

1980 BILL 16

Second Session, 19th Legislature, 29 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

**THE RECIPROCAL ENFORCEMENT OF
MAINTENANCE ORDERS ACT, 1980**

MRS. FYFE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

**THE RECIPROCAL ENFORCEMENT OF
MAINTENANCE ORDERS ACT, 1980**

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Bill 16
Mrs. Fyfe

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1980

THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT, 1980

(Assented to , 1980)

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

1 In this Act,

(a) "Attorney General" includes a person authorized in writing by the Attorney General to act for him in the performance of a power or duty under this Act;

(b) "certified copy" means the original or a copy of the document certified by the original signature or facsimile signature of a proper officer of the court to be a true copy;

(c) "claimant" means a person who has or alleges to have a right to maintenance;

(d) "confirmation order" means a confirmation order made under this Act or under the corresponding enactment of a reciprocating state;

(e) "court" means an authority having jurisdiction to make an order;

(f) "final order" means an order made in a proceeding of which the claimant and respondent had proper notice and in which they had an opportunity to be present or represented, and includes

(i) the maintenance provisions in a written agreement between a claimant and a respondent if those provisions are enforceable in the state in which the agreement was made as if contained in an order of a court of that state, and

(ii) a confirmation order made in a reciprocating state;

(g) "former Act" means *The Reciprocal Enforcement of Maintenance Orders Act*, chapter 313 of the Revised Statutes of Alberta 1970;

Explanatory Notes

GENERAL: This Act is an Act prepared and adopted by the Uniform Law Conference of Canada.

1 Definitions.

(h) “maintenance” includes support or alimony;

(i) “order” means an order or determination of a court providing for the payment of money as maintenance by the respondent named in the order for the benefit of the claimant or a dependant of the claimant named in the order, and includes the maintenance provisions of an affiliation order;

(j) “provisional order” means

(i) an order of a court in Alberta that has no force or effect in Alberta until confirmed by a court in a reciprocating state, or

(ii) a similar order made in a reciprocating state for confirmation in Alberta;

(k) “reciprocating state” means a state declared under section 21 to be a reciprocating state and includes a province;

(l) “registered order” means

(i) a final order made in a reciprocating state and filed under this Act or under the former Act with a court in Alberta,

(ii) a final order deemed under section 2(3) to be a registered order, or

(iii) a confirmation order that is filed under section 5(8);

(m) “registration court” means the court in Alberta

(i) in which the registered order is filed under this Act, or

(ii) that deemed a final order to be a registered order under this Act or under the former Act;

(n) “respondent” means a person in Alberta or in a reciprocating state who has or is alleged to have an obligation to pay maintenance for the benefit of a claimant, or against whom a proceeding under this Act, or a corresponding enactment of a reciprocating state, is commenced;

(o) “state” includes a political subdivision of a state and an official agency of a state.

2(1) If the Attorney General receives a certified copy of a final order made in a reciprocating state before, on or after the day on which this Act comes into force with information that the respondent is in Alberta, the Attorney General shall designate a

2 Final orders.

court in Alberta for the purposes of the registration and enforcement, and shall forward the order and supporting material to that court.

(2) On receipt of a final order transmitted to a court in Alberta under subsection (1) or under a provision in a reciprocating state corresponding to section 5(8)(a), the proper officer of the court shall file the order with the court and give notice of the registration of the order to the respondent.

(3) If a final order is made in Alberta before, on or after the day on which this Act comes into force and the claimant subsequently leaves Alberta and is apparently resident in a reciprocating state, the court that made the order shall, on the written request of the claimant, the respondent or the Attorney General, deem the order to be a registered order.

(4) A registered order varied in a manner consistent with this Act continues to be a registered order.

(5) A respondent may, within one month after receiving notice of the registration of a registered order under subsection (2), apply to the registration court to set the registration aside.

(6) On application under subsection (5), the registration court shall set aside the registration if it determines that the order was obtained by fraud or error or was not a final order.

(7) An order determined not to be a final order and set aside under subsection (6) may be dealt with by the registration court under section 5 as a provisional order.

3(1) On application by a claimant before, on or after the day on which this Act comes into force, a court may, without notice to and in the absence of a respondent, make a provisional order against the respondent.

(2) An order under subsection (1) may only include the maintenance provisions the court could have included in a final order in a proceeding of which the respondent had notice in Alberta but in which he failed to appear.

(3) If a provisional order is made, a proper officer of the court in Alberta shall send to the Attorney General for transmission to a reciprocating state

(a) 3 certified copies of the provisional order,

(b) a sworn document setting out or summarizing the evidence given in the proceeding,

(c) a copy of the enactments under which the respondent is alleged to have an obligation to maintain the claimant, and

3 Making of provisional orders.

(d) a statement giving available information respecting identification, location, income and assets of the respondent.

(4) If, during a proceeding for a confirmation order, a court in a reciprocating state remits the matter back for further evidence to the court in Alberta that made the provisional order, the court in Alberta shall, after giving notice to the claimant, receive further evidence.

(5) If evidence is received under subsection (4), a proper officer of the court shall forward to the court in the reciprocating state a sworn document setting out or summarizing the evidence with modifications to the provisional order as the court in Alberta considers appropriate.

(6) If a provisional order made under this section comes before a court in a reciprocating state and confirmation is denied in respect of one or more claimants, the court in Alberta that made the provisional order may, on application within 6 months after the denial of confirmation, re-open the matter, receive further evidence and make a new provisional order for a claimant in respect of whom confirmation was denied.

4(1) If the affiliation of a child is in issue and has not previously been determined by a court of competent jurisdiction, the affiliation may be determined as a maintenance proceeding under this Act.

(2) If the respondent disputes affiliation in the course of a proceeding to confirm a provisional order for maintenance, affiliation may be determined, notwithstanding that the provisional order makes no reference to affiliation.

(3) A determination of affiliation under this section has effect only for the purpose of maintenance proceedings under this Act.

5(1) If the Attorney General receives from a reciprocating state documents corresponding to those described in section 3(3) with information that the respondent is in Alberta, the Attorney General shall designate a court in Alberta for the purpose of proceedings under this section and shall forward the documents to that court.

(2) On receipt of the documents referred to in subsection (1), the court shall, whether the provisional order was made before, on or after the day on which this Act comes into force, serve a summons on the respondent in the same manner as it would in a proceeding under *The Domestic Relations Act* for the same relief, and shall proceed, taking into consideration the sworn document setting out or summarizing the evidence given in the proceeding in the reciprocating state.

4 Affiliation.

5 Making of confirmation orders.

(3) If the respondent apparently is outside the territorial jurisdiction of the court and will not return, a proper officer of the court, on receipt of documents under subsection (1) shall return the documents to the Attorney General with any available information respecting the location and circumstances of the respondent.

(4) At the conclusion of a proceeding under this section, the court may make a confirmation order in the amount it considers appropriate or make an order refusing maintenance to any claimant.

(5) If the court makes a confirmation order for periodic maintenance payments, the court may direct that the payments begin from a date not earlier than the date of the provisional order.

(6) The court, before making a confirmation order in a reduced amount or before refusing maintenance, shall decide whether to remit the matter back for further evidence to the court that made the provisional order.

(7) If a court remits a matter under subsection (6), it may make an interim order for maintenance against the respondent.

(8) At the conclusion of a proceeding under this section, the court, or a proper officer of the court, shall

(a) forward a certified copy of the order to the court that made the provisional order and to the Attorney General,

(b) file the confirmation order, if one is made, and

(c) if an order is made refusing or reducing maintenance, provide written reasons to the court that made the provisional order and to the Attorney General.

6(1) If the law of the reciprocating state is pleaded to establish the obligation of the respondent to maintain a claimant resident in that state, the court in Alberta shall take judicial notice of that law and apply it.

(2) An enactment of a reciprocating state may be pleaded and proved for the purposes of this section by producing a copy of the enactment received from the reciprocating state.

(3) If the law of the reciprocating state is not pleaded under subsection (1), the court in Alberta shall

(a) make an interim order for maintenance against the respondent if appropriate,

(b) adjourn the proceeding for a period not exceeding 90 days, and

6 Choice of law.

(c) request the Attorney General to notify the proper officer of the reciprocating state of the requirement to plead and prove the applicable law of that state if that law is to be applied.

(4) If the law of the reciprocating state is not pleaded after an adjournment under subsection (3), the court shall apply the law of Alberta.

(5) If the law of a reciprocating state requires the court in Alberta to provide the court in the reciprocating state with a statement of the grounds on which the making of the confirmation order might have been opposed if the respondent were served with a summons and had appeared at the hearing of the court in Alberta, the Attorney General shall be deemed to be the proper officer of the court for the purpose of making and providing the statement of the grounds.

7(1) The provisions of this Act respecting the procedure for making provisional orders and confirmation orders apply with the necessary changes to proceedings, except proceedings under subsection (5), for the variation or rescission of registered orders.

(2) This section does not

(a) authorize a provincially appointed judge to vary or rescind a registered order made in Canada by a federally appointed judge, or

(b) allow a registered order originally made under a federal enactment to be varied or rescinded except as authorized by federal enactment.

(3) Notwithstanding subsection (2), a provincially appointed judge may make a provisional order to vary or rescind a registered order made in Canada under a provincial enactment by a federally appointed judge.

(4) A registration court has jurisdiction to vary or rescind a registered order if both the claimant and respondent accept its jurisdiction.

(5) If the respondent is ordinarily resident in Alberta, a registration court may, on application by the claimant, vary or rescind a registered order.

(6) A registration court may make a confirmation order for the variation or rescission of a registered order if

(a) the respondent is ordinarily resident in Alberta,

(b) the claimant is ordinarily resident in a reciprocating state,

7 Variation or rescission of registered orders.

(c) a certified copy of a provisional order of variation or rescission made by a court in a reciprocating state is received by the registration court through the Attorney General, and

(d) the respondent is given notice of the proceeding and an opportunity to appear.

(7) A registration court may, on application by the respondent, vary or rescind a registered order if

(a) the respondent is ordinarily resident in Alberta,

(b) the claimant is ordinarily resident in a reciprocating state, and

(c) the registration court, in the course of the proceeding, remits the matter to the court nearest to the place where the claimant lives or works for the purpose of obtaining evidence on behalf of the claimant,

or if the respondent is ordinarily resident in Alberta, the claimant is not ordinarily resident in a reciprocating state and the claimant is given notice of the proceeding.

(8) If a claimant ordinarily resident in Alberta applies for a variation or rescission of a final order and the respondent is apparently ordinarily resident in a reciprocating state, the court may make a provisional order of variation or rescission and section 3 applies with the necessary changes to the proceeding.

8 If an order originally made in Alberta is varied or rescinded in a reciprocating state under the law in that state corresponding to section 7, the order shall be deemed to be so varied or rescinded in Alberta.

9(1) The registration court has jurisdiction to enforce a registered order, notwithstanding that the order

(a) was made in a proceeding in respect of which the registration court would have had no jurisdiction, or

(b) is of a kind that the registration court has no jurisdiction to make.

(2) The provisions of *The Domestic Relations Act* for the enforcement of maintenance orders apply with the necessary changes to registered orders and interim orders made under this Act.

(3) A registered order has, from the date it is filed or deemed to be registered, the same effect as if it had been a final order originally made by the registration court and may be enforced,

8 Effect of variation or rescission of orders of the Province by courts in reciprocating states.

9 Enforcement.

varied or rescinded as provided in this Act whether the order is made before, on or after the day on which this Act comes into force.

(4) If a registered order is registered with the Court of Queen's Bench, it may be enforced as if it were an order of that Court.

(5) If a proceeding is brought to enforce a registered order, it is not necessary to prove that the respondent was served with the order.

(6) If a registered order is being enforced and the registration court finds that the order has been varied by a court subsequent to the date of registration, the registration court shall record the fact of the variation and enforce the order as varied.

10(1) If Alberta, a province, a state or a political subdivision or an official agency of Alberta, the province or the state is providing or has provided support to a claimant, it has, for the purpose of obtaining continuing maintenance for the claimant or obtaining reimbursement, the same right to bring proceedings under this Act as the claimant.

(2) If Alberta, a province, a state or a political subdivision or an official agency of Alberta, the province or the state is subrogated to the rights of a person to obtain maintenance, it is deemed to be a claimant for the purposes of bringing proceedings under this Act.

11(1) The Attorney General shall, on request in writing by a claimant or an officer or court of a reciprocating state, take all reasonable measures to enforce an order made or registered under this Act.

(2) On receipt of a document for transmission under this Act to a reciprocating state, the Attorney General shall transmit the document to the proper officer of the reciprocating state.

(3) The Attorney General may, in writing, authorize a person to perform or exercise any power or duty given to the Attorney General under this Act.

12(1) If a document signed by a presiding officer of the court in a reciprocating state or a certified copy of the document is received by a court in Alberta through the Attorney General, the court in Alberta may deem the document to be a provisional order or a final order, according to the tenor of the document, and may proceed accordingly.

(2) If in a proceeding under this Act, a document from a court in the reciprocating state contains terminology different from

10 Remedies of a state.

11 Duties of the Attorney General.

12 Documents from reciprocating states.

the terminology of this Act or customarily in use in the court in Alberta, the court in Alberta shall give a broad and liberal interpretation to the terminology so as to give effect to the document.

13(1) If confirmation of a provisional order or registration of a final order is sought and the documents received by a court refer to an amount of maintenance or arrears not expressed in Canadian currency, a proper officer of the court shall first obtain from a bank a quotation for the equivalent amount in Canadian currency at a rate of exchange applicable on the day the order was made or last varied.

(2) The amount in Canadian currency certified on the order by the proper officer of the court under subsection (1) shall be deemed to be the amount of the order.

14 If an order or other document received by a court in Alberta is not in the English language, the order or other document shall have attached to it from the other jurisdiction a translation into the English language approved by the court in Alberta, and the order or other document shall be deemed to be in the English language for the purposes of this Act.

15(1) Subject to subsections (2) and (3), a claimant, respondent or the Attorney General may appeal any ruling, decision or order of a court in Alberta under this Act, and *The Domestic Relations Act* applies, with any necessary modifications, to the appeal.

(2) A person resident in the reciprocating state and entitled to appear in the court in the reciprocating state in the proceeding being appealed from, or the Attorney General on the person's behalf, may appeal within 75 days after the making of the ruling, decision or order of the court in Alberta appealed from.

(3) A person responding to an appeal under subsection (2) may appeal a ruling, decision or order in the same proceeding within 15 days after receipt of the notice of the appeal.

(4) An order under appeal remains in force pending the determination of the appeal, unless the court appealed to otherwise orders.

16(1) In a proceeding under this Act, a document purporting to be signed by a judge, officer of a court or public officer in a reciprocating state shall, unless the contrary is proved, be proof of the appointment, signature and authority of the person who signed it.

13 Conversion to Canadian currency.

14 Translation of documents.

15 Appeals.

16 Evidentiary matters.

(2) Statements in writing sworn to by the maker, depositions or transcripts of evidence taken in a reciprocating state may be received in evidence by a court in Alberta under this Act.

(3) For the purposes of proving default or arrears under this Act, a court may receive in evidence a sworn document made by any person, deposing to have knowledge of, or information and belief concerning, the fact.

17 A registration court or a proper officer of it shall, on reasonable request of a claimant, a respondent, the Attorney General, a proper officer of a reciprocating state or of a court of that state, furnish a sworn itemized statement showing with respect to maintenance under an order,

(a) the amounts that became due and owing by the respondent during the 24 months preceding the date of the statement, and

(b) the payments made through the court by or on behalf of the respondent during the period referred to in clause (a).

18 If a proper officer of a court in Alberta believes that a respondent under a registered order has ceased to reside in Alberta and is resident in or proceeding to another province or state, the officer shall inform the Attorney General and the court that made the order of any information he has respecting the location and circumstances of the respondent and, on request by the Attorney General, a proper officer of the court that made the order, or the claimant, shall send to the court or person indicated in the request,

(a) 3 certified copies of the order as filed with the court in Alberta, and

(b) a sworn certificate of arrears.

19 This Act does not impair any other remedy available to a claimant or another person, Alberta, a province, a state or a political subdivision or official agency of Alberta, a province or a state.

20 An order made under the former Act continues, insofar as it is not inconsistent with this Act, valid and enforceable, and may be rescinded, varied, enforced or otherwise dealt with under this Act.

21 If the Lieutenant Governor in Council is satisfied that laws are or will be in effect in a state for the reciprocal enforcement

17 Statement of payments.

18 Transmission of documents by court where respondent leaves the province.

19 Saving section.

20 Transitional.

21 Declaration of reciprocating states.

of orders made in Alberta on a basis substantially similar to this Act, the Lieutenant Governor may by regulation declare that state to be a reciprocating state.

22 *A reference to The Reciprocal Enforcement of Maintenance Orders Act in any statutory provision not amended by this Act or in any agreement, regulation, order, decision, instrument, approval, consent or undertaking made before the commencement of this Act shall be deemed to be a reference to The Reciprocal Enforcement of Maintenance Orders Act, 1980.*

23 *The Alimony Orders Enforcement Act is amended by striking out "The Reciprocal Enforcement of Maintenance Orders Act" and substituting "The Reciprocal Enforcement of Maintenance Orders Act, 1980" in the following provisions:*

section 3(1);
section 5(2);
section 15(1);
section 16.

24 *Section 4(2)(b) of The Family Court Act is amended by striking out "The Reciprocal Enforcement of Maintenance Orders Act" and substituting "The Reciprocal Enforcement of Maintenance Orders Act, 1980".*

25 *Section 59(b) of The Maintenance and Recovery Act is amended by striking out "section 5 of The Reciprocal Enforcement of Maintenance Orders Act" and substituting "section 3 of The Reciprocal Enforcement of Maintenance Orders Act, 1980".*

26 *The Reciprocal Enforcement of Maintenance Orders Act is repealed.*

27 *This Act comes into force on a date or dates to be fixed by proclamation.*

22 Transitional.

23 Consequential.

24 Consequential.

25 Consequential.

26 Repeal.