*** 143.1 (1) **No garnishment of certain amounts** — No benefit, allowance or assistance paid under the *Family Benefits Act* or the *General Welfare Assistance Act* may be garnished by a creditor of the person to whom it is payable.

*** (2) **Deemed protection** — Subsection (1) applies even if the amount has been paid into the person's account at a financial institution.

Proposed Repeal — 143.1

143.1 [Repealed 1999, c. 12, Sched. B, s. 4(4). Not in force at date of publication.]

144. **Orders enforceable by police** — Warrants of committal, warrants for arrest and any other orders requiring persons to be apprehended or taken into custody shall be directed to police officers for enforcement.

Commentary: This was added to provide for the police to enforce the apprehension or taking into custody of persons as set out.

145. **Consul as official representative** — Where a person who is ordinarily resident in a foreign country is entitled to money or property that is in the hands of a court or an executor or administrator, and if the foreign country has a consul in Canada who is authorized to act as the person's official representative, the money or property may be paid or delivered to the consul.

146. **Where procedures not provided** — Jurisdiction conferred on a court, a judge or a justice of the peace shall, in the absence of express provision for procedures for its exercise in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice.

147. (1) **Seal of court** — The courts shall have such seals as are approved by the Attorney General.

(2) **Idem** — Every document issued out of a court in a civil proceeding shall bear the seal of the court.

148. **Jurisdiction of Federal Court** — The Federal Court of Canada has jurisdiction,

(a) in controversies between Canada and Ontario;

(b) in controversies between Ontario and any other province in which an enactment similar to this section is in force,

in accordance with section 19 of the *Federal Court Act* (Canada).

PART VIII — MISCELLANEOUS

149. (1) [Repealed 1994, c. 12, s. 47(2).]

(2) **Repeal** — Subsection (1) is repealed on January 1, 1996.

1994, c. 12, s. 47

Where a person has another person under his or her charge, the duty to provide is only imposed if the person under charge is unable, for a reason listed in s.215(1)(c)(i), to withdraw from the charge and if the person under charge is unable to provide for himself or herself. In an English case from 1893, *R. v. Instan*,[22] the accused was living with her elderly aunt. The aunt became ill with gangrene and was confined to bed. Only the accused was aware of the aunt's condition. The accused did not provide or attempt to obtain any medical assistance for her aunt. She also neglected to provide food for her, although the accused accepted food that was brought to the house by tradespeople. Although the aunt died from the gangrene, the court found that the aunt's death was substantially accelerated by neglect—that is, by want of food and nursing and medical attention. The accused was found guilty of manslaughter.

a. Necessaries of Life

"Necessaries" in this section of the Code are those things necessary for the preservation of life. Ordinarily, this includes food, shelter, clothing and medical treatment. However, this is probably not a complete list, especially since what is considered a necessary will depend on the particular circumstances of the case.[23]

b. Lawful Excuses

The failure to provide necessaries must be without "lawful excuse." The Code has not clearly defined lawful excuse. However, courts have stated that inability to provide because of lack of money—where, for example, the parents are unable to find employment—is a lawful excuse.[24] Also, the person must be aware that the necessaries are required before he or she can be found guilty of failing to provide them.[25] Also, when the spouse or child has adequate means of his or her own, the accused has a lawful excuse, since the spouse or child is not in destitute or necessitous circumstances.

c. Destitute and Necessitous Circumstances

The fact that a spouse or child is on welfare or receiving charity from friends or relatives does not mean that he or she is not in destitute or necessitous circumstances. As one judge aptly pointed out, families receive relief because they are in destitute or necessitous circumstances. They do not cease to be in such circumstances because they have received relief to keep them from famishing or suffering.[26]

Furthermore, s.215(4)(d) states that the fact that a spouse or child is receiving or has received necessaries from a person who is not under a legal duty to provide them cannot be used as a defence by an accused. Say that a wife has been deserted by her husband and is forced to live with her parents because she has no means of her own. Even if the parents support her at a

22 [1893] 1 Q.B. 450; 17 Cox's C.C. 602.
23 See, for example, *R. v. Sidney* (1912), 20 C.C.C. 376 (Sask.C.A.).
24 See, for example, *R. v. Bunting* (1926), 45 C.C.C. 135 (Ont.C.A.).
25 *R. v. Steele* (1952), 102 C.C.C. 273 (Ont.C.A.).
26 *R. v. Wilson* (1931), 60 C.C.C. 309 (Alta.C.A.).