

1992 BILL 298

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Fourth Session, 22nd Legislature, 41 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ~~ALBERTA~~

# BILL 298

## ACCESS ENFORCEMENT ACT

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MRS. HEWES

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 298*  
*Mrs. Hewes*

## BILL 298

1992

### ACCESS ENFORCEMENT ACT

(Assented to \_\_\_\_\_, 1992)

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

Definitions

1(1) In this Act,

(a) "access order" means a court order which provides for access to a child by a parent of that child who does not have sole custody, and includes a provision relating to access in maintenance order;

(b) "Director" means the Director of Access Enforcement appointed pursuant to this Act.

(2) An access order entered into under the *Child Welfare Act* is deemed to be an access order for the purposes of Act.

Director of Access  
Enforcement

2(1) The Attorney General shall appoint a person as Director Access Enforcement for the purposes of this Act.

(2) The Director may delegate any power, duty or function conferred or imposed on the Director under this Act, including the power to delegate or subdelegate, to any person for any purpose.

Enforcement

3 If the Director considers it practicable to do so, the Director shall enforce access orders as filed pursuant to this Act and for that purpose may commence and conduct a proceeding in the

name of the Director as if the Director were entitled to access under the access order.

Filing of orders

**4** Any person entitled to access under an access order may file the order with the office of the Director.

Exclusive enforcement

**5(1)** No person other than the Director shall take proceedings to enforce an access order during the time it is filed with the Director.

**(2)** Subject to subsection (1), nothing in this Act prohibits the Director or a person entitled to access from taking proceedings pursuant to any other Act to enforce an access order.

Mediation

**6(1)** The Director may appoint a mediator to attempt to mediate any dispute relating to an access order at any time when he is of the opinion that it would serve the interests of the parties to do so.

**(2)** If the Director appoints a mediator at a time when proceedings relating to the order are before a Court, the Director shall advise the Court and the Court shall make such order as it sees fit relating to the proceedings.

Enforcement

**7(1)** The Director or a person entitled to access may file with the Court of Queen's Bench an access order that is not otherwise so filed and, on being filed, the parts of the order that relate to access are deemed to be a judgment of the Court of Queen's Bench.

**(2)** If an access order filed under subsection (1) was made by the Provincial Court, the Court of Queen's Bench may, from time to time, vary the order as to the amount, times or other conditions of access or may temporarily suspend or revive any previously suspended order as the court considers appropriate.

Summons and default hearing

**8(1)** If a person who is required to give access under an access order fails to grant access, the Director or the person entitled to access may procure a summons to attend at a default hearing from the Clerk of the Court of Queen's Bench.

**(2)** The summons shall require the person who is to give access to appear at a default hearing before the Court of Queen's Bench at a time and place set out in the summons

(a) to show the Court why the access order should not be enforced;

(b) to show why he should not be subject to punishment by the Court on the ground that he has wilfully defaulted on granting of access under the access order.

(3) The summons shall be served personally on the person required to give access unless the Court of Queen's Bench directs otherwise.

(4) At a default hearing, the court shall inquire into

(a) the circumstances under which access was requested and denied;

(b) the conduct of the person seeking access in relation to times when access was granted previously and at the time when access was refused;

(c) any other matter that the Court considers relevant.

Warrant

9(1) If a person who is required to give access has been served with a summons or has been bound over to appear before the Court, does not appear at the time and place stated and no just excuse is offered for the non-appearance, the Court of Queen's Bench may issue a warrant for the arrest of the person to be brought before the Court.

(2) When the person is brought before the Court on a warrant, the Court may bind him over to appear at a default hearing and

(a) require that a surety be procured or produced and join the recognizance,

(b) require that a sum of money be deposited with the Court sufficient to ensure the appearance of person required to give access at the default hearing, or

(c) commit the person required to give access to jail until the default hearing.

Court order

10(1) The Court of Queen's Bench, unless it is satisfied that there has been no default in giving access under the access order,

or that the person required to give access did not or should not comply on the grounds of a disability or on the behaviour of the person wishing to have access, or any other reason that the Court considers sufficient, may do none or more of the following:

- (a) amend the access order,
- (b) require the person who is to give access to grant compensatory access to make up for access refused previously;
- (c) order the person required to give access to provide forthwith to the Court, the director or a person specified in the order, particulars of any change of address as soon as it occurs;
- (d) order the person required to give access to pay a fine or to serve a term of imprisonment.

(2) The Court of Queen's Bench may vary an order made under subsection (1) if there is a material change in the circumstances of the person required to give access or in the relevant behaviour of the person seeking access.

**Appeal**

**11** An appeal lies to a judge of the Court of Queen's Bench by way of a new trial from an order of a Master in Chambers made under section 10.

**Regulations**

**12** The Lieutenant Governor in Council may make regulations

- (a) respecting the filing and re-filing of access orders with the Director;
- (b) respecting forms and procedures to be used in proceedings under this Act;
- (c) respecting records to be kept by the Director;
- (d) respecting service of documents under this Act or the regulations.

**Commencement**

**13** This Act comes into force on Proclamation.