

1950

c 102 Deserted Wives' and Children's Maintenance Act

Ontario

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CHAPTER 102

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

1.—(1) Where a wife has been deserted by her husband and information may be laid before a justice of the peace and the justice of the peace may issue a summons against the husband in the form in the Schedule to this Act and if upon the hearing before a magistrate, it appears that the husband has 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 may order him to pay such sum at such intervals as may be deemed proper, having regard to all the circumstances and the order may be in the form in the Schedule to this Act. R.S.O. 1937, c. 211, s. 1 (1); 1950, c. 15, s. 1.

Order for
maintenance
of wife.

(2) A married woman shall be deemed to have been deserted 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 which has not been condoned and which is duly proved, notwithstanding the existence of a separation agreement, providing there has been default thereunder and whether or not the separation agreement contains express provisions excluding the operation of this Act.

Desertion
of wife.

(3) Without restricting in any way the generality of subsection 2, conduct causing reasonable apprehension of bodily injury, or of injury to health, without proof of actual personal violence, which 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.

What may
constitute
cruelty.

(4) No order shall be made in favour of a wife who is proved to have committed adultery unless the adultery has been condoned, and any order may be rescinded upon proof that the wife, since the making thereof, has been guilty of adultery if it has not been condoned.

Cases of
adultery.

Effect of finding of adultery.

(5) A finding by the magistrate that adultery has been proved shall not be evidence of the adultery in any other proceedings. R.S.O. 1937, c. 211, s. 1 (2-5).

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 that the father shall 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 support, but such sum shall not exceed a rate of \$20 a week with or without costs. 1950, c. 15, s. 2.

When child deemed to have been deserted.

(2) 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 16 years and when the father has, without adequate cause, refused or neglected to supply the child with food or other necessaries when able so to do. R.S.O. 1937, c. 211, s. 2 (2).

Custody of child.

(3) The magistrate or judge may in any 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. 1948, c. 26, s. 1.

Contempt of custody orders.

(4) Every person who wilfully resists any provision as to custody and right of access in any order made under this section shall be 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 shall be liable to a penalty of not more than \$100 or to imprisonment for a term of not more than three months, or to both. 1949, c. 27, s. 1.

Order to report to officer.

3.—(1) Where an order for payment of maintenance or support is made under this Act and any person for whose benefit the order is made is a public charge or the judge or magistrate making the order is of opinion that if there is default therein any person is likely to be a public charge, he shall order the person required to make the payments to report to an officer for such period and at such times and places as he may deem necessary and to satisfy such officer that he is complying with the order for payment.

(2) Where a judge or magistrate orders any person to report to an officer under this section he shall designate the officer and may by further order alter such designation. Designation of officer.

(3) In this Act, "officer" means a probation officer appointed under *The Probation Act*, a local superintendent as defined in *The Children's Protection Act* or any other official of the Department of Public Welfare or of any municipality, designated by the Minister. Interpretation. Rev. Stat., cc. 291, 53.

(4) Every person who without reasonable excuse fails to report to an officer as required by this section shall be guilty of an offence and on summary conviction shall be liable to imprisonment for a term of not more than three months. Failure to report to officer.

(5) An order made under this Act certified by the judge or magistrate making it, or a certificate of a judge or magistrate as to the making of an order by him, shall be receivable in evidence as proof of the making of such order in any prosecution under this section without proof of the office or signature of the person certifying. 1942, c. 11, s. 1. Certificate of judge or magistrate.

4. A complaint under this Act may be laid by a deserted wife or child or by a person having the care and custody of a deserted child, or, with the consent of the Crown attorney, by any other person. R.S.O. 1937, c. 211, s. 3. Who may lay complaint.

5. The judge or magistrate may in any order set a time limit, not exceeding 30 days, within which each sum of money ordered to be paid and the costs shall be paid. R.S.O. 1937, c. 211, s. 4. Time limit.

6.—(1) Where a judge is satisfied that, Rehearing of application.

(a) the circumstances of any of the parties have changed since the making of an order; or

(b) evidence has become available which was not available upon the previous hearing,

he may direct a rehearing of the application.

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

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

(a) the judge or magistrate who made the order; or

(b) if such judge or magistrate is dead, ill, or absent from his territorial jurisdiction, any other judge of the juvenile court or magistrate whose jurisdiction in the same locality is such that an information similar to the original information could be laid before him; or

(c) any judge of the juvenile court or magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides. 1950, c. 15, s. 3.

Applications
may be
heard in
private.

7. Any application may be heard by the judge or magistrate in private. R.S.O. 1937, c. 211, s. 6.

Payment of
expenses.

8. 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 complainant is unable to pay such expenses, they may be paid out of such sum as may be appropriated by the Legislature for that purpose. R.S.O. 1937, c. 211, s. 7.

Application
of Rev. Stat.,
c. 379.

9.—(1) Except as otherwise provided, proceedings under this Act shall be in accordance with *The Summary Convictions Act*, and any order for the payment of money made hereunder may be enforced as if it were an order or conviction made under such Act, but imprisonment shall only be ordered under subsection 2 of this section, subsection 4 of section 2, or subsection 4 of section 3. R.S.O. 1937, c. 211, s. 8 (1); 1942, c. 11, s. 2, *amended*.

Enforcement
of order,

(2) Whenever default is made in the payment of any sum of money ordered to be paid the judge of the juvenile court or magistrate who made the order, or any other judge of the juvenile court or magistrate before whom an information similar to the original information could be laid, or any judge of the juvenile court or magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides,

by summons;

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

by warrant
to arrest;

(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 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; or

(c) may, when a warrant has been issued, or where the person in default fails to satisfy the magistrate that such default is due to inability to pay, order and adjudge such person to be imprisoned for a term of not more than 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. 1937, c. 211, s. 8 (2).

(3) Whenever default is made in the payment of any sum of money ordered to be paid, the judge of the juvenile court or magistrate who made the order may 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 matter in the locality in which such person resides, or to any magistrate in or near such locality, and upon receipt thereof the judge of the juvenile court or magistrate, 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 clauses *b* and *c* of subsection 2, and when he has dealt with the matter he shall send a report thereon to the judge of the juvenile court or magistrate who made the order. 1948, c. 26, s. 2.

10. Any order for payment of money may also be filed with the clerk of any division court and enforced by execution and by judgment summons as in the case of a judgment in the division court. R.S.O. 1937, c. 211, s. 9.

SCHEDULE

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT

SUMMONS

(Section 1 (1))

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 Magistrate (or Justice of the Peace, *as the case may be*) for..... for a summons under *The Deserted Wives' and Children's Maintenance Act*, for that you have wilfully refused or neglected to maintain your said wife (or your wife and family, *as the case may be*) or your child, and have deserted your said wife or child. These are, therefore, to command you to appear before the undersigned or such magistrate or justices as may then and there be present in my (or our) stead, 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 said 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 may be considered to be in accordance with your means and with the means of your said wife (or child).

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

J.S.

(L.S.)

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT

ORDER

(Section 1 (1))

County (or District)

of.....

Upon reading the summons dated the..... day of..... 19...., issued by..... Magistrate for the..... (or Justices of the peace for.....), upon the application of C.B., wife or child of A.B., under the provisions of *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 (or we), the undersigned, do hereby order that the said A.B. do pay hereafter to his said 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..... hand and seal..... day of....., 19....

J.S.

(L.S.)