

1990 BILL 232

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 232

**AN ACT TO AMEND
CERTAIN STATUTES ON MAINTENANCE**

MS. M. LAING

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 232
Ms. M. Laing

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AN ACT TO AMEND CERTAIN STATUTES ON MAINTENANCE

(Assented to _____, 1990)

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

1(1) *The Maintenance Enforcement Act is amended by this
section.*

(2) *Section 1 is amended by adding the following after subsection
(3):*

(4) A maintenance agreement entered into by 2 spouses who
have separated by mutual agreement and who have agreed in
writing that one of them accept from the other specified
periodic amounts for support and maintenance is deemed to be
a maintenance order under this Act.

(3) *Section 5 is repealed and the following is substituted:*

5 The Director shall enforce a maintenance order that is
filed with him and the Director, for that purpose, may
commence and conduct a proceeding in the name of the
Director as if he were a creditor under the maintenance order.

(4) *Section 15(3) is repealed.*

(5) *Section 16(6) is amended by deleting "for the latest 3-year
period".*

(6) *Section 31 is repealed.*

(7) *Section 32 is amended by adding the following after*

Explanatory Notes

1 This section will amend chapter M-0.5 of the Statutes of Alberta, 1985 to improve enforcement of maintenance orders including separation agreements and extends priority of claims beyond the present 3 year retroactive period.

subsection (1):

(2) The Director shall continue to enforce the maintenance order until he receives notification that the order has been varied, unless the court hearing the application otherwise orders.

2(1) *The Domestic Relations Act is amended by this section.*

(2) *The following Part is added after section 1:*

PART 1

COHABITANT SUPPORT

Definitions

2(1) For the purposes of this Part "cohabitant" means

(a) in relation to a man, a woman who is living or has lived with the man on a *bona fide* domestic basis although not married to him; and

(b) in relation to a woman, a man who is living or has lived with the woman on a *bona fide* domestic basis although not married to her.

(2) For the purposes of this Part "cohabitational relationship" means the relationship between a male and a female cohabitant, being the relationship of living or having lived together on a *bona fide* domestic basis although not married to each other.

Order for
maintenance

3(1) On application by a cohabitant for an order under this Part for maintenance, a Court may make an order for maintenance, as the Court thinks reasonable for the support of

(a) the other cohabitant;

(b) any or all children of the cohabitational relationship; or

(c) the other cohabitant and any or all children of the cohabitational relationship.

(2) In determining whether to make an order under this Part for maintenance and in fixing any amount to be paid pursuant to such an order, the Court shall take into consideration the condition, means, needs and other circumstances of each cohabitant, including

(a) the length of the cohabitational relationship;

2 This section will amend chapter D-37 of the Revised Statutes of Alberta, 1980 to provide for cohabitant support for common-law spouses.

(b) the functions performed by the cohabitants during cohabitation;

(c) any other agreement or arrangement relating to support of the cohabitant.

(3) In making an order under this Part the Court shall not take into consideration any misconduct of a cohabitant in relation to the cohabitational relationship.

(4) An order made under this Part that provides for the support of a cohabitant should

(a) recognize any economic advantages or disadvantages to the cohabitant arising from the cohabitational relationship or its breakdown;

(b) apportion between the cohabitants any financial consequences arising from the care of any child of the cohabitational relationship, or of a child of either party that is in the care and control of the other, over and above the obligation to pay child support; and

(c) relieve any economic hardship of the cohabitants arising from the breakdown of the cohabitational relationship.

(5) A Court may make an order under this Part that terminates on the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

Interim
maintenance

4 Where on an application by a cohabitant for an order under this Part for maintenance, it appears to a Court that the applicant is in immediate need of financial assistance, but it is not practical in the circumstances to determine immediately what order, if any, should be made, the Court may order the payment by the respondent, pending the disposal of the application, of such sum or sums as the Court considers reasonable.

Order for
variation, rescission
or suspension

5(1) A Court may make an order varying, rescinding or suspending, prospectively or retroactively a support order or any provision thereof on application by either or both cohabitants or former cohabitants.

(2) The Court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

(3) Before the Court makes a variation order in respect of a support order, the Court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either former cohabitant since the making of the support order or the last variation order made in respect to that order, as the case may be, and, in making the variation order, the Court shall take into consideration that change.

(4) In making a variation order the Court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

(5) A variation order varying a support order that provides for the support of a former cohabitant should

(a) recognize any economic advantages or disadvantages to the former cohabitants arising from the cohabitational relationship or its breakdown;

(b) apportion between the former cohabitants any financial consequences arising from the care of any child of the cohabitational relationship, or of a child of either party that is in the care and control of the other, over and above the obligation to pay child support; and

(c) relieve any economic hardship of the former cohabitants arising from the breakdown of the cohabitational relationship.

(6) Notwithstanding section 5(1), where a support provides for a definite period or until the happening of a special event, a court may not, on an application instituted after the expiration of that period or the happening of that event, make a variation order for the purpose of resuming that support unless the court is satisfied that

(a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (3) that is related to the cohabitation relationship; and

(b) the changed circumstances, had they existed at the time of the making of the support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.