

No. 87

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4th Session, 13th Legislature, Alberta  
6 Elizabeth II, 1958

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## **BILL 87**

**A Bill to Facilitate the Reciprocal Enforcement of  
Maintenance Orders**

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HON. MR. MANNING

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## Explanatory Note

General. This Bill sets forth an Act to facilitate the enforcement of maintenance orders made in reciprocating jurisdictions and vice versa, as revised and approved by the Commissioners on Uniformity of Legislation in Canada in 1956. This Uniform Act was first prepared by the Commissioners in 1946 and was adopted by Alberta in 1947 as The Maintenance Orders (Facilities for Enforcement) Act. The present Act is limited to England and Northern Ireland and other parts of Her Majesty's Dominions and the Republic of Ireland. The main change proposed in this revision is to make the Act applicable to all States that are willing to provide for the reciprocal enforcement of maintenance orders and not just to those listed above. The section references in the explanatory notes are to the corresponding provisions in the present Act; chapter 189 of The Revised Statutes of Alberta, 1955.

2. (a) The present section 2(a).

(b) The present section 2(b) with reference to Alberta courts removed.

(c) The present section 2(c) enlarged by adding the words "is sought".

(d) The present section 2(e).

(e) Replaces a definition referring to any part of Her Majesty's Dominions.

3. (1) Similar to the present section 3(1), but particular references to England and Northern Ireland removed. The maintenance order is to be sent directly to the Attorney General instead of to the Lieutenant Governor for forwarding to the Attorney General as at present. The Lieutenant Governor in Council designates the appropriate court (cf. present section 3(3)).

# BILL

No. 87 of 1958

## An Act to Facilitate the Reciprocal Enforcement of Maintenance Orders

(Assented to \_\_\_\_\_, 1958)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Reciprocal Enforcement of Maintenance Orders Act*".

2. In this Act,

- (a) "certified copy" in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy;
- (b) "court" means an authority having statutory jurisdiction to make maintenance orders;
- (c) "dependant" means a person that a person against whom a maintenance order is sought or has been made is liable to maintain according to the law in force in the place where the maintenance order is sought or was made;
- (d) "maintenance order" means an order, other than an order of affiliation, for the periodical payment of money towards the maintenance of the wife or any other dependant of the person against whom the order was made;
- (e) "reciprocating state" means a jurisdiction declared under section 14 to be a reciprocating state.

### **Enforcement of Maintenance Orders Made in Reciprocating States**

3. (1) Where, either before or after the coming into force of this Act, a maintenance order has been made against a person by a court in a reciprocating state, and a certified copy of the order has been transmitted by the proper officer of the reciprocating state to the Attorney General, the Attorney General shall send a certified copy of the order for registration to the proper officer of a court in Alberta designated by the Lieutenant Governor in Council as a court for the purposes of this section, and on receipt thereof the order shall be registered.

(2) The present section 3(2) reworded.

(3) New. Self-explanatory.

**4.** The present section 4(1) reworded with particular references to England and Northern Ireland removed.

**5.** (1) The present section 5 subsections (1) and (2) combined with particular reference to England and Northern Ireland removed.

(2) The present section 5(3) reworded.

(2) An order registered under subsection (1) has, from the date of its registration, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so registered, and that court has power to enforce the order accordingly.

(3) A maintenance order that makes payable sums of money expressed in a currency other than the currency of Canada shall not be registered under subsection (1) until the court in which it is sought to register the order, or, where that court is a Supreme Court the clerk of that court, has determined the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the order of the court in the reciprocating state, as ascertained from any branch of any chartered bank, and the court or the clerk, as the case may be, shall certify on the order the sums so determined expressed in the currency of Canada and, upon the registration of the order, it shall be deemed to be an order for the payment of the sums so certified.

#### **Maintenance Orders Against Non-Residents**

4. Where, either before or after the coming into force of this Act, a court in Alberta has, on the application of a dependant who is resident in the Province, made a maintenance order against a person and it is proved to the court that the person against whom the order was made is resident in a reciprocating state the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney General for transmission to the proper officer of the reciprocating state.

5. (1) Where an application is made to a court in Alberta by a dependant who is resident in the Province, for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but an order so made is provisional only and has no effect until it is confirmed by a competent court in the reciprocating state.

(2) Where the evidence of a witness who is examined on an application mentioned in subsection (1) is not taken in shorthand, the evidence shall be put into the form of a deposition, and the deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

(3) Where an order has been made pursuant to subsection (1),

(3) (a) The present section 5(5) slightly reworded.

(b) The present section 5(6) slightly reworded to include part of subsection (4).

(4) The present section 5(8) slightly reworded with a particular reference to England and Northern Ireland removed.

(5) The present section 5(9) slightly reworded.

(6) The present section 5(10) but with clause (a) omitted. (See clause 5(7)).

(7) The provision contained in clause (a) of the present section 5(10).

(8) The present section 5(11) slightly reworded.

- (a) the court shall prepare,
  - (i) a statement showing the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing, and
  - (ii) a statement showing the information that the court possesses for facilitating the identification of the person against whom the order was made and ascertaining his whereabouts,
 and
- (b) the court shall send to the Attorney General for transmission to the proper officer of the reciprocating state,
  - (i) a certified copy of the order,
  - (ii) the depositions or a certified copy of the transcript of the evidence, and
  - (iii) the statements referred to in clause (a).

(4) Where a provisional order made under this section has come before a court in a reciprocating state for confirmation, and the order has by that court been remitted to the court in Alberta that made the order for the purpose of taking further evidence, the court in Alberta shall, after giving the notice prescribed by the rules, proceed to take the evidence in like manner, and subject to the like conditions, as the evidence in support of the original application.

(5) Where upon the hearing of the evidence taken under subsection (4) it appears to the court in Alberta that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence, if it was taken in shorthand, shall be sent to the Attorney General and dealt with in like manner as the depositions or transcript of the original evidence.

(6) The confirmation of an order made under this section does not affect any power of the court that originally made the order to vary or rescind the order, but an order varying an original order has no effect until it is confirmed in like manner as the original order.

(7) Where, after an order made under this section is confirmed, the court that originally made the order makes a varying or rescinding order, that court shall send a certified copy thereof, together with the depositions or a certified copy of the transcript of any new evidence adduced before the court, to the Attorney General for transmission to the proper officer of the reciprocating state in which the original order was confirmed.

(8) An applicant for a provisional order under this section has the same right of appeal, if any, against a refusal to make the order as he would have had against a refusal to make a maintenance order if a summons had been duly served on the person against whom the order is sought to be made.

**6.** (1) The present section 6, subsections (1) and (2) combined and slightly reworded. The designation of the proper court by the Lieutenant Governor in Council is new. (See clause 3, subclause (1)).

(2) The present section 6(3) slightly reworded.

(3) The present section 6(4) slightly reworded.

(4) The present section 6(5).

(5) The present section 6, subsections (6) and (7) combined.



**Confirmation of Maintenance Orders Made in  
Reciprocating States**

- 6. (1) Where,**
- (a) a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect until confirmed by a court in Alberta,
  - (b) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is received by the Attorney General, and
  - (c) it appears to the Attorney General that the person against whom the order was made is resident in Alberta,

the Attorney General may send the documents to a court designated by the Lieutenant Governor in Council as a court for the purposes of this section, and upon receipt of the documents the court shall issue a summons calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

(2) At a hearing under this section the person on whom the summons was served may raise any defence that he might have raised in the original proceedings if he had been a party thereto, but no other defence, and the statement from the court that made the provisional order, stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is conclusive evidence that those grounds are grounds on which objection may be taken.

(3) Where, at a hearing under this section, the person who was served with the summons does not appear or, having appeared, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order, either without modification or with such modifications as the court, after hearing the evidence, considers just.

(4) Where the person against whom a summons was issued under this section appears at the hearing and satisfies the court that, for the purpose of any defence, it is necessary to remit the case to the court that made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where, on an application for rescission or variation, the court is satisfied that it is necessary to remit the case

(6) The present section 6(8).

(7) New, but similar in intent to the present section 7(2).

(8) New. Self-explanatory.

**7.** The present section 7(1).

**8.** New, but similar in effect to the present sections 4(2) and 5(7).

**9.** The present section 8.

**10.** The present section 10, subsections (1) and (2) combined with a particular reference to England and Northern Ireland removed.

to the court that made the order for the purpose of taking further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where an order has been confirmed under this section, the person bound thereby has the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order if the order had been an order made by the court confirming the order.

(7) An order confirmed under this section has, from the date of its confirmation, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so confirmed, and that court has power to enforce the order accordingly.

(8) Where an order sought to be confirmed under this section makes payable sums of money expressed in a currency other than the currency of Canada, the confirming court, or where that court is the Supreme Court, the clerk of that court, shall determine the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the provisional order of the court in the reciprocating state, as ascertained from any branch of any chartered bank, and the confirming court or the clerk, as the case may be, shall certify on the order when confirmed the sums so determined expressed in the currency of Canada and the order when confirmed shall be deemed to be an order for the sums so certified.

### **General**

**7.** A court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of the court, shall take all proper steps for enforcing the order.

**8.** Where under this Act a document is sent to the Attorney General for transmission to the proper officer of a reciprocating state, the Attorney General shall transmit the document accordingly.

**9.** The Lieutenant Governor in Council may make rules prescribing the practice and procedure under this Act.

**10.** A document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

**11.** The present section 11 with a particular reference to England and Northern Ireland removed.

**12.** New. Translation of orders in foreign languages provided for.

**13.** New. Self-explanatory.

**14.** (1) The present section 12(1) reworded with references to Her Majesty's Dominions and the Republic of Ireland removed.

(2) New. Self-explanatory.

**11.** Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Act, may be received in evidence before the courts in Alberta under this Act.

**12.** Where a maintenance order sought to be registered or confirmed under this Act is in a language other than the English language the maintenance order or a certified copy thereof shall have attached thereto, for all purposes of this Act, a translation in the English language approved by the court and upon such approval being given the maintenance order shall be deemed to be in the English language.

**13.** Nothing in this Act deprives a person of the right to obtain a maintenance order instead of proceeding under this Act.

**14.** (1) Where the Lieutenant Governor in Council is satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of maintenance orders made within Alberta, the Lieutenant Governor in Council may by order declare it to be a reciprocating state for the purposes of this Act.

(2) The Lieutenant Governor in Council may revoke any order made under subsection (1), and thereupon the jurisdiction with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act.

**15.** This Act shall be so interpreted as to effect its general purpose of making uniform the law of the provinces that enact it.

**16.** *The Maintenance Orders (Facilities for Enforcement) Act*, being chapter 189 of The Revised Statutes of Alberta, 1955, is hereby repealed.

**17.** This Act comes into force on the day upon which it is assented to.

No. 87

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FOURTH SESSION

THIRTEENTH LEGISLATURE

6 ELIZABETH II

1958

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**BILL**

An Act to Facilitate the Reciprocal  
Enforcement of Maintenance  
Orders

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. MANNING

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