

1969 Bill 37

Second Session, 16th Legislature, 18 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 37

**An Act respecting Maintenance and the Recovery
of Public Funds**

THE MINISTER OF SOCIAL DEVELOPMENT

First Reading

Second Reading

Third Reading

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BILL 37

1969

An Act respecting Maintenance and the Recovery of
Public Funds

(Assented to _____, 1969)

HER 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 Maintenance and Recovery Act*.

2. In this Act,

- (a) "Department" means the Department of Social Development;
- (b) "Director" means the Director of Maintenance and Recovery appointed under Part 1;
- (c) "Minister" means the Minister of Social Development.

PART 1

ADMINISTRATION

3. In accordance with *The Public Service Act, 1968* there may be appointed a Director of Maintenance and Recovery who shall administer this Act under the directions of the Minister.

4. (1) The Director may, in writing, authorize any employee of the Department to exercise any powers, duties and functions conferred upon the Director by this Act as specified in the authorization.

(2) Where pursuant to subsection (1), the Director authorizes a person to exercise any power, duty or function of his, any reference in this Act to the Director in connection with that power, duty or function shall be construed as also referring to the person so authorized.

Explanatory Notes

General. This Bill will provide an administrative consolidation (under a Director of Maintenance and Recovery) of procedure for the recovery of maintenance respecting children of unmarried parents and procedure for the recovery of overpayments of aid under The Public Welfare Act.

2. Definitions.

3. Appointment of Director of Maintenance and Recovery.

4. Delegation of functions.

(3) An authorization purported to be given by the Director under this section shall be admitted in evidence as *prima facie* proof of the facts stated therein without proof of the signature or authority of the person signing it.

5. (1) The Minister may make regulations

- (a) governing the duties of the Director and any other employee under this Act,
- (b) prescribing rules under which applications under this Act or any Part thereof are to be made and dealing generally with all matters of procedure under this Act or any Part thereof,
- (c) prescribe forms and provide for their use, and
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act or any Part thereof.

(2) Out of the moneys appropriated by the Legislature for the purpose, the Minister may pay the costs incurred in retaining counsel under section 13 to represent a complainant.

6. (1) In the public interest, any file, document or paper kept by any person

- (a) that deals with the personal history or record of a child or an adult, and
- (b) that has come into existence through any thing done under or pursuant to Part 2,

shall not be disclosed to any person except upon the written consent of the Minister.

(2) No person shall disclose or be compelled to disclose any information obtained by him in the course of the performance of any duties under Part 2,

- (a) except at a trial, hearing or proceedings under Part 2, and
- (b) in any other case, except upon the written consent of the Minister.

(3) Subsections (1) and (2) do not apply to a disclosure

- (a) to any employee of the Department or of any other department or agency of the Government, or
- (b) to any official of a municipal government or of the Government of Canada or of any province or territory of Canada, or an agency thereof, or
- (c) to any person assisting or acting as an agent of the Department,

or to a solicitor acting on behalf of any of them, where the disclosure is made to enable the giving of assistance and information required for the proper administration of Part 2.

5. Regulations.

6. Disclosure of information.

- (4) No person shall publish in any form or by any means
 - (a) the name of a child or his parent concerned in any judicial proceedings under Part 2, or
 - (b) an account of the circumstances brought out at such a judicial proceeding.

(5) Nothing in this section prohibits the Director from publishing notice of hearings or other notices as may be necessary in the interests of justice or for the proper administration of Part 2.

(6) Any person who contravenes this section is guilty of an offence and liable upon summary conviction to a fine of not more than \$100 and in default of payment to a term of imprisonment of not more than 90 days.

PART 2

CHILD WELFARE

7. In this Part,

- (a) “agreement” means an agreement entered into pursuant to section 10, whether or not varied by an order;
- (b) “judge” means
 - (i) a judge of the district court, or
 - (ii) a judge of a Family Court upon whom has been conferred jurisdiction over all or any of the matters under this Part;
- (c) “mother” means
 - (i) a single woman who has been delivered of a child or who is pregnant and likely to be delivered of a child or who was pregnant and the pregnancy terminated without the birth of a child, or
 - (ii) a widow who
 - (A) has been delivered of a child, or
 - (B) is pregnant and likely to be delivered of a child,
12 months or more after the death of her husband, or
 - (iii) a married woman living apart from her husband who
 - (A) has been delivered of a child, or
 - (B) is pregnant and likely to be delivered of a child,

7. Part 2 re-enacts Part 4 of The Child Welfare Act, 1966 with a few minor amendments. The section references in the explanatory notes are to the equivalent sections in The Child Welfare Act, 1966.

12 months or more after she ceased cohabiting with her husband, or

(iv) a woman mentioned in subclause (i), (ii) or (iii) who has married or resumed cohabitation with her husband, and

(A) who may make a complaint or continue proceedings pursuant to section 14, subsection (3), or

(B) who incurred the expenses mentioned in section 21, subsection (1), clause (a) and who married or resumed cohabitation with her husband before the making of an order or the entering into of an agreement,

or

(v) a married woman who has been delivered of a child,

(A) where a person other than her husband admits that he is the father of the child, or

(B) where a court has found that the woman's husband is not the father of the child;

(d) "order" means an order of a judge made pursuant to this Part, whether or not varied by a further order under this Part;

(e) "putative father" means a person alleged to have caused the pregnancy whereby a woman has become a mother within the meaning of this Part.

8. A judge having jurisdiction in the judicial district

(a) where a child was born out of wedlock, or

(b) where a mother resides, or

(c) where a putative father or a person declared to be a father resides,

has jurisdiction under this Part in all matters respecting the child, the mother and the putative or declared father, or any of them.

9. A mother or a person who has the custody of a child born out of wedlock, or who has undertaken the care and maintenance of such a child, or who has supplied a mother or the child with necessities, may apply to the Director for aid and advice in matters pertaining to the child or the pregnancy of the mother and the Director may thereupon take such action as seems to him to be in the best interests of the mother or the child, or both.

10. (1) A putative father may enter into an agreement

(a) with the Director, or

8. Jurisdiction of judge. Section 68.

9. Application for aid. Section 69.

10. Agreement by putative father. Section 70.

(b) with the Director and the mother,
whereby he undertakes to pay the whole or any part of all or any of the expenses referred to in section 21, if the amounts to be paid are acceptable to the Director and if the agreement contains the putative father's admission that he caused or possibly caused the pregnancy of the mother.

(2) A mother may enter into an agreement with the Director whereby she undertakes to pay the whole or any part of any of the expenses referred to in section 21, if the amounts to be paid are acceptable to the Director.

(3) Subsection (2) does not apply with respect to any of the expenses or part of the expenses referred to in section 21, which the putative father

(a) has by an agreement under this Part agreed to pay,
or

(b) has by an order under this Part been ordered to pay.

(4) An agreement under this section may be varied or terminated or reinstated at any time by agreement of the parties thereto.

(5) An agreement between a mother and a putative father of the child,

(a) relating to matters within the scope of this Part,
and

(b) not entered into in accordance with this section,
is not a bar to any proceedings under this Part.

11. (1) Where a woman has become a mother, a complaint may be made against the putative father as hereinafter provided.

(2) Where any one of two or more persons may be the putative father, a complaint may be made against each of those persons.

12. (1) A complaint shall be made before a judge or before any magistrate or before the clerk of a court and shall be in writing and under oath.

(2) Where a complaint is made before a magistrate, he shall forthwith transmit it to a judge with an endorsement thereon to the effect that it is transmitted pursuant to this Part and the judge shall act upon the complaint in the same manner as if it had been made before him.

13. (1) A complaint may be made

(a) by the mother, or

11. Lodging of complaint. Section 71.

12. Manner of lodging complaint. Section 72.

13. Persons who may lodge complaint. Section 73.

(b) by the next friend or guardian of a child born out of wedlock, or

(c) by the Director.

(2) Where a complaint is made by some one other than a person authorized by the Director,

(a) the person instituting the proceedings shall give notice thereof to the Director, and

(b) the Director, or a person authorized by the Director, has the right to appear and intervene and be heard by counsel or otherwise.

(3) If he considers it to be in the public interest to do so, the Director may retain counsel to represent a person who has made a complaint and may do so at any stage of the proceedings.

14. (1) An order may not be made against a putative father unless the complaint is made within his lifetime and

(a) not later than 24 months after the birth of the child or the termination of the pregnancy, or

(b) within the 12 months next after the doing of an act, on the part of the putative father, that could reasonably be regarded as an acknowledgment that he caused or possibly caused the pregnancy, or

(c) within 12 months after the return to Alberta of the putative father where he was absent from Alberta at the expiration of the period of 24 months from the birth of the child or the termination of the pregnancy.

(2) The death of the mother does not bar the making of a complaint or the continuation of any proceedings under this Part commenced before her death.

(3) If the child is retained in her custody and under her care and control,

(a) the marriage of the mother, or

(b) the resumption by the mother of cohabitation with her husband,

does not bar the making of a complaint or the continuation of any proceedings under this Part commenced before the marriage or resumption of cohabitation, as the case may be, but in either case a judge may only make an order if the circumstances are such as would justify the reinstatement of an existing order as provided in section 23.

15. (1) Upon a complaint being made, a judge or a clerk of the court shall issue a summons to the putative father requiring him to appear at the time and place stated in the summons before a judge then present to show cause why an affiliation order should not be made against him.

14. Time limitation. Section 74.

15. Summons to putative father. Section 75.

(2) The judge may determine the manner in which the summons is to be served and may authorize service *ex juris*.

(3) Notwithstanding subsection (1), a judge, upon such evidence as is satisfactory to him, may

- (a) instead of issuing a summons, or
- (b) at any time after the issuance of a summons and before the time fixed for the hearing of the complaint,

issue a warrant for the arrest of the putative father and to have him brought before any judge.

(4) Where a putative father who has been served with a summons or who has been bound over to appear pursuant to subsection (5) does not appear at the time and place stated and no just excuse is offered for his non-appearance, the judge may issue a warrant for the arrest of the putative father to have him brought before any judge.

(5) Where a putative father is brought before a judge upon a warrant, the judge may bind him over to appear at the hearing of the complaint and

- (a) require that a surety or sureties be procured or produced and join the recognizance, or
- (b) require that a sum of money be deposited with the judge sufficient to ensure the appearance of the putative father at the hearing of the complaint, or
- (c) upon being satisfied that the ends of justice would otherwise be defeated, commit the putative father to gaol until the hearing of the complaint.

(6) A judge may

- (a) compel the attendance of any person and require him to give evidence on oath and to produce such documents and things as may be required, and
- (b) exercise the powers that are conferred for these purposes upon a judge of the district court or a magistrate under Part XIX of the *Criminal Code*.

16. (1) Where a putative father

- (a) upon whom a summons has been served, or
- (b) who has given his recognizance to appear,

fails to appear at a hearing of the complaint, the judge, upon the application of the person who made the complaint and after hearing the evidence adduced before him, may make any order that he may have made had the putative father appeared at the hearing.

(2) Where a judge makes an order against a putative father who failed to appear in accordance with his recognizance, the judge may also direct that all or a part of the

16. Failure of putative father to appear. Section 76.

amount of the recognizance be applied in satisfaction of the order or in such other way as the judge may direct.

(3) On the application of a person against whom an order was made pursuant to subsection (1) within 30 days of the making of the order, a judge may, in his discretion, direct a rehearing and may confirm or reverse, and if confirmed vary, any order so made but no costs shall be awarded to the applicant.

17. A judge shall exclude from the room where a complaint is being heard under this Part all persons other than the complainant, the mother, the putative father, any welfare worker connected with the case, the Director or his representative and the counsel and such other persons as the judge in his discretion permits.

18. (1) Where the judge hearing a complaint is satisfied that the putative father caused the pregnancy of the mother, the judge may make an order declaring him to be the father for the purposes of this Part.

(2) Where more than one person is named in complaints as a putative father and if the judge hearing the complaint

(a) is satisfied that the pregnancy of the mother was caused by any one of a number of the persons named as putative fathers, but

(b) is unable to determine which one of that number actually caused the pregnancy,

the judge may make an order declaring all of those persons he is satisfied could have caused the pregnancy to be the father for the purposes of this Part, and the provisions of this Part apply *mutatis mutandis* to each of them.

(3) When the judge hearing a complaint is satisfied that the pregnancy of the mother was caused by any one of a number of persons, including

(a) one or more persons not named in a complaint as a putative father, and

(b) one or more persons named in a complaint as a putative father,

but is unable to determine which of that number actually caused the pregnancy, the judge may make an order under subsection (1) or (2) against the person or persons named in a complaint only, and may, by order, require that person or those persons to pay only a *pro rata* share of the expenses referred to in section 21.

19. (1) An order shall not be made upon the evidence of the mother unless her evidence as to the paternity of the child is corroborated by some other material evidence implicating the putative father.

17. Exclusion from hearing. Section 77.

18. Order declaring paternity. Section 78.

19. Evidence at proceedings. Section 79.

(2) Notwithstanding any other law to the contrary, in all proceedings under this Part a married woman is a competent and compellable witness to testify as to the paternity of her child in respect of whom the proceedings are taken.

(3) Notwithstanding any other Act, a putative father is a competent and compellable witness in proceedings under this Part, and if called as a witness by the applicant he may, without prior notice or payment of conduct money, be cross-examined by or on behalf of the applicant but the applicant is not, by reason only of his being so called, bound by his testimony.

(4) Any testimony given by a putative father when called as a witness by the applicant in proceedings under this Part and which tends to show that he had sexual intercourse with any person is not admissible in evidence against him in any matrimonial cause to which he is a party.

(5) A form of agreement as mentioned in section 10, subsection (1),

(a) purportedly signed by the putative father, and

(b) whether or not it is signed by the Director and the mother, or either of them,

shall be admitted in evidence in any proceedings under this Part as proof of the admissions contained therein, without proof of the signature.

20. (1) Where an order is made under section 18, a judge may, by order, require

(a) the person or persons declared to be the father, and

(b) the mother, if the judge determines that she should contribute toward the expenses,

to pay the whole or any part of all or any of the expenses referred to in section 21 in such proportion as the judge considers just.

(2) Where

(a) no order has been made under section 18 and no agreement by the mother pursuant to section 10 exists, or

(b) an order or agreement exists but does not provide for the payment in full of all or any of the expenses referred to in section 21,

a complaint may be made against the mother and upon the hearing the judge, if he determines that she should contribute toward the expenses may, by order, require her to pay the whole or any part of any of the expenses set out in section 21.

(3) In so far as they are applicable, the provisions of this Part respecting the procedure on complaints against putative fathers apply *mutatis mutandis* to a complaint against a mother under subsection (2).

20. Order for payment of maintenance. Section 80.

(4) At any time after a complaint is made a judge may examine, under oath and as a part of the proceedings, a putative father or a declared father and the mother, as to his or her means.

21. (1) An order or agreement may provide for the payment of the following expenses:

- (a) the reasonable expenses for the maintenance and care, medical and otherwise, of the mother
 - (i) during a period not exceeding three months preceding the birth of the child or the termination of the mother's pregnancy,
 - (ii) at the birth of the child or the termination of the mother's pregnancy, and
 - (iii) during such period after the birth of the child or the termination of the mother's pregnancy as is considered necessary as a consequence of the birth of the child or the termination of the mother's pregnancy;
- (b) a monthly sum of money towards the maintenance and education of the child until the child attains the age of 16 years, or until the child attains the age of 18 years if he is attending school or is mentally or physically incapable of earning his own living;
- (c) the amount necessarily expended upon the care and maintenance of the child or the value of the necessities supplied to the child, as the case may be, before the date of the order or agreement;
- (d) a specified sum of money for the maintenance of the child and the expenses incidental to the providing of care for the child, where the mother wishes to divest herself of her parental responsibilities of the child and the child is made a temporary or permanent ward of the Crown or by instrument of surrender the mother surrenders custody of a child to the Director of Child Welfare for the purposes of adoption;
- (e) the expenses of the burial of the mother if she dies at or in consequence of the birth of the child or the termination of the pregnancy;
- (f) the expenses of the burial of the child if the child dies before the making of the order or agreement;
- (g) the costs of all proceedings taken under this Part.

(2) In determining which amounts and how much of any amount a person is to pay under an order or agreement, consideration shall be given to

- (a) the ability of the mother to provide it, and
- (b) the ability of a person declared to be a father or the putative father, as the case may be, to provide

21. Determining amount of payments. Section 81.

it and at the same time provide for the proper subsistence of his wife and legitimate children, if any, and for the education of the latter.

(3) The amount fixed by an order or agreement for the maintenance of a child shall be such as will enable the child to be maintained at a reasonable standard of living, consideration being given to the probable standard of living the child would have enjoyed had he been born to his parents in lawful wedlock.

(4) An order or agreement may provide that the liability of a person for the amounts referred to in subsection (1) will be finally satisfied upon the payment of a specified sum, although by the terms of the order or agreement the specified sum is payable in periodic instalments.

(5) Where any of the expenses mentioned in subsection (1) have been paid or may be paid from public funds,

(a) the Minister may specify the amount of money that will satisfy the claim of the Province, and

(b) an affidavit of the Accountant, Assistant Accountant or a Supervisor of the Department stating the amount of money paid by or the amount of money that will satisfy the claim of the Province, shall be admitted in evidence as *prima facie* proof of the facts stated therein, without proof of the authority or signature of the person swearing the affidavit.

22. (1) From time to time an application to vary an order or agreement may be made to a judge by

(a) a person required to make a payment under the order or agreement, or

(b) the mother of the child, or

(c) the next friend or guardian of the child, or

(d) the Director.

(2) Upon such proof as he considers satisfactory

(a) that there has been a substantial alteration in respect of

(i) the means of either parent, or

(ii) the needs of the child, or

(iii) the cost of living since the making of the order or agreement or the latest subsequent order varying either an order or an agreement,

or

(b) that the father named in the order or agreement is, owing to the terms of the order or agreement, unable to provide the proper subsistence for his wife and legitimate children, if any, and for the education of the latter,

22. Application to vary order. Section 82.

a judge may vary the original order or agreement, or subsequent order so made.

(3) Except with respect to an application by the Director, an order under this section may not vary the total amount of the specified sum to be paid under an order or agreement by which liability is to be finally satisfied upon the payment of a specified sum.

23. (1) The provisions in an order or agreement for payment of a monthly sum towards the maintenance and education of a child terminate

- (a) on the death or adoption of the child, or
- (b) on the marriage of the mother when the child is retained in her custody and under her care and control, or
- (c) in the case of a mother who was a married woman living apart from her husband, on the resumption of cohabitation with her husband when the child is retained in her custody and under her care and control.

(2) Notwithstanding subsection (1), after

- (a) the marriage of a mother, or
- (b) the resumption of cohabitation with her husband by a mother,

who has retained the child in her custody and under her care and control an application may be made to a judge to reinstate or to reinstate and vary the provisions of an order or agreement terminated pursuant to subsection (1).

(3) Where

- (a) a mother marries, or
- (b) a mother resumes cohabitation with her husband,

and the child was not retained or at any time thereafter ceased to be retained in her custody or under her care and control, an application may be made to a judge to terminate or vary the provisions of an order or agreement requiring the payment of a monthly sum towards the maintenance and education of the child.

(4) At any time after an order is made under this section a further application may be made to a judge to vary or terminate that order.

(5) An application under this section may be made by any of the persons mentioned in section 22, subsection (1).

(6) Upon an application being made under this section a judge may make such order as he considers to be in the best interests of the child, consideration being given to the provisions of section 21, subsections (2) and (3), of section 22, subsection (2) and of this section.

23. Termination of order. Section 83.

(7) This section does not apply to an order or an agreement by which liability is to be finally satisfied upon the payment of a specified sum.

24. (1) Where an order is made or varied, the judge may, after inquiry into the means of the person against whom the order is made, require him to furnish such security for the future performance of the provisions of the order as the judge directs.

(2) If the person against whom the order is made fails to furnish the security required, the judge may forthwith commit him to gaol there to be imprisoned for a term of not more than 12 months or until he furnishes the security and pays the costs and charges of commitment and of conveying him to gaol.

25. (1) Any amount to be paid under an order or agreement shall be paid to the Director or to such person as the Director directs.

(2) The Director shall ensure that the moneys collected under an order or agreement are paid out and applied for the purposes specified in the order or agreement, but

(a) the Director may cause any of the moneys to be paid out in such amounts and at such times as the Director considers reasonable, and

(b) where any public funds have been or are being spent on any of the expenses mentioned in section 21, the Director may pay into the General Revenue Fund a like amount collected under the order or agreement.

(3) Where funds have been paid under an order or agreement to the Director and the Director is unable to pay out the funds for the purpose intended due to the death of the child or other reason, the funds remaining in the hands of the Director shall, in his discretion, be repaid to the person who paid the money or forfeited to the Crown, unless otherwise ordered by a judge.

(4) Where under an agreement funds have been paid or are to be paid to the Director and the Director determines that the amount paid or to be paid is in excess of the amount of the expenses for which the funds were intended the Director may, in his discretion,

(a) repay any excess funds remaining to the person from whom the money was received, or

(b) release his claim against the excess amount agreed to be paid.

26. (1) The Director shall take such action as he considers necessary to collect any moneys payable under an

24. Security for payments. Section 84.

25. Disposition of payments. Section 85.

26. Enforcement of payments. Section 86.

order or an agreement, including the taking of proceedings for the enforcement of the order or agreement and the realizing upon any security given by the person against whom an order was made.

(2) Proceedings for the enforcement of the order or agreement may be taken by the Director in accordance with *The Alimony Orders Enforcement Act*, and for the purposes of that Act an agreement is deemed to be an order.

(3) In any proceedings for the enforcement of an order or agreement an affidavit of the Accountant or Assistant Accountant or a Supervisor of the Department

(a) stating there is a default in payment by the persons against whom the proceedings are brought, and

(b) stating the amount of the default,

shall be admitted in evidence as *prima facie* proof of the facts stated therein, without proof of the authority or signature of the person swearing the affidavit.

(4) In addition to the powers he may exercise under *The Alimony Orders Enforcement Act*, a judge, if he is satisfied

(a) that a person required to make a payment under the order or agreement has the means to comply with the terms of the order or agreement, and

(b) that no application to vary the terms of the order or agreement is being heard,

may order that in default of payment of a specified sum on or before a specified date the person be committed to gaol there to be imprisoned for a term of not more than 90 days or until he pays the amount set out in the order and pays the charges of commitment and conveying him to gaol.

(5) An order or agreement may be registered in any land titles office and the registration so long as the order or agreement remains in force

(a) binds the estate and interest of every description that the person required to make a payment thereunder has in any lands in the land registration district where the registration is made, and

(b) operates thereon in the same manner and with the same effect as a registration of a charge by the person required to make a payment thereunder of a life annuity on his lands.

(6) For the purpose of enforcing an order or an agreement, a magistrate, on the application of the Director, may issue a summons to a person required to make a payment under the order or agreement, and section 3, subsections (2) and (3) and sections 4 to 14 of *The Alimony Orders Enforcement Act* apply *mutatis mutandis* to the proceedings except that a magistrate may not rescind or vary the order or the agreement.

27. (1) An order made against a declared father or an agreement entered into by a putative father binds his estate after his death, and each sum payable thereunder is a debt due from and chargeable upon the estate of the father and recoverable at the suit of the Director.

(2) Notwithstanding subsection (1), an order or agreement is, with respect to any payment falling due before or after a declared or putative father's death, subject to review as provided in sections 22 and 23.

(3) After the death of a declared or putative father no action or other proceedings shall be taken against his estate on the order or agreement without the leave of a judge granted on notice to the widow and legitimate children of the father, except those children who are under the care of and living with the widow.

(4) Where it appears to a judge that the terms of the order or agreement cannot be carried out without depriving the widow or legitimate children of a declared or putative father of proper subsistence and education, the judge shall vary the order or agreement to such an extent and in such manner that the widow of the father and his children born in wedlock, if any, will be properly provided for before a child born out of wedlock.

28. (1) Upon the failure on the part of a putative father to comply with the terms of an agreement with respect to the making of payments for maintenance and when the putative father is outside Alberta, the Director may apply to a judge for an order against the putative father with respect to payments in arrears and terms of payment in the future.

(2) The judge shall issue a notice to the putative father in which he shall set out the facts of the application and the date and time at which the application will be heard.

(3) The judge may direct the manner in which the notice is to be served and, in the absence of direction, service of the notice on the putative father by double registered mail mailed not less than 20 days prior to the date of the hearing is sufficient service.

(4) On the date set for the hearing the judge, upon receiving satisfactory proof of service may, in the presence of or in the absence of the putative father, make an order concerning the payment of any maintenance payments due at the date of the hearing and setting out terms of future maintenance payments consistent with the terms of the agreement.

29. (1) Every complaint and every order made shall be filed with the clerk of the court, who shall keep a record thereof in the same manner as he is required to do in connection with civil proceedings or in such other manner as may be provided by the regulations.

27. Liability of estate. Section 87.

28. Enforcement of order in other jurisdictions. Section 88.

29. Record of proceedings. Section 89.

(2) The clerk of the court shall forthwith transmit a certified copy of every order filed with him to the Director.

30. Where an order has been made or an application for an order has been dismissed, a judge may, on the discovery of new evidence or of fraud, grant leave to reopen and may reopen and consider a previous decision.

31. All the provisions of this Part are applicable for or against a mother or a putative or declared father even though under the age of 21 years, but a judge in his discretion may appoint the Public Trustee or other person to safeguard his or her interests before the court.

32. Nothing in this Part takes away or abridges any right of action or remedy which without this Part might have been maintained against the father of a child born out of wedlock.

PART 3

PUBLIC WELFARE

33. In this Part,

- (a) "agreement" means an agreement entered into pursuant to section 35, whether or not varied by any order;
- (b) "application for aid" means the information set out in the application for social allowance and budget and decision forms completed by or on behalf of the recipient from time to time;
- (c) "judge" means a judge of the district court;
- (d) "order" means an order of a judge made pursuant to this Part, whether or not varied by a further order under this Part;
- (e) "overpayment" means an amount, as determined by the authority giving the aid, by which the aid received by a person under *The Public Welfare Act* exceeds the amount of aid he was actually entitled to receive.

34. A judge having jurisdiction in the judicial district

- (a) where the recipient of an overpayment resides, or
- (b) where the aid is or has been issued,

has jurisdiction under this Part.

30. New evidence. Section 90.

31. Persons under 21. Section 91.

32. Protection of other remedies. Section 92.

33. Definitions.

34. Jurisdiction of judge.

35. (1) A person who has received an overpayment may enter into an agreement with the Director whereby the recipient undertakes to repay to the Province the whole or any part of the overpayment in such manner as may be agreed upon.

(2) An agreement may be varied at any time by agreement of the parties thereto.

(3) An agreement is not a bar to any proceedings under this Part.

36. Where the Director has reason to believe that a person has received an overpayment, a complaint may be made against the recipient as hereinafter provided for the recovery of the overpayment.

37. (1) An agreement under section 35 or a complaint under section 36 may include the amount of any overpayment made to the recipient by a municipality.

(2) From any amount recovered under subsection (1), the Province may retain the amount of the grant paid under section 38 of *The Public Welfare Act* in respect of the overpayment, and the balance shall be paid to the municipality which made the overpayment.

38. A complaint shall be made before a judge and shall be in writing and under oath.

39. (1) Upon a complaint being made, a judge shall issue a summons to the recipient requiring him to appear at a time and place stated in the summons before a judge then present to show cause why an order requiring the repayment of the overpayment complained of should not be made.

(2) The judge may determine the manner in which the summons is to be served and may authorize service *ex juris*.

(3) A judge may

(a) compel the attendance of any person and require him to give evidence on oath and to produce such documents and things as may be required, and

(b) exercise the powers that are conferred for those purposes upon a judge of the district court or a magistrate under Part XIX of the *Criminal Code*.

40. (1) Where a recipient upon whom a summons has been served fails to appear at a hearing of the complaint, a judge

(a) upon the application of the Director, and

35. Agreement to repay overpayment.

36. Lodging of complaint.

37. Recovery of overpayment of municipal aid.

38. Manner of lodging complaint.

39. Issue of summons.

40. Failure to appear in answer to summons.

(b) after hearing the evidence adduced before him, may make any order that he might have made had the recipient appeared at the hearing.

(2) On the application of a person against whom an order was made pursuant to subsection (1) within 30 days of the making of the order, a judge may, in his discretion, direct a rehearing and may confirm or reverse, and if confirmed vary, any order so made but no costs shall be awarded to the applicant.

41. (1) Without prior notice or payment of conduct money, and notwithstanding any law to the contrary, a recipient is a competent and compellable witness in proceedings under this Part and if called as a witness by the Director he may be cross-examined by or on behalf of the Director, but the Director is not by reason only of his being so called bound by the recipient's testimony.

(2) A form of agreement, whether or not it is signed by the Director, shall be admitted in evidence in any proceedings under this Part as proof of the admissions contained therein, without proof of signature.

(3) In any proceedings under this Part an affidavit and the exhibits thereto of the Accountant or Assistant Accountant or a Supervisor of the Department, shall be admitted in evidence as *prima facie* proof of the facts stated therein, without proof of the authority or signature of the person swearing the affidavit.

(4) The affidavit referred to in subsection (3) may be sworn on information and belief and the deponent is not required to disclose the source of information.

(5) Notwithstanding any other law to the contrary, in all proceedings under this Part the spouse of the recipient is a competent and compellable witness.

42. (1) Where the judge hearing a complaint is satisfied that an overpayment has been made, he shall make an order fixing the amount of the overpayment and ordering the manner in which the overpayment is to be repaid.

(2) At any time after a complaint is made a judge may examine, under oath and as part of the proceedings, a recipient as to his or her means.

(3) An order may provide for the costs of all proceedings taken under this Part.

43. An application to vary an order or agreement may be made from time to time to a judge by the Director or the recipient and, upon such proof as he considers satisfactory, a judge may vary the order or agreement or subsequent order so made.

41. Proving overpayment.

42. Order for payment.

43. Variation of order.

44. (1) Where an order is made or varied, the judge may after inquiry into the means of the person against whom the order is made, require him to furnish such security for the future performance of the provisions of the order as the judge directs.

(2) If the person against whom the order is made fails to furnish the security required, the judge may forthwith commit him to gaol therein to be imprisoned for a term of not more than 12 months or until he furnishes the security and pays the costs and charges of commitment and of conveying him to gaol.

45. Any amount to be paid under an order or agreement shall be paid to the Director or to such person as the Director directs.

46. (1) The Director shall take such action as he considers necessary to collect any moneys payable under an order or agreement, and where the person who has been ordered or who has agreed to pay any money has not paid any or all of the sums payable, the Director may procure a summons from the clerk of the district court of the district in which the person named in the order or agreement resides or carries on business, or in the Judicial District of Edmonton.

(2) The summons shall require the person named in the order or agreement to appear before a judge at a time and place within the judicial district therein named, for the purpose of

(a) being examined on oath touching his estate, effects and resources, and in particular

(i) the means or ability he has of complying with the order or agreement,

(ii) the disposal he has made of any property since the date upon which the proceedings were commenced in which the order was made or the date on which the agreement was made, and

(iii) any and what debts are owing to him,
and

(b) showing cause why he should not be committed to gaol on the ground that his failure to comply with the order or agreement is or was wilful.

(3) The summons shall be served personally upon the person named in the order or agreement or in such manner as a judge may direct.

(4) At the time and place mentioned in the summons (or at any other date appointed by a judge on adjournment), the judge shall inquire into

44. Security for payment may be required.

45. Payment.

46. Enforcement of order or agreement.

- (a) the resources of the person named in the order or agreement,
- (b) his means and ability to comply with the order or agreement,
- (c) the disposal he has made of any property since the order or agreement was made,
- (d) any and what debts are owing to him, and
- (e) the circumstances under which he has made default in complying with the order or agreement,

and for that purpose may examine on oath any person representing the Director and the person named in the order or agreement and any witness produced on behalf of either of them.

(5) Where a person named in the order or agreement does not attend for examination in obedience to the summons, and good and sufficient reason for his non-attendance is not shown, a judge may forthwith issue his warrant for procuring the apprehension and the production of the person named in the order or agreement before any judge.

47. (1) A judge may by order commit the person named in the order or agreement to a gaol for a period of not more than one year

- (a) if the person named in the order or agreement refuses to submit himself to examination in obedience to the summons, or
- (b) if the person named in the order or agreement does not answer to the satisfaction of the judge with respect to a matter on which the person named in the order or agreement is required to be examined, or
- (c) if the judge is satisfied as a result of the examination of a witness produced
 - (i) the person named in the order or agreement has made or caused to be made a gift, delivery or transfer of property or has removed or concealed the property with intent to avoid compliance with the order or agreement, or
 - (ii) the person named in the order or agreement has or has had sufficient means or ability or resources with which to comply with the order or agreement either wholly or in part and when proceedings to obtain the order were begun against him or since the order was obtained against him, or since the making of the agreement, as the case may be, has refused or neglected to pay the amount ordered or agreed to be paid, either wholly or in part, at the time and in the manner ordered or agreed.

47. Order of commitment.

(2) When an order of commitment has been made the clerk of the court shall issue a warrant of commitment, directed to a peace officer who may by virtue thereof arrest the person against whom it is issued.

48. (1) Peace officers shall, within their respective jurisdictions, aid in the execution of each warrant of commitment referred to in section 47.

(2) The gaoler or keeper of a gaol shall receive and keep therein the person named in the order in respect of whom a warrant of commitment is produced until that person named in the order is discharged under this Part or otherwise by due course of law.

49. (1) A person who fails to attend as required by a summons issued under this Part shall not be committed to gaol for the non-attendance unless the judge is satisfied that the non-attendance is wilful or that that person has failed to attend after being twice summoned.

(2) If, at a hearing,

(a) it appears to the judge upon examination or otherwise that the person ought not to have been summoned, or

(b) the person who obtained the summons does not appear,

the judge may award to the person summoned such witness fees as may be allowed to a witness in an ordinary action under the Alberta Rules of Court, to be recovered against the person who obtained the summons in the same manner as any other judgment of the court.

(3) In the case referred to in subsection (2) the person who obtained the summons shall also pay the costs of the summons and the subsequent proceedings thereon, to be recovered as the judge directs.

50. A person imprisoned under this Part who complies with the terms of the order for payment and also pays

(a) the costs remaining due when the order for imprisonment was made,

(b) the costs of obtaining the order for imprisonment, and

(c) all subsequent costs,

upon a certificate of satisfaction signed by the clerk of the court from which the order issued, or by leave of a judge on the same grounds or any other grounds the judge thinks sufficient, shall be discharged out of custody.

51. The judge before whom a summons is heard may

48. Enforcing order.

49. Failure to appear on summons.

50. Compliance by person committed.

51. Variation of orders and agreements.

- (a) rescind or alter an agreement or order for payment previously made by or against the person named in the order, and
- (b) make a further or other order for the payment of a sum due under the agreement or order for payment and for all costs, either forthwith or by instalments, or in any other manner that he thinks reasonable and just.

52. No imprisonment under this Part

- (a) impairs an order for payment of money, or
- (b) extinguishes the cause of action on which the order has been obtained, or
- (c) deprives the person obtaining the order of any right to take out execution against the person named in the order.

53. An order made against a recipient or an agreement entered into by a recipient binds his estate after his death, and each sum payable thereunder is a debt due from and chargeable upon the estate of the recipient and recoverable at the suit of the Director.

54. A person who, for the purpose of obtaining aid or causing aid to be obtained for himself or for any other person under *The Public Welfare Act*, knowingly

- (a) gives false information, or
- (b) conceals information, or
- (c) omits to provide or disclose information,

is guilty of an offence and liable on summary conviction

- (d) to a fine of not more than \$1,000 and in default of payment to imprisonment for a term not exceeding one year, or
- (e) to imprisonment for a term not exceeding one year.

55. (1) A person who applies for or is receiving aid under *The Public Welfare Act* may be required by the Minister to give an undertaking in the form of an agreement with the Director to repay to the Province the total value of aid provided for himself and his dependants.

(2) The provisions of this Part apply to an agreement made under subsection (1) as if the amount due under the agreement were an overpayment.

56. (1) Where the parents of a child fail to provide adequate maintenance for their dependent child for whom aid is being or has been paid under *The Public Welfare Act*,

52. Effect of imprisonment.

53. Effect of order or agreement.

54. Offence.

55. Section 29 of The Public Welfare Act presently reads:

29. A destitute employable person who has applied for or is in receipt of any material aid from a municipality or from the Department may be required to give an undertaking to the municipality or the Department to repay the total value of the material aid provided for himself and his dependants.

56. Recovery of aid to dependent children.

either or both parents may enter into an agreement with the Director to pay maintenance for the child in a manner agreed upon.

(2) If no agreement to pay is entered into by a parent or upon the failure of a parent to comply with the terms of an agreement, the Director may make an application to a magistrate for an order for maintenance and sections 27 to 30 of *The Domestic Relations Act* apply *mutatis mutandis* and all proceedings shall be conducted in the same manner and to the same effect as if the application in respect of maintenance were made by a wife where the application is restricted to the maintenance of a child.

57. A judge, in any hearing under this Part, may consider the terms of any agreement in effect prior to or after the coming into force of this Act, made between the recipient or other person and an official of the Department.

58. (1) Where a social allowance is provided under *The Public Welfare Act* to meet the payments of a land mortgage or an agreement for the sale of land, the Minister may cause a caveat in a form prescribed by him to be registered in the land titles office against the certificate of title for the land.

(2) On the registration of the caveat, the Minister has a charge on the land equal to the amount by which the principle sum of the mortgage or agreement for sale has been reduced since payments as mentioned in subsection (1) were commenced.

(3) On receiving the caveat, the Registrar shall send a notice of the caveat to

(a) the mortgagor, where payments are made for a mortgage, and

(b) the purchaser, where payments are made under an agreement for sale provided that the purchaser's address may be ascertained from the certificate of title.

(4) Notwithstanding section 144 of *The Land Titles Act*, a caveat registered pursuant to this section does not lapse and shall not be cancelled or withdrawn except on the Minister's request to withdraw the caveat.

(5) No fees are payable to the Registrar for the registration or withdrawal of a caveat under this section.

(6) The Minister may waive the rights given by this section, in whole or in part, for the purpose of any proceedings or for any other reason he thinks is proper.

59. (1) *The Child Welfare Act, 1966* is amended

57. Agreements to be considered.

58. Caveat against title. Replaces section 48a of The Public Welfare Act.

59. Consequential amendments.

- (a) as to section 10, clause (d) by striking out the words "or under section 73 to represent a complainant",
- (b) as to section 24 by striking out subsection (5) and by substituting the following:
 - (5) For the purpose of enforcing an order made under subsection (2) a judge of the juvenile court, on the application of
 - (a) the Director, or
 - (b) the Director of Maintenance and Recovery, may issue a summons to any person against whom the order was made, and subsections (2) and (3) of section 3 and sections 4 to 14 of *The Alimony Orders Enforcement Act* apply *mutatis mutandis* to the proceedings.
- (c) by striking out Part 4, and all agreements, complaints and orders given, made or ordered under Part 4 continue in force as if made under this Act and all proceedings pending under Part 4 may be continued under this Act as if commenced under this Act.
- (2) *The Family Court Act* is amended as to section 4 by adding the following after clause (d) :
 - (d1) proceedings under Part 2 of *The Maintenance and Recovery Act*,
- (3) *The Vital Statistics Act, 1959* is amended as to section 30a by striking out the words "Child Welfare" wherever they occur and by substituting the words "Maintenance and Recovery".
- (4) *The Public Welfare Act* is amended
 - (a) as to section 29 by striking out the words "or from the Department" and the words "or the Department",
 - (b) by striking out section 48a.

60. This Act comes into force on May 1, 1969.

