

1977 BILL 103

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 103

THE MATRIMONIAL HOME POSSESSION ACT

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

BILL 103

1977

THE MATRIMONIAL HOME POSSESSION ACT

(Assented to , 1977)

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

1 In this Act,

- (a) “Court” means the Supreme Court of Alberta;
- (b) “household goods” means personal property owned by one or both spouses and ordinarily used or enjoyed by both spouses or one or more of their dependent children for transportation, household, educational, recreational, social or aesthetic purposes, while the spouses are residing together;
- (c) “matrimonial home” means property with respect to which an order may be made under this Act;
- (d) “spouse” includes a former spouse and a party to a marriage notwithstanding that the marriage is void or voidable.

2 Nothing in this Act confers a right on a spouse who at the time of marriage knew or had reason to believe that the marriage was void.

3 An order may be made under this Act with respect to property in Alberta that is owned or leased by one or both spouses and is

- (a) a parcel of land on which a dwelling house is situated and which consists of not more than 4 adjoining lots in one block in a city, town or village as shown on a plan or described in a certificate of title registered under *The Land Titles Act*,
- (b) a dwelling house and as much of the surrounding land as the Court considers necessary to the use of the dwelling

Explanatory Notes

General: This Bill will enable the Supreme Court of Alberta to give exclusive possession of the matrimonial home and the household goods to one spouse. The circumstances that the Court must take into consideration in making the order for possession are stipulated in the Bill.

The Bill does not deal with ownership of the matrimonial home or the household goods. Ownership is dealt with in Bill 102 for The Matrimonial Property Act which should be referred to along with this Bill.

The Bill does not affect the responsibility of a spouse to pay mortgage, insurance or tax payments or make repairs, etc. to the matrimonial home since these and similar matters are properly dealt with by the Court in deciding the question of maintenance between the spouses under other legislation. This Bill and Bill 102 are intended to be given first reading only at the present session.

1 Definitions.

2 Restriction on the application of this Act.

3 Property with respect to which an order may be made.

house as a dwelling on a parcel of land other than land in a city, town or village,

(c) that part of business premises used as living accommodation and the access the Court considers necessary to the living accommodation,

(d) a mobile home and the parcel of land or as much of the parcel of land on which it is located as the Court considers necessary to the use of the mobile home,

(e) a unit as defined in *The Condominium Property Act*, or

(f) an apartment,

that is or has been occupied by a married person and his spouse as their family home.

4(1) The Court, on application by a spouse, may by order do any or all of the following:

(a) direct that a spouse be given exclusive possession of a matrimonial home;

(b) direct that a spouse be evicted from a matrimonial home;

(c) restrain a spouse from entering or attending at or near a matrimonial home.

(2) An order under subsection (1) may be made under such conditions and for such time as the Court considers necessary.

5(1) The Court, on application by a spouse, may by order direct that a spouse be given exclusive possession of all or any of the household goods notwithstanding the ownership of the household goods.

(2) An order under subsection (1) may be made under such conditions and for such time as the Court considers necessary.

6(1) An application under this Act

(a) may be made by originating notice,

(b) may be joined with a matrimonial cause between the spouses, or

(c) may be made as an application in an action or proceeding between the spouses under *The Domestic Relations Act* or *The Matrimonial Property Act*.

4 The Court may grant a spouse exclusive possession of the matrimonial home.

5 The Court may give exclusive possession of household goods to one spouse.

6 Methods of making an application under this Act.

(2) An order may be made under this Act on an application made ex parte where the Court is satisfied that there is a danger of injury to the applicant spouse or the children of the marriage as a result of the conduct of the respondent spouse.

7 In exercising its powers under this Act, the Court shall have regard to

- (a) the availability of other accommodation within the means of both the spouses,
- (b) the needs of the dependent children of the marriage,
- (c) the financial position of each of the spouses, and
- (d) any order made by a court with respect to the property or the maintenance of one or both of the spouses.

8 An order made under this Act takes effect notwithstanding an order under *The Matrimonial Property Act* or an order for the partition and sale of the matrimonial home.

9(1) Where an order is made under section 4 with respect to a matrimonial home and the matrimonial home or part of it is real property that

- (a) is owned by one or both of the spouses,
- (b) is leased by one or both of the spouses for a term of more than 3 years, or
- (c) is the subject of a life estate in favour of one or both of the spouses,

the order may be registered with the Registrar of Titles for the land registration district in which the property is situated.

(2) Where an order is registered under subsection (1), the registration binds the estate or interest of every description that the spouse or spouses have in the property to the extent stipulated in the order.

(3) A person against whose estate or interest an order is registered under this section shall not dispose of or encumber his estate or interest without the consent in writing of the spouse in possession.

10(1) Where the matrimonial home is a mobile home owned or leased by one or both spouses, the order may be registered at either or both of

7 Items the Court shall take into consideration in making an order under this Act.

8 An order under this Act takes precedence over other orders dealing with the interests of the spouses in the matrimonial home.

9 An order for possession may be registered against the title to the property owned by one or both spouses or leased under a registerable lease.

10 If the matrimonial home is a mobile home and an order for possession is made or an order with respect to household goods is made, the order may be registered at the Vehicle Registry or the Central Registry.

(a) the Vehicle Registry of the Department of the Attorney General, and

(b) the Central Registry constituted under *The Chattel Security Registries Act*.

(2) Where the Court makes an order with respect to household goods under section 5, the order may be registered at

(a) the Vehicle Registry of the Department of the Attorney General, and

(b) the Central Registry constituted under *The Chattel Security Registries Act*.

(3) Where an order is registered under this section, the order is notice of the interest of the spouse in possession for all purposes.

11(1) All rights under this Act are in addition to and not in substitution for or derogation of a right of a spouse under *The Dower Act*.

(2) Where a spouse in possession of a matrimonial home establishes a right to a life estate in the matrimonial home pursuant to *The Dower Act*, an order under this Act ceases to have any effect and the registration of the order shall be cancelled by the Registrar.

12(1) The person against whose property an order is registered under section 9 may apply to the Court for an order directing the Registrar of Titles to cancel the registration.

(2) The person against whose property an order is registered under section 10 may apply to the Court for an order cancelling the registration.

(3) The Court may make an order under this section upon such terms and conditions as the Court considers necessary.

13 This Act comes into force on a date to be fixed by Proclamation.

11 All rights under this Act are in addition to rights under The Dower Act.

12 An order registered under this Act may be cancelled by order of the Supreme Court.