

UNIFORM RECIPROCAL ENFORCEMENT OF 38A-1
MAINTENANCE ORDERS ACT

1. In this Act,

“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;

“certified copy” means, in relation to a document of a court, the original or a copy of the document certified by the original or facsimile signature of a proper officer of the court to be a true copy;

“claimant” means a person who has or is alleged to have a right to maintenance;

“confirmation order” means a confirmation order made under this Act or under the corresponding enactment of a reciprocating state;

“court” means an authority having jurisdiction to make an order;

“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) maintenance provisions in a written agreement between a claimant and a respondent where 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;

“maintenance” includes support or alimony;

“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 named in the order;

“provisional order” means an order of a court in (the enacting jurisdiction) that has no force or effect in (the enacting jurisdiction) until confirmed by a court in a reciprocating state or a corresponding order made in a reciprocating state for confirmation in (the enacting jurisdiction);

“reciprocating state” means a state declared under section 18 or under an enactment repealed by this Act to be a reciprocating state and includes a province;

“registered order” means

(i) a final order made in a reciprocating state and filed under this

Act or under an enactment repealed by this Act with a court in (the enacting jurisdiction),

- (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);

“registration court” means the court in (the enacting jurisdiction)

- (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- (ii) that deemed a final order to be a registered order under this Act or under an enactment repealed by this Act;

“respondent” means a person in (the enacting jurisdiction) 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;

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

2. (1) Where 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 (the enacting jurisdiction), the Attorney General shall designate a court in (the enacting jurisdiction) for the purposes of the registration and enforcement and forward the order and supporting material to that court.

(2) On receipt of a final order transmitted to a court 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) Where a final order is made in (the enacting jurisdiction) before, on or after the day on which this Act comes into force and the claimant subsequently leaves (the enacting jurisdiction) 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, 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.

(8) Where an order purporting to be a final order is made by a court in a reciprocating state and the order is not enforceable in (the enacting jurisdiction) under the conflict of laws rules of (the enacting jurisdiction), the court in (the enacting jurisdiction) may, in its discretion, deem the order to be a provisional order and deal with it under section 5.

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 (the enacting jurisdiction) but in which he failed to appear.

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

- (a) three certified copies of the provisional order;
- (b) a certified transcript of the evidence given in the proceeding or 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
- (d) a statement giving available information respecting identification, location, income and assets of the respondent.

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

(5) Where 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 such recommendations as the court in (the enacting jurisdiction) considers appropriate.

(6) Where 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 (the enacting jurisdiction) that made the provisional order may, on application within six months from the denial of confirmation, reopen the matter and receive further evidence and make a new provisional order for a claimant in respect of whom confirmation was denied.

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

(2) If the respondent disputes parentage in the course of a proceeding to confirm a provisional order for maintenance, the matter of parentage may be determined even though the provisional order makes no reference to parentage.

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

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

(2) On receipt of the documents referred to in subsection (1), the court shall, (issue process against) the respondent in the same manner as it would in a proceeding under (name enactment) for the same relief and shall proceed, with the hearing, whether or not the respondent is present, taking into consideration the sworn document setting out or summarizing the evidence given in the proceeding in the reciprocating state.

(3) Where 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 available information respecting the whereabouts 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) Where 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 denying maintenance, shall decide whether to remit the matter back for further evidence to the court that made the provisional order.

(7) Where 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, where one is made; and
- (c) where an order is made refusing or reducing maintenance give written reasons to the court that made the provisional order and to the Attorney General.

6. (1) Where 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 (the enacting jurisdiction) 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) Where the law of the reciprocating state is not pleaded under subsection (1), the court in (the enacting jurisdiction) shall

- (a) make an interim order for maintenance against the respondent where appropriate;
- (b) adjourn the proceeding for a period not exceeding 90 days; and
- (c) request the Attorney General to notify the appropriate 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) Where the law of the reciprocating state is not pleaded after an

adjournment under subsection (3), the court shall apply the law of (the Province).

(5) Where the law of a reciprocating state requires the court in (the enacting jurisdiction) 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 (process) and had appeared at the hearing of the court in (the enacting jurisdiction), 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 provisional orders and confirmation orders apply with the necessary modification to proceedings, except 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 provincial enactment by a Federally appointed judge.

(4) Subject to subsections (2) and (3) a registration court has jurisdiction to vary or rescind a registered order where both claimant and respondent accept its jurisdiction.

(5) Where the respondent is ordinarily resident in (the enacting jurisdiction) 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 where

(a) the respondent is ordinarily resident in (the enacting jurisdiction);

(b) the claimant who initiated the application for variation or rescission in a reciprocating state is ordinarily resident in the reciprocating state;

(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, make a provisional order varying or rescinding a registered order where

(a) the respondent is ordinarily resident in (the enacting jurisdiction); and

(b) the claimant is ordinarily resident in a reciprocating state in which the order was first made, and section 3 applies with the necessary modifications to the proceeding.

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

(a) the respondent is ordinarily resident in (the enacting jurisdiction);

(b) the claimant is ordinarily resident in a reciprocating state other than the state in which the order was first made; 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 where

(d) the respondent is ordinarily resident in (the enacting jurisdiction);

(e) the claimant is not ordinarily resident in a reciprocating state; and

(f) the claimant is given notice of the proceeding.

(9) Where a claimant ordinarily resident in (the enacting jurisdiction), 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 provincial order of variation or rescission and section 3 applies with the necessary modification to the proceeding.

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

- (a) the respondent who initiated the application for variation or rescission in a reciprocating state is ordinarily resident in the reciprocating state;
 - (b) the claimant is ordinarily resident in (the enacting jurisdiction);
 - (c) a certified copy of a provisional order of variation or rescission made by a court in the reciprocating state is received by the registration court through the Attorney General; and
 - (d) the claimant is given notice of the proceeding and an opportunity to appear.
8. Where an order originally made in (the enacting jurisdiction) 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 (the enacting jurisdiction).
9. (1) The registration court has jurisdiction (1) 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 deserted spouses' and children's maintenance enactment of the enacting jurisdiction) for the enforcement of maintenance orders apply with the necessary modification 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, both with respect to arrears accrued before registration, and with respect to obligations accruing after registration, be enforced, 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) Where a registered order is registered with (Supreme Court of the enacting jurisdiction), it may be enforced as if it were an order of that court.
- (5) Where a proceeding is brought to enforce a registered order, it is not necessary to prove that the respondent was served with the order.
- (6) Where 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. Where (the enacting jurisdiction), a province, a state or a political subdivision or official agency of (the enacting jurisdiction), a province or state is providing or has provided support to a claimant, it has, for the purpose of obtaining reimbursement or for the purpose of obtaining continuing maintenance for the claimant, the same right to bring proceedings under this Act as the claimant.

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 a power or duty given to the Attorney General under this Act.

12. (1) Where 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 (the enacting jurisdiction) through the Attorney General, the court in (the enacting jurisdiction) may deem the document to be a provisional order or a final order, according to the tenor of the document, and proceed accordingly.

(2) Where in a proceeding under this Act a document from a court in the reciprocating state contains terminology different from the terminology of this Act or customarily in use in the court in (the enacting jurisdiction), the court in (the enacting jurisdiction) shall give a broad and liberal interpretation to the terminology so as to give effect to the document.

(3) For the purposes of this Act, it shall be presumed, unless the contrary is established, that procedures taken in a reciprocating state have been regular and complete and that the court making an order in a reciprocating state had jurisdiction to do so and that the jurisdiction is recognized under the conflict of laws rules of (the enacting jurisdiction).

13. (1) Where confirmation of a provisional order or registration of a final order is sought and the documents received by a court refer to amounts 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 amounts in Canadian currency at a rate of exchange applicable on the day the order was made or last varied.

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

(3) Where an order or other document received by a court is not in (English or French), the order or other document shall have attached to it from the other jurisdiction a translation in (English or French) approved by the court and the order or other document shall be deemed to be in (English or French) for the purposes of this Act.

14. (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 (the enacting jurisdiction) under this Act and (the deserted spouses' and children's maintenance enactment of the enacting jurisdiction) applies with the necessary modification 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 that person's behalf, may appeal within seventy-five days after the making of the ruling, decision or order of the court in (the enacting jurisdiction) appealed from.

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

(4) The Attorney General may respond to an appeal under subsection (2) and may appeal a ruling, decision or order in the same proceeding within fifteen days after receipt of notice of the appeal, and he may act on behalf of a person resident in a reciprocating state who is responding to an appeal under subsection (3).

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

15. (1) In a proceeding under this Act, spouses are competent and compellable witnesses against each other.

(2) 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.

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

(4) 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.

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

- (a) all amounts that became due and owing by the respondent during the twenty-four months preceding the date of the statement; and
- (b) all payments made through the court by or on behalf of the respondent during that period.

17. Where a proper officer of a court in (the enacting jurisdiction) believes that a respondent under a final order or a registered order has ceased to reside in (the enacting jurisdiction) 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 whereabouts 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) three certified copies of the order as made in or filed with the court in (the Province); and
- (b) a sworn certificate of arrears.

18. The Lieutenant Governor in Council may, where he is satisfied that laws are or will be in effect in a state for the reciprocal enforcement of orders made in (the enacting jurisdiction) on a basis substantially similar to this Act, by regulation declare that state to be a reciprocating state.

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

20. Any order made under an enactment repealed by this Act continues, insofar as it is not inconsistent with this Act, valid and enforce-

able, and may be rescinded, varied, enforced or otherwise dealt with under this Act.

21. The reciprocal enforcement of maintenance orders enactment presently in force in (the enacting jurisdiction) is repealed.