

7633-40

Vol. 2

CONFIDENTIAL

L

Department of External Affairs

Subject:

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT
POLICY)

File No.

7633-40

Volume

TWO

From

JULY, 1950

To

FEBRUARY 1951

RE: DESERTION, BIGAMY & ILLEGITIMACY CASES
INVOLVING CANADIANS

REFERENCE TO RELATED FILES

Date	Referred To	Returned	Date	Referred To	Returned
7633-1-40	UN PROPOSALS RE RECIPROCAL ENFORCEMENT ABROAD				
7633-2-40	UK [REDACTED] CAN. MAINTENANCE ORDERS--RECIPROCAL AGREEMENT ON FACILITIES FOR ENFORCEMENT OF---POLICY				
7633-3-40	ISLE OF MAN--CAN MAINTENANCE ORDERS--RECIPROCAL AGREEMENT ON FACILITIES FOR ENFORCEMENT OF---POLICY				
7633-4-40	AUSTRALIA-CAN. MAINTENANCE ORDERS---RECIPROCAL AGREEMENT ON FACILITIES FOR ENFORCEMENT OF---POLICY				
7633-5-40	NEW ZEALAND-CAN MAINTENANCE ORDERS--RECIPROCAL AGREEMENT ON FACILITIES FOR ENFORCEMENT OF---POLICY				

**PUBLIC ARCHIVES
RECORDS CENTRE**

DECLASSIFIED

ACCESS TO INFORMATION
ACT / LA LOI SUR L'ACCÈS À L'INFORMATION
EXAMINED BY / EXAMINÉ PAR:

J. Sharpe

DATE / DATE:

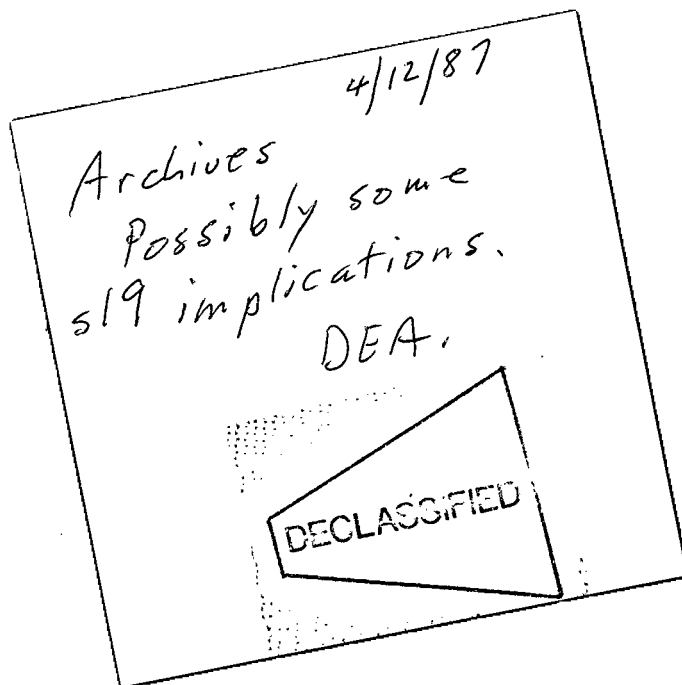
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	File No. 7633-40	Vol. 2	Proposed Category	
	Dates 1950-1957		<input type="checkbox"/> 1 - Declassification <input type="checkbox"/> 2 - Part Declassification <input checked="" type="checkbox"/> 3 - Postponed Declassification	
Title	Maintenance Orders (Australia, Paraguay, etc)		Screened by	J. P. Gagnon M. 4
Comments	Y 76			
Reason for Category	Since all items are post-1949, the screening might be premature.			
Historical Interest				
Disposition	Return to PARC			

**FOR SUBSEQUENT CORRESPONDENCE
SEE NEXT PART OF FILE**

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CONFIDENTIAL

February 13, 1957.

MEMORANDUM FOR MR. HOUDE

file 7633-40

Enforcement of Maintenance Awards Order

The Italian Ambassador raised this matter himself: he said that there were a number of outstanding cases and that while there was provincial legislation on the subject a substantial deposit was required before action could be taken. I explained again our constitutional difficulties and made the point that early action was not likely.

2. The Ambassador wondered whether other means were not available: without making any suggestion, he asked whether administratively the Immigration authorities could not apply some pressure. It would not be desirable to threaten deportation perhaps, but short of this, the Government might be in a position to assist in compelling immigrants to discharge an important moral obligation.

3. I said that I personally saw merit in the suggestion and that we would examine it. (Please discuss this with Consular and European Divisions and let me know what are the prospects.)

M. CADILUX

M.C.

cc: Legal Division
European Division

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

(FILE COPY)

NUMBERED LETTER

TO: THE CANADIAN EMBASSY,
BELGRADE, YUGOSLAVIA.
FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.
Reference: Your letter No. 15 of January 10, 1957.
Subject: Enforcement of Marital Maintenance
Orders.

Security: RESTRICTED
No: 29
Date: January 21, 1957.
Enclosures:
Air or Surface Mail:
Post File No: CON-1-1
CON-6-2

Ottawa File No.	
7633-40	
131	26

References

Canada has not signed this Convention. For your own information we are at present considering approaching the provinces to ascertain whether they would be prepared to implement the provisions of the Convention, in case the Canadian Government were to adhere to it.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

Internal
Circulation

Distribution
to Posts

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: The High Commissioner For Canada,
Pretoria, Union of South Africa

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.
Your letter No. 252 of September 25,
and enclosures and my letter No. 5
Reference: of January 3, 1957.
Subject: Transmission of a Provisional Maintenance Order made in Ontario to the Union authorities.

UNCLASSIFIED

Security: L-
No: January 17, 1957.
Date: 2
Enclosures: air
Air or Surface Mail:
Post File No: 10.1.4

Ottawa File No.

7633-40

References

s.19(1)

I am enclosing a Provisional Order and supporting material received from the Lieutenant Governor of Ontario in support of a claim for maintenance made by [redacted] against John [redacted]

2. I should be grateful if these enclosures could be passed to the appropriate Union authorities together with a copy of the Lieutenant Governor of Ontario's letter dated December 27, 1956.

3. In communicating the attached Provisional Order to the authorities of the Union it would be advantageous for you to ascertain informally their views on the channel of communications which should normally be employed in the future for the transmission of individual maintenance orders issued by Courts in Canada for execution in South Africa and vice versa. We have recently reached agreement with the United Kingdom authorities on a procedure whereby maintenance orders issued in the United Kingdom for execution in Canada will be transmitted direct by the Commonwealth Relations Office to the Lieutenant Governor of the Canadian Province concerned. Similarly the competent provincial authorities will transmit to the Commonwealth Relations Office direct (without the intervention of our Department) locally issued maintenance orders to be confirmed or executed in the British Isles.

4. Should the competent authorities in the Union of South Africa be prepared to communicate direct with the various provincial authorities in Canada in cases involving the transmission of individual orders, we would consider requesting the authorities of those Provinces which have provided for the reciprocal enforcement of maintenance orders with the Union to communicate direct with the competent Office in South Africa.

Internal
Circulation

Distribution
to Posts

Under-Secretary of State
for External Affairs

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Embassy,
..... Belgrade, Yugoslavia.

Reference: Your letter L-365 of August 30, 1956

Subject: Enforcement of Marital Maintenance
Orders.

Security: RESTRICTED

No: 15

Date: January 10, 1957

Enclosures:

Air or Surface Mail:

CON-1-1

Post File No: CON-6-2

Ottawa File No.

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References

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Jan 17 1957

According to the semi-official news agency JUGOPRES, the Yugoslav Government has decided to sign the March 1956 United Nations convention in which the inclusion of court decisions concerning alimony claims is facilitated between signatory countries. According to the agency report, the convention was initiated by the Economic and Social Council of the U.N. The agency states that on the basis of the convention's provisions each signatory country is committed to form at least two new institutions: an agency for presentation of claims and an agency for mediation. The first organization would be designed to present claims against persons in foreign signatory countries, whereas the second institution would be responsible for the initiating of court proceedings, filing claims and requesting legal protection in favour of claimants in foreign countries.

2. We presume that Canada has not signed this convention because of Provincial constitutional jurisdiction in this field, but would appreciate receiving confirmation since we from time to time receive informal enquiries on the subject from Yugoslavs.

Internal
Circulation

*Canada has
not signed this
convention
J.M.*

H. Walker
for The Embassy.

Distribution
to Posts

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NO ENCLUSTRES

1957 JAN 17 AM 11:35

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File 7633-40
AGENDA (see p. 3.)

FOR THE

THIRTY-SEVENTH ANNUAL MEETING

OF THE

Conference of Commissioners

ON

Uniformity of Legislation
in Canada

To be held in the Railway Committee Room, Parliament
Buildings, Ottawa, commencing at ten o'clock a.m.
on Tuesday, August 23rd and continuing
until Saturday, August 27th, 1955.

PART I

OPENING PLENARY SESSION

1. Opening of Meeting.
2. Minutes of Last Meeting.
3. President's Address.
4. Treasurer's Report and Appointment of Auditors.
5. Secretary's Report.
6. Appointment of Nominating Committee.
7. Publication of Proceedings.
8. Next Meeting.

PART II

UNIFORM LAW SECTION

Amendments to Uniform Acts—Report of Mr. Treadgold (1951 Proceedings, page 17).

Assignments of Book Debts; Bills of Sale; Conditional Sales—Report of Manitoba Commissioners (1954 Proceedings, page 25).

Bulk Sales—Report of British Columbia Commissioners (1954 Proceedings, page 21).

Companies—Report of Federal Representatives (1954 Proceedings, page 17).

Highway Traffic and Vehicles:

Responsibility for Accidents—Report of Nova Scotia Commissioners (1948 Proceedings, page 25; 1954 Proceedings, page 24).

Rules of the Road—Report of Special Committee (1954 Proceedings, page 17).

Innkeepers—Report of Nova Scotia Commissioners (1952 Proceedings, page 24; 1954 Proceedings, page 23).

Testate Succession—Report of Ontario Commissioners (added to the Agenda by direction of the President).

Judicial Decisions affecting Uniform Acts:

Report of Dr. Read (1951 Proceedings, page 21).

Reports of British Columbia, Nova Scotia, Saskatchewan, Alberta and Ontario Commissioners re Dr. Read's 1954 Report (1954 Proceedings, pages 23, 24).

Legitimation—Report of Alberta Commissioners (1954 Proceedings, page 21).

// Reciprocal Enforcement of Judgments; Reciprocal Enforcement of Maintenance Orders—Report of Special Committee (1954 Proceedings, page 20).

Survivorship—Report of Alberta Commissioners (1954 Proceedings, page 22).

Trustee Investments—Report of British Columbia and New Brunswick Commissioners (1954 Proceedings, page 18).

Wills—Report of Special Committee (1953 Proceedings, page 17; 1954 Proceedings, page 18).

New Business.

PART III

CRIMINAL LAW SECTION

The Section will consider a substantial number of suggestions for amendments to the *Criminal Code* being matters that have come to light through the operation of the Code and that appear to require further study.

PART IV

CLOSING PLENARY SESSION

1. Report of Criminal Law Section.
2. Appreciations, etc.
3. Report of Auditors.
4. Report of Nominating Committee.
5. Close of Meeting.

Copies on file: 7633-2-40
9106-40C
7633-1-40

Legal Division/E.G. Lee/bl

United Nations Division
Dept. of Health & Welfare (Att. Mr. R.E. Curran)

Ottawa, November 22, 1956

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Our File: 7633-40

Copies on 7633-2-40
9106-40
7633-1-40

Dear Mr. O'Heara,

Draft Acts of Conference of Commissioners
on Uniformity of Legislation in Canada

Thank you for your letter of November 7, 1956 with the enclosed copies of the draft model acts of the above Conference to facilitate the reciprocal enforcement of judgments and maintenance orders.

As you will recall from correspondence between our two Departments during 1955-56 / on your file 1521/45 (see in particular my letter to the Under-Secretary of State of September 24, 1956), we were informed recently by the United Kingdom authorities that with respect to the question of the appropriate corresponding authorities, the United Kingdom Maintenance Order (Facilities for Enforcement) Act, 1920, refers expressly to the transmission of Orders by and to Governors of parts of Her Majesty's dominions. In the circumstances they have indicated that they are not able to agree that orders should be transmitted other than by or to a Governor or Lieutenant-Governor. As this particular procedure is laid down by Act of the United Kingdom Parliament, the United Kingdom authorities consider that there is no alternative to their insisting that orders should be transmitted by or to the Lieutenant-Governors.

W.P.J. O'Heara, Esq.,
Assistant Under Secretary of State,
Department of the Secretary of State,
O T T A W A.

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Accordingly, you might perhaps wish to consider whether Sections 3 (1) and 8 of the draft model act on the reciprocal enforcement of maintenance obligations are broad enough to allow the United Kingdom authorities to forward the maintenance order directly to the Lieutenant-Governor of a province for transmission to the Attorney-General, and on the other hand to allow the Attorney-General to transmit a document to the proper officer of a reciprocating state through the intermediary of the Lieutenant-Governor.

If Sections 3(1) and 8 are not considered broad enough to allow for the transmission of the orders through the Lieutenant-Governor in these circumstances, would there be any advantage should the opportunity arise in amending the sections to make clear that the Attorney-General is not required by law to be the only transmitting authority? If it is considered that an amendment would be advisable, the problem might be solved by inserting the words "through the appropriate channels" after the words "transmitted" and "transmission" in Sections 3(1) and 8 respectively. Thus the two Sections would read:

Section 3(1):

"Where, either before or after the coming into force of this Act, a maintenance order has been made against a person by a court in a reciprocating state, and a certified copy of the order has been transmitted through the appropriate channels by the proper officer of the reciprocating state to the Attorney-General, the Attorney-General shall send a certified copy of the order for registration to the proper officer of a court in (province) designated by the Lieutenant-Governor-in-Council as a court for the purposes of this section, and on receipt thereof the order shall be registered."

and Section 8:

"Where under this Act a document is sent to the Attorney-General for transmission through the appropriate channels

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"to the proper officer of a reciprocating state, the Attorney-General shall transmit the document accordingly."

It is noted that Section 8 above speaks of a document, which is not defined in the draft model act, whereas the United Kingdom Act deals only with the transmission of orders. It is to be presumed, however that Section 8 does refer to inter alia, documents such as maintenance orders.

As you may know there is a United Nations Convention on the Recovery Abroad of Maintenance which was adopted and opened for signature at the United Nations Conference on Maintenance Obligations on June 20, 1956 (a copy is attached for your information). Although Canada is not a party to this Convention at the present time, there is a possibility that we might consider acceding to the Convention in the future. Consequently this Department has an interest in ascertaining whether the provisions of the legislation - either in force or contemplated - of the provinces with regard to maintenance orders conform to those of the United Nations Convention on Recovery Abroad of Maintenance.

After studying the provisions of the draft model act attached to your letter under reference in relation to the United Nations Convention we are lead to the tentative conclusion that they do not conflict: while the former deals with the reciprocal enforcement of a maintenance order made against a person by a court in a reciprocating state, the latter provides for the creation of an agency in the claimants' country which would collate the necessary evidence to be transmitted to a similar agency known as the receiving agency in the country of the respondent; the latter agency would itself prosecute the action on behalf of the claimant.

You may also recall that in 1952 the Report of the Committee of Experts on the Recognition and Enforcement Abroad of Maintenance Obligations appointed by the Secretary-

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General of the United Nations pursuant to Resolution 390 (XIII) of the Economic and Social Council, proposed a Draft Model Convention on the Enforcement Abroad of Maintenance Orders (U.N. Document E/AC.39/1 Annex II). However the committee decided that this Convention should be used by States as a model for bilateral treaties or uniform legislation rather than as the basis of a multilateral convention, (U.N. Document E/2364/Add.1). Consequently it would seem that no problem of conflict of provisions between this Convention and the draft model act would confront us. / Unfortunately we do not have extra copies of this second Convention; we would be glad, however, to lend you our file copy, if you so desire/.

I should add that Mr. R.E. Curran, in the Department of National Health and Welfare, who represented Canada at the United Nations Conference mentioned in paragraph 6 above, would, in my opinion be interested in the problem under discussion. I am therefore taking the liberty of sending him a copy of this letter in case he might care to convey any expression of views to you. If convenient, may I suggest that you provide him with copies of the model acts which were attached to your letter of November 7, 1956 to me.

I do not have any comments to make on the draft model act to facilitate the reciprocal enforcement of judgments.

Yours sincerely,

GILLES SICOTTE

Gilles Sicotte.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

File *eth* Ottawa, November 7, 1956.
7633-40

By Hand

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Dear Mr. Sicotte:

In accordance with our conversation by telephone yesterday afternoon, I send you herewith a copy of each of two draft acts recommended by the Conference of Commissioners on Uniformity of Legislation in Canada for uniform adoption by the Canadian provinces. These are draft acts (a) to facilitate the reciprocal enforcement of judgments and (b) to facilitate the enforcement of maintenance orders.

Under the rules of the Conference it is required that these drafts be distributed "to members of the Conference in their respective jurisdictions, and that if the Acts as so revised are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1956, they be recommended for enactment in that form."

In the circumstances I shall appreciate it if you would let me know within the next fortnight whether you consider that in any respect the draft uniform acts ought not to be recommended for adoption by the various Canadian provinces.

Yours very truly,

W.P.J. O'Meara

(W.P.J. O'Meara)

Assistant Under Secretary of State.

G. Sicotte, Esq.,
Director, Legal Division,
Department of External Affairs,
Room 209, Post Office Building,
Ottawa, Ontario.

File off

7633-40

An Act to Facilitate the Enforcement of Maintenance Orders

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

- Short title . 1. This Act may be cited as "The Reciprocal Enforcement of Maintenance Orders Act".
- Interpretation. 2. In this Act,
- "certified copy" (a) "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;
- "court" (b) "court" means an authority having statutory jurisdiction to make maintenance orders;
- "dependant" (c) "dependant" means a person that a person against whom a maintenance order is sought or has been made is liable to maintain according to the law in force in the place where the maintenance order is sought or was made;
- "maintenance order" (d) "maintenance order" means an order, other than an order of affiliation, for the periodical payment of money towards the maintenance of the wife or any other dependant of the person against whom the order was made; and
- "reciprocating state" (e) "reciprocating state" means a jurisdiction declared under section 14 to be a reciprocating state.

ENFORCEMENT OF MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

- Enforcement in (province) of maintenance orders made elsewhere. 3. (1) Where, either before or after the coming into force of this Act, a maintenance order has been made against a person by a court in a reciprocating state, and a certified copy of the order has been transmitted ^{through the appropriate channels} by the proper officer of the reciprocating state to the Attorney-General, the Attorney-General shall send a certified copy of the order for registration to the proper officer of a court in (province) designated by the Lieutenant-Governor-in-Council as a court for the purposes of this section, and on receipt thereof the order shall be registered.
- Effect of registration. (2) An order registered under subsection (1) has, from the date of its registration, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so registered, and that court has power to enforce the order accordingly.
- Conversion to Canadian currency. (3) A maintenance order that makes payable sums of money expressed in a currency other than the currency of Canada shall not be registered under subsection (1) until the court in which it is sought to register the order, or, where that court is the (Supreme) Court, the (registrar) of that court, has determined the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the order of the court in the reciprocating state, as ascertained from any branch of any chartered bank; and the court or the (registrar), as the case may be, shall certify on the order the sums so determined expressed in the currency of Canada and, upon the registration of the order, it shall be deemed to be an order for the payment of the sums so certified.

MAINTENANCE ORDERS AGAINST NON-RESIDENTS

- Transmission of maintenance orders made in (province). 4. Where, either before or after the coming into force of this Act, a court in (province) has, on the application of a dependant who is resident in the province, made a maintenance order against a person and it is proved to the court that the person against whom the order

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was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the proper officer of the reciprocating state.

Provisional
maintenance
orders against
person residing
outside
(province).

5. (1) Where an application is made to a court in (province), by a dependant who is resident in the province, for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a summons had been duly served on that person and he had failed to appear at the hearing; but an order so made is provisional only and has no effect until it is confirmed by a competent court in the reciprocating state.

(Note:- In this subsection and elsewhere in the draft where the word "summons" is used, each province should use the term appropriate to its own courts.)

Depositions
and
transcripts.

(2) Where the evidence of a witness who is examined on an application mentioned in subsection (1) is not taken in shorthand, the evidence shall be put into the form of a deposition; and the deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

Preparation of
statements and
transmission of
documents to
Attorney-
General.

(3) Where an order has been made pursuant to subsection (1),

(a) the court shall prepare,

(i) a statement showing the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing, and

(ii) a statement showing the information that the court possesses for facilitating the identification of the person against whom the order was made and ascertaining his whereabouts; and

(b) the court shall send to the Attorney-General for transmission to the proper officer of the reciprocating state,

(i) a certified copy of the order,

(ii) the depositions or a certified copy of the transcript of the evidence, and

(iii) the statements referred to in clause (a).

Power to take
new evidence
on renvoy.

(4) Where a provisional order made under this section has come before a court in a reciprocating state for confirmation, and the order has by that court been remitted to the court in (province) that made the order for the purpose of taking further evidence, the court in (province) shall, after giving the notice prescribed by the rules, proceed to take the evidence in like manner, and subject to the like conditions, as the evidence in support of the original application.

Further
powers on
renvoy.

(5) Where upon the hearing of the evidence taken under subsection (4) it appears to the court in (province) that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence, if it was taken in shorthand, shall be sent to the Attorney-General and dealt with in like manner as the depositions or transcript of the original evidence.

Power of
original court
to vary or
rescind.

(6) The confirmation of an order made under this section does not affect any power of the court that originally made the order to vary or rescind the order, but an order varying an original order has no effect until it is confirmed in like manner as the original order.

Transmission
of varying or
rescinding
order.

(7) Where, after an order made under this section is confirmed, the court that originally made the order makes a varying or rescinding order, that court shall send a certified copy thereof, together with the depositions or a certified copy of the transcript of any new evidence adduced before the court, to the Attorney-General for transmission to the proper officer of the reciprocating state in which the original order was confirmed.

Right of
appeal.

(8) An applicant for a provisional order under this section has the same right of appeal, if any, against a refusal to make the order as he would have had against a refusal to make a maintenance order if a summons had been duly served on the person against whom the order is sought to be made.

CONFIRMATION OF MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

Confirmation of
maintenance
orders made
outside
(province).

6. (1) Where,

(a) a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect until confirmed by a court in (province);

(b) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed if the person against whom the order was made had been a party to the proceedings is received by the Attorney-General; and

(c) it appears to the Attorney-General that the person against whom the order was made is resident in (province),

the Attorney-General may send the documents to a court designated by the Lieutenant-Governor-in-Council as a court for the purposes of this section; and upon receipt of the documents the court shall issue a summons calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

Right of defence
on application
for confirmation.

(2) At a hearing under this section the person on whom the summons was served may raise any defence that he might have raised in the original proceedings if he had been a party thereto, but no other defence; and the statement from the court that made the provisional order, stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is conclusive evidence that those grounds are grounds on which objection may be taken.

Power to
confirm with
or without
modification.

(3) Where, at a hearing under this section, the person who was served with the summons does not appear or, having appeared, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order, either without modification or with such modifications as the court, after hearing the evidence, considers just.

Power to
remit to court
that made
provisional
order.

(4) Where the person against whom a summons was issued under this section appears at the hearing and satisfies the court that, for the purpose of any defence, it is necessary to remit the case to the court that made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Variation or
rescission of
order that has
been confirmed.

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court; and where, on an application for rescission or variation, the court is satisfied that it is necessary to remit the case to the court that made the order for the purpose of taking further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Right of appeal.

(6) Where an order has been confirmed under this section, the person bound thereby has the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order if the order had been an order made by the court confirming the order.

(7) An order confirmed under this section has, from the date of its confirmation, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so confirmed, and that court has power to enforce the order accordingly.

Conversion
to Canadian
currency.

(8) Where an order sought to be confirmed under this section makes payable sums of money expressed in a currency other than the currency of Canada, the confirming court, or where that court is the (Supreme) Court, the (registrar) of that court, shall determine the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the provisional order of the court in the reciprocating state, as ascertained from any branch of any chartered bank; and the confirming court or the (registrar), as the case may be, shall certify on the order when confirmed the sums so determined expressed in the currency of Canada, and the order when confirmed shall be deemed to be an order for the sums so certified.

GENERAL

Enforcement
of order.

7. A court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of the court, shall take all proper steps for enforcing the order.

Transmission of
documents by A. G.
to reciprocating
state.

8. Where under this Act a document is sent to the Attorney-General for transmission ^{through the appropriate channels} to the proper officer of a reciprocating state, the Attorney-General shall transmit the document accordingly.

Rules of practice.

9. The Lieutenant-Governor-in-Council may make rules prescribing the practice and procedure, including costs, under this Act.

(Note: - To be varied to suit the requirements of each adopting province.)

Proof of documents
signed by officer
of court.

10. A document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Depositions to
be evidence.

11. Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Act, may be received in evidence before the courts in (province) under this Act.

Where order in
foreign language.

12. Where a maintenance order sought to be registered or confirmed under this Act is in a language other than the (English) language, the maintenance order or a certified copy thereof shall have attached thereto, for all purposes of this Act, a translation in the (English) language approved by the court; and upon such approval being given the maintenance order shall be deemed to be in the (English) language.

Saving.

13. Nothing in this Act deprives a person of the right to obtain a maintenance order instead of proceeding under this Act.

Designation of
reciprocating
states.

14. (1) Where the Lieutenant-Governor-in-Council is satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of maintenance orders made within (province), the Lieutenant-Governor-in-Council may by order declare it to be a reciprocating state for the purposes of this Act.

Revocation of
designation.

(2) The Lieutenant-Governor-in-Council may revoke any order made under subsection (1); and thereupon the jurisdiction with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act.

Uniform
interpretation.

15. This Act shall be so interpreted as to effect its general purpose of making uniform the law of the provinces that enact it.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

(FILE COPY)

NUMBERED LETTER

TO: The Canadian Embassy,
..... Belgrade, Yugoslavia.

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Reference: Your letter No. 413 of July 12, 1956.

Subject: Arrangements for the reciprocal
enforcement of maintenance orders.
.....

Security: RESTRICTED
No: L- 365
Date: August 30, 1956.
Enclosures:
Air or Surface Mail:
Post File No:

Ottawa File No.

7633-40

131

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References

I agree that the making of arrangements for the reciprocal enforcement of maintenance orders between Canada and Yugoslavia has certain undesirable features which distinguish it from a West European country such as Austria and that in this particular situation it would not be advisable, at this time, to offer any encouragement to the Yugoslav authorities.

If further informal enquiries are made in this regard I suggest that you might inform the enquirer that the making of arrangements for the reciprocal enforcement of maintenance orders in the Provinces is regulated by Provincial Laws and that a formal approach to the each provincial Government through this Department would be necessary. It would be well to explain that so far no province has entered into an arrangement for the reciprocal enforcement of maintenance orders with States outside the Commonwealth.

If this factual information is not sufficiently discouraging to the Yugoslav Government and they indicate that they wish to make a formal approach to the Provinces, this Department could inform the Provinces of the points raised in your above mentioned letter and I have no doubt but that the reply would be negative.

Internal
Circulation

European Div.
Consular Div.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

Distribution
to Posts

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

(FILE COPY)

NUMBERED LETTER

TO: The Office of the High Commissioner.....
.....for Canada, London.....

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Reference: Your Letter 1195 of July 23, 1956.....

Subject: Reciprocal Enforcement of Foreign.....
.....Judgments and Maintenance Orders made by
.....the Scottish Supreme Court.....

Security: UNCLASSIFIED.....

No: L- 1028.....

Date: August 10, 1956.....

Enclosures:.....

Air or Surface Mail:.....

Post File No:.....

Ottawa File No.	
9106-40	
7633-40	
131	—

References

ORIG ON 9106-40

Neither the Department nor its Missions abroad normally give advice to private enquirers on points of law involving interpretation of Canadian legislation. In this particular instance we would not be prepared to advise Mr. McWilliam as to whether judgment of the Scottish Supreme Court -- other than maintenance orders -- would or would not be enforceable in Canada.

2. I suggest, therefore, that you advise this enquirer that he would be well advised to consult an attorney familiar with the laws of the province in regard to which he is interested.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

Internal
Circulation

Distribution
to Posts

File
Daily
Working
FILE COP

European/J. George/G. Choquette/gb

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

Security **RESTRICTED**

Date **August 8, 1956.**

FROM: European/J. George

File No.

7633-40 L

REFERENCE: Your Memorandum of July 24.

12	—	
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SUBJECT: Arrangements for the reciprocal enforcement of maintenance orders with Yugoslavia.

I agree that it would certainly be difficult for us to object if the Yugoslav Government were to make formal proposal that they be permitted to approach the Canadian Provinces through our Department with a view to concluding reciprocal enforcement agreements on maintenance orders. At the same time I share the reservations expressed by our Embassy in Belgrade and suggest that we should instruct them to let matters lie unless the Yugoslavs raise the question formally.

2. Judging from the file, it seems probable that most of the Provinces would refuse a Yugoslav request in any case and if they make a further informal approach, they might be advised that for this reason we did not see much point in pursuing the matter.

3. In any case a reciprocal agreement would in practice be anything but "reciprocal".

JAMES GEORGE

J.G.

cc: Consular Division
DL (2) Division

European/J. George/G. Choquette/gb
DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

Security RESTRICTED

Date August 8, 1956.

FROM: European/J. George

File No. 7633-40		
137	—	—

REFERENCE: Your Memorandum of July 24.

SUBJECT: Arrangements for the reciprocal enforcement of maintenance orders with Yugoslavia.

I agree that it would certainly be difficult for us to object if the Yugoslav Government were to make formal proposal that they be permitted to approach the Canadian Provinces through our Department with a view to concluding reciprocal enforcement agreements on maintenance orders. At the same time I share the reservations expressed by our Embassy in Belgrade and suggest that we should instruct them to let matters lie unless the Yugoslavs raise the question formally.

2. Judging from the file, it seems probable that most of the Provinces would refuse a Yugoslav request in any case and if they make a further informal approach, they might be advised that for this reason we did not see much point in pursuing the matter.

3. In any case a reciprocal agreement would in practice be anything but "reciprocal".

J.G.

cc: Consular Division
DL (2) Division

Legal Division
I agree with European's comment.
Aug 28.
Brillat
Consular

Legal/J.S.Nutt/ts.

ME HAWKINS
FILE COPY

European Division

RESTRICTED

Consular Division

July 24, 1956.

Legal Division

Letters 330 & 413 from Belgrade
and our letter 255 of June 28 to Belgrade

7633-40	
131	✓

Arrangements for the reciprocal enforcement of maintenance
orders.

As will be seen from the above mentioned correspondence, Mr. Hart of our Embassy in Belgrade has raised several points of objection to informing the Yugoslav Government of the facilities available in Canada for the reciprocal enforcement of maintenance orders provisionally made in a foreign country. From a legal point of view we can see no objection to passing this information along. In fact, it is difficult to see how we can withhold it. We could inform our Embassy not to give any encouragement to the Yugoslav authorities that arrangements would be possible. It is difficult to see how we could avoid agreeing to pass on a request to the Provinces if the Yugoslav Government should make a formal request. Our only alternative would then seem to be to inform the Provinces of our reservations when passing along the request.

2. I would be grateful, therefore, if you would let me know whether you consider Mr. Hart's reservations constitute a sufficient reason for our doing everything possible to avoid having reciprocal arrangements entered into.

3. Incidentally, I do not think the suggestion in the last paragraph, would be practical. Such a suggestion would infer that Yugoslav courts listen to the representations of Government Departments in such matters as claims for maintenance: i.e. that they are not impartial.

GILLES SICOTTE

Legal Division.

x of letter 413

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

H 2

TO: ~~European Division~~ Security **RESTRICTED**
..... ~~Consular Division~~
FROM: ..Legal Division.....
REFERENCE: ..Letters 330. & 413. from Belgrade...
.....and our letter 255. of June 28. to Belgrade...
SUBJECT: Arrangements for the reciprocal enforcement of maintenance orders.

Date July 24, 1956.

File No.
7633-40
Bz — —

As will be seen from the above mentioned correspondence, Mr. Hart of our Embassy in Belgrade has raised several points of objection to informing the Yugoslav Government of the facilities available in Canada for the reciprocal enforcement of maintenance orders provisionally made in a foreign country. From a legal point of view we can see no objection to passing this information along. In fact, it is difficult to see how we can withhold it. We could inform our Embassy not to give any encouragement to the Yugoslav authorities that arrangements would be possible. It is difficult to see how we could avoid agreeing to pass on a request to the Provinces if the Yugoslav Government should make a formal request. Our only alternative would then seem to be to inform the Provinces of our reservations when passing along the request.

2. I would be grateful, therefore, if you would let me know whether you consider Mr. Hart's reservations constitute a sufficient reason for our doing everything possible to avoid having reciprocal arrangements entered into.

3. Incidentally, I do not think the suggestion in the last paragraph* would be practical. Such a suggestion would infer that Yugoslav courts listen to the representations of Government Departments in such matters as claims for maintenance: i.e. that they are not impartial.

Legal Division.

* of letter 413

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Embassy
.....
..... BELGRADE, Yugoslavia.

Reference: Your Letter No. L-255 of June 28, 1955

Subject: Arrangements for the reciprocal
..... enforcement of maintenance orders

Security: UNCLASSIFIED

No: 413

Date: July 12, 1956.

Enclosures:

Air or Surface Mail:

Post File No: CON-1-1

Ottawa File No.

7633-40

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Cmt*

References

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JUL 18 1956

Internal
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Distribution
to Posts

In your letter under reference, you have indicated that you see no objection to the Yugoslav Government approaching the Provinces through the Department of External Affairs with a proposal for the reciprocal enforcement of maintenance orders. We were interested to note that an arrangement of this kind has already been agreed upon between the Province of Ontario and the Austrian Government. On further reflection on this matter, it appears to us that the Yugoslav case has certain features which distinguish it from a West European country and which perhaps deserve further consideration before the matter is taken up again with the Yugoslav authorities here.

2. One of the distinguishing features is the fact that a good many male immigrants to Canada left Yugoslavia originally with the intention of making their fortune abroad and then returning to their homeland to live out the rest of their days in relative affluence. Thus a lot of these people left their wives and children behind, expecting to rejoin them here at some future date. In the interval, a Yugoslav immigrant in Canada may have developed a common-law relationship with another woman there and have established a home with her there complete with Canadian-born children. The same sort of relationship has probably, in a good many cases, been entered into in Yugoslavia by the women who were left behind. Any arrangement for enforcing maintenance upon a husband in such circumstances in Canada in favour of a wife in Yugoslavia enjoying similar circumstances would seem to work out unfairly on the husband. The husband probably has no notion of returning to Yugoslavia and the wife is probably content to remain in Yugoslavia and make the best of both sets of relationship.

3. Undoubtedly there must be cases of hardship which may justify the Yugoslav Government's concern in the matter. This, however, to our knowledge, is the first time they have made an approach of this kind to us. It comes at a time when the Yugoslav Government is embarking on an all-out endeavour to increase its resources of foreign currency. In this connection much attention has been given to increasing the flow of remittances from Yugoslav immigrants abroad. Last year the total of such remittances was in the neighbourhood of \$6 million but this was

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NO ENCLOSURES

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-2-

substantially lower than the record achieved in the 1920's. The wish to increase remittances by all means possible may well have had a bearing, therefore, on the enquiry which we have received at this time from the Secretariat of State.

4. Another important consideration is the attitude the Yugoslav authorities themselves take to the reunion of families. There are still a number of cases on our files of wives who wish to join their husbands in Canada but from whom passport facilities are still being withheld. Some of these people may eventually obtain passports but only after long delays of several years. We have suggested in our previous letter that an agreement between Governments to force proper maintenance by the husbands might have the effect of encouraging wives to remain in Yugoslavia. Yugoslav authorities themselves might feel less enthusiastic about expediting passport facilities if a policy of increased delay and obstruction might bring them, through the operation of maintenance arrangements, an increased flow of dollars.

We should appreciate your comments on the considerations we have outlined above. In the circumstances, it would seem to be desirable to obtain assurances from the Yugoslav authorities that individual applications for a maintenance order would be clearly deserving and that Yugoslav passport policy would operate in a way which would bring families together in Canada with a minimum of delay.


The Embassy

TOP OF FILE

7633-40	
64	✓

LIEUTENANT GOVERNOR'S OFFICE
SAINT JOHN, N.B.

May 14th, 1956.

W.H. Measures, Esq.,
Department of the Secretary of State,
Ottawa, Ontario.

Re: Reciprocal Enforcement of Maintenance
Orders: Canada-Australian Capital
Territory and Northern Territory

Dear Sir:

Referring to your letter of April 11th,
1956, file 1521-45 (Australia), concerning the above.

The practical application of Reciprocal Enforcement
of Maintenance Orders has not yet been proven to be efficacious,
even between Canadian Provinces.

For this reason and because the likelihood
of the necessity of invoking the Act between this Province
and any Australian territory seems very remote, the Attorney
General deems it inadvisable to recommend to the Government
at this time that the necessary and not inconsiderable
procedures be carried out to make any further reciprocal
arrangements with any jurisdiction outside of Canada.

Yours very truly,

D.L. MacLaren, P.C.,
Lieutenant-Governor.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

(FILE COPY)

NUMBERED LETTER

TO: The Canadian Ambassador,
Belgrade, Yugoslavia.

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Reference: Your letter No. 330 of June 5, 1956.

Subject: Arrangements for the reciprocal
enforcement of maintenance orders.

Security: UNCLASSIFIED

No: L- 255

Date: June 28, 1956.

Enclosures: 1

Air or Surface Mail: Air

Post File No: CON-1-1

Ottawa File No.	
7633-40	
131	26

References

Refer to:
Consular
European

The making of arrangements for the reciprocal enforcement of maintenance orders in the Provinces is regulated by the Provinces. At the present time no Province has entered into an arrangement for the reciprocal enforcement of maintenance orders with States outside the Commonwealth. However, some of the Provincial Acts allow for arrangements with countries other than Commonwealth States. I see no objection to the Yugoslav Government approaching the Provinces through this Department with such a proposal.

For your own information, the Province of Ontario has agreed to enter into an arrangement with the Austrian Government for the reciprocal enforcement of maintenance orders but, as yet, the arrangements are incomplete.

I am enclosing one copy of Circular Document B. 10/54 which includes a memorandum on the enforcement of voluntary undertakings to support children abroad.

Internal
Circulation

J. E. MUTT

Under-Secretary of State
for External Affairs.

Distribution
to Posts

SUBJECT FILE.

7633-40

CIRCULAR DOCUMENT

Ottawa, February 19, 1954.

NO. B. 10/54THE MAINTENANCE OF CHILDREN WHO HAVE BEEN
ABANDONED BY FATHERS IMMIGRATING TO CANADA

Foreign missions in Ottawa and Canadian posts abroad frequently ask if there is any way in which a father who has immigrated to Canada can be made to support his children, either legitimate or illegitimate, whom he has abandoned in his country of origin. Because in Canada such matters are within the jurisdiction of the Provinces, the Federal Government can do little, if anything, to assist these children; the pertinent sections in the Criminal Code depend upon provincial law.

From a practical point of view, the best solution to the problem is to refer persons seeking your advice or assistance to a welfare agency. That agency should then present the case to the International Social Service, which has its headquarters in Geneva. The International Social Service will in turn, through its branch in the United States, refer the matter to the Canadian Welfare Council in Ottawa which will ask an agency in the district where the father resides to investigate the matter. This agency will, if possible, obtain a voluntary undertaking from the father to maintain his child and will be responsible for remitting any contributions which he might decide to make.

At the request of the German Embassy in Ottawa, the provincial authorities were asked if, in their opinion, a voluntary undertaking of this type could be enforced by a court. The replies of the provinces have been summarized in a memorandum which is attached. It should be borne in mind that it appears that a court has never considered the question and, therefore, these opinions are in no way conclusive.

(Sgd.) K. J. BURBRIDGE

for the Secretary of State
for External Affairs.To the Heads of
Canadian Posts Abroad.

M E M O R A N D U MEnforcement of Voluntary Undertakings
to Support Child Abroad.GENERAL

Sections 242 and 244 (the penal section) of the Criminal Code provide that a father who fails to provide his child with the necessities of life is criminally liable, but does not create a duty upon him to do so. Whether such a duty exists as a matter of civil rights and is, therefore, of provincial concern. In British Columbia this duty exists under the provisions of the Poor Relief Act, but in Ontario no such duty exists where the child is not living with its father.

Generally speaking, the position seems to be that stated by the authorities in Nova Scotia; it is difficult to formulate any rule which would serve in all instances and each case should therefore be considered on its merits.

ALBERTA -

It appears that a voluntary undertaking could not form the basis of an action in an Alberta court but could serve as corroborative evidence. An action for maintenance of the child could not be brought in an Alberta court because the person to be maintained is without the jurisdiction of the court. An order made in a foreign court could be the basis of an action in an Alberta court providing that the foreign court had jurisdiction and that the order of the foreign court is final.

BRITISH COLUMBIA -

It is doubtful whether a voluntary undertaking to support a child abroad could be enforced against a father living in British Columbia. An action could be brought in a court for an order that the father pay so much a month towards the support of a child but it would be difficult to prove the neglect or non-support of a child not resident in the province.

MANITOBA -

The authorities in Manitoba take the position that whether or not a voluntary undertaking made in Canada by an immigrant father to support his legitimate or illegitimate children in Germany can be enforced in the courts of Manitoba depends entirely on the form of the "voluntary undertaking". If the undertaking is in the form of a contract between the father and a person or agency in Manitoba for the payment of a specified sum and is made in Manitoba, it will be enforceable.

NEW BRUNSWICK -

Whether or not an undertaking to support a child would be enforceable in the courts of New Brunswick depends upon the exact nature of the "undertaking" and the circumstances surrounding the giving of the undertaking.

NEWFOUNDLAND -

A voluntary promise made by a father to support a child resident abroad would not in itself constitute a cause of action in Newfoundland.

- 2 -

NOVA SCOTIA -

An undertaking of this sort would be enforceable as an action by the child through its next friend for debt for the recovery of amounts not paid in accordance with the undertaking. Such an action could relate only to arrears and would not result in the obtaining of an enforceable order for payment of maintenance in the future. The claimant, therefore, would probably have to bring actions from time to time as arrears accrued.

The Wives' and Children's Maintenance Act, which provides a summary method of obtaining an order having continuous effect, is applicable only to claims by or on behalf of wives or children who reside in the Province. It would not be available in the case of a wife or child living in Germany. Since there is not reciprocity between Nova Scotia and the Federal Republic of Germany, respecting the enforcement of maintenance orders, an Act permitting recognition or enforcement of maintenance orders made elsewhere could not be used.

ONTARIO -

It is the opinion of the Attorney General that no basis exists upon which action could be taken in an Ontario court to enforce a voluntary undertaking by a father to support his children abroad.

PRINCE EDWARD ISLAND -

The provincial authorities are of the opinion that such an undertaking could be enforced.

QUEBEC -

The Attorney General is of the opinion that each case is worth considering since it is quite probable that an undertaking of this kind could be enforced.

SASKATCHEWAN -

The success of an action to enforce a voluntary undertaking given by a father in Saskatchewan to support his child abroad would depend upon the evidence establishing liability.

DEPARTMENT OF EXTERNAL AFFAIRS
CROSS REFERENCE SHEET

File 2.15.

Security *Unclassified*

"L"

7633-40		
28	✓	—

Type of Document *Copy of letter* No. *✓* Date *June 13/5'6*
From *Cik & Immigration*
To *Belgrade*
Subject: *Re - Slavica & Franjo Horvath*

Original on File No. *copy "L" 17-40*

Copies on File No. *✓*

Other Cross Reference Sheets on *✓*

Prepared by *[Signature]* *6/5/8*

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Embassy,
Belgrade, Yugoslavia.

Reference:.....

Subject: Maintenance of Deserted Wives.

Security:.....RESTRICTED

No:.....330

Date:.....June 5, 1956

Enclosures:.....

Air or Surface Mail:.....

Post File No.: GON-1-1.

Ottawa File No.	
7633-40	
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References

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JUN 10 1956

During a visit to the consular department of the Secretariat of State last week, the Vice Consul was asked informally whether he thought there was any possibility that the Canadian Government would be interested in entering into an agreement in which husbands of Yugoslav wives could be forced to support their dependents who have been left behind in Yugoslavia and whom the husbands have failed either to support or to apply for their immigration to Canada.

2. Mr. Walker was non-committal but pointed out the constitutional difficulties of any attempt to make effective such an agreement even if in principle Canadians might sympathize with the plight of the deserted wives. The Vice Consul then went on to explain that "property and civil rights" were under the exclusive jurisdiction of the Provincial Governments.

3. You may wish to advise whether we are acting correctly in not encouraging Yugoslav interest in such an agreement at the present time. It is our feeling that in many of these cases the fault lies with the husband who has illegally left Yugoslavia and fails to make application for his dependents to join him in Canada. On the other hand, we also believe that in many instances the wife does not wish to join her husband in Canada but nevertheless would like to receive parcels of food and clothing as well as financial support. An agreement between the governments to force proper maintenance by the husband might actually have the effect of encouraging the wives to remain in Yugoslavia rather than joining their husbands in Canada.

Internal
Circulation

Distribution
to Posts

L

H. W. Walker
for The Embassy.

Document disclosed under the *Access to Information Act* -
Document divulgué en vertu de la *Loi sur l'accès à l'information*

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Original

Re: Enforcement of Maintenance Orders

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DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Mr. *Nutt*

FROM: M. Hawkins

REFERENCE:

SUBJECT: TRACING DEFENDANTS IN MAINTENANCE ORDER CASES

Security **Unclassified**

Date **April 27, 1956**

File No.

7633-40

108

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I refer to our conversation concerning the responsibility of this Department in locating the "WHEREABOUTS" of a defendant in a maintenance order case.

It is clearly stated in the Ontario Statute that it is the duty of the plaintiff to inform the court of the whereabouts of the defendant (see Section (4)(b) of the Reciprocal Enforcement of Maintenance Orders Act, Province of Ontario, Volume 4, page 385. Mr. Wershof, on March 26, 1947 stated in the last para of his letter that "once an order has been confirmed or registered any subsequent correspondence as to enforcement, etc, is usually carried on between the courts concerned. Where, however, an application is made for either a variation or rescission of an order the procedure for enforcement and channel of communications is the same as for an original order".

Notwithstanding the above information, the Department of the Secretary of State made arrangements to obtain from the Department of Veterans Affairs the last known address of any veteran who could not be located in connection with a maintenance order (see letter of Aug 8, 1950). On August 11, 1950 the Unemployment Insurance Commission agreed to assist in locating defendant husbands. The R.C.M.P. agreed to be the channel of enquiry. The Provincial courts are to institute the enquiry through the Attorney General. Therefore, the channel of enquiry available to the courts to ascertain the whereabouts of a defendant is as follows:

note in conclusion: At Mr. Smith's request the question of whereabouts of defendants was dropped.

mtt

1. Provincial court
2. Attorney General
3. R.C.M.P.
 - (a) Veterans Affairs
 - (b) Unemployment Insurance Commission
 - (c) Additional sources of enquiry available to the R.C.M.P.

On October 11, 1950 this Department informed the Unemployment Insurance Commission that:

"The Canadian Government will endeavour to trace husbands in all cases where a specific request to do so is received from another Commonwealth Government and the Province of residence is unknown".

s.19(1)

There the matter rests. The case of [REDACTED] is a specific request and in my view it is our duty to attempt to locate this man through the good offices of the R.C.M.P.

I suggest that we ask the various Provinces and Territories to confirm their understanding of the procedure to be taken.

I think this information re Ellis should be communicated to the AG Ontario who requested the information. Presumably if he so desires the Attorney General will then approach the RCMP according to the procedure outlined in the letter to State of Oct 11, 1950 which was to be communicated to the Provinces (Ontario was one). Please speak to me. J.W.M.

DEPARTMENT OF EXTERNAL AFFAIRS
REFERENCE SLIP

SECURITY

Attention: Mr. W. Nason

Ottawa, April 10, 1956

To: The Department of Northern Affairs
and National Resources,
Langevin Block,
Ottawa.

7633-40	
131	-

The documents described below are attached for your information or
for any action you consider necessary:

Letter dated Mar. 26, 1956, Re: Recognition and Enforcement
Abroad of Maintenance Obligations.

Also referred to: from Office of the Deputy Minister of Justice.

Department of Northern Affairs and National Resources
Department of National Health and Welfare - Att'n: Mr. Curran

G. SICOTTE

FOR THE
Under-Secretary of State
for External Affairs

DEPARTMENT OF EXTERNAL AFFAIRS
CROSS REFERENCE SHEET

File 16

Security *Unclassified*

"L"

7633-40		
78	✓	✓

s.19(1)

Type of Document... *Letter* No. *✓* Date... *April 10/56*
From... *E. A.*
To... *Mrs.* [REDACTED]

Subject: *Requesting financial support from her husband*

Original on File No... *"L" 17-40*
Copies on File No... *✓*
Other Cross Reference Sheets on... *✓*

Prepared by *[Signature]* *C/S/R*

7633-46	
131	—

OTTAWA, April 10, 1956

Dear Madam:

The Secretary of State for External Affairs has asked me to reply to your letter in which you request financial support for yourself and your child from your husband, now residing in Canada.

I very much regret to inform you that, as this is a private matter, the Canadian Government cannot directly assist you. However, you might wish to write to the Yugoslav Red Cross Society, asking it to present your case to the International Social Service in Geneva, Switzerland, or you could write direct to the International Social Service: This organization will refer your problem to an appropriate Canadian agency. Alternatively, you might wish to put your case in the hands of a lawyer in Yugoslavia.

Yours sincerely,

Under-Secretary of State
for External Affairs

s.19(1)



DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: THE CANADIAN EMBASSY, ATHENS.

Reference:
Subject: Request for legal assistance.

Security: RESTRICTED

No: 214

Date: April 9, 1956

Enclosures: 2 *CS*

Air or Surface Mail:

Post File No: 5-8

Ottawa File No.

7633-40

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APR 18 1956

Internal
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to Posts

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*Attch, reply
considered satisfactory
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I attach a copy of a letter dated March 28, 1956 from Mrs. [REDACTED] of Vancouver, who is requesting assistance in having her husband provide for her maintenance. Also enclosed is a copy of our reply.

2. This appears to be a private matter in which the Embassy should not normally intervene. Mrs. [REDACTED] is known to the Embassy, as she is the [REDACTED] of [REDACTED]

She came to Greece over a year ago, to get married. She met a cousin of hers, her present husband, who made the marriage conditional upon her sharing with him all of her property. She agreed to this in writing and the marriage was performed. She paid for all the expenses, their air transportation to Canada, etc. Seven months later, her husband apparently asked for his money and departed.

3. This is a sad story, but I am afraid there is little we can do to help. You may wish however to write to Mrs. [REDACTED] and explain our position more fully to her.

Toz...
Ambassador.

1956 APR 17 PM 3:16

1956 APR 17 AM 8:56

000049

/AC

CORRECT COPY

March 28, 1956

Canadian Consul
Canadian Embassy
Athens, Greece.

Dear Sirs,

The present is written in order to inform you of a situation which is quite pitiful and heartbreaking on my part, and to plead for your indulgence in helping me gain at least a little satisfaction out of this tragic episode which occurred in my life.

A little over a year ago, I visited Greece, and there found a person by the name of [REDACTED], or ([REDACTED]), whom I fell in love with, and as he said he loved me and married him, thinking at the time that he shared in my marital feelings. Unfortunately, he married me in fraud, being interested only in my money, and informing me of this fact shortly after our marriage.

To make a long story short he succeeded in "taking" me for many thousands of my money, which was earned from long hours work since I was a very young girl, and he has now left me in Vancouver, B.C. while he is presently living in Athens, Greece. Needless to say, this whole affair has brought me to the point of despair, and impaired my health which I am under doctors care all the time. I therefore, implore you to inform me as to what can be done in this mournful matter. We are not divorced, and he has no grounds for divorce. He left me after he took all the thousands of dollars of mine, a few months before his departure for Greece which I did not know anything about his going. Can he be compelled to support me? My uncle [REDACTED] in Athens Greece will verify the above letter.

I would appreciate immensely an answer to my above mentioned plea at your early convenience.

With appreciation and gratitude,

(Sgd)
Mrs. [REDACTED]

s.19(1)

Athens, Greece,
April 9, 1956.

Dear Madam,

On receipt of your letter of March 28, 1956, I enquired of the Greek Foreign Ministry whether a maintenance order issued by a Canadian court could be enforced in Greece. The reply was that there was no agreement between Greece and Canada in the matter and that such a procedure could therefore not be followed in trying to have your husband support you.

I regret therefore that I can only suggest that you consult a lawyer in Canada who might be able to give you further advice. If you wish, on the other hand, to use the services of a lawyer in Athens, I shall be glad to put you in touch with the lawyer usually consulted by the Embassy, Mr. Fotopoulos, who I am sure would be only too glad to help.

I am sorry there appears to be little more I can do for you at the present time, but if at any time some other step suggests itself I shall get in touch with you again.

Yours sincerely,

s.19(1)

F. X. Houde
Vice-Consul
The Embassy

For File: 7633-40

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Consular Division

Security Unclassified

Date April 3, 1956

FROM: Legal Division

File No.

7633-40

REFERENCE: Your memorandum of March 20, 1956

SUBJECT: Request from abroad concerning Non-support

s.19(1)

I have considered your memorandum under reference together with your letters of March 20 to Mrs. [REDACTED] and the Director of Immigration.

2. A perusal of relevant Legal Division files indicates that few requests for assistance or inquiries concerning non-support have ever been dealt with in this Division. Our main concern has been the reciprocal enforcement of maintenance orders which, as you know, is conditional upon the existence of corresponding legislation between Canadian provinces and other countries. (We have had for instance to ascertain whether such legislation does exist, in which provinces, to provide channels of communications, etc.) I should add however that after the War, the predicament of some deserted wives or dependents of discharged Canadian service men were brought to the attention of our Division. Requests for assistance from these persons were processed in co-operation with National Defence and the national authorities of the destitute enquirers. However, these cases were a sequel of the war and requests for advice or assistance concerning non-support are in the future likely to come from persons deserted by foreign residents of Canada (i.e. newly arrived immigrants); consequently our past practice would, in my opinion, be of no significance in these different circumstances.

3. You are quite correct in assuming that we do consider enquiries of this nature as private matters with which the Department should not be concerned. I do not think, however, that enquirers should be referred to the Embassy of their country in Ottawa. As you will remember instructions were sent two years ago to our missions abroad on the way to deal with enquiries of this kind (Circular Document No. B. 10/54 of February 19, 1954: the maintenance of children who have been abandoned by fathers

in migrating to Canada). These instructions read in part as follows:

"From a practical point of view, the best solution to the problem is to refer persons seeking your advice or assistance to a welfare agency. That agency should then present the case to the International Social Service, which has its headquarters in Geneva. The International Social Service will in turn, through its branch in the United States, refer the matter to the Canadian Welfare Council in Ottawa which will ask an agency in the district where the father resides to investigate the matter. This agency will, if possible, obtain a voluntary undertaking from the father to maintain his child and will be responsible for remitting any contributions which he might decide to make."

We should, in my opinion, follow the same procedure in dealing with requests addressed to Ottawa directly. Your letter to Mrs. [REDACTED] which is returned herewith might be amended accordingly.

s.19(1) 4. I note that it has been a practice in your Division to write to the husband or father of the deserted dependent (see paragraph 2 of your memorandum under reference). This practice however appears to be somewhat superseded by your writing presently to the Director of Immigration. I have no suggestion to make in this respect as the correct procedure would seem to be a matter for your Division to decide. (Your letter to the Director of Immigration has been released.)

5. As for the questions raised in paragraph 4 of your memorandum under reference, they may be answered as follows:

(1) We have no record, nor am I aware of any agreement entered into by the Federal or any Provincial Government concerning non-support of foreign dependents by residents of Canada. However, there exists at present arrangements for the reciprocal enforcement of maintenance orders between all provinces, but Quebec, and various Commonwealth countries. Maintenance orders obtained in the courts of those countries are therefore enforceable in most Canadian provinces. As for deserted dependents residing in countries with which Canadian provinces have no reciprocal arrangements, they would have to bring an action in a Canadian court to have their supporter fulfill his obligations towards them. The only alternative course of action would be to obtain from him a voluntary undertaking of support. You will note in the circular document referred to above,

that provincial authorities were asked if, in their opinion, such a voluntary undertaking could be enforced by a Court. The replies of the Provinces (summarized in a memorandum attached to the circular document) are not conclusive but they provide valuable guidance.

(2) I do not think any purpose would be served by referring requests for assistance or advice concerning non-support to provincial authorities. In one instance, Legal Division declined to do so although the situation brought to its attention was a likely case of bigamy. (Letter No. 397 of May 28, 1954 from Canadian Embassy, Belgrade).

(3) Legal Division should in my opinion continue to deal with the reciprocal enforcement of maintenance orders but not with requests for advice or assistance concerning non-support. It would appear from our files that this arrangement is operative at the present time.

GILLES SICOTTE

Legal Division

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

File
Wans

TO: Mr. Dupuy

Security Unclassified

Date March 27, 1956.

FROM: M. Hawkins

File No.		
7633-40		
<i>JS</i>	/	

REFERENCE: Consular's memo of March 20, 1956.

SUBJECT: Requests from abroad concerning non-support

The procedure followed by Consular Division is precisely correct.

I believe it would be worthwhile to re-assess the situation and to discuss the matter with the Department of Immigration. Immigration have much to gain from information of this nature and in many cases can determine the worth of a new immigrant and his right to become a Canadian citizen.

With regard to Consular Division's queries, please find the answers as follows:

(1) Reciprocal Enforcement of Maintenance Orders arrangements are at present in force between the Provinces and various Commonwealth countries, chiefly, UNITED KINGDOM? Australia, New Zealand, States of Guernsey and Isle of Jersey. The Province of Ontario has indicated its willingness to reciprocate with the Austrian Government. Germany is also interested in a similar arrangement but so far has not made any progress in the matter.

(2) I do not think it useful or appropriate to send letters concerning non-support to the Provinces unless some provision has been made in the Provincial Statutes.

(3) Enquiries concerning non-support, in my opinion, should be directed to Legal Division or as an alternative, the Reciprocal Enforcement of Maintenance Order Arrangements should be transferred to Consular Division. The present system appears disorderly to me and I suggest that the matter be brought to Mr. Sicotte's attention.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: UNITED NATIONS DIVISION

TEMPORARY
FILE COPY

Security CONFIDENTIAL

Date March 23, 1956

FROM: Legal Division

File No.

7633-40

REFERENCE:

108

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SUBJECT Recognition and Enforcement of Maintenance Orders.

You will see from the Secretary-General's note of September 16, 1955 on the attached file that we have been invited to attend a Conference which will meet at the headquarters of the United Nations on May 29, 1956 to complete the drafting of a Convention on the Recovery Abroad of Claims for Maintenance. Such a Convention would provide means for a resident of one country to obtain an order for maintenance against a resident of another country in the courts of the other country.

2. The subject matter of this draft Convention is within provincial legislative jurisdiction. There is, however, a federal state clause in the draft Convention. The Department of Justice is to let us know whether this clause is satisfactory from a Canadian point of view.

3. We have canvassed the provinces and some of them have shown some interest in the proposed Convention. Additionally there might be some Canadian interest to be served by having the Convention applied to the Yukon Territory and the Northwest Territories. The Government of Canada would implement the Convention in so far as these territories are concerned.

4. The Deputy Minister of Welfare considers that several advantages would accrue from Canadian participation in the Conference. (See his letter of August 24, 1955).

5. You will see from the file that the Under-Secretary addressed the Deputy Ministers of Justice, Welfare and Northern Affairs on January 9 concerning the Secretary-General's invitation

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- 2 -

and suggested that the simplest way of coordinating the views of the Departments concerned on what reply should be made to the Secretary-General's invitation would be to hold a meeting of officials. Welfare and Northern Affairs have agreed to attend. Justice would prefer not to attend since they are not concerned with the main problem, whether Canada should be represented at the Conference. A meeting has been arranged for 2:30 p.m. Wednesday, March 28, in the small conference room of the East Block. Would you please arrange to have an officer of United Nations Division attend the meeting.

6. You will see that in the Under-Secretary's letter to the Deputy Minister of Justice of January 9, it is suggested that the first consideration is whether Canada would be prepared to sign the draft Convention since attendance at the Conference would give rise to some inference that we were prepared to sign the Convention, provided its terms were generally satisfactory to us. As I have already indicated, and as the Under-Secretary suggested in his letter to the Deputy Minister of Justice, I think there is some Canadian interest to be served by signing a Convention of this sort. As is further pointed out, however, even though we might ultimately decide to adhere to the Convention, attendance at the Conference is not essential to this end. We could, if we thought it desirable, await the outcome of the Conference and submit the final text of the Convention to the provinces before deciding finally whether to adhere. I am inclined to favour this view.

7. On the other hand, in addition to the advantages outlined by the Deputy Minister of Welfare, there is the following consideration. If we do not attend the Conference, we shall have no opportunity to propose any revisions to the draft Convention which might seem desirable. In this connection, I have asked the representative of the Department of Welfare if he could advise us whether he considers changes in the text essential or desirable from the Canadian point of view.

8. Could this file be returned to Mr. Nutt on Tuesday.

GILLES SICOTTE

Legal Division

Consular/P.M. Roberts/B.A. Wallis/as

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

File
was

TO:LEGAL DIVISION.....

Security UNCLASSIFIED.....

Date...March 20, 1956.....

FROM:CONSULAR DIVISION.....

File No. 7633-40		
102	—	

REFERENCE:

SUBJECT:Requests from abroad concerning non-support.....

s.19(1)

I attach a copy of a letter from Mrs. [REDACTED]
[REDACTED] a resident of Yugoslavia, together with a reply
which I have signed. If you agree to the reply, please
release it. Also attached for your information is our
letter to the Director of Immigration on this subject.

2. It is our understanding that when your Division
has received enquiries of this nature, you have regarded
them as private matters with which the Department should
not be concerned. On the other hand, it has been the
practice of this Division to write to the husband in
Canada informing him of his wife's predicament and asking
what reply he wished us to make to her letter to us. We
should appreciate your views as to which of these two
procedures you think should be followed.

3. As is stated in our letter to the Director of
Immigration, the Immigration officers throughout Canada
sometimes interview immigrants concerning support of their
relatives abroad. In such cases, Immigration does not
inform the dependent residing abroad of the results of the
interview, as the enquiry is made on an informal basis,
but leaves it to the immigrant in Canada to write to his
dependent (if he decides to do so).

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- 2 -

4. For our use in answering any similar requests which may come to us, would you please give us your views on the following questions:

NO (1) Are there any provinces which, to your knowledge, have agreements with foreign governments concerning non-support of foreign dependents by residents (Canadian citizens and newly arrived immigrants) of Canada?

s.19(1)

(2) Would it be useful or appropriate to send letters such as the one from Mrs. [REDACTED] to the provincial authorities for reply? ~ D

(3) Should such enquiries be dealt with by you or by this Division?


CONSULAR DIVISION.

T R A N S L A T I O N

Re: [REDACTED]

s.19(1)

Honourable Mr. Minister:

I address you in the following matter.
Since 1949 the immigrant [REDACTED] has been living in Canada, he is a former resident of Gornje Rijeke, district and county Jastrebarsko, Croatia. The same person is the husband of his sick wife [REDACTED] and the father of a minor child [REDACTED] who is 9 years old. I, the undersigned, present my case to the effect that I am without means of support and beg you to take some steps in the matter for the sake of the child [REDACTED] so that his father would be chastised and forced to do his duty as a father to his child and as a husband to his wife; since it is duty to help his invalid wife and hungry child, [REDACTED]

I am convinced that the husband is in a position to do so since he has been writing letters to his poor sick wife boasting of his success in Canada.

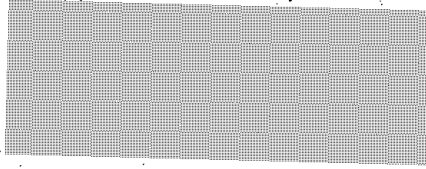
Thanking you for your favours, I remain,
Yours faithfully, [REDACTED]

Wife and son.

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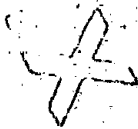
s.19(1)

His address is:



ECI

AGA



Consular/P.M.Roberts/as
c.c. Belgrade.
Legal Division. ✓

OTTAWA, March 20, 1956.

Dear Madam,

The Secretary of State for External Affairs has asked me to reply to your letter in which you request financial support for yourself and your child from your husband, now residing in Canada.

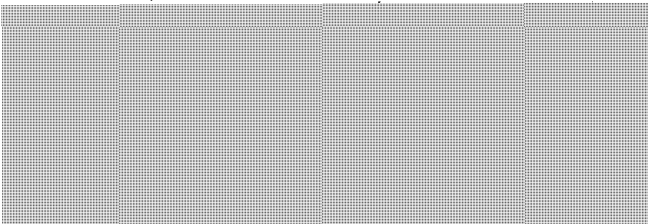
I very much regret to inform you that, as this is a private matter, the Canadian Government cannot directly assist you. This is a problem which should properly be placed in the hands of a lawyer in Yugoslavia. If you are not able to do this, you might receive some assistance by writing to the Yugoslav Embassy in Ottawa, the address of which is 17 Blackburn Avenue, Ottawa 2, Ontario.

Yours sincerely,

T. P. MALONE

Under-Secretary of State
for External Affairs.

s.19(1)



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CONFIDENTIAL

ORIG ON
10633-40 "C"
OTTAWA, March 26, 1956.

The Director of Immigration,
Department of Citizenship and Immigration,
Ottawa.

Requests from abroad concerning
non-support.

s.79(1)

I attach a copy of a letter from Mrs. [redacted], a Yugoslav national, concerning alleged non-support by her husband, now in Canada. I attach also a copy of our reply. The Registrar of Citizenship has informed us that Mr. [redacted] has not become a Canadian citizen.

2. I understand that your regional officers sometimes interview immigrants about support of dependents abroad. Would you be willing to instruct your officer in Port Arthur to interview [redacted] if he still living there, concerning the support of his wife and son?

T. P. MALONE

Under-Secretary of State
for External Affairs.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: The Canadian Consulate General,
San Francisco.

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Reference: Your letter No. 362 of December 20,
Maintenance of Miss [redacted] 1955.
Subject: and child by [redacted]

Security: UNCLASSIFIED
No: L- 65
Date: March 1st, 1956.
Enclosures: Five
Air or Surface Mail: Air
Post File No: 108

Ottawa File No. 7633-40	
131	26

References

s.19(1)

I am enclosing a copy of a letter dated February 9, 1955 together with four enclosures received from the Department of National Defence in reply to our enquiry concerning the maintenance of [redacted] and her child by [redacted]

In replying to Miss [redacted] I can only suggest that you tell her that we can add nothing further to what she and her solicitor have already been told by the Royal Canadian Air Force except to mention for her information that there are no arrangements for the reciprocal enforcement of court orders between Canada and the United States.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

Internal
Circulation

Distribution
to Posts

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M E M O R A N D U M for Orville M.M. Kay, Esq., Q.C.,
Deputy Attorney-General,

Re: Draft Convention on the Recovery
Abroad of Claims for Maintenance.

Annex I on the attached file relates to claims for maintenance between a claimant resident in one state and a respondent resident in another state.

The procedure adopted appears to be that the claimant applies to what is called a "transmitting agency" to have her claim forwarded to a "receiving agency" in the state where the respondent is residing. The claim apparently to consist of an application filed by the claimant together with all pertinent documents. A hearing may be held if the transmitting agency or the claimants so request, and the law of such agency permits.

In the memorandum accompanying this convention it is pointed out that the functions of this transmitting agency are of a preliminary nature and do not form part of the judicial proceedings subsequently to be commenced. On the other hand, reference is made both in said memorandum and the Annex to evidence taken at the hearing held by the transmitting agency.

The necessary documents and material having been compiled they are then forwarded to the receiving agency or the claimant may withdraw the same for direct transmission to counsel chosen by him.

The receiving agency upon receipt of the documents institutes proceedings in a competent tribunal to obtain a judgment and enforce the same. It is stated in Article 7(2) that "the law of the tribunal shall govern such proceedings".

It may be mentioned here that a person who has previously recovered a judgment may apply to have the judgment transmitted in lieu of the documents previously referred to and such judgment to either be registered and enforced or the basis of an action for a further judgment.

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Provision is made where further evidence is required for letters of request to be forwarded directly between the states.

COMMENTS AND RECOMMENDATIONS

- I. There is no provision respecting language or interpretation of the various documents. This should be clarified in one way or another together with the question of the payment for such services.
- II. There is no provision or requirement in Annex I requiring the material which is to be forwarded to be elicited under oath. While the preliminary steps are said not to be a judicial proceeding both the Annex and the memorandum accompanying it refer to a hearing and "evidence".

Under our system of law it is an extraordinary procedure to commence a court proceeding without the presence of the defendant. This was done in the case of our "Maintenance Orders (Facilities for Enforcement) Act, 1946" but it was required that evidence be taken under the sanctity of an oath from the complainant setting forth her claim and the evidence on which such claim was based.

The convention here referred to apparently proceeds on the basis of unsworn statements contained in an application and made at a hearing if such is held, together with any documents, all given or made in the absence of the defendant.

I would say that this is such a derogation from the basic principles of our law as to call for the most serious consideration of the part of the authorities concerned with the implementation of this convention.

It would seem that a minimum requirement where a proceeding is to take place without the defendant being present would at least be the taking of the evidence supporting the claim under oath.

- III. Consideration should be given to the clarification of this draft convention with respect to the principles of law to be applied by the courts in the country where the defendant resides in deciding whether or not an order should be made and also the rules of procedure to be applied.

As it stands at present this convention in Article 7(1) refers to "proceedings to be instituted and prosecuted in a

- 3 -

competent tribunal, as well as to procure the execution of such judgment as may be rendered" and then by Article 7(2) provides: "7(2). The Law of the tribunal shall govern such proceedings."

It seems to the writer that an argument could ensue that the law of the tribunal was to govern procedural matters only.

- IV. In connection with the foregoing it seems to the writer that the principles of law of the tribunal where the court hearing takes place should apply.

I am of this opinion for several reasons. Firstly it would seem unfair to interfere with the civil rights of a resident of this Province by making the law of a foreign tribunal apply which might or might not give rise to claims-based on principles of law to which the defendant would have a good defence in the country of the tribunal holding the hearing.

Secondly it would be an almost impossible task to expect our Courts for example to be aware of, and apply, the law of a foreign tribunal.

On the other hand if the principles of law of the country where the court hearing is held are to be applied it will work a hardship in some, if not many cases. To give but one example. The convention under consideration refers to a claimant as a "person related in direct line by blood or by operation of law." This is, I believe, in line with the law of certain countries which provide that a defendant is responsible for the maintenance of his illegitimate children and which countries it is anticipated will be parties to this convention.

If these countries become parties to the convention it is doubtful whether they will be aware, or even interested in, the laws of the tribunal to which the claim is being forwarded, with the result that claims on behalf of illegitimate children will arrive here in Manitoba, for example.

Then the laws of the Province of Manitoba will be applicable to such claim, and we find that since this claim is not in the nature of an application for a filiation order under the

- 4 -

Child Welfare Act" it must be governed then by the general laws of maintenance set forth in "The Wives' and Children's Maintenance Act" which requires cohabitation between the man and woman for one year or more, a declaration that the respondent was the father of the child and the necessity of the claim for maintenance being initiated within one year from the cessation of cohabitation. This would defeat many applications, and similarly our laws of desertion, marriage, separation and divorce may create defences which might not be open to a defendant in the country where the claim arose.

- V. From the foregoing it will be obvious that in many cases the courts of the country where the defendant resides will have to make a most careful scrutiny of the documents forwarded from the country where the claimant resides. I would think that in almost all cases further facts and material would be required but no provision is made for this apart from what are called letters of request.

These letters of request are not admissible by our rules of procedure and I would recommend that a method be formulated for referring a matter back to the original country for the taking of evidence under oath.

- VI. This convention also contains a provision that if the papers submitted do not constitute evidence under the law of the tribunal where the defendant resides such papers may nevertheless be the basis of the court making an interim order for the payment of maintenance.

This provision is such a derogation from our basic principles of law and could be open to so much abuse that the writer would recommend it be deleted altogether.

Some basis should be set on which maintenance can be ordered, such as evidence under oath which the defendant can admit or dispute, and once this basis has been established there should be no derogation from it in any case at all.

The manner in which the present convention reads on this point indicates that there is no time limit

- 5 -

on such an interim order and the result could be that proceedings with no merit could be delayed indefinitely to the prejudice of a defendant.

- VII. There is a further provision that where a maintenance order has already been obtained by a claimant, then the record may be forwarded in lieu of the documents already referred to. Such record may be registered and enforced in countries where this is permissible, or may be the basis of a new action where registration is not permissible.

There is no provision in our law for registration and enforcement of a foreign judgment and I would recommend that no such provision be adopted.

I say this on the ground that there is no requirement in the convention that the said judgment must have been obtained after service on the defendant while resident in the jurisdiction of the court giving the judgment and with an opportunity to the defendant to defend. Secondly, even if such procedure was carried out, the defendant being now resident in another jurisdiction, such as our Province, might be entitled to certain defences previously not open to him, and to not allow him the right to these defences would be to interfere with his rights as a resident of this Province.

In connection with a new proceeding based on the prior judgment, which seems to be the better procedure, the prior judgment should be made admissible as evidence not as proof of the subsequent claim but merely as one of the elements going to prove the new claim. It therefore would seem that the other material referred to should be forwarded along with the record of the prior judgment.

- VIII. There is provision in the convention relating to the highest priority being given to the transfer of funds paid under these orders. These particular provisions do not apply to the Provinces of Canada due to the division of legislative powers that we have in this country. If this convention is implemented, consideration should be given to a separate convention covering these features on behalf of the Federal Government, otherwise the Provinces might find themselves in possession of

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funds which cannot be transmitted due to exchange restrictions.

ANNEX II

Annex II on the attached file, generally speaking, deals with the enforcement in the jurisdiction of one contracting party of maintenance judgments made by the courts of another contracting party.

Some of the comments and recommendations made above with respect to the provisions of Annex I apply here also.

This convention provides for either the registration of such judgment as a judgment of the court in the jurisdiction where the respondent now resides or the pronouncing of a new judgment based on the prior judgment depending on the law in force in the jurisdiction of the enforcing court.

The difference here between this procedure and the procedure under Annex I is that the proceedings were instituted while the defendant was in the jurisdiction, he either appeared and submitted to the jurisdiction or was notified in time to defend, the order is enforceable in the country where it was made and was not reviewable.

I In this case the registration of such a judgment as a judgment of our court would appear to be in accordance with our prior practice under "The Maintenance Orders (Facilities for Enforcement) Act, 1946".

To safeguard against an order being registered and enforced in the courts of another country which was based on principles of law in conflict with the laws of the enforcing country it is provided that no order shall be enforced which would be "manifestly contrary to public policy in the country of the enforcing court".

This provision will result I feel in many cases not being enforced, such as the case of maintenance for an illegitimate child above referred to. However it is a necessary provision otherwise there would be too much interference with the civil rights

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of a person resident in this province.

- II The convention requires that the enforcing court shall satisfy itself of certain matters, such as the jurisdiction of the original court, the fact that the order is enforceable in the country of the original court and not reviewable, and that the order is not contrary to public policy.

Yet no provision is made to provide any proof of these matters or to itemize the facts of the claim so that the enforcing court can ascertain whether or not an order is contrary to public policy.

The only requirement is a certified copy of the order duly translated and proof of service on the judgment debtor where the order was given by default.

This apparently means that the enforcing court will have to ascertain the law of the country of the original court in order to satisfy itself that these conditions have been met.

It would seem that this would not only necessitate great delays but would require the services of experts in all these different systems of law and would be a most expensive procedure.

Surely some system can be devised whereby the courts of the country which granted the original order can certify to their jurisdiction and so on, and whereby a concise statement of the facts of the case and the principles of law which were applied could be forwarded to the enforcing court so that this court could decide on the question of public policy.

- III Provision is also made in Article 2(2) whereby an enforcing court will enforce a provisionally enforceable or interim order even where such order is subject to review in the country of the court which originally made the same.

In the writer's opinion this provision should be deleted. This convention should not extend to provisional or interim orders or orders subject to review.

Surely it is only right to expect that an order which

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is forwarded for registration and enforcement by the enforcing court should at least be a final order of the court making the same and not provisional or interim in nature or subject to review.

In addition there is no limit in time fixed by the convention as to these provisional, interim and reviewable orders so that apparently this situation could carry on indefinitely. Such a provision hardly seems fair to the defendant or the enforcing court.

IV In the writer's opinion the following underlined portion of Article 3 sub-paragraph (a) requires clarification:

"3. The following courts shall be competent to pronounce maintenance orders for the purpose of this Convention:

(a) The courts of the country in which the respondent was resident when the proceedings were instituted."

It seems to the writer that this provision could be the subject of abuse also, for coupling this provision with the other provision allowing judgment to be obtained by default where the defendant is served in time to defend, the situation could arise whereby a claimant knowing that the defendant was departing the jurisdiction would commence proceedings and give notice for a hearing date after the defendant's departure, or if the law of the jurisdiction allowed for service for example by mail then the claimant could commence proceedings immediately prior to the defendant's departure and if sufficient time was given to the defendant to defend any order made would be valid.

True, the enforcing court has a discretion regardless of the fact that the notice was served in sufficient time on the defendant, but I feel the matter could be clarified further by requiring the service of the notice and the hearing of the case to take place while the defendant was in the jurisdiction of the court.

V. Article 6 of this convention provides for enforcement

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of such orders in the same manner as if the maintenance order had been pronounced originally by the enforcing court.

If this convention is implemented I would suggest that the provisions of our "Wives' and Children's Maintenance Act" be applied to this Convention so that imprisonment can be ordered in default of compliance with such orders.

A.

R.A. Gallagher.

IN REPLY PLEASE QUOTE

No. C-41556 (DPA)



Department of National Defence

OTTAWA, 9 February 1956

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The Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

Dear Sir:

s.19(1)

Reference is made to your 7633-40 dated 30 January 1956.

Attached are copies of this Headquarter's correspondence concerning [REDACTED]. The legal firm mentioned act or acted as solicitors for [REDACTED].

Pursuant to the request contained in paragraph 2 of the Canadian Consulate General's letter 362 of 20 December 1955, you are at liberty to employ anything contained in the attached material for the purpose of framing a reply.

Yours very truly,

W.H. Schroeder
(W.H. Schroeder)
Group Captain
for Chief of the Air Staff

Encl.

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1956 FEB 10 AM 11:45

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CONFIDENTIAL
(DPA)

c
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y.

16 November, 1955.

s.19(1)

Dear [REDACTED]

Your letter of November 2, has been referred to me for reply.

We can find no trace at this Headquarters of a Court Order which you stated was forwarded on August 17. I have checked with every Directorate which might be concerned and apparently it has not been received.

However, for your information, we are enclosing a copy of a letter sent to your Attorneys on 22 June of this year. You will notice that unless the Court Order you have was obtained through a Canadian Court or, is one which is enforceable under the laws of Canada, we cannot force LAC [REDACTED] to send any money to you.

Would you discuss this with your Attorneys again.

Yours very truly,

signed
(H.M. Sutherland)
Squadron Leader

for Chief of the Air Staff.

Encl.

c
o
p
y.

22 June 1955.

Messrs. Collins & Salazar,
Attorneys at Law,
702 Majestic Building,
Denver 2, Colorado.

Re: [REDACTED]

Dear Sirs:

Your letter concerning the above-named airman dated 2 June 1955 is acknowledged.

Royal Canadian Air Force regulations provide for compulsory assignments of pay when there is in existence a Court Order enforceable under the laws of Canada or any province requiring payments to be made in respect of the support, care or maintenance of a wife or former wife, or of any legitimate or illegitimate child. In the absence of such a court order, the regulations do not provide for any such payment.

s.19(1)

It would therefore appear necessary for your client, [REDACTED] to bring an action against this airman in the province where he is stationed, then, having secured Judgment, forward it to this Headquarters. It may be that if this airman were to submit to the Colorado courts, you could secure a Judgment which could be enforced in Canada pursuant to the rules of International Law.

This Headquarters would appreciate some word from you concerning any future action which may be taken to secure a decree of annulment.

Yours very truly,

signed
(T.R. GILES)
Squadron Leader
for Chief of the Air Staff.

~~CONFIDENTIAL~~

(DPA)

15 Sep 55

Air Officer Commanding,
1 Air Division, RCAF,
Metz, Moselle, France.

Marriage Allowance and Personal Exemptions

1 Reference our [REDACTED] dated 9 Aug 55.

s.19(1)

2 Attached is a copy of a letter from the subject airman's putative wife, [REDACTED] explaining her present financial difficulties, and enclosing a copy of a hospital bill. Attached also is a copy of this HQ's reply to [REDACTED] letter.

3 Although, there would not appear to be any legal compulsion to support [REDACTED] under the circumstances, it might well be that she would be able to obtain an order for support of her unborn child.

4 May this airman's CO be requested to bring this matter to LAC [REDACTED] attention, and, if possible, to ascertain his intentions regarding support.

Signed
(T.H. Hough) S/L
for CAS

Encl.

c
o
p
y

(DPA)

15 September 1955

s.19(1)

Re: [REDACTED]

Dear: [REDACTED]

was then based on a false order cancelling the marriage.

Records at this Headquarters indicate that the subject airman's marriage allowance was cancelled effective 30 April 1955. It will be appreciated that entitlement to marriage allowance is contingent upon a valid existing marriage and this Headquarters was in receipt of information that your marriage to [REDACTED] was void due to your pre-existing marriage. Once marriage allowance ceased to be in effect, this Headquarters was automatically precluded from forwarding supporting assignment cheques. It would appear that LAC [REDACTED] did not see fit to continue to support you on his own initiative.

This Headquarters has no authority to order a compulsory assignment in favour of a wife or dependent child unless a court order decreeing maintenance payments is first obtained.

However, a copy of your letter is being forwarded to LAC [REDACTED] Commanding Officer, with the request that he acquaint LAC [REDACTED] with your financial predicament.

Yours very truly,

signed
(T.H. Hough)
Squadron Leader
for Chief of the Air Staff

(DPA)

c
o
p
y

22 June 1955

s.19(1)

Messrs. Collins & Salazar,
Attorneys at Law,
702 Majestic Building,
Denver 2, Colorado.

Re: [REDACTED]

Dear Sirs:

Your letter concerning the above-named airman dated 2 June 1955 is acknowledged.

Royal Canadian Air Force regulations provide for compulsory assignments of pay when there is in existence a court order enforceable under the laws of Canada or any province requiring payments to be made in respect of the support, care or maintenance of a wife or former wife, or of any legitimate or illegitimate child. In the absence of such a court order, the regulations do not provide for any such payment.

It would therefore appear necessary for your client , [REDACTED] to bring an action against this airman in the province where he is stationed, then, having secured Judgment, forward it to this Headquarters. It may be that if this airman were to submit to the Colorado courts, you could secure a Judgment which could be enforced in Canada pursuant to the rules of International law.

This Headquarters would appreciate some word from you concerning any future action which may be taken to secure a decree of annulment.

Yours very truly,

Signed
(T.R. Giles)
Squadron Leader
for Chief of the Air Staff

FILE COPY

7633-	40
131	26

Ottawa, January 30, 1956.

Our file 7633-40
Your file [REDACTED] (DPA)

s.19(1)

Not Del.
Chief of the Air Staff,
A.L.P. - D.P.A.
No 8, Temporary Building,
Ottawa, Ont.

Attention: S/L T.H. Hough

In accordance with our telephone conversation of January 27, 1956 I am enclosing an additional copy of a letter dated November 30, 1955 addressed to the Canadian Consulate General, San Francisco by W.C. Smith concerning a claim for maintenance made by [REDACTED]

I trust that your file is now complete concerning the maintenance of Mrs. [REDACTED] and that a reply will be received to our enquiry of January 4, 1955 as soon as an opportunity presents itself.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

IN REPLY PLEASE QUOTE

No. [redacted] (DPA)



Department of National Defence

OTTAWA, 25 January 1956

s.19(1)

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The Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

Dear Sir:

Reference your letter 7633-40 dated 12 January 1956.

The attachment to your referenced letter indicates that The Canadian Consulate General, San Francisco, wrote the Royal Canadian Air Force on 4 November, and received a reply dated 30 November from the Air Officer Commanding, 1 Air Division.

In order that this Headquarters may advise as to the reply to be made by the Consulate General to Mrs. [redacted] it is necessary that copies of this correspondence be made available to this Headquarters.

Would you be kind enough to forward copies at your convenience.

Yours very truly,

(T.H. Hough)
Squadron Leader
for Chief of the Air Staff

*phone
5630*

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NO ENCLOSURES

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FILE COPY

7633-40	
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Ottawa, January 12, 1956.

Our file: 7633-40

Chief of the Air Staff,
A.M.P. - D.P.A.,
No. 8 Temporary Building,
Ottawa, Ont.

Attention: Mr. Hough.

In accordance with our telephone conversation of today's date, I am enclosing one copy of letter No. 362 of December 20, 1955 received from The Canadian Consulate General, San Francisco and which we omitted to enclose with our letter to you of January 4, 1956.

s.19(1)

I trust that your file is now complete concerning the maintenance of Mrs [REDACTED] and that a reply will be received to our above mentioned letter as soon as an opportunity presents itself.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

FILE COPY

7633-	40
131	25

Ottawa, January 4, 1956.

Our file 7633-40

Chief of the Air Staff,
"A" Building,
125, Elgin Street,
Ottawa, Ont.

Attention: S/L. Brown
R.C.A.F. Legal Section

s.19(1)

I am enclosing for your perusal one copy of letter No. 362 of December 20, 1955 received from The Canadian Consulate General, San Francisco together with one copy of its enclosure dated November 30, 1955 concerning the maintenance of Mrs. [REDACTED]

I would be grateful if you would suggest an appropriate reply which could be made to this enquiry.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: The Canadian Consulate General.

San Francisco

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Reference: Your letter No. 362 of December 20,
1955.

Subject: Alleged non-support of

s.19(1)

Security: UNCLASSIFIED

No: L-

Date: December 30, 1955.

Enclosures: Nil

Air or Surface Mail: Air

Post File No: 108

Ottawa File No.

7633-40

References

This claimant should be informed that this Department is unable to offer assistance in cases of this nature.

You could explain to Mrs. [redacted] that there are no arrangements between the United States and the Canadian Provinces or Territories whereby maintenance orders can be enforced. It now appears that LAC [redacted] cannot be forced to assign any part of his pay and allowances to Mrs. [redacted] and I suggest that the only alternative action which she may now take is to secure a Court Order from a Magistrate and to present this Order to LAC [redacted] Commanding Officer for consideration.

If you possess the Revised Statutes of Canada 1952, you could show her Section 213 of the National Defence Act, Chapter 184, Volume III.

Under-Secretary of State
for External Affairs.

Internal
Circulation

Distribution
to Posts

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: ...CANADIAN CONSULATE GENERAL.....

.....SAN FRANCISCO.....

Reference: ...Our transmittal slip of November 4,
1955

Subject:

....Leading Aircraftsman.

s.19(1)

Security: ..Unclassified.....

No:362.....

Date: ...December 20..1955.....

Enclosures: ...1.✓.....

Air or Surface Mail: ...Air.....

Post File No: ...108.....

Ottawa File No.

7633-40

131

128

file mt

References

With the transmittal slip under reference we sent you a copy of our letter of November 4 to the Commanding Officer, Royal Canadian Air Force station, Greenwood, Nova Scotia, enclosing a copy of a letter we had received from Mrs.

..... The Commanding Officer at Greenwood subsequently informed us that had been transferred to Metz, France, on August 13, 1955, and that our letter had been sent to the Commanding Officer at his new station.

2. I am attaching for your information a copy of a letter of November 30 from the Commanding Officer, 1 Air Division, Royal Canadian Airforce, Metz, France, (received today), giving's side of the case. Before we write to Mrs. we would appreciate your letting us know whether there is any objection to our writing along the lines of paragraphs 3 and 4 of the attached letter of November 30. As it is now apparent that Mrs. has been in communication with R.C.A.F. Headquarters, Ottawa, you may possibly wish to consult them.

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28 DEC 1955

Internal
Circulation

WPH Lead
CONSULATE GENERAL

Distribution
to Posts

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COPY

DEPARTMENT OF NATIONAL DEFENCE

Royal Canadian Air Force

Metz, France,

30 November, 1955

Mr. Christopher Eberts,
Consul General,
Canadian Consulate General,
400 Montgomery Street,
San Francisco 4, Calif.
U.S.A.

Re: [REDACTED]

s.19(1)

Dear Sir,

This will acknowledge receipt of your letter of November 5th, 1955, concerning the above noted airman.

2. Please be advised that Mrs. [REDACTED] has been corresponding with RCAF Headquarters in Ottawa in connection with the alleged non support of her by Leading Aircraftman [REDACTED]

3. Leading Aircraftman [REDACTED] has been interviewed in connection with this matter; he has stated that his marriage to Mrs. [REDACTED] is a nullity because [REDACTED] was already married at the time when she and Leading Aircraftman Martin went through a marriage ceremony in Denver on the 31st of December, 1954. He also denies paternity of the child of [REDACTED]

4. The allegation of Leading Aircraftman [REDACTED] that he is not legally married to Miss [REDACTED] is confirmed by a letter of the 2nd of June, 1955, from the attorney of Miss [REDACTED] in Denver.

5. Leading Aircraftman [REDACTED] has placed this matter in the hands of his solicitor in British Columbia and has stated that he does not intend to contribute to the support of [REDACTED] or her child unless a court order compels him so to do is obtained.

6. Under these circumstances the RCAF cannot become involved in the paternity dispute.

Yours very truly,

H.M. Smith
Wing Commander
for Air Officer Commanding
1 Air Division
Royal Canadian Air Force

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*Strictly only
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can
be
sent
Mr.
J.H.*

Document disclosed under the *Access to Information Act* -
Document divulgué en vertu de la *Loi sur l'accès à l'information*

DEC 23 1991 9:52

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Legal/G. Sicotte/ms

cc. File 7633-2-40
7633-40

File 7633-40 ✓
7633-7-40

7633-	40
131	—

Ottawa, November 17, 1955

*Original on 7633-1-4
copies on 7633-2-40*

Dear Mr. Stein,

Re: Reciprocal Enforcement of Maintenance
Orders between Austria and the Province
of Ontario - Your file 7633-7-40

I refer to your letter of June 2, 1955 relating to this subject. We have now communicated to the Legation of Austria the advice that the Government of Ontario will be pleased to enter into negotiations with Austria with a view to arranging for the reciprocal enforcement of maintenance orders. I should appreciate it, therefore, if you could advise the Lieutenant-Governor of Ontario, accordingly.

It would be of assistance to this Department if you could, in communicating with the Lieutenant-Governor, ascertain whether the decision of the Ontario authorities to undertake negotiations with Austria should be taken as an indication that Ontario might be contemplating in principle similar negotiation with any other foreign country which might be desirous of

..3

Charles Stein, Esquire, Q. C.,
Under Secretary of State,
Department of the Secretary of State,
O t t a w a

- 2 -

entering into arrangements relating to maintenance orders. As far as I am aware the only countries which have been declared reciprocating states under the Ontario Reciprocal Enforcement of Maintenance Orders Act are members of the British Commonwealth of Nations.

I am also curious to know whether the decision of the Government of Ontario to withhold the enforcement of maintenance orders received from other parts of the Commonwealth pending a decision of the Supreme Court of Canada in the Scott vs. Scott appeal case (referred to in Mr. Thibault's letter dated August 16, 1954 (your file 1521/45 (Ontario))) should be deemed to have any bearing on the arrangements contemplated between Ontario and Austria.

Yours sincerely,

M. N. WERSHOF

FOR THE

Under-Secretary of State
for External Affairs

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: Office of the High Commissioner for Canada,
London, England.

Reference: Your letter L-2484 of June 29, 1951.

Subject: Maintenance of Dependants Reciprocal
Enforcement (Yukon Territory)

Security: Unclassified

No: 1901

Date: November 9, 1955

Enclosures: 1 ✓

Air or Surface Mail: Air

Post File No: Legal-3

Ottawa File No.	
7633-40	
131	26

*John
Cant*

References

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15 NOV 1955

1. Your letter referred to above outlined the procedure to be adopted concerning the payment of fees required under the Yukon Maintenance Orders (Facilities for Enforcement) Ordinance of 1950.

s.19(1)

2. In this connection, the first remittance under this arrangement has been submitted by the Home Office, Whitehall, S.W.1., in the form of a Payable Order No. 37716 for 16/10d, representing the fee received from [redacted] for the Enforcement in a Yukon court of a Maintenance Order against her husband [redacted]

3. This amount has been passed to the Treasury Office in London for deposit to the credit of the Receiver General of Canada on account of your Department, and in accordance with your instructions Treasury Office Official Receipt for this payment has been sent to the Home Office who have been requested to attach the receipt to the relevant documentation, all of which will be forwarded to Ottawa by the Commonwealth Relations Office.

4. Copy of C.T.O Official Receipt No. A.2358 dated 8th November 1955 is attached for your records.

Internal
Circulation

Distribution
to Posts

2

*\$ 2.35 payable to
Commissioner
Yukon Territory
who will pass money
to proper authority
Ch A 47-24-814
mailed Feb 7/56
ms.*

Canada House.

DOMINION OF CANADA

COMPTROLLER OF THE TREASURY
OVERSEAS OFFICE

Document disclosed under the Access to Information Act -
Document divulgué en vertu de la Loi sur l'accès à l'information

OFFICIAL RECEIPT

CODE 1000

DEPARTMENT
OF *

External Affairs.

RECEIVED FROM

Home Office,
Whitehall, S.W.1.,
c/o Mr. Jones,
Canada House, S.W.1.

S.19(1)

OFFICIAL
RECEIPT No.

A.2358

DEPOSIT LIST
NUMBER

298

CASH BOOK
FOLIO

126

THE SUM OF


- POUNDS 16 SHILLINGS 10 PENCE

£ 0. 16. 10d.

ON ACCOUNT OF

Payment of fee for the enforcement in a Yukon Court of a
Maintenance Order in the case of [REDACTED]

CHEQUE No. 37716

PREPARED BY	DEPOSITED IN BANK OF MONTREAL LONDON, ENGLAND.	DIV.	EST. OR INST.	F. E. NUMBER	VOTE	PRI. OR CAP.	SUB- ALT.	OBJECT OR S. O. No.	AMOUNT	RATE OF EXCHANGE
EMH	8. 11. 55.				741	00		000	\$ 2. 35	\$2.79
CHECKED BY										
									\$ 2. 35	
TOTAL									\$ 2. 35	

ISSUED AT LONDON, ENGLAND

CERTIFIED CORRECT

DATE 8th November, 1955.

FOR CHIEF TREASURY OFFICER

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TRANSMITTAL SLIP

TO: DEPARTMENT OF EXTERNAL AFFAIRS..... Security..Unclassified.....
..... OTTAWA Date..... Nov. 4, 1955.....
FROM: CANADIAN CONSULATE GENERAL..... Air or Surface..Air.....
..... SAN FRANCISCO No. of enclosures... 2.....

The documents described below are for your information.

Despatching Authority..... Consul General.....

7633-40
131 26

Copies	
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3	1
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15 NOV 1955

Description

Also referred to:

Letter from Mrs. [REDACTED] of
Denver Colorado, Nov. 3, 1955

Letter from Consulate General to
Commanding Officer, RCAF Station,
Greenwood, Nova Scotia, Nov. 4, 1955

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s.19(1)

INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.
2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.

CANADIAN CONSULATE GENERAL
SAN FRANCISCO.

Our File No. 108

400 Montgomery St.,
San Francisco 4, Calif.

November 4, 1955.

s.19(1)

Dear Sir,

Attached is a copy of a letter of November 3 from Mrs. [REDACTED]

[REDACTED] From this it will be seen that Mrs. [REDACTED] whose original home was apparently Denver, states that she married LAC [REDACTED] in Denver on December 31, 1954; lived with him at his Station in Nova Scotia; was "sent home" to Denver, *permanent* in May, 1955, with promises that her husband would send her funds for her hospital and doctor bills; obtained some sort of court order in August, 1955, under which she was to receive \$73 a month from her husband; now has LAC [REDACTED] child and is, therefore, having difficulties arranging to work; and has heard nothing from her husband since her return to Denver.

We, of course, have no means of judging the truth of Mrs. [REDACTED] statements and I would, therefore, be grateful if you would be good enough to have this matter investigated and to see whether, if Mrs. [REDACTED] statements are correct, arrangements can be made for LAC [REDACTED] to provide his wife and child with suitable support. If LAC [REDACTED] has, by any chance, moved to another Station, I should appreciate your forwarding this letter to his new Commanding Officer for attention.

I need hardly emphasize that, all other considerations aside, the neglect of an American wife and his Canadian child by a Canadian is hardly calculated

Commanding Officer,
Royal Canadian Air Force Station,
Greenwood, Nova Scotia.

-2-

s.19(1)

to create a good opinion of things Canadian in the Denver neighbourhood - unless, of course, Mrs. [REDACTED] bears the major responsibility for her present situation.

Incidentally, on the basis of what Mrs. [REDACTED] says in her letter, it would appear that she was a United States citizen at the time of her marriage and is, therefore, still a U.S. citizen since she did not have time to acquire Canadian citizenship during the few months she was in Canada; it would also appear that the son, who was apparently born in this country, while being a U.S. citizen under U.S. law in view of his place of birth, is a Canadian citizen under Canadian law if, as I assume, his father is a Canadian citizen.

Yours sincerely,

Christopher Eberts,
Consul General.

C O P Y

Nov. 3 - 1955

s.19(1)

Dear Sir,

I was told here by the British Consulate to write you and perhaps you could help me.

I am writing in regards to [REDACTED] He is stationed in Greenwood, Nova Scotia.

We were married here Dec. 31-1954. I went to Nova Scotia where he was stationed to live and he sent me home in May. I was almost 5 months pregnant and now I have his child and I haven't heard from him since he sent me home.

s.19(1) I want to court August 16-1955 and was granted \$73.00 per month and the court order was sent to Ottawa and I haven't received any money as yet and the Dr. and hospital are wanting their money. He told me when he sent me home he would send me the hospital and Dr. money. I received allotments while in Canada but he stopped them after he sent me home and his attorney here in Denver said he had wrote to him and he won't even answer his letters.

I worked before the baby was born but now I can't work because I don't have anyone to take care of the baby.

So please if you can write there and find out anything for me. I sure would appreciate it for I sure need some help from somewhere in the meantime I am going to try to get some money from the Welfare here in Denver but they think he should send money so I don't know if I can get on the welfare here or not.

Thanking you in advance for anything you might do.

Mrs. [REDACTED]

His address is L.A.C. [REDACTED]

RCAF Station,

Greenwood, Nova Scotia,
Canada.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: MR. SICOTTE

Security UNCLASSIFIED

Date October 12, 1955

FROM: M. HAWKINS

File No.		
7633-40		
131	✓	✓

REFERENCE:

SUBJECT: Summary of Challenge of Validity of Reciprocal Maintenance Orders between the Province of Ontario and England.

As you requested, I have read the decision given by the Ontario Court of Appeal on the validity of the Reciprocal Maintenance Order arrangement between the Province of Ontario and England and my findings are as follows:

The validity of the Reciprocal Maintenance Order arrangement between the Province of Ontario and foreign states was challenged by John Lewis Scott and argued before the Ontario Court of Appeal on June 7, 1954 and judgment was handed down on June 25, 1954 by five judges of the Appeal Court declaring the Reciprocal Maintenance Order arrangements between the Province of Ontario and foreign states to be ultra vires.

The appellant was upheld on the following points:

1. That the learned Chief Justice of the High Court of Ontario erred in holding that the Reciprocal Enforcement of Maintenance Orders Act was intra vires of the Legislature of the Province of Ontario.
2. That the learned Chief Justice of the High Court of Ontario erred in failing to hold that the Magistrate was without jurisdiction to exercise the powers conferred by the Reciprocal Enforcement of Maintenance Orders Act even if the Statute itself was within the power of the Legislature to enact.

. . . 2

- 2 -

3. That the learned Chief Justice of the High Court of Ontario erred in failing to hold that a Magistrate acting under the Reciprocal Enforcement of Maintenance Orders Act could not confirm an Order which had been made for the payment of an amount of money expressed in a foreign currency.

The Attorney General of Ontario carried this judgment of the Ontario Court of Appeal to the Supreme Court of Canada and the case was heard by nine judges on June 21, 1955.

The Registrar's Office of the Supreme Court of Canada has informed me that the judgment may be handed down at any date between now and January, 1956.

On July 30, 1954, the Lieutenant-Governor of Ontario informed the Secretary of State that no provisional or final order received from any reciprocating state including England will be forwarded to any court in Ontario for confirmation or enforcement until a decision has been handed down by the Supreme Court of Canada. In reply, the Department of the Secretary of State stated on August 16, 1954, that any further cases referred to their Department will be held pending further instructions. Similar correspondence was exchanged between the Provinces of Alberta (see flagged letter from the Department of the Secretary of State dated September 24, 1955 - File No. 7633-4-40), Nova Scotia (see flagged letter from the Department of the Secretary of State dated November 9, 1954), and British Columbia (see flagged letter from the Department of the Secretary of State dated November 12, 1954).

2. It is, therefore, suggested that this Department continue to pass Maintenance Order cases to the Department of the Secretary of State, even if judgment has not been rendered by the Supreme Court in the above mentioned case.

M. Hawkins

M. Hawkins

Legal/C.E. Bourbonniere/1e

Our file: ~~7633-4-105~~

7633-40	
16	16

Ottawa, March 1, 1955.

Dear Mr. Pyman,

As promised in my letter of February 22, 1955, I am sending you a copy of the Reasons for Judgment of the Ontario Court of Appeal in Re John Lewis Scott.

An appeal from the Order of the Ontario Court is being taken to the Supreme Court of Canada and I am pleased to enclose a copy of the Appeal Case and Factum of the Attorney General for Ontario.

Yours sincerely,

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

T.A. Pyman, Esq.,
First Secretary,
Office of the High Commissioner
for Australia,
O t t a w a.

Legal/C.E. Bourbonniere/le

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM TEMPORARY FILE COPY

TEMPORARY
FILE COPY

TO: The Legal Adviser

FROM: Legal Division

REFERENCE: Your memorandum of January 22, 1955.

SUBJECT: Channel of Communication of Maintenance Orders.

Unclassified
Security

Date February 16, 1955

File No. 7633-40	
16	16

I attach three Aide Memoire which you may wish to hand to officers representing the United Kingdom, Australian and New Zealand High Commissions at Ottawa.

2. I attach for your information volume 9 of Halsbury Statutes of England. The Maintenance Orders (Facilities for Enforcement) Act, 1920, is dealt with on page 409 and s.q.

3. We do not have in Legal Division Library nor on our file a copy of the New Zealand Act. However, we have a clear statement on file that the New Zealand Act "follows the language of the Imperial Act of 1920" except with regard to reciprocity which is not a prerequisite of the enforcement of orders made elsewhere in the Commonwealth. I am sorry to say that we do not have any copies of Australian State Legislation in this respect. We have noted that all copies of such legislation which were received in the Department from our High Commission at Canberra were forwarded at the time to the provincial authorities. However, since legislation relating to maintenance orders enacted by Commonwealth Governments is either identical to or follows very closely the wording of the United Kingdom legislation of 1920, you may consider that Halsbury will be sufficient to meet the purposes you have in mind.

GILLES SIGOTTE

cc: Files Nos.

7633-2-40
7633-4-40
7633-5-40

Legal Division.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: The Legal Adviser..... *file*

Security **Unclassified**

Date **February 16, 1955**

FROM: Legal Division

File No. 7633-40		
16	16	

REFERENCE: Your memorandum of January 22, 1955.

SUBJECT: ... Channel of Communication of Maintenance Orders.

I attach three Aide Memoire which you may wish to hand to officers representing the United Kingdom, Australian and New Zealand High Commissions at Ottawa.

2. I attach for your information volume 9 of Halsbury Statutes of England. The Maintenance Orders (Facilities for Enforcement) Act, 1920, is dealt with on page 409 and s.q.

3. We do not have in Legal Division Library nor on our file a copy of the New Zealand Act. However, we have a clear statement on file that the New Zealand Act "follows the language of the Imperial Act of 1920" except with regard to reciprocity which is not a prerequisite of the enforcement of orders made elsewhere in the Commonwealth. I am sorry to say that we do not have any copies of Australian State Legislation in this respect. We have noted that all copies of such legislation which were received in the Department from our High Commission at Canberra were forwarded at the time to the provincial authorities. However, since legislation relating to maintenance orders enacted by Commonwealth Governments is either identical to or follows very closely the wording of the United Kingdom legislation of 1920, you may consider that Halsbury will be sufficient to meet the purposes you have in mind.

cc: Files Nos.

7633-2-40

7633-4-40

7633-5-40

W. L. Smith
Legal Division.

16.2.32 (us)

cc: Belgrade

Our file: 7633-40

16	100

Ottawa, November 1, 1954.

The Deputy Minister,
Department of Citizenship and Immigration,
O t t a w a.

Attention: Chief of the Admissions Division.

For your information and for any action which you may consider necessary, I am enclosing a copy of letters No. 397 and 703 of May 28 and October 22, 1954, from the Canadian Embassy at Belgrade. I thought it might be useful for your Department to have on file the information contained in these two letters concerning the alleged bigamy of [REDACTED] and [REDACTED]

s.19(1)

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

*Comm.
H76
Conrad L.*

NOV 3 - A.M.

Ext-14

OTTAWA FILE

No. 7633-40

11/2

SECURITY CLASSIFICATION

Unclassified

Letter No. 703

Date. October 22, 1954.

FROM: THE CANADIAN EMBASSY, BELGRADE, YUGOSLAVIA

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

Reference. Circular Document B.10/54 of February 19, 1954.

Subject: Maintenance of children abandoned by their fathers.

s.19(1)

We have been approached by Mrs. [REDACTED]

who informs us that her husband, [REDACTED] is now living at [REDACTED] (?) [REDACTED] and that he has refused to provide any assistance for her or their three children. In accordance with your instructions, we have advised [REDACTED] to make application through the International Social Service in Geneva in an endeavour to obtain a voluntary undertaking of support for the children, though it seems unlikely that this will be forthcoming. Mrs. [REDACTED] alleges, however, that her husband has re-married in Canada and now has two children there; we have no way of knowing whether this report is correct, but in view of the possibility that Mr. [REDACTED] second marriage may be bigamous, you may wish to bring the matter to the attention of the appropriate Provincial authorities.

2. Mrs. [REDACTED] also enquired about the possibility of immigrating to Canada and we informed her that for this she would require her husband's sponsorship.

John Harrington
The Embassy.

Copies Referred
To.....

No. of Enclosures

Post File
CON-6-1
No. CON-6-2.....

1954 OCT 29 PM 1 44



000106

DEPARTMENT OF EXTERNAL AFFAIRS

Commonwealth

Subject *Reciprocal Legal
Agreements*

Date *26 June 1954* Publication *"The Globe and Mail",
Toronto, page 4.*

7633-40	
16	16

(5) *flm-7*

*less by Mr. Barrett
Mr. Murray
Mr. Bombardier*

No Power

Justices Upset Ruling On Rights Surrender

Five justices of the Supreme Court of Ontario agreed yesterday that the Legislature has no power to "surrender the civil rights of a person resident here to a foreign jurisdiction."

Their decision upset a ruling by Chief Justice McRuer, who had decided that a magistrate has power to confirm an order for maintenance of a dependent made by a court in another province or country having a reciprocal agreement with Ontario.

Here are the facts of the case: The wife of John Lewis Scott obtained a provisional order in London, England, awarding her five shillings a week for her maintenance and 30 shillings a week for each of their two children.

Before Magistrate Foster of Barrie could confirm, vary or refuse the London court order, upon her application, counsel for Scott objected that the magistrate did not have jurisdiction.

The motion which Chief Justice McRuer denied, and which the court allowed yesterday, was for an order prohibiting Magistrate Foster from taking any further proceedings under the provisions of the Reciprocal Enforcement of Maintenance Orders Act.

The 10 provinces of Canada, the Northwest Territories, the Yukon, and England, the Isle of Man, Northern Ireland, New Zealand, the Cook Islands, South Australia, Western Australia, Queensland, New South Wales, Tasmania and Victoria are all reciprocating states.

Chief Justice Pickup and Messrs. Justices Roach, Hope, J.

K. Mackay and Gibson, by their judgment, declared that certain sections of the maintenance act are unconstitutional.

Deputy Attorney-General C. R. Magone and M. A. R. Laird argued the appeal for the province. B. J. MacKinnon, who lectures on constitutional law at Osgoode Hall, was counsel for Scott. It is believed that the decision will be appealed to the Supreme Court of Canada.

"A person resident in Ontario is not subject, so far as his property and civil rights are concerned, to legislation enacted by a foreign state," Chief Justice Pickup said. "The Legislature of this province alone has jurisdiction with respect to these rights while he continues to be resident here."

The province surrenders those rights under this act when it declares that "the person on whom the summons was served shall have only those defenses that he might have raised in the original proceedings had he been a party thereto in the foreign state."

Chief Justice Pickup noted that an Ontario resident can not be expected to know what defenses he will have to raise in a foreign state, and he does not have the power of presenting any defense or of cross-examining evidence presented against him.

The court ruled that the magistrate had no jurisdiction to confirm "a provisional maintenance order made in another province or in some other country." In addition, the attorney-general has no power to send such a matter either to a magistrate or to a judge of a juvenile court, it said.



No. NS. [redacted]
Pers(N) "T"

Department of National Defence

to be placed in Source Book

Ottawa, 6. Aug. 54

+ Copy on 7633-ZE-40

7633-40	
16	100

Under-Secretary of State for External Affairs
East Block,
Ottawa, Ontario.

M. Smith
to action
(Perhaps copy to
the correspondence
in the Source Book)

Dear Sir:

Dependents in Ireland of Canadian Servicemen now Serving in Canada

I would refer to your letter of 2 July on the
above-noted subject under your files 7633-ZE-40 and
7633-40.

You ask whether a compulsory assignment can be
effected against a man in the Canadian Forces in order to
make provision for his wife without the necessity of a
court order being first obtained and also whether there is
any possibility of a maintenance order granted in Ireland
being enforced in Canada.

In the Canadian Army and Royal Canadian Air Force
there is no provision whereby the pay of an officer or man
may be compulsorily debited for the maintenance of his wife
or child unless there is in effect an order or decree
enforceable under the laws of Canada or any province thereof
requiring such payments to be made. The case of the Royal
Canadian Navy is somewhat different because of the conditions
under which personnel of that Service may be performing their
duties. Special authority has been conferred by the Governor
in Council upon the Chief of the Naval Staff to make deductions
from the pay of an officer or man notwithstanding that there
is no order or decree in effect. This special power is, in
practice, exercised only in very exceptional circumstances.

Maintenance orders granted in Ireland are not
enforceable, so far as we are aware, in Canada in the same
fashion as are maintenance orders issued in the United Kingdom.
Accordingly, there would appear to be no advantage in your
correspondent's taking proceedings in the Irish courts.

For your information with respect to the enquiry
concerning LSWS2 [redacted] this man was
released from the Royal Canadian Navy on 28 April, 1954.

Yours truly

(C.M. Drury)
Deputy Minister.

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File / CEB
on Murray

10 AUG 1954

s.19(1)

Document disclosed under the *Access to Information Act* -
Document divulgué en vertu de la *Loi sur l'accès à l'information*

1954 AUG 10 AM 9 : 05

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7633-40	
16	16

M.H. Wershof/vsj

July 20, 1954

MEMORANDUM FOR MR. SICOTTE,
LEGAL DIVISION:

Maintenance Orders (Reciprocal
Enforcement) Act of Ontario.

I return herewith the proposed letter to
Justice dated July 19:

While I do not rule out the possibility
that we might write Justice, I am reluctant to do
so unless we have first clarified:-

(1) the role this Department has played
in the past in this problem, and

(2) the share, if any, the Department
of Justice has taken in the past.

I would be interested to see the actual
judgment of June 25, 1954 when the text is available
in the law reports.

*File and
BF Sept emb 16, 1954 / CFB*

M.H.W.



DEPARTMENT OF EXTERNAL AFFAIRS
CANADA

Ottawa, July 19, 1954.

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

The Deputy Minister,
Department of Justice,
Ottawa, Ont.

*Not Sent
see my note
July 20
Blumh*

Maintenance Orders (Reciprocal Enforcement) Act (Ontario)

I invite your attention to the attached report from the Globe & Mail of June 26 last according to which the Supreme Court of Ontario has challenged the validity of the Maintenance Orders (Reciprocal Enforcement) Act in that Province. There are, as you will see, indications that the Province of Ontario may appeal to the Supreme Court of Canada against this decision.

2. It is likely, as a result, that courts in Ontario may henceforth cease to confirm - until and unless the Supreme Court of Canada reverses the decision of the Ontario Supreme Court reported above, - maintenance orders issued by courts in the United Kingdom and other parts of the Commonwealth. Courts in other provinces may also be encouraged by the example of the Ontario Supreme Court to reject in the future the requests received for the enforcement of maintenance orders under their respective legislation on maintenance orders. Such a situation will probably provoke repercussions in the other Commonwealth countries (where maintenance orders emanating from Ontario cannot be enforced in the absence of reciprocity) and the governments of these countries - particularly the United Kingdom - may well be moved to make representations to us in this regard.

3. This Department is instrumental in the transmission of maintenance orders issued by courts in the United Kingdom to provincial courts in Canada for purposes of confirmation. As a matter of course all these orders are sent by the United Kingdom court, together with all relevant exhibits, to

- 2 -

the Commonwealth Relations Office, forwarded to this Department and then relayed by us to the provincial governments in Canada through the Department of the Secretary of State, for eventual submission to the provincial court.

4. As you are no doubt aware, the enforcement of maintenance orders issued by courts of other Commonwealth countries has been made possible by the willingness of most Canadian provinces to enact legislation for this purpose. It is to be assumed that our provincial governments in considering the advisability of promoting such statutes have reckoned with the fact that the system of legislation in "reciprocating" states ought to be similar to the Canadian one. ✓

5. I realize that as this issue involves the question of civil rights, which is strictly within the competence of provincial jurisdiction, the federal authorities of Canada will have little to say in the matter. I would, however, appreciate receiving your comments on the possible remedies which would be available in regard to the - presumably undesirable - situation which would develop if Canadian provincial courts should henceforth refuse to confirm maintenance orders from Commonwealth countries.

Acting Under-Secretary of State
for External Affairs.

COMMONWEALTH RECIPROCAL
LEGAL AGREEMENTS

(Press clipping from The Globe and Mail, page 4, June 26, 1954.)

No Power

JUSTICES UPSET RULING ON RIGHTS SURRENDER

Five justices of the Supreme Court of Ontario agreed yesterday that the Legislature has no power to "surrender the civil rights of a person resident here to a foreign jurisdiction."

Their decision upset a ruling by Chief Justice McRuer, who had decided that a magistrate has power to confirm an order for maintenance of a dependent made by a court in another province or country having a reciprocal agreement with Ontario.

HERE ARE THE FACTS of the case: The wife of [REDACTED] obtained a provisional order in London, England, awarding her five shillings a week for her maintenance and 30 shillings a week for each of their two children.

s.19(1)

Before Magistrate Foster of Barrie could confirm, vary or refuse the London court order, upon her application, counsel for [REDACTED] objected that the magistrate did not have jurisdiction.

THE MOTION WHICH Chief Justice McRuer denied, and which the court allowed yesterday, was for an order prohibiting Magistrate Foster from taking any further proceedings under the provisions of the Reciprocal Enforcement of Maintenance Orders Act.

The 10 provinces of Canada, the Northwest Territories, the Yukon, and England, the Isle of Man, Northern Ireland, New Zealand, the Cook Islands, South Australia, Western Australia, Queensland, New South Wales, Tasmania and Victoria are all reciprocating states.

CHIEF JUSTICE PICKUP and Messrs. Justices Roach, Hope, J.K. Mackay and Gibson, by their judgment, declared that certain sections of the maintenance act are unconstitutional.

Deputy Attorney-General C.R. Magone and M.A.R. Laird argued the appeal for the province. B.J. MacKinnon, who lectures on constitutional law at Osgoode Hall, was counsel for Scott. It is believed that the decision will be appealed to the Supreme Court of Canada.

"A PERSON RESIDENT in Ontario is not subject, so far as his property and civil rights are concerned, to legislation enacted by a foreign state." Chief Justice Pickup said, "The Legislature of this province alone has jurisdiction with respect to these rights while he continues to be resident here."

The province surrenders those rights under this act when it declares that "the person on whom the summons was served shall have only those defenses that he might have raised in the original proceedings had he been a party there-to in the foreign state."

- 2 -

CHIEF JUSTICE PICKUP noted that an Ontario resident can not be expected to know what defenses he will have to raise in a foreign state, and he does not have the power of presenting any defense or of cross-examining evidence presented against him.

The court ruled that the magistrate had no jurisdiction to confirm " a provisional maintenance order made in another province or in some other country." In addition, the attorney-general has no power to send such a matter either to a magistrate or to a judge of a juvenile court, it said.

COPY

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: The Legal Adviser

Security Unclassified

Date January 20, 1955

FROM: Legal Division

File No.		
7633-40		
14	16	

REFERENCE: Your memorandum of December 1, 1954.

SUBJECT: Channel of Communication of Maintenance Orders.

Correspondence coming to this Department with regard to maintenance orders is of two types:

- a) correspondence dealing with the actual legislation - establishing reciprocity - between the Canadian provinces and various parts of the Commonwealth (states, colonies, etc.).
- b) transmission of individual maintenance orders, made provisionally, which are to be confirmed by Courts having jurisdiction over the husband of the deserted wife and children (see annex to this memorandum indicating the routing of individual orders).

2. There is no indication on file that consideration was ever given to eliminating this Department as a channel of communication where the first type of correspondence is concerned. It has no doubt been considered in the past that External Affairs is normally a regular channel for such purposes and that, although the federal authorities are not concerned with the enforcement of maintenance orders, Canada's external relations being nevertheless involved to a certain extent, it is desirable for our Department to keep an eye on reciprocal arrangements concluded by our provinces with other Commonwealth countries. The principle that the state acts as a unit whenever external relations are concerned might indeed support the retention of this present "post office" like function in our Department.

- 2 -

3. As to the practical use which is made of maintenance order legislation, I might say that, in normal times, (i.e. prior to last year's decision of the Ontario Court in the Scott case now being appealed to the Supreme Court of Canada) this Department has been handling an average of one dozen individual maintenance order cases per week. Of these, some 98% would be coming from or going to United Kingdom Courts while the rest would originate from or ~~be~~ be directed to other Commonwealth tribunals, chiefly in Australia.

4. As a matter of fact the type of correspondence mentioned in a) above is not, as far as Legal Division is concerned, as importune as the second type b) above. Routing of individual maintenance orders through us is indeed burdensome, and also involves a hardship for the plaintiffs (wife and children) concerned who are generally in urgent need of the money to be paid to them pursuant to the confirmation of the orders.

5. In 1950, thought was given to the possibility of shortening the channel of communication with regard to individual orders. The officer holding the departmental desk at that time prepared an excellent study of the question which we have pink-flagged on the attached file for your perusal. His main recommendation was that as far as maintenance orders from the United Kingdom are concerned, these be sent from the C.R.O. directly to the Lieutenant Governors of our provinces (and vice versa).

6. There would seem to be no doubt that under the present U.K. legislation which is the Maintenance Orders (Facilities for Enforcement) Act, 1920, the Lieutenant Governors could be addressed directly by the C.R.O. Section 2 of the Act reads in part: "The Court shall send to the Secretary of State for transmission to the Governor of that part of His Majesty's Dominions (to which the Act extends) a certified copy of the Order".

7. No effective action was taken to implement this worthwhile recommendation. In the early part of 1952, however, Mr. Bedson discussed the matter informally with Mr. Kenneth East of Earnscliffe. It appears that Mr. East then raised the question with London stressing the fact that a more direct channel was highly desirable. Mr. East indicated to Mr. Bedson that a formal request from this Department would be of great help to him in pursuing the matter with the authorities in London. This was not pursued however; it was thought at the time that both the Department of Justice and the

Department of the Secretary of State should first be consulted and requested to ascertain the views of the provincial authorities with regard to our proposal for a more direct channel. The last piece of correspondence dealing with the matter was a letter of September 1, 1953 (pink-flagged) from Mr. East to Miss Weir in which it is stated that London is "holding out no great hope of any substantial progress". It should also be noted here that there is evidence (on our file 7633-5-40) that the High Commissioner for New Zealand at Ottawa has in the past communicated directly with provincial authorities in Canada in connection with maintenance orders apparently to the satisfaction of all concerned.

Conclusion

8. There is every reason to revive the initiative described in para. 6 above in an effort to eliminate both the Departments of the Secretary of State and External Affairs in the channelling of routine correspondence dealing with individual cases of maintenance orders coming from the U.K., Australian, or New Zealand Courts and going to Canadian Courts; these Departments' participation in their transmission offers no advantage whatever.

9. Consequently, I would suggest that the question be raised, quite formally, with the Commonwealth Relations Office either through Canada House or Earnscliffe; we should indicate clearly our view that the channelling of maintenance orders through State and External in Canada serves no useful purpose but merely adds to the cumbersomness and expense of an already lengthy and costly procedure.

10. I am not quite certain however as to what would be the most appropriate moment for such an approach. Two considerations ought perhaps to be kept in mind in this regard:

- 1) the outcome of the Scott case: if the Supreme Court upholds the decision of the Ontario Court (which is in fact unlikely) it is most probable that several provinces in Canada will attempt to have their courts cease recognizing maintenance orders issued in other parts of the Commonwealth; it is to be presumed that the traffic of maintenance orders would then practically disappear until such time as the Canadian provinces may be persuaded to amend their

Agree.
I wish we could
go further &
establish
direct communication
in para.
1(a) as
well
HW

legislation and arrange for the courts to resume their recognition.

- ii) the advisability of consulting Justice and (through Department of State) the provincial Attorneys General.

Justice should presumably advise specifically as to the constitutional propriety of having the provinces communicate directly with Commonwealth authorities. (In this connection, I refer you to a note made by the former Head of this Division on a memorandum of January 21, 1952, (blue flagged) from which it appears that consideration was given at the time to consulting Justice in this matter.)

11. You will no doubt wish to consider whether in due course a letter for your signature should be addressed either to Earnscliffe or to Canada House asking them to discuss the matter with the C.R.O., and whether you see any necessity for us of previously consulting the Department of the Secretary of State, the Department of Justice and possibly the various provincial authorities.

W. L. Smith

Legal Division.

I don't see why we need consult them. I think it would be told when C.R.O. consents to new correspondence procedure. *mb*

A N N E X

Channel of Communication
Individual Maintenance Orders

United Kingdom Court



Home Office



Commonwealth Relations Office



Department of External Affairs



Department of the Secretary of State



Lieutenant-Governor



Provincial Attorney General



Provincial Court

7633-40
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December 1, 1954

Free Col.

M. Br...
In action
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MEMORANDUM FOR LEGAL DIVISION

Reciprocal Enforcement of Maintenance Orders

I am worried by the amount of correspondence which your Division has to look after under this heading. Practically all of the correspondence comes through us as a kind of post office between the provincial governments on the one hand and the Government of the United Kingdom or Australia or New Zealand on the other hand.

Not only is our role merely that of a post office but the actual correspondence is almost frivolous. Every time some tiny little colony or possession of the United Kingdom decides to extend its maintenance order legislation to Canada, we are called upon to transmit the glad tidings to our 10 provinces and to transmit the replies of the provinces to the Government of the United Kingdom who send it on to the colonial government. I shall be greatly surprised if any practical use is ever made of this legislation. //

I should be obliged if you would, within the next couple of months, survey the history of this subject and consult with me on what might be done to reduce the burden on this Department.

The tentative solution I am thinking of is that we might request the Government of the United Kingdom, and possible the Governments of Australia and New Zealand to correspond directly with the provincial governments on this matter. They could very easily do so through their High Commissioners in Ottawa, provided that we ~~are~~ first told ~~by~~ the provincial governments what to expect and provided that we give the High Commissioners in Ottawa a list of the provincial authorities to whom they might address themselves.

M.H. Wer
M.H. Wershof

PTO

2.12.4(55)

BF February 1, 1955 / CEF

January 22, 1955

File No. 7633-40

*On 2/1/55
In Despatch
On 2/1/55
SS*

MEMORANDUM FOR LEGAL DIVISION

Channel of Communication of
Maintenance Orders

Thank you for your excellent memorandum of January 20. I have discussed it with Mr. MacKay, who agrees with me that this Department should make a serious effort to get out of the business of transmitting individual maintenance orders between Canadian courts and provincial governments on the one hand and the courts and governments of other Commonwealth countries on the other hand.

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24/1/55
24 JAN 1955

2. I see no need to consult any other Department of the Canadian Government or the provincial governments before we agree on a new procedure with other Commonwealth governments. Of course, as soon as a new procedure is settled with any other Commonwealth government, we must send a careful explanation of it to the provincial governments and the governments of the Yukon and North-West Territories.

3. We need not assume that the new procedure will necessarily require direct correspondence between the Commonwealth Relations Office (or the External Affairs Departments of other Commonwealth governments) and the Lieutenant-Governors of provinces. It might be better for them to use the High Commissioners in Ottawa as intermediary. That, however, is for the respective Commonwealth governments to decide.

4. I would be inclined to open up this procedural subject with the High Commissioners in Ottawa rather than through our High Commissioners -- but of course we will keep our High Commissioners informed.

- 2 -

5. I suggest that you prepare draft Aides Memoires for us to give, with an oral explanation, to representatives of the High Commissioners of the United Kingdom, Australia and New Zealand -- is South Africa involved? The Aides Memoires should explain present law and practice as well as the proposed procedure.

No.
Feb.

6. On the timing, you might try to find out from the Registrar of the Supreme Court when the Scott appeal is to be heard. If you feel strongly that we should postpone action on paragraph 5 until after the Supreme Court of Canada has settled the appeal, let us discuss the matter.



M. H. W.

DEPARTMENT OF EXTERNAL AFFAIRS
MEMORANDUM

TO: UNITED NATIONS DIVISION

UNCLASSIFIED
Security
Date July 14, 1954

FROM: LEGAL DIVISION

File No. 7633-40
16 16

REFERENCE: Your Memorandum of July 13, 1954.

SUBJECT: Recognition and Enforcement Abroad of
Maintenance Obligations.

I am returning your memorandum with its attachment.
The Draft Article on the above noted subject is quite
satisfactory from our point of view. We would suggest
however that the two first sentences on page two of the
Draft be reworded as follows:-

"The first Convention would provide means
for a resident of one country to obtain an
order for maintenance against a resident of
another country in the courts of the other
country. The second would provide a model
of the machinery necessary to enable a person
who has obtained a maintenance order in his
own country to have it enforced in another
country."

GILLES SICOTTE

LEGAL DIVISION.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: ...LEGAL DIVISION.....

Security ...CONFIDENTIAL.....

Date ...July 14, 1954.....

FROM: ...DEFENCE LIAISON (2) DIVISION.....

File No.		
"L" 7633-40		
16	16	

REFERENCE: ...Your memorandum of July 5, 1954...

SUBJECT: The locating of former Czech citizens defaulting on maintenance payments to dependents in Czechoslovakia.....

I concur in your view that it would not be appropriate for the Federal Government to assist the Czech Government in locating former Czech citizens now resident in Canada on the grounds that the latter are defaulting in their obligations toward dependents still resident in Czechoslovakia.

2. From a security standpoint this Division does not consider it advisable to assist a Communist country in locating former citizens, particularly for such reasons as those suggested by Mr. Skacil. By placing former Czech citizens in touch with the Czech authorities we might subject them to various forms of pressure, which, as well as being undesirable in itself, could have an adverse effect on our own internal security. Moreover we have no satisfactory way of ensuring that these claims for maintenance are valid.

3. For your own information I might add that no record is normally kept of former Czech citizens beyond their initial address in Canada. Therefore, in most cases, it would be extremely difficult to trace them.

George P. Kidd

Defence Liaison (2) Division

This Division will advise Mr Skacil that it is impossible for the Federal Government to assist in locating Czech defaulters — if he inquires again. Rum 4

noted
file Rum

DEPARTMENT OF EXTERNAL AFFAIRS
MEMORANDUM

TO: Legal Division

Security ...CONFIDENTIAL.....

Date July. 9. 1954.

FROM: European Division

File No. 7633-40		
16	16	

REFERENCE: Your memorandum of July 5, 1954.....

SUBJECT: The locating of former Czech citizens defaulting on
maintenance payments to dependents in Czechoslovakia.

I agree with the comment in your memorandum
that it would be inadvisable to assist the Government
of Czechoslovakia in its efforts to obtain the ad-
dresses of former Czechs now resident in Canada.

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9 JUL 1954

*Noted
file
Room*

RA King

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: ✓ European Division *Ms. Crowe*

Defence Liaison (2)-Division *Bill*

FROM: Legal Division

REFERENCE:

Security CONFIDENTIAL

Date July 5, 1954.

File No.

76 33-40

16 16

SUBJECT: The locating of former Czech citizens defaulting on maintenance payments to dependents in Czechoslovakia.

On June 30, 1954, Mr. Sicotte had a visit in his office from Mr. Skacil, Attaché of the Czechoslovakian Legation. Among other things Mr. Skacil asked if the Canadian Government could assist the Czechoslovakian authorities in locating former Czech citizens now resident in Canada who were defaulting in their obligations towards dependents still resident in Czechoslovakia. Although he realized that in the absence of agreements between the Canadian provinces and Czechoslovakia for the reciprocal enforcement of maintenance orders that the Czechoslovak authorities could impress on such defaulters only a moral obligation to support their dependents, Mr. Skacil expressed the intention to send letters to the defaulters reminding them of their obligations if we could assist him in finding their addresses.

2. Mr. Skacil was informed that this was a subject handled entirely by the provinces and that even in cases where maintenance orders could be enforced in the Courts great difficulty was often found in locating the defaulter. It therefore appeared inappropriate for the Federal Government to attempt to locate defaulters, and in practice extremely difficult to do so.

3. As Mr. Skacil may telephone for confirmation of this understanding, I would appreciate your comments.

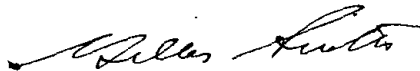
4. In the event that the R.C.M.P. does keep records of the addresses of former Czech citizens, you may agree

...2

- 2 -

that it would be inadvisable to assist a Communist country in locating former citizens.

5. For your information I have informed Mr. Skacil that the "International Social Service" in Geneva does valuable work in conjunction with welfare agencies throughout the world in obtaining voluntary undertakings for the support of dependents.



Legal Division.

Our files: 7633-ZE-40
7633-40 ✓

Ottawa, July 2, 1954.

The Deputy Minister,
Department of National Defence,
O t t a w a.

7633-40	
46	26

Dependents in Ireland of Canadian servicemen
now serving in Canada.

I am enclosing a copy of a letter dated May 17, 1954, addressed to the Canadian Embassy in Dublin by a lawyer acting on behalf of Mrs. [REDACTED], said to be the wife of Leading Seaman [REDACTED] until recently stationed at Point Edward Naval Base, Sydney, N.S. Enquiry is made in the letter as to whether there is:

1. any procedure whereby the pay of a man in the Canadian forces can be attached in any way to make provision for his wife without the necessity of a Court Order; or
2. if there is any possibility of a maintenance order if granted in Ireland, being enforced in Canada.

It is my understanding that as Ireland, unlike the United Kingdom, has no arrangements with various Canadian provinces for the reciprocal enforcement of maintenance orders, a maintenance order granted in Ireland would not be enforceable in any Canadian Provincial Court. (Although it is true that Saskatchewan in 1934 enacted a Foreign Judgements Act, I understand that even in that Province an action would have to be brought for the enforcement of a maintenance order against a person living in Saskatchewan.)

- 2 -

In your letter to this Department of February 11, 1953, (your file: NS.M-3397 Pers (N) W), you advised that:

"Under existing Naval regulations there is no means by which financial assistance may be made, other than voluntary, unless there is in effect an order or decree enforceable under the laws of Canada or any Province thereof requiring payment to be made".

I would appreciate your confirmation that the situation described in your letter of February 11, 1953, remains unchanged, and if the same situation applies for all three Services. If that is the case I shall advise our Embassy in Dublin that under the existing Service regulations there is no means by which financial assistance may be made, other than voluntary, to dependents of Canadian servicemen, resident in Ireland.

G. SICOTTE

FOR THE

Acting Under-Secretary of State
for External Affairs.

Ext. 1

OTTAWA FILE

No. 7633-40

16/26
SECURITY CLASSIFICATION

UNCLASSIFIED

Letter No. 397

Date May 28, 1954.

FROM: THE CANADIAN EMBASSY, BELGRADE, YUGOSLAVIA.

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

Reference.....

Subject: Matrimonial ventures of Mr. [REDACTED] s.19(1)

We have been informed by Mrs. [REDACTED] that her husband, [REDACTED] escaped from Yugoslavia some years ago and entered Canada under I.R.O. auspices. She believes his present address to be [REDACTED]

She informs us that she corresponded regularly with him until a year ago, but since then has had no word and has now learned from his parents that he has contracted a second marriage. Mrs. [REDACTED] informs me that the first marriage, which was contracted on July 10, 1948, at Zagreb, has not been terminated by divorce or otherwise and, at least in Yugoslav law, is still in force. There is one child of the marriage, born on [REDACTED]

2. We have seen both the marriage certificate of [REDACTED] and also the child's birth certificate, both issued by the authorities of the People's Republic of Croatia. We informed Mrs. [REDACTED] that if the facts she has given are correct, her husband's second "marriage" would not be valid in Canadian law, and have advised her of the steps she should take through the International Social Service in order to attempt to secure maintenance of her child. In the meantime, however, you may wish to bring this information to the attention of the Ontario provincial authorities, since it would appear that Mr. [REDACTED] has committed bigamy.

Mr. Harrington
The Embassy

Mr. Sirothe & Mr. Bourdonnige decided not to refer this to province. 14/6/54 Rem

10.11.54 11 5:00

1954 JUN 7 PM 1:08

1954 JUN 4 PM 2:09

000131

C O P Y

Patrick J. O'Doherty
Solicitor
Dublin office: 22 Nassau St.

16 16
Diamond,
Carndonagh,
Co. Donegal.

file
17th May 1954.

s.19(1)

Re/ Mrs. [REDACTED]

Dear Sir,

I am acting on behalf of the above-named in seeking to make her husband liable for her maintenance and support. My client is the wife of Leading Seaman [REDACTED] until recently stationed at Point Edward Naval Base, Sydney, Nova Scotia. He is a Canadian citizen.

The parties were married in Ireland in June 1952, and in January 1953 my client travelled by air to Canada to take up residence with her husband in Sydney N.S. About September 1953 the parties agreed to separate, for a period of six months at least, the husband undertaking to make my client an assignment of sixty Canadian dollars per month out of his pay.

My client returned to this country in October 1953 to reside with her parents, and for the following three months she received a monthly cheque from the Naval Department in accordance with the agreement made with her husband.

No cheque arrived for the month of January 1954, and on enquiry from the Naval Dept. it was ascertained that [REDACTED] had cancelled the assignment of portion of his pay to her.

I write to enquire from you if there is any procedure whereby the pay of a man in the Canadian forces can be attached in any way to make provision for his wife without the necessity of a Court Order, or, alternatively, if there is any possibility of a Maintenance Order, if granted in this country, being enforced in Canada.

I would be obliged for an early reply.

Yours faithfully,

Patrick J. O'Doherty (signed)

The Secretary,
Canadian Embassy, 92 Merrion Sq.,
Dublin.

UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL



Distr.
GENERAL

E/2364/Add.1
2 April 1954

ORIGINAL: ENGLISH

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4	Seventeenth session
5	Item 1
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ADVANCE COPY

APR 6 1954

Legal 8/R
May this go in
the file

RECOGNITION AND ENFORCEMENT ABROAD OF MAINTENANCE OBLIGATIONS

Note by the Secretary-General

7633-40
16 ✓

7 APR 1954

1. The purpose of this note is to furnish to the Economic and Social Council additional information on the question of the recognition and enforcement abroad of maintenance obligations.
2. The Council will consider the two draft conventions prepared by the Committee of Experts on the Recognition and Enforcement Abroad of Maintenance Obligations (E/AC.39/1, Annexes I and II).
3. These draft conventions attempt to alleviate the situation of women and children abandoned without means of subsistence by those responsible for their support who have moved to another country. Before the war, the largest group involved consisted of wives and children of emigrants who, having established themselves in a new country, failed to fulfil their moral and legal duty to provide for the support of their dependents. Since the war, the number of abandoned women and children has greatly increased because of the mass displacement of persons and the return to their homelands of soldiers who were married or had children while they were stationed in foreign countries.
4. A dependent who seeks to enforce her rights against a man who lives in another country is faced with considerable legal difficulties and expense. For this reason, on the initiative of various benevolent societies, several attempts have been made in the past twenty-five years to find legal means which would make it easier for dependents to obtain support from a defaulter abroad. The preparatory work before the war was done by the International Institute for the

54-09502

E/2364/Add.1
English
Page 2

Unification of Private Law under the auspices of the League of Nations, but the war interrupted the project.

5. After the war the project was taken up again by the United Nations. At the request of the Social Commission, the Institute prepared a draft convention which was submitted by the Secretary-General to States for their comments. This draft was considered at the seventh session of the Social Commission (April 1951) and at the thirteenth session of the Council (August 1951).

6. Some governments, including Argentina, Belgium, Italy and the Philippines (E/CN.5/236) have indicated general approval of the Institute's draft. Other governments, however, such as the United States (E/CN.5/236, p. 33) and the United Kingdom (E/CN.5/236/Add.1), have expressed the view that the Institute's draft could not be used as a working basis for an international convention because it was not considered suitable to the legal systems of those countries.

Accordingly, the Council, by resolution 390 (XIII), requested the Secretary-General to prepare one or two working drafts and to convene a committee of experts which, on the basis of the Secretariat's drafts, would prepare the text of one or two model conventions to be submitted to the Council. The Committee of Experts, composed of jurists from seven countries, met in Geneva in August 1952 and prepared the two draft conventions which are now before the Council.

7. In the first draft convention (E/AC.39/1, Annex I), the Committee of Experts developed a suggestion made by the United States (E/CN.5/236, p. 33) and sought to devise a system compatible with the domestic legislation of the different countries and of the constituent units of federal states.

The main purpose of the first draft convention is to make it easier for a dependent living in one country to obtain a valid and enforceable support order against a defaulter living in another country. This would be accomplished through co-operation between the authorities of the countries concerned. A claimant would apply for support to an agency (called the "transmitting agency") located in the country of residence of the claimant; the transmitting agency would make a preliminary examination of the application and of the evidence submitted; if satisfied that a case is made for transmission, the transmitting agency would then forward the papers to an agency (called the "receiving agency") located in the country of residence of the defendant; the receiving agency would be required to bring suit for support on behalf of the claimant against the defendant before

E/2364/Add.1
English
Page 3

the competent tribunal of the latter's place of residence. The proceedings would be governed by the law of the tribunal; thus a support order issued by the tribunal would be enforceable in the same manner as if the claimant was a resident of the country where the defendant resides. The draft would also give additional facilities to claimants in the transfer of funds, exemption from fees, etc.

8. The main purpose of the second draft convention (E/AC.39/1, Annex II) is to facilitate the enforcement abroad of a support order issued by a court in the country of residence of the dependent. While the first draft convention would assist primarily those abandoned dependents who have not obtained a support order in the country of their residence, the second draft convention would assist those who, having obtained such support order, are seeking to have it enforced in the country of residence of the defaulter.

9. The Committee of Experts reached the conclusion that the first draft convention could provide a solution compatible with the different legal systems of the countries more directly concerned. Accordingly, the Committee has submitted the first draft to the Council for possible adoption by States as a multilateral convention.

In addition, the Committee has submitted the second draft as a model which could be used by States for bilateral treaties or uniform legislation for the purpose of improving existing procedures for the enforcement abroad of family support orders.

DEPARTMENT OF



SUBJECT FILE.

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EXTERNAL AFFAIRS
CANADA

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CIRCULAR DOCUMENT

NO. B. 10/54

Ottawa February 19, 1954.

14 MAR 1954

THE MAINTENANCE OF CHILDREN WHO HAVE BEEN
ABANDONED BY FATHERS IMMIGRATING TO CANADA

Foreign missions in Ottawa and Canadian posts abroad frequently ask if there is any way in which a father who has immigrated to Canada can be made to support his children, either legitimate or illegitimate, whom he has abandoned in his country of origin. Because in Canada such matters are within the jurisdiction of the Provinces, the Federal Government can do little, if anything, to assist these children; the pertinent sections in the Criminal Code depend upon provincial law.

From a practical point of view, the best solution to the problem is to refer persons seeking your advice or assistance to a welfare agency. That agency should then present the case to the International Social Service, which has its headquarters in Geneva. The International Social Service will in turn, through its branch in the United States, refer the matter to the Canadian Welfare Council in Ottawa which will ask an agency in the district where the father resides to investigate the matter. This agency will, if possible, obtain a voluntary undertaking from the father to maintain his child and will be responsible for remitting any contributions which he might decide to make.

At the request of the German Embassy in Ottawa, the provincial authorities were asked if, in their opinion, a voluntary undertaking of this type could be enforced by a court. The replies of the provinces have been summarized in a memorandum which is attached. It should be borne in mind that it appears that a court has never considered the question and, therefore, these opinions are in no way conclusive.

for the *K. J. Burbridge*
Secretary of State
for External Affairs.

To the Heads of
Canadian Posts Abroad.

M E M O R A N D U M

Enforcement of Voluntary Undertakings to Support Child Abroad.

GENERAL

Sections 242 and 244 (the penal section) of the Criminal Code provide that a father who fails to provide his child with the necessities of life is criminally liable, but does not create a duty upon him to do so. Whether such a duty exists is a matter of civil rights and is, therefore, of provincial concern. In British Columbia this duty exists under the provisions of the Poor Relief Act, but in Ontario no such duty exists where the child is not living with its father.

Generally speaking, the position seems to be that stated by the authorities in Nova Scotia; it is difficult to formulate any rule which would serve in all instances and each case should therefore be considered on its merits.

ALBERTA -

It appears that a voluntary undertaking could not form the basis of an action in an Alberta court but could serve as corroborative evidence. An action for maintenance of the child could not be brought in an Alberta court because the person to be maintained is without the jurisdiction of the court. An order made in a foreign court could be the basis of an action in an Alberta court providing that the foreign court had jurisdiction and that the order of the foreign court is final.

BRITISH COLUMBIA -

It is doubtful whether a voluntary undertaking to support a child abroad could be enforced against a father living in British Columbia. An action could be brought in a court for an order that the father pay so much a month towards the support of a child but it would be difficult to prove the neglect or non-support of a child not resident in the province.

MANITOBA -

The authorities in Manitoba take the position that whether or not a voluntary undertaking made in Canada by an immigrant father to support his legitimate or illegitimate children in Germany can be enforced in the courts of Manitoba depends entirely on the form of the "voluntary undertaking". If the undertaking is in the form of a contract between the father and a person or agency in Manitoba for the payment of a specified sum and is made in Manitoba, it will be enforceable.

NEW BRUNSWICK -

Whether or not an undertaking to support a child would be enforceable in the courts of New Brunswick depends upon the exact nature of the "undertaking" and the circumstances surrounding the giving of the undertaking.

NEWFOUNDLAND -

A voluntary promise made by a father to support a child resident abroad would not in itself constitute a cause of action in Newfoundland.

- 2 -

NOVA SCOTIA -

An undertaking of this sort would be enforceable as an action by the child through its next friend for debt for the recovery of amounts not paid in accordance with the undertaking. Such an action could relate only to arrears and would not result in the obtaining of an enforceable order for payment of maintenance in the future. The claimant, therefore, would probably have to bring actions from time to time as arrears accrued.

The Wives' and Children's Maintenance Act, which provides a summary method of obtaining an order having continuous effect, is applicable only to claims by or on behalf of wives or children who reside in the Province. It would not be available in the case of a wife or child living in Germany. Since there is not reciprocity between Nova Scotia and the Federal Republic of Germany respecting the enforcement of maintenance orders, an Act permitting recognition or enforcement of maintenance orders made elsewhere could not be used.

ONTARIO -

It is the opinion of the Attorney General that no basis exists upon which action could be taken in an Ontario court to enforce a voluntary undertaking by a father to support his children abroad.

PRINCE EDWARD ISLAND -

The provincial authorities are of the opinion that such an undertaking could be enforced.

QUEBEC -

The Attorney General is of the opinion that each case is worth considering since it is quite probable that an undertaking of this kind could be enforced.

SASKATCHEWAN -

The success of an action to enforce a voluntary undertaking given by a father in Saskatchewan to support his child abroad would depend upon the evidence establishing liability.

CIRCULAR DOCUMENT
No. ~~10~~ B. 10/54.

7633-40	
16	✓

Ottawa, February 1954.

THE MAINTENANCE OF CHILDREN WHO HAVE BEEN
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From a practical point of view, the best solution to the problem is to refer persons seeking your advice or assistance to a welfare agency. That agency should then present the case to the International Social Service, which has its headquarters in Geneva. The International Social Service will in turn, through its branch in the United States, refer the matter to the Canadian Welfare Council in Ottawa which will ask an agency in the district where the father resides to investigate the matter. This agency will, if possible, obtain a voluntary undertaking from the father to maintain his child and will be responsible for remitting any contributions which he might decide to make.

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*To the Heads of
Canadian Posts Abroad.*

*Secretary of State
for External Affairs*

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5 To Support pool 16-1-54

OF EST. & ORG. DIV.)

DEPARTMENT OF EXTERNAL AFFAIRS
CIRCULAR DOCUMENT REQUISITION

SECURITY CLASSIFICATION

Unclassified

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(Originating Officer to complete in full)

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Belgrade, Berlin, Moscow, Prague, or Warsaw UNLESS INDICATED IN 1A,
and will be marked "FOR IMMEDIATE DESTRUCTION".

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Yes or No Yes or No Yes or No Yes or No Yes or No

2. DEPARTMENTAL DISTRIBUTION. Yes X... No ~~.....~~...
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4. SEND: As a self-contained document. X... As enclosure of covering document.....100 copies
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Copies required by Drafting Officer 10... Return draft. X... Retain draft.....

Drafting Officer

Signature of Head of Division

February 12/54

Date

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Circular Document No.

To be sent to Establishments and Organization Division,
and then to Production Services

Production Services

Job No.

INCOMPLETE REQUISITIONS WILL BE RETURNED.

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7633-40	
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CIRCULAR DOCUMENT
No. B/10/54

Ottawa, February 1954

THE MAINTENANCE OF CHILDREN WHO HAVE BEEN
ABANDONED BY FATHERS IMMIGRATING TO CANADA

Foreign missions in Ottawa and Canadian posts abroad frequently ask if there is any way in which a father who has immigrated to Canada can be made to support his children, either legitimate or illegitimate, whom he has abandoned in his country of origin. Because in Canada such matters are within the jurisdiction of the Provinces, the Federal Government can do little, if anything, to assist these children; the pertinent sections in the Criminal Code depend upon provincial law.

From a practical point of view, the best solution to the problem is to refer persons seeking your advice or assistance to a welfare agency. That agency should then present the case to the International Social Service, which has its headquarters in Geneva. The International Social Service will in turn, through its branch in the United States, refer the matter to the Canadian Welfare Council in Ottawa which will ask an agency in the district where the father resides to investigate the matter. This agency will, if possible, obtain a voluntary undertaking from the father to maintain his child and will be responsible for remitting any contributions which he might decide to make.

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*To the Heads of
Canadian Posts Abroad*

*Secretary of State
for External Affairs*

LEGAL/C.S.WEIR/bm

Your File No. C 11-1-129
Our File No. 7633-40

16	26
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Ottawa, February 9, 1954

Dear Sir,

Reciprocal arrangements for the
enforcement of maintenance orders

In your letter of January 21st, you asked me to confirm your understanding that reciprocal arrangements exist between the United Kingdom and all the provinces and territories of Canada, except Quebec.

This is substantially true. I should point out, however, that the reciprocal arrangements as they exist now are between the provinces and territories of Canada, except Quebec, on the one hand, and England, Ireland, Wales, the Isle of Man and the States of Jersey on the other hand. Scotland does not have legislation which would permit it to enter into reciprocal arrangements with other jurisdictions.

Yours sincerely,

K. J. BURBRIDGE

FOR THE

Acting Under-Secretary of State
for External Affairs.

The Commissioner,
Royal Canadian Mounted Police,
RCMP Headquarters Building,
Tremblay Road,
O t t a w a.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE CANADIAN EMBASSY,
STOCKHOLM, SWEDEN

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Reference: My Letter #339 of October 5, 1953

Subject: Maintenance of children abroad by
immigrant fathers

UNCLASSIFIED
Security: L 29

No: February 8, 1954
Date:

Enclosures:

Air or Surface Mail:

Post File No:

Ottawa File No.	
7633-40	
16	26

References

I am enclosing a summary of opinions given by the provincial authorities on the question of whether a voluntary undertaking to maintain a child who is not resident in Canada, signed by an immigrant father, would be enforceable in the provincial courts. You may find this information useful in answering future requests for assistance in maintenance cases.

K. J. BURBRIDGE

FOR THE

Acting Under-Secretary of State
for External Affairs.

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ALL CORRESPONDENCE TO BE ADDRESSED:-
THE COMMISSIONER
C. M. POLICE
OTTAWA



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ROYAL CANADIAN MOUNTED POLICE
OFFICE OF THE COMMISSIONER
OTTAWA

C 11-1-129

January 21, 1954.

REF. NO.

Your Ref: 7633-40

Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

Re: Reciprocal Arrangements for
Enforcement of Maintenance Orders

Referring to your letter of August 21 and our
reply thereto of August 25, 1950, it is noted that at
that time five of the Provinces, namely British Columbia,
Alberta, Saskatchewan, Manitoba and Ontario, had by
Legislation provided for the enforcement in Canada of
Maintenance Orders on a reciprocal basis among the
Provinces themselves and with the United Kingdom. It is
our understanding that this arrangement has since been
extended to include all the Provinces of Canada, with the
single exception of Quebec.

2. It would be very much appreciated if you would
advise us whether our information in this respect is
correct.

for COMMISSIONER.

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25 JAN 1954

Document disclosed under the *Access to Information Act* -
Document divulgué en vertu de la *Loi sur l'accès à l'information*

1954 JAN 25 PM 3 : 56

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CANADA

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FOREIGN TRADE SERVICE

FILE 199

Canadian Govt. Trade Commissioner,
P.O. Box 2300,
Beirut.

December 22nd 1953.

The Under Secretary of State
for External Affairs,
Ottawa.

Dear Sir,

Thank you for your letter of December 9th ref.
7633-40, concerning the enforcement in Canada of an
ecclesiastical court order made in the Lebanon.

I am passing the information as you have given it,
to Sir Edwin Chapman Andrews, the British Ambassador in
Beirut, and I know he will be grateful to you for your
suggestions as to the channels through which the Greek
Archbishop might communicate.

Yours sincerely,

G.F.G. Hughes.

Canadian Govt. Trade Commissioner.

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c.c. referred to Trade Commis-
sioner Service, (D. T & C.)
Done Dec.9/53 - BL

Your File No. 199
Our File No. 7633-40

16	27

Ottawa, December 9, 1953.

Dear Sir,

I have received your letter of November 19 in which you ask for advice concerning the enforcement in Canada of a Maintenance Order made by an ecclesiastical court in Lebanon.

There is no way in which a foreign Maintenance Order can be enforced at the present time except through the reciprocal arrangements between the Provinces and certain Commonwealth countries. The only way to obtain maintenance from a husband who has left his wife abroad is for a welfare agency in the wife's country to request the International Social Service, which has its headquarters in Geneva, to make inquiries through its organization. The International Social Service forwards the case to the Canadian Welfare Council in Ottawa, which in turn asks an agency located in the husband's place of residence to interview him. If possible the last agency obtains the husband's voluntary undertaking to maintain his wife. There appears to be no way in which this undertaking can be enforced in a court.

It would be possible, of course, for the wife to bring an action against her husband in a Canadian court. This would be an expensive procedure.

s.19(1)

You might be interested to know that [redacted] is employed as a carpenter in the Bridge & Building Department of the Winnipeg Terminal of the Canadian National Railways.

Yours sincerely,

K. J. BURBRIDGE

FOR THE

Under-Secretary of State
for External Affairs

The Canadian Government Trade Commissioner,
P.O. Box 2300,
Beirut,
Lebanon.

000151

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: THE CANADIAN CONSULATE GENERAL, NEW
YORK.

Reference: NOBO

Subject: Maintenance Order against Mr. [REDACTED]

s.19(1)

Security: UNCLASSIFIED

No: 973

Date: December 8, 1953.

Enclosures: One

Air or Surface Mail:

Post File No: [REDACTED] 17-167

Ottawa File No.

7633-40

10 10

References

s.19(1)

Enclosed is a copy of a letter, dated November 30, 1953, from Mrs. [REDACTED] of [REDACTED] requesting information concerning the business address of Mr. [REDACTED]

2. We have been informed that Mr. [REDACTED] is the [REDACTED]

On July 20, 1951, Mr. [REDACTED] was issued Canadian passport at this Consulate General. He was born at [REDACTED] on the [REDACTED]

3. The above information has not been transmitted to Mrs. [REDACTED] nor has her letter been acknowledged, as we assume that you have a prescribed procedure in cases involving the enforcement of maintenance orders against Canadians residing in the United States. Should you wish us to write to Mrs. [REDACTED] or give us any instructions in dealing with future cases of this kind, we should be very glad to hear from you.

CONSULATE GENERAL.

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Answered
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2 DEC 1953



CANADA

FOREIGN TRADE SERVICE

Canadian Govt. Trade Commissioner,
P.O.B. 2300
Beirut.

November 19th, 1953

Secretary of State for External Affairs,
Department of External Affairs,
Ottawa.

Dear Sir,

The British Ambassador in Beirut, Sir Edwin Chapman-Andrews, has asked my assistance in a case which apparently involves a Canadian and I in turn, wish to refer the details to you for your suggestions.

The case concerns the judgement rendered by the Greek Orthodox Archbishop of Zahleh, Lebanon, which incidentally, is recognized by the Lebanese Courts, against the husband of Mrs. [redacted] for arrears of maintenance. The husband, [redacted] a native of Karaoun, Bekaa, Lebanon, apparently left this country in 1938 and was admitted to Canada. Having obtained information through channels which are not revealed, the Bishop of Zahleh states that [redacted] (who now is known as [redacted]) occupies the position of [redacted] of the [redacted] in Winnipeg and that he is married in Canada.

The British Ambassador, in explaining his position mentioned that he would like to render some assistance to the Bishop because of his help to the British authorities in the past. Normally I would only have suggested that the Bishop might probably take up the matter with the Lebanese Consul General in Ottawa, or through his own ecclesiastical channels but felt in this case, that because of the British Ambassador's interest, I should ask you for your suggestions and, if possible, for a verification of the existence of the so-called [redacted] and his address and occupation in Winnipeg. It is not clear how closely the Canadian Immigration Authorities would be concerned regarding a man who left a legal wife and two children and settled in Canada, as though they did not exist. Furthermore it is not clear whether a judgement of an ecclesiastical court in Lebanon though recognized by the state, could be implemented in Canada especially after such a lengthy period has elapsed.

At this stage I merely wish to acquaint you with a very brief outline of the case and look forward to your reply when I can furnish you with any additional information you require.

Yours truly,

G.F.G. Hughes,

Canadian Govt. Trade Commissioner.

7633-40
16 | 24

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2 DEC 1953

File
JW

s.19(1)

1023-2-5

2

Document disclosed under the *Access to Information Act* -
Document divulgué en vertu de la *Loi sur l'accès à l'information*

1953 DEC 2

PM 3:03

000154



ORIGINAL DAMAGED

FOREIGN TRADE SERVICE

FILE I99

Canadian Govt. Trade Commissioner,
P.O.B. 2300
Beirut.

November 19th, 1953

Secretary of State for External Affairs,
Department of External Affairs,
Ottawa.

Dear Sir,

The British Ambassador in Beirut, Sir Edwin Chapman-Andrews, has asked my assistance in a case which apparently involves a Canadian and I in turn, wish to refer the details to you for your suggestions.

s.19(1)

The case concerns the judgement rendered by the Greek Orthodox Archbishop of Zahleh, Lebanon, which incidentally, is recognized by the Lebanese Courts, against the husband of Mrs. [REDACTED] for arrears of maintenance. The husband, [REDACTED] a native of Karaoun, Bekaa, Lebanon, apparently left this country in 1938 and was admitted to Canada. Having obtained information through channels which are not revealed, the Bishop of Zahleh states that [REDACTED] who now is known as [REDACTED], occupies the position of [REDACTED] of the [REDACTED] in Winnipeg and that he is married in Canada.

The British Ambassador, in explaining his position mentioned that he would like to render some assistance to the Bishop because of his help to the British authorities in the past. Normally I would only have suggested that the Bishop might probably take up the matter with the Lebanese Consul General in Ottawa, or through his own ecclesiastical channels but felt in this case, that because of the British Ambassador's interest, I should ask you for your suggestions and, if possible, for a verification of the existence of the so-called [REDACTED] and his address and occupation in Winnipeg. It is not clear how closely the Canadian Immigration Authorities would be concerned regarding a man who left a legal wife and two children and settled in Canada, as though they did not exist. Furthermore it is not clear whether a judgement of an ecclesiastical court in Lebanon though recognized by the state, could be implemented in Canada especially after such a lengthy period has elapsed.

At this stage I merely wish to acquaint you with a very brief outline of the case and look forward to your reply when I can furnish you with any additional information you require.

Yours truly,

G.F.G. Hughes,

Canadian Govt. Trade Commissioner.

ORIGINAL DAMAGED

00015

1953 DEC

2

AM 9:31

000156

COPY:BL

OFFICE OF CLERK OF TERRITORIAL COURT

YUKON TERRITORY

CANADA

7633-40	
49	49

Whitehorse, Y.T.

orig on 7633-2-40

Oct. 26th, 1953

The Acting Under-Secretary of State
for External Affairs,
Department of External Affairs,
Ottawa, Canada.

re: Reciprocal Enforcement of Maintenance Orders:
YOUR FILE NO. 7633-40 & 7633-2-40

Dear Sir:

I have for acknowledgment your letter of Oct. 21, with reference to the above and wish to advise that your correspondence dated July 3rd was received at the office of The Commissioner of Yukon Territory, Whitehorse, Y.T., and a reply made thereto by a Mr. F.G. Smith, Administrator. It would appear that you have not received this letter, and, as requested by your letter of July 3rd I have listed the Tariff of Fees applicable in the Yukon Territory, for the following documents:

Filing ... (any document)25	
Application	\$2.00	
Commission or Order in lieu of	\$3.00	
Certificate (every)	\$2.00	
Decree or Order of Court or Judge...	\$2.00	
Motion (notice of) or Chamber		
Summons.....	\$1.00	
Notices.....	\$1.00	
Originating Summons or Other		
Original Process.....	\$2.00	(Not over \$200.00)
" " " "	\$3.00	(Over \$200.00)
For Services by Bailiff.....	\$2.75	
Certified Copies of any Document....	\$2.00	

I trust that this is the information you require.

Yours truly,

R.J. Friend,
Clerk & Registrar, T.C., Y.T.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

(FILE COPY)

NUMBERED LETTER

TO:.....THE CANADIAN EMBASSY.....
.....STOCKHOLM.....
FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.
Reference:..Your Letter No. 451 of Sept. 22/53..
Subject:....[REDACTED].....
.....[REDACTED].....
.....[REDACTED].....

Security:.....Unclassified.....
No:.....L- 339.....
Date:.....October 5, 1953.....
Enclosures:.....
Air or Surface Mail:..Air.....
Post File No:.....

Ottawa File No.:

7633-40

16 26

References

s.19(1)

I am sorry to inform you that there is no way in which [REDACTED] can be forced to comply with the Judgment of a Swedish court now that he is without its jurisdiction.

2. This problem has come up several times recently in connection with German and Austrian immigrants and we have endeavoured to see if some means could be found to help these abandoned wives and children. At the present time there is no way in which immigrant husbands could be forced legally to live up their obligations short of the wife bringing an action in a Canadian court. This, in practice, is too costly a procedure for most of the persons involved.

3. As you know, the enforcement of judgments is within the jurisdiction of the Provinces. It is hoped that a model act providing for the reciprocal enforcement of foreign judgments will be in a form ready for adoption by the Provinces after the Commissioners on Uniformity of Legislation have finished with the final draft toward the end of the year. Some of the Reciprocal Enforcement of Maintenance Order Acts of the Provinces provide for the reciprocal enforcement of foreign Orders (as opposed to Commonwealth and Canadian Orders) but no Province has yet been willing to enter into arrangements under these provisions.

4. You might suggest to the Social Welfare Department of the town of Vimmerby that it write to the Welfare Department of the City of Toronto. That agency may be willing to assist in this case on a reciprocal basis.

Internal
Circulation

Distribution
to Posts

GILLES SICOTTE
Acting Under-Secretary of State
for External Affairs

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Minister
STOCKHOLM

Reference: [REDACTED]

Subject: [REDACTED]

s.19(1)

Security: UNCLASSIFIED

No: 451

Date: September 22, 1953

Enclosures: 4

Air or Surface Mail: AIR

Post File No:

Ottawa File No.

7633-40

16

26

References

The Social Welfare Department of the town of Vimmerby has written to us asking for advice as to the manner in which the Judgement of a Swedish court, ordering a man called [REDACTED] at present resident in Canada, for the maintenance of his two children in Sweden, can be enforced.

2. I am enclosing copies of the two letters we have received from the Child Welfare Officer of that town, and I will be obliged if you will let me know what advice we should pass on to him and also whether any further information may be required.

W. D. Matthews

Minister.

[Signature]
Internal
Circulation

Distribution
to Posts

2

C O P Y

VIMMBERBY
Social Welfare Department

s.19(1)

Canadian Legation
Strandvägen 7 C
Stockholm

Re: Maintenance Grant from [REDACTED]

The above-mentioned person, who in accordance with a court decision of the 3rd of February, 1951, is liable for the maintenance of two minor children, has not discharged his maintenance obligations since September, 1951.

I would be grateful for information as to whether [REDACTED] future earnings can be impounded, or if he cannot be contacted at the above address, how to request that an inquiry be made. I have on previous occasions written to the Swedish Consulate General in Montreal but have not received any information concerning the possibility of impounding.

I would be grateful for a reply as soon as possible.

Yours respectfully,

VimMBERBY, August 24, 1953.

(signed) Anna-Lena Lindblad
Child Welfare Officer

MERBY
Social Welfare Department

Canadian Legation
Stockholm

Re: Maintenance Grant from [REDACTED]

s.19(1)

In answer to your letter of 27th August and in connection with my questions of 24th August, I wish to inform you as follows:

[REDACTED] is stateless, a former Estonian citizen, and his wife, now remarried, is a Swedish citizen. The children were earlier Estonian citizens, but since the father has lost that citizenship, it seems the children are also stateless for the present.

Copy of court decision is attached. I wish to thank you for your assistance in this matter.

(signed) Anna-Lena Lindblad
(Child Care Board)

s.19(1)

s.19(1)

Attested by:

7633-49
19 26
OFFICE OF THE HIGH COMMISSIONER
FOR THE UNITED KINGDOM,
Earnscliffe,
OTTAWA.

1106/1

1st September, 1953.

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L4 SEP 1953

Dear Miss Weir,

We recently discussed the proposal put forward in correspondence some little time ago for the simplification of the procedure for transmitting Maintenance Orders between the courts of England, Wales and Northern Ireland and the Provinces of Canada having reciprocal enforcement arrangements with them.

between
Earnscliffe
and
C.R.O.
not between
External
and
Earnscliffe
— cars

Following our conversation I reminded the authorities in London that this correspondence remained unconcluded and enquired whether they would be ready to return to the subject in the near future. I have now received an interim reply promising a further letter but holding out no great hope of any substantial progress.

Yours sincerely,

KEast.
(K. East)

Miss C.S. Weir,
Legal Division,
Department of External Affairs,
O t t a w a.

DG

7633-40	
16	J

Please refer to:
Our File No. 7633-40

Ottawa, July 3, 1953.

The Registrar,
Yukon Territorial Court,
Whitehorse,
Yukon Territory.

I am enclosing a copy of a letter received from the office of the High Commissioner for the United Kingdom in which information is requested concerning the filing of documents in connection with reciprocal enforcement of maintenance orders in the United Kingdom and the Yukon Territory.

I should appreciate it if you would give me some indication of the reply I might make to this letter. Would you also be good enough to send me a list of the fees payable to the Court for the filing of a document, the issuing of a summons, the entering of an Order, and the issuing of certified copy of an Order.

A. P. ERICHSEN-BROWN

Under-Secretary of State
for External Affairs.

for the

DEPARTMENT OF EXTERNAL AFFAIRS
CROSS REFERENCE SHEET

Security.....

7633-40		

Type of Document. Letter..... No...288.... Date.....21.Feb.53.....

From:....USSEA.....

To:....London.....

Subject: Dependents in UK of Canadian Servicemen now Serving in Canada

Para 2. In the case of Miss Ross we have been informed as follows:

"Under existing Naval regulations there is no means by which financial assistance may be made, other than voluntary, unless there is in effect an order or decree enforceable under the laws of Canada or any Province thereof requiring payment to be made."

In view of this, I am afraid nothing can be done here to help Miss Ross unless she has obtained a Maintenance Order in the UK. If she does possess one, it could be enforced here and Naval Regulations could be employed to extract financial assistance from P.O. Thompson. If she has not obtained an Order before, I am afraid the case is probably hopeless as it is almost certainly too late for her to get one now unless the alleged father acknowledges his paternity.

Original on File No.....7633-QP-40.....

Copies on File No.....

Other Cross Reference Sheets on.....

Prepared by.....W. Brown.....

Legal Division

7633-40	
16	✓

February 18, 1953.

*File on
General
Maintenance
Order Free
CJW*

MEMORANDUM FOR PROTOCOL DIVISION

The Legal Division is planning a set of forms to deal with correspondence rising out of the reciprocal enforcement of Maintenance Orders Acts, one-half of which is addressed to the Secretary of State for Commonwealth Relations. We consider that it is most efficient, from the point of view of the typist, to have all the material which might vary in a heading. If the old style of address and complimentary closing is used in writing to the Secretary of State for Commonwealth Relations the form looks odd, as you will see by looking at the attached draft, and we would like to change to a more modern style of address and complimentary closing.

2. I would appreciate it if you would be good enough to give me your comments on the possibility of changing the style of letters addressed to the Secretary of State for Commonwealth Relations.

J. B. Bullock
Legal Division.

Miss Weir - Legal. Div.

We spoke. I have consulted Eamondiffe, who confirmed my impression that they themselves still adhere to "Sir" I have the honour, in routine forms of this sort.

27.11.53.

MEMORANDUM FOR MR. BURBRIDGE

Re: Maintenance Order Cases

Until some years ago, all correspondence on this subject was made on form letters. When these forms ran out, the stenographers of the Division, who could perfectly handle this type of correspondence, decided that it would not be worthwhile to have new forms printed.

2. The situation is different now that we have the Transcribing Unit. The present set up is that one girl is assigned to this specific work, until, of course, she is transferred to the East Block; then another girl must be trained. (So far two have been trained by me).

3. This requires much time from the officer dealing with the Maintenance Order cases and chiefly delays the transmittal of the documents received either from the C.R.O. or the U.S.S. of Canada, contrarily to what was the situation under the former system, when, as soon as received the documents were despatched.

4. If you agree that forms should be used again, would you please indicate your concurrence with the attached proposed letters (6), which I believe, are likely to cover any of the fourteen or fifteen types of letters and despatches which are presently prepared by this Division.

G. Bertrand
G. Bertrand

MEMORANDUM FOR MR. BURBRIDGE

7633-40	
16	✓

Re: Maintenance Order Cases

Until some years ago, all correspondence on this subject was made on form letters. When these forms ran out, the stenographers of the Division, who could perfectly handle this type of correspondence, decided that it would not be worthwhile to have new forms printed.

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4. If you agree that forms should be used again, would you please indicate your concurrence with the attached proposed letters (6), which I believe, are likely to cover any of the fourteen or fifteen types of letters and despatches which are presently prepared by this Division.

GB
G. Bertrand

00016
9

D R A F T

EA MAIL

No. _____



DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

7633-44	
16	1

new

Sir,

Reciprocal Enforcement of Maintenance Orders

Name of case

Your despatch No.

(with enclosure) applicable

I have the honour to advise you that a copy
of your despatch under reference has been commu-
nicated to the appropriate Canadian authorities.

I have the honour to be,

Sir,

Your obedient servant,

Secretary of State
for External Affairs.

The Secretary of State
for Commonwealth Relations,
London, England.



EXTERNAL AFFAIRS
CANADA

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

OTTAWA,

Please refer to:
Your File No.
Our File No.

TO: The Under-Secretary of State,
Department of the Secretary of State of Canada,
Ottawa, Ontario.

RE: Maintenance Orders (Facilities for Enforcement)
Act -

I refer to our letter of
concerning the case of
against her husband,

— Please find attached, for transmission
to the Canadian authorities concerned, copy of
despatch No. of , from
the Secretary of State for Commonwealth Rela-
tions, London, (together with its enclosures.)

When necessary.

Under-Secretary of State
for External Affairs

D R A F T



DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

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7633-40		
16	✓	5

new

Please refer to:
Your File No.
Our File No.

The Under-Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

Reciprocal Enforcement of Maintenance Orders.
None of case
My letter of _____

Would you be good enough to forward the
enclosed documents from the Secretary of State
for Commonwealth Relations, London, to the appropriate
provincial authorities.

Under-Secretary of State
for External Affairs.



7633-40	
16	✓

OTTAWA,

old

SEA MAIL

NO. _____

Sir,

I have the honour to refer to ~~my~~
Despatch No. _____ dated _____
concerning the Maintenance Order case of _____
against her
husband, _____ and _____
to request that the attached copy of a
despatch from the Lieutenant-Governor of
the Province of _____ be sent
to the prescribed officer of the appropri-
ate court in the United Kingdom, (together *← with the necessary.*
with its enclosures)

I have the honour to be,

Sir,

Your obedient Servant,

Secretary of State
for External Affairs

The Secretary of State
for Commonwealth Relations,
LONDON, England.

D R A F T

SEA MAIL

No. _____



DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

7633-40	
16	✓

new

Sir,

Reciprocal Enforcement of Maintenance Orders

Name of case

My despatch No.

I have the honour to refer to my despatch
under reference and to request that the enclosed
~~despatch~~ *letter* be sent to the prescribed officer of
the appropriate court in the United Kingdom.

I have the honour to be,

Sir,

Your obedient servant

Secretary of State
for External Affairs.

The Secretary of State
for Commonwealth Relations,
London, England.



REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

OTTAWA,

Please refer to:
Your File No.
Our File No.

TO: The Under-Secretary of State,
Department of the Secretary of State of Canada,
Ottawa, Ontario.

RE: Maintenance Orders (Facilities for Enforcement)
Act -

I refer to your letter of
attaching copies of a despatch from the Lieute-
nant-Governor of (together with
its enclosures.)

*When
necessary.*

I have forwarded these documents to the
Secretary of State for Commonwealth Relations.

Under-Secretary of State
for External Affairs

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Document divulgué en vertu de la *Loi sur l'accès à l'information*

7633-40

000176

16

D R A F T

Document disclosed under the Access to Information Act -
Document divulgué en vertu de la Loi sur l'accès à l'information



EXTERNAL AFFAIRS
CANADA

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

Please refer to:
Your File No.
Our File No.

heed

The Under-Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

Reciprocal Enforcement of Maintenance Orders
Name of case
Your letter of - - -

I have received your letter under reference
and have forwarded the documents you enclosed
to the Secretary of State for Commonwealth Relations.

Under-Secretary of State
for External Affairs.

Document disclosed under the *Access to Information Act* -

Document divulgué en vertu de la *Loi sur l'accès à l'information*

7633-40

16

✓

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EXTERNAL AFFAIRS
CANADA

7633-40	
16	✓

Old

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

OTTAWA,

Please refer to:
Our File No.

TO: The Under-Secretary of State,
Department of the Secretary of State of Canada,
Ottawa, Ontario.

RE: Maintenance Orders (Facilities for Enforcement)
Act -

I enclose, together with the supporting exhibits, a certified copy of an Order made provisionally against
on complaint of his wife

2. The Secretary of State for Commonwealth Relations, who has forwarded these documents with his Despatch No. of has informed me that the defendant's address is believed to be:

3. I should be grateful if you would transmit these documents to the provincial authorities concerned for whatever action may be possible.

4. If the Order is confirmed, moneys paid in satisfaction of it may be remitted to:

for payment to the complainant.

5. I should appreciate it if you would inform me in due course whether the Order has been confirmed.

Under-Secretary of State
for External Affairs

D R A F T



EXTERNAL AFFAIRS
CANADA

76 33-40	1
16	✓

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

Please refer to:
Our File No.

new

The Under-Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

Reciprocal Enforcement of Maintenance Orders

Name of action & def's address go here

I enclose, together with supporting exhibits,
a certified copy of an Order made provisionally in
the above case.

I should be grateful if you would transmit
these documents to the appropriate provincial author-
ities for whatever action may be possible and inform
me, in due course, whether the Order has been confirmed.

Under-Secretary of State
for External Affairs.

7633-40	
16	✓

Please Refer to:
Our File No.
Your File No.

The Under-Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

Reciprocal Enforcement of Maintenance Orders
Name of case
My letter of

Would you be good enough to forward the
enclosed documents from the Secretary of State
for Commonwealth Relations, London, to the ap-
propriate provincial authorities.

Under-Secretary of State
for External Affairs.

200 Copies

D R A F T

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

3

7633-40	
16	✓

Please refer to:
Your File No.
Our File No.

The Under-Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

Reciprocal Enforcement of Maintenance Orders

Name of case

Your letter of - - -

I have received your letter under reference
and have forwarded the documents you enclosed
to the Secretary of State for Commonwealth Relations.

Under-Secretary of State
for External Affairs.

D R A F T

SEA MAIL

No. _____

Sir,

Reciprocal Enforcement of Maintenance Orders

My despatch No. _____

I have the honour to refer to my despatch under reference and to request that the enclosed despatch be sent to the prescribed officer of the appropriate court in the United Kingdom.

I have the honour to be,

Sir,

Your obedient servant

Secretary of State
for External Affairs.

The Secretary of State
for Commonwealth Relations,
London, England.

D R A F T

7633-40	5
16	✓

Please refer to:
Your File No.
Our File No.

The Under-Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

Reciprocal Enforcement of Maintenance Orders.

Name of case
My letter of

Would you be good enough to forward the
enclosed documents from the Secretary of State
for Commonwealth Relations, London, to the appropriate provincial authorities.

Under-Secretary of State
for External Affairs.

D R A F T

A MAIL

No. _____

7633-10
16 ✓

Sir,

Reciprocal Enforcement of Maintenance Orders

Your despatch No.

I have the honour to advise you that a copy
of your despatch under reference has been commu-
nicated to the appropriate Canadian authorities.

I have the honour to be,

Sir,

Your obedient servant,

Secretary of State
for External Affairs.

The Secretary of State
for Commonwealth Relations,
London, England.

DEPARTMENT OF EXTERNAL AFFAIRS

ROUTING SLIP

DATE
SECURITY

TO:

~~Mr. Murray~~

FROM:

10 Green

☐ For Signature

☐ For Action

☒ For Comments

☐ For Approval

For Information and

File ☐

Destroy ☐

Return ☐

COMMENTS: (This space is not for comments of a permanent character which should be formally recorded in a memorandum)

Which do you

think looks best?

I prefer three or four

I prefer 4

00018

SEA MAIL

No. _____

X

7633-61

Reciprocal Enforcement of Maintenance Orders
(Name of case,
Your despatch No. _____)

Sir,

I have the honour to advise you that a
copy of your despatch under reference, together
with its enclosures, has been communicated to
the appropriate Canadian authorities.

I have the honour to be,

Sir,

Your obedient servant.

Secretary of State
for External Affairs.

The Secretary of State
for Commonwealth Relations,
London, England.

SEA MAIL

No. _____

7633-40
- 16 ✓

Sir,

I have the honour to advise
you that a copy of your despatch under
reference, together with its enclosure has
been communicated to the appropriate Canadian
authorities.

I have the honour to be,

Sir,

Your obedient servant.

Secretary of State
for External Affairs.

The Secretary of State
for Commonwealth Relations,
London, England.

Reciprocal Enforcement of Maintenance Orders
Your despatch No.

SEA MAIL

No. _____

DRAFT-3

7633-40	
16	✓

Sir,

Reciprocal Enforcement of Maintenance Orders

(name of action and defendant's address to
go here.)

I have the honour to enclose, together with supporting exhibits, a certified copy of a Maintenance Order made provisionally in the above case.

2. I should appreciate it if you would be good enough to send these documents to the appropriate court in the United Kingdom for confirmation of the Order.

3. I should be grateful if you would inform me, in due course, whether the Order has been confirmed.

I have the honour to be,

Sir,

Your obedient servant.

Secretary of State
for External Affairs.

NO. NS.N-3397 Pers(N)W



Department of National Defence

Ottawa, February 11, 1953

7633 -	40
49	SC

Dear Sir:

s.19(1)

DEPENDENTS IN THE UNITED KINGDOM OF CANADIAN SERVICEMEN NOW SERVING IN CANADA

In reply to your letter of 9 January, 1953, in which you asked if something could be done to provide assistance to the dependents in the United Kingdom of Canadian servicemen now serving in Canada, the following information regarding the unmarried mother Miss [redacted] and her daughter, alleged to be the issue of Petty Officer [redacted], RCN is forwarded.

Under existing Naval regulations there is no means by which financial assistance may be made, other than voluntary, unless there is in effect an order or decree enforceable under the laws of Canada or any Province thereof requiring payment to be made.

Yours sincerely,

Paul Drury
(C.M. Drury)
DEPUTY MINISTER

The Under-Secretary of State for External Affairs
OTTAWA.

EXTERNAL AFFAIRS
REC'D - CLEARED

EXTERNAL AFFAIRS
REC'D - CLEARED

1953 FEB 13 AM 10:37

1953 FEB 12 PM 4:31

11

DEPARTMENT OF EXTERNAL AFFAIRS
CROSS REFERENCE SHEET

Security.....

7633-40		

Type of Document..... Letter..... No..... Date.... 9 Jan 53.....

From:..... USSEA.....

To:..... Dept Nat. Defence.....

Subject: Dependents in UK of Cdn Servicemen now serving in Canada

s.19(1) Para 2.the other the unmarried mother of the
child of No. [REDACTED] RCN.

Original on File No..... 7633-QP-40.....

Copies on File No.....

Other Cross Reference Sheets on.....

Prepared by..... W Brown.....

Ext. 1 C

DUPLICATE

OTTAWA FILE

No. 7633-40

SECURITY CLASSIFICATION

UNCLASSIFIED

Letter No. 4133

Date. December. 11, 1952.

FROM OFFICE OF THE HIGH COMMISSIONER FOR CANADA, LONDON.

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

Reference.....

Subject: Dependents in the United Kingdom of Canadian Servicemen now serving...
in Canada.

Two cases have recently come to my attention of the dependents of Canadian servicemen who are in financial difficulties in the United Kingdom.

2. The first concerns the wife of LAC [redacted]. I understand that [redacted] joined the RCAF within the last year and was stationed at St. Jean, Quebec, but that he has recently been undergoing a course at Borden, Ontario. Mrs. [redacted] states that her husband had a separation agreement which was drawn up in Canada in November, 1950, in which he agreed to allow Mrs. [redacted] and her son the sum of \$80 per month. Mrs. [redacted] says she has never received any money from her husband, and on taking legal advice, was informed that the separation agreement could not be enforced under the Maintenance Orders (Facilities for Enforcement) Act, 1920, as the above mentioned Act does not apply in the Province of Quebec. Mrs. [redacted] has sent me a letter from her husband dated September 8, in which he indicates that he would be glad of a reconciliation with his wife. He has still failed, however, to put his intentions in any tangible form for his wife's benefit. Their son has been in hospital for the last year, and is expected to remain therefor the next two years, and Mrs. [redacted] finds it exceedingly hard to provide for herself and the necessities which her son requires.

3. It has occurred to me that, in view of the separation order, a proportion of LAC [redacted] pay and allowances should be deducted and assigned to his wife, and I should be grateful if you could make the appropriate enquiries through Air Force channels and find out whether anything can be done to help Mrs. [redacted] in her distress.

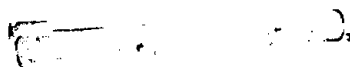
4. The second case concerns the unmarried mother of the child of No. [redacted] Petty Officer [redacted] R.C.N., whose address is given as HMCS "Cedarwood", Naval Dockyard, Esquimalt, B.C., his last known home address being [redacted]. The name of the mother is Miss [redacted].

[redacted] when the child's father was serving on H.M.C.S. "Morrow". Miss [redacted] has taken legal advice in Scotland, and has been told that the mother was outwith the jurisdiction of the Court of Session in Edinburgh, and that, although they felt that she had a good case, they were unable to proceed in Scotland. I am not aware whether or not a paternity order has been granted, but even if it were, it is my impression that it could not be enforced outside the United Kingdom. You might consider it desirable, however, to make enquiries through Naval channels to ascertain whether or not the particulars I have given are correct, and whether anything can be done.

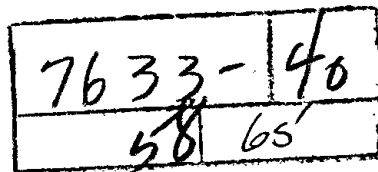
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- 2 -

5. I have sent interim replies to both the ladies concerned, but I should be grateful if you would let me know what further information I should give them.



Canada House.



Please refer to our
File No. 7633-40.

OTTAWA, September 17, 1952.

The Under-Secretary of State,
Department of the Secretary of State
of Canada,
O T T A W A, Ontario.

Maintenance Orders (Facilities for
Enforcement) Act - [REDACTED]

s.19(1)

I refer to previous correspondence concerning the maintenance order made provisionally against [REDACTED] on the complaint of his wife, [REDACTED]

The Secretary of State for Commonwealth Relations in a recent despatch has informed us that the Order in this case was confirmed at the Wingham Petty Sessional Court on August 7, 1952. I enclose a copy of a letter from the Clerk to the Wingham Justices which is self-explanatory.

It is suggested that any further communications which may be necessary in this case should be direct between the Court in Prince Edward Island and the Clerk to the Justices, Justices' Clerk's Office, 16, Watling Street, Canterbury, Kent.

f. W.
Under-Secretary of State
for External Affairs



7633-	40
58	86

COMMONWEALTH RELATIONS OFFICE,

DOWNING STREET, S.W.1.

26th August, 1952.

CANADA

NO. 149

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Sir,

s.19(1) With reference to the maintenance order made provisionally against [REDACTED] I have the honour to state that the order was confirmed at the Wingham Petty Sessional Court on the 7th August, 1952. A copy of a letter from the Clerk to the Wingham Justices is enclosed.

2. It is suggested that any further communications which may be necessary in the case should be direct between the Court in Prince Edward Island and the Clerk to the Justices, Justices' Clerk's Office, 16, Watling Street, Canterbury, Kent.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

Salisbury.

L
THE SECRETARY OF STATE
FOR EXTERNAL AFFAIRS,
CANADA.

Justices' Clerk's
Office,
16, Watling Street,
Canterbury, Kent.

Your ref. MOR2/412/1 8th August, 1952.

Sir,

Maintenance Orders (Facilities for
Enforcement) Act, 1920

s.19(1)

This matter came before my Justices yesterday when the Provisional Order made in the Court of Queen's County Prince Edward Island, Canada was confirmed, but the payment was reduced to £1 0s. 0d. per week for the wife and ten shillings per week for each of the two children whilst under the age of sixteen years. The costs were reduced to £2 0s. 0d.

I have written to the Clerk of the County Court of Queen's County informing him of the decision, and will in due course remit payments direct to him.

I am Sir,

Your obedient Servant,

(Signed) GERALD M. KINGSFORD.

The Under Secretary of State,
Home Office,
London, S.W.1.

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Legal/FB Roger/jdc

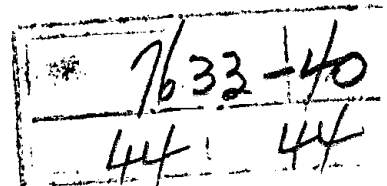
File ~~7633~~-GG-40

COPY FOR FILE 7633-40

Ottawa, April 12, 1950

NO

104



Sir:

I have the honour to refer to your despatch No. 43 of March 20 concerning maintenance order case of [REDACTED] against her husband [REDACTED].

s.19(1)

2. I have informed the provincial authorities in Alberta that the order in this case has been registered in the Probate, Divorce and Admiralty Division of the High Court of Justice. I have also indicated that Mrs. [REDACTED] should complete the forms which were enclosed with your despatch in connection with her application to the Poor Persons Committee of the Law Society for a solicitor.

I have the honour to be,

Sir,

Your obedient servant.

Secretary of State
for External Affairs.

The Secretary of State
for Commonwealth Relations,
London, England.

For file 7633-40

file jdc

Please refer to our
file No. 7633-CG-40

Ottawa, April 12, 1950

7633-40
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To: The Under-Secretary of State,
Department of the Secretary of State of Canada,
Ottawa.

s.19(1)

Re: Maintenance Orders (Facilities for Enforcement)
Act - [REDACTED]

I refer to my letter of February 12
in which I informed you I was making further enquiries
in this case.

I have now received a despatch from
the Secretary of State for Commonwealth Relations in
which I am informed that the order in this case has
been registered in the Probate, Divorce and Admiralty
Division of the High Court of Justice.

s.19(1)

The Secretary of State for Commonwealth
Relations indicates that Mrs. [REDACTED] can make
application to the Poor Persons Committee of the Law
Society for a solicitor and a certificate may be
granted provided she comes within the prescribed income
group and satisfies the Committee that her husband
is resident in England.

I enclose duplicate photostatic copies
of the Law Society's "Instructions to Applicants" and
the necessary forms which should be completed fully
by Mrs. [REDACTED] for transmission to the authorities in
Alberta.

Extra
copies in
file packet
7633-40^c

js (copy kept)

Under-Secretary of State
for External Affairs.

Legal: J.D. Foote:mg
File 7633-40

58	JK
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Ottawa, August 8, 1952

Please refer to our
File No. 7633-40
Your Ref: 1106/1

Dear Mr. East,

I refer to your letter of April 28, 1952 addressed to Mr. Blais of this Department, enquiring as to the interpretation of the expression "filing an affidavit", which is used in the Yukon Territory Maintenance Order Legislation.

The Commissioner for the Yukon Territory has now replied, and the following is an extract from his letter:

"Inquiry from the Office of the High Commissioner appears to be as to what the fee of twenty-five cents for the filing of an affidavit actually covers, that is, as to whether the fee would be charged for documents of the nature of an affidavit, such as a deposition or statement of arrears.

This is a matter that would be largely determined by the Clerk of the Court who was accepting the document for filing. It appears to me that the safest course to pursue, is to assume

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K. East, Esq.,
Office of the High Commissioner
for the United Kingdom,
Ottawa

- 2 -

in all such cases that a fee of twenty-five cents should be paid, and to pay the fee on depositing such documents with the Clerk of the Court.

I presume that the procedure for the enforcement of all Maintenance Orders in the Yukon Territory, and which had been made by a Court of competent jurisdiction in the United Kingdom, would be to file with the Clerk of the Court in the Yukon Territory a certified copy of the Maintenance Order, together with evidence that the payments under the order were in arrears.

The evidence would, I believe, be properly in affidavit form, though it is conceivable that a statement of arrears, certified to by an official of the Court in the United Kingdom, would be accepted.

In such cases the fee for filing the certified copy of the Order would be \$2.00, and the fee for the supplementary material, whether affidavit or otherwise, would be 25 cents."

I hope that this information is of assistance.

Yours sincerely,

~~XXXXXXXXXXXX~~ BRIDGE

for the Acting Under-Secretary of State
for External Affairs



CANADA

DEPARTMENT
OF

RESOURCES AND DEVELOPMENT

ADDRESS REPLY TO
COMMISSIONER OF YUKON TERRITORY

7633-40
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PLEASE QUOTE

FILE 1-27-19

DAWSON, Y.T.,
July 2, 1952.

Dear Sir:

re Reciprocal Enforcement of Maintenance
Orders - United Kingdom

I must apologize for not having replied to your letter of May 3rd, with reference to the above matter, your File 7633-40.. The delay has been occasioned by a change in staff.

// Inquiry from the Office of the High Commissioner appears to be as to what the fee of twenty-five cents for the filing of an affidavit actually covers, that is, as to whether the fee would be charged for documents of the nature of an affidavit, such as a deposition or statement of arrears.

This is a matter that would be largely determined by the Clerk of the Court who was accepting the document for filing. It appears to me that the safest course to pursue, is to assume in all such cases that a fee of twenty-five cents should be paid, and to pay the fee on depositing such documents with the Clerk of the Court.

I presume that the procedure for the enforcement of all Maintenance Orders in the Yukon Territory, and which had been made by a Court of competent jurisdiction in the United Kingdom, would be to file with the Clerk of the Court in the Yukon Territory a certified copy of the Maintenance Order, together with evidence that the payments under the order were in arrears.

The evidence would, I believe, be properly in affidavit form, though it is conceivable that a statement of arrears, certified to by an official of the Court in the United Kingdom, would be accepted.

In such cases the fee for filing the certified copy of the Order would be \$2.00, and the fee for the supplementary material, whether affidavit or otherwise, would be 25¢.

I trust that this answers the inquiry from the Office of the High Commissioner.

Yours truly,

Fred. Fraser
Fred. Fraser
Commissioner.

The Under Secretary of State for External Affairs,
Department of External Affairs,
OTTAWA, CANADA.

L



OFFICE OF THE COMMISSIONER
NORTHWEST TERRITORIES
CANADA

OTTAWA


Maintenance Orders (Facilities for Enforcement) Ordinance

- O r d e r -

WHEREAS the Deputy Commissioner of the Northwest Territories is satisfied that the Maintenance Orders (Facilities for Enforcement) Act 1920 (a) reciprocal provisions have been made by the United Kingdom for the enforcement in England and Northern Ireland of maintenance orders made within the Northwest Territories.

THEREFORE, pursuant to the Maintenance Orders (Facilities for Enforcement) Ordinance, Chapter three of the 1951 Ordinances, England and Northern Ireland is declared to be a reciprocating State for the purposes of the said Ordinance.

Dated at Ottawa, this 8th day of August, 1952.


.....
F.J.G. Cunningham
Deputy Commissioner

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Please refer to our
File No. 7633-40.
Your Ref: 1-27-19.

OTTAWA, May 3, 1952.

Dear Sir:

I refer to your letter of February 14, 1952 concerning the interpretation of the expression "filing an affidavit", which is used in the Yukon Territory Maintenance Order Legislation.

I enclose copy of a letter No. 1106/1 of April 28, 1952 received from the Office of the High Commissioner for the United Kingdom, Ottawa.

I should be grateful if you would let me know in due course what reply should be sent to the Office of the High Commissioner.

Yours sincerely,

K. J. BURBRIDGE

file

Acting Under-Secretary of
State for External Affairs.

Fred Fraser, Esq.,
Commissioner of Yukon Territory,
Department of Resources and Development,
Northern Administrations,
DAWSON,
Yukon Territory.

Legal: M. Blais: RJP
File No. 7633-40.

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May 2, 1952.

Please file
JRP

Mr. Blais

MEMORANDUM FOR MR. K. J. BURBRIDGE:

Re: Maintenance Orders - Channels
of Communication.

On May 1st, I spoke to Miss McKenzie regarding the contents of our memorandum of January 25, 1952, addressed to Commonwealth Division and Protocol Division on the matter under reference. She told me that Commonwealth Division has no objection to our suggestion.

2. This morning I saw Mr. Feaver on this matter. He suggested that the best procedure would be for the Court in the United Kingdom to forward documents direct to the Attorney General or to the Court in the province where the defendant resides. He believes that to request the assistance of the Home Office, the Commonwealth Relations Office or the Lieutenant-Governor of the provinces means that we are acting on a diplomatic level and that the documents will need to be passed by the Department of External Affairs and the Department of the Secretary of State. He thinks that there will be advantages in adopting new channels of communication because it will save time, work and paper.

This is reasonable
JRP

3. I suggest that we ask the views of the Department of the Secretary of State and through Canada House of the Commonwealth Relations Office on this subject.

4. This new procedure would apply of course only to routine cases.

M. Blais.

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OFFICE OF THE HIGH COMMISSIONER
FOR THE UNITED KINGDOM,
Earnscliffe,
OTTAWA.

1106/1

file
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28th April, 1952

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Dear Mr. Blais,

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APR 29 1952

Would you please refer to your letter of the 23rd February, reference 7633/40, about the interpretation of the expression "filing an affidavit" which is used in the Yukon Territory Maintenance Order Legislation.

I sent to the authorities in London the quotation from the letter written by the Commissioner of the Territory which you gave in your letter, but I am afraid there is still some doubt in the minds of the Home Office as to precisely what is intended. The difficulty is over the word "affidavit" itself. The Home Office are not certain whether this is to be interpreted strictly and consequently whether anything which is not a properly sworn affidavit (for example, a deposition or statement of arrears) would escape the fee for filing.

In the circular which they are sending out to Justices' Clerks, the Home Office are taking the view that this strictly literal interpretation is the correct one. However, it would be much appreciated if you could let us have confirmation that they are proceeding on the right lines.

Yours sincerely,

(K. East)
(K. East)

M. Blais, Esq.,
Department of External Affairs,
O t t a w a.

JW

OFFICE OF THE DIRECTOR

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APR 30 1952

N.B. Mr. Sark told me that London
is willing to extend to
Northwest Territories the Act of
1920.

Chapter 3

AN ORDINANCE TO FACILITATE THE ENFORCEMENT
OF MAINTENANCE ORDERS

(Assented to 15th February, 1951.)

The Commissioner of the Northwest Territories by and with the advice and consent of the Council of the said Territories enacts as follows:

1. This Ordinance may be cited as THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ORDINANCE.

2. In this Ordinance,-

- (a) "certified copy" in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy;
- (b) "court" means any authority having statutory jurisdiction to make maintenance orders;
- (c) "dependants" means such persons as a person against whom a maintenance order is made, is liable to maintain according to the law in force in the place where such maintenance order is made; and
- (d) "maintenance order" means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made.

3. (1) Where a maintenance order has, whether before or after this Ordinance comes into force, been made against any person by a court in a reciprocating state and a certified copy of the order has been transmitted by the proper officer of the reciprocating state to the Commissioner, the Commissioner shall send a certified copy of the order to the proper officer of a court in the Northwest Territories for registration, and on receipt thereof the order shall be registered and shall from the date of such registration be of the same force and effect, and, subject to the provisions of this Ordinance, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

(2) The court in which an order is to be registered shall be such court as is determined by the Commissioner.

4. Where a court in the Northwest Territories has, whether before or after this Ordinance comes into force, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Commissioner for transmission to the proper officer of that reciprocating state, and the Commissioner shall transmit the certified copy accordingly.

5. (1) Where an application is made to a court in the Northwest Territories for a maintenance order against any person, and it is proved that that person is resident in a reciprocating state, the court may, in

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the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in such reciprocating state.

(2) If the evidence of any witness who is examined on any such application is not taken in shorthand, the evidence shall be put into the form of a deposition, and such deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

(3) Where an order is made pursuant to subsection one, the court shall send to the Commissioner a certified copy of the order for transmission to the proper officer of the reciprocating state.

(4) The court shall also prepare, --

- (a) a statement showing the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing; and
- (b) a statement showing such information as the Court possesses for facilitating the identification of the person against whom the order is made and ascertaining his whereabouts.

(5) With the certified copy of the order the court shall also send to the Commissioner for transmission to the proper officer of the reciprocating state,--

- (a) the depositions or a certified copy of the transcript of the evidence;
- (b) the statement referred to in clause (a) of subsection four; and
- (c) the statement referred to in clause (b) of subsection four.

(6) The Commissioner shall transmit the documents sent to him by the court to the proper officer of the reciprocating state.

(7) Where any such provisional order has come before a court in a reciprocating state for confirmation and the order has by that court been remitted to the court in the Northwest Territories that made the order for the purpose of taking further evidence, the last-mentioned court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(8) If upon the hearing of such evidence it appears to the court in the Northwest Territories that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence if it was taken in shorthand shall be sent to the Commissioner and dealt with in like manner as the depositions or transcript of the original evidence.

(9) The confirmation of an order made under this section shall not affect any power of the court by which the order was originally made to vary or rescind the order; provided that on the making of a varying or rescinding order the court shall send a certified copy thereof, together

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with the depositions or a certified copy of the transcript of any new evidence adduced before the court, to the Commissioner for transmission to the proper officer of the reciprocating state in which the original order was confirmed, and that in the case of an order varying an original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(10) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

6. (1) Where a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect unless and until confirmed by a court in the Northwest Territories, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed is received by the Commissioner and it appears to him that the person against whom the order was made is resident in the Northwest Territories, the Commissioner may send the documents to such court as is determined by the Commissioner, and upon receipt of such documents the court shall issue a summons calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

(2) At the hearing it shall be open to the person on whom the summons was served to raise any defence that he might have raised in the original proceedings had he been a party thereto but no other defence; and the statement from the court that made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(3) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as to the court after hearing the evidence may seem just.

(4) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court that made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court that made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

7. (1) A court in which an order has been registered under this Ordinance or by which an order has been confirmed under this Ordinance, and the officers of such court, shall take all proper steps for enforcing the order.

(2) Every such order shall be enforceable in like manner as if

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the order were a judgment of the court in which the order is so registered or by which it is so confirmed.

8. The Commissioner may make rules prescribing the practice and procedure under this Ordinance.

9. Any document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

10. Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Ordinance, may be received in evidence in proceedings before courts in the Northwest Territories under this Ordinance.

11. Where the Commissioner is satisfied that reciprocal provisions have been made by any province in Canada, any part of the British Commonwealth of Nations or Empire, or any foreign state for the enforcement therein of maintenance orders made within the Northwest Territories, the Commissioner may declare it to be a reciprocating state for the purposes of this Ordinance, and thereupon it shall become a reciprocating state within the meaning of this Ordinance.

Legal:M. Blais:RJP
File No. 7633-40.

file
-B

April 24, 1952.

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NOTE FOR FILE:

Maintenance Orders
(Facilities for Enforcement)
Northwest Territories.

Mr. East enquired to-day whether there were arrangements for the enforcement of the Maintenance Orders Act, 1920, to the Northwest Territories. Mr. Bouchard (Northwest Territories Council - Local 5404) tells me that the Northwest Territories have a Maintenance Order Ordinance but that reciprocal arrangements are not in force for the extension of the Maintenance Orders Act of 1920. He is sending me five copies of the Ordinance which I will forward to Mr. East with a request that arrangements be made by the proper authorities in London. Relevant letters on file 7633-40 are dated October 7, 1950, November 4, 1950 and April 19, 1951.

MB

M. Blais.

Legal: M. Blais: RJP

File 7633-40

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Please refer to our
File No. 7633-40.

OTTAWA, February 23, 1952.

Dear Mr. East:

I refer to your enquiry concerning the exact meaning of the expression, "filing an affidavit", which is used in the Yukon Territory maintenance order legislation.

2. The Commissioner of the Yukon Territory has sent us a letter dated February 14th last from which I quote the following:

"I am not sure to what the office of the High Commissioner of the United Kingdom is referring when they ask for the exact meaning of this expression. I believe however that the enquiry arises from my quoting the fees applicable to the ordinance for the Enforcement of Maintenance Orders - my letter August 16, 1951.

I have searched our legislation in connection with the enforcement of maintenance orders in the Territory and also our Deserted Wives Maintenance Ordinance and can find no place where the above expression would cause any difficulty of interpretation. Perhaps in quoting the fees for filing an affidavit some confusion has arisen.

K. East, Esq.,
Office of the High Commissioner
for the United Kingdom,
Earnscliffe, Ottawa, Ont.

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This was just a general statement of costs in this regard given me by the Judge of the Territorial Court and was, I presume, meant to cover any affidavit that might be filed in connection with the enforcement of maintenance orders made in a reciprocating state.

If there is any case requiring a more specific interpretation will you please let me know."

Yours sincerely,

M.B.

M. Blais.



CANADA

DEPARTMENT

OF

RESOURCES AND DEVELOPMENT

NORTHERN ADMINISTRATIONS

PLEASE QUOTE

FILE...1-27-19

ADDRESS REPLY TO
COMMISSIONER OF YUKON TERRITORY

DAWSON, Y.T.

7633 -	40
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February 14th, 1952

The Under-Secretary of State
for External Affairs
Dept. of External Affairs
Ottawa
Ontario

Attention of Mr. K. J. Burbridge

Dear Sir:

Your File 7633-40

I refer to your letter dated the 4th of February requesting the exact meaning of the expression "filing an affidavit". I am not sure to what the office of the High Commissioner of the United Kingdom is referring when they ask for the exact meaning of this expression. I believe however that the enquiry arises from my quoting the fees applicable to the ordinance for the Enforcement of Maintenance Orders - my letter August 16, 1951.

I have searched our legislation in connection with the enforcement of maintenance orders in the Territory and also our Deserted Wives Maintenance Ordinance and can find no place where the above expression would cause any difficulty of interpretation. Perhaps in quoting the fees for filing an affidavit some confusion has arisen.

*Feb 22. Spoke to Earl
U.K. Office. Question of
fees has been settled
some time ago. B.*

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FEB 18 1952

The Under-Secretary of State
for External Affairs

page 2

This was just a general statement of costs in this regard given me by the Judge of the Territorial Court and was, I presume, meant to cover any affidavit that might be filed in connection with the enforcement of maintenance orders made in a reciprocating state.

If there is any case requiring a more specific interpretation will you please let me know.

Yours sincerely,



Fred Fraser
Commissioner

AFFAIRS

NOV 9:25

000217

MEMORANDUM

Department of External Affairs

Ottawa, February 7, 1952

Mr. E. Brown:

The reason for sending four copies of our despatches to CRO is that it is so laid down in departmental rules & instructions. (see Appendix XXI, page 1). Your reasons for sending fewer copies are most cogent but I suppose CRO must originally have asked for 4 copies. They invariably send us 3 copies of all maintenance order communications.

Making more than one copy of enclosures is not required although the extra typing would probably help CRO.

DRCB

on distribution
Mr. Johnson is right
but the regulations are
not universal if applied
literally - I guess the instructions to work
CRO without their consent.
File DRCB 657

Legal/J.P. Erichsen-Brown/mfm.

File No. 7633-MX-40.

February 6, 1952.

MEMORANDUM FOR MR. BEDSON

7633-	40
96	963

?
I am taking this opportunity to ask you some questions concerning our practice in transmitting documents to the Commonwealth Relations Office in maintenance order cases. The despatch which you cleared in to me is in four copies stapled together and apparently intended to go to the United Kingdom. Annexed are one copy each of three letters from the Lt.-Governor to the Under-Secretary of State; the Deputy Provincial Secretary to the Lt.-Governor's Secretary; and the Assistant Deputy Attorney General to the Deputy Provincial Secretary.

2. I have observed that the Commonwealth Relations Office is most careful in the use of paper and I do not think they ever send a despatch to us with extra copies attached except when they know that it would be desirable and we would wish to forward a copy of their despatch to the provincial authorities.

3. You will recall that recently there have been circular despatches to our missions abroad on the subject of the transmission of duplicate material to Ottawa. The overall objective is to eliminate unnecessary duplicate material but to ensure that it is sent to save copying here when required. The drafting officer is expected to use some judgment when preparing the despatch.

4. In the present case I can see no reason why the Commonwealth Relations Office could possibly want four copies of this despatch; upon the face of it they would not want to send it on to the Home Office or the local courts, in my opinion. The same applies to the letters from the Lt.-Governor to the Under-Secretary of State and from the Deputy Provincial Secretary to the Secretary to the Lt.-Governor.

File
JRB

- 2 -

5. Would it not be better to send the original despatch only in a case of this sort with three copies of the letter containing the substantive material - in this case the letter from the Assistant Deputy Attorney General to the Deputy Provincial Secretary? Thus instead of the general language: "I attach copies of correspondence forwarded by the Lt.-Governor of British Columbia", I suggest it would be better to say: "I am enclosing three copies of a letter from the Assistant Deputy Attorney General of British Columbia to the Deputy Provincial Secretary of that province quoting a report from the Stipendiary at Salmon Arm, B.C. etc.".

6. If you are aware of any standing request of the United Kingdom authorities covering communications in maintenance order cases I would be glad to have you direct it to my attention. We would, of course, wish to comply with any specific request of the Commonwealth Relations Office concerning the material to be forwarded.

*I agree this
should be renewed*

HJB

(15)

Legal Division.

7633-	40
96	198

Please refer to our
File No. 7633-40

Ottawa, February 4, 1952.

Dear Sir:

The Office of the High Commissioner for the United Kingdom has enquired concerning the exact meaning of the expression, "filing an affidavit", which is used in the Yukon Territory maintenance orders legislation.

While it appears quite clear that the expression referred to signifies the institution of a request for the granting of a maintenance order by a deserted spouse, I should be grateful to have your confirmation or further explanation to pass on to the High Commissioner's Office.

Yours sincerely,

A. J. BURBRIDGE

for the

Under-Secretary of State
for External Affairs

F. Fraser, Esq.,
Commissioner of Yukon Territory,
DAWSON,
Yukon Territory.

C O P Y

Legal: DRC Bedson: RJP
File No. 7633040

January 25, 1952

MEMORANDUM FOR COMMONWEALTH DIVISION
AND PROTOCOL DIVISION

The United Kingdom Maintenance Orders (Facilities for Enforcement) Act of 1920 provided that a court in England and Northern Ireland could issue a maintenance order requiring a husband to contribute to the support of his wife and dependent children whom he had deserted. After the late war, some of the Canadian provinces enacted legislation on the pattern of the United Kingdom Act and included provision in their legislation which provided for reciprocal enforcement of maintenance orders between any province and the government of another unit in the commonwealth.

In consequence of this legislation the department has been burdened with a heavy volume of correspondence transmitting Provisional Maintenance Orders from the provinces to the United Kingdom and from the United Kingdom to the provinces. The channel of communication is from the court in the United Kingdom to the Home Office, to the Commonwealth Relations Office, to this department, to the Department of the Secretary of State of Canada, to the Lieutenant-Governor of the provinces concerned and thence to the court in the district where the defendant resides. It will be understood that considerable time is consumed as documents pass through this somewhat involved channel of communication.

For some time we have been giving thought to the suggestion that documents might pass directly from the Home Office or the Commonwealth Relations Office to the Lieutenant-Governor concerned and vice versa. It would of course be understood that matters of policy would continue to follow official channels and that only routine cases would receive direct transmission.

For Jan 25/52

*May 1 - Commonwealth has no objection.
(Miss McKenzie)*

.....2

B

- 2 -

Accordingly a draft letter to the Under-Secretary of State has been prepared requesting the concurrence of his department in the transmission of routine maintenance order cases from either the Home Office or the Commonwealth Relations Office to the provincial Lieutenant-Governors. A copy of this draft letter is attached and I should be grateful to have any comments on it which you may care to make before it is despatched.

'sgd' K.J.Burbridge

Legal Division.

Legal/J.P. Erichsen-Brown/mfm.

File No. 7633-40.

76 33-40
96 96

January 24, 1952.

MEMORANDUM FOR MR. BURBRIDGE

*Mr. Erichsen-Brown
I agree with this
KJ 2*

I have three suggestions for improving the draft letter to the Under-Secretary of State which you may wish to consider.

- a) In paragraph 3 the second "usefully" might be eliminated.
- b) The opening sentence of paragraph 5 does not seem to me to be appropriately worded having regard to the fact that Mr. Stein's communication will go to the Lt.-Governors. I would suggest that it might be re-worded as follows:

"If you agree with the foregoing, ^{be satisfied if you would} should you ascertain from the Lt.-Governors of the Provinces whether they would be willing to transmit the documentation in individual maintenance order cases directly to either the Commonwealth Relations Office or the Home Office in the United Kingdom and whether they would have any objection to our suggesting to the United Kingdom that incoming material be sent directly to the Lt.-Governors".

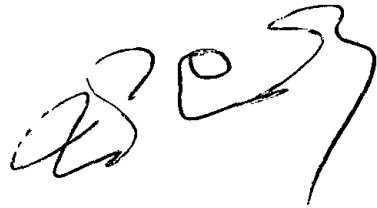
- c) If you approve of b) then I would suggest the second and third sentences of paragraph 5 be dropped.
- d) Paragraph 7 might be misconstrued and I think some further explanation of the Federal Government's interest is desirable. Accordingly I would suggest that the following additional sentences be added to paragraph 7.

*Mr. Tolson
Please circulate
my recommendations
to Mr. Tolson
re: incoming para 5
BJ*

- 2 -

remainder
of para 7

"We recognize that except in the case of the Yukon Territories the policy decisions, which rest on a pattern of reciprocal legislation, will be made in the first instance by the provinces. However, we have a continuing interest in matters which effect our relations with other countries and our representatives in other Commonwealth countries must be kept informed of developments. Although we have already established a direct channel of communication between the Department of External Affairs and the Commonwealth Relations Office in the case of the United Kingdom (thus by-passing both the United Kingdom High Commissioner in Ottawa and Canada House) nevertheless we send copies of communications on questions of policy to our High Commissioners for information in all cases affecting the Commonwealth country concerned."



Legal Division.

Legal: J.P. Erichsen-Brown:
D.R.C. Bedson: RJP

File No. 7633-40.

D R A F T

The Under-Secretary of State,
Department of the Secretary of State
of Canada,
Ottawa, Ontario.

I refer to your letter of July 14, 1950, entitled "Federal-Provincial Relations" in reply to my letter of July 7, 1950 in which I suggested that communications in connection with the reciprocal enforcement of maintenance orders might be sent directly from the Department of External Affairs to the Provincial Attorneys-General.

2. We have since re-examined the whole question, and are now inclined to think that two types of communications should be distinguished. In the one case, we think that no change in the channel of communication should be made -- in the other, we are inclined to shorten it even further. In short, we no longer favour the suggestion put forward in our letter of July 7, above mentioned.

3. The types of communications to be distinguished are: (a) communications which originate with government authorities and which are concerned with questions of general policy, and, (b) communications which originate with courts and which are concerned solely with the obtaining of maintenance orders in individual cases. In the case of the former, we do not think that any departure from the formal channels of communication hitherto followed would be desirable. In the case of the latter, it is our present view that the channel might usefully be shortened as much as possible and that communications might ~~(usefully)~~ be exchanged directly between the governmental authorities immediately responsible for the administration of the courts.

4. As a matter of legal theory, it would appear to be sufficient to enable the reciprocal legislation to operate if a provisional order of one court were produced in the other court -- the channel of communication being irrelevant. The Ontario legislation appears to be based on this theory. However, the legislation now in force in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia contemplates that provisional orders shall be sent "to the Lieutenant-Governor ... and forwarded by him to the Attorney-General".

5. If you agree with the foregoing, would you ascertain from the provincial authorities whether they would be prepared to transmit the documentation in individual maintenance order cases direct from their Lieutenant-Governors to either the Commonwealth Relations Office or the Home Office in the United Kingdom. (It is understood of course, that these would be cases in which one of the parties concerned resided in the United Kingdom and that the Government of the United Kingdom would designate which ministry should receive the documentation. Similarly, documentation originating in the United Kingdom would be transmitted directly to the Lieutenant-Governors.) You may recall that on several occasions the Lieutenant-Governor of Ontario has enquired when the shorter channel of communication for transmission of

- 2 -

routine cases to the United Kingdom will be established.

6. We do not suggest that there should at the present time be a direct channel for court communications in the case of commonwealth countries other than the United Kingdom. However, if cases involving other commonwealth countries should increase in number, a similar direct channel could readily be adapted by arrangement with the commonwealth countries concerned.

7. As already indicated we think that communications originating with governments on questions of policy should continue to follow the usual channels. +

8. *As your Ministry*
~~I assume that you will be willing to approach all the provinces in this connection save the Province of Quebec since the nine Civil Law Provinces have all introduced maintenance orders legislation. There is also~~
understand ~~believe an indication that the Province of Quebec intends to introduce similar legislation at the next sitting of the legislature. A similar query might be addressed to the Lieutenant-Governor of that province if you believe the forthcoming legislation will make provision for the reciprocal enforcement of maintenance orders with other members of the commonwealth.~~ *also.*

Under-Secretary of State
for External Affairs

Legal:DRC Bedson:RJP

File No. 7633-40.

January 21, 1952. 7633-40
9696

Mr. Bedson.

MEMORANDUM FOR MR. BURBRIDGE:

Channel of Communication for
Maintenance Orders.

Two weeks ago you asked me whether any final decision had been made as a result of the consideration given last year to shortening the channel for the transmission of Maintenance Order proceedings from United Kingdom to the Canadian provinces and vice versa.

The attached file shows that some thought was given to the desirability of submitting a memorandum to the Minister with a recommendation that he approve of the shortened channel, i.e., correspondence relating to individual Maintenance Order cases was to pass directly between the Lieutenant-Governors of the provinces and the Commonwealth Relations Office. Probably owing to changes in the personnel of Legal Division, action in this connection was halted in April, 1951.

The subject had, however, been mentioned informally to the Office of the United Kingdom High Commissioner in Ottawa and that office had placed the matter before the Commonwealth Relations Office. Mr. K. East at Earnscliffe told me recently that C. R. O. was in favour of shortening the channel in routine cases but the Home Office had not at first welcomed the idea of direct communication between C.R.O. and the Lieutenant-Governors. Mr. East wrote at the end of last year to point out to C. R. O. that the Lieutenant-Governors could be addressed directly under existing United Kingdom legislation and also stressed the fact that it was highly desirable to save time by arranging for a more direct channel for the transmission of Maintenance Order proceedings.

- 2 -

It was suggested to me by Mr. East that it would be helpful to have some communication from this Department which he could use when asking C. R. O. to hasten their consideration of the shortening of channels of communication in regard to Maintenance Order cases. He thought that our views should be pressed by a Note to the High Commissioner in Ottawa and also by some informal enquiries addressed to the Home Office by someone in Canada House.

Before undertaking to revise the memoranda drafted last April and earlier I should like to have your reactions to Mr. East's recent suggestions to me. Personally, I do not believe that we need seek further authority from the Department of the Secretary of State for pressing Earnscliffe for action since that Department was in favour of the shorter channels of communication in Maintenance Order cases when we approached the subject to them informally a year ago.

I suggest, therefore, that we write the following letters:

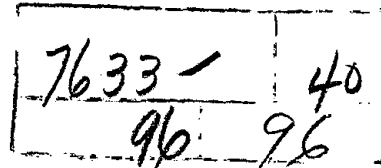
(1) to the United Kingdom High Commissioner in Ottawa summarizing the somewhat cumbersome channel of communication from Maintenance Order proceedings now in effect and referring to the consideration now being given to shortening it by the C. R. O. and Home Office.

(2) to Canada House also summarizing the situation and suggesting some unofficial pressure on the Home Office by Ernest Côté who I believe is already familiar with the situation.

D.R.C.B.
D. R. C. Bedson.

I would first like to have the views of Sec - 3 State Department & possibly Postal Division on the wording of the communications we intend to send.

Legal/DRC Bedson/RJP
File 7633-40



Please refer to our
File No. 7633-40.

Ottawa, January 18, 1952.

Dear Sir:

The Office of the High Commissioner for the United Kingdom in Ottawa has asked to be furnished with three additional copies of the Nova Scotia Maintenance Orders (Facilities for Enforcement) Act.

I should be grateful if you would send me three copies of the Act for transmission to the High Commissioner's Office.

Yours sincerely,

W. L. BURBRIDGE

for the Under-Secretary of State
for External Affairs

Arthur S. Barnstead, Esq., I.S.O., K.C.,
DEPUTY Provincial Secretary,
Province of Nova Scotia,
HALIFAX, N. S.

7633	40
96	79

Ottawa, October 26, 1951

Please refer to our
File 7633-40
Your RHT

TO: The Secretary,
Foreign Exchange Control Board,
Ottawa.

RE: Fixed Exchange Rate for Maintenance Order
Fees.

I wish to acknowledge your letter of October 23rd in which you informed me that there was nothing in the Foreign Exchange Control Act and Regulations to prevent the Commissioner of the Yukon Territory agreeing to accept a fixed sterling equivalent for fees applicable in the Yukon Territory in the enforcement of Maintenance Orders.

I may mention that the Commonwealth Relations Office asked for the authorizing of a fixed scale of fees in this matter so that the work of United Kingdom magistrates in dealing with Maintenance Order cases relating to Canadian citizens might be facilitated. It was not a matter of conserving foreign exchange.

I intend to request the further comments of the Commissioner of the Yukon Territory before replying to the Commonwealth Relations Office.

J. P. ERICHSEN-BROWN

jn Under-Secretary of State
for External Affairs.

J. S.
Foreign Exchange Control Board

Ottawa, Canada

October 23, 1951

7633 40
96 79
WHEN REPLYING
PLEASE GIVE THIS REFERENCE

Your file: 7633-40

.....RHT.....

Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

Dear Sir, Fixed Exchange Rate for Maintenance Order Fees

In reply to your letter of October 19th there is nothing in the Foreign Exchange Control Act and Regulations to prevent the Commissioner of the Yukon Territory agreeing to accept a fixed sterling equivalent for fees applicable in the enforcement of maintenance orders.

We might mention, however, that in comparison with the rate proposed of \$3.00 per pound, the present market rate for sterling in Canada is approximately \$2.92 and a somewhat lower rate would, no doubt, be received on the conversion of small remittances. In addition we do not understand why the Commonwealth Relations Office in London should seek to have the fees in question paid in sterling. We know of no reason why they could not as readily be paid by Canadian dollar money orders purchased from banks in the United Kingdom and the effect on the United Kingdom exchange reserves would be precisely the same as if they are paid in sterling.

Yours very truly,

Robert H. Tarr

Secretary.

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OCT 24 1951

EXTERNAL AFFAIRS
RECORDS DIVISION

1951 OCT 24 AM 9:26

000233

7633	40
96	29

Ottawa, October 19, 1951

Please refer to our
File 7633-40

TO: The Secretary,
Foreign Exchange Control Board, Ottawa.

RE: Fixed Exchange Rate for Maintenance Order
Fees.

The Commonwealth Relations Office in London has enquired whether the Administration of the Yukon Territory would be prepared to agree upon a fixed Sterling equivalent for fees applicable in the enforcement of Maintenance Orders in the Territory. The fees in question are:

On Filing an Order..... \$2.00
On Filing an Affidavit..... .25

The Commissioner of the Yukon Territory is willing to set the rate of exchange at three dollars Canadian to One Pound Sterling, i.e.:

On Filing an Order..... 13s.4d.
On Filing an Affidavit..... 1s.8d.

I should be grateful if you would let me know whether the setting of a fixed Sterling equivalent for the Yukon Maintenance Order fees would be permissible under the Foreign Exchange Control Board regulations. The Commissioner of the Yukon Territory has indicated that the rate would be subject to adjustment each year.

J. P. ERICHSEN-BROWN

for
Under-Secretary of State
for External Affairs.

00023

4



CANADA

DEPARTMENT

OF

RESOURCES AND DEVELOPMENT

NORTHERN ADMINISTRATIONS

PLEASE QUOTE

FILE 1-27-19

ADDRESS REPLY TO
COMMISSIONER OF YUKON TERRITORY

DAWSON, Y.T.

October 12th, 1951.

Mr. K.J. Burbridge,
Dept. of External Affairs,
Ottawa, Ontario.

Dear Sir:

Re: Maintenance Order Facilities
between the Yukon and the Un-
ited Kingdom,
External Affairs File 7633-40,
Resources & Development File 19440.

I have a copy of your letter of September
25th, 1951, concerning the possibility of fixing a Sterling
equivalent for the purpose of payment of Court fees in the
above matter.

For this purpose I will set the rate of ex-
change at three dollars Canadian to one pound Sterling prov-
ided that this does not conflict with Foreign Exchange Con-
trol Board regulations, and provided also that the rate so
set be subject to adjustment each year.

Would you please communicate with the F.E.C.B.
to clear this agreement with them.

Yours truly,

A.H. Gibson
A.H. Gibson,
Commissioner.

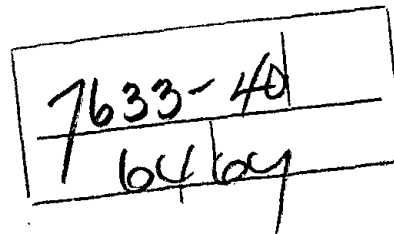
c.c. The Director,
Northern Administration & Lands Branch,
Department of Resources & Development.

EXTERNAL AFFAIRS
RECEIVED

1951 OCT 18 AM 10:19

000236

Full copy



Ottawa, le 31 mai 1951

Monsieur,

Je me réfère à votre lettre du 23 mai 1951, par laquelle vous nous demandez s'il nous serait possible d'obliger votre père à prendre à sa charge l'entretien de votre mère, qui se trouve en Belgique.

Il s'agit là d'une question de droit purement privé, et il n'existe, entre le Canada et la Belgique, aucun accord que le Ministère puisse invoquer pour venir à votre aide. Votre mère, toutefois, pourrait peut-être intenter une action en vue d'obtenir une pension alimentaire, devant les tribunaux belges et ceux de la province canadienne où votre père est domicilié.

D'autre part, si votre père ou votre mère, ou les deux, sont ressortissants belges, vous pourriez écrire à l'Ambassadeur de Belgique au Canada, à l'adresse suivante:

Ambassade de Belgique
170 est, avenue Laurier
Ottawa (Ontario)

Veuillez agréer, Monsieur, l'assurance de mes sentiments les meilleurs.

K. J. BURBRIDGE

s.19(1)

pour Le Sous-Secrétaire d'Etat
aux Affaires extérieures,



(FOR TRANSLATION)

Ottawa, May 31 1951

Dear Sir,

I refer to your letter of May 23, 1951
in which you request assistance ^{in forcing} ~~enforcing~~ your father
to assume responsibility for the maintenance of your
mother in Belgium.

This matter is entirely of a private legal
nature, and there is no agreement between Canada ^{or} ~~and~~ Belgium
under which this Department could take action
to assist you. It may however be possible for your
mother to take action in the Belgian Courts and in
the Courts of the Canadian province in which your
father is living with a view to obtaining maintenance.

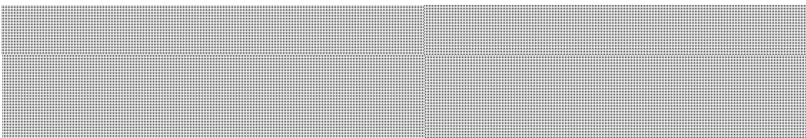
If either your father or mother, or both,
are Belgian citizens, you might wish to write to
the Belgian Ambassador in Canada at the following address:

Ambassade ^{de} Belgique,
170 Est, Avenue Laurier,
Ottawa, Ontario.

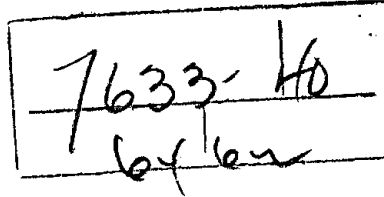
Yours sincerely,

s.19(1)

Under-Secretary of State
for External Affairs.



File: 7633-40



May 29, 1951

MEMORANDUM FOR TRANSLATION BUREAU

We would appreciate having the attached
letter to [REDACTED]

s.19(1)

[REDACTED] translated into French, in final
form, and returned to this Division.

Priority "C"

Legal Division

1 Bond (short) Letterhead
2 flimsy
1 bond

Croydon, 23 mai 1951.

Consul général
Ottawa.

7633-48
6/6

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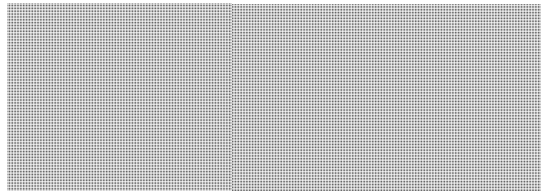
Monsieur,

Ma mère qui demeure présentement en Belgique dési-
rerait correspondre avec vous au sujet de troubles avec
son mari. Mon père vit présentement au Canada et ne voit
pas à ses besoins.

25 MAY 1951

Pourriez-vous me dire si vous pourriez de quelque
façon que ce soit forcer ce dernier à lui subvenir.

Recevez, monsieur le consul, mes salutations
respectueuses.



s.19(1)

EXTERNAL AFFAIRS
RECEIVED
1951 MAY 25 PM 3:05

00024

1

Legal/J.P.Erichsen-Brown/hre

March 1, 1951.

March 2/51
Mr. Erichsen - Brown
I now have had a chance to
review these 2 files and I wonder
whether we should bother about changing
the present channels. It is not a heavy
chore on this slip. The only obstacle seems to be
The odd complaint about delay. I think the memo
to Mr. Heeney should give him a better explanation of the problem

MEMORANDUM FOR MR. BURBRIDGE:

I suggest we meet in my
office next Mon at 4:30 P.M.
Will your pt ask Heeney
to come along.

Re: Channel of Communication of
Maintenance Orders

7633 - 4072
96 96

In your note endorsed on my memorandum of February 17, you suggested that I have copies of my draft letter to Stein run off, and also an enclosing memorandum to Mr. Heeney.

2. I have redrafted and shortened my first draft of the letter to Mr. Stein. A number of copies are annexed (sufficient for discussion).

...

3. I have also drafted a memorandum to the Under-Secretary, but I have not set this up in the form of a long memorandum with the arguments pro and con. I think these arguments should be sifted by discussion here.

4. I am ready to discuss the issues with yourself, Summers, Kennedy, and Roger, if you would care to set a time.

2.5.51

DRAFT

MEMORANDUM FOR THE MINISTER

7633-40
96 96

Re: The Channel of Communication between
Canada and the United Kingdom in
Maintenance Order Cases.

The Maintenance Orders (Facilities for Enforcement)
Act ~~(U.K.) 1920~~ ^{of the United Kingdom} Chapt. 33, 10-11 George V provides that where
a Court in the United Kingdom makes a Maintenance Order against
a person residing in some part of His Majesty's Dominions to
which the Act extends, the Court shall send to the Secretary
of State, for transmission to the Government of that party of
His Majesty's Domions, a certified copy of the Order.

~~In furtherance of the implementation of this Act,~~
^{consequence of this reciprocal legislation}

~~The Department~~
Canada has become involved in two types of correspondence with
the United Kingdom, one of which may be considered to relate
to policy and the other to administration. The first is that

which ensues when negotiations are initiated either by the ~~Home office~~ ⁱⁿ

~~in the~~ United Kingdom or by one of the Provinces ⁱⁿ of Canada with a
view to having the ~~United Kingdom Act extended to the Provinces~~
^{arrangement for reciprocal enforcement}
~~either extended or modified~~
~~in question on the basis of reciprocal legislation passed in~~

~~that Province. The second type of correspondence relates to~~
^{enforcement order in individual cases i.e. correspondence}
~~the maintenance order is that which originates with a Court~~
^{is transmittable to another country}
in the United Kingdom or in Canada and which has as its object
the ^{an} formation and enforcement in the one country of a Maintenance
Order made in a specific case by a Court in the other country.

As a result of correspondence of the first type
referred to above, reciprocal Maintenance Order legislation has
been enacted in a number of instances and the United Kingdom
Act has been extended to the Provinces of Ontario, Manitoba,
Saskatchewan, Alberta and British Columbia and to the Yukon
Territory. The extension of the Act to these Provinces has
given rise to a voluminous correspondence of the second type,
i.e., dealing with individual Maintenance Order cases, and it
is with this correspondence that we are presently concerned.

The channel of ^{communication} ~~negotiation~~ which was followed in these
matters and which is at present observed is the following; ~~to~~
^{from the U.K. Court to the Home Office;}

- 2 -

the Secretary of State for Commonwealth Relations; to this Department; to the Secretary of State of Canada; to the Lieutenant-Governors for transmission through their Attorneys-General to the appropriate Canadian Court. Where the Order is originated by ^athe Canadian Court the channel is reversed.

I think you will agree that the channel of ~~Communication~~ ^{negotiations} described above is unnecessarily involved and cumbersome when applied to correspondence of this type, and it is considered that, for the following specific reasons, efforts should be made to establish a more direct channel in these matters: (1) Under the present arrangement this Department and the Department of the Secretary of State of Canada are involved in a considerable amount of correspondence in connection with individual Maintenance Order cases, although neither Department performs any other than a Post Office function in these matters;

(2) A hardship is worked upon the individual ^{parties} ~~authorities~~ affected by the Orders in question as a result of the undue delay occasioned by the necessity for transmission of the documents through the present lengthy channels;

(3) As a result of this delay also, misunderstandings frequently arise between the originating and the confirming Court;

(4) A study of the United Kingdom Act and the Provincial legislation of maintenance orders discloses that they envisaged a more direct channel of communication in these matters. i.e., between the Secretary of State for Commonwealth Relations and the Lieutenant-Governor of the Province.

In view of the above it is proposed that the Commonwealth Relations Office and the Provinces concerned be consulted to ascertain whether they would favour the establishing of a new channel of communication in Maintenance Order Cases whereby correspondence would be carried on directly between the Commonwealth Relations Office and the Lieutenant-Governors of the Province. A definite

- 3 -

proposal to the above effect might be followed by a
and
suggestion that the Lieutenant-Governors ~~of~~ the Commonwealth
Relations Office might find it possible and desirable to
cooperate still further in shortening the channel by arranging
for the correspondence to take place between the Home Office
and the Attorneys-General of the Provinces. The United
Kingdom have already indicated informally that they would
be prepared to consider having this correspondence handled
by the Home Office without the intervention of the Commonwealth
Relations Office.

The proposed arrangement would not apply to
questions of policy relating to Maintenance Orders and in any
event such questions would not arise except with respect to
those Provinces where arrangements have not yet been made
for reciprocal enforcement of Maintenance Orders with the
United Kingdom.

The arrangement would likewise not apply with
respect to Maintenance Order correspondence between Canada
and other Commonwealth territories since the volume of such
correspondence relating to individual cases is at present
negligible.

It is therefore recommended: (1) that the Secretary
of State of Canada be asked, if he concurs in this proposal,
to communicate with the Lieutenant-Governors of the Provinces
of Ontario, Manitoba, Saskatchewan, British Columbia and
Alberta, and with the Commissioner of the Yukon with a view
to obtaining their approval of a new arrangement whereby the
correspondence relating to individual Maintenance Order cases
will be channelled directly between the Secretary of State
for Commonwealth Relations and the Lieutenant-Governors of
the Provinces concerned. A letter in these terms addressed
to the Secretary of State is attached for your signature, if
you approve; (2) that when the approval of the Provinces
has been notified, the High Commissioner for Canada in
London be asked to approach the Commonwealth Relations
Office with a view to obtaining their agreement.

Legal/J.P.Erichsen-Brown/hre
File No. 7633-40

March 1, 1951.

D R A F T

7633-40
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TO: Under-Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

I refer to your letter of July 14, 1950, entitled "Federal-Provincial Relations" in reply to my letter of July 7, ^{in which} ~~suggesting the desirability of shortening the channel of communication in maintenance order cases. In my letter last mentioned,~~ I suggested that communications in connection with the reciprocal enforcement of maintenance orders might be sent directly from the Department of External Affairs to the Provincial Attorneys-General.

2. ^{now} We have since re-examined the whole question, and are inclined to think that two types of communications should be distinguished. In the one case, we think that no change in the channel of communication should be made -- in the other, we are inclined to shorten it even further. In short, we no longer favour the suggestion put forward in our letter of July 7, above mentioned.

3. The types of communications to be distinguished are: (a) communications which originate with government authorities and which are concerned with questions of general policy, and, (b) communications which originate with courts and which are concerned solely with the obtaining of maintenance orders in individual cases. In the case of the former, we do not think that any departure from the formal channels of communication hitherto followed would be desirable. ~~the~~ In the case of the latter, it is our present view that the channel might usefully be shortened as much as possible ^{and that} ~~and that~~ these communications might usefully be exchanged directly between the governmental authorities immediately responsible for the administration of the courts. ^{and that}

4. As a matter of legal theory, it would appear to be sufficient to enable the reciprocal legislation to operate if a provisional order of one court were produced in the other court -- the channel of communication being irrelevant. The Ontario legislation appears to be based on this theory. However, the legislation now in force in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia contemplates that provisional orders shall be sent "to the Lieutenant-Governor ... and forwarded by him to the Attorney-General". Such legislation appears to reflect what has been the traditional channel of communication, rather than any reason in principle requiring the intervention of ^{the} offices of the Lieutenant-Governors. If ~~the principle were~~ ^{it is} accepted that the channel ~~of~~ ^{for} communications ~~between~~ courts should be as direct as possible, it would appear to follow that formal channels should be eliminated in their entirety.

originating in the

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5. We do not suggest that there should at the present time be a direct channel for court communications in the case of commonwealth countries other than the United Kingdom. However, if ~~the volume of cases involving~~ *number of cases involving* other commonwealth countries should increase in ~~the future~~ *the future, number,* a similar direct channel could readily be adapted by arrangement with the commonwealth countries concerned.

6. ~~We also confirm our view that all communications~~ *As already indicated we think* originating with governments on questions of policy should continue to follow the usual channels.

7. If you agree with the foregoing, would you ascertain from the provincial authorities whether their respective Attorneys-General would be prepared to transmit communications, originating in provincial courts in individual cases where one of the parties concerned resides in the United Kingdom, directly to a governmental authority in the United Kingdom to be designated by the Government of the United Kingdom.

Legal/J.P.Erichsen-Brown/hre

March 1, 1951.

MEMORANDUM FOR THE UNDER-SECRETARY:

On July 7, 1950, Mr. Mayrand signed on your behalf, a letter to Mr. Stein, suggesting that the Department of the Secretary of State might give some consideration to a shortening of the channel of communication with the provinces in extradition cases and maintenance order cases. The immediate occasion for our putting forward this suggestion was the fact that Cabinet had recently requested the Department of the Secretary of State to study the general question of the channel of communication between federal and provincial governments.

2. On July 14, 1950, Mr. Stein wrote, saying that he was taking our views into account in the preparation of recommendations to his Minister and to Cabinet. However, the text of his letter showed that he expected the question to come up at a meeting of the committee of Cabinet on constitutional amendments. Informal enquiries of Mr. Gordon Robertson of the Privy Council Office have revealed that this never occurred -- in fact, so far as we are aware, nothing further came of our suggestion.

3. We have since reconsidered the question of maintenance orders, and feel that it would be desirable to again write to Mr. Stein, and we have accordingly prepared the annexed letter for your signature, if you agree. The proposal which we are now making would involve that the Federal Government be cut out entirely in the case of communications between Canada and the United Kingdom, originating in the courts in individual cases. This proposal eliminates any question as to the relative merits of intervention by the Department of External Affairs and the Secretary of State. It also

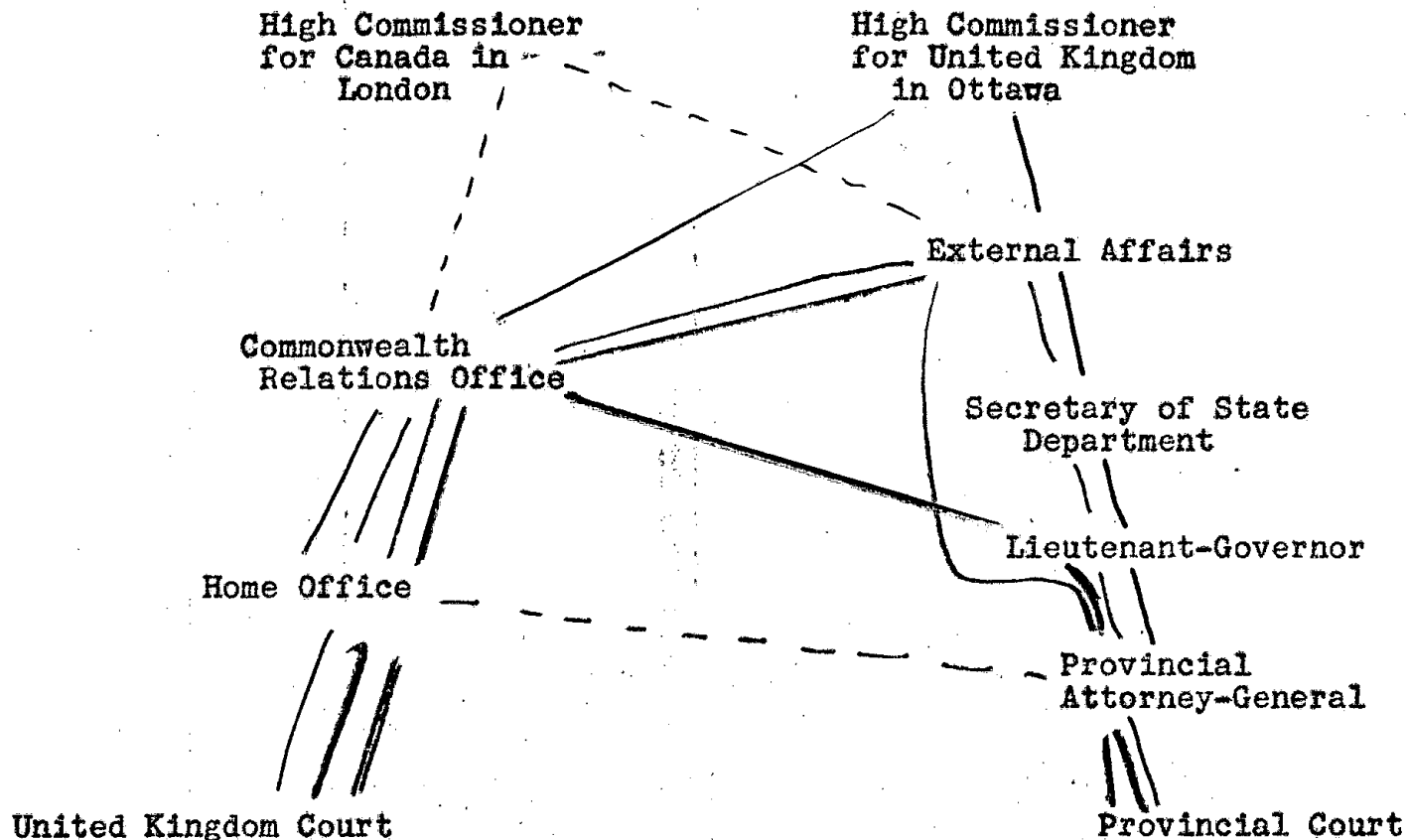
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would involve that the existing channel of communication be maintained in the case of communications originating with governments on questions of policy (as distinct from enforcement).

Legal Division.

CHANNEL OF COMMUNICATION - MAINTENANCE ORDERS



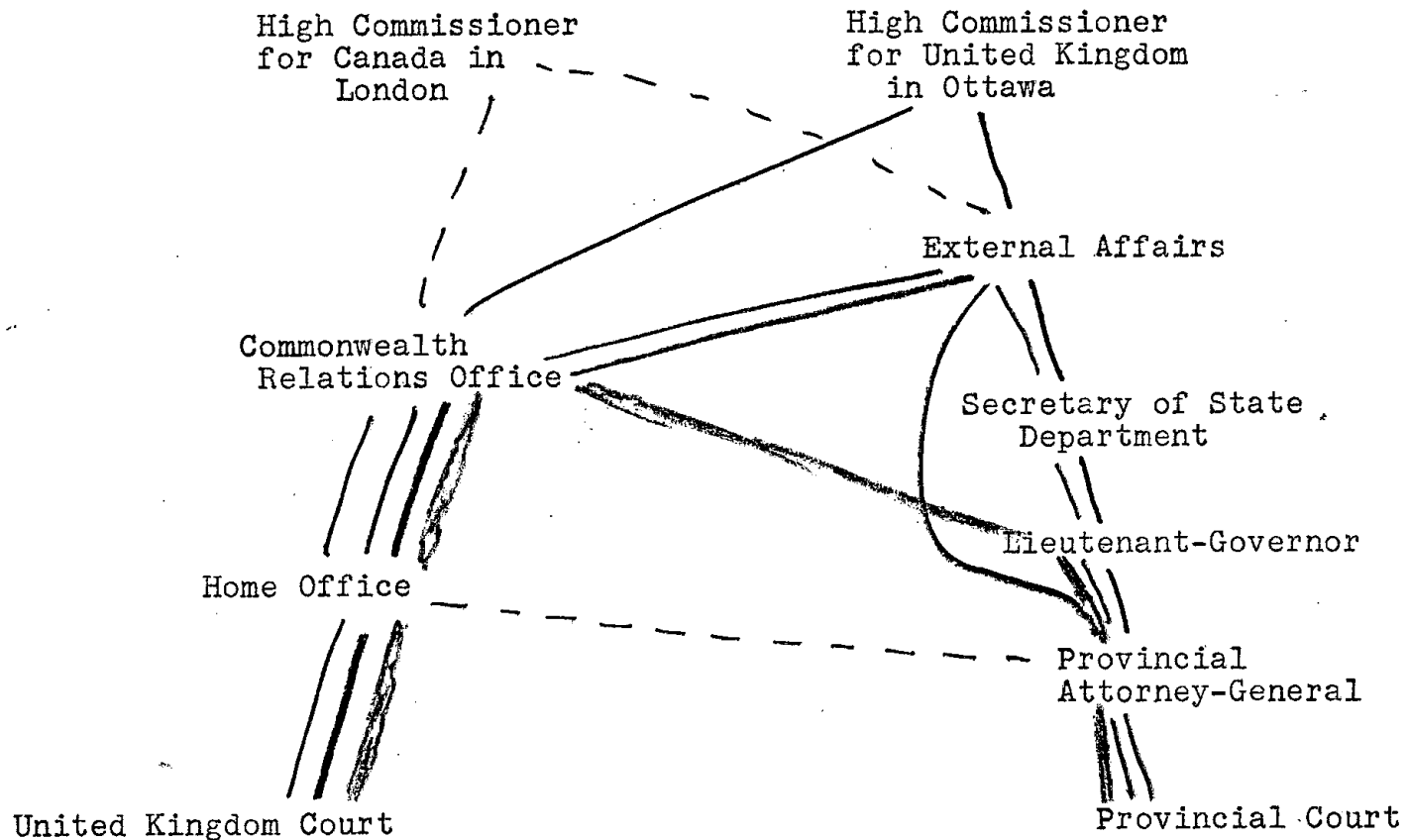
Government policy.

Implementation by courts.

Channel suggested to Secretary of State in our letter of July 7, 1950 (types of communication not differentiated).

Channel advocated by Mr. Hadwen.

CHANNEL OF COMMUNICATION - MAINTENANCE ORDERS



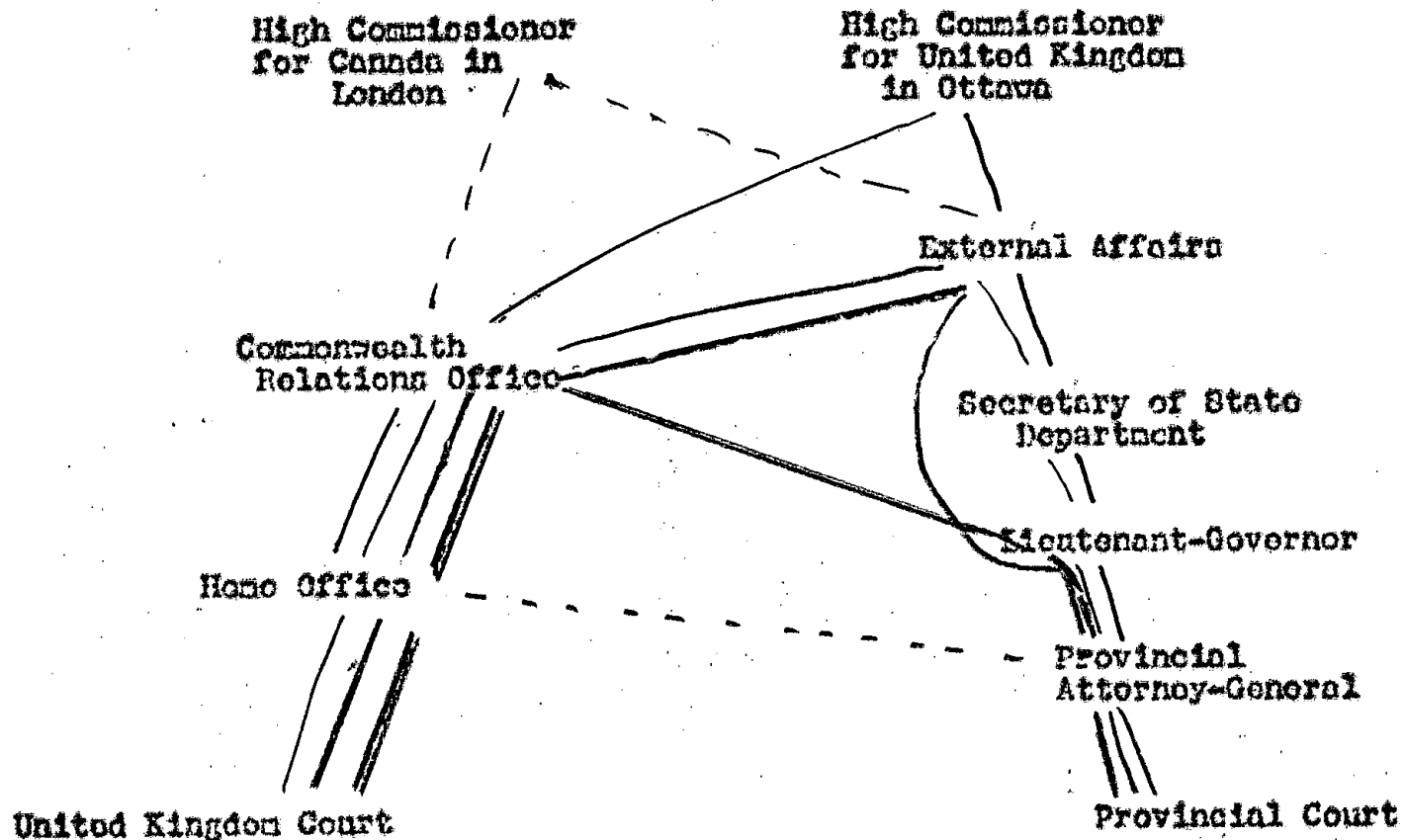
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———— Implementation by courts.

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one letter of July 7/50 (types of communication
not differentiated)

———— Channel advocated by Mr. Halman

CHANNEL OF COMMUNICATION - MAINTENANCE ORDERS



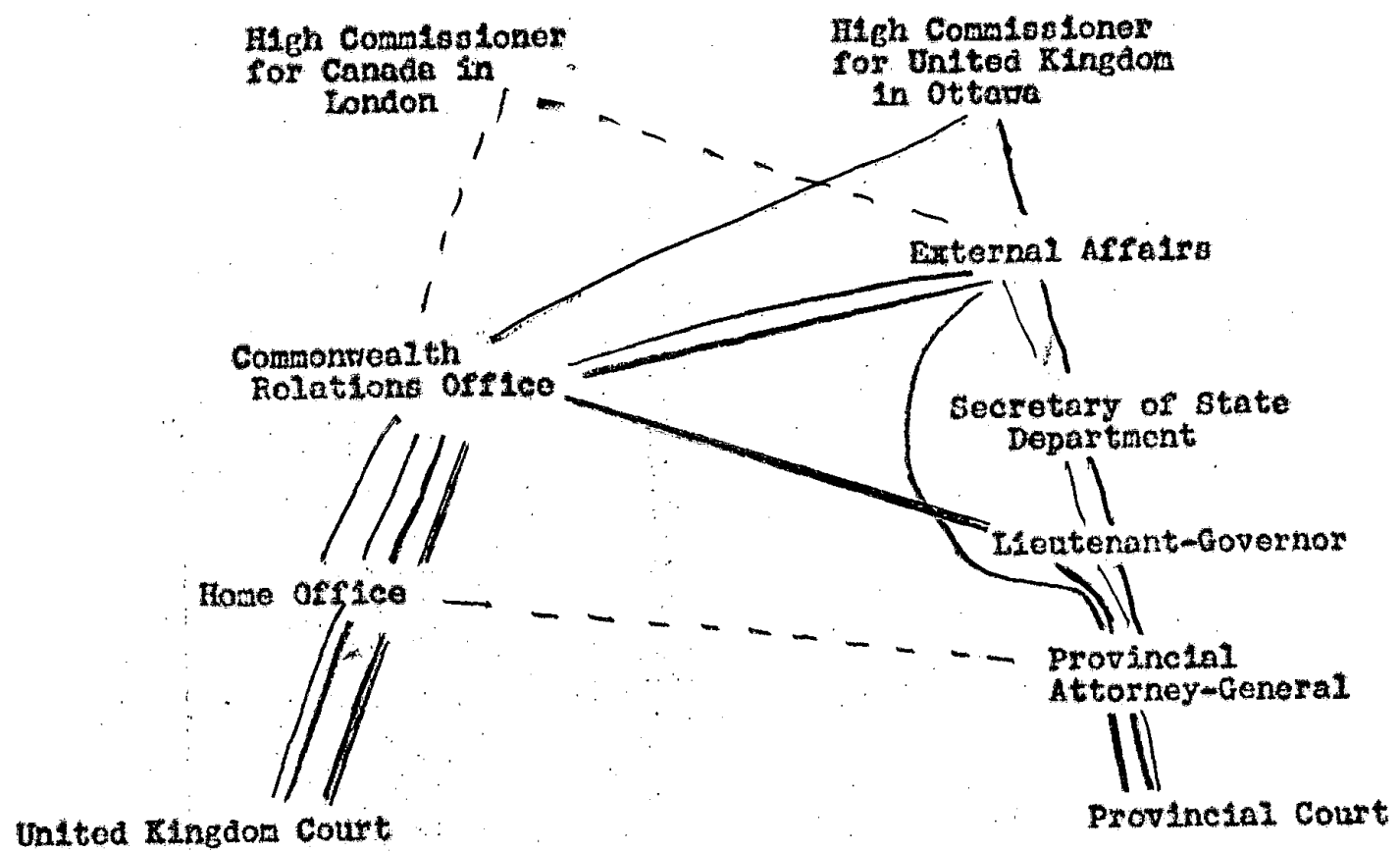
Government policy.

Implementation by courts*.

Channel suggested to Secretary of State in our letter of July 7, 1950 (types of communication not differentiated).

Channel advocated by Mr. Hadwen.

CHANNEL OF COMMUNICATION - MAINTENANCE ORDERS



———— Government policy.

———— Implementation by courts.

———— Channel suggested to Secretary of State in our letter of July 7, 1950 (types of communication not differentiated)

———— Channel advocated by Mr. Hadwen

Legal/J.P.Erichsen-Brown/hre

Feb 21/51 February 17, 1951.

Mr. Erichsen-Brown
Could you have a copy of the letter to Stein and an enclosing memo to Heeney run off. I would then suggest that the group referred to in your memo 7 Feb 51 discuss both. I think you have raised some very good points

MEMORANDUM FOR MR. BURBRIDGE:

... Re your note: I have drafted a form of letter, ~~sent to~~ *meant to* the Secretary of State, ~~to the Lieutenant Governors of Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia.~~ The following points occurred to me as ones which might be mentioned in a *discuss both. I think you have raised some very good points* memorandum to Mr. Heeney or a letter to Mr. Stein, or both:

- (a) The Canadian Government is generally loathe to encourage direct communications from provincial authorities to foreign authorities. *5/3*
- (b) The principle that the State acts as a unit in external relations would support the retention of our Department's present functions.
- (c) Within the federal government, the intervention of External appears more important than that of the Secretary of State.
- (d) The functions of the Department of Secretary of State, however, have a constitutional basis tied in with the special position of the Crown as a federal state.
- (e) We have no explanation as to why Commonwealth Relations Office is used as well as the Home Office in the United Kingdom. The policy factors involved may be equally applicable to Canada.
- (f) We are concerned at the waste of time because of the volume of cases, but from the point of view of provinces individually, the volume is not great, with the possible exception of Ontario. This fact may cast some doubt on the wisdom of our relinquishing a traditional

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foreign office function of handling external communications simply because of the volume of routine work.

- (g) There are such broad issues involved in the whole problem of the channel of communication with the provinces, that it might not be desirable to put forward any suggestion along these lines because of other factors unknown to us having nothing to do with maintenance orders.
- (h) The division might be considered to be between government communications and court communications; or alternatively, between policy questions and individual cases. In either event, there might be a disposition in the provinces to question our concern with questions of policy. Fortunately, the new legislation for the Yukon Territory and the Northwest Territories gives us some direct interest, but the fact remains that the policy is very largely of provincial concern. It would manifestly be undesirable for the provinces to undertake direct negotiations with other commonwealth countries in matters concerning legislation, and I would say on policy questions generally.
- (i) The arrangement could be, at best, an Ad Hoc one applicable to United Kingdom court cases. The arrangement will inevitably be confusing because of the retention of the traditional channels of communication with other commonwealth countries and because of the different handling of United Kingdom policy communications. To us it may seem simple, to a province having a small volume of cases, it may seem absurd.
- (j) An arrangement which dispensed with formal channels as such, including the channel through the Lieutenant-Governors, would have the

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advantage that it would not undermine the federal prerogative in external communications in the same way as if the federal government were merely eliminated. However, communications could not be sent directly to the Home Office by the Provincial Attorneys-General without an amendment of legislation in Manitoba, Saskatchewan, Alberta and British Columbia.

Legal/J.P. Erichsen-Brown/hre

February 17, 1951.

First Draft

Letter

Department of External Affairs
to
Department of Secretary of State

I refer again to your letter of July 14, 1950,
entitled "Federal-Provincial Relations".

2. We have given further consideration to the
question of the channel of communication between courts
in the United Kingdom and courts in Canada in cases under
the legislation providing for the reciprocal enforcement
of maintenance orders. Three types of communication are
envisaged:

- (a) Communications of every kind with countries
other than the United Kingdom.
- (b) Communications with the United Kingdom originating
with a government concerned (policy questions).
- (c) Communications with the United Kingdom originating
in the courts (implementation - individual cases).

It has become apparent that a very large portion of all
communications come within category (c). We are wondering
whether it would be desirable to make an Ad Hoc arrangement
to shorten the channel of communication in cases coming
within (c).

3. We have examined the relevant legislation affect-
ing Canada and the United Kingdom. From the point of view
of the minimum legal requirements which might be imposed,
it would appear to be sufficient if a provisional order made
by a judge or magistrate in one jurisdiction and supporting
material were produced to the judge or magistrate in the
jurisdiction in which it is sought to have the order con-
firmed, and if the legislation in the latter jurisdiction
were to found the jurisdiction of its courts on the production
of such provisional order only, the manner in which it was

- 2 -

produced - i.e. through what authorities (Lieutenant-Governors or others) being irrelevant. However, a court in one jurisdiction is generally ignorant of the particular court which would be competent to act in the other jurisdiction. Some channel through governmental authorities is therefore necessary.

4. Arising out of (2), what might be called a "minimum practicable legal requirement" would be a provision which required transmittal through the government authority charged with the immediate supervision of the courts in one jurisdiction to corresponding authority in the other jurisdiction. Such an authority in the United Kingdom is thought to be the Home Office, and in Canada the Provincial Attorneys-General, or the Commissioners of the Yukon and Northwest Territories.

5. The Ontario legislation would permit such a shortening as it does not depend upon transmittal through the Lieutenant-Governors. The legislation of Manitoba, Saskatchewan, Alberta and British Columbia, on the other hand, contemplates that provisional orders shall be sent "to the Lieutenant-Governor of British Columbia (Man., Sask., Alta.) and forwarded by him to the Attorney-General " These provisions appear to have been related to the consideration of what are the normal channels of communication rather than to the consideration of what is, in fact, a minimum requirement to enable the local provincial court to act.

6. Unless these provinces were to amend their legislation, therefore, it would appear that communications originating in United Kingdom courts must continue to go through the Lieutenant-Governors.

7. We have, accordingly, been considering the desirability of our suggesting to the United Kingdom Government that communications in individual cases originating in United Kingdom courts be channelled directly to the Lieutenant-Governors of the Canadian provinces concerned, and the Commissioners of the Yukon and Northwest Territories, thus bypassing both our Department and your Department, i.e., bypassing the federal government entirely, insofar as communications destined to courts in the five western provinces are concerned.

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8. We doubt if it would be desirable at the present time to depart from the normal channels of communication with other commonwealth countries such as New Zealand or the States of Australia, with whom there are existing reciprocal arrangements. In the future, it might be possible to distinguish between court communications in implementation of the acts and policy communications of governments in the case of these other commonwealth countries also.

9. Such a special arrangement with the United Kingdom would not, we think, be desirable unless it were concurred in by all of the provinces concerned. In the event of other provinces adopting similar legislation on a reciprocal basis with the United Kingdom, the Canadian Government would suggest to such provinces that they also agree to a similar short channel for communications originating in the courts.

10. Externally, in the case of the United Kingdom, there has already been some abbreviation of the channel of communication in court cases. Thus, communications are sent directly between Commonwealth Relations Office and the Department of External Affairs. All policy questions, however, continue to be handled through diplomatic channels (High Commissioners).

11. We are not entirely convinced that it would be desirable to propose the transmission of such material direct from the United Kingdom to the Lieutenant-Governors. We would appreciate an expression of your views in this regard.

12. A possible alternative would be for you to write to the Lieutenant-Governors of Manitoba, Saskatchewan, Alberta and British Columbia, informing them that the Canadian Government has under consideration the desirability of shortening the channel of communication in the case of communications concerning individual cases originating in the courts of the United Kingdom. You might then quote the text of the memorandum received from the United Kingdom High Commissioner which was quoted in our letter to you of October 11, 1950, together with the text of the letter which you received from the Lieutenant-Governor of Ontario, dated November 28, 1950, (Your File MH/T (258) 1521/45 Part I). You might then

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ask whether these provinces would be prepared to delete the provisions of their acts referring to the Lieutenant-Governors with a view to bringing their legislation in line with the Ontario legislation and point out that this would enable the Canadian Government to suggest to the United Kingdom Government that communications between courts be channelled directly from Home Office to the Attorney-General.

13. The advantage in the alternative suggestion last mentioned would be that it would provide for the elimination of formal channels, on both dominion and provincial levels. There might be, perhaps, less implication of surrender of a federal prerogative (to handle external communications) than might be involved if the federal government departments alone were eliminated.

Legal/J.P.Erichsen-Brown/hre

February 14, 1951.

Mr. Erichsen-Brown

MEMORANDUM FOR MR. BURBRIDGE:

I have reviewed the recent material on our policy file on maintenance orders.

2. If you agree, I would like to discuss the problem with yourself, Summers, Kennedy, Roger, and Hadwen, all present.

3. If we can agree on a desirable course of action, I would like to discuss the problem first with Gordon Robertson (who has been Chairman of a Dominion provincial committee, which, I understand, has not dealt with the problem). Mr. Robertson's views, however, might be useful.

4. I would then like, if you agree, to discuss the matter with Mr. Mayrand.

5. If Mr. Mayrand agrees, I would like to discuss the matter informally with Mr. Stein, after having telephoned him to arrange an appointment to see him at his convenience.

6. My present view is that we should not at the present time write any letters to anybody.

7. If you agree, would you state the time for our first conference here, and I will ask Hadwen to come over.

Feb 14/51

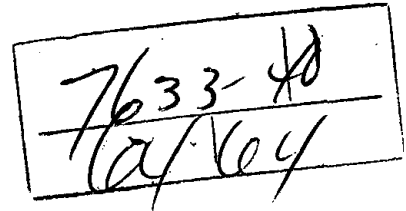
I'm doubtful whether all these steps are necessary. Cannot state legit & ourselves make the decision? I'd prefer to have your draft a letter to Stein for Mr. Kennedy's signature in which we would outline the ridiculousness of present procedure. The group in a very short & solution for his concurrence. We might have para 2. above might discuss to go to Cabinet. The group in your draft.

Legal Division



DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA



Ottawa, January 16, 1951

Please refer to our
file No. 7633-40

not sent

To: The Under-Secretary of State,
Department of the Secretary of State of Canada,
Ottawa.

Re: Maintenance Orders Cases

As you are no doubt aware, this Department and your own Department are engaged in a type of Post Office transaction in which Maintenance Order cases are sent from the Commonwealth Relations Office to us for transmission through your Department to the Lieutenant-Governors of the Canadian Provinces. This Department does not, and neither, I presume, does your Department, assume any responsibility with regard to these individual cases merely passing on the documents which it receives.

2. The present chain of communication is necessary when any general matter relating to the negotiation of reciprocal agreements for the enforcement of Maintenance Orders arises, but it appears on the surface to be unnecessary with regard to the individual cases which arise out of these Acts.

3. In the first place, the legislature itself provides for a more direct channel of communication (see attached memorandum). Secondly, there is at present a considerable waste of stenographic and secretarial assistance involved in transmitting these cases. Thirdly,

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the transmission of provisional orders and of confirming orders from one court to another is also considerably delayed.

4. You may remember that in a letter of October 11, 1950, I passed on to you excerpts from a Note received from the Office of the United Kingdom High Commissioner in Canada stating that sometimes payments under an order were received in England before the official document itself arrived. I notice that recently the British and Canadian courts have been sending confirming orders directly to the court concerned, and merely sending a notification that this has been done through the diplomatic channels.

6. You will recall that in July 1950 an effort was made by this Department to have this matter discussed by the Committee of Cabinet on Constitutional Amendments. (See letter from the Acting Under-Secretary of State for External Affairs to Mr. Stein of July 28, 1950). Apparently this was not possible.

7. The usual channel of communication with the United Kingdom Government is of course from this department to the Commonwealth Relations Office and the normal channels for communicating with the provincial governments is of course through your department. The question is whether it would be feasible and proper to depart from this practice for the individual cases coming under the maintenance order legislation.

8. We would be grateful if you would give this matter your consideration in so far as provinces are concerned and let us know whether you deem it advisable to take up the question with them. If this is done, we would communicate with the Commonwealth Relations Office to determine whether they would agree to transmit the documents in maintenance order cases directly to the provincial authorities and to receive them in the same way.

Under-Secretary of State
for External Affairs.

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MEMORANDUM ON THE CHANNEL OF COMMUNICATION
FOR MAINTENANCE ORDERS

I. Present Procedure

Documents are now sent from the originating court in England through the Commonwealth Relations Office to the Department of External Affairs. They are then despatched through the Department of the Secretary of State to the provincial authorities of the province concerned for transmission to the Canadian Court. Documents originating in Canada follow an identical course to England.

II. Maintenance Orders (Facilities for Enforcement) Act
1920 (Chap. 33 - 10 & 11 Geo. 5)

A- Communications from the United Kingdom to Canada -

Section 2 of this Act reads as follows:-

"Where a court in England or Ireland has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in some part of His Majesty's dominions outside the United Kingdom to which this Act extends, the court shall send to the Secretary of State for transmission to the governor of that part of His Majesty's dominions a certified copy of the order."

Section 12 (1) provides that:-

"Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by courts within England and Ireland, His Majesty may by Order in Council

-2-

extend this Act to that part, and thereupon that part shall become a part of His Majesty's dominions to which this Act extends."

B- Communications from Canada to the United Kingdom

The British Act, Article I (1) states that:-

"....(when) a certified copy of the order has been transmitted by the Governor of that part of His Majesty's Dominions to the Secretary of State,"

C- The Secretary of State (U.K.) is empowered to deal with the problem of the channel of communication since Section 5 runs as follows:-

"The Secretary of State may make regulations as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts."

III. Provincial Maintenance Orders Acts

Section 3(1) of the Maintenance Orders, Reciprocal Enforcement of, 1946, Chapter 42, British Columbia provides that:

"Where a maintenance order has, whether before or after this Act comes into force, been made against any person by any Court in England or Northern Ireland or in any reciprocating State and a certified copy of the order has been transmitted by the Secretary of State or by the Governor of the reciprocating State to the Lieutenant-Governor of British Columbia and forwarded by him to the Attorney-General....."

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Section 5(3) provides that:

"Where an order is made pursuant to sub-section (1), the Court shall send to the Attorney-General a certified copy of the order for transmission to the Secretary of State, if the person against whom the order is made is alleged to reside in England or Northern Ireland, or to the Governor of the reciprocating State if the person against whom the order is made is alleged to reside in a reciprocating State."

Section 9 provides that:

"The Lieutenant-Governor in Council may make regulations as to the manner in which a case can be remitted by a Court authorized to confirm a provisional order to the Court which made the provisional order, and generally for facilitating communications between such Courts."

The same provisions as those noted above are found in the Provincial Acts of the remaining Provinces since all this legislation was apparently copied from the British Act.

"The Maintenance Orders (Facilities for Enforcement, 1947," Chapter 13 of the Province of Alberta has identical provisions to the British Columbia Act in Section 3(1), Section 5(3) and Section 9, as does "The Maintenance Orders (Facilities for Enforcement) Act, 1946", Chapter 22 of Saskatchewan.

"The Maintenance Orders (Facilities for Enforcement) Act, 1946", Chapter 35, passed by the legislature of Manitoba has almost the same wording, Article 9 being different in form but not in substance.

The "Act to facilitate the Enforcement of Maintenance Orders, 1948," No. 64 of the Province of Ontario provides in Section 3 that:

"....a certified copy of the order (be sent) to the Attorney-General for transmission to the proper officer of that reciprocating state...." 00026

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Section 5 (1) of the same Act provides that Maintenance Orders coming to Ontario shall be received by the Attorney-General. ~~This may be taken to mean by Lieutenant Governor of the Province for purposes of this Memorandum since the Attorney-General would undoubtedly follow precedent and communicate with other jurisdictions through the Lieutenant Governor.~~ Section 7 states that:

"The Lieutenant-Governor in Council may make rules prescribing the practice and procedure under this Act."

The Maintenance Order (Facilities for Enforcement Ordinance, May 11, 1950, Yukon, Section 3(1) reads:

"Where a maintenance order has, whether before or after this Ordinance comes into force, been made against any person by any Court in England or Northern Ireland or in any reciprocating state and a certified copy of the order has been transmitted by the Secretary of State or by the Governor of the reciprocating state to the Commissioner and forwarded by him to the Legal Adviser....."

Section 4 provides that:

".....the Court, on request of the person in whose favour the order was made, shall send a certified copy of the order to the Legal Adviser for transmission to the Secretary of State or to the Governor of that reciprocating state, as the case may require,....."

IV.

It will be seen that the present procedure differs considerably from that contemplated in the legislation. All the maintenance order acts seem to make a direct channel of communication between the provincial authorities and the Commonwealth Relations Office possible.

MEMORANDUM FOR: MR. BURBRIDGE
MR. SUMMERS

The Possibility of shortening the Channel of
Communication with regard to Maintenance Orders

I. - Present Procedure

The cases under the Maintenance Orders (Facilities for Enforcement) Act, 1920 (Chapter 33, 10 - 11 George V (U.K.) which come through this Department call for us to act merely as a post office. The channel of communication at present is as follows: from the British Court to the Secretary of State for Commonwealth Relations, to this Department, to the Secretary of State of Canada and then to the Lieutenant-Governors for transmission through their Attorneys-General to the Canadian Court.

2. This Department exercises no responsibility with regard to the cases which pass through our hands and is merely checking the documents for obvious errors and passing on to the Secretary of State of Canada any special comment made by the Commonwealth Relations Office. (This is, of course, not true with regard with general matters arising out of the extension of this legislation to the Canadian Provinces by the United Kingdom and other parts of the Commonwealth.)

3. This Memorandum sets forth reasons why the individual cases developing under this Act should no longer pass through the Department of External Affairs. (These reasons do not apply to the problems developing from the general application of the Act to Canada which should continue to do so.)

II. - Review of the Legislation by the United Kingdom and the Canadian Provinces relating to this Act.

1. Maintenance Orders (Facilities for Enforcement) Act, 1920.

(a) Communications from the United Kingdom to Canada.

- 2 -

Section 2 of this Act reads as follows:

"Where a court in England or Ireland has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in some part of His Majesty's dominions outside the United Kingdom to which this Act extends, the court shall send to the Secretary of State for transmission to the governor of that part of His Majesty's dominions a certified copy of the order."

It has been considered that the meaning of the phrase "transmission to the governor of that part of His Majesty's dominions" means that documents coming from the Secretary of State for Commonwealth Relations in England must pass through the federal authority in Canada and accordingly through this Department.

The Dominion government is, however, in no sense a party to these arrangements. This Act provides that:

12. "Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by courts within England and Ireland, His Majesty may by Order in Council extend this Act to that part, and thereupon that part shall become a part of His Majesty's dominions to which this Act extends." (Section 12(1)).

The phrase "the legislature of any part of His Majesty's dominions" seems to indicate that, at the time this Act was passed, it was envisaged that reciprocal arrangements might be made by states or provinces within a section of the Commonwealth. This has in fact been the case in Canada where only Ontario, Manitoba

- 3 -

on Home Office

Saskatchewan, Alberta, British Columbia and the Yukon Territory come under its provisions. It therefore appears that there is sufficient justification in the Act itself for the contention that the channel of communication be direct from the Commonwealth Relations Office to the Lieutenant-Governor of the Province concerned since he can be accurately described as "the governor of that part of His Majesty's dominions". This is all the more obvious since the legislation which brings these arrangements into force was enacted by the United Kingdom and the Canadian Provinces without any intervening legislative action whatsoever by the federal authorities.

When documents come from other parts of the Commonwealth, besides the United Kingdom, to Canada, it might seem necessary that they pass through this Department as being the official channel in all matters concerning Canada's external relations. This would be true, as noted above, in matters affecting the maintenance orders legislation in general but with regard to the individual cases it seems unnecessary. The reciprocal legislation passed by the Canadian Provinces and by other parts of the Commonwealth to bring this Act into force clearly anticipates a direct channel of communication between the Governor of that part of the Commonwealth and the Lieutenant-Governor of the Province concerned (See analysis of the Canadian Provincial Acts below).

(b) Communications from Canada to the United Kingdom.

The British Act provides that:

"...(when) a certified copy of the order has been transmitted by the Governor of that part of His Majesty's Dominions to the Secretary of State", (Section I(1)).

*The Secretary of State
in the U.K. Act
is any person
who is properly constituted
by Home Office*

The "Secretary of State" referred to is obviously the Secretary of State for Commonwealth Relations, in England. This means that the British Act expects that correspondence under that Act will be sent directly to the Commonwealth Relations Office from the Provinces in which

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the legislation is in force. Section of this
same Act provides that:

"The Secretary of State may make regulations as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts."

X Since the Commonwealth Relations Office is empowered to determine the channel of communication which it considers proper, any changes in this channel contemplated by Canadian authorities could be carried into effect by the Commonwealth Relations Office without difficulty.

2. Provincial Maintenance Orders Acts.

Section 3(1) of the Maintenance Orders, Reciprocal Enforcement of, 1946, Chapter 42, British Columbia provides that:

"Where a maintenance order has, whether before or after this Act comes into force, been made against any person by any Court in England or Northern Ireland or in any reciprocating State and a certified copy of the order has been transmitted by the Secretary of State or by the Governor of the reciprocating State to the Lieutenant-Governor of British Columbia and forwarded by him to the Attorney-General ..."

Section 5(3) provides that:

"Where an order is made pursuant to subsection (1), the Court shall send to the Attorney-General a certified copy of the order for transmission to the Secretary of State, if the person against whom the order is made is alleged to reside in England or Northern Ireland, or to the Governor of the reciprocating State if the person

- 5 -

against whom the order is made is alleged to reside in a reciprocating State."

Section 9 provides that:

B.C.
"The Lieutenant-Governor in Council may make regulations as to the manner in which a case can be remitted by a Court authorized to confirm a provisional order to the Court which made the provisional order, and generally for facilitating communications between such Courts."

under
It will be seen from these quotations that the Act passed by legislature of British Columbia provides for a channel of communication directly from the Secretary of State for Commonwealth Relations or the Governor of a reciprocating State to the Lieutenant-Governor of British Columbia for all communications both coming or going under the terms of the Act. In spite of this, British Columbia continues to send all maintenance orders cases originating in British Columbia through the Canadian Secretary of State and of course receives all communications from the Commonwealth Relations Office through the channel of communication described at the beginning of this Memorandum.

The same provisions as those noted above are found in the Provincial Acts of the remaining Provinces since all this legislation was apparently copied from the British Act. "The Maintenance Orders (Facilities for Enforcement, 1947," Chapter 13 of the Province of Alberta has identical provisions to the British Columbia Act in Section 3(1), Section 5(3) and Section 9, as does "The Maintenance Orders (Facilities for Enforcement) Act, 1946", Chapter 22 of Saskatchewan. "The Maintenance Orders (Facilities for Enforcement) Act, 1946", Chapter 35, passed by the legislature of Manitoba has almost the same wording, Article 9 being different in form but not in substance. "The Act to facilitate the Enforcement of Maintenance Orders, 1948," No. 64 of the Province of Ontario provides in Section 3 that:

... 6

- 6 -

".... a certified copy of the order (be sent) to the Attorney-General for transmission to the proper officer of that reciprocating state..."

(~~which provides even greater leeway.~~) Section 5(1) of the same Act provides that Maintenance Orders coming to Ontario shall be received by the Attorney-General. This may be taken to mean by Lieutenant-Governor of the Province for purposes of this Memorandum since the Attorney-General would undoubtedly follow precedent and communicate with other jurisdictions through the Lieutenant-Governor. Section 7 states that:

"The Lieutenant-Governor in Council may make rules prescribing the practice and procedure under this Act."

The Maintenance Order (Facilities for Enforcement Ordinance, May 11, 1950, Yukon, Section 3(1) reads:

"Where a maintenance order has, whether before or after this Ordinance comes into force, been made against any person by any Court in England or Northern Ireland or in any reciprocating state and a certified copy of the order has been transmitted by the Secretary of State or by the Governor of the reciprocating state to the Commissioner and forwarded by him to the Legal Adviser ..."

Section 4 provides that:

"...the Court, on request of the person in whose favour the order was made, shall send a certified copy of the order to the Legal Adviser for transmission to the Secretary of State or to the Governor of that reciprocating state, as the case may require,..."

III. - Conclusions.

1. It will be seen that all of these Acts set up a channel of communication between the Secretary

- 7 -

2 of State for Commonwealth Relations, or the Governor of the reciprocating state, and the Lieutenant-Governor of the Provinces concerned or in the case of Yukon, the Commissioner.

- 2.
3. It is therefore recommended that efforts be made to establish such a channel of communication excluding the Department of External Affairs and the Department of the Secretary of State of Canada from all correspondence relating to individual maintenance orders cases.
3. It is possible that the reason why all the provinces and Yukon up to the present time have been addressing all communications under this Act to the Canadian Secretary of State is that, through faulty drafting, it sometimes appears in the Canadian Act that this might be the channel instead of the Secretary of State for Commonwealth Relations. There seems, from a survey of this legislation, to be no reason why all documents relating to individual cases should go through either the Secretary of State in Canada or the Department of External Affairs. Indeed these Acts expressly provide otherwise and, it appears, so does the United Kingdom Act of 1920.

4. Officers of the Department of the Secretary of State of Canada have informally expressed their approval of any effort to route the maintenance orders cases away from Ottawa.

5. If this could be arranged it should be clearly established that any negotiations concerning the extension or modification of either the Provincial Acts or the British Act should continue to pass through the Department of the Secretary of State and this Department but there seems to be no reason why this should be the case with the individual orders themselves.

IV - Suggested course of Action.

1. That a letter be sent to the Secretary of State of Canada requesting his formal approval to the proposed course of action and asking him to contact the provinces in this regard. A draft letter is attached.
2. That this Department contact the Commissioner for Yukon directly in this matter.

- 8 -

3. That a despatch be sent to the High Commissioner for Canada in London, once the Secretary of State of Canada agrees, asking him to approach the Commonwealth Relations Office for their views on the proposed change in the channel of communication. It does not seem necessary that this need await the receipt of approval from all the Canadian Provinces.
4. That once the Commonwealth Relations Office and the Canadian Provinces have agreed on the proposal, a suggested procedure be drafted here and submitted to both.
5. That once the new procedure is adopted, approval be requested from the Under-Secretary of State for External Affairs for the division of our maintenance orders cases files into provincial groups for their transmission to the affected Provinces.

John H. adwen

Is this necessary?
Presumably the
provinces already
have files on
the cases which
are pending
in their courts.
DTH

7633-40	
37	22

Please refer to our
file No. 7633-40

Ottawa, October 11, 1950

To: The Under-Secretary of State
Department of the Secretary of State
Ottawa

Re: Reciprocal Enforcement of Maintenance
Orders

A recent case brought to the attention of this Department the difficulties which face the provincial authorities occasionally in tracing the defendants in these cases; when the plaintiff is not certain of the address or when the address supplied is inaccurate or insufficient.

Consultation was had with the Department of Veterans' Affairs, the Unemployment Insurance Commission and the Royal Canadian Mounted Police in an effort to work out the scheme of cooperation to be followed in tracing defendant husbands whose Canadian addresses are unknown to wives in other Commonwealth countries and who desire to avail themselves of their rights under the Maintenance Orders (Facilities for Enforcement) Act.

I would appreciate your communicating the contents of the attached memorandum to the various provinces which have maintenance order legislation and reciprocal enforcement arrangements in effect.

K. J. BURBRIDGE

Under-Secretary of State

for External Affairs

00027

6

Memorandum concerning Tracing Defendants in
Maintenance Order Cases - Provinces of Ontario,
Manitoba, Saskatchewan, Alberta and British Columbia

Such wives generally supply a "last known address" and the problem of tracing, where the address is inaccurate, therefore generally arises in the province concerned. It is considered that any enquiries to be instituted in such cases are the responsibility of the provincial authorities. It is noted, however, that the R.C.M. Police also act as the provincial police in four of the five provinces having such legislation. Canadian departments are generally prepared to cooperate by furnishing information of record on a confidential basis to the R.C.M. Police.

D.K. | A majority of applications for enforcement originate in the United Kingdom, and many of these concern veterans. Having regard to the protection afforded to husbands by Canadian courts in which confirmation orders are sought, the Department of Veterans' Affairs will generally furnish any available information as to the address of a Canadian veteran where a wife or children in another Commonwealth country are seeking to have a provisional order confirmed. Such information will be furnished in response to a written request signed by or on behalf of the Attorney-General of the Province concerned. The District offices of the Department of Veterans' Affairs have been so informed. In other cases information can be obtained by the R.C.M. Police through cooperation of other government departments.

Occasionally a provisional order cannot be served in one province because the husband has left that province and his new address is unknown. Such cases are usually referred back to the Department of External Affairs which informs the government of the country of origin. The Canadian Government will take no initiative in instituting enquiries with a view to tracing husbands in such cases even although the husband is known to have gone to a province in which facilities for enforcement exist. In such cases a new provisional

-2-

order is, in any event, required, and it is considered that enquiries should not be instituted in the absence of a specific request from the Commonwealth government concerned.

The Canadian Government will endeavour to trace husbands in all cases where a specific request to do so is received from another Commonwealth government and the province of residence is unknown.

If the provincial authorities have no objection, it is suggested that it might be useful if the contents of this communication were communicated to the Commonwealth Relations Office of the United Kingdom and to other Commonwealth countries having reciprocal legislation. At the same time, similar assistance would be requested to assist wives and children in Canada who are seeking to trace husbands in the other Commonwealth countries concerned.

*Was this
referred
in the document?*
[Signature]



CANADA

DEPARTMENT OF VETERANS AFFAIRS

7633-40	
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OFFICE OF THE DEPUTY MINISTER
OTTAWA

September 5th, 1950.

Under-Secretary of State
for External Affairs,
O t t a w a .

Your file reference: 7633-40

Reference is made to your letter of August 21st, enclosing a copy of a draft letter which your Department proposes to send to the Lieutenant-Governors of the Provinces having legislation for the reciprocal enforcement of Maintenance Orders.

You are hereby advised that the issue of such a letter is quite acceptable to the Department and, as indicated therein, district officers concerned of the Department of Veterans Affairs have already been notified that information relating to the whereabouts of a veteran may be released on receipt of a written request signed by or on behalf of the Attorney General of the Province concerned.

E. L. M. Burns

E. L. M. Burns,
Deputy Minister.

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1950 SEP 7 AM 10:08

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7633-40	
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UNEMPLOYMENT INSURANCE COMMISSION


OTTAWA, Ontario,
August 30, 1950.

Dear Sir:

Re: Reciprocal Arrangements for Enforcement of Maintenance Orders

In reply to your letter of August 22, I have considered your draft letter to the Lieutenant-Governors of certain provinces and I fully agree with the procedure outlined and this Commission will be ready to provide the R.C.M. Police with the information mentioned therein.

Yours very truly,


J.G. Bisson,
Chief Commissioner.

The Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

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CORRESPONDENCE TO BE ADDRESSED:-
THE COMMISSIONER
R. C. M. POLICE
OTTAWA



7633-40	
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ROYAL CANADIAN MOUNTED POLICE
OFFICE OF THE COMMISSIONER
OTTAWA

REF. No. C 11-26-53.
Your Ref: 7633-40.

25 August, 1950.

The Under-Secretary of State
for External Affairs,
O T T A W A.

Re: Reciprocal Arrangements for Enforcement
of Maintenance Orders

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28 AUG 1950

Receipt is acknowledged of your memorandum of August 21, 1950, with enclosures referred to. The only comment on the draft letter may not be material but it is mentioned for the sake of clarity. It has to do with the statement that the Department of Veterans Affairs will supply information either to the R.C.M. Police or directly in response to a written request signed by or on behalf of the Attorney General of the Province concerned. In the letter dated August 8, 1950, to you from the Deputy Minister, Department of Veterans Affairs, it would appear that the Department has agreed to supply information only to the Department of the Attorney General concerned. If the R.C.M. Police, therefore, requires the information to further investigation to locate a missing person it would seem that the information would have to be obtained from the Department of the Attorney General and not direct from the Department of Veterans Affairs.

2. In view of the foregoing it might be advisable to inform the Lieutenant-Governors of the Provinces that information from the Department of Veterans Affairs records will be supplied only in response to a written

.....2

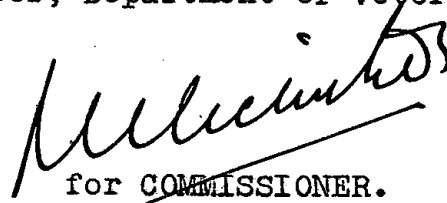
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Document divulgué en vertu de la *Loi sur l'accès à l'information*

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request signed by or on behalf of the Attorney General of the Province concerned. It is noted that the Unemployment Insurance Commission will supply information to the R.C.M. Police in accordance with the suggestions contained in paragraph 17(e) and (f) of your letter dated July 14, 1950, directed to the Deputy Minister, Department of Veterans Affairs.


for COMMISSIONER.

7633-40
57 71

Ottawa, August 22, 1950.

Please refer to our
File No: 7633-40

TO: The Chief Commissioner,
Unemployment Insurance Commission,
OTTAWA, Canada.

I refer to your letter of August 11, 1950, concerning arrangements for tracing defendants subject to Maintenance Orders under the Maintenance Orders (Facilities for Enforcement) Acts now in force in several Canadian provinces.

2 I am enclosing copy of a letter dated July 25 from the Commissioner, R.C.M.P., and copy of a letter dated August 8 from the Deputy Minister, Department of Veterans Affairs.

 I am also enclosing copy of a draft letter which it is proposed should be sent by the Department of the Secretary of State to the Lieutenant-Governors of the Provinces having legislation for the reciprocal enforcement of Maintenance Orders.

I would appreciate your comments on the draft letter last mentioned.

K. J. BURBRIDGE

for
Under-Secretary of State
for External Affairs.

ORIGINAL DAMAGED

7633-40

57 71

Ottawa, August 21, 1950

Please refer to our
File No. 7633-40

TO: The Deputy Minister,
Department of Veterans Affairs,
OTTAWA, Canada.

I refer to recent correspondence on the
subject of reciprocal enforcement of Maintenance
Orders.

As explained by Mr. Roger of this Depart-
ment to Mr. Dixon, on reconsideration we think it
would be more appropriate for us to communicate with
the provincial authorities as suggested by you in your
letter of August 8.

2
I am enclosing for your information copy
of a letter dated July 25 from the Commissioner, R.C.M.P.,
and copy of a letter dated August 11 from Mr. Murchison,
Commissioner of the Unemployment Insurance Commission.

I am also enclosing copy of a draft letter
which it is proposed should be sent by the Department
of the Secretary of State to the Lieutenant-Governors
of the Provinces having legislation for the reciprocal
enforcement of Maintenance Orders.

I would appreciate your comments on the
draft letter last mentioned.

K. J. BURBRIDGE

Under-Secretary of State
for External Affairs

ORIGINAL DAMAGED

7633-40
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ORIGINAL DAMAGED

Ottawa, August 21, 1950

Please refer to our
File No. 7633-40

TO: The Commissioner,
Royal Canadian Mounted Police,
OTTAWA, Ontario.

RE: Reciprocal Arrangements for Enforcement
of Maintenance Orders

I refer to your letter of July 25, 1950,
in which you commented on the suggested arrangements
for exchange of information raised in my letter to
the Department of Veterans' Affairs dated July 18,
1950.

2 ✓
I am enclosing copies of letters dated
August 8 and 11 respectively, from the Deputy Minister
of the Department of Veterans Affairs and Mr. Murchison,
Commissioner of the Unemployment Insurance Commission.

✓
I am also enclosing copy of a draft letter
which it is proposed should be sent by the Department
of the Secretary of State to the Lieutenant-Governors
of the Provinces having legislation for the reciprocal
enforcement of Maintenance Orders.

I would appreciate your comments on the
draft letter last mentioned.

for
K. J. BURBRIDGE
Under-Secretary of State
for External Affairs

ORIGINAL DAMAGED

ORIGINAL DRAFT of Letter to be sent by the Department of the Secretary of State to Lieutenant-Governors of the Provinces of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia

The Canadian Government has had under consideration the degree of co-operation which might be afforded in tracing husbands whose Canadian addresses are unknown to wives in other Commonwealth countries, who desire to avail themselves of their rights under the Maintenance Orders (Facilities for Enforcement) Acts.

Such wives generally supply a "last known address" and the problem of tracing, where the address is inaccurate, therefore generally arises in the province concerned. It is considered that any enquiries to be instituted in such cases are the responsibility of the provincial authorities. It is noted, however, that the R.C.M. Police also act as the provincial police in four of the five provinces having such legislation. Canadian departments are generally prepared to co-operate by furnishing information of record on a confidential basis to the R.C.M. Police.

A majority of applications for enforcement originate in the United Kingdom, and many of these concern veterans. Having regard to the protection afforded to husbands by Canadian courts in which confirmation orders are sought, the Department of Veterans' Affairs will generally furnish any available information as to the address of a Canadian veteran where a wife or children in another Commonwealth country are seeking to have a provisional order confirmed. Such information will be furnished ~~either to the R.C.M. Police or directly~~ in response to a written request signed by or on behalf of the Attorney-General of the Province concerned. The District offices of the Department of Veterans' Affairs have been so informed. *in other cases information can be obtained by the R.C.M. Police through cooperation of other government departments.*

Occasionally a provisional order cannot be served in one province because the husband has left that province and his new address is unknown. Such cases are usually referred back to the Department of External Affairs which informs the government of the country of origin. The Canadian Government will take no initiative in instituting enquiries with a view to tracing husbands in such cases even although the husband is known to have gone to a province in which facilities for enforcement exist. In such cases a new provisional order is, in any event, required, and it is considered that enquiries should not be instituted in the absence of a specific request from the Commonwealth government concerned.

The Canadian Government will endeavour to trace husbands in all cases where a specific request to do so is received from another Commonwealth government and the province of residence is unknown.

It is suggested that it might be useful if the contents of this communication were communicated to the Commonwealth Relations Office of the United Kingdom and to other Commonwealth countries in view of reciprocal legislation. At the same time, similar assistance would be requested to assist wives and children in Canada who are seeking to trace husbands in the other Commonwealth countries concerned.



7633-46	
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UNEMPLOYMENT INSURANCE COMMISSION

OTTAWA, 11th August, 1950.

The Under-Secretary of State
for External Affairs,
Ottawa, Can.

Dear Sir:

Re: Reciprocal Arrangements for Enforcement of Maintenance Orders

Your letter of July 18th and attachment, have been considered by this Commission, and I am pleased to inform you that we have decided to co-operate in the matter of locating defendant husbands in cases in which the enforcement of maintenance orders has been requested. Such cooperation is conditional upon all inquiries being channelled through the Commissioner of the R.C.M. Police, to whom our replies will be addressed.

A further condition attached to our undertaking is that the R.C.M. Police shall not disclose the source of the information. You are no doubt aware of the provision in Section 105 of the Unemployment Insurance Act 1940, which concerns the secrecy of records, etc.

Sincerely yours,

C.A.L. Murchison-
Commissioner.

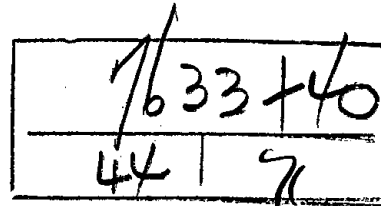
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14 AUG 1950

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Ottawa, August 11, 1950.

Please refer to our
File No: 7633-40

TO: The Deputy Minister,
Department of Veterans Affairs,
O t t a w a.

RE: Reciprocal Arrangements for Enforcement
of Maintenance Orders.

I refer to your letter of August 8 in which you informed me that you had reached a decision in connection with these cases whereby the Department of the Attorney-General in any of the provinces having such legislation in effect may apply to your Department to obtain the last known address of any Canadian veteran who cannot be located and who is involved in a Maintenance Order case.

s.19(1)

I would appreciate your advising the provincial Attorneys-General of the five Provinces of Canada which have this legislation in effect of your willingness to supply information upon formal written request made by the respective department of the Attorney-General concerned. I would appreciate also your including in this communication the indication that your district offices have been instructed concerning the procedure to be followed upon such applications.

The address given in your letter for [REDACTED] is the same as that given by the Commonwealth Relations Office in their original despatch.


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s.19(1)

Although [REDACTED] cannot be located at this address, I am indicating to the provincial authorities, through the Department of the Secretary of State, that this is the latest information which we have respecting this individual.

K.J. BURBRIDGE

 Under-Secretary of State
for External Affairs.

CANADA

DEPARTMENT OF VETERANS AFFAIRS

7633-40	
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OFFICE OF THE DEPUTY MINISTER

OTTAWA

August 8, 1950.

Under-Secretary of State for External Affairs,
Department of External Affairs,
Ottawa, Ontario.

Attention: Mr. A. J. Pick

Re: Reciprocal Arrangements for Enforcement
of Maintenance Orders.

Further reference is made to your letter of July 14th on the above subject, the receipt of which was acknowledged on July 21st.

As stated in your letter, five Provinces of Canada, (British Columbia, Alberta, Saskatchewan, Manitoba and Ontario), have, by legislation, provided for the enforcement in Canada of Maintenance Orders, the legislation having been modelled on the United Kingdom Act passed in the early 20's which has also formed the basis of similar legislation in other Commonwealth Countries.

I might state that the Department had, previous to the receipt of your letter, been in communication with the Department of the Attorney-General of the Province of Ontario on the same matter, namely, the release by the Department of Veterans Affairs to the Provincial Department of the Attorney General of the address of a Canadian veteran when required for the purpose of informing the veteran of the Provisional Maintenance Order made against him under the reciprocal legislation and of summoning him to appear before the appropriate local court.

Following consideration of the matter, the decision has been reached that in any case where the Department of the Attorney-General in any of the above mentioned provinces is unable to locate a Canadian veteran for the purpose of notifying him of the Order made under the Maintenance Orders (Facilities for Enforcement) Act, the Department of Veterans Affairs will, on request, furnish the Department of the Attorney-General concerned with the last known address of the Canadian veteran.

The District Offices of the Department situated in the provinces previously mentioned will be instructed accordingly.

Referring to the case of Mr. [REDACTED] which gave rise to the correspondence and referred to in paragraph 8 of your letter, it would appear that the request for his address was made to the Department's Office in Vancouver, by telephone, by a Social Worker of the Family Court in that city. If the case refers to [REDACTED] who served with the Canadian Forces under regimental number [REDACTED] will you have the Office of the Department of the Attorney-General in British Columbia informed that his last address, according to the records of the Department, is [REDACTED]

In as much as, according to your letter, all Provincial Orders are received by you from the Commonwealth

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DEPARTMENT OF VETERANS AFFAIRS

- 2 -

Relations Office and are transmitted through the Lieutenant-Governors to the Provincial Attorneys-General, perhaps you would wish to have the five Attorneys-General concerned informed of the Department's decision.

It would appear desirable that where the address of a Canadian veteran is required for these purposes, a written request be made by an appropriate officer in the Department of the Attorney-General concerned.



E. L. M. Burns,
Deputy Minister.

ORIGINAL DAMAGED

SEC

Ottawa, July 28, 1950

Dear Mr. Robertson,

2 I am attaching for your information a copy of my letter of July 7 to Mr. Stein and a copy of his reply of July 14 on channels of communication with the provincial authorities.

If the general problem of the channel of communication with the provinces is referred to a committee of Cabinet, would you kindly take note that we are interested in Maintenance Order cases and Extradition cases.

I understand that Mr. Gordon Robertson will inform the Legal Division by telephone of any developments.

Yours sincerely,

LEON MAYRAND

J. Acting Under-Secretary

N. A. Robertson, Esq.,
Secretary to the Cabinet,
Privy Council Office,
OTTAWA, Ontario.

Legal/J.P. Erichsen-Brown/MR/d
File No. 7633-40

37 72

BEST AVAILABLE COPY

SECRET

Ottawa, July 28, 1950

Dear Mr. Stein,

I thank you for your letter of July 14, "Re: Federal-Provincial Relations", in which you confirmed that you have under consideration the procedure for consulting the provinces, including the two types of cases in which we are particularly interested, namely: Maintenance Order cases and Extradition cases.

I take it that if this subject should not be referred to the Committee of Cabinet on Constitutional Amendments, as you suggested might be possible, you will inform me of any alternative course which may be adopted. I have written to the Secretary to the Cabinet along the lines suggested by you.

Yours sincerely,

LEON MAYRAND

f. Acting Under-Secretary

Charles Stein, Esq., K.C.,
Under-Secretary of State,
Department of the Secretary of State,
OTTAWA, Ontario.

BEST AVAILABLE COPY

Legal/A.J. Pick/dl
File No. 7633-40

July 26, 1950

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MEMORANDUM FOR MR. MAYRAND

As requested in your marginal
note on our memorandum of July 21, I have
had retyped the letter to Mr. Stein and
have redrafted slightly the letter to
Mr. Robertson. I assume that you will
sign these.

A.J. Pick
Legal Division

ALL CORRESPONDENCE TO BE ADDRESSED:-
THE COMMISSIONER
R.C.M. POLICE
OTTAWA



7633-40
37 71

ROYAL CANADIAN MOUNTED POLICE
OFFICE OF THE COMMISSIONER
OTTAWA

REF. NO. C 11-1-84
Your Ref: 7633-40

July 25, 1950.

To Mr. Rogers

The Under-Secretary of State
for External Affairs,
OTTAWA, Ontario.

*This is
very helpful
JPP*

Re: Reciprocal Arrangements for
Enforcement of Maintenance
Orders.

Your letter dated July 18, 1950, enclosing copy of letter to the Deputy Minister, Department of Veterans Affairs, is acknowledged. There is no objection to the suggestions made in paragraph 17 of your letter to the Deputy Minister, Department of Veterans Affairs, but the following comments are made.

2. The statement that this Force asks the permission of the person enquired for before his whereabouts is disclosed is correct only when the enquiry is for a missing person as distinguished from one who is wanted for some judicial process. In the latter case we have always disclosed the whereabouts of the wanted person to the Court or police force wishing to locate him, so, accordingly, the proposals advanced by you will not conflict with our present policy as the persons wanted are being sought for judicial proceedings.

.....2.

EXTERNAL AFFAIRS
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H.Q. File No: C 11-1-84
Your Ref: 7633-40

3. It is understood that all that will be required from this Force is a check of records supplied by other Departments in the Canadian Government, including the Department of Veterans Affairs and the Unemployment Insurance Commission, and thereafter making such local enquiries as may be indicated in an effort to locate the wanted person. If the person is located, we would then advise you of his whereabouts and you in turn would pass this information on to the Provincial Attorney-General or Court which was endeavouring to locate him.

4. We will anticipate hearing from you again in this connection when arrangements have been finalized.


for COMMISSIONER.

Legal/J. P. Erichsen-Brown/MR
File No. 7633-40

J. P. Erichsen-Brown

July 21, 1950

7633-40
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MEMORANDUM FOR THE UNDER-SECRETARY

Attention: MR. MAYRAND

I would invite your attention to Mr. Stein's reply to the letter which you signed on behalf of the Under-Secretary suggesting that the Department of State, when reviewing the general question of the channel of communication with the provinces, should take into account two specific cases in which we are interested, namely: Maintenance Orders and Extradition cases.

2. I have spoken to Mr. Gordon Robertson in the Privy Council Office, who is secretary of the Committee of Cabinet on Constitutional Amendments. He doubts if questions concerning the channel of communication should properly be referred to this committee. He suggested that we might formally notify him, as suggested by Mr. Stein, and also that we protect ourselves when replying to Mr. Stein so as to put the onus on him to further notify us if these matters are not, in fact, referred to this committee.

2

3. I am accordingly drafting letters for your signature, if you agree, to the Clerk of the Privy Council and Mr. Stein, in the sense of the foregoing.

Mr. Pich: As Mr. Heaney will be absent until August 11, I should be more happy if the letters were prepared in the name of the Acting U.S. C.A.

C. J. Pich
Legal Division

On the same occasion, you might indicate in the first paragraph of the letter to Mr. Robertson the nature of the matter under reference.

25.7.14 (US) LEE July 25.



CANADA

DEPARTMENT OF VETERANS AFFAIRS

OFFICE OF THE DEPUTY MINISTER
OTTAWA

July 21, 1950.

Under-Secretary of State
for External Affairs,
Department of External Affairs,
OTTAWA, Ont.

Attention: Mr. A. J. Pick

Re: Reciprocal Arrangements for Enforcement
of Maintenance Orders

Your letter of 14th July has been received. The question raised is quite a complicated one and affects several aspects of the policy of this Department. It will be put under study at once and I hope to let you have our views in a short time.

E. L. M. Burns

E. L. M. Burns,
Deputy Minister.

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release of name and
address to police*

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Legal/F.B. Roger/dl
File No. 7633-40

S E C R E T

July 19, 1950

~~Page 4~~
MEMORANDUM FOR MR. ERICHSEN-BROWN - *RES*

The attached letter of July 14 was received from Mr. Stein, the Under-Secretary of State, in reply to our recent letter making certain suggestions for speeding up the transmission of documents for Maintenance Order cases. I am not familiar with the Order-in-Council referred to in this letter but, if you think it advisable, I shall try to get some further information.

FBR
F. B. Roger

Legal/FB Roger/jdc

7633 - 40

37 37

Ottawa, July 18, 1950

Please refer to our
file 7633-40

To: The Commissioner,
Royal Canadian Mounted Police,
Justice Building,
Ottawa.

Re: Reciprocal Arrangements for Enforcement
of Maintenance Orders

I attach a copy of a letter dated July 14 addressed to the Deputy Minister of the Department of Veterans Affairs concerning the problem of obtaining information respecting the location of defendants in these cases. I have forwarded a copy to the Chairman, Unemployment Insurance Commission.

I would appreciate receiving your comments upon the proposals in this letter. I would also be glad to know, if in your view it is either necessary or desirable, to give any undertaking to husbands not to disclose their whereabouts in such cases.

for de
A.J. PICK

Under-Secretary of State
for External Affairs.

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SECRET

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DEPARTMENT OF THE SECRETARY OF STATE
OF CANADA

Ottawa, July 14, 1950.

Attention: Mr. L. Mayrand

Dear Mr. Heeney:

Re: Federal-Provincial relations

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[Handwritten initials and signature over the form]

17 JUL 1950

In reply to your letter of the 7th instant I may say that I have had under consideration for some time the above-noted subject, and more precisely, the possibility and advisability of better defining or determining the role of this Department in that field, and that I am now preparing some material on the subject, in the light of the minutes of the Cabinet meeting of the 28th ultimo and of Order in Council P.C. 3252 of the 5th instant, which governs the procedure for consulting the provinces in connection with International Labour Organization conventions and recommendations.

I have made due note of the information, and views set out in your letter and I am taking them into account in the preparation of recommendations to my Minister and Cabinet.

There is a possibility of this subject being discussed about the middle of next month, perhaps by the Committee of Cabinet on Constitutional Amendments and its advisers. I suggest that you ask the Clerk of the Privy Council to notify you of any such discussion and to give you an opportunity of being represented.

Yours very truly,

[Handwritten signature of C. Stein]

C. Stein,
Under Secretary of State.

A. D. P. Heeney, Esq.,
Under-Secretary of State
for External Affairs,
O t t a w a .

Copy on
7633-FW-40

ORIGINAL DAMAGED

Ottawa, July 14, 1950

To: The Deputy Minister,
Department of Veterans Affairs,
Ottawa.

Re: Reciprocal Arrangements for Enforcement
of Maintenance Orders.

I would appreciate an expression of your views concerning the cooperation which might be afforded to other Commonwealth governments, particularly that of the United Kingdom, in the location of husbands for the purpose of enforcement of maintenance orders.

2. As you are no doubt aware, five Provinces of Canada (B.C., Alta., Sask., Man. and Ont.) have now, by legislation, provided for the enforcement in Canada of maintenance orders. This legislation is modelled on the United Kingdom Act passed in the early 20's, which has also formed the basis of similar legislation in other Commonwealth countries. The scheme of the legislation is that the wife can apply to the jurisdiction in which she resides for a provisional order. This order is made upon hearing her side of the case only and a copy of the order, together with supporting exhibits such as marriage, birth certificates, relevant correspondence etc., as well as a transcript of her testimony, is forwarded to the jurisdiction in which the husband resides. The husband is then summonsed by a local court. The wife's testimony and exhibits are read and the husband then has an opportunity of giving his own testimony. The court may confirm, vary or deny the provisional order having regard to all the

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circumstances including such legal grounds as desertion by the wife, invalidity of marriage, divorce, etc. If the husband raises issues which have not been covered by the wife in her test, the case is frequently referred back to the original jurisdiction for the taking of further evidence.

3. The essential feature of the system is that it enables an order to be obtained and enforced at the suit of a wife who is in another jurisdiction upon a complete investigation of the facts by two courts in cooperation, in place of one court. Claims of this sort can seldom be enforced in the absence of such legislation, as the wife would be obliged to sue the husband in the jurisdiction in which he resides - engaging solicitors in both jurisdictions at such an expense that the cost of action would in fact be prohibitive. Moreover actions for alimony or maintenance are notoriously difficult to enforce in the absence of something in the nature of a police power. By this I mean the power of a magistrate to order payments under penalty of a subsequent show cause application and possible committal for contempt of court.

4. A majority of provisional orders of which confirmation and enforcement in Canada is sought by other Commonwealth governments originate in the United Kingdom, and a large portion of these cases are an aftermath of the war and concern Canadian veterans who married during the war.

5. These provisional orders are forwarded to us by Commonwealth Relations Office and transmitted through the Lieutenant-Governors to the Provincial Attorneys-General, who instruct the appropriate officials in local courts to summons the defendant, the wife's case being presented to the court without legal aid.

by officials of the [REDACTED]

6. We have hitherto of transmitting the relevant data to provincial authorities and leaving anything necessary to locate the defendant. Sufficient information as to his address was not given if it should turn out that, unknown to the wife, he had changed his address. As a result of certain cases which have come to our attention, we have concluded that some reconsideration should be given to the general question of what degree of cooperation should be offered by the Canadian Government in locating missing husbands.

7. Before dealing specifically with the issues involved, I should point out that this department for a number of years has endeavoured to comply with requests of foreign and commonwealth governments to locate persons in Canada for various reasons. Enquiries have generally been made through the R.C.M. Police whose practice has been, upon locating the individual to ask him whether he objected to his whereabouts being disclosed. The question remains, however, as to whether a husband should be so protected when it is known that the enquirer is a wife who is endeavouring to locate him.

8. We have at hand a report received through the Lieutenant-Governor of British Columbia by the Clerk of the Juvenile and Family Court at Vancouver which reads as follows:

" We wish to advise that we have been unable to locate Mr. Oscar Carlson at either address given, or through the Unemployment Insurance Commission.

The Department of Veterans' Affairs is endeavouring to locate his present whereabouts and have a

that we are and
with him. However,
under a recent direct
to give out a man's ad
of maintenance action wi

9. You can appreciate
embarrassed in quoting this report in
which it has been given to the Commonwea
Office. The broad policy on which the legi
has been framed is that the governments woul
operate for the assistance of wives and child
such cases. Moreover, the disclosure of the
abouts of a husband would not have to be attr
to any specific source and would not wreak any
injustice upon the husband since the legislation
fully protects him and leaves the merits to the
which is the proper authority to resolve the issue
We deduce from the text of the letter quoted above
that your practice is to inform the defendant the
information is sought but presumably to refuse to give
the address without his consent. We are under the
impression that your department and its predecessors
have sought to protect Canadian veterans from actions
by wives for a great number of years - going back at
least to the First World War. We are not clear, how-
ever, as to whether your policy has been reviewed hav
regard to the new legislation enacted since the last
war, which reflects a changed attitude on the part of
the provincial governments concerned toward the
problem of assisting a wife and frequently young
to recover from a defaulting husband.

10. All of these cases pass through our
department and we have been impressed with the fact
firstly, that the great majority of applications ori
in England are by wives who apply alst on behalf of
children - so far as we can judge,
dent in England, without children

the procedure - there are exceptions, of course, but they seem to be comparatively rare. Secondly, that the majority of provisional orders which are considered by Canadian judges and magistrates in the presence of the husband and after hearing his evidence, are confirmed. In other words, the claims of the dependents are generally meritorious.

11. It appears to be anomalous that a husband who has evaded process by the simple expedient of changing his address should be able to prevent a court from passing on the merits of the claim of his wife and children by requesting an officer who might succeed in locating him not to disclose his whereabouts.

12. Our departmental concern is, of course, solely that of our good relations with other commonwealth governments. We have generally favoured a united front where the attitude of Canadian authorities towards problems of concern to other states are concerned. As you know, the Canadian state acts as a unit in international law and no state can plead its constitution or the independent position of its political subdivisions. It is true that the reciprocal enforcement of maintenance orders is not based upon convention but rather upon a pattern of simultaneous legislation and it is equally true that other commonwealth governments appreciate our constitutional position and the fact that such responsibility is assumed by the state for deserted wives and children is assumed at the provincial level. Nevertheless, implementation on the provincial level is a matter of arrangements are made by us. For instance, only recently completed arrangements between Canadian provinces and several states in the Isle of Man for the reciprocal enforcement of orders.

13. We would suggest that commitments where the domestic provincial legislation, it

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Canadian Government to cooperate in any way possible in furthering the objectives of the provincial legislation.

14. It might be suggested that the objective of such legislation was solely to provide a means of enforcement to a wife who would furnish the address of her husband at which he could be served. This is, in a sense, technically correct but we doubt if it is fundamentally so. It is impossible to consider the broad pattern of legislation administered by welfare authorities throughout the commonwealth without realizing that commonwealth states have gone much further in assisting wives and children than in the case of any ordinary private litigant. The fact that the responsibility of acting for a wife in Canadian courts devolves upon the Crown is itself evidence of this fact. The broad purpose appears to have been to eliminate the wife's difficulties attributable to the fact that she resides in another jurisdiction.

15. In any appraisal of the degree of co-operation which might be expected of departments of the Canadian Government, the federal legislation, Sec. 242 ss.(3) and (4) of the Criminal Code, may be of some relevancy.

16. Of some relevancy also is the fact that the R.C.M. Police act as the local provincial police in all of the provinces having such reciprocal legislation with the exception of Ontario. Any request of the R.C.M. Police for information to assist in locating an individual might therefore be regarded in a sense as emanating from the provincial authorities.

17. In conclusion, we would suggest for consideration the following procedures:

- (a) Any requests made to External and other commonwealth governments

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in tracing husbands will be referred solely to the Commissioner, R.C.M. Police;

- (b) Any report that a husband has left Province A which was asked to confirm a maintenance order, and has gone to Province B, will be reported to Commonwealth Relations Office, together with any information as to the new address or the fact of such information being lacking as the case may be;
- (c) Any request for assistance in tracing a husband in the province to which he is reported to have gone will be dealt with as in (a). This department will take no initiative, either by inviting such request or otherwise, but will leave it to the commonwealth government concerned to make such request on behalf of the wife;
- (d) In any case where the purpose of the enquiry is to enable the question of the husband's liability to be referred to the competent local court (in which the husband is fully protected as to the merits) the R.C.M.P. investigating officer will not consult the husband as to his willingness to have his whereabouts disclosed;
- (e) Any department in the Canadian Government, including the Department of Veterans' Affairs and the Unemployment Insurance Commission, will give any information in their possession where such purpose is disclosed, but solely to the R.C.M.P.;
- (f) The source of the information will remain confidential, on the files of the R.C.M.P., and will not be disclosed either to the Department of External Affairs or to any provincial authorities.

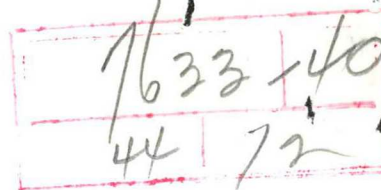
18. I am sending a copy of this letter to the Commissioner, R.C.M. Police and to the Chairman, Unemployment Insurance Commission, and I am also inviting their comments upon these suggestions.

Yours sincerely,

A.J. PICK

for the
Under-Secretary of State
for External Affairs

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SECRET

Ottawa, July 7, 1950

Dear Mr. Stein:

My attention has been directed to the minutes of a Cabinet meeting of June 28 from which I note that you may be concerned with the general question of the channel of communication between federal and provincial governments.

I think it might be useful if communications in connection with the reciprocal enforcement of Maintenance Orders were sent directly by this Department to the Provincial Attorneys-General. The High Commissioner for the United Kingdom recently left with us an aide-memoire in the following words:

" English courts have represented that in certain instances they have received maintenance order payments from Canadian courts considerably earlier than they have received the official notification of confirmation of the order. It is appreciated that the formalities in connection with the confirmation of orders must necessarily take some time, but it would be helpful if the Canadian authorities could consider whether when a Canadian court makes a first payment under an order the English court could at the same time be given all relevant information about the order. "

Charles Stein, Esq.,
Under-Secretary of State,
Department of the Secretary of State,
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We are inclined to question whether it is practical to request courts to report the action taken directly to an English court in some cases and not in others. The remedy rather appears to be in expediting the delivery of information through official channels.

You will recollect that we have also been concerned with the procedure in Extradition cases. Mr. O'Meara attended a meeting in this connection some weeks ago and we subsequently sent a memorandum to the Department of Justice containing a recommendation that the Department of Justice should act as the channel of communication with the Provincial Attorneys-General. The chief reason for this is that the Department of Justice has to advise in any event on the sufficiency of the evidence adduced to warrant action in Canada under the Extradition Act and Treaties. There are also certain procedures in Extradition cases which have to be handled urgently.

I would appreciate it if, when considering the general problem, you would at the same time review the position in connection with these two matters.

Yours sincerely,

LEON MAYRAND

J A.D.P. Heeney

Legal/J. P. Erichsen-Brown/MR
File No. 7633-40

July 5, 1950

MEMORANDUM FOR THE UNDER-SECRETARY

Re: Channel of Communication
with Provinces

I would invite your attention to the annexed Minutes of a Cabinet Meeting of June 28.

2. It appears to me that it might be useful if we were to write to Mr. Stein in connection with the channel of communication in regard to

(a) the enforcement of Maintenance Orders, and

(b) Extradition cases.

3. I am annexing a letter to Mr. Stein for your signature if you agree.

J. P. Erichsen-Brown
Legal Division

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