

Extract from the report of the Bills Committee on Interest on Arrears of Maintenance Bill 2001

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Problem of deliberate evasion of service summons by maintenance payers

21. Members have expressed concern about the problem of deliberate evasion of service of summons by maintenance payers. To address the problem, some members suggest that the court should be given the power to impose a surcharge even though the maintenance payer fails to appear before the court, so long as the summons has been served to the address provided by the payer.

22. In response to the suggestion, the Administration has pointed out that the blameworthy conduct of the maintenance payer is a fact to be established by the court before imposing a surcharge. As accrued maintenance arrears can amount to tens of thousands of dollars and since the surcharge scheme is designed to cover all maintenance arrears cases, the imposition of a surcharge by the court may inflict a serious detriment on some maintenance payers. From the general legal policy perspective, where there is a serious detriment to an individual on the establishment of certain facts, the criminal standard of proof (i.e. beyond reasonable doubt) would be required even though the case is not a criminal matter. The facts will not be taken to be proved merely on a balance of probabilities.

23. The Administration has further explained that if the court is empowered to impose a surcharge on a maintenance payer in his/her absence, there may be cases where the criminal standard of proof is not satisfied. It is only appropriate that a maintenance payer be afforded a chance to present his/her points to the court. Otherwise, there is no way for the court to find that there is no reasonable excuse for the payer's failure to comply with the maintenance order.

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Intermediary body for the collection of maintenance payments

34. Members note that the Working Group had considered the proposal of setting up an intermediary body for the collection of maintenance payments. However, the Working Group concluded that an intermediary body would not be able to offer maintenance payees or taxpayers any significant benefits over and

above those that could be achieved by improving the existing administrative system. The Administration had accepted the Working Group's recommendation not to set up an intermediary body.

35. Members consider that as in the case of Attachment of Income Orders, the present proposals are not cost effective and will only benefit a small number of maintenance payees. Despite the implementation of such proposals, many maintenance payees would still encounter difficulties in collecting maintenance payments.

36. As the various legislative amendments implemented hitherto to improve the enforcement of maintenance order are ineffective, members disagree with the conclusion reached by the Working Group and urge the Administration to re-consider the proposal of setting up an intermediary body for the collection and enforcement of maintenance payments. Apart from shielding maintenance payees from emotional turmoil when confronting their ex-spouses, the intermediary body, with expert knowledge and concerted efforts, would be more cost-effective and efficient in recovering arrears from maintenance payers than if the same act is carried out by the maintenance payees themselves. Members also share the view that more efficient collection and enforcement of maintenance payments would also help to relieve the pressure on legal aid and the Comprehensive Social Security Assistance Scheme.

37. As the establishment of an intermediary body is outside the ambit of the Bills Committee, members agree that the matter should be referred to the Panel for Home Affairs for follow-up.

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