

Enforcing Court Orders Legislation

The Family Maintenance Act

Definitions

52 In this Part

"creditor" means a person entitled to receive payments under a maintenance order, and includes

- (a) the director to whom an order has been assigned under section 64,
- (b) an agency under *The Child and Family Services Act* that is entitled to receive maintenance for a child as authorized by an order made under that Act,
- (c) a government or agency of a government referred to in section 39 of *The Inter-jurisdictional Support Orders Act*, and
- (d) a minister, member or agency referred to in section 20.1 of the *Divorce Act* (Canada) to whom a support order is assigned under that Act;

"debtor" means a person required to make payments under a maintenance order;

"designated authority" has the same meaning as in *The Inter-jurisdictional Support Orders Act*;

"designated officer" means a person employed under *The Civil Service Act* and designated by the Minister of Justice for the purposes of this Part;

"director" means the Director of Assistance designated under *The Manitoba Assistance Act*, or a person acting under his or her authority;

"maintenance order" means

- (a) an order, interim order, or variation order for payment of maintenance, support or alimony made under
 - (i) this Act,
 - (ii) *The Child and Family Services Act*,
 - (iii) *The Child Welfare Act* (now repealed),
 - (iv) *The Wives' and Children's Maintenance Act* (now repealed), or
 - (v) the *Divorce Act* (Canada),

and includes a compensatory order under section 46.0.1, or

- (b) a maintenance order, provisional maintenance order or interim maintenance order made in a jurisdiction outside Manitoba and registered or confirmed in Manitoba under *The Reciprocal Enforcement of Maintenance Orders Act* (now repealed) or *The Enforcement of Judgments Conventions Act*, or a support order or support variation order made in Manitoba or in a reciprocating jurisdiction outside Manitoba and registered in Manitoba under *The Inter-jurisdictional Support Orders Act*, or
 - (b.1) the maintenance or support provisions of a written agreement made in a reciprocating jurisdiction outside Manitoba and registered in Manitoba under *The Reciprocal Enforcement of*

Maintenance Orders Act (now repealed) or *The Inter-jurisdictional Support Orders Act*, or

(c) the maintenance provisions of a separation agreement duly filed under subsection 53(3.1);

"**pension benefit**" has the same meaning as in subsection 14(4) of *The Garnishment Act*;

"**person required to pay**" means the person or entity required to pay under a support deduction notice, and includes the government or a government agency;

"**prescribed**" means prescribed by the regulations under this Act;

"**reciprocating jurisdiction**" has the same meaning as in *The Inter-jurisdictional Support Orders Act*;

"**support deduction notice**" means a support deduction notice issued by the designated officer under section 58.1;

"**suspension order**" means an order under section 61.2 that suspends the enforcement of a maintenance order by the designated officer;

"**wages**" includes salary, commission and fees, and any other money payable by an employer to an employee in respect of work or services performed in the course of employment but it does not include any deductions made by the employer under any Act of the Legislature of any province or the Parliament of Canada.

Payments remitted to designated officer

54(1) The debtor shall remit to the designated officer the amount of each payment due under a maintenance order in the manner set out in the regulations.

Payment to creditor

54(1.1) The designated officer shall

- (a) record each payment received from a debtor;
- (b) deposit the payment into the government's trust account; and
- (c) subject to subsection (1.2), issue payment to the creditor.

Designated officer to take action on default

55(1) Where it appears to a designated officer that a debtor is in default, the officer shall take such action as he or she considers necessary or advisable to determine whether the debtor is in default and the amount of any default, and to enforce the payment of any amount in default.

Designated officer may request information

55(2) The designated officer may in writing request a person, the government or an agency of government to provide in writing any information in the possession or control of the person, government or agency respecting

- (a) the whereabouts of a creditor;
- (b) a debtor, including
 - (i) the whereabouts of the debtor,
 - (ii) the name and address of the debtor's employer,
 - (iii) the debtor's financial means, including source of income and payroll records,
 - (iv) the debtor's assets and liabilities, including any asset transferred or gifted to the person requested to provide the information, or to a third party,
 - (v) the debtor's pension and pension benefit credits, as defined under *The Pension Benefits Act*,
 - (vi) the debtor's income tax returns and assessment notices,
 - (vii) the debtor's social insurance number,
 - (viii) circumstances that affect or could affect the amount of maintenance paid under the maintenance order,

- (ix) the extent of the debtor's control or influence over any assets or liabilities of
- (A) the person requested to provide the information, or
 - (B) a third party,
- particulars of those assets or liabilities, and the nature of the relationship between the debtor and a person referred to in paragraph (A) or (B), and
- (x) any benefits the debtor receives from the assets of the person requested to provide the information or a third party; or
- (c) the whereabouts of a person named in a request to locate, as defined in *The Inter-jurisdictional Support Orders Act*, upon the request of the designated authority.

The Inter-jurisdictional Support Orders Act

Regulations declaring reciprocating jurisdictions

43(1) If the Lieutenant Governor in Council is satisfied that laws are or will be in effect in a jurisdiction for the reciprocal enforcement of support orders made in Manitoba on a basis substantially similar to this Act, the Lieutenant Governor in Council may make regulations declaring that jurisdiction to be a reciprocating jurisdiction.

Conditions re declaring a reciprocating jurisdiction

43(2) In declaring a jurisdiction to be a reciprocating jurisdiction under subsection (1), the Lieutenant Governor in Council may impose any conditions with respect to the enforcement and recognition of support orders made or registered in that jurisdiction.

Regulation 10/2003

Reciprocating jurisdictions

- 20 The jurisdictions named in the Schedule are declared to be reciprocating jurisdictions for the purposes of section 43 of the Act.

SCHEDULE

RECIPROCATING JURISDICTIONS (section 20)

A. In Africa:

Ghana South Africa Zimbabwe

B. In Asia:

Hong Kong Special Administrative Region of the People's Republic of China Singapore

C. In Australia and Polynesia:

Australia, including Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Island
Fiji

New Zealand Papua New Guinea

D. In Canada:

Alberta British Columbia New Brunswick Newfoundland and Labrador Northwest Territories Nova Scotia
Nunavut Ontario Prince Edward Island Quebec Saskatchewan Yukon

E. In Central America and West Indies: Barbados

F. In Europe:

Austria Czech Republic Germany Guernsey, Alderney and Sark Isle of Man Jersey Malta Norway Poland Slovak Republic Switzerland United Kingdom, (England, Wales, Scotland and Northern Ireland)

G. The United States, including the fifty states, American Samoa, District of Columbia, Guam, Puerto Rico, United States Virgin Islands and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act (U.S.A.).

The Criminal Code

Abduction in contravention of custody order

282 (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person,

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in contravention of the custody provisions of a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction.

Where no belief in validity of custody order

(2) Where a court charges an offence under subsection (1) and the offence is not proven only because the accused did not believe that there was a valid custody order but the evidence does prove an offence under section 283, the accused may be convicted of an offence under section 283.

Abduction

283 (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, whether or not there is a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person, is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction.

Consent required

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General or counsel instructed by him for that purpose.

Defence

284 No one shall be found guilty of an offence under sections 281 to 283 if he establishes that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was done with the consent of the parent, guardian or other person having the lawful possession, care or charge of that young person.

Defence

285 No one shall be found guilty of an offence under sections 280 to 283 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm or if the person charged with the offence was escaping from danger of imminent harm.

No defence

286 In proceedings in respect of an offence under sections 280 to 283, it is not a defence to any charge that a young person consented to or suggested any conduct of the accused.

The Child Custody Enforcement Act

Order to locate and take child

9(1) Where a court is satisfied upon application that there are reasonable and probable grounds for believing,

- (a) that any person is unlawfully withholding a child from a person entitled to custody of or access to the child;
- (b) that a person who is prohibited by court order or separation agreement from removing a child from Manitoba proposes to remove the child or have the child removed from Manitoba; or

(c) that a person who is entitled to access to a child proposes to remove the child or to have the child removed from Manitoba and that the child is not likely to return,

the court by order may

(d) authorize the applicant or someone on his behalf to apprehend the child for the purpose of giving effect to the rights of the applicant to custody or access, as the case may be; or

(e) direct a peace officer, a police force, or an agency or all three, having jurisdiction in any area where it appears to the court that the child may be, to locate, apprehend and deliver the child to the person named in the order; or

(f) do both (d) and (e).

Application without notice

9(2) An order may be made under subsection (1) upon an application without notice where the court is satisfied that it is necessary that action be taken without delay.

Duty to act

9(3) A peace officer, police force or an agency directed to act by an order under subsection (1) shall do all things reasonably able to be done to locate, apprehend and deliver the child in accordance with the order.

Entry and search

9(4) For the purpose of locating and apprehending a child in accordance with an order under subsection (1), a peace officer, a member of a police force or an authorized employee or agent of an agency may enter and search any place where he has reasonable and probable grounds for believing that the child may be with such assistance and such force as are reasonable in the circumstances.

Time

9(5) An entry or a search referred to in subsection (4) shall be made only between the hours of 8:00 a.m. and 8:00 p.m. unless the court, in the order, authorized entry and search at another time.

Expiration of order

9(6) An order made under subsection (1) expires six months after the day on which it was made, unless the order specifically provides otherwise.

When application may be made

9(7) An application under subsection (1) may be made in an application for custody or access under *The Child and Family Services Act* or *The Family Maintenance Act* or under this Act at any time.

Application to prevent removal of child

10(1) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person prohibited by court order or separation agreement from removing a child from Manitoba proposes to remove the child from Manitoba, the court in order to prevent the removal of the child from Manitoba may make an order under subsection (3).

Application to ensure return of child

10(2) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person entitled to access to a child proposes to remove the child from Manitoba and is not likely to return the child to Manitoba, the court in order to secure the prompt, safe return of the child to Manitoba may make an order under subsection (3).

Order by court

10(3) An order mentioned in subsection (1) or (2) may require a person to do any one or more of the following:

- (a) Transfer specific property to a named trustee to be held subject to the terms and conditions specified in the order.
- (b) Where payments have been ordered for the support of the child, make the payments to a specified trustee subject to the terms and conditions specified in the order.
- (c) Post a bond, with or without sureties, payable to the applicant in such amount as the court considers appropriate.

(d) Deliver the person's passport, the child's passport and any other travel documents of either of them that the court may specify to the court or to an individual or body specified by the court.

The Hague Convention on the Civil Aspects of Child Abduction

Article 1

The objects of the present Convention are –

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State;
- and
- b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where – a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

- a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.