

1960

c 105 Deserted Wives' and Children's Maintenance Act

Ontario

© Queen's Printer for Ontario, 1960

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/rso>

Bibliographic Citation

Deserted Wives' and Children's Maintenance Act, RSO 1960, c 105

Repository Citation

Ontario (1960) "c 105 Deserted Wives' and Children's Maintenance Act," *Ontario: Revised Statutes*: Vol. 1960: Iss. 1, Article 108.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1960/iss1/108>

CHAPTER 105

**The Deserted Wives' and Children's
Maintenance Act**

1.—(1) Where a wife has been deserted by her husband, an ^{Order for maintenance of wife} information may be laid before a justice of the peace, and the justice of the peace may issue a summons (Form 1) against the husband, and if upon the hearing before a magistrate or a judge of a juvenile court it appears that the husband had deserted his wife without having made adequate provision for her maintenance and the maintenance of his children residing with her and that he is able to maintain them in whole or in part and neglects or refuses so to do, the magistrate or judge may order (Form 2) him to pay such sum at such intervals as is deemed proper having regard to all the circumstances. R.S.O. 1950, c. 102, s. 1 (1); 1954, c. 22, s. 1 (1).

(2) A married woman shall be deemed to have been deserted ^{Desertion of wife} within the meaning of this section when she is living apart from her husband because of his acts of cruelty, or of his refusal or neglect, without sufficient cause, to supply her with food and other necessaries when able so to do, or of the husband having been guilty of adultery that has not been condoned and that is duly proved, notwithstanding the existence of a separation agreement where there has been default under it and whether or not it contains express provisions excluding the operation of this Act.

(3) Without restricting in any way the generality of sub- ^{What constitutes cruelty} section 2, conduct causing reasonable apprehension of bodily injury, or of injury to health, without proof of actual personal violence, that renders the home an unfit place, either for a wife or a child, may be held to constitute acts of cruelty within the meaning of subsection 2.

(4) No order shall be made in favour of a wife who is ^{Cases of adultery} proved to have committed adultery, unless the adultery has been condoned, and any order may be rescinded upon proof that the wife, after the making thereof, has been guilty of adultery, if it has not been condoned. R.S.O. 1950, c. 102, s. 1 (2-4).

Effect of
finding of
adultery

(5) A finding by the magistrate or judge that adultery has been proved is not evidence of the adultery in any other proceedings. R.S.O. 1950, c. 102, s. 1 (5); 1954, c. 22, s. 1 (2).

Order for
maintenance
of child

2.—(1) A father who has deserted his child may be summoned before a magistrate or a judge of a juvenile court having jurisdiction where the father or the child then resides, who, if satisfied that the father has wilfully refused or neglected to maintain the child and has deserted the child, may order the father to pay to the person named in the order for the support of the child such sum at such intervals as the magistrate or judge deems proper, having regard to the means of the father and to any means the child may have for his own support. R.S.O. 1950, c. 102, s. 2 (1); 1957, c. 27, s. 1 (1).

Maximum
sum

(2) The sum that a father may be ordered to pay under subsection 1 for the support of each child deserted by him shall not exceed a sum calculated at the rate of \$20 a week with or without costs. 1957, c. 27, s. 1 (2).

When child
deemed to
have been
deserted

(3) A child shall be deemed to have been deserted by his father within the meaning of this section when the child is under the age of sixteen years and the father has, without adequate cause, refused or neglected to supply the child with food or other necessaries when able so to do.

Custody of
child

(4) The magistrate or judge may in an order made under this section make provision as to the custody of the child and the right of access thereto of any person, or of either parent, having regard to the welfare of the child and to the conduct of the parent or person and to the wishes of the mother as well as of the father, and may at any time alter, vary or discharge any provision so made.

Contempt
of custody
orders

(5) Every person who wilfully resists any provision as to custody and right of access in an order made under this section is guilty of contempt and on summary conviction before the magistrate or judge or any magistrate or judge having jurisdiction in the court in which the order was made is liable to a fine of not more than \$100 or to imprisonment for a term of not more than three months, or to both. R.S.O. 1950, c. 102, s. 2 (2-4).

Warrant
for
arrest

3. Where the justice of the peace before whom an information is laid under section 1 or 2 is satisfied that the husband or father, as the case may be, is about to quit the territorial jurisdiction of the justice of the peace, the justice of the peace may, with the written approval of a magistrate or judge of a

juvenile and family court, issue a warrant (Form 3) for the arrest of the husband or father. 1957, c. 27, s. 2.

4.—(1) In this section, “officer” means a probation officer appointed under *The Probation Act* or *The Juvenile and Family Courts Act* or a local director of a children’s aid society, and includes any official of the Department of Public Welfare or of any municipality who is designated by the Minister of Public Welfare as an officer for the purposes of this section.

Interpretation
R.S.O. 1960,
cc. 308, 201

(2) Where an order for the payment of maintenance or support has been made under this Act and the person for whose benefit the order was made is a public charge or where the magistrate or judge who made the order is of opinion that if default should occur in complying with the order the person for whose benefit the order was made may become a public charge, the magistrate or judge may order the person required to make the payments to report to such officer as he designates at such times and during such period and at such place as he considers necessary to ensure that the order for payment will be complied with.

Order to report to officer

(3) The magistrate or judge may at any time by further order designate another officer for the purposes of subsection 2.

Change of officer

(4) Every person who without reasonable excuse fails to report to an officer when ordered so to do under this section is guilty of an offence and on summary conviction is liable to imprisonment for a term of not more than three months.

Offence

(5) An order made under this Act that is certified by the magistrate or judge who made it or a certificate of a magistrate or judge as to the making of such an order by him is receivable in evidence in a prosecution under subsection 4 as proof of the making of the order without proof of the office or signature of the magistrate or judge so certifying. 1957, c. 27, s. 3.

Certificate of order

5. An information under this Act may be laid by a wife or child or by a person having the care and custody of a child, or with the consent of the Crown attorney, by any other person. R.S.O. 1950, c. 102, s. 4.

Who may lay information

6. The magistrate or judge may in any order under this Act set a time limit, not exceeding thirty days, within which each sum of money ordered to be paid and the costs shall be paid. R.S.O. 1950, c. 102, s. 5.

Time limit

Rehearing
of applica-
tion

7.—(1) Where a judge is satisfied that,

- (a) the circumstances of any of the parties have changed since the making of an order under this Act; or
- (b) evidence has become available that was not available upon the previous hearing,

he may direct a rehearing of the application.

Order may
be con-
firmed, etc.

(2) Upon the rehearing of the application any order previously made may be confirmed, rescinded or varied.

Interpre-
tation

(3) In this section, "judge" means,

- (a) the magistrate or judge who made the order; or
- (b) if such magistrate or judge is dead, ill or absent, any other magistrate or any other judge of a juvenile and family court whose jurisdiction in the same locality is such that an information similar to the original information could be laid before him; or
- (c) any magistrate or any judge of the juvenile and family court who has jurisdiction in the locality in which the person in whose favour the order is made resides. R.S.O. 1950, c. 102, s. 6.

Primary
jurisdiction
in juvenile
and family
court

8. Where there is juvenile and family court with jurisdiction, proceedings under this Act shall be heard in that court. 1954, c. 22, s. 2.

Applications
may be
heard in
private

9. An application under this Act may be heard by the magistrate or judge in private. R.S.O. 1950, c. 102, s. 7.

Payment of
expenses

10. Where it is necessary to incur expense in serving a warrant or summons or in carrying out any of the provisions of this Act, and the informant is unable to pay such expenses, they may be paid out of the moneys that are appropriated by the Legislature for that purpose. R.S.O. 1950, c. 102, s. 8.

Provisional
order

11.—(1) Where an information has been laid against a person under this Act and that person fails to appear to answer to the summons, a magistrate or judge of the juvenile court having jurisdiction to hear the complaint in the locality in which the information was laid may, instead of issuing a warrant to compel the person's attendance or taking any other action that might be taken under this Act or otherwise, in his

absence and without further notice to him, hear the evidence and, if satisfied of the justice of the complaint and that the person is resident in another locality in Ontario, make any order that he might have made if the person had appeared before him to answer to the complaint, but in such case the order is provisional only and has no effect unless and until confirmed by a magistrate or judge of the juvenile court having jurisdiction in the locality in which the person resides.

(2) If the testimony of a witness at the hearing is not taken in shorthand, it shall be put into the form of a deposition which shall be read over and signed by the witness and by the magistrate or judge presiding at the hearing. ^{Depositions and transcripts}

(3) Where an order is made under subsection 1, the magistrate or judge, as the case may be, shall send to a magistrate or judge of the juvenile court having jurisdiction in the locality in which the person against whom the order is made resides, ^{Transmission of documents}

- (a) a copy of the information certified by the magistrate or judge to be a true copy;
- (b) a copy of the order certified by the magistrate or judge to be a true copy;
- (c) a copy of the transcript of the evidence certified by the court stenographer to be a true copy, or, where the evidence was not taken in shorthand, the depositions referred to in subsection 2;
- (d) a statement, signed by the magistrate or judge containing such information as is available for facilitating the identification of the person against whom the order is made and ascertaining his whereabouts.

(4) The magistrate or judge to whom the documents mentioned in subsection 3 are sent may issue a summons calling upon the person named in the order to appear and show cause why the order should not be confirmed. ^{Issue of summons}

(5) At the hearing, it shall be open to the person named in the order to raise any defence that he might have raised in the original proceedings, but, if on appearing he fails to satisfy the magistrate or judge that the order ought not to be confirmed, the magistrate or judge may confirm the order without modification or with such modification as he considers proper having regard to all the evidence. ^{Confirmation of order}

Adjourn-
ment for
further
evidence

(6) Where the person mentioned in the order appears before the magistrate or judge and satisfies him that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the magistrate or judge who made the order, the magistrate or judge may so remit the case and adjourn the proceedings for that purpose.

Where
order not
confirmed

(7) Where the person named in the order appears before the magistrate or judge and the magistrate or judge, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, he may remit the case to the magistrate or judge who made the order together with a statement signed by him of his reasons for so doing, and in that event the magistrate or judge who made the order may proceed with the case as though the order had not been made.

Variation
and rescis-
sion of
order,
remission
of case,
after con-
firmation

(8) Where an order has been confirmed under this section, it may be varied or rescinded in like manner as if it were made originally by the confirming magistrate or judge, and, where on an application for variation or rescission the magistrate or judge is satisfied that it is necessary to remit the case to the magistrate or judge who made the order for the purpose of taking further evidence, he may so remit the case and adjourn the proceedings for that purpose.

Right of
appeal

(9) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have if the order had been made under section 1 or 2.

Effect of
confirma-
tion

(10) An order that has been confirmed under this section shall be deemed to be an order of the magistrate or judge who confirmed it and the officers of his court shall take all proper steps to enforce it.

Proof of
documents;
admissibility
in evidence

(11) Any document under this section purporting to be signed by a magistrate or judge or by a court stenographer shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or official character of the person appearing to have signed it and any such document is admissible in evidence. 1953, c. 28, s. 1.

Enforcement
of order

12.—(1) When default is made in the payment of a sum of money ordered to be paid under this Act, a justice of the peace,

(a) may from time to time summon the person in default to explain the default; and

- (b) if the service of the summons is proved and the person summoned does not appear and sufficient reason for his absence is not given, or if it appears that the summons could not be served, may issue a warrant for his arrest,

and, if upon the hearing before a magistrate or judge of the juvenile court the person in default fails to satisfy him that the default is due to inability to pay, he may order and adjudge the person to be imprisoned for a term of not more than three months unless the sum payable under the first-mentioned order, or such lesser sum as the magistrate or judge designates, is sooner paid. 1959, c. 29, s. 1.

(2) When default is made in the payment of a sum of money ordered to be paid under this Act, the magistrate or judge of the juvenile court who made the order may at any time send a duplicate original of the order, together with a statement showing such information as he possesses of the circumstances of the case and for facilitating the identification of the person against whom the order was made and the location of his place of residence, to any judge of a juvenile court having jurisdiction in the locality in which such person resides, or to any magistrate in or near such locality, and upon receipt thereof the magistrate or judge of the juvenile court, as the case may be, shall summon the person in default to explain the default and may, if he is satisfied as to the justice of the order, exercise any of the powers mentioned in subsection 1, and, when he has dealt with the matter, he shall send a report thereon to the magistrate or judge of the juvenile court who made the order.

(3) Notwithstanding subsection 1 of section 3 of *The Summary Convictions Act*, section 625 of the *Criminal Code* (Canada) does not apply to an order for imprisonment made under this section. 1951, c. 20, s. 1, *part*.

13. Except as otherwise provided, proceedings under this Act shall be in accordance with *The Summary Convictions Act*. 1951, c. 20, s. 1, *part*.

14. An appeal from an order made under this Act may be heard at such time as the judge of the court to which the appeal is taken may appoint and may in the discretion of the judge be heard in chambers. 1951, c. 20, s. 2.

15.—(1) No appeal or other proceeding by way of *certiorari*, motion to quash, prohibition, mandamus or otherwise suspends the operation of any order for the payment of money made

Transmission of order to facilitate enforcement

The Application of 1953-54, c. 51 (Can.), s. 625

The Application of R.S.O. 1960, c. 387

Appeals

Payment of money not affected pending appeal

under this Act until the appeal or other proceeding is disposed of, unless an interim order suspending in whole or in part the operation of such order for payment is made upon application to the court in which the appeal or other proceeding is pending.

If default in payment occurs

(2) If a person ordered to pay money under this Act is in default, any appeal or other proceeding taken with respect to such order may be dismissed. 1955, c. 16, s. 1.

Enforcement of order for payment of money

16. Any order for payment of money may also be filed with the clerk of any division court and enforced by garnishment proceedings, by execution and by judgment summons as in the case of a judgment in the division court. R.S.O. 1950, c. 102, s. 10; 1958, c. 23, s. 1.

FORM 1

The Deserted Wives' and Children's Maintenance Act

(Section 1 (1))

SUMMONS

County (or District) of

To A. B., of

Whereas application has this day been made by your wife (or child), C. B., to the undersigned Justice of the Peace for for a summons under The Deserted Wives' and Children's Maintenance Act, for that you have wilfully refused or neglected to maintain your wife (or your wife and family, as the case may be) or your child, and have deserted your wife or child. These are, therefore, to command you to appear before a magistrate or judge of the juvenile and family court (as the case may be) at on the day after the service hereof, at the hour of in the noon, to show cause why an order should not be made against you, to pay to your wife for her support (or for the support of her and your family, as the case may be, or to your child for his support), such sum not exceeding the rate of \$20 weekly (where application is for maintenance of wife, omit the words and figures "not exceeding the rate of \$20 weekly"), as is considered to be in accordance with your means and with the means of your wife (or child).

Given under my hand and seal this day of, 19....

..... (L.S.) Justice of the Peace.

FORM 2

The Deserted Wives' and Children's Maintenance Act

(Section 1 (1))

ORDER

County (or District)

of.....

Upon reading the summons dated the..... day of,..... 19...., issued by..... Justice of the Peace for....., upon the application of C. B., wife or child of A. B., under *The Deserted Wives' and Children's Maintenance Act*, and upon hearing all the parties (or as the case may be) and the evidence adduced, and it appearing that the said C. B. is entitled to the benefit of the said Act:

I do hereby order that the said A. B. do pay hereafter to his wife, or her agent (or his child or his child's agent), authorized in writing, at....., the sum of \$..... for her support (or for the support of her and the family of the said A. B. or for support of the child), the first payment to be made on the..... day of....., 19...., together with the costs of these proceedings, which amount to \$....., which shall be paid on or before the..... day of....., 19....

Given under my hand and seal this..... day of....., 19....

..... (L.S.)
Magistrate (or Judge)

R.S.O. 1950, c. 102, Sched., part.

FORM 3

The Deserted Wives' and Children's Maintenance Act

(Section 3)

WARRANT TO ARREST

Province of Ontario

of

}
}

To the peace officers in the said.....

Whereas an information has been laid against..... of..... under *The Deserted Wives' and Children's Maintenance Act*; and whereas I am satisfied that the said..... is about to quit my territorial jurisdiction;

This is therefore to command you, in Her Majesty's name, forthwith to arrest the said..... and bring him before..... to be dealt with according to law.

Dated at..... this..... day of....., 19....

.....
Justice of the Peace

The issue of the above Warrant to Arrest is approved by me.

Dated at..... this..... day of....., 19....

.....
Magistrate (or Judge)

1957, c. 27, s. 4.

