1987 BILL 276

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 276

CHILD ACCESS ACT

MR. GOGO

First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

Bill 276
Mr. Gogo

BILL 276

1987

CHILD ACCESS ACT

(Assented to , 1987)

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

1 The Domestic Relations Act is amended by this Act.

2 Section 56 is amended by adding the following after subsection (1):

(1.1) An order under subsection (1) may specify the times or days upon which either party is to have custody of the minor.

Explanatory Notes

1 This Bill will amend chapter D-37 of the Revised Statutes of Alberta 1980.

2 Section 56 presently reads as follows:

56(1) On the application

(a) the father or mother of a minor, or

(b) a minor, who may apply without a next friend,

the Court may make any order it sees fit regarding the custody of the minor and the right of access to the minor of either parent.

(2) In making an order under subsection (1), the Court shall have regard

(a) to the welfare of the minor,

(b) to the conduct of the parents, and

(c) to the wishes as well of the mother as of the father.

(3) The Court may alter, vary or discharge the order on the application of either parent, or after the death of either parent on the application of a guardian appointed under this Part.

(4) The Court may in each case referred to in subsection (1) make any order respecting costs the Court considers just.

3 *The following is added after section 56:*

56.1(1) A person in whose favour an order has been made for access to a child at specific times or on specific days and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied access to the child, may apply to the Court for an order

(a) requiring the respondent to give the applicant compensatory access to the child for a period, not exceeding the length of the period wrongfully denied, as agreed to by the parties or if the parties do not agree, as ordered by the Court;

(b) requiring the respondent to reimburse the applicant for any reasonable expenses actually incurred as a result of the wrongful denial of access;

(c) requiring the respondent to give security for the performance of any obligation imposed by the order; or

(d) appointing a mediator to attempt to negotiate a settlement between the applicant and respondent as to access, and report back to the Court.

(2) An application made under subsection (1) shall be heard within 3 days after it has been served on the respondent.

(3) An application under subsection (1) may not be made more than 30 days after the alleged denial of access.

(4) The application shall be determined on the basis of oral evidence only, unless the Court gives leave, in exceptional circumstances, to the filing of an affidavit.

(5) The Court may also make an order for the maintenance of the minor by payment by the father or by the mother, or out of an estate to which the minor is entitled, of any sum from time to time that the Court considers reasonable, having regard to the pecuniary circumstances of the father or of the mother, or to the value of the estate to which the minor is entitled.

3 New section will provide for an application to a Court to be heard within 3 days in the case of a wrongful denial of access and enables the Courts to make a variety of orders to deal with the question, provide compensatory access and reimburse expenses. The new section provides guidelines for what circumstances may justify a denial of access otherwise provided for in a custody order.

(5) At the hearing of the application, unless the Court orders otherwise, evidence shall be admitted only if it is directly related to

(a) the alleged denial of access or a failure to exercise the right of access or return the child; or

(b) the reasons for the denial or failure.

(6) A denial of access is wrongful unless it is justified by a serious and legitimate reason such as one of the following:

(a) the respondent had reasonable grounds for believing there would be a substantial risk of serious physical or emotional harm to the child if the right of access were exercised;

(b) the respondent had reasonable grounds to believe that the applicant was impaired by alcohol or a drug at the time provided for access;

(c) the applicant did not attempt to exercise the right of access within an hour of the terms specified in the order or otherwise agreed on by the parties;

(d) at the time, the child had an illness or injury that constituted reasonable grounds for denying access;

(e) the applicant did not satisfy written conditions concerning access that were agreed to by the parties or that form part of the order for access;

(f) at the time the applicant had not paid the maintenance provided for by a court order;

(g) the applicant had failed previously on numerous occasions, without reasonable notice and excuse, to exercise the right of access;

(h) the applicant had informed the respondent that the right of access would not be exercised on the occasion in question.

(7) On application, a Court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as provided in the order.