

1994 BILL 52

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 52

CHILD WELFARE AMENDMENT ACT, 1994

MR. SEVERTSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 52

1994

CHILD WELFARE AMENDMENT ACT, 1994

(Assented to , 1994)

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

Amends SA
1984 cC-8.1

1 *The Child Welfare Act is amended by this Act.*

2 *Section 49(3) is repealed and the following is substituted:*

(3) No private guardianship order shall be made under this
section

(a) in respect of a child who is the subject of a
temporary guardianship order, or

(b) if the purpose of the application is to facilitate the
adoption of the child.

3 *Section 55(1) is amended by adding the following after clause
(b):*

(c) "licensed search agency" means a search agency that holds
a licence issued under section 70;

(d) "relative", in respect of a child, means

(i) a grandparent of the child,

(ii) an aunt or uncle of the child, or

(iii) a great-aunt or great-uncle of the child,

whether related to the child by blood, marriage or adoption.

4 *Section 56 is amended*

Explanatory Notes

1 Amends chapter C-8.1 of the Statutes of Alberta, 1984.

2 Section 49(3) presently reads:

(3) No application shall be made for a private guardianship order in respect of a child who is the subject of a temporary guardianship order.

3 Section 55(1) presently reads:

55(1) In this Part,

(a) "Court", notwithstanding section 1(1)(g), means the Court of Queen's Bench;

(b) "licensed adoption agency" means an adoption agency that holds a licence issued under section 70.

4 Section 56 presently reads:

(a) *in subsection (1)(a) by adding “other than a guardian who is petitioning the court under section 58 for the order” after “child”;*

(b) *by adding the following after subsection (1):*

(1.1) If the person who is petitioning the court under section 58 for an adoption order is the sole guardian of the child, an adoption order in respect of the child shall not be made without the consent in the prescribed form of the person who was the child’s guardian before the petitioner became the guardian.

5 *The following is added after section 56:*

Automatic joint
guardianship
status

56.1(1) A prospective adopting parent named in a consent required under section 56 is, on the giving of the consent, a joint guardian of the child with the guardian who gave the consent.

(2) The prospective adopting parent’s status as a joint guardian under subsection (1) terminates

(a) if a consent given under section 56 is revoked in accordance with section 57(1),

(b) when the adoption order is made or the petition for the adoption order is dismissed, or

(c) if the court makes an order declaring the status of the joint guardian to be terminated.

6 *Section 57 is amended*

(a) *in subsection (1) by striking out “guardian who has consented to the adoption of a child under section 56” and substituting “person who has consented to the adoption of a child under section 56(1)(a) or (1.1)”;*

(b) *in subsection (2) by striking out “guardian of the child who has consented” and substituting “person who has consented under section 56(1)(a) or (1.1)”.*

7 *Section 58(3) is amended by adding “the child is a Canadian citizen or has been lawfully admitted to Canada for permanent residence and” after “unless”.*

56(1) An adoption order in respect of a child shall not be made without the consent in the prescribed form of

(a) all the guardians of the child, and

(b) the child if the child is 12 years of age or over.

(2) A consent to an adoption given in a jurisdiction outside Alberta in a form that is valid in that jurisdiction is deemed to be a consent under this Act.

5 Adds a new section creating an automatic joint guardianship status when consents are provided under section 56.

6 Section 57(1) and (2) presently read:

57(1) A guardian who has consented to the adoption of a child under section 56 may, not later than 10 days after the date of the consent, revoke the consent by providing written notice of the revocation to a director.

(2) The director who receives a notice under subsection (1) shall ensure that the person in whose custody the child has been placed and any other guardian of the child who has consented to the adoption of the child are notified forthwith of the revocation of consent.

7 Section 58(3) presently reads:

(3) No petition for an adoption order shall be filed in respect of a child unless

8 *Section 59 is amended*

(a) in subsection (1)

(i) in the words preceding clause (a) by striking out “or a child who is placed directly in the custody of the petitioner by a parent”;

(ii) by repealing clause (a)(ii) and substituting the following:

(ii) a statement that the director is the guardian of the child pursuant to the agreement or order,

(ii.1) the terms of any agreement or order respecting access to the child,

(ii.2) a statement that the petitioner, in the opinion of the director, is a fit and proper person to have the care and custody of the child, and

(iii) by repealing clause (b)(ii);

(iv) by repealing clause (c) and substituting the following:

(c) the consents required under section 56;

(b) in subsection (2)

(i) in the words preceding clause (a) by striking out “may” and substituting “or a child who is placed directly in the custody of the petitioner by a parent shall”;

(ii) in clause (a) by striking out “and” at the end of subclause (ii), adding “and” at the end of subclause (iii) and adding the following after subclause (iii):

(iv) if a person referred to in section 68.11(1)(d) was involved in the placement of the child,

- (a) *the period for revoking a consent to adoption under section 57(1) has expired,*
- (b) *if the child is the subject of a permanent guardianship order, the period for appealing the order has expired or an appeal of the order has been disposed of, or*
- (c) *if the child is the subject of a permanent guardianship agreement, the period for terminating the agreement has expired or an application for termination of the agreement has been disposed of.*

8 Section 59 presently reads:

59(1) A petition for an adoption order in respect of a child who is the subject of a permanent guardianship agreement or order or a child who is placed directly in the custody of the petitioner by a parent shall be filed with the Court by a director and must be accompanied by the following documentation:

- (a) *the affidavit of the director setting out*
 - (i) *the name, date and place of birth, gender and parentage of the child, so far as is known,*
 - (ii) *if the child is the subject of a permanent guardianship agreement or order,*
 - (A) *a statement that the director is the guardian of the child pursuant to the agreement or order,*
 - (B) *the terms of any agreement or order respecting access to the child, and*
 - (C) *a statement that the petitioner, in the opinion of the director, is a fit and proper person to have the care and custody of the child;*
 - (iii) *if the child is an Indian, a statement that section 62.1 has been complied with;*
- (b) *the affidavit of the petitioner setting out*
 - (i) *the age, address, marital status and occupation of the petitioner and the relationship, if any, of the petitioner to the child, and*
 - (ii) *if the child is placed directly in the custody of the petitioner by a parent*
 - (A) *the terms of any agreement and any document or writing relating to any agreement under which payment or other consideration passes from the petitioner in respect of care, maintenance, medical treatment or other necessities to or for the benefit of the parent, and*

(A) a copy of that person's written request to a director for authorization to place or facilitate the placement of the child, and

(B) a copy of the authorization;

(iii) *by repealing clause (c) and substituting the following:*

(c) the consents required under section 56;

(iv) *by repealing clause (f);*

(c) *in subsection (3)*

(i) *in the words preceding clause (a) by adding "or a child who is placed by a parent directly in the custody of a petitioner who is a relative of the child" after "of a petitioner";*

(ii) *by repealing clause (b) and substituting the following:*

(b) the consents required under section 56.

- (B) *the terms of any agreement or order respecting access to the child;*
 - (c) *the consent in the prescribed form of the guardian of the child and of the child if the child is 12 years of age or over;*
 - (d) *a home assessment report in the prescribed form prepared by a qualified person on behalf of the director respecting*
 - (i) *the suitability of the petitioner as an adoptive parent, and*
 - (ii) *the capability and willingness of the petitioner to assume the responsibility of a parent towards the child;*
 - (e) *the affidavit of any person acceptable to the director respecting the fitness of the petitioner to adopt the child, or any other material that the director may require.*
- (2) *A petition for an adoption order in respect of a child who is placed in the custody of the petitioner by a licensed adoption agency may be filed with the Court by an officer of the licensed adoption agency and must be accompanied by the following documentation:*
- (a) *the affidavit of an officer of the licensed adoption agency setting out*
 - (i) *the name, date and place of birth, gender and parentage of the child, so far as is known,*
 - (ii) *a statement that the petitioner, in the opinion of the officer, is a fit and proper person to have the care and custody of the child, and*
 - (iii) *if the child is an Indian, a statement that section 62.1 has been complied with;*
 - (b) *the affidavit of the petitioner setting out*
 - (i) *the age, address, marital status and occupation of the petitioner and the relationship, if any, of the petitioner to the child,*
 - (ii) *the terms of any agreement and any document or writing relating to any agreement under which payment or other consideration passes from the petitioner in respect of care, maintenance, medical treatment or other necessities to or for the benefit of the parent of the child, and*
 - (iii) *the terms of any agreement or order respecting access to the child;*

9 Section 60 is amended

(a) in subsection (1)

***(i) in clause (a) by adding “other than the petitioner”
after “child”;***

(ii) by adding the following after clause (a):

**(a.1) if the petitioner is the sole guardian of the child,
the person who consented to the adoption under
section 56(1.1),**

- (c) *the consent in the prescribed form of the guardian of the child and of the child if the child is 12 years of age or over;*
- (d) *a home assessment report in the prescribed form prepared by a qualified person on behalf of an officer of the licensed adoption agency respecting*
 - (i) *the suitability of the petitioner as an adoptive parent, and*
 - (ii) *the capability and willingness of the petitioner to assume the responsibility of a parent towards the child;*
- (e) *the affidavit of any person acceptable to an officer of the licensed adoption agency respecting the fitness of the petitioner to adopt the child, or any other material that the officer may require;*
- (f) *the consent in the prescribed form to the transfer of the interim care and custody of the child from a parent to the petitioner.*

(3) *A petition for an adoption order in respect of a child of the spouse of a petitioner shall be filed with the Court and must be accompanied by the following documentation:*

- (a) *the affidavit of the petitioner setting out*
 - (i) *the name, date and place of birth, gender and parentage of the child, so far as is known,*
 - (ii) *the age, address, marital status and occupation of the petitioner and the relationship of the petitioner to the child,*
 - (iii) *the name of the spouse of the petitioner, and*
 - (iv) *the terms of any agreement or order respecting access to the child;*
- (b) *the consent in the prescribed form of the guardian of the child and of the child if the child is 12 years of age or over.*

9 Section 60(1) presently reads:

60(1) A petitioner under section 58 shall serve by personal service not less than 30 days before the date of the hearing, a notice of the nature, time and place of the hearing of the petition and the documentation required under section 59 on

- (a) *the guardians of the child,*
- (b) *the child if the child is 12 years of age or over,*

(b) by adding the following after subsection (1):

(1.1) Any guardian who has indicated a desire not to be notified of the hearing need not be served under subsection (1).

(1.2) A child referred to in subsection (1)(b) need not be served with the home assessment report under subsection (1).

10 Section 61 is amended by adding the following after subsection (3):

(4) This section does not apply where the child is placed by a parent directly in the custody of a petitioner who is a relative of the child.

11 Section 63(4) is amended

(a) by striking out “56(1)” and substituting “56”;

(b) by striking out “or” at the end of clause (a) and adding the following after clause (a):

(a.1) a person who is required under section 56(1.1) to provide a consent, or

12 Section 63.1 is amended by striking out “of the petitioner’s spouse” and substituting “referred to in section 59(3)”.

- (c) a director if a person other than a director is filing the petition, and*
- (d) in the case of the adoption of a child who is not the subject of a permanent guardianship agreement or order, the biological father of the child.*

10 Section 61 presently reads:

61(1) A parent who places a child directly in the custody of a person who intends to petition the Court under section 58 for an adoption order in respect of the child shall give notice of the placement to a director in the prescribed form not later than 30 days after the placement.

(2) A person, in whose custody a child is placed directly by a parent, who intends to petition the Court under section 58 for an adoption order in respect of the child shall give notice of the placement to a director in the prescribed form not later than 30 days after the placement.

(3) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$5000 and in default of payment to imprisonment for a term not exceeding 3 months.

11 Section 63(4) presently reads:

(4) Notwithstanding sections 56(1) and 59, on the hearing of a petition under this Part, the Court may make an order dispensing with the consent of

- (a) a guardian of the child other than a director, or*
- (b) the child*

if the Court, for reasons that appear to it to be sufficient, considers it necessary or desirable to do so.

12 Section 63.1 presently reads:

63.1 The Court may, if it considers it appropriate to do so, require a petitioner who has petitioned the Court for an adoption order in respect of a child of the petitioner's spouse to submit to the Court a home assessment report in the prescribed form prepared by a qualified person respecting

- (a) the suitability of the petitioner as an adoptive parent, and*

13 Section 66 is amended

(a) by adding the following after subsection (3):

(3.1) A person who has consented under section 56(1.1) to the adoption of a child must be notified in accordance with subsection (3) that the adoption order has been made, unless that person has indicated a desire not to be notified.

(b) in subsection (7)(b) by striking out “section 56” and substituting “section 56(1) and a person who consented under section 56(1.1)”;

(c) by adding the following after subsection (8):

(9) Notwithstanding subsection (8), the Minister may disclose

(a) to a licensed search agency, for the purpose of processing an application under section 66.2, the identity and other personal information of a family member as defined in the regulations or of an adopted person who is 18 years of age or over, and

(b) to an adopted person who is 18 years of age or over, the birth surname of that person if the adoption order relating to that person did not disclose it.

14 The following is added after section 66.1:

Application to
licensed
search agency

66.2(1) In this section, “family member” has the meaning given to it in the regulations.

(2) An application may be made to a licensed search agency

(a) for the location of a family member, or

(b) for the disclosure of the identity and other personal information

(i) of the applicant to a family member, and

(ii) of a family member to the applicant.

(3) An application under subsection (2) may be made only by a person who is 18 years of age or over and who was adopted in accordance with this Act or any predecessor to this Act.

- (b) the capability and willingness of the petitioner to assume the responsibility of a parent towards the child.*

13 Section 66(3) and (7) presently read in part:

(3) Where a guardian other than a director has consented to the adoption of a child, a director or an officer of a licensed adoption agency shall, within 35 days of the making of the adoption order, notify the consenting guardian that the adoption order has been made, unless the consenting guardian has indicated a desire not to be notified.

(7) Notwithstanding subsections (5) and (6), the Minister or the clerk of the Court may, on request, provide a certified copy of an adoption order to

- (a) the adopted person, if that person is 18 years of age or over,*
- (b) a guardian who consented under section 56 to the adoption of the child who is the subject of the adoption order, and*
- (c) any person named in subsection (1).*

14 Two new sections are added to establish an active search mechanism for adoptees.

(4) A family member who is located by a licensed search agency may

- (a)** consent to a reunion with the applicant,
- (b)** consent to the disclosure of the family member's identity and other personal information to the applicant, or
- (c)** register a veto in the prescribed form with a director
 - (i)** declining a reunion with the applicant, or
 - (ii)** prohibiting the release of the family member's identity and other personal information to the applicant.

(5) A family member who registers a veto under subsection (4)(c) may revoke the veto by providing written notice of the revocation to a director.

(6) If a family member consents to a reunion with the applicant and wishes the licensed adoption agency to facilitate the reunion, the agency shall use the services of a qualified person to bring about the reunion.

(7) If the disclosure of information has been consented to under subsection (4)(b), the licensed search agency may disclose the identity and other personal information about each of the applicant and the family member to the other.

Financial
assistance for
a search

66.3 The Minister may provide financial assistance in accordance with the regulations to applicants under section 66.2 who are described in the regulations.

15 Section 68(2)(d) is amended by adding “, if he is not the applicant” after “made”.

15 Section 68(2) presently reads:

(2) Notice of the nature, time and place of the hearing of an application under subsection (1) shall be served by the applicant on

- (a) the Minister,*
- (b) the adopting parent, if he is not the applicant,*
- (c) the adopted child, if he is 12 years of age or over and is not the applicant,*
- (d) the person who was the guardian of the child immediately before the adoption order was made,*

16 The following is added after section 68.1:

Prohibition

68.11(1) No person other than the following shall place or facilitate the placement of a child for the purpose of an adoption:

- (a) a parent of the child;
- (b) a director;
- (c) a licensed adoption agency;
- (d) a person authorized by a director in accordance with the regulations.

17 Section 69(1) is amended by adding “or 68.11” after “section 68.1”.

18 Section 69.1 is amended

- (a) in subsection (1) by adding “or a search agency” after “agency”;*
- (b) in subsection (2)(b) by adding “or a licensed search agency, as the case may be,” after “agency”.*

19 Section 70(1)(c) is amended by adding “or a licensed search agency, as the case may be” after “agency”.

(e) the Public Trustee, if a director was the guardian of the child immediately before the adoption order was made, and

(f) any other person who in the opinion of the Court should be served.

16 Adds a new prohibition.

17 Section 69(1) presently reads:

69(1) Any person and any officer or employee of a corporation who contravenes section 68.1 is guilty of an offence and liable to a fine of not more than \$10 000 or in default of payment to imprisonment for a term not exceeding 6 months.

18 Section 69.1 presently reads:

69.1(1) An application for a licence to operate an adoption agency, or for a renewal of a licence, may be submitted to a director in accordance with this Part and the regulations by

(a) a body incorporated under the Societies Act,

(b) a body referred to in Part 9 of the Companies Act, or

(c) a body incorporated under Part II or III of the Canada Corporations Act (Canada).

(2) An application under subsection (1) must

(a) be in the prescribed form,

(b) be accompanied by any other information required under the regulations to enable a director to determine the capacity of the applicant to provide the services and carry out the responsibilities of a licensed adoption agency in accordance with this Act, and

(c) be accompanied by the prescribed fee.

19 Section 70(1)(c) presently reads:

Suspension,
cancellation
and refusal of
licence

20 Section 70.1 is amended

(a) by repealing subsection (1) and substituting the following:

70.1(1) A director may suspend or cancel a licence issued under section 70 if

- (a) the director is not satisfied that the licensee is capable of continuing to provide the services and to carry out the responsibilities of that licensee, or
- (b) an officer or employee of the licensee has contravened this Act or the regulations or any other Act or has acquiesced in a contravention of this Act or the regulations or any other Act.

(b) in subsection (2)

- (i) in the words preceding clause (a) by striking out “licensed adoption agency” and substituting “applicant or licensee, as the case may be,”;
- (ii) in clause (b) by striking out “licensed adoption agency” and substituting “licensee”.

21 Section 71 is amended

- (a) by striking out the words preceding clause (a) and substituting “A licensee”;
- (b) in clause (b) by adding “or a licensed search agency, as the case may be,” after “agency”.

22 Section 71.1 is amended

(a) in subsection (1)

- (i) in the words preceding clause (a) by striking out “licensed adoption agency” and substituting “licensee”;
- (ii) by repealing clause (a) and substituting the following:

70(1) A director who receives an application under section 69.1 may

- (c) if the director is not satisfied that the applicant is capable of providing the services and carrying out the responsibilities of a licensed adoption agency, refuse to issue or renew a licence.*

20 Section 70.1(1) and (2) presently read:

70.1(1) A director may suspend or cancel the licence of a licensed adoption agency if

- (a) the director is not satisfied that the licensed adoption agency is capable of continuing to provide the services and to carry out the responsibilities of a licensed adoption agency, or*

- (b) an officer or employee of the licensed adoption agency has contravened this Act or the regulations or has acquiesced in a contravention of this Act or the regulations or of any other Act.*

(2) If a director imposes terms and conditions under section 70(1)(b), refuses to issue or renew a licence under section 70(1)(c) or suspends or cancels a licence under subsection (1) of this section, the director shall serve on the licensed adoption agency a notice in writing in the prescribed form

- (a) setting out that decision and the reasons for the decision, and*

- (b) informing the applicant or licensed adoption agency, as the case may be, of its right to an appeal under section 86.*

21 Section 71 presently reads:

71 A licensed adoption agency

- (a) whose licence is cancelled, or*

- (b) that ceases to carry on the operation of a licensed adoption agency*

shall surrender to a director its licence and the books and records in its possession that relate to its clients or to the children that it has placed for adoption.

22 Section 71.1 presently reads:

71.1(1) A director or his delegate, on reasonable notice, at a reasonable time and on communicating to an officer of a licensed adoption agency the purpose and authority for an inspection, may

- (a) enter any land or premises of a licensed adoption agency other than a private dwelling and inspect the land or premises for the purpose of ascertaining if the licensed*

(a) enter any land or premises of a licensed adoption agency or a licensed search agency, other than a private dwelling, and inspect the land or premises for the purpose of ascertaining if the agency is complying with this Part and the regulations,

(b) *in subsection (4) by striking out “the licensed adoption agency” and substituting “a licensee”.*

23 Section 91(1) is amended by striking out “66.1” and substituting “66 or 66.1”.

24 Section 96(2) is amended

(a) by adding the following after clause (r):

(r.1) respecting the establishment and operation of licensed search agencies;

(b) in clauses (s), (t), (u), (v), (y) and (z) by adding “and licensed search agencies” after “agencies” wherever it occurs;

adoption agency is complying with this Part and the regulations,

(b) demand the production for examination of any books, records, accounts or other documents that are or may be relevant to the purpose of the inspection, and

(c) on giving a receipt for them, remove any of the things referred to in clause (b) for the purpose of making copies of them.

(2) A person who removes anything referred to in subsection (1)(b) may make copies of the things that were removed and shall return the things that were removed to the premises from which they were removed within a reasonable time after removing them.

(3) If a person refuses or fails

(a) to permit entry of any land or premises under subsection (1)(a), or after permitting entry obstructs a director or his delegate in the exercise of his authority under this section,

(b) to comply with a demand under subsection (1)(b), or

(c) to permit the removal of a thing under subsection (1)(c),

the director may apply to a judge of the Court by notice of motion for an order under subsection (4).

(4) If on application under subsection (3) the judge is satisfied that there are reasonable and probable grounds to believe that access to land or premises or the production or removal of books, records, accounts or other documents is necessary for the purpose of ascertaining if the licensed adoption agency is complying with this Part and the regulations, he may make any order he considers necessary to enforce compliance with this section.

23 Section 91(1) presently reads:

91(1) Except in proceedings under this Act or in accordance with section 66.1, the Minister and any person employed or assisting in the administration of this Act shall preserve secrecy with respect to the name and any other identifying information of a person that comes to his attention under this Act and shall not disclose or communicate that information to any other person except as otherwise provided in this section.

24 Amends regulation-making powers.

(c) *in clause (w) by striking out “a licensed adoption agency” and substituting “licensed adoption agencies and licensed search agencies”;*

(d) *by adding the following after clause (z):*

(z.1) defining “family member” for the purposes of Part 6;

(z.2) respecting the granting of authority by a director to persons for the purpose of placing or facilitating the placement of children for adoption in accordance with this Act;

(z.3) respecting the provision of financial assistance to persons who apply to licensed search agencies under section 66.2(1) and describing applicants who qualify for the assistance.

25 The Domestic Relations Act is amended by renumbering section 50 as section 50(1) and by adding the following after subsection (1):

(2) No order shall be made under subsection (1) if the purpose of the application is to facilitate the adoption of the minor.

26 This Act comes into force on March 31, 1995.

25 Consequential amendment to chapter D-37 of the Revised Statutes of Alberta 1980.

26 Coming into force.