。這樣便可減省法律程序，亦可適用任何類型工作的支付人。

郭志英

明愛向晴軒督導主任

二零零二年九月十九日



香港婦女中心協會

Hong Kong Federation of Women's Centres

香港婦女中心協會對〈2001年贍養費欠款利息條例草案〉之意見

本會同意法案委員會建議修訂追討贍養費欠款人兼付利息，但此修訂仍解決不了最為人疾病的漏洞，如：欠款人故意令自己債台高築、沒有固定僱主或找不到入息証明(如裝修、地盤工人)等問題。從本會的求助個案中，現存的法例中或修改之後的執行問題，都令人擔心未能有效使贍養費受款人獲得應有的保障及權利：

1. 曾有求助婦女被前夫故意拖欠贍養費而要向親友及銀行借貸，因該婦女有一兒子在外地讀書，為了希望兒子能完成基本的學業(中學畢業)，在前夫拖欠贍養費期間，求助婦女向親友借貸，及後借無可借便在銀行信用咭透支，現在正進行追討贍養費的過程，但追討需時，而銀行借款利息高昂，求助婦女的家庭已陷入非常困難的狀況，即使討回丈夫的贍養費，亦要支付銀行過萬的手續費及利息。
2. 亦有婦女因前夫故意拖欠贍養費而需要申令綜援，及後該婦女向法院申請追討有關款項，但前夫知道該婦女已向法院申請時，故意欠債並在此時申請破產，使求助人無法追回過往的贍養費。

就本會接觸的婦女中，有很多婦女因為未能收取應得的贍養費而感到沮喪，在被拖欠時面對的經濟壓力及追討過程面對煩複的程序及對方的拖延，這些精神折磨使婦女處於長期困擾之中，有些婦女甚至因而疏忽照顧子女及患上抑鬱，最終的受害者亦是婦女及其子女。

法例修改以協助受款人獲得應有權利，但法例修改的同時，應該安排向有關團體及公眾人士進行相關的社區教育，使受影響的人能夠真正理解法例的原意及精神，以免一如過往，在支款人不到最後一刻也不支付贍養費。

另外，本會認為不論扣押入息令或贍養費欠款利息等法例，在理論上只能協助小部份的求助人，對一些沒有固定僱主或找不到入息証明收入，而故意逃避支付贍養費的人，如裝修、地盤工人、小販、自僱人士等，仍起不了很大作用：

1. 曾有個案之前夫為有限公司僱主之一，在追討贍養費訴訟中提交之證明中反映他入息微薄，公司年年蝕本，理論上難以支付法庭所定之贍養費。

因此本會支持政府設立一中介組織，直接收取支款人應繳款項，才能有效解決問題，亦可減輕政府對綜援單親家庭的財政負擔。

本會亦發現很多婦女從多方面獲取資訊，但泛濫的資訊只會令案主更混亂、更無助，使婦女在追討過程中白白浪費時間。因此，本會建議在法例執行的同時，應定下一些對法律較為掌握的機構或部門讓求助人參考及作諮詢，使求助人可以盡快獲得正確的資訊。

香港單親協會

回應「贍養費欠款利息條例草案」意見書

23-9-2002

各位立法會議員：

香港單親協會成立於1991年，三位創會人士都是曾受贍養費問題困擾者，由創會以來本會一直聯同各界不停探討贍養費議題，希望政府可以立法及修定政策將問題解決或緩和，目的是希望：1) 使執法者有法可依；2) 使付款人減少鑽法律空子的機會及負責任；3) 使受款家庭減少依賴社會救濟，及令社會納稅人減少負擔；4) 使有關兒童可以在尊嚴下成長；5) 使下一代學習及養成負責任的觀念，最終希望締造一個自尊自重、平等互助的社會。

本會在過去的工作中經常接觸需要依靠贍養費生活的家庭，無論這些人士的經濟環境如何，都有可能受到贍養費的困擾：

1) 過去收取贍養費人士經常遇到的困難是：

- 1.1 支付人不知所蹤；
- 1.2 支付人不肯付贍養費；
- 1.3 支付人拖延付贍養費；
- 1.4 支付人不依判令付足贍養費款項；
- 1.5 支付人在被傳出庭應訊前最後關頭才付贍養費款項，但之後又重施故技，直至下次被傳出庭應訊前最後關頭才肯再付贍養費；
- 1.6 累積多個月才肯付全或部份；
- 1.7 支付人用恐嚇甚至暴力手段令收取贍養費人士自動放棄追討；
- 1.8 收取贍養費者在未收到定時定額款項時經常要自行解決經濟困境，例如利用信用卡向銀行透支款項應急；
- 1.9 並非所有收取贍養費者可以得到法援處協助只需付低廉律師費，有工作的受款人的為追討應得的贍養費而要花大筆律師費和時間，往往需要全家人節衣縮食，還可能為法律事件奔走而影響工作被辭退，雖然如此仍然沒有把握可以追回應得款項；
- 1.10 能使用「扣押入息令」者不多，其餘收取贍養費者還是要靠自己辦法去追討。

2) 本會原則上支持「贍養費欠款利息條例草案」，並有以下意見：

- 2.1 民政事務局在2001年12月提出上述條例草案目的有三，(a)項想補償收款人因未收到贍養費而要借貸所做成額外的財政負擔，本會接觸多位個案根本沒有儲蓄可用，只能靠信用卡向銀行透支款項或向親友借貸應急，向銀行透支款項與自己儲蓄戶口所計的利息相差很大，這點法庭應考慮：條例的設立是為起阻嚇作用還是為彌補收款人的實際損失、或兩者兼備？本會希望是兩者兼備。
- 2.2 本會希望條例可有足夠的阻嚇作用，令收款人、法庭及社會不再需要為這種一而再，再而三的拖欠行為而付出代價。
- 2.3 為加強(b)項作用，本會提議應定出加收再犯的罰款比例，除上述草案外，應學稅局向過期交稅者加收的款項一樣，例如在沒有足夠理由下第一次再犯者，將在需繳款項上再加百份之五，第二次再犯再加收百份之十等，如此類推，相信將會減少故意拖欠贍養費的行為，當然，罰款比率可以再訂。
- 2.4 向需付贍養費者進行教育，令其明白所負責任及法律權益，亦教育其尊重法律，例如在失業或其他原因未有能力履行法庭判令時應向法院提出，由法庭再考慮修改判令，而非用逃避或其他非法方法解決。
- 2.5 上述提議亦令本港實施「聯合國兒童公約」第27(4)條更能落實執行，即是“採取一切適當措施，向兒童的父母或其他對兒童負有經濟責任的人追索兒童的贍養費”，同時亦不會錯誤懲罰有合理辯解或實在沒有能力的支付人。
- 2.6 當局需協助有關人士實行上述公約，而非只在可節省款項上動腦筋，綜援金是最後選擇，兒童得到父母的庇護及撫養是應得的權利，任何人不得任意替代而制造兒童被親生父母遺棄的機會，
- 2.7 法律是社會道德標準的定位，過與寬鬆的法律只會令社會道德向下滑，本會曾收過一個案，這位有一歲兒的女士因丈夫有第三者而要求和她離婚，據她反映，這是她丈夫第四次婚姻，前三次均有妻兒，但丈夫說都不用給贍養費，因政府會替他養妻活兒，故此該女士對申請贍養費不敢抱希望。

2.8 在本會的經驗中，帶著兒童的婦女為多數的受款人，本會過去多次向全國婦聯及廣東省婦聯提出過有關協助香港婦女找尋在國內的前夫追討贍養費的議題，本會提議香港政府考慮和國內司法界及婦女界探討跨境執行刑罰的可行性，如果付款人在香港被判令需付款而又刻意跨境逃避的話，該刑罰應亦可在國內執行，這會進一步打擊故意違法意欲。

2.9 是次民政局提出的草案可以對部份現時追討贍養費的人士一些幫忙，但本會和多個團體過去多年來呼吁政府考慮設立「贍養費局」，希望能較徹底協助收款人，亦減少恐嚇、暴力事件的繼續發生，否則靠個別家庭的力量根本不可以有效令付款人履行法庭判令，故此本會希望當局積極考慮設立「贍養費局」的建議，而本會亦隨時準備為此提供協助。

謝謝!

香港單親協會