

1950

## c 163 Habeas Corpus Act

Ontario

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## CHAPTER 163

## The Habeas Corpus Act

1.—(1). Where a person, other than a person imprisoned for debt, or by process in any action, or by the judgment, conviction or order of the Supreme Court, court of general sessions of the peace or other court of record is confined or restrained of his liberty, a judge of the Supreme Court, upon complaint made by or on behalf of the person so confined or restrained, if it appears by affidavit that there is reasonable and probable ground for the complaint, shall award a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody or power the person so confined or restrained is, returnable immediately before the judge so awarding the same, or before any judge of the Supreme Court or before the Court of Appeal. R.S.O. 1937, c. 129, s. 1 (1).

In what cases  
*hab. corp. ad  
subjiciendum*  
may be  
awarded,  
and by  
whom.

(2) Notice in writing of every application for a writ of *habeas corpus ad subjiciendum* shall be given to the Attorney-General at least forty-eight hours before the making of the application and the Attorney-General shall be entitled as of right to be heard either in person or by counsel upon the application. 1941, c. 55, s. 13 (1).

Notice of  
application  
for writ of  
*habeas  
corpus.*

(3) Instead of awarding the writ the judge before whom the application is made may direct that the motion for the writ be adjourned to be heard before the Court of Appeal. R.S.O. 1937, c. 129, s. 1 (2).

Order  
adjourning  
motion for  
writ.

2. The writ may be served either personally by actual delivery thereof to the person to whom the same is directed or by leaving it with his servant or agent at the place where the person is so confined or restrained. R.S.O. 1937, c. 129, s. 2.

Service of  
writ.

3. If the person to whom the writ is directed wilfully neglects or refuses to make a return or pay obedience thereto he shall be deemed guilty of contempt of court, and the court or judge, upon proof by affidavit of such wilful neglect, refusal or disobedience, may issue a warrant for apprehending and bringing him before the court or judge to the end that he may be bound to His Majesty with two sufficient sureties in such sum as in the warrant is expressed, conditioned that he will appear on the day named in the warrant to answer the matter of the contempt. R.S.O. 1937, c. 129, s. 3.

Disobedi-  
ence of  
writ.

Committal.

4. In case of neglect or refusal to become bound as aforesaid the court or judge may commit such person to the common jail of the county wherein he resides or may be found, there to remain until he becomes bound as aforesaid, or is discharged by order of the court or a judge, and if he becomes bound the recognizance shall be returned and filed and shall continue in force until the matter of the contempt has been heard and determined, unless sooner ordered by the court to be discharged. R.S.O. 1937, c. 129, s. 4.

Issue of writ of *certiorari*.

5. Where a writ of *habeas corpus* is issued under the authority of this Act or otherwise, the court or judge may direct the issue of a writ of *certiorari* directed to the person by whom or by whose authority any person is confined or restrained of his liberty, or other person having his custody or control, requiring him to certify and return to the court or judge as by the writ may be provided, all the evidence, depositions, conviction and all proceedings had or taken, touching or concerning such confinement or restraint of liberty. R.S.O. 1937, c. 129, s. 5.

Procedure on return of writ.

6. When upon a return to a writ of *habeas corpus* it is alleged that the person is detained by reason of a conviction or order other than a conviction or order of the Supreme Court or other court of record upon the return of the writ of *certiorari*, it shall be the duty of the court or judge to examine and consider the proceedings had and taken to ascertain if the proceedings show that the person restrained has been convicted of any offence against the law and that there is any evidence to sustain the conviction, or that upon the evidence the person accused is guilty of an offence against the law and that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence of which the person accused is guilty, and in such cases to remand the person detained to custody but otherwise to order his discharge. R.S.O. 1937, c. 129, s. 6.

Proceedings for inquiring into the truth of the matters alleged in the return.

7. Although the return to a writ of *habeas corpus* is good and sufficient in law the court or judge before whom the writ is returnable may examine into the truth of the facts set forth in the return, by affidavit or other evidence, and may order and determine touching the discharging, bailing or remanding the person. R.S.O. 1937, c. 129, s. 7.

Appeal from remandment to custody.

8.—(1) Where a person confined or restrained of his liberty is brought before a judge upon a writ of *habeas corpus* and is remanded into custody upon the original order or warrant of commitment or by virtue of any warrant, order or rule

of such judge, such person may appeal from the decision or judgment of the judge to the Court of Appeal, and thereupon the writ of *habeas corpus*, the return thereto, and the affidavits, depositions, evidence, conviction and other proceedings shall be certified by the proper officer to the Court of Appeal.

(2) The Court of Appeal shall thereupon hear and determine the appeal without formal pleadings, and if the court determines that the confinement or restraint is illegal shall so certify to the person having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly. R.S.O. 1937, c. 129, s. 8. Court may order discharge.

9. The provisions of this Act shall extend to all writs of *habeas corpus* awarded in pursuance of the Act passed in England in the 31st year of the reign of King Charles the Second, commonly called *The Habeas Corpus Act*, or otherwise in as ample and beneficial a manner as if such writs and the cases arising thereon had been herein specially named and provided for. R.S.O. 1937, c. 129, s. 9. Application of Act.

(NOTE.—*See 29-30 Vict. c. 45, Canada.*)

10. Subject to the approval of the Lieutenant-Governor in Council, the Rules Committee may make such rules of practice in reference to the proceedings on writs of *habeas corpus* as may seem necessary or expedient. R.S.O. 1937, c. 129, s. 10; 1941, c. 55, s. 13 (2). Power to make rules.

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