

1985 BILL 68

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 68

CHILD WELFARE AMENDMENT ACT, 1985 (NO. 2)

THE MINISTER OF SOCIAL SERVICES
AND COMMUNITY HEALTH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 68

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CHILD WELFARE AMENDMENT ACT, 1985 (NO. 2)

(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2 Section 1(1)(z) is repealed and the following is substituted: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3 Section 8(2)(b)(ii) is repealed and the following is substituted: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5 *Section 18(1) is repealed and the following is substituted:*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)*

(i) *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”;

(ii) *by striking out* “personally”;

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

(1.1) Notice under subsection (1) shall be served personally on

- (a) all the guardians of the child, and
- (b) the child, if the child is 12 years of age or over.

(1.2) Notice under subsection (1) may be served by mail on

- (a) a director,
- (b) a foster parent, and
- (c) a person in whose care the child was when the child was apprehended.

(c) *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.

(d) *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(5) is repealed and the following is substituted:*

(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 55(1) is amended by adding “a judge of” before “the Court”.

17 Section 56(1) is amended by striking out “in the prescribed form”.

18 The following is added after section 56:

56.1(1) An application to adopt a child shall be made by petition, which shall first be submitted to a director.

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 55(1) presently reads:

55(1) Notwithstanding section 1(1)(g), in this Part, "Court" means the Court of Queen's Bench.

17 Section 56(1) presently reads:

56(1) Any adult may apply to the Court in the prescribed form for an adoption order in respect of a child if the child or the applicant resides in Alberta.

18 Adoption by petition.

(2) In the interests of the child, a director shall cause an investigation to be made of an application to adopt a child and prepare a report of the investigation.

(3) An order of adoption shall not be made unless a petition together with a report of the investigation is presented to the Court by a director.

(4) The petition shall be supported by an affidavit disclosing

(a) the name, date of birth, place of birth, sex and parentage of the child to be adopted, so far as is known, and

(b) the age, address, marital status and occupation of each petitioner and the relationship, if any, of the petitioner to the child.

(5) The petition shall, in respect of the fitness of each petitioner to adopt the child, be further supported by an affidavit or affidavits of persons acceptable to a director, or by any other material that a director may require.

(6) If an agreement or arrangement exists whereby consideration is passing to or from a petitioner, the terms of the agreement shall be disclosed in the petition and any document or writing relating to the agreement shall be made an exhibit to the affidavit of the petitioner.

56.2(1) Within 6 months of the receipt of a petition for the adoption of a child, a director shall present the petition to the Court.

(2) The petition and the material to be used in connection with it shall be filed with the clerk of the Court.

(3) Copies of the petition and material shall be retained by the director.

(4) Unless the Court directs otherwise, all proceedings under this Part relating to the adoption of a child shall be heard in chambers.

(5) A petitioner is entitled to be heard, either personally or by counsel, at the proceedings before the Court.

56.3 When the child is the subject of a permanent guardianship agreement or order, an order of adoption shall not be made unless a director in writing indicates that the petitioner, in the opinion of the director, is a fit and proper person to have the care and custody of the child.

56.4(1) A person who surrenders the custody of a child to another person for the purposes of adoption shall notify a director of the surrender of custody within 30 days of the surrender.

(2) A person who receives the custody of a child from another person for the purposes of adoption shall notify a director of the receipt of custody within 30 days of the receipt.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable to a fine of not more than \$5000 and in default of payment to imprisonment for a term not exceeding 3 months.

56.5(1) If the Court before whom a petition for adoption is brought dismisses the petition, no further petition under this Part shall be presented to the Court by that petitioner until a further period of 2 years has elapsed from the date of the hearing of the previous adoption petition.

(2) Notwithstanding subsection (1), the Court may permit the filing of a new petition within the 2-year period on being satisfied that the reasons for dismissal of the previous petition no longer exist.

56.6(1) No person shall publish in any form or by any means an advertisement dealing with the adoption of a child.

(2) Subsection (1) does not apply to

(a) the publication of a notice pursuant to an order of the Court,

(b) the publication of any advertisement authorized by a director for the purpose of finding homes for children in his custody who are available for adoption, or

(c) the publication of an announcement by a petitioner in respect of the approval of his petition.

(3) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$2500 and in default of payment to imprisonment for a term not exceeding 1 month.

19 Section 59(1) is amended by adding “shall be in the prescribed form and” after “order”.

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

21 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.

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

23 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

19 Section 59(1) presently reads:

59(1) An application for an adoption order shall be accompanied by a report in the prescribed form prepared by a qualified person

(a) on the suitability of the applicant as an adoptive parent,

(b) that the applicant is capable of assuming and willing to assume the responsibility of a parent towards the child, and

(c) that it is in the best interests of the child that the child be adopted by the applicant.

20 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.

21 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.

22 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).

23 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).

- (a) the Director of Vital Statistics, and
- (b) if the adopted child is an Indian, the Registrar under the *Indian Act* (Canada).

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

25 *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

26 *Section 79 is amended by striking out “clerk of the Court” and substituting “clerk of the Court of Queen’s Bench”.*

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

28 *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)”.*

29 *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.

24 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.

25 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).

26 Section 79 presently reads:

79 If the Court makes an order under this Act directing that financial contribution to the maintenance of a child be made by a person, the clerk of the Court shall, on the director filing an affidavit of default in the prescribed form, issue a summons to the person who is in default and the order may be enforced by the director under Part 4, except section 56(1), of the Maintenance and Recovery Act.

27 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.

28 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.

29 Foreign orders and agreements.

30 Section 96(2) is amended

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

(c) respecting support services;

(b) by repealing clause (m).

31 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.

(10) A petition for adoption submitted to the Director of Child Welfare before the date on which this Act comes into force is deemed to have been submitted to a director.

32 Section 113 is amended by adding "on Proclamation" after "repealed".

33 The following is added after section 114:

114.1(1) Sections 56.1 to 56.6 are repealed on Proclamation.

(2) A petition for an adoption order submitted to a director before the coming into force of this section shall be concluded as if this section had not come into force.

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

30 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;

31 Transitional provisions.

32 Section 113 presently reads:

113 The Child Welfare Act, being chapter C-8 of the Revised Statutes of Alberta 1980, is repealed.

33 Repeals adoption by petition.