

1937

## c 217 Children of Unmarried Parents Act

Ontario

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## CHAPTER 217.

## The Children of Unmarried Parents Act.

## PART I.

## PRELIMINARY.

Interpreta-  
tion.

## 1. In this Act,—

"Judge"

- (a) "Judge" shall mean judge or junior or acting judge of a county or district court or magistrate or judge of the juvenile court where such magistrate or judge of the juvenile court has been designated by the Lieutenant-Governor in Council a judge within the meaning of this Act; R.S.O. 1927, c. 188, s. 1, cl. (a); 1929, c. 23, s. 10.

"Provincial  
Officer."

- (b) "Provincial officer" shall mean an officer in the public service designated for that purpose by the Lieutenant-Governor in Council;

"Regula-  
tions"

- (c) "Regulations" shall mean regulations made under the authority of this Act. R.S.O. 1927, c. 188, s. 1, cls. (b) (c).

*Provincial Officer—Duties and Powers.*Appointment  
of officers,  
clerks, etc

- 2.—(1) The Lieutenant-Governor in Council may appoint such officers, clerks and servants and may employ such other assistance as he may deem necessary for the administration and enforcement of this Act, and may designate any of such officers a provincial officer for the purposes of this Act.

Officers  
may take  
affidavits,  
etc

- (2) Any officer appointed under this section may take and receive such affidavit or statutory declaration as any person desires to make in or concerning any matter arising out of the administration of this Act. R.S.O. 1927, c. 188, s. 2.

Provincial  
officer to be  
notified of  
registration  
of all births  
out of wed-  
lock.

3. The division registrar and the Deputy Registrar-General shall notify the provincial officer of the birth of every child born out of wedlock registered under *The Vital Statistics Act* and every birth registered under the said Act in such a manner as to suggest that the parents are unmarried or unknown, with such particulars as may be directed by the regulations. R.S.O. 1927, c. 188, s. 3.

Rev. Stat.  
c. 88.

4. It shall be the duty of the provincial officer, by inquiry through children's aid societies and the returns furnished by the division registrar or Deputy Registrar-General, to obtain all information possible with respect to every child born out of wedlock, and the provincial officer shall take such proceedings and do all such things as are permitted or required under this Act as may seem to him advisable in the interest of such child. R.S.O. 1927, c. 188, s. 4.

Provincial officer to make investigations.

5. Nothing in this Act contained shall require the provincial officer to interfere with the care and maintenance of any child born out of wedlock,—

Restrictions as to interference by provincial officer.

(a) where such child has been adopted according to the provisions of *The Adoption Act*; or

Rev. Stat. c. 218.

(b) where such child is being cared for voluntarily by a person or persons whom the provincial officer deems suitable to have the charge of such child. R.S.O. 1927, c. 188, s. 5.

6. The mother of a child born out of wedlock or of a child who is likely to be born out of wedlock may apply to the provincial officer for advice and protection in any matter connected with such child or with the birth of such child, and the provincial officer shall take such action as may seem to him advisable in the interest of such mother and child. R.S.O. 1927, c. 188, s. 6.

Unmarried mother may apply to provincial officer for advice.

7. Where the father of a child born out of wedlock cannot be found or where adequate means of support cannot be provided by such father and the mother is dead, or is absent, or through lack of means is unable, or through misconduct is unfit to have the care of such child, the child may, with the consent of the provincial officer be dealt with as a "neglected child" within the meaning of *The Children's Protection Act*, and shall be maintained in accordance with the provisions of that Act. R.S.O. 1927, c. 188, s. 7.

Neglected child.

Rev. Stat. c. 312.

8. The Lieutenant-Governor in Council may make regulations,—

Regulations.

(a) respecting the procedure to be followed upon an application for an order of affiliation;

(b) for fixing the fees, costs, charges and expenses payable on proceedings under this Act and for dispensing with the payment of such fees, costs, charges and expenses where owing to lack of means or any other reason the judge deems such action advisable;

- (c) for the payment of the expenses of the provincial officer in carrying out the provisions of this Act out of such sums as may be appropriated by the Legislature for that purpose;
- (d) for designating a provincial officer, and for the appointment of local and other assistants to the provincial officer, and for authorizing any such assistants to act for and in the place of the provincial officer;
- (e) generally for the better carrying out of the provisions of this Act. R.S.O. 1927, c. 188, s. 8.

## PART II.

### *Affiliation Order.*

Application  
to judge.

**9.** An application to the judge for an affiliation order may be made,—

Who may  
make  
application.

- (a) by the mother of a child born out of wedlock; or
- (b) by an unmarried woman pregnant with a child; or
- (c) by the next friend or guardian of a child born out of wedlock; or
- (d) by any person who has supplied medical attendance or nursing or hospital accommodation to an unmarried woman during pregnancy or confinement; or
- (e) by a person who has the custody of a child born out of wedlock or who has undertaken the care and education of such child or who has supplied such child with necessities; or
- (f) by any person who has incurred the funeral expenses of an unmarried mother who has died in childbirth or in consequence of her pregnancy, or of a child born out of wedlock; or
- (g) by the provincial officer. R.S.O. 1927, c. 188, s. 9.

Limit of  
time for  
application.

**10.** An affiliation order shall not be made under this Act unless the application therefor is made within the lifetime of the father, and

- (a) within one year after the birth of the child; or
- (b) within one year after the doing of any act on the part of the putative father which affords evidence of acknowledgment of paternity; or



(c) within one year after the return to Ontario of the putative father, where absent from Ontario at the expiration of the period of one year from the birth of the child; R.S.O. 1927, c. 188, s. 10, cls. (a-c).

(d) the putative father at any time has failed in whole or in part to carry out the terms of any agreement authorized by this Act. 1935, c. 7, s. 2.

**11.** The judge shall, upon application, appoint in writing a time and place at which he will inquire and determine whether the person said to be the father of the child is in fact the father of such child. R.S.O. 1927, c. 188, s. 11. Appointment for hearing.

**12.—(1)** Notice in writing of the time and place appointed shall be served personally or in such other manner as the judge may direct upon the person said to be the father of the child at least three days before the day so appointed. Service of appointment.

(2) Where the judge is satisfied that there is good and probable cause for believing that the person said to be the father of the child is the father of the child and that such person, unless he be arrested is about to quit the territorial jurisdiction of the judge with the intention of avoiding service of the notice in writing referred to in subsection 1 or of evading his obligations in respect of the child and its mother, whether before or after an affiliation order has been made, the judge may issue a warrant for the arrest of such person and upon his arrest may require him to give security for such sum and in such manner and upon such condition as the judge shall direct and if such security is not given the judge may order such person to be imprisoned for any period not exceeding three months unless such security is sooner given, or such person has sooner complied with the condition so imposed. R.S.O. 1927, c. 188, s. 12. Arrest of alleged father who may be required to give security or be imprisoned.

**13.** If at the time and place appointed the person so served fails to appear or show sufficient reason for not attending, the judge, in the absence of such person and upon sufficient evidence being adduced before him, may make such affiliation order or other order as he may deem just. R.S.O. 1927, c. 188, s. 13. Proceedings in default of appearance.

**14.—(1)** Where the person so served appears in pursuance of such notice, the judge may hear and determine the matter in a summary manner and upon sufficient evidence being adduced before him may make an order declaring the person named therein to be the father of the child and requiring the father to pay,— In case of appearance.

Liability of  
father—  
extent of.

- (a) the reasonable expenses for the maintenance and care, medical or otherwise, of the mother of such child during the three months next preceding the birth of the child, at the birth, and during such period after the birth as may in the opinion of the judge have been or be necessary in connection with, or as a consequence of the birth of such child, taking into consideration the circumstances of the case;
- (b) a sum of money weekly towards the maintenance of the child until the child attains the age of sixteen years, or a lump sum in lieu of such weekly payments which shall form a principal consuming annuity, the income from which shall be equivalent to the order for weekly maintenance by the court, the balance of which, in the event of the death of the child before the age of sixteen years, shall revert to the Province unless otherwise ordered by the court;
- (c) the expenses of the burial of the mother in case of her death at or in consequence of her pregnancy, or of the birth of the child;
- (d) the expenses of the burial of the child if he dies before the making of the affiliation order or at any time thereafter before attaining the age of sixteen years. R.S.O. 1927, c. 188, s. 14 (1); 1928, c. 28, s. 2 (1); 1933, c. 59, s. 21 (1).

Means of  
father to be  
considered.

(2) In estimating the sums payable by the father under this section, the judge shall take into consideration the ability to provide, and the prospective means of such father. R.S.O. 1927, c. 188, s. 14 (2).

Liability of  
mother for  
maintenance  
of child.

**15.** The judge may in his discretion upon the same or a like application order that the mother of a child born out of wedlock shall contribute a weekly sum of money towards the maintenance of the child until such child reaches the age of sixteen years. R.S.O. 1927, c. 188, s. 15.

Amount of  
maintenance  
—how fixed.

**16.** The judge shall fix such sums for maintenance as shall enable the child to maintain a reasonable standard of life, and the judge shall be governed in his findings by the consideration of what the child would have enjoyed had he been born to his parents in lawful wedlock. R.S.O. 1927, c. 188, s. 16.

Reopening of  
application.

**17.—(1)** A judge may, upon the discovery of new evidence or fraud being shown by affidavit, grant leave to reopen and

may reopen and reconsider any application for an affiliation order.

(2) A judge may at any time where an order for payment has been made, rescind or vary such order as he sees fit and any order so varied may be enforced in like manner as the original order. 1935, c. 7, s. 3.

Order may be rescinded or varied.

18.—(1) A judge may require security to be given for such sum and in such manner as he shall direct for the performance of any order made under the provisions of this Act, and where any person fails to give the security required of him, a judge may order such person to be imprisoned for any period not exceeding three months unless such security is sooner given.

Security or imprisonment for failure to give security.

(2) When any person has failed to perform a condition or comply with an order in respect of which security has been given, under section 12 or this section, a judge may order that such security be forfeited, which order of forfeiture may be enforced under the provisions of section 19, and the provincial officer shall apply the proceeds of such forfeited security in making any payments ordered to be made by the father, or in such other manner as a judge may direct. R.S.O. 1927, c. 188, s. 18; 1931, c. 23, s. 15.

Forfeiture of security. Application of proceeds.

19.—(1) Any order made under the provisions of this Act, may be enforced in the same manner and by the like proceedings, as,—

Enforcement of orders.

(a) any order made or fine imposed under the provisions of *The Summary Convictions Act*, save that imprisonment for default in making payment under such order shall only be ordered as hereinafter provided; or

As summary convictions. Rev. Stat. c. 136.

(b) a judgment of the division court, where the order has been filed with the clerk of a division court, whereupon proceedings by way of execution or judgment summons, *inter alia*, may be used to enforce such order. R.S.O. 1927, c. 188, s. 19 (1).

Or division court judgments.

(2) It shall be the duty of the provincial officer to see that payments directed to be made are duly made, and upon default in any such payment, the provincial officer may apply to any judge, who,—

Provincial officer to apply to judge to enforce payment.

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

By summons.

(b) may, where service of the summons has been proved and the person summoned does not appear or sufficient reason for his absence is not given, or

By warrant to arrest.



where it appears that the summons cannot be served, or where an order of imprisonment has been made, issue a warrant for the arrest of such person; and

By imprisonment.

(c) may, when a warrant has been issued or where the person in default fails to satisfy the judge that such default is due to inability to pay, order such person to be imprisoned for any period not exceeding three months unless the sums of money payable under the order or such lesser sums as the judge may see fit to designate are sooner paid. R.S.O. 1927, c. 188, s. 19 (2), cl. (c); 1932, c. 53, s. 18; 1935, c. 7, s. 4.

As in division court.

(3) Upon such default the provincial officer, where the order has been filed in the division court, may proceed as in the case of a judgment of that court. R.S.O. 1927, c. 188, s. 19 (3).

Evidence.

**20.** No order of affiliation shall be made upon the evidence of the mother of the child unless her evidence is corroborated by some other material evidence. R.S.O. 1927, c. 188, s. 20.

Proceedings may be heard by judge in chambers.

**21.** All proceedings under this Act may be heard by the judge in his chambers and not in open court. R.S.O. 1927, c. 188, s. 21.

Notice to be given to provincial officer.

**22.** Notice shall be given to the provincial officer in all proceedings instituted under the authority of this Act, and he shall have the right to appear and intervene and be heard in person or by counsel on any such proceedings. R.S.O. 1927, c. 188, s. 22.

Death of mother not a bar to proceedings.

**23.** The provincial officer shall not be debarred from instituting or continuing proceedings under this Act by the death of the mother. R.S.O. 1927, c. 188, s. 24.

Agreement and affiliation order shall bind estate of father.

**24.—(1)** Where an agreement with the provincial officer has been entered into by the putative father or where an affiliation order has been made against the father of a child born or likely to be born out of wedlock, such agreement or order shall bind the estate of such putative father or father after his death and any sums payable thereunder shall be a debt due from and chargeable upon the estate of the putative father or father and recoverable at the suit of the provincial officer, but every agreement or affiliation order shall, as to any payment falling due before or after the putative father or father's death, be subject to review as provided in section 17 and no action or other proceeding shall be taken thereon after



the death of the putative father or father without the leave of the judge, and the judge, before granting such leave shall direct that notice shall be given to the widow and legitimate children of the putative father or father and to all other persons interested in the estate.

(2) Where it appears to the judge that the terms of the agreement with the provincial officer or affiliation order cannot be carried out without depriving the widow or legitimate children of the putative father or father of necessary maintenance, he shall vary the agreement with the provincial officer or affiliation order to such an extent and in such manner that the widow of the putative father or father and his children born in wedlock, if any, shall be duly provided for before the child or children born out of wedlock. 1933, c. 59, s. 21 (2).

Widow and children born in wedlock not to be prejudiced.

**25.**—(1) Any agreement between the mother and the putative father of a child born or likely to be born out of wedlock and any agreement entered into between such father and any other person relating to any matters coming within the provisions of this Act with regard to the maintenance and support of such mother or child, shall require the approval in writing of a judge, and a copy of every such agreement shall be recorded with the provincial officer.

Approval of agreement for maintenance.

(2) Any agreement coming within subsection 1 entered into without the approval of a judge, shall be voidable at the instance of the provincial officer. R.S.O. 1927, c. 188, s. 26; 1931, c. 23, s. 15.

Agreement voidable—under what circumstances.

**26.**—(1) The provincial officer may enter into an agreement with any person, whereby such person agrees to pay such of the expenses and maintenance set forth in section 14 as, in the opinion of the provincial officer, have been or may be necessary. R.S.O. 1927, c. 188, s. 27 (1); 1933, c. 59, s. 21 (3).

Agreement with provincial officer to pay expenses.

(2) Upon default in payment under any such agreement the provincial officer may apply to a judge for an affiliation order, and such agreement when made by the person said to be the father of the child shall be *prima facie* proof of paternity and of the ability and prospective means of the father to make the payments provided by such agreement. R.S.O. 1927, c. 188, s. 27 (2); 1931, c. 23, s. 15; 1935, c. 7, s. 5.

Default under agreement

**27.** A judge shall have power to direct payment of the costs of any proceedings taken before him under this Act. R.S.O. 1927, c. 188, s. 28; 1931, c. 23, s. 15.

Power of judge to direct payment of costs.

Appeal.

**28.** An appeal shall lie from any order under this Act to the Court of Appeal by leave of a judge of the Supreme Court. R.S.O. 1927, c. 188, s. 29.

Payment  
over of funds  
to Public  
Trustee.

**29.—(1)** All sums of money whether for expenses, maintenance or costs, payable under an order made or an agreement entered into under this Act shall be paid in the first instance to the provincial officer and where payment of a lump sum is ordered or agreed upon the provincial officer shall pay over to the Public Trustee any portion thereof not immediately required for the maintenance of the child or to meet other charges under this Act. 1928, c. 28, s. 2 (3); 1933, c. 59, s. 21 (4).

Funds, how  
dealt with.

**(2)** All sums so paid over shall be invested by the Public Trustee but subject to withdrawal of any amounts from time to time upon the written requisition of the provincial officer, provided that the provincial officer shall at no time have in his possession or under his control a greater amount than the sum of \$5,000. 1928, c. 28, s. 2 (3).

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