

1990 BILL 53

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 53

PARENTAGE AND MAINTENANCE ACT

MR. TANNAS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 53
Mr. Tannas

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PARENTAGE AND MAINTENANCE ACT

(Assented to , 1990)

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

Definitions

1 In this Act,

- (a) “agreement” means an agreement under section 6, and includes a variation of the agreement;
- (b) “child” means a child born of parents who are not married to each other;
- (c) “Court” means the Court of Queen’s Bench;
- (d) “Department” means the Department of Family and Social Services;
- (e) “Director” means the Director appointed under section 3(1);
- (f) “Director of Maintenance Enforcement” means the Director of Maintenance Enforcement under the *Maintenance Enforcement Act*;
- (g) “father” means
 - (i) the biological father of a child, or
 - (ii) the person who caused the pregnancy of a mother;
- (h) “filed agreement” means an agreement that has been filed with the Director of Maintenance Enforcement;
- (i) “Minister” means the Minister of Family and Social Services;
- (j) “mother” means
 - (i) the biological mother of a child, or
 - (ii) the expectant mother of a child;
- (k) “order” means an order made under this Act, and includes a variation of the order;
- (l) “parent” means a mother or a father.

Application

2 This Act applies to any person, including a parent who is under 18 years of age, but the Court may appoint a person to represent the interests of a minor in an application to the Court under this Act.

- Director**
- 3(1)** In accordance with the *Public Service Act* there may be appointed a Director who shall administer this Act under the direction of the Minister.
- (2) The Director may in writing delegate to an employee of the Department any power or duty conferred or imposed on him by this Act or the regulations.
- (3) A delegation by the Director under subsection (2) shall be admitted in evidence as proof of the facts stated in the delegation without proof of the signature or authority of the Director.
- Request for assistance**
- 4(1)** A request for assistance relating to the maintenance of a child or a mother may be made to the Director by
- (a) a parent,
 - (b) a child,
 - (c) a person who has the care and control of a child, or
 - (d) a person who has undertaken to provide maintenance for a mother or a child.
- (2) On receipt of a request under subsection (1), the Director may
- (a) enter into or assist another person in entering into an agreement,
 - (b) make or assist another person in making an application to the Court under this Act, and
 - (c) take any other action that, in the Director's opinion, is in the best interests of the child or the mother or of both.
- Access to information**
- 5(1)** A person who makes a request under section 4 has a right of access to any records maintained by the Director relating to that person's personal history and, on request, the Director shall provide the person with access to the records.
- (2) A person referred to in subsection (1) may in writing authorize the Director to provide access to that person's records to any other person named in the authorization, and on receipt of the authorization the Director shall provide the person named in the authorization with access to the records.
- Agreement**
- 6(1)** A parent may enter into an agreement in the form prescribed in the regulations with

- (a) the Director,
- (b) the other parent, or
- (c) any other person having the care and control of the parent's child,

whereby the parent agrees to pay any or all of the expenses referred to in subsection (2).

(2) An agreement may refer to any or all of the following expenses:

- (a) reasonable expenses for the maintenance of the mother
 - (i) during a period not exceeding 3 months preceding the birth of the child,
 - (ii) at the birth of the child, and
 - (iii) during a period after the birth of the child;
- (b) reasonable expenses for the maintenance of the child before the date of the agreement;
- (c) monthly or periodic payments for the maintenance of the child until the child reaches the age of 18 years;
- (d) expenses of the burial of the child if the child dies before the date of the agreement;
- (e) expenses incurred for the purpose of determining parentage.

(3) An agreement may provide that the liability of a parent for the expenses referred to in subsection (2), other than for the maintenance of a child under subsection (2)(c), shall be satisfied by the payment of an amount specified in the agreement.

(4) An agreement to which a father is a party must contain his acknowledgment that he is or may be the father.

(5) The parties to a filed agreement may vary the agreement at any time by entering into a new agreement and filing the new agreement with the Director of Maintenance Enforcement.

(6) An agreement that is not entered into in accordance with this section does not prevent a person from making an application under section 7.

Application

7(1) Subject to subsection (5), an application may be made to the Court for an order

(a) declaring that the respondent is a parent for the purposes of this Act, and

(b) directing the payment of any or all of the expenses referred to in section 16(2).

(2) An application under subsection (1) may be made by

(a) a parent,

(b) a child,

(c) a person who has the care and control of a child, or

(d) the Director on behalf of a recipient of a social allowance as defined in the *Social Development Act*.

(3) An application must be commenced by filing with the Court an affidavit in the form prescribed in the regulations setting out the facts relevant to the application.

(4) If any one of 2 or more persons might be a parent, each of those persons may be named as a respondent in the application.

(5) No application may be made under this section in respect of a respondent who is deceased.

Power of the
Director to
intervene

8 If an applicant becomes the recipient of a social allowance as defined in the *Social Development Act* after an application has been commenced under section 7, the Director may intervene in and make representations at the application.

Summons

9(1) On the filing of an affidavit under section 7(3), the Court or the clerk of the Court shall issue a summons to the respondent requiring the respondent to appear before the Court at the time and place stated in the summons to show cause why an order under section 7(1) should not be made against the respondent.

(2) The clerk of the Court may in writing delegate to any member of his staff the power to issue a summons under subsection (1).

(3) Unless the Court otherwise directs, the summons shall be served personally on the respondent not less than 2 days before the date stated in the summons for the hearing of the application, and the Court may authorize service outside Alberta.

(4) Instead of issuing a summons under subsection (1), or at any time after the issuance of a summons and before the date stated in the summons for the hearing of the application, the Court may, on evidence satisfactory to it, direct that a warrant in the form

prescribed in the regulations be issued for the arrest of the respondent.

(5) When a respondent who has been served with a summons or who has been bound over to appear pursuant to subsection (6) does not appear at the time and place stated in the summons and no reasonable excuse is offered for his non-appearance, the Court may direct that a warrant in the form prescribed in the regulations be issued for the arrest of the respondent.

(6) The Court or a justice of the peace before whom a respondent is brought on a warrant may bind the respondent over to appear at the hearing of the application and may require the respondent to enter into a recognizance

(a) with or without a cash amount to be deposited with the Court or the justice of the peace, or

(b) with or without a surety.

Failure to
appear

10(1) If a respondent

(a) on whom a summons has been served,

(b) who has entered into a recognizance, or

(c) on whom a summons has been served outside Alberta and who has submitted to the jurisdiction of the Court,

fails to appear at the hearing of the application, the Court, after hearing the evidence presented to it, may make any order that it could have made if the respondent had appeared at the hearing.

(2) If an order is made under subsection (1) against a respondent who fails to appear in accordance with his recognizance, the Court may direct that all or a part of the cash deposit or surety provided under section 9(6) be applied in satisfaction of the order or in any other way that the Court directs.

(3) If an order is made under subsection (1), the respondent may, within 30 days of the date of the order, apply to the Court for a rehearing, and the Court may direct a rehearing and may confirm, vary or reverse the order, but no costs shall be awarded to the applicant.

Exclusion from
hearing

11(1) Subject to subsection (2), if the Court is satisfied that

(a) the evidence to be presented at the hearing would be prejudicial to a person who is the subject of the hearing, or

(b) it would promote the proper administration of justice to exclude a person from the hearing,

the Court may exclude any person from all or part of the hearing.

(2) The Court may not exclude from the hearing

(a) the Director or his delegate,

(b) the applicant or respondent in the application, or

(c) a lawyer representing any of the parties to the application.

Presumption of paternity

12(1) For the purposes of this Act, unless the contrary is proven on a balance of probabilities, there is a presumption that a person is the father of a child in any of the following circumstances:

(a) the person was married to the mother of the child at the time of the birth of the child;

(b) the person was married to the mother of the child and the marriage was terminated by

(i) a decree of nullity of marriage granted not more than 300 days before the birth of the child, or

(ii) a judgment of divorce granted not more than 300 days before the birth of the child;

(c) the person married the mother of the child after the birth of the child and acknowledged that he was the father of the child;

(d) the person cohabited with the mother of the child for at least one year immediately before the birth of the child;

(e) the person is registered as the father of the child at the joint request of himself and the mother of the child under the *Vital Statistics Act* or similar legislation in a province other than Alberta;

(f) the person has been found by a court of competent jurisdiction in Canada to be the father of the child.

(2) Where circumstances exist that give rise to a presumption under subsection (1) that more than one person might be the father of a child, no presumption as to paternity may be made.

Blood tests, etc.

13(1) On the request of a party to an application under this Act, the Court may make an order granting leave to obtain blood tests

or any other tests that the Court considers appropriate from any person named in the order and to submit the results in evidence.

(2) An order under subsection (1) may be made subject to any terms and conditions the Court considers proper.

(3) No test shall be performed on a person without his consent.

(4) If a person named in an order under subsection (1) is not capable of giving a consent because of age or incapacity, the consent may be given by the guardian of the person.

(5) If a person named in an order under subsection (1) or the person's guardian, as the case may be, refuses to consent to a test referred to in the order, the Court may draw any inference it considers appropriate.

Evidence

14(1) Notwithstanding any other Act, in an application under this Act a married woman is a competent and compellable witness to testify as to the paternity of her child in respect of whom the application is made.

(2) Notwithstanding any other Act, in an application under this Act a respondent is a competent and compellable witness, and if called as a witness by the applicant the respondent may, without notice or the payment of conduct money, be cross-examined by or on behalf of the applicant, but the applicant is not bound by the respondent's evidence by reason only of having called the respondent as a witness.

(3) Evidence given by a party to an application under this Act that tends to show that the person giving the evidence had sexual intercourse with any person is not admissible in evidence against the person giving the evidence in any matrimonial action to which that person is a party.

(4) In an application under this Act, the Court may

(a) compel the attendance of any person and require him to give evidence on oath and to produce any documents and things that may be required, and

(b) exercise the powers of a magistrate under Part XXII of the *Criminal Code* (Canada).

Order declaring
parentage

15(1) If the Court is satisfied that the respondent is a parent, the Court may make an order declaring the respondent to be a parent for the purposes of this Act.

(2) If 2 or more persons are named as respondents in an application and the Court

(a) is satisfied that any one of the respondents might be a parent, and

(b) is unable to determine which respondent is a parent,

the Court may make an order declaring each of the respondents who, in the opinion of the Court, might be a parent to be a parent for the purposes of this Act.

(3) No order may be made under this section if, at the date of the application for the order, the child in respect of whom the application is made has reached the age of 18 years.

Order for
payment of
maintenance

16(1) If an order is made under section 15, the Court may, subject to subsection (3), make a further order

(a) directing the respondent to pay any or all of the expenses referred to in subsection (2), or

(b) if the order is made under section 15(2), directing the respondents to pay any or all of the expenses referred to in subsection (2) in any proportion the Court considers appropriate.

(2) A direction in an order under this section may refer to any or all of the following expenses:

(a) reasonable expenses for the maintenance of the mother

(i) during a period not exceeding 3 months preceding the birth of the child,

(ii) at the birth of the child, and

(iii) during a period after the birth of the child that, in the opinion of the Court, is necessary as a consequence of the birth of the child;

(b) reasonable expenses for the maintenance of the child before the date of the order;

(c) monthly or periodic payments for the maintenance of the child until the child reaches the age of 18 years;

(d) expenses of the burial of the child if the child dies before the date of the order;

(e) costs of any or all Court proceedings taken under this Act.

(3) No order may be made under this section

(a) in respect of an expense referred to in subsection (2)(b) or (c) unless the application for the order is commenced before the child in respect of whom the application is made reaches the age of 18 years, or

(b) in respect of an expense referred to in subsection (2)(a) or (d) unless the application for the order is commenced within 2 years after the expense was incurred.

(4) In making an order under this section, the Court shall fix an amount to be paid for the maintenance of a child that will enable the child to be maintained at a reasonable standard of living having regard to the financial resources of each of the child's parents.

(5) An order may provide that the liability of a parent for the expenses referred to in subsection (2), other than for the maintenance of a child under subsection (2)(c), shall be satisfied by the payment of an amount specified in the order.

(6) When an order is made under this section, the applicant shall provide certified copies of the order to any person declared to be a parent under section 15.

Change in care
and control

17(1) An order or agreement may provide that a payment for the maintenance of a child shall be made to any person who assumes the care and control of the child, notwithstanding that the person is not a party to the order or agreement.

(2) If a person is not a party to an order or a filed agreement and assumes the care and control of a child after the date of the order or filed agreement, the person shall, within 30 days of assuming the care and control of the child, notify the Director of Maintenance Enforcement by registered mail of the change in care and control.

(3) The Director of Maintenance Enforcement is not responsible for the repayment of any money disbursed by him after a change in the care and control of a child of which he has not been notified under subsection (2).

Application to
vary or
terminate

18(1) An application to vary or terminate an order or a filed agreement may be made to the Court by

(a) a person required by the order or filed agreement to make a payment,

(b) a parent of a child who is the subject of the order or filed agreement,

(c) a person who has the care and control of a child who is the subject of the order or filed agreement,

(d) a child who is the subject of the order or filed agreement, or

(e) the Director on behalf of a recipient of a social allowance as defined in the *Social Development Act*.

(2) The Court may vary or terminate an order or a filed agreement if it is satisfied that there has been a substantial change in

(a) the ability of a parent to pay the expenses specified in the order or filed agreement,

(b) the needs of the child, or

(c) the care and control of the child.

(3) An order under this section may not vary an amount specified under section 6(3) or 16(5).

Termination of order

19(1) A provision in an order or agreement that directs the payment of maintenance for a child terminates on the death or adoption of the child.

(2) On the termination of an order or a filed agreement, the person who has the care and control of the child shall, within 30 days of the termination, notify the Director of Maintenance Enforcement by registered mail that the order or filed agreement has been terminated.

(3) The Director of Maintenance Enforcement is not responsible for the repayment of any money disbursed by him after the termination of an order or a filed agreement of which he has not been notified under subsection (2).

Security

20 When an order under section 16 is made or varied, the Court may, after inquiring into the financial resources of the person who is directed by the order to make a payment, require the person to provide security as directed by the Court for the payments to be made under the order.

New evidence

21 Where an order has been made or an application has been dismissed under this Act, the Court may, on the discovery of new evidence or fraud, grant leave to re-open and may re-open and consider a previous decision of the Court.

Other remedies **22** Nothing in this Act takes away any right of action or remedy that without this Act might have been maintained against a person.

Disclosure of information **23(1)** No person employed or assisting in the administration of this Act shall disclose or communicate to any other person information obtained by him in the performance of his duties that deals with the personal history or records of any person, except

- (a) in Court proceedings under this Act,
- (b) with the written consent of the Minister, or
- (c) in accordance with section 5.

(2) Subsection (1) does not apply to a disclosure that is considered necessary for the proper administration of this Act and that is made to

- (a) an employee of the Department or of any other department or agent of the Government,
- (b) an official of a municipal government or of the Government of Canada or of any province or territory of Canada or an agent of any of those governments, or
- (c) a person acting as an agent of the Department.

(3) Unless the Court orders otherwise, no person shall publish in any manner a report or notice of a hearing under this Act that discloses

- (a) the name of a child or a parent of the child, or
- (b) any information that might identify a child or a parent of the child.

(4) Nothing in this section prevents the clerk of the Court from

- (a) publishing a notice of a hearing, or
- (b) releasing information to a party to an application under this Act or his lawyer,

if the publication or release of information is necessary for the proper administration of justice.

(5) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to a term of imprisonment of not more than 6 months.

Regulations

24 The Minister may make regulations

- (a) governing the duties of the Director;
- (b) prescribing rules under which applications under this Act are to be made and dealing generally with all matters of procedure under this Act;
- (c) prescribing forms and providing for their use.

Transitional

25(1) *A complaint made under the Maintenance and Recovery Act in respect of which a summons has not been issued under that Act before the coming into force of this Act ceases to have any effect.*

(2) A complaint made under the Maintenance and Recovery Act in respect of which a summons has been issued under that Act but has not been served on the respondent before the coming into force of this Act ceases to have any effect.

(3) A complaint made under the Maintenance and Recovery Act in respect of which a summons has been issued under that Act and served on the respondent before the coming into force of this Act where the date of the commencement of the hearing of the application is after the coming into force of this Act shall be continued under this Act.

Amends RSA
1980 cF-2

26 *The Family Relief Act is amended in section 1(b)(ii)(B) by striking out "Maintenance and Recovery Act" and substituting "Parentage and Maintenance Act".*

Amends RSA
1980 cI-9

27 *The Intestate Succession Act is amended in section 14(1)(b) by striking out "Children of Unmarried Parents Act, a Child Welfare Act or the Maintenance and Recovery Act" and substituting "Child Welfare Act or the Parentage and Maintenance Act or any prior Act providing for affiliation or paternity orders".*

Amends SA
1985 cM-0.5

28 *The Maintenance Enforcement Act is amended in section 1(2) by striking out "10 or 51 of the Maintenance and Recovery Act" and substituting "6 of the Parentage and Maintenance Act or section 51 of the Income Support Recovery Act".*

Amends RSA
1980 cM-2

29 *The Maintenance and Recovery Act is amended*

(a) by striking out the title and chapter number and substituting the following:

INCOME SUPPORT RECOVERY ACT

CHAPTER I-1.7

(b) in sections 1(b) and 3 by striking out "Maintenance and" wherever it occurs and substituting "Income Support";

(c) by repealing section 6(2);

(d) in section 7 by striking out "Part 2, 3 or 4 or" wherever it occurs and substituting "Part 3 or 4 or";

(e) by repealing Part 2;

(f) in section 54

(i) in clause (a) by striking out "Part 2 or 3" and substituting "Part 3";

(ii) in clause (b) by striking out "10,".

Amends RSA
1980 cS-16

30 *The Social Development Act is amended*

(a) in section 5(2)(f) by striking out "or the Maintenance Recovery Act" and substituting ", the Parentage and Maintenance Act or the Income Support Recovery Act";

(b) in section 17(1) by striking out "Maintenance and" and substituting "Income Support" .

Amends RSA
1980 cV-4

31 *The Vital Statistics Act is amended in section 32(2)(a) by striking out "Part 2 of the Maintenance and Recovery Act" and substituting "the Parentage and Maintenance Act".*

Consequential

32 *In the following provisions, "Maintenance and" is struck out wherever it occurs and "Income Support" is substituted:*

Act	Section
Assured Income for the Severely Handicapped Act	9(1), 14(2)(d)
Widows' Pension Act	6(1)

Coming into
force

33 *This Act comes into force on Proclamation.*