

1980

c 258 Matrimonial Causes Act

Ontario

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CHAPTER 258

Matrimonial Causes Act

1.—(1) In this section, “child of the marriage” and “child” include a child adopted under Part III of the *Child Welfare Act*, or a predecessor thereof, by the parties to the action but do not include a child of the marriage of the parties who has been adopted by another person under Part III of the *Child Welfare Act* or a predecessor thereof. R.S.O. 1970, c. 265, s. 6 (1).

Interpre-
tation
R.S.O. 1980,
c. 66

(2) Where a petition or counter-petition for divorce or the statement of claim in an action for the annulment of a marriage contains particulars of any child of the marriage who, at the time of the commencement of the action,

Official
Guardian's
report

(a) is under sixteen years of age; or

(b) is sixteen or seventeen years of age and is in full-time attendance at an educational institution or through illness or infirmity is unable to earn a livelihood,

the Official Guardian shall cause an investigation to be made and shall report to the court upon all matters relating to the custody, maintenance and education of the child. 1972, c. 50, s. 1 (1).

(3) The Official Guardian may engage any person to make such investigation on his behalf.

Agents

(4) An affidavit of any person making the investigation, verifying the report as to such facts as are within his knowledge and setting out the source of his information and his belief as to any other facts, with the report marked as an exhibit thereto, shall be received in evidence upon the trial of the action. R.S.O. 1970, c. 265, s. 6 (3, 4).

Report to be
received in
evidence

(5) Where the facts contained in the report are disputed, the Official Guardian or his agent shall if directed by the court, and may when not so directed, attend the trial on behalf of the child and cause the person making the investigation to attend as a witness. 1972, c. 50, s. 1 (2).

Attendance
at trial

Payment of
fees and
disburse-
ments

R.S.O. 1980,
c. 6

(6) The petitioner in a petition for divorce or the plaintiff in an action for annulment shall pay such fees for and disbursements arising from an investigation in respect of the petition or action as are prescribed under the *Administration of Justice Act*.

Idem

(7) The Official Guardian shall not file his report of the investigation with the court until such fees and disbursements have been paid unless otherwise directed by the court. 1972, c. 50, s. 1 (3).

Rules

R.S.O. 1980,
c. 223

(8) The Rules Committee may make rules for carrying this section into effect and except where inconsistent with this section or such rules, the *Judicature Act* and the rules made thereunder apply to proceedings under this section. R.S.O. 1970, c. 265, s. 6 (10).

Fees, etc.,
deemed costs
in action

(9) The fees and disbursements of the Official Guardian payable under subsection (6) shall be deemed to be costs incurred in the action for the purposes of any award as to costs by the judge. 1972, c. 50, s. 1 (4).

Rights of
appeal

2.—(1) Any party to an action for the annulment of a marriage in which a judgment nisi is granted may appeal to the Court of Appeal from the judgment nisi, but no appeal lies from the judgment absolute in any such action by any party who having had time and opportunity to appeal from the judgment nisi has not done so.

Idem

(2) Any party to an action for the annulment of a marriage in which a judgment nisi is granted or any person who intervened or who applied to show cause why the judgment should not be made absolute may appeal to the Court of Appeal from the judgment or order disposing of the matter raised by the intervention or by the application. R.S.O. 1970, c. 265, s. 7 (1, 2), *revised*.

Rules
confirmed
with right
to repeal,
amend, etc.

3. The rules of court relating to the conduct of matrimonial causes may be repealed, amended or varied by the Rules Committee, subject to the approval of the Lieutenant Governor in Council. R.S.O. 1970, c. 265, s. 9.

Her
Majesty's
Proctor,
appointment

4. There shall be an officer known as Her Majesty's Proctor who shall be appointed by the Lieutenant Governor in Council. R.S.O. 1970, c. 265, s. 10.