

1990 BILL 268

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 268

CHILDREN'S ACCESS RIGHTS
ENFORCEMENT ACT

MR. EVANS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 268
Mr. Evans

BILL 268

1990

CHILDREN'S ACCESS RIGHTS ENFORCEMENT ACT

(Assented to , 1990)

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

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

*(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 or access
to the minor.*

(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 on specific days and who
claims that a person in whose favour an order has been made
for custody of the child has been 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 during the 12-month
period following the date of the order for a period or
periods not exceeding in total the access wrongfully denied,
as agreed to by the parties or if the parties do not agree,
as ordered by the Court;

Explanatory Notes

1(1) This section will amend chapter D-37 of the Revised Statutes of Alberta 1980.

(2) Section 56(1) presently reads:

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.

(3) New section will provide for an application to a Court to be heard within 10 days in the case of a wrongful denial of access and enables the Court 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.

- (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, which shall be ordered by the Court if requested by one party if the Court is of the opinion that the party is making the request in good faith.
- (2) An application made under subsection (1) shall be heard within 10 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 permits evidence by affidavit, on grounds that appear reasonable to the Court.
- (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 applicant did not attempt to exercise the right of access specified in the order or otherwise agreed on by the parties;
 - (c) 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;

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

(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.

2(1) *The Provincial Court Act is amended by this section.*

(2) *Section 32 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 or access to the child.

(3) *The following is added after section 32:*

32.1(1) A person in whose favour an order has been made for access to a child at specific times on specific days and who claims that a person in whose favour an order has been made for custody of the child has been 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 during the 12-month period following the date of the order for a period or periods not exceeding in total the access 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, which shall be ordered by the Court if requested by one party if the Court is of the opinion that the party is making the request in good faith.

2(1) This section will amend chapter P-20 of the Revised Statutes of Alberta 1980.

(2) Section 32(1) presently reads:

32(1) *If*

(a) the parents of a child are in fact living apart from one another, and

(b) there is a dispute as to the custody of or access to the child,

the Court may, on an application, make an order as it sees fit regarding

(c) the custody of the child, and

(d) the right of access to the child,

by either parent or any other person, having regard to the best interests of the child.

- (2) An application made under subsection (1) shall be heard within 10 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 permits evidence by affidavit, on grounds that appear reasonable to the Court.
- (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 applicant did not attempt to exercise the right of access specified in the order or otherwise agreed on by the parties;
 - (c) 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;
 - (d) the applicant had failed previously on numerous occasions, without reasonable notice and excuse, to exercise the right of access.
- (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.