

7633-40

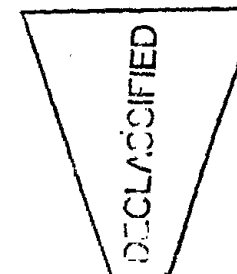
Vol 2 FP

File Pocket
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| J. Sharp | 4/12/87 |



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40

Have in Jack

DECLASSIFIED

ACCESS TO INFORMATION
L'ACCES A L'INFORMATION
EXAMINED BY / EXAMINE PAR:
J. Sharpe
DATE / DATE:
4/12/87

External Affairs Department
Ottawa.

*file this
copy on
7633-40C
J29*

Ottawa, November 12, 1949.

No. 217

*original
on file
7633-40C*

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| 7633 - | 40 |
| 51 | 51 |

Sir,

I have the honour to refer to my Despatch to you No. 114 dated July 4, 1949 concerning the Maintenance Order case of [redacted] against her husband [redacted]

s.19(1)

2. I enclose, herewith, copy of a Judgment issued by His Honour Judge Shandley dated 14 October, 1949 in connection with this case which has been forwarded to me by the Provincial authorities in British Columbia.

3. In transmitting the copy of the Judgment, the Deputy Attorney General for British Columbia observes -

..... "that there does not seem to be any further action possible to take to have the case reviewed by a Higher Court. Section 6 (6) of the above case gives a right of Appeal but only to the person bound by the Order where the Order has been confirmed, and there is no corresponding right of Appeal by the complainant on the refusal to confirm the Order."

4. I have been further advised by the Deputy Attorney General that an amendment of the Act is proposed for the next Session of the Legislature to consider, which will provide for a Right of Appeal by either party.

I have the honour

Sir,

Your obedient servant

Secretary of State
for External Affairs.

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

Mr. Natt:

Please see flagged letters
concerning an enquiry re the laws
of Canada relating to enforcement
of maintenance of German children.

M. Hawkins

The German request
of 1953 having been
pursued it would be
no more appropriate for
us to approach them
concerning reciprocal enforcement
of maintenance orders than
it would be for us to do
likewise in the case of
every foreign country
represented in Ottawa. (over)

00032

The initiative
really sets us off
as the foreign group is
by the provincial govt.
There has just been a general
convention organized in
New York. Something
may come of it which
will enable us
to take the question
of border arrangements
to the President
EJW

ROUTING SLIP

DATE
SECURITY

TO:

7633-8
Tom Daly -40

FROM:

Marv Hawkins

☐ 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)

May we have a new file made up titled

"Maintenance of children in Germany by German nationals resident in Canada"

00032

6

DEPARTMENT OF EXTERNAL AFFAIRS

ROUTING SLIP

DATE 15/2/56
SECURITY

TO:

Mr. M. Hawkins

FROM: Tom Daly

☐ 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)*

I think Mr Sicotte meant this to be returned to you.

In this connection I would add that we have very little space here and therefore I am quite anxious to send as many of these files to dormant as possible. Many of the Maintenance cases have had no correspondence since 1947.

00032

DEPARTMENT OF EXTERNAL AFFAIRS

ROUTINE SLIP

DATE 23/1/56
SECURITY

TO:

Mr. ~~Sicotte~~

FROM:

Tom Daly

☐ 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)

Some time ago Mr. Hawkins separated the following correspondence from the General Policy file on Maintenance Orders. At the time Mr. Charrette and I were unwilling to open a new file until something further developed of a more concrete nature. If you do wish to have a new file opened in the series there ~~are one or two~~ points-I would like to discuss with you.

Let's discuss first

00032

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO:.....THE CANADIAN EMBASSY.....
.....BONN, GERMANY.....

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

Reference: Your letter No. 418 of May 11, 1955.

Subject:..Inquiries by Wives in Germany for....
.....Support by Canadian Citizens.....
.....

Security:..UNCLASSIFIED.....
No:.....L- 341.....
Date:.....May 27, 1955.....
Enclosures:.....1.....
Air or Surface Mail:.....Air.....
Post File No:.....

| | |
|-----------------|-----|
| Ottawa File No. | |
| 7633-40 | |
| 16 | 100 |

References

It is not open to the Canadian authorities to coerce residents of Canada into maintaining their wives or children in foreign countries. As you know, most Canadian provinces have entered into agreements with Commonwealth countries for the reciprocal enforcement of maintenance orders, but such arrangements have not been made with countries other than those of the Commonwealth.

2. In addition to informing inquirers that their problem is of a private legal nature, you should inform them of the procedure outlined in paragraph 2 of the attached circular document No. B-10/54 of February 19, 1954, which provides the necessary guidance to our missions abroad on these matters.

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

FROM: Canadian Embassy, Bonn, Germany

Reference: *file*

Subject: Inquiries by wives in Germany for
support by Canadian citizens.

Security: ...Unclassified.....

No:418.....

Date: ...May 11, 1955.....

Enclosures:

Air or Surface Mail:

Post File No:

Ottawa File No.

7633-40

16 26

References

Enclosed is a copy of a letter received from Mrs. [REDACTED]. This letter is a sample of many received at this mission from wives who find themselves in poor circumstances through non-support by Canadian husbands who have returned to Canada.

s.19(1)

I should appreciate advice as to whether the Canadian authorities would contact the Canadian parties in such cases. The only advice we have given in the past is that this is a personal matter which should be conducted through civil law channels.

W. Stewart
The Embassy.

Internal
Circulation

Distribution
to Posts

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

1955 MAY 16 21 3 : 24

000331

COPY

From: Mrs. [REDACTED]

To:
British Resident
Dortmund.

15 April 1955

s.19(1)

Since Feb 1954 my husband, [REDACTED] is living in Toronto, Canada. Up to that time we lived in Glasgow. My daughter Sylvia (5 years) and I returned in July 1954 to my mother in Germany. It was not possible for me to follow my husband as 2 days before my return to Germany, I received the information that my lungs are not in order. In Germany I saw immediately a doctor. Since Feb I neither receive money nor mail from my husband. I receive no answer to my letters. For two months I have now borrowed the money for my child and myself to live. Furthermore I have a bill from the doctor which I cannot pay. I don't know how to go on and ask for your kind help. My passport number is [REDACTED].
The last address of my husband was Mr. [REDACTED]

Respectfully,

(Signature).

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE CANADIAN LEGASSY
COLOGNE, GERMANY

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

Reference: My Letter L611 of October 1, 1953.

Subject: Maintenance of children abroad by
immigrant fathers

Security: UNCLASSIFIED

No: L 99

Date: February 6, 1954

Enclosures:

Air or Surface Mail:

Post File No:

Ottawa File No.
7633-40

16 24

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.

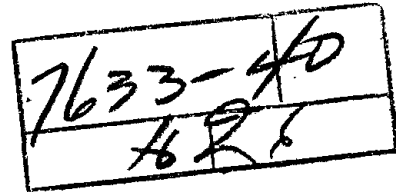
K. J. BURBRIDGE

FOR THE

Acting Under-Secretary of State
for External Affairs.

Internal
Circulation

Distribution
to Posts



No. 729

The Department of External Affairs presents its compliments to the Embassy of Germany and has the honour to refer to the Department's memorandum of November 12th, 1953, concerning the maintenance of children in Germany whose fathers have immigrated to Canada.

The provincial authorities were asked for their opinions as to whether an undertaking to support a child without the jurisdiction of the provincial courts would be enforceable in those courts. All the provinces and territories have now replied and a summary of the opinions of the provincial authorities is enclosed. This summary is a compilation of opinions only since the law on the precise point has not been decided yet by the courts.

K. J. BURBRIDGE

OTTAWA, February 8, 1954

NOV. 12/53

Feb/53

MEMORANDUM

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The maintenance of children is a matter for Provincial legislation and not one in which the Federal Government can take more than an informal interest. For this reason, there are no formal arrangements at the Federal level for the taking of a declaration of responsibility to maintain a child from an immigrant father who has left the child abroad.

There is, however, an informal scheme whereby undertakings to maintain a child are taken from immigrant fathers by voluntary agencies. To start this procedure in motion, a welfare agency abroad, which is aware that a child is not being maintained by an immigrant father, gets in touch with the International Social Service, which has its headquarters in Geneva and branches in most European countries. The International Social Service sends the details of the case through its branch in the United States of America to the Canadian Welfare Council in Ottawa, a voluntary centralizing agency. The Canadian Welfare Council considers the case and sends it to the voluntary agency in whose district the father lives. A social worker from the agency then interviews the father and, if possible, obtains his signed undertaking to maintain his child at a rate relative to his income and arranges to collect his payments.

Whether these undertakings can be enforced in a court depends upon Provincial laws. The appropriate Provincial authorities have been asked whether such a procedure would be possible under existing laws. When answers have been received from them, the Embassy shall be informed.

*Original given to
Dr. Hester (Canadian Embassy)
17-11-53
[Signature]*

Ottawa, November 12, 1953.

File No. 7633-40

49 26

Ottawa, November 3, 1953

The Under-Secretary of State,
Department of the Secretary of State,
O t t a w a .

Voluntary Undertakings by Immigrant
Fathers to Provide for Children Abroad

This Department has been asked by the Embassy of the Federal Republic of Germany to ascertain whether a voluntary undertaking made in Canada by an immigrant father to support his children in Germany, both legitimate and illegitimate, could be enforced in the courts of Canada.

I should appreciate it if you would make inquiries of the appropriate Provincial authorities to determine the Provincial law in regard to this point.

GILLES SICOTTE

Under-Secretary of State
for External Affairs

MH/M

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

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PLEASE REFER TO
OUR FILE.....403-2-30

Ottawa, January 21, 1954.

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

Re: Voluntary Undertakings by Immigrant
Fathers to Provide for Children Abroad

Dear Sir,

With further reference to your letter of November 3
on the above subject, your file No. 7633-40, I now enclose three copies
of the replies received from the Provinces of Saskatchewan and Alberta,
together with the enclosures referred to in the despatch from Alberta.

Yours very truly,

Ph. Thibault
Ph. Thibault
Director, Information Division.

26 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 26

PM

1:23
000338

OFFICE OF THE LIEUTENANT GOVERNOR
Legislative Building
Edmonton, Alberta.

January 18th, 1954.

The Honourable,
The Secretary of State,
Ottawa, Ontario.

Sir:

Re: Voluntary Undertaking by Immigrant Fathers to
Provide for Children Abroad.

I have the honour to refer you to my letter dated
December 30th, 1953, and to advise that the following information has
been received:-

"I have the honour to refer to your letters quoting
despatches from the Secretary of State in the matter of an enquiry from
the Embassy of the Federal Republic of Germany as to whether a voluntary
undertaking made in Canada by an immigrant father to support his children
in Germany, both legitimate and illegitimate, could be enforced in the
courts of Canada.

This matter was referred to the Attorney General's
Department for an opinion, and I am enclosing three copies of the memorandum
received in reply."

I have the honour to be,
Sir,
Your obedient servant,

(Sgd) John J. Bowlen
Lieutenant Governor of the Province
of Alberta.



MEMORANDUM

Attorney General's Department OUR FILE NO. 15 B

YOUR FILE NO.

FROM Eileen MacLean Yates,
Solicitor.

TO R.A. Andison, Esq.,
Clerk of the Executive Council,
302 Legislative Building.

Date January 13th, 1954.

Re: Voluntary Undertaking by Immigrant Fathers
to Provide for Children Abroad

Your memorandum of November 16th, 1953, has been passed to me for my attention and direct reply. Your memorandum appears to contain two problems set out hereunder as follows:

- (a) Whether a voluntary undertaking in writing executed in Alberta by a putative father to support an illegitimate child born in Germany to a mother of German domicile is enforceable in the Courts of Alberta;
- (b) Whether a voluntary undertaking in writing made in Alberta by a father to support his legitimate children born in Germany to a mother of German domicile is enforceable in the Courts of Alberta.

With respect to Problem (a).

I am of the opinion

- (a) That the voluntary undertaking cannot form the basis of such an action but could serve as corroborative evidence;
- (b) that an action cannot be brought in Alberta to obtain support for an illegitimate child born to a mother of foreign domicile. Where a child is born of a foreign mother who has a foreign domicile at the date of the birth of the child the Alberta Court has no jurisdiction to make a paternity order under The Child Welfare Act, being chapter 8 of the Statutes of Alberta, 1944.

- 2 -

See R. v. Blane, 13 Q.B. 772
Tetau v. O'Dea, 1950, 2 A.E.R. 695

It might be that an action could be brought in Germany for an order declaring paternity, etc., but if the Courts of Germany should require evidence of the putative father relating to paternity some difficulty may be faced in obtaining that evidence since the putative father by virtue of The Alberta Evidence Act cannot be compelled to give such evidence. If evidence of the putative father is not necessary to the order of the Court of Germany, the problem then arises as to the enforcement of the order in Alberta. There being no statutory provisions for the reciprocal enforcement of judgments between Canada and Germany, and no treaty, it appears to me that it would be necessary to resort to common law and bring an action on the judgment obtained in Germany. From the case law it seems that in such an action the following must be established to the satisfaction of our Alberta Courts:

- (1) Jurisdiction of the foreign Court;
- (2) That the order of the foreign Court is a final Order.

With respect to Problem (b).

I am of the opinion

- (a) that the voluntary undertaking cannot form the basis of such an action but could serve as corroborative evidence;
- (b) that an action cannot be brought in Alberta for a maintenance order under The Maintenance Order Act, being chapter 135 of the Revised Statutes of Alberta, 1942, to obtain support for a legitimate child in Germany unless the person entitled to maintenance brings herself within the jurisdiction of the Alberta courts. If an action for maintenance can be brought into the Courts of Germany and a judgment can be obtained, there being no agreement between Canada and Germany for the reciprocal enforcement of judgments it would not be possible to have the order of the Court of Germany registered or confirmed here but an action might be brought in Alberta on the judgment obtained in Germany providing

- (1) The Court of Germany had jurisdiction;
- (2) The order of the German Court is a final order.

(SIGNED) EILEEN MacLEAN YATES



MEMORANDUM

FROM

To

OUR FILE NO.

YOUR FILE NO.

Date

O
P
Y

LIEUTENANT GOVERNOR'S OFFICE
HOTEL SASKATCHEWAN
REGINA, SASK.

January 6th, 1954.

Sir;

I have the honour to acknowledge your despatch of November 12th re: file 403-2-20 MH/M advising that the Embassy of the Federal Republic of Germany has inquired regarding Voluntary Undertakings by Immigrant Fathers to provide for children abroad.

I have the honour to advise that on this subject an official of my Government has reported as follows:

"the Federal Republic of Germany is not a reciprocating state within the meaning of The Maintenance Orders (Facilities for Enforcement) Act being chapter 22, Statutes of Saskatchewan, 1946, and amendments thereto, for the purpose of reciprocal enforcement of Maintenance Orders made in either jurisdiction. Even if such reciprocal arrangements were in effect a voluntary undertaking given by a father in this jurisdiction to support his children abroad would not by itself be enforceable in our courts but would only be, depending on the nature of same, a matter of evidence in establishing liability."

I have the honour to be,

Sir,

Your obedient servant,

(signed) W.J. Patterson

Lieutenant Governor of Saskatchewan.

The Honourable,
The Secretary of State,
OTTAWA, Ontario.
C A N A D A.

DRAFT CIRCULAR DOCUMENT

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 children, both legitimate and illegitimate, that he has abandoned in his country of origin. Because the matter is one of provincial concern, the Federal Government can, of course, do little if anything to assist these children; the pertinent sections in the Criminal Code depend upon provincial law.

*Till
QW*
Practically speaking, the best solution to the problem seems to be to refer the person seeking your 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 his contributions.

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.

MH/M

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

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PLEASE REFER TO
OUR FILE.....

403-2-30

4

Ottawa, December 16, 1953.

The Under Secretary of State
for External Affairs,
Ottawa.

Re: Voluntary Undertakings by Immigrant Fathers
to Provide for Children Abroad.

Dear Sir,

With further reference to your letter of November 3 on the above subject, your file No. 7633-40, I now enclose three copies of the replies received from the Provinces of Quebec and Manitoba.

Yours very truly,

Ph. Thibault
Ph. Thibault
Director, Information Division.

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18 DEC 1953

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1953 DEC 18 AM 10:29

GOVERNMENT HOUSE
WINNIPEG

December 8th, 1953.

Your file: 403-2-20

Mr. Charles Stein, Q.C.,
Under Secretary of State,
Department of the Secretary of State,
Ottawa, Ontario.

Dear Mr. Stein:

Re: Voluntary Undertakings by Immigrant Fathers to
Provide for Children Abroad.

Please refer to your letter of November 12th regarding an enquiry received from the Embassy of the Federal Republic of Germany as to whether a voluntary undertaking made in Canada by an immigrant father to support his children in Germany, both legitimate and illegitimate, could be enforced in the courts of Canada.

I have received information from the Honourable the Attorney-General as follows:

"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 made between the father and some person or agency in Manitoba for the payment of a specified sum it will be enforceable.

"If the person or agency with whom the contract is made is located elsewhere than in Manitoba or the contract is not for a specific sum or is not made in Manitoba the question of enforcement will depend upon the form and nature of it."

I trust this is the information that is required.

Yours very truly,

(Sgd) J.S.McDiarmid
Lieutenant-Governor.

Province de Québec
HOTEL DU GOUVERNEMENT

Québec le 9 décembre 1953.

Monsieur,

Pour faire suite à votre dépêche du dix-sept novembre dernier, relative à une demande de la République française à l'effet de savoir si les tribunaux du Canada pourraient faire respecter un engagement pris volontairement au Canada par un père immigrant pour soutenir en Allemagne ses enfants légitimes et illégitimes, j'ai l'honneur de vous informer que mon Procureur général désire signaler à l'attention des intéressés les dispositions de l'article 6 du Code civil de la province de Québec lesquelles se lisent comme suit:

6. "Les lois du Bas Canada régissent les biens immeubles qui y sont situés.

Les biens meubles sont régis par la loi du domicile du propriétaire. C'est cependant la loi du Bas Canada qu'on leur applique dans le cas où il s'agit de la distinction et de la nature des biens, des privilèges et des droits de gage, des contestations sur la possession, de la juridiction des tribunaux, de la procédure, des voies d'exécution et de saisie, de ce qui intéresse l'ordre public et les droits du souverain,

L'honorable Secrétaire d'Etat,

Edifices du Parlement,

OTTAWA, Ontario.

Province de Québec
HOTEL DU GOUVERNEMENT

ainsi que dans tous les autres cas
spécialement prévus par ce code.

Les lois du Bas Canada relatives aux personnes
sont applicables à tous ceux qui s'y trouvent,
même à ceux qui n'y sont pas domiciliés; sauf,
quant à ces derniers, l'exception mentionnée ; à
la fin du présent article.

L'habitant du Bas Canada, tant qu'il y conserve
son domicile, est régi, même lorsqu'il en est
absent, par les lois qui règlent l'état et la
capacité des personnes; mais elles ne s'appliquent
pas à celui qui n'y est pas domicilié, lequel
y reste soumis à la loi de son pays, quant à
son état et à sa capacité".

Quant au cas concret auquel réfèrent les intéres-
sés, mon Procureur général est d'opinion que ces derniers
pourraient avec avantage le soumettre à un avocat prati-
quant dans la province de Québec, si le débiteur se trou-
ve dans la province de Québec.

J'ai l'honneur d'être,

Monsieur,

Votre tout dévoué,

GASPARD FAUTEUX

Lieutenant-Gouverneur

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

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PLEASE REFER TO

OUR FILE.....403-2-30

Ottawa, December 11, 1953.

The Under Secretary of State
for External Affairs,
Ottawa.

Re: Voluntary Undertakings by Immigrant
Fathers to Provide for Children Abroad.

Dear Sir,

With reference to your letter of November 3 on the above subject, your file No. 7633-40, I now enclose three copies of the replies received in this connection from the Provinces of Ontario, Nova Scotia, New Brunswick, British Columbia, Prince Edward Island and Newfoundland, and from the Yukon Territory and the Northwest Territories, together with the enclosures referred to therein.

Yours very truly,

Ph. Thibault
Director, Information Division.

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10 DEC 1953

1953 DEC 15 PM 2:51

Toronto 2, Ontario,
November 27, 1953.

Sir,

I have the honour to refer to your despatch dated November 10th relative to an enquiry from the Embassy of the Federal Republic of Germany as to whether a voluntary undertaking made in Canada by an immigrant father to support his children in Germany, both legitimate and illegitimate, could be enforced in the courts of Canada.

I am advised by the Department of my Attorney-General that it knows of no basis upon which action could be taken in an Ontario Court to enforce such a voluntary undertaking.

I have the honour to be

Sir,

Your obedient servant,

(Sgd) L.O.Breithaupt
Lieutenant-Governor of Ontario.

The Honourable
The Secretary of State,
OTTAWA, Ontario.

PROVINCIAL SECRETARY
NOVA SCOTIA

Halifax, December 2nd, 1953.

Mr. Ph. Thibault,
Director, Information Division,
Department of Secretary of State,
Ottawa, Ontario.

Dear Sir,

On receipt of your letter of November 12th I made
inquiry at the office of the Attorney General, from whom I have
a reply today.

I enclose a copy of the opinion of the Deputy Attorney
General.

Yours very truly,

(Sgd) C.L. Beazley,
Deputy Provincial Secretary.

Halifax, 27th November, 1953

Mr. C. L. Beazley, Q.C.,
Deputy Provincial Secretary,
Halifax, Nova Scotia

Dear Mr. Beazley:

This will acknowledge your letter of the 23rd November respecting an inquiry from the Embassy of the Federal Republic of Germany about enforcement in the courts of Canada of a voluntary undertaking made in Canada by an immigrant father to support his children in Germany. In my opinion, an undertaking of that sort would be enforceable in the ordinary courts of the Province in an action for debt for the recovery of amounts not paid in accordance with the undertaking. Our courts are, of course, open to aliens and to non-residents, but there are some practical difficulties in the way of securing judgments. Normally, the plaintiff in an action commenced in our courts is resident in the Province, and is able to appear personally and with his witnesses to give evidence in support of his claim. If the plaintiff is not resident in the Province and cannot appear and give evidence personally, it is possible that the evidence could be taken outside by a Commissioner appointed for the purpose by the court in which the action is pending. A procedure of this sort necessarily adds additional costs, in the first instance at least, to the burden of the claimant.

In addition to the problem of procuring evidence, the non-resident plaintiff may be faced with an order requiring him to furnish security for costs.

An action on an undertaking to maintain children could relate only to arrears, and would not result in the obtaining of an enforceable order for payment of maintenance in the future. In the result, the claimant would probably have to bring actions from time to time as arrears accrued.

- 2 -

Mr. C. L. Beazley, Q.C.

27/11/53

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 a 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.

Yours very truly,
COPY
John A. Y. MacDonald
Deputy Attorney General

HFM.D

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

1993 DEC 7 AM 3 38

DEPARTMENT OF

LIBRARY 000356

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

November 24th, 1953.

Ph. Thibault, Esq.,
for Under Secretary of State,
West Block,
Ottawa, Ontario.

Re: Voluntary Undertakings by Immigrant
Fathers to Provide for Children Abroad.

Dear Sir:

Referring to your letter of November 12, 1953, file
403-2-20, in connection with the above.

The Attorney General advises me he is unable to give
a definite reply to this enquiry. He considers one would have
to know the exact nature of the "undertaking" and the circumstances
surrounding the giving of the "undertaking". I am sorry it is not
possible to be more definite.

Yours very truly,

(Sgd) D.L.MacLaren, P.C.
Lieutenant-Governor.

The 30th of November, 1953.

At Government House
Victoria, B.C.

Sir,

I have the honour to refer to your despatch, 403-2-30, dated November 12th, 1953, relative to an enquiry received from the Embassy of the Federal Republic of Germany as to whether a voluntary undertaking made in Canada by an immigrant father to support his children in Germany could be enforced in the courts of Canada, and to enclose copy of a letter received from the Department of my Provincial Secretary, together with the documents referred to therein.

I have the honour to be,

Sir,

Your obedient servant.

(Sgd) C. Wallace
Lieutenant-Governor.

The Under Secretary of State,
West Block,
Ottawa 4, Ontario.

November 19th, 1953.

Sir,

Re: Voluntary Undertakings by Immigrant
Fathers to Provide for Children Abroad.

I have the honour to refer to your letter of November 16th and to enclose herewith for onward transmission the three copies of a memorandum from the Deputy Attorney-General.

I have the honour to be,

Sir,

Your obedient servant.



R.A. Pennington,
Deputy Provincial Secretary.

Captain J.G. Cromack,
Secretary,
Government House,
Victoria, B. C.

AT THE COURT AT BUCKINGHAM PALACE,

The 8th day of July, 1927.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY
IN COUNCIL.

WHEREAS by the Maintenance Orders (Facilities for Enforcement) Act, 1920, provision has been made for the enforcement in England and Ireland of maintenance orders made by a Court in any part of His Majesty's Dominions outside the United Kingdom to which the said Act extends :

AND WHEREAS by the said Act it is amongst other things provided 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 extend the said Act to that part, and thereupon that part shall become a part of His Majesty's Dominions to which the said Act extends :

AND WHEREAS on the 6th day of December, 1922, the Irish Free State was established under the provisions of an Act of Parliament shortly entitled the Irish Free State Constitution Act, 1922 (Session 2) :

AND WHEREAS His Majesty is satisfied that the Legislature of the part of His Majesty's Dominions outside the United Kingdom, hereinafter mentioned, has made reciprocal provisions for the enforcement within that part of maintenance orders made by Courts within England and Ireland :

NOW, THEREFORE, His Majesty, by virtue and in exercise of the powers by the above recited Act in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. The Maintenance Orders (Facilities for Enforcement) Act, 1920, shall apply to the part of His Majesty's Dominions outside the United Kingdom hereunder mentioned :—

The Territory for the Seat of Government of the Commonwealth of Australia.

2. Nothing in this Order shall affect the making, registration, confirmation or enforcement in the Irish Free State of any maintenance order as defined in sections 10 and 11 of the said Act.

AND the Right Honourable Leopold Charles Stennett Amery, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

M. P. A. Hankey.

Printed by His MAJESTY'S STATIONERY OFFICE PRESS,
11-17, Hare Street, E.2.

GOVERNMENT HOUSE
CHARLOTTETOWN
PRINCE EDWARD ISLAND.

November 30, 1953.

Mr. Ph. Thibault,
for Under Secretary of State,
Ottawa, Ontario, Canada.

Re: Voluntary Undertakings by Immigrant
Fathers to Provide for Children Abroad.

Sir,

This will acknowledge your communication of November 10th.,
regarding the above matter.

Please be advised that in my opinion such an undertaking
could be so enforced.

Yours sincerely,

(Sgd) T.W.L. Prowse
Lieutenant-Governor.

GOVERNMENT HOUSE,
ST. JOHN'S
NEWFOUNDLAND.

December 4th, 1953.

Sir,

Re: Voluntary Undertakings by Immigrant Fathers
to Provide for Children Abroad.

With further reference to your letter of November 12th on the subject, I am now advised by the Department of the Attorney General that a voluntary promise made in the circumstances referred to would not in itself constitute a cause of action in Newfoundland.

I have the honour to be,
Sir,
Your obedient servant.

(Sgd) Leonard Outerbridge
Lieutenant-Governor.

Ph. Thibault, Esq.,
Department of the Secretary of State,
Ottawa, Ontario.

DEPARTMENT
OF
RESOURCES AND DEVELOPMENT

Whitehorse, Y.T.,
November 18th, 1953.

Your File 403-2-30

Under Secretary of State,
Department of the Secretary of State,
OTTAWA, Ontario.

Dear Sir:

Re: Voluntary Undertakings by Immigrant Fathers
to Provide for Children Abroad.

I have for reply your letter of November 12th, 1953.~
The Yukon Territory has no legislation in force at present with regard
to matters of this nature. An examination was made of the Yukon
"Protection of Children Ordinance" but it does not provide for the
maintenance of children abroad.

It is the opinion of my Legal Adviser that any right of
enforcement of an agreement of this nature in the Yukon Territorial
Court would have to be ascertained by reference to the common law.

Yours truly,

(Sgd) W.G. Brown,
Commissioner.

OFFICE OF THE COMMISSIONER
NORTHWEST TERRITORIES
CANADA.

Ottawa.

3rd December, 1953.

Charles Stein, Esq., Q.C.,
Under Secretary of State,
Department of the Secretary of State,
OTTAWA, Ontario.

Dear Mr. Stein: Attn. Mr. Ph. Thibault

Re: Voluntary Undertaking by Immigrant Fathers
to Provide for Children Abroad

I acknowledge your letter of the 12th of November, 1953, in connection with the inquiry you have received from the Embassy of the Federal Republic of Germany concerning the enforcement in the courts of Canada of a voluntary undertaking made in Canada by an immigrant father to support his children in Germany, both legitimate and illegitimate.

I am advised that there are hardly sufficient details at hand to fully consider the matter, and what while it is believed that enforcement action may be theoretically possible, it is thought that from the practical standpoint the difficulties of proving a claim and supporting an action would be almost insurmountable.

The same general situation existed between the Northwest Territories and the Provinces until reciprocal arrangements were completed for the enforcement of maintenance orders. If the Federal Republic of Germany have an act similar to the Northwest Territories Maintenance Orders (Facilities for Enforcement) Ordinance, copy enclosed, it might be possible for us to enter into reciprocal relations with that state. Action for the support of children might then be taken in Germany and any order obtained would be enforceable in the Northwest Territories.

Yours sincerely,

(Sgd) N.G. Robertson
Commissioner
of the Northwest Territories.

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

- 2 -

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

- 4 -

- 4 -

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.

M 254-6

The Deputy Provincial Secretary,
BUILDINGS.

November 18, 1953.

Re: Voluntary Undertakings by Immigrant
Fathers to Provide for Children Abroad.

Your memorandum of the 17th instant received, with reference to an enquiry from the embassy of the Federal Republic of Germany, in regard to the above matter, and in reply may say that I doubt very much whether a voluntary undertaking, such as the one referred to, could be enforced in the Courts in this Province, but I would not care to express a definite opinion on the point without having particulars as to the undertaking in question. I might add, however, that a Father is under a legal obligation to support his infant children no matter where they are, and failure to do so renders him liable to prosecution. If the children are suffering as a result of his neglect, he is liable to prosecution under the Criminal Code for this offence, for which he can be sent to Gaol.

He is also liable in this Province and in most of the other Provinces in Canada, to support his children under provincial law and, upon complaint being made by any person having the care and custody of the children, an order may be made by a magistrate for the father to pay so much a month towards the support of the children. The difficulty in this matter would be to prove the neglect or non-support of the children as they reside in Germany.

E. Pepler,
Deputy Attorney-General.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO:FOR FILE No. 7633-40.....

Security

FROM: .G.S. Weir.....

DateOctober 29, 1953.....

REFERENCE:

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|---------------------|---|--|
| File No. 7633-40 | | |
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SUBJECT: ..Voluntary Undertakings to Provide for Children by Immigrating Fathers.....

At Mr. Sicotte's request, I made inquiries to see if there was any way in which the voluntary undertakings of fathers to provide for their children could be received and enforced in Canada.

I telephoned Miss Marion Murphy who is in the Child Welfare Section of the Canadian Welfare Council, a voluntary centralizing agency supported by a large number of voluntary agencies throughout Canada.

Miss Murphy informed me that this problem arises often is handled by an agency known as International Social Service which has its head office in Geneva and branches in most European countries. When a specific case arises, the European agency concerned contacts the International Social Service and forwards the case to the Canadian Welfare Council through its branch in the United States. The Canadian Welfare Council decides which agency should be asked to interview the father and sends the case to that agency. The agency gets in touch with the father and makes arrangements with him whereby he voluntarily undertakes to support his child.

4. Miss Murphy also informed me that a Committee composed of representatives of the Provinces, the Departments of Labour, Citizenship and Immigration, and National Health and Welfare, and the Canadian Welfare Council, were holding meetings to discuss the problem. It occurred to me that as this Department will have to act as the inevitable post office of any scheme operates on a Government level and because we are always being approached by the missions in connection with this problem, someone should attend these meetings if only to hold the watching brief. I shall endeavour to get more details from Miss Murphy.

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5. I also telephoned Judge Fraser of the Family Court in Ottawa who confirmed my opinion that there is no way in which a father who has broken his voluntary undertaking to support his child can be compelled by court action to live up to his agreement. Such an undertaking is, of course, a unilateral declaration and not a contract. Judge Fraser also said that he thought he would have no jurisdiction because the child was not within the jurisdiction of the court. - I have asked the U.S. of State to ascertain the views of the Provinces on this point


Legal Division.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: MISS WEIR

Security Unclassified

Date October 22, 1953

FROM: MR. SICOTTE


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|-------------------------------------|-------------------------------------|
| File No. | 7633-40 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

REFERENCE:

SUBJECT: Support by "Displaced Persons" in Canada of their
children in Germany.

Dr. Hecker, Counsellor of the Germany Embassy, called on me October 21st and left the attached memorandum inquiring about the possibility of having declarations made by "displaced persons" in Canada-in regard to the support of their children-in Germany-received before a Canadian authority. He explained that what he had in mind was not the question of which judicial authority was empowered to issue maintenance orders or to oblige neglectful parents to support their children abroad -- both legitimate and illegitimate. What he wishes to know is simply *rather* whether there is any government department -- federal or provincial -- which would have authority to receive voluntary declarations, or to inquire from the parents whether they recognize their children.

As the enquiry is specifically limited to "displaced persons" it is possible that the Department of Citizenship and Immigration may have administrative arrangements covering cases of this type. Would you make the necessary enquiries and prepare a report to answer Dr. Hecker.


G. Sicotte.

Pro Memoria

Many 'displaced persons' immigrated into Canada have left their children in Germany who have to be supported there by public means.

Could the Canadian authorities give any assistance in causing these displaced persons to make maintenance payments for their children in Germany?

Which authorities could be asked to accept in writing declarations in which it is stated that the displaced persons are prepared to make maintenance payments for these children and could also be asked to fix the amounts they could pay in relation to their income?

Which would be the legal steps to be taken in case the fathers and mothers or other relatives would refuse to take over even part of the maintenance payments?

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO:.....THE CANADIAN EMBASSY,.....
.....BONN, GERMANY,.....
FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.
Reference:...My Letter No..L-562. of .Sept..10/53.
Subject:.....Alimony payment of immigrated D.P.'s
.....to Canada to the surviving.....
.....dependents left behind in Germany..

Security:.....Unclassified.....
No:.....L- 611.....
Date:.....October 1, 1953.....
Enclosures:..1.....
Air or Surface Mail:..Air,.....
Post File No:.....

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| Ottawa File No. 7633-40 | |
| 10616-1-140 | |
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References

I am attaching a copy of a letter I have received recently from the Deputy Minister of Citizenship and Immigration in reply to my letter to him putting forward your suggestion that his Department might be able to take some steps to insure that German immigrants live up their obligations toward their families in Germany.

2. I shall advise you if anything more develops. It is my understanding that the German Embassy in Ottawa is interested in this problem.

for the GILLES SICOTTE
Acting 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: THE CANADIAN EMBASSY,
..... BONN., GERMANY.

Reference: Your Letter No. L-562 of
September 10, 1953.

Subject: Alimony Payment of Immigrated
..... D.P.'s to Canada to the Surviving
..... Dependents Left Behind in Germany..

Security: UNCLASSIFIED

No: 875

Date: September 22, 1953

Enclosures: 1

Air or Surface Mail: Air

Post File No: 45-11

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References

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29 SEP 1953

Thank you for your letter under reference. I enclose herewith copy of letter which I have today written to the Immigration authorities in Karlsruhe and which speaks for itself.

2. I would suggest that you follow up the idea of denying naturalization to immigrants who have evaded their family responsibilities.


T. C. Davis

Internal
Circulation

Distribution
to Posts 

COPY



Zitelmannstrasse 22,
Bonn, September 22, 1953.

Your File No. 9256

Dear Mr. Quinn:

Re Dependents of German Immigrants to Canada
Left Behind in Germany and Abandoned by the
Immigrants

I duly received your letter of September 7 in reply to my letter to you of August 26. I now have for acknowledgement your further letter of September 16 with enclosure as stated. This enclosure indicates that a happy solution has been found for the movement to Canada of dependents of immigrants who seek to have such dependents join them there.

This does not deal with the problem of what can be done to force those immigrants, who are attempting to abandon their families over here, to live up to their responsibilities. We wrote to Ottawa asking for an opinion from our Legal Division and that division has now advised that at present there is no means whereby a judgment of a German court requiring the immigrant to pay alimony or maintenance can be enforced in Canada. The only apparent relief the abandoned wife or family have is to bring action in a Canadian court. This, of course, is out of the question for financial and other reasons. I do not know how you are possibly

P.E. Quinn, Esq.,
Acting Chief,
Canadian Government Immigration
Mission,
11 Redtenbacherstrasse,
Karlsruhe.

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going to solve this problem.

In my letter to Ottawa I suggested that steps should be taken to enter a caveat in the Office of the Secretary of State against the issue of naturalization certificates to any immigrants who have deliberately evaded their family responsibilities and left their families destitute in Germany.

I expect that one of the main problems in Canada is to locate the immigrant but I would think that in the case of those who can be located they might be advised that unless they assumed their family obligations naturalization would be denied to them. It might be necessary to amend the Naturalization Act for this purpose.

Yours sincerely,

(Sgd.) T. C. DAVIS

T.C. Davis



CANADA
DEPUTY MINISTER
OF
CITIZENSHIP AND IMMIGRATION

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Ottawa, September 21, 1953.

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

Re: Your file No. 10616-L-1-40

In reply to your letter of September 15 concerning an inquiry of the World Council of Churches at Munich, I wish to inform you that I know of no legal procedure which would compel Germans immigrating to this country to comply with Maintenance Orders made by a German court. I believe that the proper procedure would be to initiate new proceedings in Canada.

Regarding your suggestion that perhaps Canadian citizenship could be refused to those who have abandoned their families in their native lands, you will appreciate, I am sure, that accepting this suggestion would place us in a situation where we would have to make investigations in the country of origin of each applicant who would mention that he has some dependents abroad. This procedure, in addition to being cumbersome, would not be satisfactory as some would claim that their dependents are properly being looked after and we would have no means of verifying the conflicting statements.

Some months ago, following a complaint received that our procedure of bringing heads of families in advance of dependents was creating a problem in Germany, we had an investigation made which satisfied us that dependents were generally arriving in Canada within six months after the arrival of the head of family. The number of cases where dependents were left behind was so few that it was considered negligible. I would assume that an inquiry on the problem raised in your letter would also show that it covers only a small number of cases and, for this reason, I do not think that it would be advisable to initiate a new procedure.

Laval Fortier.

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Please refer to our
File No. 10616-L-1-40

Ottawa, September 15, 1953

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

Desertion of Dependents by German Immigrants

The Canadian Embassy in Bonn, Germany, has brought to my attention a letter it has received from the World Council of Churches at Munich, raising the question as to whether Germans emigrating to this country can be compelled to comply with Maintenance Orders made by a German court.

This matter has come up several times in the past and, on our part, we have not been able to find a solution to it. It occurred to me, however, that you might have some suggestions which would lead to the solution of this problem. It has been suggested that perhaps Canadian Citizenship could be refused to those who have abandoned their families in their native lands.

Should you think something might be gained by an informal discussion of the problem, I should appreciate it if you would have the officer of your Department who would take part in such a discussion telephone Miss C.S. Weir on Local 7917.

K. J. BURBRIDGE

Acting Under-Secretary of State
for External Affairs

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO:.....The Canadian Ambassador,
.....Bonn, Germany.....

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

Reference:..Your letter No. 769 of August 26, 1953.....

Subject:..Alimony payment of Immigrated D.P.'s to
.....Canada to the Surviving Dependents left
.....behind in Germany.....

Security:.....

No:.....L- 562.....

Date:.....September 10, 1953.....

Enclosures:.....

Air or Surface Mail:.....

Post File No:.....

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| Ottawa File No. | |
| 10616-L-1-40 | |
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References

The Legal Division has had several consultations with the Counsellor of the German Embassy and the Chargé d'Affaires of the Austrian Legation to see if some way could be found in which maintenance orders and divorce decrees providing for maintenance could be enforced in Canada.

2. Reluctantly, we came to the conclusion that at the present time there is no way in which immigrant husbands can be forced to live up to their obligations, short of the wife bringing an action in a Canadian Court. This, of course, is out of the question financially for most.

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 meeting of the Commissioners on Uniformity of Legislation being held this week. Some of the Reciprocal Enforcement and 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.

Internal
Circulation

K. J. BURBRIDGE

for The
Acting Under-Secretary of State
for External Affairs.

Distribution
to Posts

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

(DUPLICATE)

NUMBERED LETTER

TO: The Canadian Ambassador,
Bonn, Germany

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

Reference: Your letter No. 769 of August 26, 1953
Subject: Alimony payment of Immigrated D.P.'s to
Canada to the Surviving Dependents left
behind in Germany

Security: *Original*

No: L-562

Date: September 10, 1953

Enclosures:

Air or Surface Mail:

Post File No:

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| Ottawa File No. | |
| 7633-40 | |
| 10616-1-1-40 | |
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Ext. 

Letter No. 769.....

Date..... August 26, 1953.....

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| 1033-40 | |
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| OTTAWA FILE | |
| No. 10616-2-1-410 | |
| 16 / 24 | |
| SECURITY CLASSIFICATION | |
| none | |

FROM: The Canadian Ambassador, Bonn, Germany

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

Reference.....

Subject:..... Alimony payment of emigrated DP's to Canada to the
surviving dependents left behind in Germany.

1. I attach herewith copy of a letter which I have received from the Legal Counsellor of the World Council of Churches at Munich, dated August 14. I also attach hereto copy of my reply.
2. May I suggest that this letter and the enclosures be sent over to the Legal Division for a legal opinion as to whether or not there is any means whereby these emigrants to Canada can be made to assume their family responsibility.
3. This issue constantly arises, and I think has been brought to the attention of the Canadian Immigration Department. Someone in our Legal Division might like to consult with the officers of that Department.
4. It has often occurred to me that perhaps steps could be taken to prevent the issue of a naturalization certificate to those persons who have moved to Canada and have in that process abandoned their families.



THE AMBASSADOR

C o p y

WORLD COUNCIL OF CHURCHES
SERVICE TO REFUGEES

M u n i c h, 14 August, 1953
Pienzenauerstr. 15

To the Canadian Embassy
B o n n / Rhein
Zitelmannstrasse 22

Re.: Alimony payment of emigrated DP's to Canada to the surviving dependents left behind in Germany.

Many DP's, who emigrated, do not concern themselves about their surviving dependents, e.g. wives, illegitimate and legitimate children, left behind in Germany.

I respectfully ask you to inform me, whether the DP's, who emigrated to Canada, can be urged for alimony payment and whether there exists a law in Canada, as it is the case in Germany, imposing punishment on persons, who intentionally withdraw from their obligations as to maintenance.

Very truly yours,

(sgd.) M. Brusdeilins
Legal Counsellor

22 Zitelmannstrasse
B o n n, Rhein
August 26, 1953

Dear Sir,

I have your letter of August 14, and I do not know of the existence of any law in Canada under which a person resident therein can be made responsible for the maintenance of dependents left by such person in the land of his origin upon his movement to Canada.

I would strongly suggest that your Organization seek a legal opinion on this point from some Canadian lawyer. It may well be possible that the deserted wife and dependents can take action in Canadian courts against the husband for maintenance, etc.

Yours sincerely,

T.C. Davis
Ambassador

M. Brusdeilins, Esq.
Legal Counsellor
World Council of Churches
Service to Refugees
M u n i c h
Pienzenauerstr. 15

AIDE MEMOIRE

The Government of the Federal Republic of Germany would be interested to become a reciprocating state in the meaning of the Reciprocal Enforcement of Maintenance Orders Act of the Province of Ontario (Revised Statutes of Ontario 1950, chapter 334).

German law provides that foreign judgments can be executed in Germany by way of an action on the foreign judgment in an abbreviated form under Art. 722 of the German Code of Civil Procedure. If, however, an agreement or treaty for the reciprocal enforcement of judgments between Germany and another country is in force, execution of a judgment from such a foreign country is permitted by a simple court order which is issued on presentation of the final foreign judgment.

One difficulty under the above mentioned Act of Ontario seems to be that there is no provision in German law for the enforcement of foreign maintenance orders (in contradistinction to foreign judgments). As maintenance orders seem to be more frequent in the Province of Ontario than maintenance judgments, the German government would be prepared to consider the enactment of provisions which put maintenance orders of the Province of Ontario on the same footing as maintenance judgments.

This Embassy would be grateful for any assistance the Department for External affairs could render, in order to come to an understanding or agreement as between the Federal Republic of Germany and the Province of Ontario for the reciprocal enforcement of Maintenance orders (originating in the Province of Ontario) and maintenance judgments (originating in the Federal Republic of Germany).

- 2 -

It is understood that such agreement would only refer to maintenance orders and judgments as between husband and wife and legitimate children.