

1977 BILL 86

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 86

**THE DOMESTIC RELATIONS
AMENDMENT ACT, 1977**

MR. ASHTON

First Reading

Second Reading

Third Reading

Bill 86
Mr. Ashton

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1977

THE DOMESTIC RELATIONS AMENDMENT ACT, 1977

(Assented to _____, 1977)

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

1 *The Domestic Relations Act is amended by this Act.*

2 *Part 4 is amended by striking out “magistrate” wherever it occurs and substituting “provincial judge”.*

3 *The following section is added before section 27:*

26.1 This Part applies to judgments or orders for the payment of maintenance or alimony or both

(a) of the Supreme Court of Alberta under the *Divorce Act* (Canada), this Act or any other Act;

(b) of a provincial judge.

4 *Section 27(1) to (7) is repealed and the following substituted:*

27(1) A married person is deemed to have been deserted within the meaning of this Part when he is, in fact,

(a) deserted by his spouse, or

(b) living apart from his spouse,

whether on account of cruelty on the part of the spouse or on account of the refusal or neglect by the spouse without sufficient cause to supply him with food and other necessities when able to do so.

(2) A married person deserted by his spouse may apply, by an affidavit setting forth facts material to the application, to

Explanatory Notes

1 This Bill will amend chapter 113 of the Revised Statutes of Alberta 1970.

2 Consequential amendment. A magistrate is now called a provincial judge.

3 The enforcement provisions of this Part apply to all maintenance or alimony orders.

4 Section 27(1) to (7) now read:

27(1) A married woman shall be deemed to have been deserted within the meaning of this Part, when she is, in fact, deserted by her husband, or living apart from her husband, whether on account of cruelty on the part of the husband, or on account of the refusal or neglect by the husband without sufficient cause to supply her with food and other necessaries when able to do so.

(2) A married woman deserted by her husband may apply in person and by a supporting affidavit setting forth facts material to her application to a justice of the peace who, on being satisfied that her husband has neglected or refused without sufficient cause to provide reasonable maintenance for his wife or his wife and children, and has deserted her, may summons the husband to appear before a magistrate.

(3) Upon the husband appearing before the magistrate, the magistrate shall advise the husband of the contents of the supporting affidavit and shall ask the

a justice of the peace who, on being satisfied that the spouse has neglected or refused without sufficient cause to provide reasonable maintenance for the applicant or the applicant and their children, and has deserted him, may summons the spouse to appear before a provincial judge.

(3) Upon the spouse appearing before a provincial judge, the judge shall ask the spouse whether or not he accepts liability for the maintenance of the applicant or the applicant and their children, as the case may be, according to the application.

(4) If the spouse admits liability, or if the spouse denies liability and the judge after due hearing finds the spouse does have liability, the judge may order that the spouse pay to the applicant personally, or for his use to a third person on his behalf and named in the order, such weekly, semi-monthly or monthly sum for the maintenance of the applicant or the applicant and their children, as the judge considers reasonable having regard to the means of both the husband and wife.

(5) Where a married person has not been deserted by his spouse and has their children in his care, he may apply to a provincial judge for an order for maintenance restricted to the maintenance of the children, and the application may be dealt with in every other respect as an application under subsection (2).

(6) Where a married person makes an application for himself and his children under subsection (2) and it is held that he is not a deserted spouse, the judge may make an order for maintenance restricted to the maintenance of the children.

(7) Where a divorced person has in his care or custody legitimate children of himself and his divorced spouse and there is no order of a court or judge for maintenance of the children, he may apply to a provincial judge for an order for maintenance restricted to the maintenance of the children and the application may be dealt with in every respect as an application under subsection (2).

(7.1) Where an application is made under this section, the parties to the application shall provide the provincial judge with such financial information and records as the judge considers necessary.

5 *Section 28 is amended*

(a) *by repealing subsection (1) and substituting the following:*

28(1) Where a person against whom an order has been made for the payment of maintenance or alimony under this or any other Act has not paid any or all of the

husband whether or not he accepts liability for the maintenance of his wife or his wife and children, as the case may be, according to the application.

(4) If the husband admits liability, or if the husband denies liability and the magistrate after due hearing finds the husband does have liability, the magistrate may order that the husband pay to the applicant personally, or for her use to a third person on her behalf and named in the order, such weekly, semi-monthly, or monthly sum for the maintenance of his wife or his wife and children, as the magistrate considers reasonable having regard to the means of both the husband and wife.

(5) Where a married woman has not been deserted by her husband, if she has their children in her care she may apply to a magistrate for an order for maintenance restricted to the maintenance of the children, and the application may be dealt with in every other respect as an application under subsection (2) by a deserted wife.

(6) Where a married woman makes an application for herself and children under subsection (2) and it is held that she is not a deserted wife, the court may make an order for maintenance restricted to the maintenance of the children.

(7) Where a divorced woman has in her care or custody legitimate children of herself and her divorced husband and there is no order of the court for maintenance of the children, she may apply to a magistrate for an order for maintenance restricted to the maintenance of the children and the application may be dealt with in every respect as an application under subsection (2) by a deserted wife.

5 Section 28 now reads:

28(1) A married woman or any other person on her behalf may procure from a magistrate a summons against her husband

(a) if the sum so ordered to be paid is not paid together with costs, if any, before the expiration of 21 days from the making of the order or such lesser period as may be provided in the order, and

money payable under the order, the person to whom the money is payable may apply for the issue of a summons from a clerk of the Family Court.

(b) in subsection (2)(a) by striking out “husband” and substituting “respondent”,

(c) by repealing subsection (4) and substituting the following:

(4) If the respondent having been duly served does not attend as required by the summons, or does not show sufficient reason for his non-attendance, or does not satisfy the provincial judge that he is unable to pay the money required to be paid by the order for maintenance or alimony, the judge may enforce the order in any or all of the following ways:

(a) by any of the means provided by Part XXIV of the *Criminal Code* for the enforcement of an order by a justice of the peace for the payment of a fine or penalty;

(b) by fixing the amount of arrears of maintenance or alimony for which the respondent is liable;

(c) by varying either or both of

(i) the amount of arrears of maintenance, or

(ii) the amount of maintenance or alimony

payable under an order that is not an order of the Supreme Court;

(d) by making an order under section 28.1;

(e) by making an order under section 28.2.

and

(d) by adding the following after subsection (5):

(6) Where an application is made under this section, the parties shall provide the judge with such financial information and records as the judge considers necessary.

6 The following sections are added after section 28:

28.1(1) Where a respondent is in receipt of or is entitled to receive a salary, wages or other remuneration from an employer or any other person engaging the respondent's services, the judge may make an order directing the payment to a clerk of the Family Court at a place specified in the

(b) when and so often as the payment so ordered is in arrears.

(2) The summons may be served either personally or in such manner as the magistrate may in writing direct, and shall

(a) require the husband to attend at the time and place mentioned therein, to show cause why the order should not be enforced as hereinafter provided, and

(b) be returnable on a date which shall be at least 10 days after the service thereof.

(3) The applicant and all witnesses whom the Court thinks proper may be examined on oath touching the inquiries to be made on the return of the summons.

(4) If the husband having been duly served does not attend as required by the summons, or does not show a sufficient reason for his non-attendance, or does not satisfy the magistrate that he is unable to pay the sum ordered to be paid, the magistrate may enforce the order by any of the means provided by Part XXIV of the Criminal Code for the enforcement of an order by a justice of the peace for the payment of a fine or penalty.

(5) The magistrate may from time to time vary the order on the application of either the husband or the wife upon proof that the means of the husband or the wife have altered in amount since the making of the original order or a subsequent order varying it.

6 These sections allow for the enforcement of orders for maintenance or alimony by order of a provincial judge.

order of that part of the salary, wages or other remuneration specified in the order.

(2) The part of the salary, wages or other remuneration specified in an order made under subsection (1) may include an amount to be applied to reduce any arrears fixed by the judge under section 28(4)(b) or (c).

(3) An order under subsection (1) shall be directed to the respondent and the employer or other person engaging the respondent's services and shall be expressed to continue for such time as the judge may fix or until further order by a provincial judge.

(4) An order under subsection (1) shall be served on the employer or person engaging the respondent's services and when served is binding on him.

(5) The employer or other person engaging the respondent's services shall on being served with the order notify the respondent forthwith.

(6) If the employer or the person engaging the respondent's services has more than one office and it appears that the salary, wages or other remuneration is or may be payable through some other office than that at which the order is served, the person in charge of the office at which the order is served shall forthwith notify the person in charge of the office at which the money is or may be payable and that money is deemed to be attached and the order is deemed to be served as of the time the notice of the order is actually received at the office through which the money is payable or within 48 hours after the actual service of the order, whichever is the shorter period.

(7) Service of the order on any member of a partnership, at its usual place of business in Alberta or on an authorized agent of the partnership, is sufficient for the purposes of this Part.

(8) An employer or person engaging a respondent's services shall not terminate the respondent's employment or services by reason only that the employer or person engaging the respondent's services has been served with an order under this Part.

(9) No employer or person engaging a respondent's services shall be compelled to pay salary, wages or other remuneration or any part thereof otherwise than in accordance with the terms of the hiring.

(10) A person who is served with an order under this section and who fails to comply with the terms of the order without reasonable justification is guilty of an offence and

liable on summary conviction to a fine of not more than \$1000.

28.2(1) A provincial judge may make an order permitting a spouse or former spouse in whose favour an order for maintenance or alimony has been made to file the order for maintenance or alimony with a sheriff of the Supreme Court.

(2) Where an order is filed with a sheriff under subsection (1), the order is deemed to be a writ of execution for the amount that the payment ordered is in arrears from time to time.

(3) A certificate of a clerk of the Family Court stating the amount that the payment ordered is in arrears shall be filed at the same time as an order under subsection (1).

(4) A further certificate of a clerk of the Family Court stating the amount that the payment ordered is in arrears may be filed from time to time and when filed the order filed under subsection (1) is deemed to be for the total amount of arrears certified.

(5) A certificate of a clerk of the Family Court is deemed to be a renewal of the writ of execution for all purposes.

(6) Notwithstanding any other Act, an order for maintenance or alimony filed under this section takes priority over any other writ of execution for an amount equal to the total maintenance or alimony payable for the latest 3-month period pursuant to the order.

(7) Notwithstanding subsection (6), this section does not affect a claim under section 16 of *The Execution Creditors Act* or under section 48 of *The Alberta Labour Act, 1973*.

(8) Where an order for maintenance or alimony filed under this section is varied by a judge pursuant to this or any other Act, the variation order may be filed with the sheriff of the Supreme Court and any subsequent certificate filed under subsection (4) shall be in accordance with the amount in arrears under the order as varied.

28.3(1) In this section “debtor” means a person who is indebted to or liable to pay money to a spouse or former spouse who is required to pay maintenance or alimony by order of a court or judge.

(2) Upon the application of a person in whose favour an order for maintenance or alimony has been made, a provincial judge may order that all debts, obligations and liabilities (other than wages or salary) payable or accruing due from a

named debtor be paid by the debtor to a clerk of the Family Court at a place specified in the order.

(3) An application may be made under this section ex parte.

(4) An order made under this section shall relate only to the amount of arrears of maintenance or alimony for which the respondent is liable.

(5) Before a judge makes an order under subsection (2) he shall be satisfied

(a) that the person ordered to pay maintenance or alimony to the applicant has not made the payments required to be made under the order,

(b) that there is a debtor in Alberta, and

(c) that there is a reasonable possibility that the applicant will be unable to collect all or part of his claim or be subjected to unreasonable delay in the collection of his claim unless an order is granted under this section.

(6) An order made under subsection (2) shall be served on the debtor named in the order and service of the order binds the debt due or accruing due from the debtor or so much thereof as is necessary to satisfy the claim of the applicant and any costs fixed in the order by the judge.

(7) A copy of the order shall be served on the respondent not later than 20 days after payment by the debtor to the clerk of the Family Court.

(8) If the debtor has more than one office and it appears that money alleged to be due to the person ordered to pay maintenance or alimony is or may be payable through some other office of the debtor than that at which the order is served, the person in charge of the office at which the order is served shall forthwith notify the person in charge of the office at which money is or may be payable and that money is deemed to be attached and the order is deemed to be served as of the time the notice of the order is actually received at the office through which that money is payable or within 48 hours after the actual service of the order, whichever is the shorter period.

(9) Debts owing by a partnership carrying on business in Alberta may be attached under this section although one or more members of the partnership is resident out of Alberta, if the order is served in Alberta on any person having the control or management of the partnership or any partner.

(10) An answer disputing liability in the name of the partnership is sufficient to identify the partnership.

(11) Within 10 days after service of the order on the debtor, the debtor shall either

(a) pay to the clerk of the Family Court the lesser of

(i) the money due from him to the person ordered to pay maintenance or alimony, and

(ii) an amount sufficient to satisfy the order and any costs fixed in the order by the judge,

(b) file an answer in the office of the clerk of the Family Court stating that the money is accruing due but is not yet payable and that it is to be payable at a specified future date or upon the happening of a specified event,

(c) file an answer in the office of the clerk of the Family Court disputing his liability to the person ordered to pay maintenance or alimony, or

(d) file an answer in the office of the clerk of the Family Court that the debt attached belongs or may belong to some third person whose name and address so far as is known to the debtor shall be stated.

(12) Where the debtor files an answer under subsection (11)(b) then, upon the specified future date or the happening of the specified future event, the debtor shall pay to the clerk of the Family Court the money accrued due at the time of service of the order from him to the person ordered to pay maintenance or alimony or an amount sufficient to satisfy the order and any costs fixed by the judge, whichever is the lesser sum.

(13) Where the debtor files an answer under subsection (11)(c), the debtor shall state the grounds upon which the liability is disputed.

(14) Where the debtor files an answer under subsection (11)(d) then, unless the judge otherwise orders, the debtor shall pay to the clerk of the Family Court with the answer the debt attached or as much of the debt as is required to satisfy the order and any costs fixed by the judge, whichever is the lesser sum, and shall state the circumstances and grounds so far as they are within his knowledge.

(15) If a debtor

(a) does not pay the clerk of the Family Court,

(b) files an answer under subsection (11)(c) or (d), or

(c) does not pay the clerk of the Family Court and does not file an answer under subsection (11)(c) or (d),

the clerk shall forthwith notify the applicant.

(16) Where the applicant is notified by the clerk of the Family Court under subsection (15) he may apply by notice of motion to the Supreme Court in the judicial district in which the Family Court is located for an order under subsection (19).

(17) The notice of motion shall be served on the clerk of the Family Court that issued the original attachment order, the respondent, the debtor and any other person claiming to be interested in the money attached not less than 15 days before the date on which the application is to be heard.

(18) Upon being served with the notice of motion under subsection (17) the clerk of the Family Court shall forthwith forward to the clerk of the Supreme Court

- (a) the order made under subsection (2),
- (b) the answer, if any,
- (c) all depositions and transcripts of the evidence taken at the hearing, and
- (d) all documents and exhibits filed at the hearing.

(19) Upon hearing the motion the Supreme Court may

- (a) summarily determine any question arising in the attachment proceedings,
- (b) direct the trial of an issue to determine any question arising in the attachment proceedings, or
- (c) make such other order as may be just.

(20) Upon payment to the clerk of the Family Court by the debtor, the clerk shall forthwith notify the applicant and the respondent of the amount of the payment.

(21) Where payment is made to the clerk of the Supreme Court pursuant to an order made under subsection (19), the clerk shall forthwith pay the money to the clerk of the Family Court that issued the original attachment order.

(22) Payment by the debtor to the clerk of the Family Court is a valid discharge to him against the respondent to the extent of the payment.

28.4 An order made under this Part is binding on the Crown.

28.5 Money paid to a clerk of the Family Court pursuant to an order made under this Part may be paid to the person entitled to the money by order of a provincial judge on application made ex parte or on such notice as may be directed.

28.6 Money paid to a clerk of the Family Court pursuant to an order made under this Part is not attachable.

28.7 On an application by a person ordered to pay maintenance or alimony to his spouse for an adjournment of a hearing, the provincial judge may, as a condition of granting the adjournment, order that person to pay to his spouse such sum as the provincial judge considers proper, if any, during the period of the adjournment.

7 *Section 29 is repealed.*

8 *The following section is added after section 30:*

30.1(1) An order for maintenance or alimony may be registered in any land titles office and the registration, so long as the order remains in force,

(a) binds the estate and interest of every description that the person ordered to pay maintenance or alimony 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 ordered to pay maintenance or alimony of a life annuity on the lands of that person.

(2) The person against whose land an order is registered under subsection (1) may apply to the Supreme Court for an order directing the Registrar of Titles to cancel the registration of the order under subsection (1).

(3) The Court may make an order directing the Registrar of Titles to cancel the registration of an order under subsection (1) against part or all of the estates and interests of the

7 Section 29 now reads:

29(1) No order shall be made in favour of a wife who has committed adultery unless the adultery was condoned.

(2) An order may be rescinded by the magistrate on proof that the wife since the making of the order has been guilty of uncondoned adultery.

(3) A finding by a magistrate that adultery has been committed or that adultery has been condoned is not evidence of the adultery or the condonation, as the case may be, for any purpose except for the purpose of proceedings under this Part.

8 An order for maintenance or alimony may be registered at any land titles office.

person ordered to pay maintenance or alimony and under such terms and conditions as the Court considers necessary.

9 *The following section is added after section 31:*

31.1 The Lieutenant Governor in Council may make regulations

(a) prescribing rules with respect to the making of applications under this Part and dealing generally with all matters of procedure under this Part;

(b) prescribing forms and providing for their use.

10 *The Family Court Act is amended*

(a) *in section 4(2)(a) by striking out “wives” and substituting “spouses”, and*

(b) *by repealing section 8(1) and substituting the following:*

8(1) On an application by a person ordered to pay maintenance or alimony to his spouse for an adjournment of a hearing, the judge may, as a condition of granting the adjournment, order that person to pay to his spouse such sum as the judge considers proper for the support of the spouse and the children, if any, during the period of the adjournment.

11 *This Act comes into force on a date to be fixed by Proclamation.*

9 The Lieutenant Governor in Council may make regulations governing procedure.

10 Consequential amendments to chapter 133 of the Revised Statutes of Alberta 1970. Sections 4(2)(a) and 8(1) now read:

(2) Notwithstanding the provisions of any other Act, the Lieutenant Governor in Council by order may confer on a named judge of a Family Court exclusive original jurisdiction or joint or general jurisdiction over any or all of the following matters:

(a) maintenance orders for deserted wives and families under section 27 of The Domestic Relations Act;

8(1) On an application by a husband for an adjournment of a hearing, the judge may, as a condition of granting the adjournment, order the husband to pay to the wife such sum as the judge considers proper for the support of the wife and the children, if any, during the period of adjournment.