

1985 BILL 26

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 26

CHILD WELFARE AMENDMENT ACT, 1985

THE MINISTER OF SOCIAL SERVICES AND
COMMUNITY HEALTH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 26

BILL 26

1985

CHILD WELFARE AMENDMENT ACT, 1985

(Assented to , 1985)

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

1 The Child Welfare Act, chapter C-8.1 of the Statutes of Alberta, 1984, is amended by this Act.

2 Section 1(1)(z) is repealed and the following is substituted:

(z) “support services” means protective services provided under a support agreement;

3 Section 8(2)(b)(ii) is repealed and the following is substituted:

(ii) the survival, security and development of the child can be adequately protected through the agreement.

4 Section 10(2)(d) is amended by striking out “section 11” and substituting “section 11 or 33”.

Explanatory Notes

1 This Bill will amend chapter C-8.1 of the Statutes of Alberta, 1984.

2 Section 1(1)(z) presently reads:

1(1) In this Act,

(z) "support services" means protective services prescribed as support services in the regulations;

3 Section 8(2) presently reads:

(2) A director may enter into an agreement in the prescribed form for a term of not more than 6 months with a child who is 16 years of age or over under which custody of the child is given to the director if the director is

(a) satisfied the child is living independently of his guardian, and

(b) of the opinion that

(i) the child is in need of protective services, and

(ii) the survival, security or development of the child cannot be adequately protected if the child remains with his guardian.

4 Section 10(2) presently reads:

(2) When an agreement is made pursuant to this section

(a) the guardianship of any person who was a guardian of the child at the time the agreement was entered into is terminated,

(b) the agreement is binding on any parent who at the time the agreement was entered into was not a guardian of the child, whether or not he had notice of the agreement,

(c) the Children's Guardian is the sole guardian of the child for all purposes, and

(d) the agreement may be terminated only pursuant to section 11.

5 *Section 18(1) is repealed and the following is substituted:*

18(1) If a child has been apprehended, the director shall notify the guardian of the child forthwith

- (a) that the child has been apprehended,
- (b) of the intention, if any, of the director to confine the child pursuant to section 20(1)(b), and
- (c) of the intention, if any, of the director to apply for an order pursuant to section 20(7)(b).

6 *Section 19 is amended by adding the following after subsection (6):*

(6.1) The validity of proceedings under this Act is not affected if the director is unable, after reasonable effort, to give notice in accordance with this section.

7 *Section 21 is amended*

(a) *in subsection (1) by striking out “the hearing of an application for a supervision order or a temporary or permanent guardianship order” and substituting “every hearing under this Part”;*

(b) *by repealing subsection (1)(b), (d) and (e);*

(c) *by adding the following after subsection (1):*

(1.1) Notice of the nature, time and place of every hearing under this Part may be served by the applicant by mail on

- (a) a director, if the applicant is not a director,
- (b) a foster parent of the child, if the child was in the continuous care of that foster parent for more than 6 months immediately preceding the application, and
- (c) any other person in whose care the child was when the child was apprehended, if the child was in the continuous care of that person for more than 6 months immediately preceding the application.

(d) *in subsection (2) by striking out “subsection (1)” and substituting “subsections (1) and (1.1)”;*

(e) *in subsection (3) by repealing clauses (f) and (g) and substituting the following:*

(f) dispense with service on any person other than the Children’s Guardian.

(f) *by adding the following after subsection (3):*

(4) Whether or not authorization has been given under subsection (3), the Court may do any of the following at the time of the hearing:

- (a) approve service made in a form it considers adequate in the circumstances;
- (b) approve a shortened period as sufficient notice;
- (c) dispense with service on any person other than the Children’s Guardian.

5 Section 18(1) presently reads:

18(1) If a child has been apprehended, the director shall notify the guardian of the child forthwith that the child has been apprehended.

6 Section 19(6) presently reads:

(6) Notification under subsection (5) may be made by any method and may be oral or in writing.

7 Section 21(1), (2) and (3) presently read:

21(1) Notice of the nature, time and place of the hearing of an application for a supervision order or a temporary or permanent guardianship order, other than an application under section 19, shall be served personally by the applicant on

- (a) all the guardians of the child,*
- (b) a director, if the applicant is not a director,*
- (c) the child, if the child is 12 years of age or over,*
- (d) a foster parent of the child, if the child was in the continuous care of that foster parent for more than 6 months immediately preceding the application, and*
- (e) any other person in whose care the child was when the child was apprehended, if the child was in the continuous care of that person for more than 6 months immediately preceding the application.*

(2) Notice under subsection (1) shall be served at least 5 days before the date fixed for the hearing.

(3) If the Court is satisfied that it is proper to do so, the Court, on the ex parte application of the applicant at any time before the time fixed for the hearing, may do any of the following:

- (a) authorize service ex juris, service by registered mail or any other form of substitutional service;*
- (b) if an order is made under clause (a), extend or reduce the time within which service may be effected;*
- (c) if an order is made under clause (a), extend the time within which a hearing shall be held;*
- (d) authorize service on a guardian appointed under the Dependent Adults Act in respect of the guardian of a child instead of on the guardian of the child;*
- (e) authorize the giving of a shorter period of notice;*
- (f) dispense with service on a guardian of the child other than the Children's Guardian if another guardian has been served;*
- (g) dispense with service on any person other than a guardian of the child.*

8 *Section 29(4)(a)(iii) is repealed and the following is substituted:*

(iii) the financial contributions to the maintenance of the child to be made

(A) by a person other than the Children's Guardian who is legally responsible for the maintenance of the child, or

(B) by a trustee from property or an estate held in trust for the child,

9 *Section 31 is amended by adding the following after subsection (1):*

(1.1) A period during which a director has custody of a child pursuant to section 20(1) shall not be included in computing the total cumulative period in subsection (1).

10 *Section 32 is amended by repealing subsection (5) and substituting the following:*

(5) If the Court makes a permanent guardianship order it may, on the application of a director, order that financial contributions be made to the maintenance of the child

(a) by a person other than the Children's Guardian who is legally responsible for the maintenance of the child, or

(b) by a trustee from property or an estate held in trust for the child.

(5.1) If an order is made under subsection (5), a director or the person ordered to make financial contributions may apply to the Court for a review of the order.

11 *Section 33 is amended*

(a) *by adding "agreement or" after "permanent guardianship" wherever it occurs;*

(b) *in subsection (1) by adding "agreement or" after "before the".*

8 Section 29(4) presently reads:

(4) On making a temporary guardianship order or at any time during its term, the Court, on the application of a director or a guardian of the child, may

(a) on being satisfied that the matter cannot be resolved by agreement or the terms of an agreement have not been complied with, make an order prescribing

(i) the access to be provided between the child and a guardian or any other person with whom the child has a significant relationship,

(ii) the conditions under which the director shall consult with the guardian on matters affecting the child, or

(iii) the contributions, financial or otherwise, to be made by a guardian, other than the Children's Guardian, who is legally responsible for the maintenance of the child,

or

(b) order a guardian other than the Children's Guardian to submit prior to the expiration of the term of the temporary guardianship order to an assessment in order to assist the director or the Court, as the case may be, to determine that guardian's fitness to resume custody of the child when the term of the order ends.

9 Section 31(1) presently reads:

31(1) The total cumulative period during which a child is in the custody of 1 or more directors or the subject of a temporary guardianship order shall not be more than 2 years.

10 Section 32(5) presently reads:

(5) If the Court makes a permanent guardianship order it may, on the application of a director, order that financial contributions be made to the maintenance of the child by a person, other than the Children's Guardian, who is legally responsible for the maintenance of the child.

11 Section 33 presently reads:

33(1) If a child is the subject of a permanent guardianship order, the Children's Guardian, if he is satisfied that the child should be returned to the guardianship of the person who was the guardian of the child before the order was made, may apply to the Court for an order terminating the permanent guardianship order.

(2) When a child who is the subject of a permanent guardianship order attains 18 years of age, the Minister may continue to provide him with care and maintenance for a further period prescribed in the regulations so that he can complete a course of studies or other training.

12 Section 34(1) is amended by adding “agreement or” after “permanent guardianship”.

13 Section 38(2) is amended

- (a) by adding “agreement or” after “permanent guardianship”;*
- (b) in clause (a) by adding “agreement or” before “order”.*

14 The following is added after section 42(1):

(1.1) If a child has been apprehended under section 17, the director may apply in the prescribed form to the Court for a secure treatment order to be effective for a period to end 30 days after the granting of the order or when a supervision order or a temporary or permanent guardianship order is made in respect of the child, whichever occurs first.

(1.2) The Court shall not renew pursuant to subsection (7) a secure treatment order to which subsection (1.1) applies.

15 Section 47 is amended

- (a) in subsection (1) by striking out “ or a guardian of the child” and substituting “, a guardian of the child or a director”;*
- (b) in subsection (5)(b) by striking out “other than the Children’s Guardian”.*

16 Section 64(9) is amended by adding “agreement or” after “any”.

17 Section 66(5) is repealed and the following is substituted:

(5) The Minister may disclose the identity of a person referred to in section 65 only in accordance with section 65 unless, in the opinion of the Minister, the disclosure is necessary to the health of the adopted child.

18 Section 67(2) is amended by striking out “A person referred to in subsection (1)” and substituting “Any person”.

12 Section 34(1) presently reads:

34(1) If a child is the subject of a permanent guardianship order, any adult may make an application in the prescribed form to the Court to be appointed as guardian of the child jointly with the Children's Guardian.

13 Section 38(2) presently reads:

(2) A permanent guardianship order remains in effect until

- (a) the order is terminated by a court,*
- (b) an adoption order is made in respect of the child,*
- (c) the child attains the age of 18 years, or*
- (d) the child marries,*

whichever occurs first.

14 Section 42(1) and (7) presently read:

42(1) If a child is the subject of a temporary or permanent guardianship order, a director may apply in the prescribed form to the Court for a secure treatment order.

(7) A secure treatment order may be renewed in accordance with this section on the application in the prescribed form of a director for a period of not more than 60 days in the case of the first renewal or 90 days in the case of any subsequent renewal or the period of the guardianship order, whichever is the shorter.

15 Section 47(1) and (5) presently read:

47(1) A child with respect to whom a secure treatment order has been made or a guardian of the child may apply to the Court in the prescribed form for a review of the order.

(5) The director shall send a notice of the date, time and place of the hearing of the review by the Court by registered mail or by any other method approved by the Court to

- (a) the child,*
- (b) a guardian of the child other than the Children's Guardian, and*
- (c) the person in charge of the secure treatment institution in which the child is confined*

not less than 5 days before the date fixed for the hearing.

16 Section 64(9) presently reads:

(9) An adoption order terminates any other order made under this Act except a restraining order made under section 28.

17 Section 66(5) presently reads:

(5) The Minister shall not disclose the identity of the biological mother or biological father of an adopted child to any person except in accordance with section 65.

18 Section 67(2) presently reads:

(2) A person referred to in subsection (1) may provide the Minister with information that the Minister may disclose under subsection (1).

19 *Section 69 is amended by adding the following after subsection (3):*

(3.1) If an order is made setting aside an adoption order, the clerk of the Court shall send a certified copy of the order to

(a) the Director of Vital Statistics, and

(b) if the adopted child is an Indian, the Registrar under the *Indian Act* (Canada).

20 *Section 72(2)(b) is amended by striking out “in accordance with the regulations”.*

21 *Section 74(1) is amended by striking out the words preceding clause (a) and substituting the following:*

74(1) In a proceeding before the Court under this Act, the Court or a justice of the peace on the application of a party, or the Court on its own motion, may

22 *Section 85(4) is amended by striking out “prescribed by the regulations”.*

23 *Section 87(1) is amended by adding “, the decision to disclose identifying information in respect of an adoption other than in accordance with section 65” after “subsection (2)”.*

24 *The following is added after section 90:*

90.1 An order made by a court or an agreement for care entered into pursuant to child welfare legislation in another jurisdiction that is certified as being valid and subsisting by the court or an appropriate authority in that jurisdiction has the same force and effect as if it had been made under this Act as far as is consistent with this Act.

19 Section 69(3) presently reads:

(3) If the adoption order is set aside, the applicant for the order setting it aside shall serve a copy of the order setting it aside on all those required to be served under subsection (2).

20 Section 72(2) presently reads:

(2) An agreement under this section shall include terms prescribing

(a) whether the child will be placed in the care or custody or under the control or supervision of a director in order to permit the provision of services or financial assistance to the family or the child to meet the special needs of the child,

(b) the nature and amount of the services or the financial assistance to be provided to the family or the child in accordance with the regulations, and

(c) the contribution, financial or otherwise, to be made by the guardian of the child for the services provided in respect of the child.

21 Section 74(1) presently reads:

74(1) In a proceeding before it under this Act, the Court may, on the application of a party or on its own motion,

(a) compel the attendance of any person and require him to give evidence on oath,

(b) require the production by any person of any documents or things, and

(c) exercise the powers that are conferred for those purposes on a justice of the peace under Part XIX of the Criminal Code (Canada).

22 Section 85(4) presently reads:

(4) An appellant may be represented at the hearing of the appeal by a lawyer or by any other person prescribed by the regulations.

23 Section 87(1) presently reads:

87(1) The Minister may delegate any of the duties or powers conferred or imposed on him under this Act, except the power to delegate under subsection (2) and the power to make regulations under section 96, to any person or government for any purpose in connection with the administration of this Act.

24 Enforceability of foreign orders and agreements.

25 *Section 96(2) is amended*

(a) by repealing clause (c) and substituting the following:

(c) respecting support services;

(b) by repealing clause (m).

26 *Section 97 is amended by adding the following after subsection (8):*

(9) A certificate issued by the Director of Child Welfare pursuant to Part 5 of the former Act and a compulsory care order made under Part 5 of the former Act continue in force according to their terms as if they were a secure treatment certificate issued with those terms and a secure treatment order made with those terms under Part 4 of this Act.

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*

25 Section 96(2)(c) and (m) presently read:

(2) The Minister may make regulations

(c) prescribing the protective services that are support services;

(m) prescribing those persons who may represent an appellant at a hearing before an Appeal Panel;

26 Transitional provision.