

DESERTION: LEGISLATION AND ADMINISTRATION

**A Comparative Review of Desertion Legislation in British
Columbia, Saskatchewan and Ontario: Administration of
Desertion Legislation by Family Courts: Implications for
Social Work Practice in British Columbia**

by

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ABSTRACT

The purpose of this study has been to review desertion legislation; and to examine social work participation in the administration of desertion laws. The key question posed is: Does legislation work in dealing with cases of desertion?

In order to gather answers to the key question, pertinent legislation is reviewed. Included is: (a) The Canadian Criminal Code; (b) maintenance legislation of the provinces of Ontario, Saskatchewan and British Columbia; (c) common law remedies; and (d) certain English and American laws which pertain to desertion. To gain an understanding of the policies and problems of administering desertion legislation, interviews were held with those who are working daily with cases of desertion and non-support. Interviewed were; Judges of the Family Court, Magistrates, police, probation officers, provincial and municipal social welfare administrators, and social workers. The Family Court is the acknowledge authority in dealing with problems of desertion. Because of this, its policies were used as a guide in reviewing the procedures followed by other social welfare agencies, throughout British Columbia.

This study suggests that; (a) certain minor revisions would strengthen the British Columbia Wives' and Children's Maintenance Act; (b) desertion is as much a social problem as a legal problem; (c) social workers would be well advised to consider taking a more active part in court cases involving desertion; (d) in the final analysis a man cannot be forced to support his dependents if he wilfully refuses; and (e) skillful social work help can assist many deserters to assume their maintenance responsibilities.

DESERTION: LEGISLATION AND ADMINISTRATION

CHAPTER 1

DESERTION: PROBLEMS AND APPROACHES

Family desertion and non-support has long been a serious social problem. Whenever a breadwinner leaves his home, and fails to discharge his alimentary duties, a whole family unit is disrupted. The psychological and financial blow suffered by abandoned wives and children - as husbands are the most frequent offenders - is often irreparable. Problems in each desertion case may multiply in the coming generation. Children, who do not know a normal family, may themselves find it difficult to establish a stable marriage. The expense of desertion is tremendous, when costs such as social allowances, mother's allowances, foster home care and institutional care are taken into consideration. This is multiplied when one considers that no matter how much is spent in public assistance, the problem of a broken home still remains.

The question most often asked is; why do desertions occur? Miss Gerrie in the thesis, "Welfare Aspects of Desertion" found that:

"desertion is itself only a symptom of some more deeply seated trouble in the family structure; therefore the problem presented is not essentially different from what it was before the man or woman's departure."¹

1. Gerrie, Catherine L., Welfare Aspects of Desertion, (Master of Social Work Thesis, University of British Columbia, 1954) p.63.

It is assumed that desertion is the result of family conflict rather than the cause.

Miss Gerrie goes on to say:

"...the seeds of desertion are usually sown in childhood, we see the same pattern repeated over and over again...a husband and frequently the wife had neglected and unhappy childhoods and they married early to escape the trials of their own home. This background left them immature and unfitted for the responsibility of married life. Preparation for marriage begins not when the couple are thinking of elaborate wedding plans,...but back at the beginning of their existence as a member of a family unit. The qualities of responsibility, stability, independence, as well as the social virtues of loyalty, honesty and integrity, if deeply implanted in the minds and behavior of individuals as they grow up, would make very fertile sod for marriage later on. It is the very lack of these qualities which created emotional instability, which often ends in desertion,..." 1

The causes of marital disharmony are seen to be as numerous as the life experiences of the marital partners. The approach to helping in cases presenting such serious problems must be from a broad basis of understanding human behavior. The service must be sufficiently flexible and individualized to meet a wide variety of situations. Preventitive services are extremely important. Where these fail and the deserted wife applies to the social welfare agency for help then specialized services for each family member are necessary. When this is unsuccessful in reuniting the family, or providing adequate maintenance, then the only recourse is the remedy provided by law. Legislation without adequate facilities for its administration cannot be effective. It is the legal and administrative aspects of desertion

1. Ibid p. 70-71

with which this study is primarily concerned.

Desertion, legally defined, is the deliberate abandonment of the conjugal society.¹ This definition is widely accepted in the English speaking world. The history of the evolution of the laws pertaining to desertion is a long one. It was from the rules developed by early Christianity, one of the most patriarchal of religions, that the law of Western Europe, and especially English law, chiefly derived the idea of the subordination of the wife. More recent history however is most relevant for the Canadian situation. Until 1857, with the creation of English courts for divorce and matrimonial causes, these subjects were within the jurisdiction of the Ecclesiastical Courts. The wife's right of support, seems to have been regarded as meaning her right to live with her husband. It was assumed, and that assumption continues to the present, that as long as she was permitted to live with him, she would be able to receive as much support as was necessary for her existence. No legal remedy would be necessary, except in the case where he refused to let her live with him. The solution then, was that the husband should take his wife back.

After 1857, a deserted wife was able to obtain a court order for the purpose of protecting her property. In 1861 similar property rights were extended to women living apart from their husbands because of his assaults. However there was no statutory provision for the maintenance of the deserted wife.

1. Cairns, A., Eversley on Domestic Relations, Sweet and Maxwell Limited, London, 1837.

With the passing of the Matrimonial Causes Act of 1884, a deserted wife could apply for restitution of conjugal rights, and if this action was unsuccessful the husband could be ordered to make periodic maintenance payments to his wife. This was the first English Statute which provided the wife with an avenue to secure financial support for herself and children through a court order. English law continued to give more adequate recognition and protection to wives and children through statute. The Matrimonial Causes Act, through amendments, provided increasing protection for the deserted wife and family. With the commencement of a comprehensive Social Security program, further legal resources were provided to compel parents to fulfill their obligations to their families, where failure to do so meant payment of social security benefits. In England, however, Social Security payments are not withheld from the deserted wife.

In Canada, under the British North America Act of 1867, the federal government became responsible for the criminal law of Canada. Wilful failure to provide the necessities of life for a family, was not made a criminal offence however, until 1892, as a result of a revision of the Criminal Code. This provision offered punishment for a person who evaded his responsibility, but did not provide for family maintenance. The social welfare components found in present-day provincial maintenance legislation were still lacking.

Prior to the passing of the British North America Act, the Canadian Colonies, with the exception of Quebec, were

governed by the laws of England. In British Columbia, Governor Douglas on November 12, 1858, by proclamation ordained that;

"The civil and criminal laws of England, as the same exist at the date of the said proclamation and so far as they are not from local circumstances inapplicable to the Colony of British Columbia, are and shall remain in full force within the said Colony, subject, of course, to future legislation." 1

The deserted wife resident in British Columbia therefore had no remedy through statute law until 1901 with the passing of the "Deserted Wives Maintenance Act." In Ontario the first provincial law providing for cases of desertion was enacted in 1897 while Saskatchewan's first legislation was passed in 1911.

Both the Criminal Code and the Provincial Statutes have been frequently amended. The Criminal Code was most recently revised in 1955. The Saskatchewan Act was re-written in 1953, while both British Columbia and Ontario passed amendments designed to improve their respective statutes, as recently as 1955.

Reasons for Concern about Desertion.

There is almost universal acceptance for the tenet that strong and happy family living provides the ideal climate for human growth and development; for both adults and children. Even though there has been a decline in some of the institutional functions of the family, for example the economic function, it retains its vital social importance. The chief concern over the family nowadays is not how strong it may be as an economic and domestic production organization but how well it performs the;

"...personality function of the family;...the mutual adjustments among husbands, wives, parents and child-

1. MacGill, H.G., Laws for Women and Children in British Columbia, Womens' Institutes and Local Councils, Vancouver, 1939, p. 7.

ren for the adaptation of each member of the family to the outside world." 1

Because desertion is an important symptom of family disorganization, those disciplines concerned with the strengthening of family life, or conversely, with its breakdown, are becoming increasingly aware of the detrimental effect of desertion on the family, and, more specifically on the individual family member. It is recognized that the problem of desertion is as old as mankind. Why then the recent interest? For many years there have been no accurate figures available on the problem, and this continues to be the case in Canada. In the United States however, with the advent of federal social security legislation, and particularly that type of assistance known as Aid to Dependent Children, it has become possible to arrive at a more accurate measurement of the extent of the problem. In the United States in 1953, over 4,500,000 women and children were not being adequately supported, by estranged husbands and fathers. It was estimated that 1,904,000 wives and children had been deserted by husbands and fathers. The annual cost in 1951 under Aid to Dependent Children, to an estimated 288,000 families, due to desertion of the father, was approximately \$242,000,000.00²

1. Ogburn, W.F., The Family and its Functions, Selected Essays on Family Law, The Foundation Press Incorporated, Brooklyn 1950. p. 20.

2. Zukerman, Jacob. T., "Locating the Family Deserter" Social Service Review, " XV11, 1953, p. 48.

Comparable figures are not available in Canada. However if the United States figures were applied to Canada, on a comparison of population only, the cost in Canada would approximate 24 million dollars annually and in British Columbia \$1,600,000 per year.¹

Although the financial cost of desertion is extremely important, the cost in terms of effect on the individuals involved, is considered far more important by most social workers. One social work authority states:

"Conviction is spreading that broken and unhappy homes breeds warped personalities -- successive links in a long chain of individual discontent and misery." 2

Two other important facts directing social science and social work research to the area of family desertion, (as one aspect of family disorganization), are high rates of draft rejections for neuropsychiatric reasons, and public concern about juvenile delinquency. United States selective service figures indicated that thirty-nine per cent of men rejected were turned down for neuropsychiatric reasons. This figure of thirty-nine per cent although challenged by some critics, has caused much concern, particularly about the incidence of neurosis in the total population. The importance of wholesome family relationships in raising mentally healthy children to mature adults, is considered to be an integral part of the prevention of neurosis.

1. See appendix A for estimate of cost.

2. Hollis, Florence, Women in Marital Conflict, A Casework Study, Family Service Association of America, New York, 1949, p.5.

A relationship between delinquency and the broken home has been frequently established.¹ In the United States, a subcommittee, (of the Committee on the Judiciary to Study Juvenile Delinquency in the United States), has strongly recommended strengthening of support legislation throughout the United States.²

In Canada the Public Welfare Division of the Canadian Welfare Council has commenced a study on desertion. This was undertaken because of the wide-spread concern over this problem, not only by the division, but also by the Family and Child Welfare Division of the Council.

What is the effect on a home which has been broken because of the desertion of the husband and father? Psychiatry has established and it is quite generally accepted,

"that a warm, friendly, accepting psychological climate is necessary in order to promote physiological health and freedom from psychosomatic illness." ³

The role of the mother in providing this "accepting psychological climate" for children has been well defined. The importance of the father, even from birth, is recently becoming recognized. Helena Deutsche in her book, Psychology of Women, speaks of the "triangle" of father, mother and child, thus recognizing the incompleteness of the family unit should one part be missing.

In his role the father may not seem to be "fathering" his children directly, yet he is.

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1. Merrill, M.A., Problems of Child Delinquency, Houghton Mifflin Press, 1947. p. 15-16
 2. United States Government Printing Office, Juvenile Delinquency, Washington, 1955. p. 5.
 3. English, O. S., "The Psychological Role of the Father in the Family", Social Casework. Vol. 35, October 1954. p. 325.

"His strength and power are passing through the mother to the child or children. He is keeping her in the mood for her job by consistently providing material comfort for her through his labor. He gives her security and freedom from anxiety about food, clothing, and shelter. Further, he shows an interest in her activity, her creativeness, her work, and her needs, both emotional and physical. He "loves" her in that he satisfies her, stimulates her, comforts her and assists her in the realization of her personality". 1

Thus, the loss of a father is more than the loss of direct "fathering": it includes the loss of the cumulative reciprocating love, without which the "warm, friendly accepting psychological climate" is less than ideal.

The same author quoted above suggests the following variants of the father's role:-

- "1. Companion and inspiration for the mother;
2. Awakener of the emotional potentials of his child;
3. Beloved friend and teacher to his child;
4. Ego ideal for masculine love, ethics and morality;
5. Model for social and vocational behaviour;
6. Stabilizing influence for solution of Oedipus complex;
7. Protector, mentor and hero for grade-school child;
8. Counselor and friend for the adolescent." 2

Without in any way minimizing the importance of the mother in child care, it is possible that the father's influence has been insufficiently stressed. Because of new knowledge about the incidence of broken homes in cases of delinquency, and the suspected incidence in the large numbers of emotionally deprived people in our society; renewed concern is evident about all contributions to the disorganization of family life. Fathers who have made imaginative use of the natural resources of our country have paid less attention to human resources. Because of the con-

1. Ibid, p. 325
2. English, O. S., op. cit. p. 328-329

cern about the wastage of human resources in terms of unhappy and maladjusted lives, more study is being directed to the contributory factors, one of which, is the problem of desertion and non-support.

THE SOCIAL WORKER'S APPROACH TO PROBLEMS OF DESERTION.

In approaching a problem of desertion, the professional social worker is fully aware that a complaint of desertion may cover a multitude of behaviour problems, such as, rejection of children, protest against drinking, and punitive attitudes between parents. The social worker must be aware of the legislation as it applies to a particular case. He must also have a full understanding of the terms of reference of the agency with which he is associated. Generic in the whole approach are the basic principles of the profession of social work.

The first principle is the fundamental philosophy of a democratic society; the belief in the personal worth of the individual and his basic right to achieve, in his own way, the maximum development and fulfillment of his own capacities. This ideal is sometimes called the "cornerstone philosophy" of social work. Included in it is the concept of respecting the right of the client to be different, and the recognition that each individual is unique and special. The approach therefore, demands of the social worker, the necessity of gaining an understanding of the person, and the situation, as well as knowledge as to how he sees himself, and his situation.

The second basic social work tenet is that of the possibility of development, growth, and change in an individual, (as

well as the freedom to change at his own pace.) In order to help a client change the social worker must assess what the problem means to the particular individual. This approach prevents the rigid application of rules, when a problem like desertion arises, for as Mary Richmond stated;

"...rules in the relief of human souls, since no two human needs are ever exactly alike, are dangerous but a few simple principles are absolutely necessary,... principles are the same everywhere, but methods vary." 1

Closely allied with the belief in the possibility of growth in individuals is another fundamental social work concept, namely, the belief that human behaviour is purposeful and meaningful, that is, that the principle of cause and effect is valid. Allied with this is the philosophy of the multiplicity of social causation of human behaviour problems, and the recognition of the interacting social phenomenon, on the whole psychological situation. To be of help, therefore, the social worker needs knowledge of causal relationships and an understanding of the dynamics of human behaviour.

In his efforts to help the client, the social worker must also be aware of the inter-relatedness of individuals in society. It is an essential social work belief that individuals interact in families, in groups, in a culture and in society as a whole. Because man is a part of society, he has a responsibility not only to himself, but towards the society in which he lives. Conversely, it is a part of social work belief, that society has a responsibility for the individual within it. For this reason, the social

1. Richmond, Mary, E., The Long View, Russell Sage Foundation, New York, 1930, p. 95.

worker needs to understand cultural mores, and those external forces, political, economic, religious and social, which have an effect on the individuals to be assisted. To be aware of cultural influences, demands self-awareness by the social worker of his own participation in the helping process.

The fifth principle of social work and one which is particularly pertinent to the problem of desertion, is that the family is the primary and the most dynamic unit of society. Social workers agree that the protection, and strengthening of family life, should be a major concern of all in the profession. In order to assist in the strengthening and protection of the family, the social worker must understand the dynamic interaction of parents and children. He must also be trained in understanding the role of each parent in the family, and what the absence of one or both parents, means to that part of the family remaining. In desertion especially, he must attempt to learn of the events which led to the desertion, and the meaning of family responsibilities, to those involved.

Embracing and inherent in all these principles, is the interrelationship between individual work with families in their own homes, and efforts in improving community conditions. Mary Richmond envisaged better co-ordination of all social services and community resources. She believed that;

"the legitimate charitable enterprises of a community should hang together and the success of one is the success of all; the failure of one is the failure of all."¹

1. Richmond, Mary, E., op. cit. p. 96,

The social worker, therefore, must be aware of, and develop skill in assisting in, the co-ordination of existing social services. As well, he must undertake through community organization and social action, the alleviation of social ills, and the creation of new services to meet existing needs, for the individual and the community.¹

The social worker, guided by these sound social work principles, brings to the individual situation certain methods and techniques. Social work method is outlined in five steps; (a) gathering information, (b) social diagnosis, (c) treatment plan, (d) implementation of plan, (e) evaluation and re-evaluation of diagnosis and plan. Throughout this process runs the continuity of voluntary participation by the client. Basic in technique is the establishing of a helping relationship, which is frequently described as the progressive interaction of two persons, for the purpose of assisting one of them to make a better adjustment to a problem.

The special techniques used, to help a person make a better adjustment to a problem, are divided into four groups for purposes of definition. "Environmental modification" is direct action, taken by the social worker, to relieve outside pressures, (such as granting financial assistance), as part of the helping process. A second technique is that of "psychological support". This includes measures, such as the expression of interest in, and acceptance of the client, designed to enable him to function more

1. Material on Social Work Principles was adapted from the Master of Social Work Thesis "Seeking Placement Permanency for Foster Children" by Nettie Isobel Proven. University of British Columbia, 1954.

realistically and comfortably. The third process is "clarification", this is designed to enable the client to understand himself, his problem and his environment, in order to take the necessary steps to solve or minimize his problem. The fourth category is entitled "insight". It is often used in conjunction with clarification, or it may occur as a result of clarification. To achieve insight, a client must relive current and past emotions, in order that irrationalities may be brought clearly to the surface, and recognized by the client, in order that he may increase¹ his self understanding.

With a background of social work principles, and techniques established through professional education; with a knowledge of desertion legislation, and awareness that human problems are most often multiple, and complex; the social worker offers help to the deserted client from within the framework of an agency. The agency may have as its principal function; the granting of financial assistance; social casework counseling; help in obtaining legal remedy; or a combination of such services. To assist the client in the most adequate way, the social worker must be acutely aware of the extent of service, which can be made available through the agency he represents, as well as by other existing community resources.

If the client wishes to attempt to arrange a legal remedy to her problem of desertion, the agency specifically established to fulfill that request is the Family Court. Family Courts are de-

1. Material for this paragraph was taken from Chapter XI of Women in Marital Conflict, A Casework Study, by Florence Hollis.

signed to hear cases involving domestic relations. Their basic precept is that an attempt be made at reconciliation, if possible, before court action itself is instituted. Where reconciliation is unsuccessful, the court attempts to assist its clients to fulfill their responsibilities, and conduct their behaviour, within a framework set out in law.

An example of such a court within British Columbia is the Family Court of the City of Vancouver. It was established in 1945 as a result of public request. Its personnel are also members of the Juvenile Court. The court is staffed by two judges, who are appointed by the Lieutenant Governor in Council, under the terms of the Juvenile Court Act. The Judge is empowered by this Act, to appoint the necessary staff, to fulfill the services demanded of the court. The staff, whose requirements are that they have professional education, preferably in social work, consist of a chief probation officer, supervisor, six probation officers and an enforcement officer. The enforcement officer has authority to serve summons and copies of orders. Where a warrant of arrest or commitment is issued, the facilities of Vancouver City Police Department are used. The City Prosecutor conducts the desertion cases that come before the court. An indication of the magnitude of desertion in the City of Vancouver, is the fact that \$165,000.00 was paid into the Family Court on desertion orders, during 1955.

For a client without financial problems, but wishing social work help with social or emotional difficulties, there exist in the larger centres, private agencies well equipped to

give the required counsel. An example of this type of agency in Ontario is the Family Service Bureau of Hamilton. The city client whose essential need is financial will frequently find her way directly to a City Social Service Department. It grants financial assistance on a basis of need, when the deserted wife cannot obtain support through Court action. Casework help to become re-established is also provided by most city public welfare agencies.

In suburban districts, a composite agency may be found which can give financial aid and family casework help, such an agency may give direction in applying to the local court, in situations where court action seems desirable. In Saskatchewan the District Offices of the Department of Social Welfare and Rehabilitation offer this help.

Necessary as well for the competent Social Worker is a knowledge of social legislation. The remedial purpose of legislation is well described in the British Columbia Interpretation Act.

"Every Act and every provision or enactment thereof shall be deemed remedial, whether its immediate purport be to direct the doing of anything that the Legislature deems to be for the public good, or to prevent or punish the doing of anything that it deems contrary to the public good; and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act, and of such provision or enactment, according to their true intent, meaning, and spirit."

Because of the extreme importance of legislation in helping to deter desertion, as well as to provide a legal remedy after its occurrence; this study has placed its emphasis on Canadian Legislation, and Administration of this legislation, in

problems concerning desertion and non-support.

Method and Approach of this Study.

The question, for which this thesis seeks some answers is: Does legislation work in dealing with cases of desertion? Obviously this raises social as well as legal questions. The role of social welfare agencies, courts, and enforcement agencies will be reviewed. To do this, Magistrates, police, probation officers, social welfare administrators and social workers will be interviewed. The legal aspects as found in statute law will be examined by; (a) a review of the Canadian Criminal Code; (b) a comparison of the provincial desertion legislation, in Ontario, Saskatchewan and British Columbia; (c) an outline of common law approaches to desertion, (d) an examination of reciprocal support legislation; and (e) a survey of pertinent English legislation. By the examination of the existing legislation, and by the observations of those who work daily with the complicated legal and social problems, caused by desertion; it is hoped that some answers to the key question may be assembled.

CHAPTER II

DESERTION AND MAINTENANCE LEGISLATION.

The system under which justice is administered in a state is always subject to change. A judicial system must grow and adapt itself to the requirements of the people. The exact limits of the powers of the different legislative bodies requires continued definition by the courts. The exclusive legislative authority of the Parliament of Canada extends to criminal law throughout Canada. This law is based on the common law of England, built up through the ages and consisting first of customs and usages and later of principles enunciated by generations of judges, and introduced into Canada, as regards criminal law, by Royal Proclamation in 1763.

The most recent rewriting of criminal law is found in the Criminal Code of Canada (1955). Section 186 of the Code deals with "Duties Tending to Preservation of Life". According to this, (Subsection 1), every parent or head of a family is under a legal duty to provide "necessaries of life" for children under sixteen, whether or not the child resides at home. Also, a husband is required to provide "necessaries" for his wife. "Necessaries", (in the case of *Rex. V. Sidney*), are described by the Supreme Court of Saskatchewan, (1912), as:

"...such things as are essential to preserve life,... what will constitute necessaries must be determined in view of the circumstances of each particular case."

This decision is still referred to in recent cases.

In subsection two of this same Act, it is laid down that:

"Everyone commits an offence who, being under a legal duty within the meaning of subsection one, fails without lawful excuse, the proof of which lies upon him, to perform that duty, if

(1) the person to whom the duty is owed is in destitute or necessitous circumstances,...."

In the case of Rex v. Harenslak, before the Alberta Supreme Court in 1936, the question of whether or not a wife is in destitute or necessitous circumstances was declared to be "one of fact in each case". This ruling illustrates the need of the court, for full social and economic information about each case.

The penalties for persons committing an offence under section 186, are set out in subsection three. Everyone who commits an offence under subsection (2) is guilty of: (a) an indictable offence, and is liable to imprisonment for two years; or (b) an offence punishable on summary conviction. Under the terms of the summary conviction clause, a guilty person may be sentenced to jail for a period not exceeding three months, or to a fine not exceeding five hundred dollars, or to both fine and imprisonment. Recent revisions to the Criminal Code broadens the Magistrates power in the use of summary convictions proceedings. If the accused has no previous criminal record, (i.e. has not been convicted of an indictable offence), the Magistrate may suspend sentence. The terms of suspended sentence allow the court to prescribe certain conditions of recognizance. One of these condit-

ions states that:

"the accused shall provide for the support of his wife and any other dependents whom he is liable to support; ...but no such recognizance shall be kept in force for more than two years." 1

This provision is seldom used.

Many Magistrates seem unaware of the provision. Some police, who could recommend its use, do not, because of the difficulty in proving that a man has no previous record. Also influencing the police, is the necessity of holding a further court hearing, should the accused fail to keep their terms of the recognizance.

Procedure in Desertion.

A wife, whose husband has left her for a period of a month, without making provision for her maintenance, or that of his children under the age of sixteen, may lay an information before a Magistrate outlining her complaint. The Magistrate or Judge may issue a summons, or warrant for the appearance of the person against whom the complaint is made. Evidence is presented in keeping with criminal procedure. The court, in hearing the case, is guided in its decision by precedent set in previous case decisions, case law concerning maintenance states in part:

"The general rule then being that the marriage relationship carries with it a legal duty on the part of a husband to provide necessaries for his wife..."

The exceptions to this rule include; (a) wife living in adultery; (b) wife who leaves bed and board without justification and without his consent; (c) if a husband by reason of infirmity, lack of work or for any other reason is financially unable to

supply necessities; (d) where wife is not in necessitous circumstances." 1

For the case to succeed the following essential facts must be proved -

- (1) Date of offence;
- (2) Place of offence;
- (3) that the accused is the husband or head of the family;
- (4) that he is under a legal duty to provide the necessities of life;
- (5) that the woman is his wife and that the child(ren) is under sixteen years of age;
- (6) that they are in destitute or necessitous circumstances;
- (7) that the accused has neglected or refused to provide those necessities of life; or
- (8) that he did so without any lawful excuse.

One of the advantages of the Criminal Code, in cases of desertion is that it is uniformly enforceable throughout Canada. Whether or not a deserting parent resides within a province, he may be returned to the court where the complaints is laid, in order to hear the charge. In practice a deserter is rarely brought to court from another province. The reason for this, is that the municipality where the charge is laid, is responsible for the transportation expenses. Few if any municipalities are willing to expend large sums of money to prosecute deserters.

Another feature of the Criminal Code is its simplicity of administration. Unlike the provincial maintenance acts, an

1. Rex v. Harensluk, Alberta Supreme Court (1936), Volume 67, p. 277.

action under the Code can be speedily concluded in one hearing. In these cases the onus of proof lies upon the person having the legal duty to provide necessaries. In using the Criminal Code the principal disadvantage, accepted by most authorities, is that the emphasis is on punishment. Suspended sentence, with terms of recognizance prescribing maintenance for the deserter's dependents, is seldom used. As a result the accused is fined or imprisoned. He may lose his employment and often needs rehabilitation himself when discharged from jail. The deserted family is not necessarily assisted by the punishment of the deserter. Once he is released from prison, the family is still faced with the necessity of obtaining maintenance. Having a father desert, is serious enough, without adding the disgrace that imprisonment may bring to the family members. One American writer expresses, the need for change from a punitive approach, in this way:

"...ideas on the guilt and punishment of the spouse charged with violating his marriage contract, should be abrogated and in their place substituted the modern philosophy of diagnosis and therapy. This modern philosophy would involve an expensive and intricate system of Family Courts, designed to go to the root of all marriage troubles,..." 1

This thinking has helped bring about the establishment of Family Courts. It has also assisted in shifting emphasis in desertion cases, from punishment to treatment.

Provincial Statutes.

The judicial systems of the provinces as they exist today, are based upon the British North America Act of 1867. Section 91

1. Alexander, Paul, W., "Family Life Conference Suggests New Judicial Procedures and Attitudes Toward Marriage and Divorce". Journal of American Judicature Society, XXXII, p. 39.

provides that "the exclusive legislative authority of the Parliament of Canada extends to ... the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters." In each province, the legislature may make laws in relation to the administration of justice within the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, including procedure in civil matters in those courts. Historically the provinces with the exception of Quebec, accepted English common law. More recently, each Canadian province has passed legislation dealing with the problem of desertion and maintenance of the deserted family. As each province is autonomous in enacting civil legislation, it is natural to find laws which differ. In each Provincial Statute however, desertion must be evident, before proceedings can be instituted. The question immediately raised is how the different provinces under study define desertion.

Desertion: Legal Description.

In British Columbia a wife is deemed deserted if her husband has left her without "reasonable cause". The only "reasonable cause" occurs when the wife refuses to consummate the marriage or is guilty of adultery. A wife is also considered to be deserted when she is living apart from her husband because: (a) of his assaults or other acts of cruelty to her or their children; (b) of his refusal or neglect, without cause, to supply his wife and family with food, clothing and other necessities; (c) of his being a person who, (because of drinking), is incapable of managing

himself and his affairs, or is an unfit person to have custody and control of his infant children; (d) of his having been guilty of adultery which has not been condoned. Both parents may be charged with desertion of their children.

In Saskatchewan, desertion of a wife is constituted if: (a) her husband has without sufficient cause, refused or neglected to supply her with food and other necessities; (b) her husband is guilty of adultery; (c) she is living apart from her husband because of his cruelty. A child is considered to be deserted when the parent has failed to supply food and other necessities. Desertion also occurs when a child has left or has been removed from his home because of neglect, misconduct, or acts of cruelty. The Ontario Act is substantially similar in its terms of what constitutes desertion as the statutes of British Columbia and Saskatchewan.

The Saskatchewan Act would seem to have the best defined description of desertion. Although almost similar to the Ontario legislation, it goes one step further, by providing a means for the child to be maintained, when the child has left or been removed from the home, because of the neglect, misconduct, or acts of cruelty of the parent or parents. The British Columbia legislation in this area is not as clearly worded and contains a section which might be considered obsolete. This section describes the husband as possibly incapable of managing himself because of "frequent drinking of intoxicating liquor". This subsection would appear to be descriptive of, why the person is not capable of providing maintenance, rather than the fact that he has not made provision. As well the British Columbia Act states that a wife

may be deemed deserted if "her husband has left her without reasonable cause". Nothing is mentioned about non-support. This too, appears to be principally descriptive.

WHO MAY LAY COMPLAINT?

In the province of Saskatchewan those who may lay a complaint are:

- (a) the wife;
- (b) an officer of the municipality if the family reside in the municipality;
- (c) a person designated by the Minister of Municipal Affairs when the family reside in an improvement district;
- (d) any officer of the Department of Social Welfare and Rehabilitation designated by the Minister of that Department.

In Ontario a complaint may be laid by a deserted wife or child, or by a person having the care and custody of the child. In addition any other person with the consent of the Crown Attorney may lay a complaint.

Legislation in British Columbia allows a complaint laid on behalf of a child by his "next friend" or by any person having the care and custody of the child. The "next friend" may be any adult person acting in the best interests of the child. A wife may make a complaint that she is deserted or destitute. Should she reside in a municipality required by law to make provision for its poor and destitute, the municipality may issue the complaint by any constable or peace officer of the said municipality. In any other case the Attorney General may make a complaint on behalf of the deserted or destitute wife.

Saskatchewan is the only Province to provide, through

legislation, for the direct participation of the Department of Social Welfare and Rehabilitation in cases of desertion. Since this provincial department has the responsibility to provide maintenance in case of financial need, it is thought advisable for it to be able to take court action, where wilful neglect is suspected. Precedence for this action is taken from England, where the National Assistance Act provides that the National Assistance Board may, when it is necessary to provide financial assistance to anyone, make a complaint to the court against the person legally responsible to provide maintenance for the assisted person.

There are good grounds for believing that the trend will continue, of providing legal entry into cases of non-support by representatives of government departments charged with issuing financial assistance to people in need. If adequate social casework is to be done, it would seem advantageous to have someone, other than the wife, take court action against an errant husband. The reason for this is the fact, that when the wife institutes court action, opportunity for a reconciliation may be lost. Whereas if the husband realizes that a municipality or agency is implementing court action, he may be more likely to voluntarily pay maintenance to his family. A few cases have been cited by authorities in the field that show that if some person or agency, other than the wife, had taken court action, there would have been a better chance for the husband to assume responsibility. In these cases the husbands were so antagonistic towards a "nagging" wife, that they considered court action taken by their wives, as

a form of personal vindictiveness. Because of the hostility existing between the two, the husbands sometimes accepted jail terms or left the province rather than attempt to provide maintenance. There is too little evidence to show that this is an important factor in cases of desertion. In British Columbia and Saskatchewan the majority of complaints are issued by wives and this is believed also to be the case in Ontario.

FORM OF COMPLAINT:

In Ontario, a wife who has been deserted by her husband, may lay an "information" before a Justice of the Peace, who may issue a summons requiring the husband to appear before a magistrate. British Columbia's legislation requires that a complaint be made in writing to a Justice of the Peace or Magistrate. This written complaint, setting out the facts, may be made by the wife or presented on behalf of the children. On receiving this complaint the Justice of the Peace or Magistrate has the authority to issue a summons or a warrant requiring the parent to appear before the Magistrate and show cause why he should not be ordered to maintain his wife and children (if any). The Saskatchewan statute contains schedules outlining the form of complaint by the deserted wife, on behalf of the deserted wife or on behalf of the deserted child.¹ Upon receipt of such a complaint the court may issue a summons requiring the husband to appear before the court and show cause why he should not be ordered to maintain his wife

1. Samples of the schedules are found in Appendices B,C and D.

and children (if any).

The provision of a form of complaint appears to be helpful in simplifying the administration of maintenance legislation. By including the correct section under which action is to be completed, and through having a sworn complaint, the court is prepared to commence action. As well the complainant is assisted by having a form to use. The Ontario and Saskatchewan Acts provide a formal complaint form whereas British Columbia requires a complaint in writing without prescribing its form or contents.

Court Hearings.

In each province, a complaint may be laid before a Justice of the Peace, a Magistrate, or a Judge of the Juvenile and Family Court. In practice, the complaint is heard in the Family Court where one exists, or in a police court, presided over by a Police or Stipendiary Magistrate. The three Acts are written so that any Magistrate in the province may hear the case. In general, the case is heard at the court having jurisdiction in the district in which the deserted wife resides. The hearing follows the rules of procedure set out for the courts, in each province. The usual procedure followed, assuming both parents are present, is to read the complaint, accept a plea, hear the evidence where necessary, provide an opportunity for cross examination, and adjudicate. The Magistrate or Judge, as in other court cases, may dismiss the case, adjourn the hearing to obtain further evidence, or find that the wife is deserted or destitute, within the meaning of the Act. In the latter case, the Magistrate or Judge may issue an order, requiring that maintenance be paid to the deserted wife, at a rate named by the court. In each pro-

vince the hearing may be in private at the discretion of the court.

In the three provincial statutes under review the court, on receiving a complaint from an allegedly deserted wife, may issue a summons, requiring the husband to appear in court at a designated time. British Columbia, in a 1955 amendment, provided for a summons or a warrant to be issued, for the purpose of ensuring the appearance of the deserting husband. The British Columbia Act also provides, that if the husband fails to appear, and proof of the summons being served is available, the court may proceed to hear evidence as though the husband were present, even to issuing a maintenance order against him. The Ontario legislation provides for a warrant to be issued if the husband doesn't obey the summons. Alternately by a 1953 amendment the court is empowered to hear evidence, even if the husband is not present, and if satisfied with the justification of the complaint, an order may be made. This order, however, may be considered only as a provisional order, until it is confirmed by a court having jurisdiction in the locality where the "errant" husband resides. The Ontario Act sets out in some detail the requirements for this procedure.

Common to most support legislation, including the three laws under scrutiny, is the "show cause" procedure. In case an order is not fulfilled, the wife or person in whose favour the order was issued, may request that the terms of the order be obeyed. The court in this procedure, requires the defaulting husband to attend court, and show cause why he should not be ordered

to pay the sum outstanding. The Ontario Act, enables the Court to issue a summons or warrant requiring the husband to appear. In British Columbia and Saskatchewan only a summons may be issued. In the case of a husband residing outside of the Province, there is no method by which he may be compelled to attend court. When a husband, against whom an order has been made, resides a great distance from the location of the court and refuses or neglects to attend court, the problem of providing the financial means to return him becomes important. If the wife resides in a municipality it becomes the municipalities responsibility to pay the expenses. Few municipalities, in British Columbia at least, are willing to underwrite the expense. Ontario's use of provisional orders would seem to be the best remedy yet devised to constructively cope with this aspect of enforcement.

For a complaint to succeed under desertion legislation: the wife must establish that her husband has deserted her, without having made adequate provision for her maintenance; that he was able to maintain her in whole or in part; and that he neglected or refused to do so. To offer a defence therefore: the husband would have to establish that the wife is the deserter, that is, a suitable home and maintenance are at her command; or that the wife is guilty of adultery which is uncondoned; or that he the husband through infirmity, lack of work or other reason is unable to provide maintenance for his wife. The provincial acts are similar in this regard.

Maintenance Provisions.

In British Columbia, a Magistrate upon hearing a case

under the Act, may make an order against the husband for maintenance for his wife and family, in accordance with the means of the husband and the wife; but the sum is not to exceed a rate of forty dollars a week. The order shall specify the date upon which the first payment and costs are to be paid. In case the wife is possessed in her own right, of separate property, sufficient for her "comfortable maintenance" and that of her infant children, no order can be made for payment to her, of any sum, in excess of one-half of the amount necessary for the maintenance of the children. If the wife has been guilty of adultery, unless condoned, no order may be made in her favour. However, the behaviour of the wife does not, in any way, prevent an order being passed for the benefit of the children of the marriage.

In the Province of Saskatchewan, where a complaint is made, the court if satisfied that the wife is deserted, may make an order that the husband is to pay his wife, or such other person named, an amount that the "court may consider proper". The order must specify the date of the first payment, and the amount of costs. Similarly, an order for a weekly or monthly sum, may be made against the parent whose child is deserted. In case of an adjournment, requested by the husband or parent, the court may order maintenance payments to be made, for the period of the adjournment. On an application, made by the husband, or parent, wife, or person having custody of the children, and with due notice having been given to the other parties involved, the court may vary, confirm or rescind any order made previously. A sep-

aration agreement does not bar proceedings under this act. No order can be made under this act in favour of a wife who is proved to have committed adultery unless the adultery has been condoned or the husband's misconduct has served to conduce to the wifes' adultery.

The Ontario statute provides jurisdiction for a Magistrate, to make an order against a deserting husband "to pay such sums at such intervals as may be deemed proper...providing the wife is not guilty of uncondoned adultery." A father, who has deserted his child, and has not provided maintenance, may be ordered to pay "such sums", at "such periods" as the Magistrate sees fit, although this amount, shall not exceed a rate of \$20.00 per week per child. The Magistrate may, in the order, make provision as to the custody of the child and the right of access thereto. Any-one disobeying such an order, is liable to a penalty, not exceeding \$100.00, or imprisonment not exceeding three months, or to both a fine and imprisonment. As in the other acts, with a change of circumstances or on the appearance of new evidence, the judge may direct a rehearing of the application.

There is little variation in the three forms of provincial orders. There is a difference however in the limitation as to the amount of the order. The British Columbia Act restricts the amount of the order, regardless of family size, or income of the deserting father, to forty dollars per week. In Ontario, the only limitation states, that where an order is made for the separate maintenance of a child, that the weekly amount should not exceed twenty dollars. Saskatchewan leaves the amount, solely

to the discretion of the presiding Judge or Magistrate, which would seem to be the best plan. Unique, is the Ontario legislation's section on custody of children. This form of child protection would seem to be particularly important in cases of desertion involving cruelty. In such a situation, a wife and children who leave the husband and father because of his acts of cruelty, could have protection from interference of the father, who otherwise, might remove the children from the mother's care, because of spite. In the opinion of one able British Columbia Magistrate, the British Columbia Act would be strengthened by the addition of a section relating to custody of children.

Enforcement of Maintenance Orders.

In Saskatchewan, the court, at the time of making a maintenance order, may require the husband or parent to post a bond,¹ in sureties or cash, with the Minister of Social Welfare and Rehabilitation, of a value not to exceed \$1,000.00. In case of non-payment of the order, the bond may be forfeited, and the money applied to maintain the deserted family. If the maintenance order is not honored, a summons may be issued requiring the person, against whom the order is made, to appear in court and show cause why the order should not be enforced. If the individual cannot satisfy the court, that the order should not be enforced, the Magistrate may make an order under the Criminal Code relating to summary convictions. This allows for a fine, imprisonment up to three months, or both. Other sections of the Saskatchewan Act,

1. See Appendix E, for an example of the type of bond.

empower the court to register an order against land owned by the negligent party, or to attach his wages as a form of garnishee.

In Ontario, the Judge or Magistrate in making an order may, if he believes that failure to fulfill the order might result in the family becoming a public charge, order that the husband report to an officer, to satisfy him that the order will be fulfilled. (Under this act an officer includes, a probation officer, a local superintendent as defined in the Children's Protection Act and any other official of the Department of Public Welfare, or of any municipality, designated by the Minister of Welfare). If the person fails to report to the officer, he may be found guilty of an offence, and jailed on summary conviction, for a term not exceeding three months. Where a person, fails to satisfy the terms of an order, made under this act, and the Magistrate is not of the opinion that default is due to inability to pay, the Magistrate may imprison such person, for a term, not exceeding three months.

British Columbia Magistrates hearing a case in which they see fit to make a maintenance order, may require the person against whom such an order is made, to enter into a bond, of not greater than five hundred dollars, with or without sureties, or make a deposit not exceeding two hundred and fifty dollars, in order to secure fulfillment of the order. If the person does not fulfill these requirements, he may be incarcerated for a period up to three months. As in the Ontario Act, the Magistrate may

order probation if he is of the opinion that, in default of the order, the family may become a public charge. The Magistrate at a "show cause" hearing may, -if the husband fails to appear, or disposes of any of his property since the date of the original order, or fails to satisfy the Magistrate that he is unable to pay, -by order enforce payment, including imprisonment under the Summary Convictions Act which allows for a sentence of not longer than three months. Other provisions empower the Magistrate to issue a garnishee order attaching the wages of the husband. Under this act civil servants wages may be garnisheed. By depositing a certified copy of the maintenance order, in any land Registry Office, such an order automatically is registered as a lien, against the husband's property.

In Saskatchewan, the Minister of Social Welfare and Rehabilitation, continues to be involved in the administration of the Act. When the court, orders that a bond, sureties, or cash be provided, the payment is made to the Minister, rather than to the Court. This would seem to be an additional recognition that the problems of desertion and non-support, are social as well as legal, and therefore require both social and legal remedy. In British Columbia the required bond is registered with the court. Ontario makes no provision for securities to be paid in advance. Ontario and British Columbia have given recognition to the use of probation in cases of desertion, and provide for the individual against whom the order is made, to be put on probation, if the court believes that failure to comply with the order, may result in the family becoming a public charge. Alternate methods of en-

forcing orders are similar in the three provinces. Increased use of probation is seen as being advantageous in helping deserters undertake their maintenance responsibilities.

Provisions for Appeal

An appeal from an order, made under the Ontario Act, may at the discretion of the Judge be heard in chambers. No appeal is allowed to suspend the operation of any order, until the appeal or proceeding is disposed of, unless an interim order is made suspending or altering the original order. A person against whom an order has been made, who has not fulfilled the order, may on appeal be barred from proceeding, because of his default of the order. In Saskatchewan if either party is aggrieved by an order or failure to make an order, he or she may appeal to a Judge of the Court of Queen's Bench, in chambers. The appeal Judge has complete discretion as to what form the appeal may take. Costs of the appeal are also at the discretion of the appeal Judge. The appeal does not act as a stay of proceedings, unless the court by which the order was made, otherwise directs. In British Columbia, the provisions of the "Summary Convictions Act" apply to all appeals. An appeal by the husband does not act as a stay of proceedings on the order made. Where the wife is the appellant, no bond or security for the cost of the appeal, is required.

One of the problems met in Ontario and British Columbia, is the type of case where a Judge or Magistrate refuses to make an order. If the wife is not satisfied, she cannot commence further action, unless new evidence becomes available. Saskatch-

ewan covers this adequately by providing for an appeal, whether or not an order has been made. Another problem of appeal is the necessity of incurring expenses for legal aid. In Saskatchewan, where a woman or child is in receipt of aid under the "Social Aid Act", legal counsel may be supplied. No such official recognition is given to this problem in the other provinces. All three provinces have recognized the need for inter-provincial legislation.

Provisions for Reciprocal Enforcement of Maintenance Orders.

British Columbia, Saskatchewan, and Ontario have each passed statutes facilitating the enforcement of maintenance orders. The three acts are almost identical. By their terms, an order made in another reciprocating jurisdiction, may be enforced within the province, and similarly, provision is made for an order made within the province, to be enforced in another reciprocating state. Included as reciprocal states besides the three provinces mentioned, are Alberta, Manitoba, England, New Zealand and a few smaller territories, such as the Isle of Man and New South Wales.

Where an application is made to a court, for a maintenance order against any person, and it is proved that the person resides in a reciprocating state, the court may, in the persons absence, and without serving notice, proceed to hear the application. If after hearing the evidence, the court, if satisfied of the justice of the application, may make an order as if the individual had been present. This order is provisional, until such time as it may be confirmed by a competent court, in the reciprocating state. The court, where the action originates,

makes a certified copy of the order, and gathers such supporting documents as: (a) depositions or a certified transcript of the evidence; (b) a statement showing the grounds on which the making of the order might have been opposed had the person, against whom the order has been made, been present; (c) a statement showing the information held by the court as to the whereabouts and identification of the person against whom the order was made.

The order, and supporting documents, are forwarded to the Attorney General for his perusal, and additions, if any. The Attorney General is bound by statute, to forward the documents to the appropriate office in the reciprocal state, for delivery to the court having jurisdiction. In each reciprocating state, the local court on receipt of a provisional order and supporting documents, must issue a "show cause" summons requiring the person, against whom the order is made, to show cause why the order should not be confirmed. The court on hearing the evidence may confirm the order as it sees fit. Provision is made for adjournment of the hearing if more evidence is necessary.

The legality of reciprocal legislation was recently challenged in Canada. In the case of Scott v. Scott an order made in England was confirmed against Mr. Scott in Ontario. After several appeals the Ontario Court of Appeal allowed Mr. Scott's appeal. The Judge stated:

"in my opinion an attempt by the Legislature of a Province of Canada to clothe an existing inferior Court or some new provincial Court or authority with power to determine the legal rights of residents of

the Province in respect of judgements or orders pronounced or made in another territorial jurisdiction is repugnant to Section 96 of the British North America Act." 1

This decision was appealed by the Province of Ontario to the Supreme Court of Canada. Late in 1955, the Supreme Court announced its decision and allowed the appeal. (The full text of the decision had not been reported, up to the date of this writing).

During the time the case was before the Supreme Court of Canada, no actions concerning this legislation were heard, at least in British Columbia. Since the decision upholding the validity of this legislation was announced cases are again before the British Columbia Courts.

In the United States support legislation is a state act. As in Canada there are many differences in the various state statutes. Reciprocal state legislation is a recent development, with the State of New York passing the first "pilot measure" in 1948.¹ By 1954, every state except Nevada, had entered a reciprocal support law as had Alaska, Hawaii, Puerto Rico, the Virgin Islands and Guam. The American procedure is similar to that in Canada. A court petition is made, the court verifies the petition, attaches its certificate and transmits the case to a court in the responding state, where the deserting parent resides. The responding state court, takes jurisdiction over the case, ascertains whether or how much support duty is owed and

1. Scott v. Scott, Ontario Reports, 1954, p. 690

2. Carihfield, B.E., "Recent Developments in Reciprocal Support Legislation," Social Casework, March 1955, XXXV1. p.113

enters the necessary support order. As in Canada this type of legislation has been challenged in court. In all instances where the appellate adjudication has been completed, the reciprocal acts have been upheld.¹ One of the most important developments has been the interest shown in the reciprocal legislation. The Council of State Governments has acted as a clearinghouse for informational purposes. It has also provided an annual forum, for the interchange of data, and discussion of common problems. In addition, every state has designated a "State Information Agency". The agency has the responsibility to advise other states, of the detailed procedures to be followed, when reciprocal cases are forwarded, and to inform courts and local officials, within the state, of the procedures required by other states. In practice the state welfare department or the office of the Attorney General is commonly used for this purpose. Canada by the use of the Attorney General in each province as a clearing centre for reciprocal legislation would seem to have as efficient if not more satisfactory plan of facilitating the enforcement of reciprocal legislation.

For many years individuals and benevolent societies have been aware that the special situation of abandoned wives and children has demanded a special solution to the problem of foreign maintenance orders. In 1929, at the initiative of the League of Nations, the "International Institute for the Uni-

1. Ibid p. 114

fication of Private Law", began a study of the problem.

Although meetings were held no concrete results were obtained.

This matter has been under study by the Social Committee of the United Nations since 1948 and some progress is reported.

This work undertaken by the United Nations, shows that non-support problems are inevitable because of the growing interdependence¹ of the modern world.

Remedy at Common Law.

Other legal remedy is available when desertion occurs. At common law a deserted wife may proceed through civil action to recover funds from her husband sufficient to provide herself with necessaries. Necessaries are considered to be "such things as are essential to maintain life". This type of action is very seldom used, because it is futile unless the deserting husband has assets which can be attached and be readily converted to funds for the wife's support. Similarly a wife may pledge her husband's credit for "necessaries". This implies that the wife may obtain necessaries through a store or stores, on credit, naming her husband as responsible for payment of the account. This procedure also is ineffective; as a storekeeper is reluctant to provide supplies on the assumption that he may be able to recover his expenses from the deserting husband. Both these

1. Contini, Paolo, "International Enforcement of Maintenance Obligations," California Law Review, 1953. XL1, p.111

procedures are available but might be considered obsolete.

The common law remedies although seldom used, are still possible in England.

English Maintenance Legislation.

In England there are two procedures under statute law, available in cases of desertion. The Act comparable to Canada's provincial legislation, is the Summary Jurisdiction (Married Womens Act) of 1895. Under the terms of this Act, court action where there is desertion, may be commenced by any woman; whose husband has deserted her; whose husband has been guilty of consistent cruelty to her; or whose husband has willfully neglected to provide "reasonable maintenance", for her, or her children, whom he is legally liable to maintain. The court has the power to order that: (a) the applicant be no longer bound to cohabit with her husband; (b) the legal custody of any children of the marriage between the applicant and her husband, while under sixteen, be committed to the applicant; (c) the husband pay a person, designated in the order, a weekly sum not exceeding two pounds; (d) the husband pay court costs. The penalty, for failure to obey the order, is imprisonment up to a period of three months. Other provisions for enforcement, are similar to the Canadian Legislation already discussed.

Indirectly England's divorce laws make provision for a parent who has been deserted. In England, the "Matrimonial Causes Act of 1950", includes, "desertion without cause for a period of three years", as grounds for a petition for divorce.

Through this means, a wife might obtain legal remedy, through dissolution of the marriage and alimony.

The other principal maintenance legislation is defined in the "National Assistance Act". Because a complete social security program, demands responsible participation of its citizens, the responsibility for maintenance is summarized in law. The content, of this portion of the Act, requires a man to maintain his wife and children. A woman is similarly responsible for the maintenance of her husband and children. Children for the purposes of this Act include illegitimate children. Where a parent and children are granted assistance, because the person legally responsible for their maintenance refuses or neglects to provide for them, then the National Assistance Board, or local authority, may make a complaint to the court against the person who is evading his responsibility. The court, may order the individual, to pay a "reasonable sum" towards the maintenance of the person, legally entitled to support. Failure to comply with the order, may result in imprisonment not exceeding three months, or a fine of not more than fifty pounds, or both fine and imprisonment. Only the National Assistance Board, or local authority of the Board, may take this court action. The English legislation is not unlike Canadian maintenance laws. A section is included, concerning custody of children involved in these cases. Ontario has a similar section although leaving the court more discretion. The English legislation allows for custody to be given only to the applicant. Ontario authorizes the court to

make any custody order, and also an order, as to the right of access of any person. The terms of the National Assistance Act are important, in that the National Assistance Board, is given power to directly participate legally, in cases, where failure to provide maintenance, necessitates payment of public funds to deserted families. Thus the precedent is established for state participation in non-support cases.

Summary

This chapter has outlined certain existing legislation designed to provide a legal remedy for the problems of desertion and non-support. An example from case law serves to summarize the legal provisions available to the deserted wife in Canada.

The legislation provided in cases of desertion is outlined in case law as follows:

"At common law: a husband must provide for and maintain his wife according to his status and his means, while the wife on her part must cohabit with her husband at his place of abode. If he does not provide for and maintain her she does not have to cohabit and may live separate and apart; while, on the other hand, if she refused to live with him without just reason he is no longer bound to provide for and maintain her. Again if he abuses her or treats her cruelly she does not have to put up with it but may live apart, and his obligation to support and maintain her remains as before. Such conduct constitutes desertion on his part, at common law and under the Deserted Wives' and Children's Maintenance Act, and she is still legally entitled to support and maintenance...A wife whose husband fails, without excuse, to support her has her choice of three remedies. She may proceed against him civilly at common law, she may take summons proceedings under the Saskatchewan statute, or she may prosecute him criminally under Section 242(3) (now Section 186) of the Criminal Code. A common law action would be of use only if there were assets

which might be realized by execution, while the statutory proceedings are similarly restricted, in their utility, to cases in which the husband is employed, or otherwise in a position to make periodical payments. The criminal remedy is available even if the husband is without means and unable to make payments, if it is shown that he has failed, when able, to provide necessaries." 1

In addition to Canadian legislation a very brief description of corresponding English law was included. Because of the parallel problems encountered with reciprocal support legislation in the United States a summary of their procedures was added. An evaluation of the different statutes, was included under each heading, in terms of which seemed most helpful in providing the best legal remedy for a serious and difficult problem. The implications for social welfare agencies are important. In examining the legislation it was found that the criminal code is preponderantly punitive. It would seem unlikely that social welfare agencies would use the criminal section of the law. Welfare agencies, particularly government financial assistance departments, may become more involved in court action, if the English precedent and that established by Saskatchewan is continued. There would seem to be a case for further participation by agencies in laying charges and enabling enforcement. Custody of children is another area of concern for social welfare agencies. There are good grounds for believing that further exploration is needed, as to the desirability of including a section in the British Columbia statute, covering custody of children. Probation is another government service which is often outlined within

1. Rex v. Brown (1941), 1 W.W.R., p. 268.

maintenance legislation as a resource in enforcement. Still another "first" is gained by Saskatchewan through the inclusion of a portion of the act which authorizes free legal aid in some cases. Social Welfare Agencies work closely with legislation and need to keep well informed of the provisions (and needed provisions) of legislation, particularly domestic relations legislation.

CHAPTER III

THE FAMILY COURT: ADMINISTRATION OF DESERTION LEGISLATION

The effectiveness of a piece of legislation is largely determined by the resources provided for its enforcement. This is particularly true in cases of desertion. To apprehend, try, convict, and punish a deserter does not necessarily provide maintenance for his family. Therefore additional resources are needed. The recognition of the social implications, as well as the legal implications, of problems of desertion, has led to closer co-operation, and because of the interest of many citizens in domestic legal problems, a composite social welfare agency and court has developed, which, in many parts of the world, is known as the Family Court. The Family Court, (sometimes known as the Domestic Relations Court), is often patterned on the Juvenile Courts which came earlier. The purpose of both is to attempt, wherever possible, to arrive at an equitable solution of a problem, rather than mete out punishment. For this reason these Courts use the services of those professions, skilled in helping, in cases involving interpersonal or social problems. The Family Court of the City of Vancouver is used here as an example of how such a court deals with desertion cases.

A deserted wife, if she applies to the Family Court for help with her problem, is first interviewed by a Court social worker. Information is gathered by the social worker, in

order to obtain an understanding of the problem, of the situation, and of the client who has come for help. This information is then used to arrive at a tentative diagnosis of the total situation and, in co-operation with the client, work out a plan to solve or ameliorate the problem. If the husband is known to reside in the City of Vancouver or in an adjoining area every attempt is made by the Court Worker to interview him. Often in cases of desertion, there is the finding, that the marital relationship is so damaged that a reunion of the family is unlikely. When this is the finding, the deserting spouse is encouraged to make a voluntary agreement, through the court, to maintain his wife and children. This agreement is usually drawn up by the court and has the same authority as though it were a court order. The fact that it is a voluntary agreement is recorded on the order.

If a husband refuses to make a voluntary agreement, the wife may issue a complaint in writing to the Judge of the Family Court. The court issues a summons or a warrant to cause the husband to appear before the court on a given date. The social worker attends the hearing and regardless of the outcome, reviews the findings of the court with both parties, afterwards. The court uses probation where it is thought that its use might make fulfillment of the order possible. The Court Worker acts as the probation officer.

Method of Collection. When an order is made it instructs that the payments be sent to the court. This procedure

has been found to be more effective than having the payments forwarded directly to the deserted wife. The reasons for this being that; the court worker is kept directly informed of the circumstances of the payment; the other agencies in the community have access to accurate information about money paid; the court in "show cause" cases has a record of the payments; and the man through this means is encouraged to keep in direct contact with the court.

When the deserting husband is outside of the City of Vancouver, but within British Columbia, the court worker in conjunction with the deserted wife, decides whether court action should be started immediately or whether the husband should be interviewed by a social agency. If the latter decision is made the services of the Police, Probation Branch or Social Welfare Branch, (depending on the facts in each case), are requested to, interview the father, with the purpose of effecting a reconciliation or voluntary maintenance payments. Failing this, the court may, with the woman's complaint in writing, proceed to serve a summons. On proof of the summons being served, even if the husband does not appear, the case may be heard as if he were present.

When a husband is living some distance from the court no attempt is made to compel his appearance. A senior member of the court staff explained that forcing a husband to attend court under such conditions was punitive. The man would lose time from work, if not his job, and little would be accomplished in

providing maintenance for the deserted family. The cost of providing an escort and transportation, is another factor to be considered. An influence also is the fact that in a "show cause" hearing the British Columbia Act does not provide for a warrant to be issued. A man can only be brought to court, for the purpose of a hearing which at best, would result in the issuing of an order against him. This purpose can be served without the man appearing. In some cases, where the man is believed to be wilfully avoiding court attendance, and he resides within a few hours driving distance of Vancouver, a warrant may be issued. If it is a "show cause" the proceedings may be commenced under the Criminal Code, and thus the man may be brought to the Court, where with the client's permission, the Criminal charge may be dropped and the "show cause" hearing held.

From long experience with desertion cases the court workers have found that it is sound to ask the court for an order however small. Once an order is made it is much easier to vary, should one of the circumstances change, than it is to obtain a new order. It is considered to be good social work practice for a father to take some financial responsibility, however limited his resources may be, rather than have his family become wholly dependent on the state. This is seen as beneficial to the family as well as encouraging participation on the part of the responsible parent.

When a deserting father is resident outside the Province and is in a state having reciprocal legislation the action is

taken in keeping with the terms of the Maintenance Orders (Facilities for Enforcement) Act. The Family Court workers believe that the British Columbia Wife's and Children's Maintenance Act would be strengthened by the inclusion of means of reciprocal enforcement within the Province in the same way as is done in Ontario. Under these arrangements a provisional order is made and forwarded along with supporting documents to the court in the area where the father resides. This has been attempted on an informal basis by the Family Court and it has proven effective. Another improvement in the Act would be seen as allowing the court to issue a warrant in "show cause" cases as well as in original hearings.

The Family Court social worker, in cases where a wife's application for a maintenance order is refused, may assist the wife to understand the reasons why her request was denied, and may refer the client to an appropriate resource for further social work help, e.g. (financial assistance), when necessary. One of the main strengths of the Family Court is seen as its integrated social-legal approach to problems of desertion. The emphasis is on planning to help the individuals concerned, fulfill their responsibilities, rather than on punishment. With a staff who understand human behaviour and the intricacies of the law, the greatest effectiveness of the legislation seems to be utilized.

City Social Service. The Social Service Department of the City of Vancouver is responsible under the City Council to carry out functions outlined in the City Charter. It is the

duty of the city to make suitable provisions for its "indigent and destitute". This duty has been interpreted as the meeting of financial need and the provision of other social services. These services are to be administered in a warm and friendly way, in order to help people toward eventual rehabilitation, or in the case of the old and the chronically ill, to meet dependency needs.

When a deserted mother applies at the City Social Service Department for financial assistance, she must prove herself eligible under the terms of the Social Allowance Act, and its regulations. One of the requirements, is that a person who is legally entitled to support from another person or agency, is not eligible for social allowance. For this reason a deserted wife who applies for social allowance is referred to the Family Court. The Family Court worker, on assessing the situation, may inform the City Social Service Department that court action is not possible, or that some time will elapse before the case can be brought before the court. In these instances, and if all other eligibility requirements are met, the applicant may receive social allowance. In many cases the maintenance payments are not large enough to adequately support the family. Social allowance is paid to bring the family income up to the maximum amount payable under the assistance rates. Maintenance payments through court orders are 100% deductible from assistance payments. In addition to financial need, social work services are offered, which may lead to a reunion of the broken

family, or which will provide the best possible social planning for the family. Thus the family may benefit from medical attention or from the diagnostic services provided by other agencies such as the Child Guidance Clinic. Ideally the family may be rehabilitated so that the effect of the desertion on the family may be lessened. The long range goals being, that the members of the deserted families may grow to be happy and useful citizens, and establish secure families in the future. Other agencies in Vancouver, which provide service to deserted families, are the Family Service Agency which supplies skilled family casework services, where there is no need for financial assistance or court action. The Children's Aid Societies in Vancouver are occasionally called upon to provide foster home care, when children are deserted by their parents. As well, temporary care and help in planning for the children, is given to deserted wives, often in collaboration with the City Social Service Department and the Family Court. To a lesser extent, the Foster Day Care Association and the Strathcona Day Nursery, serve deserted families, in their specialized role of extending child care for working mothers. Because of the strain on family life, caused by desertion, and the resultant social problems, most social welfare agencies provide a variety of services to families, where desertion has been one of the causative factors, in the family disintegration.

Municipal Administration in Desertion Cases. The majority of the British Columbia Municipalities have their own Social Welfare Departments, directed by an Administrator, who

in most instances is a trained social worker. The policies are largely determined by the Administrator, and thus, there are a variety of approaches to the administration of cases of desertion. There is close liason with Police Departments and Magistrates.

In most municipalities when a deserted wife makes application to the court she is referred to the Social Welfare Department. If she approaches the department, herself, a skilled social worker interviews her to ascertain the problem. He helps the deserted wife assess her own responsibility, and find a plan for her future. If there is indication that a reconciliation is desired, an attempt is made to locate the deserter and tender the same help as is given to the wife. The generic approach in all social work practice is to give a service to the individual in keeping with the needs of the client and the frame of reference of the Agency. Where a reunion is not possible, and it appears that the husband is wilfully neglecting to assume his financial obligations towards his family, court action may be recommended. Assistance may be granted without considering court action, but when every attempt possible is made to have the husband accept financial responsibility for his family, without success, then court action may be required. Where the wife refuses to institute a court proceedings social assistance may be discontinued.

In one municipality the Administrator has adopted a policy of direct participation in Court, when a deserted wife

may be in need of social allowance. The policy compels the wife to give her complaint in writing to the court, before she receives a second social allowance payment, except in cases where reconciliation appears imminent. The Administrator in court acts in the capacity of prosecutor. When an order is made, a clause is included, instructing that payments should be made payable to the wife but forwarded in care of the administrator. In this way the payments are recorded, without having the money made payable to the Court, or the Municipality. The police seem pleased to be relieved of the responsibility of prosecuting these cases, although they do issue and serve summons. In prosecuting "show cause" cases, the administrator asks for an order requiring that the maintenance payment be made by a certain date, and includes a statement that in default of such payment, the errant father be sentenced to two months in jail. The purpose of this inclusion is to strengthen the "show cause" order and to save a third hearing of the case.

The administrator, is of the opinion, that this service combines the social and legal approach to desertion problems very adequately. The legal profession are aware of the procedure and raise no objection. The channelling of payments, through the administrators office, assists efficient adjustment of social allowance payments, and provides a ready record of the status of each case. The administrator believes that a realistic application of the law is required, but does not see this in any way being a substitute for preventative casework, or skilled service, aimed at a family reunion.

Problems of Desertion as seen by Municipalities. The problems of desertion are closely related to many other problems facing Municipal Social Welfare programs. Each administrator interviewed, mentioned the need for better preventive services. In most cases of desertion, the marriage has never been stable, or has been gradually disintegrating over a period of years. An event such as the birth of a child, loss of a job or illness, often is the "final straw". It was an unanimous opinion that the sooner the couple received help after desertion occurred, the more likely they were to benefit.

Social work prevention, was seen as an overall improvement in the quality and quantity of social work service, being made available in the community. One experienced administrator pointed out that in the community in which he worked, little use was made of the social work service, by those families having marital difficulty. If on the other hand the service became known, it was his considered opinion that his staff could not begin to handle the work. The administrator believed that a good child welfare and family service program would in the long run lower the per-capita incidence of desertion. Skilled social work is a highly individualized service and therefore very expensive. The municipalities are constantly aware of the costs involved. The Province of British Columbia contributes a high share of the costs of social allowance (80%), and 50% of the social workers salaries. Nevertheless the social consciences of the municipalities are dulled, because of their difficulty in financing the many services requested by their growing population. The cost of desertion to a

community in terms of dollars and cents is large. In January, 1956 in eight small areas adjacent to Vancouver, social allowance paid in cases of desertion amounted to 21.7 of the total allowance in pay.¹

One municipality gives its most highly skilled social workers caseloads containing families on social assistance. This is the category of service which includes the majority of deserted families. The Social Allowance caseload, reached its lowest level in four years, in September 1955. Although the high level of employment was largely responsible, the Administrator is of the opinion that having the best social work available, has been an important factor in reducing the costs. This does not measure the gains in human well being.

An important problem faced by administrators, is the difficulty in locating deserting fathers, particularly when they leave the immediate vicinity. The workers time spent in attempting to trace a missing father, can be so great that some administrators are of the opinion that, having an agency or service which assumed that responsibility, would be helpful. The experience of the Family Location Service, (formerly the National Desertion Bureau), in the United States, has shown that there is much to be gained by locating the deserter, even if only to inform him that there is help available. This American Service has refined its methods of locating deserters. Support for the plan of having an agency responsible for locating deser-

1. See appendix F, for details.

ters. Support for the plan of having an agency responsible for locating deserting husbands and fathers is gained from an experiment in the Province of Ontario. There a "special investigator" works in co-operation with municipal and provincial police, in an effort to trace deserters. He has been successful in locating approximately 25% of those brought to his attention, and about half of this number have been reconciled, or have made regular¹ maintenance payments.

The perennial problem seen by almost all authorities on the subject of desertion, is the "absentee father" who has moved a great distance, or out of the Province. No municipality designated funds for returning a deserter to hear charges. Experience with Reciprocal Support Legislation has been that a father, who leaves a Province to evade his responsibility, will generally "disappear" again, once an order is made against him. Often associated with the move, is the situation where the father commences a common-law marriage. Often this father is unable to support either family adequately. A case illustrates the difficulties involved. A man deserted his family in British Columbia and moved to the Province of Saskatchewan, where he entered into a common-law union with a woman having several children. The municipality in this instance, decided to return the man to the court in British Columbia, at a cost of \$350.00. As soon as the legal wife saw her husband in court she dropped charges and asked her husband to return to her which he did for a short time,

1. Smith, W.C., "Desertion", Public Welfare Bulletin, Canadian Welfare Council, 111, 1955, p. 3.

Nothing permanent was accomplished in terms of a reconciliation or payment of maintenance. Another family was left behind in Saskatchewan.

When a new common-law family is established, before court action is considered, an additional problem is posed. Is it advisable to take court action, or is it better to maintain the deserted family and provide service to strengthen the new common-law family? This is a question which arises frequently, and has to be decided on an individual case basis. Another situation which is met frequently in desertion cases is that of the "alcoholic deserter". He may leave his family destitute even though he doesn't desert them on a permanent basis. These men need intensive help with their own difficulty. To enforce a jail sentence for non-support, only compounds the problem and does not help the family. Similar in some ways is the "inadequate" man. He may be a person, who by reasons of mental or physical disability, is unable to fulfill the responsibility of maintaining a family.

The municipal administrators believe that the cultural attitude toward the deserter is punitive. Those responsible for enforcement are also products of this culture. Therefore a punitive attitude tends to be exhibited. Often this punitive attitude results in negating the purpose of the maintenance act. Rather than help the deserter assume his responsibility he is antagonized and wilfully evades his financial duties.

Provincial Administration of Desertion Cases. The Social Welfare Branch of the Department of Health and Welfare,

has district offices serving the entire Province of British Columbia. Through these offices a generalized social welfare service is available. The local offices maintain close contact with the police and Magistrate in their respective areas. The Province is divided into administrative districts. An administrator is responsible for the programs in each region. Each client serviced, is helped through a treatment plan, in keeping with the person's needs, and the resources of the client, worker, agency and community. Decision as to taking court action is decided as a part of the total case planning done by social worker and supervisor. One administrator insists that deserted wives lay a complaint with the court before applying for Social Assistance. The reason for this is, that as a part of the eligibility requirements, the applicant must prove, that she cannot receive support from a person legally responsible for her maintenance. Nothing in the British Columbia Social Assistance Act or Regulations requires this approach. The only reference to court action in desertion cases, is found in the regulations pursuant to the Mothers' Allowances Act, which states --

"Where an application for an allowance is based upon desertion of the husband of the applicant, the latter may be required to make a complaint against her husband under the "Deserted Wives' Maintenance Act." 1

Views on Desertion Problems. The cost of maintaining deserted families concerns provincial authorities. Social Assistance payments in the Province of British Columbia for the fiscal

1. Mothers' Allowance Regulations, R.S.B.C., Section 4, Subsection f.

year 1954-55 amounted to \$8.619,000.00.¹ As mentioned previously a survey of eight "local areas" in January 1956 showed that payments to deserted families amounted to 21.7 per cent, of the municipalities direct social allowance payments. There are no comprehensive statistics available as to the costs for the province. A conservative estimate places the 1956 total expense for direct social allowance payments at \$5,000,000. If the percentage costs of the six municipalities reviewed was representative the 1956 cost to the province, for desertion cases, would amount to \$1,085,000. The cost is not the only concern of provincial social workers. The problems inherent in cases of desertion cause untold human unhappiness.

The difficulties of providing service, raised by social work administrators, is that of the large amount of social worker time used in desertion cases. Because of heavy work responsibilities the social workers are apt to attempt to meet the immediate financial need of the deserted family. More intricate help, aimed at assisting the family locate the missing parent and reuniting, may be neglected. Closely associated with the shortage of time is the shortage of social workers. Demands are made of the provincial social worker, to have an understanding of at least twenty different sets of acts and regulations, besides broad social work knowledge and skills. Fifty percent of the social workers in the provincial service as of July, 1955

1. Public Welfare in British Columbia, 1955, Annual Report of Social Welfare Branch, Victoria, 1955, p. 032.

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were in-service-trained. Lack of knowledge about desertion legislation, by many social workers may interfere with good enforcement. Because desertion involves social problems the social worker must assume some responsibility of helping a deserted wife take court action, or follow-up action, when indicated.

Insufficient knowledge of desertion legislation, on the part of some Magistrates, is another difficulty influencing sound enforcement of the Wives' and Children's Maintenance Act. One long experienced administrator, gave the opinion, that the Magistrate's lack of knowledge of the provisions of the Act, was the "biggest drawback" to effective enforcement of British Columbia's desertion legislation. Magistrates have been known to refuse to accept complaints of deserted wives. The wife in this case has no recourse but to seek a Magistrate who will hear her case. Many of the Magistrates, particularly in rural areas, have no legal training. (In Saskatchewan the Magistrate hearing desertion cases has legal training.) Lack of training may lead to less effective enforcement. More enquiries as to the whereabouts of deserting husbands, are received in British Columbia than are sent from British Columbia to other areas. The administrator, through whose offices enquiries are directed, believes that this in part reflects more vigorous enforcement in other parts of Canada.

1. Assessment of Staff Utilization summarized from material submitted by Social Workers, District Supervisors and Regional Administrators for July, 1955. Social Welfare Branch Department of Health and Welfare, Province of British Columbia.

The provincial administrators are concerned about the "laissez-faire" attitude of those responsible for administration of non-support legislation. Social workers, police and Magistrates are prone to take the "what's the use" attitude. This is sometimes expressed as: (What's the use--it's impossible to make legislation work.) or "Why send a man to jail, and then have to support both he and his family?" This thinking clouds some of the issues, particularly: (a) the responsibility of a man to support his dependents; and (b) the right of those dependents to maintenance. The "laissez-faire" thinking may also mask a punitive approach. Thus "Why send a man to jail?" may really conceal lack of motivation to provide realistic help which should be to encourage a man to fulfill his responsibilities voluntarily.

In attempting to analyze the reasons for "laissez-faire" thinking, no definite answers are available. One of the contributing factors is seen to be the social workers lack of skill. Few social workers seem able to combine casework skills with the realistic requirements of desertion legislation. Many social workers, it is thought, fear that, in explaining the requirements of the law, they are being punitive. Another factor influencing social workers is the length of court cases and the numerous hearings necessary. Many of these cases have been unsuccessful and this feeling of futility carries over to cases where court action might prove beneficial. There is reason to believe that the same kind of thinking has affected the police

and magistrates to some degree.

Many points were raised common to both municipal and provincial authorities. The two most important being lack of facilities, for locating deserters and returning them to courts from distant points. There was agreement that: lack of time; paucity of knowledge of legal procedures; inadequate skill in presenting legislature requirements to deserters; and laissez-faire attitudes on the part of those involved hinders realistic enforcement of desertion legislation.

Desertion Proceedings as seen by Magistrates and Judges.

Magistrates and Judges are appointed by the Attorney General. In the larger centres the Magistrate is often a lawyer. Magistrates, interviewed outside the City of Vancouver, varied in their opinions as to the effectiveness of the present Wives' and Children's Maintenance Act. A Magistrate with training in law, felt that one of the difficulties in arriving at a decision in desertion cases, was the belief that these are matrimonial more than legal problems. This Magistrate thought that "trained social workers" should have more responsibility in the court proceedings. The social workers role was seen as attempting a settlement prior to coming to court, and if that was unsuccessful, tendering a report for the court as to the work done with the couple. Another opinion was that Magistrates should have greater powers. A suggestion was that, these should include authority to imprison the deserting husband at the first hearing, if this seemed indicated. A case was cited where a deserting husband had said in court that he would refuse to obey the court

order. The Magistrate was powerless to act unless action was taken under the Criminal Code. In this instance the man left the Province rather than honour the court order. Another suggestion was, that the Act give the Magistrate power to pass an order as to the custody of the children, particularly in cases involving cruelty. All the Magistrates favoured having the amount of the order left to the discretion of the court. One recommended having the maximum amount of the Bond posted, to be raised from \$500.00 to \$1,500.00 and the maximum jail sentence raised from three months to six months. Each Magistrate interviewed, mentioned that he had had cases where, after a jail sentence the deserting husband began to pay maintenance.

One of the Magistrates indicated that his hearings were informal, and before bringing a case to court he had a talk with both parties, whenever possible. He estimated that approximately fifty percent of his cases were settled outside of court through this procedure. As a self styled "father confessor" he took pride in his accomplishment in the small community where he lived. At the same time he cautioned that Magistrates should "follow-up" desertion cases until such a time as a satisfactory solution was found. The opinion was expressed that some agency such as the Police, Probation Service or Social Welfare Branch should take an active part in collections of payments. Without this check orders often are neglected and their effectiveness diminished.

An outstanding, legally trained Magistrate, expressed the opinion that, with one exception, little improvement can be made in the existing legislation. It was held that the Wives' and Children's Maintenance Act could be strengthened by the inclusion of a section allowing for provisional orders to be made in one court, (within the province), and forwarded to another for confirmation, in cases where the husband lived at a distant part of the province. This was seen as giving better service to both partners.

More important however was to arrange for better service to carry out the existing legal provisions. One improvement was seen as being the appointment of legally trained Magistrates throughout the province. Another suggestion was that social workers, (or probation officers), throughout the province should take a more active part in court. This could be facilitated by the social workers having a better understanding of the rudimentary laws of evidence. Also, social workers could provide the prosecutor with enough information to ensure that all possible evidence is presented to the court. Another improvement in the service was considered to be, increased use of probation, in cases where a maintenance order is made. This Magistrate included in his remarks, a statement of the usefulness of desertion legislation as an aid to settlements out of Court. He pointed out that, although the Family Court obtained a large amount of money through its orders, (\$165,000 in 1955), that many families received regular maintenance payments, because the deserter realized that he might be taken to court, if he did not

support his dependents.

Because of the reference to the use of probation, interviews were arranged with authorities in that discipline. Those interviewed expressed the opinion that their service had been insufficiently used in desertion cases. With the expansion of the Provincial Probation Branch in (British Columbia), in the last few years, to cover almost the entire province, it was thought that many more desertion cases would be accrued. This has not been the case. It is thought that the Magistrates are not aware of the section authorizing probation. The probation officers in their capacity of court officers would prepare a court summary when requested. They would also be prepared to collect payments if the court so directed. The consensus of opinion of those interviewed, was that maintenance payments should never be made directly from husband to wife, but through a recognized agency or person.

It was suggested that the responsibility of collection should be that of the Court or the Courts representative. As well, the Probation Officer where responsible, would commence "show cause" actions, when warranted. The service of the Probation Branch is also available to assist in the location of deserters. Increased use of the expanding facilities of probation service would seem to be desirable. The close co-operation that Probation Officers have with the Police and Magistrates would be valuable in helping the latter obtain a better understanding of the problems of desertion.

Problems of Desertion Cases as Seen by the Police.

Today the R.C.M.P. do the majority of police work in British Columbia. Due to the existence of the Family Court in the City of Vancouver the Vancouver City Police have little participation, except to execute warrants for arresting deserting fathers. Members of the R.C.M.P. who were interviewed expressed quite openly their distaste for desertion cases. The two most prevalent viewpoints were that marital problems should not be their responsibility and that there is little use in prosecuting desertion cases, as they are rarely successful. Because of this attitude, the chances for a sympathetic approach in desertion cases would seem remote.

In some areas the R.C.M.P. receive many marital complaints including accusations of desertion. They admit to becoming easily frustrated, at hearing the complicated tales of family discord. When a case of desertion is begun, a summons is issued to the husband. Often the husband and wife go to the police prior to the hearing and the wife asks to drop the charges. This is done, and in a short time the procedure is repeated. On the other hand many officers have had the experience of bringing a case to trial three or four times. The man, as soon as he is faced with the alternative of going to jail, may pay the arrears, and then the procedure is repeated again in a few months. Similar cases involve the man who is unable to support himself, through lack of ability or training, or a serious problem such as alcoholism. He is sent to jail for a short period and nothing is accomplished. The police agree that they have many other "petty offenders" but point out that generally, involved court

hearings are necessary in desertion cases before the case is completed. If the man is imprisoned the action may start again once he is freed. Lengthy police work is involved in these cases, and little seems to be accomplished.

Some of the other reactions of the police were that there is no use jailing a man and having the taxpayer assume responsibility for both the family and the man. The argument carried over to saying that it was cheaper in the long run to pay for the family and let the man maintain himself. Another comment by some police was that desertion was really a civil action and the police are responsible mainly for criminal proceedings. One of the things that concerns the police is the fact that if a deserting husband moves to a distant part of the province little if anything is done to enforce proceedings against him...No funds are available to bring the husband to the court hearing. This proves frustrating to the police, who are firm in the belief that the law should apply to everyone, not just the person who is near enough to bring into court. The inclusion of the section which permits the court hearing to proceed once a summons has been served, regardless of the man's presence, was seen as an improvement.

The consensus of opinion of the police seemed to be that; they are not trained to handle what seem to be primarily marital problems; desertion cases are frustrating and time consuming; the case seldom results in a permanent order which is fulfilled. On some occasions police appeared to speak against

the use of the "Wives' and Children's Maintenance Act" without having sufficient knowledge of it's contents.

Problems of Getting Help Faced by the Client. The overwrought deserted wife usually has deeper problems, of which desertion may only be a symptom. The first decision she must make is--Where can help be obtained? She will be fortunate if she has a sympathetic family or friend. If not she must seek help where she can. Usually she is referred to a Social Welfare Agency, the Police or a Magistrate. Often she goes to an agency where she is asked a long series of questions. These may be geared more to seeing if she is eligible for service rather than help for her problem. She may then be referred to another agency. In the City of Vancouver the deserted wife is likely to be referred directly to the Family Court where appropriate help is available. In other areas of the Province, wives have been known to have been referred back and forth several times, between the Magistrate, Police and the Social Welfare Branch Office.

One difficulty still encountered is that of the Magistrate who refuses to hear a case on the grounds that the desertion did not occur in the area of his jurisdiction. One such example quoted was that of a wife who was deserted in an upcoast community. She moved to a municipality near Vancouver to stay with her parents. When she applied to the local Magistrate, she was told she would have to take action in the locality where the desertion occurred. She returned to the Court in the coastal town, and when she mentioned that she was living near Vancouver she was

referred back to the court where she made her original request. Finally with the help of the Social Welfare Branch her case was heard.

In rural areas a deserted wife is seldom able to secure legal aid, whereas her husband may be able to afford to secure the services of a lawyer. This is particularly helpful in cases of cruelty which may be technically difficult to establish. The Family Court has the services of the City Prosecutor, who in practice ensures that all appropriate evidence is placed before the court. In some instances Municipal Solicitors are engaged on behalf of the wife. This occurs most frequently in cases where the wife is liable to become a charge upon the municipality.

A general problem faced by most laymen is the anxiety created in being involved in a court case and giving evidence under oath. A social worker can be of great help in these situations. The problem confronted by the husband who has deserted his family are also involved. His departure from home is nearly always accompanied by feelings of guilt and anxiety. He often won't seek help, even if he knows where he may find it. The initial approach to a deserting father, seldom recognizes that he is a person with a difficult problem. Often, in fact, the first time a deserting father is seen he is accused in a punitive way of deserting his wife and family. Sometimes his first contact is with the person serving a summons. All authorities interviewed expressed the opinion that the original interview in desertion cases, whether it be with the husband or the wife, can

best be taken by a skilled social worker. If each agency involved carefully cleared with the others as to what the best procedure might be for their community, the clients could be helped with a minimum of delay and referral.

Summary. In this chapter, problems of administration of desertion legislation have been reviewed as they are experienced by social agencies, courts, magistrates, police and the clients involved. The basic objectives of any support law includes, a reconciliation where possible. When this is impossible, the hope is kept, that the deserting father can be encouraged to voluntarily support his family. When this cannot be accomplished the purpose is to make certain that moneys for the support of a man's dependents are received by those dependents. Although essentially a collection problem, in many instances more than collection techniques are needed. Intricate family problems may be involved. For their solution expert social work or psychiatric treatment is needed.

CHAPTER IV

IMPROVING SERVICE FOR DESERTION CASES.

Enquiries at Courts and Agencies revealed that there are no statistics kept which can be readily used to estimate the number of deserted families in British Columbia. The courts keep a record of the number of hearings held under the Wives' and Children's Maintenance Act. This figure in the opinion of those experienced in work with desertion cases is not representative of the number of desertions in the Province. It is pointed out that many non-support cases are never brought to court. The cost of social allowance paid to deserted families is also difficult to calculate accurately. None of the large agencies provide a break-down of their expenditures to include allowances paid to deserted families.

The survey showing that 21.7 percent of social allowance paid in eight small areas went to deserted families, is not necessarily a representative sample of the entire province. It is thought however, that this small review, indicates that the cost of desertion in terms of social allowance payments in the Province of British Columbia is in excess of one million dollars annually. A study in Ontario shows that in 1953 desertion accounted for

10.1 percent of the total of Mother's Allowances Cases.¹ In the same period in British Columbia desertion accounted for 8 percent of the Mother's Allowance cases.² These figures would seem to confirm that desertion in financial assistance caseloads accounts for close to ten percent of the gross social allowance payments. This is a rough-and-ready review; but it clearly indicates the necessity for further research to be done, in order to establish a more accurate estimate of the incidence and cost of desertion in British Columbia.

No doubt there will continue to be cases of desertion. However, much can be done to improve existing services to those effected by desertion. Inevitably, when problems of family disintegration are discussed with social workers, the need for better preventitive services is brought to the fore. Proposals for better preventitive service calls for a broad front, of helping to improve family life at all levels. Building stable marriages is a gigantic task since it is generally accepted, that the best preparation for a happy marriage, is to have experienced a happy and emotionally healthy home-life. Income maintenance was insufficiently stressed in this study. However in preventitive services it is extremely important. In family disruption, as a result of desertion, a secure income is necessary to minimize

1. Smith, W.C. op. cit., p. 3.

2. Public Welfare in British Columbia, 1953, Annual Report of Social Welfare Branch, Victoria, 1953, p. U37.

the effect of the loss of the breadwinner. In British Columbia particularly, seasonal unemployment creates problems. Without adequate assistance for unemployed employables temporary desertion occurs. This usually happens when the breadwinner leaves home to find employment, but is unsuccessful. In exceptional cases "deliberate" desertion happens when the husband leaves home in order that his wife will receive social allowance. This point was referred to by municipal administrators. Financial assistance to a deserted family is not usually sufficient to overcome the trauma caused by the desertion, or to effect changes in the serious problems inherent in the family, prior to the departure of the father. Individualized services are often required for each family member involved. The mother may need support in her everyday management problems. Children often need social work treatment services, to correct faulty emotional experiences. The father needs help in evaluating his social situation. When he decides to return to his family he still may need help. When his decision is to remain away from his family, skilled aid is usually necessary, to enable the father to provide adequate support for their care. When all these important personal services fail the sole recourse is legal remedy. Sound social work planning is necessary to know whether or not to recommend court action. (It is always kept in mind that a wife, if deserted, has the right to institute court action.) When the decision is made to proceed to Court, care must be taken to eliminate punitive attitudes. The social

worker, (or Probation Officer), may act as a resource person to the Court. He may also serve the court, in the role of Probation Officer, in order to most effectively obtain maintenance for the deserted family. Thus in an administrative way, the social worker has responsibilities reaching beyond those of the court, in attempting to see that both parties receive help with their problems, regardless of the outcome of the court hearing. Through adequate service, the social worker may break the chain of events, which often carries problems of poor social adjustment from one generation to another. Thus the link is made with preventitive service regardless of the immediate focus of social work help.

Desertion Cases Where Court Action Seems Inadvisable.

Throughout this study, informants have stressed the opinion, that there are some cases of desertion that do not benefit through court action. Most social agencies evaluate each case, and on the basis of the particular circumstances, a decision is made about court action. The deserted wife may institute court proceedings without the recommendation of the Agency. If the deserted wife refuses to take court action the Social Agency may refuse assistance. The criteria on which a case decision is made is not formally established. The two broad classifications of cases, which leading social work administrators are reluctant to see prosecuted, are the ones where the deserting husband is unable to cope with his own problems, or has established another family. An alcoholic or a mentally retarded person often cannot cope adequately with his own situation. In these cases court action is rarely effective. The added social pressure of a

court case, and eventual imprisonment, may serve only to weaken the ability of the individual to care for himself. The end result may then be, a completely shattered or dependent person, for whom society must take full responsibility. Legally, a problem such as alcoholism, or mental or emotional retardation, is not taken into consideration. However, socially a man with such a disability is thought of as a person who has "sufficient cause" not to support his dependents. This is a very difficult assessment to make, and error on either side, is to be expected. When a deserting father has established another family, and his economic status is such that he cannot assume further financial responsibility, the value of court action is questioned. Sometimes court proceedings result in two deserted families instead of one. Most social workers believe that such court action is punitive. They recommend service to strengthen both families. When the deserting father leaves his common-law family, then the possibility action under the Act is reviewed. Under terms of case law, a person who is unable to support his family, because of inability to work or to obtain work, is protected.

Suggestions for Strengthening British Columbia Legislation. The material reviewed in preceding chapters indicates that, the use of the Criminal Code in desertion cases, is of little benefit in securing maintenance for deserted families. There are instances, where the use of the Criminal Code has been effective, in that, after a period of imprisonment, the deserter has made regular payments for the support of his dependents. Although this has happened, there is insufficient evidence avail-

able to support a recommendation of frequent use of criminal law. There is another form of proceeding under the Criminal Code which has limited benefit. This is the use of the suspended sentence and "formal recognizance". In using this the Magistrate may, if the accused has no previous criminal record, order as part of the recognizance, that the man pay a reasonable sum regularly for the maintenance of his family. If the order is not honoured, the man may be sentenced to prison for breaking the terms of the recognizance. The problem encountered in this proceeding is that it is difficult to learn whether or not the defendant has a criminal record. The police must forward an enquiry to the central Ottawa files which is time-consuming. During this period the prisoner must be held in custody. The police may favour the Criminal Code in some instances because of their familiarity with the Code and its simplicity of administration. In general it must be recognized that its effect is more punitive than remedial. If the Magistrates were given wider discretion in using the terms of the suspended sentence, it is believed that the Criminal Code would be much more useful in dealing with desertion.

The British Columbia Wives' and Children's Maintenance Act has been frequently revised in order to ensure its maximum effectiveness. It has been said that it goes much further than any other type of legislation in attempting to provide for efficient administration. Constant revisions are necessary for the laws to keep abreast of the changes in society. This review

indicates that British Columbia has gone further than other provinces in the matter of proceeding with a court hearing, even to making an order, in the absence of the alleged deserted, if it can be established that the absent deserter was served with a summons. Most of the provisions of the three desertion Acts under examination are similar. Several provisions in the Saskatchewan and Ontario legislation are seen as being an improvement on the British Columbia statute.

The Ontario Deserted Wives' and Children's Maintenance Act, contains a section which enables the court to make a provisional order, when the husband is known to reside in another part of the province. Through this procedure a case is heard without summoning the alleged deserter to appear. If the Magistrate who hears the complaint is satisfied that it is justified, he may make a provisional order. This order is forwarded to the court in the district where the husband resides, along with supporting documents which include; (a) a copy of the complaint; (b) a certified copy of the provisional order; (c) a certified transcript of the evidence; and (d) a statement containing information facilitating the identification of the person against whom the order is made. The second court on receiving the order, and supporting documents may summons the deserting parent to appear, and hear the evidence included with the provisional order. If the Magistrate on hearing the man's evidence, is satisfied that the order should be confirmed, he may confirm the order. If he is not satisfied he may return the provisional order to the first court, with his recommendations. The advantage of this procedure, is to

have a full hearing, without the necessity of returning the deserter to the location of the original court. By including this provision in the British Columbia Act, many cases, where the husband is living a great distance from his family, could benefit from a full hearing.

Another suggested addition is that of a section relating to the custody of children. Such an inclusion, would authorize a Magistrate hearing a case, to include in the order a statement designating who should have custody of the children. A custody order is particularly important in some cases involving cruelty, on the part of a father. In such a case a mother may take her children and leave. She has no protection from the father's interference unless she seeks an order under the Equal Guardianship of Infants Act, which is a costly procedure. Precedence for custody orders, in cases of desertion, is found in the Ontario act and in English legislation.

Several minor revisions are also recommended. One is that the British Columbia Act does not provide an outline for a deserted wife's complaint. This is done in both the Saskatchewan and Ontario statutes. Such an outline is believed helpful to a deserted wife. It may also prove effective in providing the court with a more accurate document to use in instituting court action. A British Columbia Court is limited to a maximum of forty dollars per week, in its powers in designating the amount of a maintenance order. In some cases this could prove to be insufficient. Those who work with this legislation express the

opinion that the amount of the order should be left to the discretion of the Magistrate as is done in Ontario and Saskatchewan.

Reciprocal Support Legislation The facilities for enforcement of desertion legislation when the deserter is in another province are found in the British Columbia Act known as the "Maintenance Orders (Facilities for Enforcement) Act." Those responsible for its administration in British Columbia revealed that the legislation itself seems adequate. The opinion is given that because of the necessary documentation in preparing a provisional order, the enforcement is cumbersome. A way of streamlining this was suggested to be that of encouraging all the provinces to enact similar desertion legislation. Thus the evidence and defence would be common to all courts. There is little likelihood of this happening. In all non-support legislation, the key to successful administration would seem to rest mainly on favourable attitudes and responses by the Judges of the respective courts, vested with responsibility for its enforcement.

Social Welfare Agencies and Cases of Desertion. Social Welfare Agencies in the City of Vancouver have segmented services, as a result of which the Family Court is the only agency directly concerned with the enforcement of the Wives' and Children's Maintenance Act. Referral policies are well defined by other agencies who serve families where desertion is a problem. The Family Court procedure, established through experience, utilizes a "team" approach in desertion cases. The "team" includes the Judge, City Prosecutor, and Court social worker. All appear in court and the client receives the benefit of the formal presentations

of each "team" member. Social Welfare agencies in other parts of British Columbia, notably the Social Welfare Branch and Municipal social welfare departments, vary in their approach to the problems presented in desertion cases. Most of these agencies or district offices attempt to establish a case plan for all their clients. This includes, in cases of desertion, a decision as to the desirability of taking court action, based on the facts presented by each case. Court proceedings are only recommended, when other attempts to reunite the family or effect voluntary contributions, fails. This planning is seen as sound social work. However policies vary more widely when court action is recommended.

In court proceedings involving cases of desertion the unwritten rule of the Social Welfare Branch is that social workers do not attend court. In a few special cases social workers have attended court. In some instances a telephone referral to the court, or police, is completed by the social worker, and in other cases the client is sent to the appropriate office. One Municipal Social Welfare Administrator not only attended court but also acted as prosecutor. A re-examination of these policies would be of benefit.

It follows from this thesis, that social workers should take a more active part, by attending court. It would obviously help if the policy of the Family Court were studied closely, and where applicable, be adopted by other social agencies. This study has established that desertion is as much a social problem as a legal problem. Social workers, by withholding their support from court diminish the effectiveness of the court. By acting

as a resource person to the court the social worker may serve both clients and not favour either. By having a social report outlining what the social worker has done and what the circumstances of the case may be, the Magistrate is assisted in his understanding of the social factors. Through sharing in the difficulties of enforcement, the social worker could obtain a better knowledge of the requirements of the law. He could also refine his own skills in selecting cases for court action. One finding of this report suggested that the Magistrates of the Province are not familiar with the provisions of the Wives' and Children's Maintenance Act. By appearing in court, and by reviewing the cases before and after the hearings, the social worker could be in a position to suggest alternative procedures as outlined in the legislation. By this more active team co-operation, social workers should be able to give leadership in progressive court action. The team-process in court, particularly the part played by the social worker, must always centre on the rights and duties of the clients, as found by the court. It is recommended that members of the social work profession, examine their attitudes to desertion and to court attendance, for possible bias that may interfere with their help for both the deserter and the "deserted". Through better quality and quantity of service in court and in the community, the social workers can provide leadership in preventing and correcting the problems found in cases of desertion.

Co-operation Between Social Work and the Courts. Current professional thinking, by both members of the legal pro-

fession and the profession of social work, demands that a proper disposition of cases of desertion requires the discovery of the root cause, and an effort to eradicate it, rather than merely treating the symptoms by punitive or other purely legal remedies. Because of the "social-problem" content in non-support cases, social workers have the right and the duty to speak from their professional knowledge, on the content of support legislation and the enforcement of such legislation. In most of the communities in British Columbia, desertion cases are held in the same courts which deal with assaults, thefts, and other criminal charges. Social Workers need to be more articulate than they now are, about the need for a social approach to all domestic problems. They could do more to marshal support in the community in favour of better facilities, social and psychiatric, in all of the courts dealing with family problems, and particularly those handling failure-to-support cases. The legal profession has been most co-operative in recommending changes in desertion laws. One leading legal authority believes that the law has gone almost as far as it can go, in providing a sound Act. The legal professions has also been in favour of having Magistrates appointed who are trained in law. The social Work profession in upholding its part, can assure the courts and the legal profession, of its full support in working effectively in its area of competence, namely the social-problem aspect of desertion. In actively showing this co-operation it follows that social workers need to participate as a resource person in

court and have some rudimentary understanding of legislation and court procedure.

The Client Looks at Problems of Desertion. This review has omitted references to the deserted clients feelings, and has concentrated on the legal and administrative problems of desertion. One of the administrative difficulties experienced by the deserted wife, is that of obtaining help in locating the errant husband. Social Workers differ in their opinions on this point. If there are no clues as to the whereabouts of the "fugitive father" most agencies agree that nothing can be done. Some social workers believe that a method of locating missing husbands should be made available, if a deserted wife's legal rights are to be protected. The Family Location Service Agency's experience is that relatively few men disappear without leaving some clue as to their destination. Ontario has used an investigator who has succeeded in locating about twenty-five percent of the deserters brought to his attention. The Ontario Provincial Police are circularized, giving particulars about every deserter. If a deserter is located the appropriate social welfare administrator is advised. In British Columbia when the husband's whereabouts are known he is usually interviewed by a social worker, probation officer or policeman in the area where he resides. This is seen to be as satisfactory as possible in view of the great distances involved in some parts of the province. Insufficient information is available on this point on which to base a recommendation.

The deserted wife has to be helped to accept the fact that without substantial leads little can be done, at present, to locate her husband except to advertise in the newspapers. This is seldom effective. The importance of interviewing the deserter, if only to offer help, is recognized by the social agencies.

Another problem facing the deserted wife, outside Vancouver, is that of collections. The court order, in most cases, designates that the money be paid directly to the wife. When there is a default she must either contact her husband herself, have an agency do so, or take court action. Most social workers and Magistrates recommend that an agency be responsible for collections. There is no agreement as to what agency should take this responsibility. One of the Municipal administrators solves this by having the order so worded, that the payments are sent in-care-of the administrator. There appears to be little, if any opportunity, for many courts to establish a collection service because of their lack of establishment. The police have not been in favour of acting as a collection agency. The alternatives appear to be the Provincial Probation Branch and the Social Welfare Branch. Evidence is inconclusive as to which if any of these agencies should act as collectors. However the Senior Probation Officers have indicated that their Branch is ready to assume this responsibility when requested to do so by the court.

Generally the proceeding most feared by deserters and deserted wives is the court hearing. Fuller participation in court, by the social worker, would enable the client to have a

better preparation for the hearing, as well as have the encouragement of the presence of a known person. This arrangement should prove helpful to the client. In addition, the whole proceeding could be facilitated, due to the client's understanding of the requirements of the court. The client needs help with technical problems of procedure, as certainly as with his or her psychological difficulties.

The Question: Does Legislation Work in Dealing with Cases of Desertion? The findings of this study do not provide a yes, or no, answer to the question under consideration. What is the intent of legislation in desertion cases? It is suggested by this review that the purpose of legislation is to provide maintenance for a deserted family, when all other efforts to obtain such maintenance voluntarily, has failed. When a court hearing results in a desertion order that is fulfilled, one may say that the legislation is effective. When it is impossible to bring a case to court; when a case is dismissed; or when the social worker's recommendation is not to institute court proceedings; it cannot necessarily be argued that the legislation is ineffective.

The provincial legislation provides for a hearing whenever the whereabouts of the husband is known. It can do little more. When difficulty is encountered it is found in the inadequate means of administration or in terms of human frailty. When a man consciously refuses to support his wife and family no law is able to force him to do so. Legislation therefore can only work where provision is made for sound enforcement, and

where in the final analysis, the individual against whom the order is made, is helped to fulfill his responsibility within the requirements of the law. The use of law is a last resort. Prevention needs to be stressed and where this fails improved social services can be utilized to help many deserters fulfill their responsibilities voluntarily.

APPENDIX A

Estimate of Cost of Public Assistance to Deserted
Wives and Children in Canada; Based on a Comparison of the
Approximate Costs in the United States.

Estimated Population of United States of America in 1951....	150,000,000.
" " " Canada " " 15,000,000.
" " " British Columbia " " 1,000,000.

Approximate Cost of Aid to Dependent Children in United States due to
Desertion of the Father (1951).....\$242,000,000. 1

Figures Applied to Canada:

$$\frac{242,000,000}{150,000,000} = x \quad \frac{x}{15,000,000} \dots\dots\dots x = \$24,200,000.$$

Figures Applied to British Columbia:

$$\frac{1}{15} \times \$24,200,000. = \dots\dots\dots \$1,613,333.$$

1. Zukerman, Jacob, T., "Locating the Family Deserter", Social Service Review, XVII, 1953. p. 48

APPENDIX B

EXAMPLE FOR FORM OF COMPLAINT BY A DESERTED WIFE.

FORM A
(Section 3)

COMPLAINT BY DESERTED WIFE

CANADA
Province of Saskatchewan.

The complaint of (name of wife) of _____ in the
Province of Saskatchewan, taken this _____ day of
19 __, who says that _____ of
in the Province of Saskatchewan is her husband and that she is deserted
within the meaning of the Deserted Wives' and Children's Maintenance
Act by reason of the fact that the said _____ has without
sufficient cause refused or neglected to supply food or other necessar-
ies for her (or state other grounds constituting desertion--see clauses
(b), (c) and (d) of paragraph 1 of subsection (2) of section 2 of the
Act).

(Signature).....
Complainant.

Sworn before me the day and year first above mentioned

(Signature).....

A Justice of the Peace,
Notary Public, Commissioner
for Oaths, Police Magistrate
or District Court Judge.

APPENDIX C

EXAMPLE FOR FORM OF COMPLAINT: ON BEHALF OF A DESERTED WIFE.

FORM A
(Section 3)

COMPLAINT ON BEHALF OF DESERTED WIFE

CANADA
Province of Saskatchewan.

The complaint of _____ of _____
in the Province of Saskatchewan, made on behalf of _____
of _____ in the Province of Saskatchewan,
taken this _____ day of _____ 19 _____, who
says that _____ of _____ in
the Province of Saskatchewan is the husband of the said
and that she is deserted within the meaning of the Deserted Wives'
and Children's Maintenance Act, by reason of the fact that the said
_____ has without sufficient cause refused or neglected to
supply food or other necessities for her (or state other grounds con-
stituting desertion--see clauses (b), (c) and (d) of paragraph 1 of sub-
section (2) of section 2 of the Act).

(Signature).....
Complainant.

(State capacity in which
the complainant acts)

Sworn before me the day and year first above mentioned.

(Signature).....
A Justice of the Peace,
Notary Public, Commis-
sioner for Oaths, Public
Magistrate or District
Court Judge.

APPENDIX D

EXAMPLE FOR FORM OF COMPLAINT: ON BEHALF OF A DESERTED CHILD.

Form C.
(Section 4)

COMPLAINT ON BEHALF OF DESERTED CHILD.

CANADA
Province of Saskatchewan

The complaint of _____ of
in the Province of Saskatchewan, taken this _____ day of _____,
19 _____, who says that _____ of
in the Province of Saskatchewan is a parent (or a parent, within the
meaning of the Deserted Wives' and Children's Maintenance Act,) of
_____ of _____ in the Province of Sask-
atchewan, a child within the meaning of the said Act, and that the
said (name of child) is deserted within the meaning of the said Act,
by reason of the fact that the said (name of parent) has without
sufficient cause refused or neglected to supply food or other necess-
aries for the said (name of child) (or by reason of the fact that the
said (name of child) has left or been removed from the home of the said
(name of parent) because of neglect by or misconduct or acts of cruelty
of the said (name of parent)).

(Signature).....

(State capacity in which
the complainant acts)

Sworn before me the day and year first above mentioned.

(Signature).....

A Justice of the Peace,
Notary Public, Commissioner
for Oaths, Police Magistrate
or District Court Judge.

Note:--Where more than one child, include all children in one complaint.

APPENDIX E

FORM FOR POSTING BOND: USED IN SASKATCHEWAN

Form G
(Section 12)

BOND

CANADA
Province of Saskatchewan.

Know all men by these presents that we
of _____ in the Province of Saskatchewan, and
_____ of _____ in the Province of
Saskatchewan, and _____ of
_____ in the Province of Saskatchewan, are jointly and severally bound unto
the Minister of Social Welfare and Rehabilitation in the sum of
_____ dollars, to be paid to him or his successor in office, for
which payment well and truly to be made, we bind ourselves and each of
us firmly by these presents.

Sealed with our seals and dated this _____ day of
19 ____ .

Whereas, under the provisions of the Deserted Wives' and Children's
Maintenance Act, a maintenance order dated the _____ day of
_____, 19 ____, was made against the above bounden
(name of husband or parent) of _____ in the
Province of Saskatchewan.

Now the condition of this obligation is that if the said
_____ complies with the said order, this obligation shall be void; other-
wise this obligation shall be and remain in full force and effect.

Signed, sealed and delivered _____ (seal)
_____ (seal)
in the presence of _____ (seal)

APPENDIX F

ESTIMATE OF COST OF SOCIAL ALLOWANCE PAYMENTS TO DESERTED
FAMILIES IN BRITISH COLUMBIA IN 1956

Estimate of Total Social Assistance Costs in
British Columbia in 1956.....\$10,000,000.

Estimate of Amount of Direct Social Allowance
Payments.....\$ 5,000,000.

Municipality	S.A. Payments to Deserted Families, January, 1956 \$	Total Direct Social Allowance Payments \$	%
A	309.00	1518.00	20.3
B	554.00	1942.00	28.5
C	749.00	4867.00	15.3
D	910.00	3446.00	26.4
E	351.00	1824.00	19.2
F	1057.00	6500.00	16.2
G	658.00	969.00	67.9
Unorganized Territory	133.00	1383.00	9.6
TOTAL	4721.00	22,449.00	21.7

Estimate of Social Allowance Payments to Deserted Families =
21.7% of \$5,000,000 or \$1,085,000.00

APPENDIX G

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