

1971 Bill 43

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Fourth Session, 16th Legislature, 20 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 43**

**An Act to amend The Maintenance and Recovery Act**

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THE MINISTER OF SOCIAL DEVELOPMENT

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 43

1971

## AN ACT TO AMEND THE MAINTENANCE AND RECOVERY ACT

(Assented to \_\_\_\_\_, 1971)

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

1. *The Maintenance and Recovery Act is hereby amended.*

2. *The following section is added after section 2:*

**2.1** All the provisions of this Act are applicable for or against any person even though he is not an adult, but a judge of a district court may, in his discretion, appoint the Public Trustee or other person to safeguard a minor's interests before the court.

3. *Section 6 is amended by striking out the words "Part 2" wherever they occur and by substituting the words "Parts 2, 3 or 4".*

4. *Section 13 is amended*

(a) *by striking out subsection (2),*

(b) *by adding the following subsection after subsection (3):*

(4) Where a complaint is made and the Director does not retain counsel to represent a person who has made a complaint

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

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

5. *Section 19 is amended*

(a) *as to subsection (3) by adding the word "all" before the word "proceedings",*

(b) *as to subsections (3) and (4) by striking out the word "applicant" wherever it occurs and by substituting the word "complainant".*

## Explanatory Notes

**1.** This Bill amends chapter 223 of the Revised Statutes of Alberta 1970.

**2.** The present section 31 is re-enacted and made applicable to the whole Act instead of only Part 2.

**3.** The amendment adds Parts 3 and 4 to the non-disclosure of information except by consent of the Minister.

**4.** Section 13, subsection (2) presently reads:

(2) Where a complaint is made by someone 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 by counsel or otherwise and be heard.

**5.** (a) The word "all" is added to make subsection (3) conform with subsection (2).

(b) The Act refers to a complainant as being the person who lodges a complaint and not the applicant.

6. *Section 20 is amended by adding the following subsection after subsection (4):*

(5) Where an order is made under this section, certified copies of the order shall be served on the mother and the putative father and the judge may authorize service ex juris.

7. *Section 23 is amended by adding the following subsection after subsection (1):*

(1.1) Where the order or agreement has terminated under subsection (1)

(a) the mother of the child shall notify the Director by registered mail within 30 days of the date of termination, and

(b) the Director is not responsible for repayment of any money disbursed by him during the period from the termination of the order or agreement to the time the notice of termination is received.

8. *Section 26 is amended by striking out subsections (1), (2), (3), (4) and (6).*

9. *Section 28, subsection (4) is amended by striking out the words "the judge" and by substituting the words "a judge".*

10. *Section 31 is struck out.*

11. *Section 39 is amended by striking out subsection (2) and by substituting the following:*

(2) Unless a judge otherwise directs the summons shall be served personally and a judge may authorize service ex juris.

12. *Sections 46 to 52 are struck out and the following sections are substituted:*

**46.** (1) Upon the failure of a recipient who is outside Alberta to comply with the terms of an agreement, the Director may apply to a judge for an order against the recipient with respect to payments in arrears and terms of payment in the future.

(2) The judge shall issue a notice to the recipient setting out the grounds of the application and the date and time at which the application will be heard.

**6.** The amendment provides for service of copies of the court order for payment of maintenance.

**7.** To provide that the Director be notified of any changes that terminate the order or agreement and to protect the Director if money is disbursed under a terminated order or agreement.

**8.** The provisions being struck out relate to the enforcement of orders and agreements respecting the maintenance of children of unmarried parents. They are re-enacted in the new Part 4 of the Act which is being added by this Bill.

**9.** Section 28, subsection (4) presently reads:

(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.

**10.** See section 2 of this Bill.

**11.** Subsection (2) presently reads:

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

**12.** The sections being struck out relate to the enforcement of orders and agreements for the recovery of overpayments of social allowances. They are re-enacted in the new Part 4 of the Act which is being added by this Bill. The section being added is similar to section 28 in Part 2 dealing with maintenance and putative fathers. The new section provides for the registration in the land titles office of an order or agreement and is similar to section 26(5) in Part 2 as it presently reads.

(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 recipient 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 recipient, make an order concerning the payment of any arrears due under the agreement at the date of the hearing and setting out terms of future payments consistent with the terms of the agreement.

**47.** 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.

*13. Section 56 is amended by adding the following subsection after subsection (2):*

(3) Where no agreement to pay is entered into by a parent and the parent is resident outside Alberta, the Director may, on behalf of the dependent child apply under section 5 of The Reciprocal Enforcement of Maintenance Orders Act for a provisional maintenance order against that parent.

*14. The following Part is added after section 58:*

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#### **PART 4**

#### **ENFORCEMENT**

**59.** In this Part,

- (a) "judge" means a judge of a district court;
- (b) "order" means an order of a judge made pursuant to Part 2 or 3 of this Act, or Part 4 of The Child Welfare Act, 1966 or Part 3 of chapter 39 of the Revised Statutes of Alberta, 1955 or section 5 of The Reciprocal Enforcement of Maintenance Orders Act, whether or not varied by a further order;

**13. Section 56, subsection (1) presently reads:**

56. (1) Where the parents of a child fail to provide adequate maintenance for their dependent child for whom a social allowance is being or has been paid under The Social Development Act, either or both parents may enter into an agreement with the Director to pay maintenance for the child in a manner agreed upon.

**14. Part 4 sets out provisions under which the Director can enforce orders and agreements made under Parts 2 and 3.**

- (c) "agreement" means an agreement entered into pursuant to section 10, 35 or 56 of this Act, or Part 4 of The Child Welfare Act, 1966 or Part 3 of chapter 39 of the Revised Statutes of Alberta, 1955, whether or not varied by an order.

**60.** The Director shall take such action as he considers necessary to collect any moneys payable under an 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.

**61.** (1) 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 in the Judicial District of Edmonton or from the clerk of the district court in the district in which the person named in the order or agreement resides or carries on business.

(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) what debts are owing to him,and
- (b) showing cause why he should not be committed to jail 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.

**62.** (1) At the time and place mentioned in the summons (or at any other date appointed by a judge on adjournment), the judge shall enquire into

- (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) 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.

(2) 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.

(3) Where the person named in the order or agreement is brought before a judge upon a warrant, the judge may order that the person be admitted to bail.

**63.** (1) Without prior notice or payment of conduct money, and notwithstanding any law to the contrary, a person named in an order or agreement 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 the recipient being so called bound by the recipient's testimony.

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

(3) In any proceedings for the enforcement of an order or agreement an affidavit of the accountant, assistant accountant or a supervisor of the Department

- (a) stating there is a default in payment by the person 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 appointment or signature of the person swearing the affidavit.

**64.** All proceedings under this Part shall be held in camera and no person shall be allowed to be present thereat other than the person named in the order or agreement, 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.



**65.** (1) A judge may by order commit the person named in the order or agreement to a jail 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) that 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.

(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.

**66.** (1) Peace officers shall, within their respective jurisdictions, aid in the execution of each warrant of commitment referred to in section 65.

(2) The jailer or keeper of a jail 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.

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



**68.** A person imprisoned under this Part who complies with the terms of the order or agreement 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.

**69.** The judge before whom a summons is heard may

- (a) rescind or alter an agreement or order for payment previously made by or against the person named in the order,
- (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, and
- (c) order that in default of payment of a specified sum on or before a specified date the person be committed to jail there to be imprisoned for a term of not more than 90 days or until he sooner pays the amount set out in the order and pays the charges of commitment and conveying him to jail.

**70.** 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.

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

