

No. 74

4th Session, 13th Legislature, Alberta
6 Elizabeth II, 1958

BILL 74

A Bill to amend The Child Welfare Act

HON. MR. JORGENSEN

Explanatory Note

General. This Bill will amend *The Child Welfare Act* in two important respects, i.e. with regard to the cost of maintenance of wards of the Government who will be wholly supported by the Province without any sharing being required of a municipality; and with regard to the status of an adopted child, which will become in all respects the legal child of the adopting parents. Other matters of less importance are dealt with and noted in these notes opposite the amending clauses. Section references herein are to sections of *The Child Welfare Act*, chapter 39, The Revised Statutes of Alberta, 1955.

2. The designations "inspectors" and "investigators" will not be used in future to describe officers of the Department who carry out inspection and investigation services. The description "child welfare worker" will be used for all such personnel. Hence the terms are removed from this section which authorizes the Lieutenant Governor in Council to make appointments of employees.

3. See note to clause 2 above. Section 9, clause (f) presently reads as follows:

"(f) "Inspector" means an inspector appointed pursuant to this Part and includes a child welfare worker;"

4. See note to clause 2 above re amendments (a) and (b). Subsections (1), (3) and (4) of section 10 read:

"10. (1) Each municipality shall appoint one or more inspectors or child welfare workers for the enforcement of this Act, and notice of each appointment shall be given forthwith to the Commission.

"(3) If the municipality neglects to provide before the first day of February in each year such inspectors or child welfare workers as may be required, the Commission may appoint such inspectors or child welfare workers at a salary to be approved by the Minister, and an inspector or child welfare worker so appointed is entitled to recover his salary by action as a debt owing by the municipality to him.

"(4) The Commission may make rules not inconsistent with this Part or the regulations made thereunder for the direction of the inspector or child welfare worker and the enforcement of this Part."

5. See note to clause 2 above. Section 11 presently begins:

"Inspectors and child welfare workers appointed under this Part"

6. See note to clause 2 above. Section 12 presently begins:

"An inspector or child welfare worker appointed"

7. (a) Reference to service upon a municipality removed from provision as municipality will not in future have any financial responsibility for wards of the Government. See note to clause 1 above. Section 13 as relevant presently reads as follows:

"13. (1) A person who has apprehended a child pursuant to section 12 or the Superintendent or a person duly authorized in writing by him shall, within ten days from the date of the apprehension, serve or cause to be served upon the parent or guardian of the child and upon the municipality to which the child is deemed to belong a notice stating

"(a) the time and place for investigating the facts of the case, which time shall not be more than twenty days after the date of apprehension of the child, unless otherwise ordered by the judge, and

"(b) the intention to apply to a judge for an order against the municipality to which the child is deemed to belong for the expenses of maintaining and supporting the child, including medical and hospital treatment, from the date of apprehension of the child and so long as the child remains a ward of the Government or in an institution approved by the Commission."

BILL

No. 74 of 1958

An Act to amend The Child Welfare Act

(Assented to _____, 1958)

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

1. *The Child Welfare Act*, being chapter 39 of The Revised Statutes of Alberta, 1955, is hereby amended.

2. Section 3 is amended by striking out the words "inspectors, child welfare workers, investigators" and by substituting the words "child welfare workers".

3. Section 9 is amended by striking out clause (f).

4. Section 10 is amended

- (a) as to subsection (1) by striking out the words "inspectors or",
- (b) as to subsection (2) by striking out the words "an inspector or" and by substituting the word "a",
- (c) by striking out subsection (3),
- (d) as to subsection (4) by striking out the words "inspector or".

5. Section 11 is amended by striking out the words "Inspectors and child" and by substituting the word "Child".

6. Section 12 is amended by striking out the words "An inspector or" and by substituting the word "A".

7. Section 13 is amended

- (a) by striking out subsection (1) and by substituting the following:

"13. (1) A person who has apprehended a child pursuant to section 12 or the Superintendent or a person duly authorized in writing by him shall, within ten days from the date of the apprehension, serve or cause to be served upon the parent or guardian of the child a notice stating the time and place for investigating the facts of the case, and the time shall not be more than twenty days after the date of apprehension of the child, unless otherwise ordered by the judge."

(b) See note above.

"(4) The judge shall not proceed to hear and dispose of the matter until he is satisfied that the parents or guardian and the municipality to which the child is deemed to belong have been notified of the investigation, or that every reasonable effort has been made to give such notification."

(c) Subsections (11) to (21) relate to the financial responsibility of municipalities under neglected child orders and are therefore repealed. See note to clause 1. The new subsection (11) provides for the Province assuming such financial responsibility completely. Subsection (12) is the present subsection (20).

8. (a) This subsection gives a right of appeal from orders made under this Part. As the municipalities will have no interest there will be no need for them to have any such right.

(b) This subsection provides for service of notice of appeal. The reference to municipalities is being removed.

9. This amendment will change the expiration date of licences to operate nurseries or similar institutions. Section 49, subsection (3) presently reads as follows:

"(3) The licence shall expire on the thirty-first day of December of the year in which it is issued and shall state the maximum number of children to be kept in the institution or nursery at one time."

10. The present section does not provide by whom the form is to be prescribed. It reads as follows:

"82. An order of adoption shall be on a prescribed form which shall be supplied by the Superintendent without charge."

11. See note to clause 1. Section 83 presently reads as follows:

"83. (1) An order of adoption

"(a) divests the natural parent, guardian or person in whose custody the adopted child has been of all legal rights and frees them from all legal obligations and duties with regard to the child,

"(b) makes such child to all intents and purposes the child of the adopter or adopters, and

"(c) imposes upon the adopter or adopters all legal obligations and duties as if the adopter or adopters were the natural parent or parents of the child from the date of the adoption.

"(2) The adopted child shall bear the surname of his adopter unless otherwise ordered by the judge.

"(3) In and by the order of adoption the judge may in his discretion give to the adopted child any first or Christian name or names requested by the proposed adopter in his petition."

The new amendment speaks in more general language with regard to particular rights, duties or divestings and makes the adopted child fully the child of the adopting parents so far as legislation alone may do so.

- (b) as to subsection (4) by striking out the words "municipality to which the child is deemed to belong" and by substituting the word "Commission",
- (c) subsections (11) to (21) are struck out and the following is substituted:

"(11) The Minister shall, out of the moneys appropriated by the Legislature for the purpose, pay the actual costs incurred for the maintenance of the child committed to the care and custody of the Superintendent or who is surrendered to the custody of the Superintendent under section 51, including necessary clothing and in addition thereto the expenses, including transportation and medical, hospital and dental treatment that may be incurred on behalf of the child, from the date of apprehension or surrender of the child so long as the child remains a ward of the Government.

"(12) Service of a notice directed to be given under this section may be effected either personally or by double registered mail."

8. Section 16 is amended

- (a) as to subsection (1) by striking out the words "or the municipality",
- (b) as to subsection (2) by striking out the words "the Commission and the municipality" and by substituting the words "and the Commission".

9. Section 49, subsection (3) is amended by striking out the words "thirty-first day of December of the year in which it is" and by substituting the words "anniversary date following the year it was".

10. Section 82 is struck out and the following is substituted:

"**82.** An order of adoption shall be on a form which may be prescribed from time to time by the Commission and which shall be supplied by the Superintendent without charge."

11. Section 83 is struck out and the following is substituted:

"**83.** (1) For all purposes an adopted child becomes upon adoption the child of the adopting parent, and the adopting parent becomes the parent of the child, as if the child had been born to that parent in lawful wedlock.

"(2) For all purposes an adopted child ceases, upon adoption, to be the child of his existing parents, whether his natural parents or his adopting parents under a previous adoption, and the existing parents of the adopted child cease to be his parents.

12. See note to clause 1. The repealed sections read as follows:

"84. (1) A person who has been adopted in accordance with this Part takes, upon the intestacy of the adopter the same share of property that the adopter could dispose of by will as he would have taken if born to such adopter in lawful wedlock, and he stands in regard to the legal descendants, but to no other kindred of the adopter, in the same position as if he had been born to the adopter in lawful wedlock.

"(2) If the adopted person dies intestate

"(a) property acquired by himself or by gift, inheritance or descent from his adopter or from the kindred of such adopter shall be distributed according to the laws of the Province relating to intestacy among the persons who would have been his kindred if he had been born to his adopter in lawful wedlock, and

"(b) property received by gift or inheritance from his natural parents or kindred shall be distributed in the same manner as if no act of adoption had taken place.

"(3) An adopted person does not lose his right to inherit from his natural parents or kindred.

"85. The word "child" or its equivalent in a will, conveyance or other instrument includes an adopted child unless the contrary plainly appears by the terms of the instrument."

The new section 83 will make these sections unnecessary, since the adopted child "becomes.....the child of the adopting parent".

13. See note to clause 1. Section 87 presently reads as follows:

"87. No action or proceeding to set aside an order of adoption granted under this Part shall be commenced after the expiration of one year from the day of the order, except on the ground that the order was procured by fraud and then it may only be set aside if it is in the interests of the adopted child to do so."

This section makes no provision as to the effect of the setting aside of an order of adoption. The new subsection sets out such effect upon the relationships established by the adopting order.

“(3) The relationship to one another of all persons, whether the adopted person, the adopting parents, the natural parents, or any other persons, shall be determined in accordance with subsections (1) and (2).

“(4) Subsections (2) and (3) do not apply, for the purposes of the laws relating to incest and to the prohibited degrees of marriage, to remove any persons from a relationship in consanguinity that, but for this section, would have existed between them.

“(5) This section shall be read subject to the provisions of any Act that distinguishes in any way between persons related by adoption and persons not so related.

“(6) This section is binding upon the Crown for the purposes of construing this Act and the right of succession affecting adopted children.

“(7) This section does not apply to the will of a testator dying before or to any other instrument made before the first day of July, 1927.

“(8) This section applies to adoptions made under the legislation heretofore in force.

“(9) The adopted child shall have such Christian or given name as the judge may specify in the adoption order, and shall assume the surname of his adopting parent unless the judge otherwise orders.”.

12. Sections 84 and 85 are repealed.

13. Section 87 is amended

- (a) by renumbering the section as subsection (1),
- (b) by adding immediately after the renumbered subsection (1) the following new subsection:

“(2) Where an order of adoption is set aside, the child ceases from the date of the setting aside of the order to be the child of the adopting parent and the adopting parent ceases to be the parent of the child from the same date, and the relationship to one another of the child and all persons is re-established as it was immediately before the order of adoption was made.”.

14. The rights of persons adopted outside Alberta are dealt with in section 88 at the moment in the following:

"88. A person who has been adopted according to the laws of any other country or any other province of Canada is entitled to the same rights of succession to property as he would have had if adopted under the laws of Alberta."

The new section will follow in principle the intent of the present section 88 as it relates to succession to property, but is in the more general language of the new provisions.

15. This section reads as follows:

"89. If the child has been previously adopted, all legal consequences of the former order of adoption determines upon a subsequent adoption, except in so far as a right, title or interest in property may have vested in law or equity in the adopted child."

The principle of this section is embodied in the new section 83, subsection (2).

16. As the new provisions under section 83 do not apply to relationship in consanguinity, the new subsection (6) will permit the adoption records in the special register of the Registrar-General of Vital Statistics to be referred to upon request for the purpose of determining whether the intended parties to a marriage are so related or not.

17. Commencement of amendments.

14. Section 88 is struck out and the following is substituted:

“**88.** An adoption effected according to the law of any other jurisdiction has the same effect as an adoption under this Act.”.

15. Section 89 is repealed.

16. Section 90 is amended by adding immediately after subsection (5) the following new subsection:

“(6) Notwithstanding subsection (4), the Deputy Registrar of Vital Statistics shall, upon the request of an issuer, clergyman or marriage commissioner, within the meaning of *The Solemnization of Marriage Act*, refer to the special register for the purpose of determining, when one of the parties to a proposed marriage is an adopted child, whether the parties are within the forbidden degrees of consanguinity.”.

17. This Act comes into force on the day or days to be fixed by proclamation of the Lieutenant Governor in Council.

No. 74

FOURTH SESSION

THIRTEENTH LEGISLATURE

6 ELIZABETH II

1958

BILL

An Act to amend The Child
Welfare Act

Received and read the

First time.....

Second time.....

Third time

HON. MR. JORGENSEN
