

1996 BILL 214

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Fourth Session, 23rd Legislature, 45 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 214

VICTIMS OF DOMESTIC VIOLENCE ACT

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MS. HANSON

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 214*  
*Ms. Hanson*

## **BILL 214**

1996

### **VICTIMS OF DOMESTIC VIOLENCE ACT**

*(Assented to , 1996)*

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

Interpretation

**1** In this Act,

- (a) "clerk" means the clerk of the court;
- (b) "cohabitants" means
  - (i) persons who have resided together or who are residing together in a family relationship, spousal relationship or intimate relationship,
  - (ii) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time, or
  - (iii) persons 16 years of age or older who are children of the victim and who are currently residing, or who normally reside, in the same residence as the victim;
- (c) "court" means
  - (i) the Provincial Court, or
  - (ii) the Court of Queen's Bench;

- (d) "domestic violence" includes
  - (i) any intentional or reckless act or omission that causes bodily harm or damage to property,
  - (ii) any act or threatened act that causes a reasonable fear of bodily harm or damage to property,
  - (iii) forced confinement,
  - (iv) sexual abuse, and
  - (v) emotional abuse;
- (e) "emotional abuse" means behaviour of any kind the purpose of which is to deliberately humiliate or degrade another individual and includes repeated insults, ridicule and name-calling;
- (f) "judge" means a judge of the court;
- (g) "protection order" means an order made under section 2;
- (h) "residence" means a place where a victim normally resides, and includes a residence that a victim has vacated due to domestic violence;
- (i) "respondent" means any person against whom an order is sought or made;
- (j) "sexual abuse" means sexual contact of any kind that is coerced by force or threat of force;
- (k) "victim" means a cohabitant who has been subjected to domestic violence by another cohabitant.

**Protection order 2(1)** Where, on application, the court determines that domestic violence has occurred, it shall grant such relief necessary to prevent further domestic violence and in doing so may issue a protection order containing any or all of the following provisions:

- (a) a provision restraining the respondent from subjecting the victim to domestic violence;

- (b) a provision granting the victim and other family members of the victim exclusive occupation of the residence, regardless of whether the residence is jointly or solely owned by the parties or jointly or solely leased by the parties;
- (c) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the victim or other family members, including the residence, property, business, school or place of employment of the victim and other family members;
- (d) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the victim, including personal, written or telephone contact with the victim and other family members or their employers, employees or co-workers or others with whom communication would likely cause annoyance or alarm to the victim;
- (e) a provision directing a peace officer to remove, immediately or within a specified time, the respondent from the residence;
- (f) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings in order to ensure the protection of the victim;
- (g) a provision requiring the respondent to pay emergency monetary relief to the victim and any child of the victim or any child who is in the care and custody of the victim, until such time as an obligation for support may be determined pursuant to any other Act of the Legislature or the Parliament of Canada;
- (h) a provision requiring the respondent to pay the victim compensation for monetary losses suffered by the victim and any child of the victim or any child who is in the care and custody of the victim as a direct result of the domestic violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application pursuant to this Act;

- (i) a provision granting either party temporary possession of specified personal property, including a vehicle, chequebook, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects;
- (j) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property that the victim may have an interest in;
- (k) a provision recommending that the respondent receive counselling or therapy;
- (l) a provision requiring the respondent to post any bond that the court considers appropriate for securing the respondent's compliance with the terms of the order;
- (m) any other provision that the court considers appropriate.

(2) Where there is no existing order relating to custody and access of a child of the victim, then, in addition to the relief that the court may grant under subsection (1), the court may

- (a) make an order awarding temporary custody of a child and in making such an order the court shall presume that the best interests of the child are served by an award of custody to the nonviolent party;
- (b) make an order providing for access to a child provided that
  - (i) the order protects the safety and well being of the victim and the child and specifies the place and frequency of visitation, and
  - (ii) the order does not compromise any other remedy provided by the court by requiring or encouraging contact between the victim and the respondent,

(3) An order made under subsection (2) may

- (a) include a designation of a place of visitation other than the victim's residence,
- (b) require supervised access, and

- (c) where supervised access is required under clause (b), require the respondent to bear the cost of supervised access.

(4) Before making an order under subsection 2(b), the court may order that an assessment be done by an appropriate person or agency to assess the risk of harm to a child if access to the child is granted to the respondent.

(5) Where there is an existing order relating to custody and access made pursuant to the *Divorce Act* (Canada), the court may make an order specifying the logistics of any access granted to the respondent to a child in the custody of the victim to ensure that the protection of the victim is not compromised by the exercise of such access.

(6) Where there is an existing order relating to custody and access made pursuant to an order under any other Act of the Legislature, the court may

- (a) make an order specifying the logistics of any access granted to the respondent to a child in the custody of the victim to ensure that the protection of the victim is not compromised by the exercise of such access;
- (b) make an order prohibiting contact between the respondent and the child where the child is at serious risk of harm from the respondent;
- (c) make an order requiring supervision of access by the respondent and setting out the logistics for the exercise of the supervised access where the child is at some risk of harm from the respondent;
- (d) make an order requiring the respondent to bear the cost of supervised access.

Ex parte order

3(1) A protection order may be granted *ex parte* if, by reason of circumstances of seriousness or urgency or for the purpose of ensuring the safety of the victim, it is proper to make the order without notice to the respondent.

(2) The court shall cause an *ex parte* order to be served forthwith upon the respondent and for this purpose may order a peace officer to effect service.

(3) If an order is made *ex parte*, the respondent may file with the clerk a written request for a hearing.

(4) The court shall arrange for a hearing as soon as practicable after filing of the written request by the respondent pursuant to subsection (3).

(5) The court shall arrange for service of a notice of hearing on the applicant by the sheriff or such person other than the respondent specified by the court at least three clear days before the hearing.

Notice of order

4(1) A provision of a protection order is not effective in relation to a person unless the person has actual notice of the provision.

(2) Notice of the provisions of a protection order may be given orally by the court, or by personal service of the order on the respondent.

(3) The court shall ensure that the parties receive notice of the provisions of a protection order, and may order a peace officer to effect personal service.

(4) The court shall order the applicant or applicant's solicitor or any other officer of the court to deliver a copy of any order, or any variation of the order, and any subsequent proof of service to each local police department, designated by the applicant, having jurisdiction over the area in which the victim resides and such other locations where the court determines that acts of domestic violence against the victim are likely to occur.

Offence

5 Every person who without lawful excuse fails or refuses to comply with the terms of a protection order is guilty of an offence and liable to a fine of not more than \$1 000 or to imprisonment for a term not exceeding 4 months, or to both fine and imprisonment.

Duration of orders

6(1) A protection order made under this Act shall be made for such specified duration, not exceeding 3 years, as the court deems appropriate in the circumstances of the case unless otherwise terminated or extended by further order.

(2) A protection order shall not be varied by a judge other than the judge who granted the order in the first instance unless the judge

who granted the order is not available for the variation application and the court has a complete record of all prior pleadings and evidence before it, or the parties consent thereto.

(3) Where one or more terms of a protection order are varied, the order continues in full force and effect with regard to all other provisions.

(4) Any provision in a protection order respecting matrimonial property, maintenance, custody of children and access thereto is subject to and shall be deemed varied by any subsequent order made pursuant to any other Act of the Legislature or the Parliament of Canada.

Confidential information, private hearings and publication

7(1) The clerk of the court shall keep the victim's address confidential at the request of the victim or a person acting on the victim's behalf.

(2) The court may order that the hearing of an application or any part of a hearing be held in private.

(3) On the request of the victim, the court may make an order prohibiting the publication of a report of a hearing or any part of a hearing if the court believes that the publication of the report

- (a) would not be in the best interests of the victim or any child of the victim or any child who is in the care and custody of the victim, or
- (b) would be likely to identify, have an adverse effect on or cause hardship to the victim or any child of the victim or any child who is in the care and custody of the victim.

Effect of order on property and leasehold interest

8(1) An order does not in any manner affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties.

(2) Where a residence is leased by a respondent pursuant to an oral, written or implied agreement and a victim who is not a party to the lease is granted exclusive occupation of that residence, no landlord shall evict the victim solely on the basis that the victim is not a party to the lease.

(3) On the request of a victim mentioned in subsection (2), the



landlord shall advise the victim of the status of the lease and serve the victim with notice of any claim against the respondent arising from the lease and the victim, at his or her option, may assume the responsibilities of the respondent pursuant to the lease.

Warrant  
permitting entry

9(1) A court may issue a warrant where, on an *ex parte* application by a person designated in the regulations, the court is satisfied by information on oath that there are reasonable grounds to believe that

- (a) the person who provided the information on oath has been refused access to a cohabitant, and
- (b) a cohabitant who may be a victim will be found at the place to be searched.

(2) A warrant issued by a court peace authorizes the person named in the warrant to

- (a) enter, search and examine the place named in the warrant and any connected premises,
- (b) assist or examine the cohabitant, and
- (c) seize and remove anything that may provide evidence that the cohabitant is a victim.

(3) Where the person conducting the search believes on reasonable grounds that the cohabitant may be a victim, that person may remove the cohabitant from the premises for the purposes of assisting or examining the cohabitant.

Appeal

10(1) With leave of a judge of the Court of Queen's Bench, an appeal from any order made by the Provincial Court pursuant to this Act may be made to the Court of Queen's Bench on a question of law.

(2) With leave of a judge of the Court of Appeal, an appeal from any order made by the Court of Queen's Bench pursuant to this Act may be made to the Court of Appeal on a question of law.

Rights not  
diminished by  
Act

**11** An application for an order pursuant to this Act is in addition to and does not diminish any existing right of action for a victim.

Immunity

**12** No action lies or shall be instituted against a peace officer, a clerk or any other person for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them

- (a) pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations, or
- (b) in the carrying out or supposed carrying out of any decision or order made pursuant to this Act or the regulations or any duty imposed by this Act or the regulations.

Regulations

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

- (a) defining, enlarging or restricting the meaning of any word or phrase used in this Act but not defined in this Act;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing the procedures to be followed for applications, hearings and rehearings pursuant to this Act;
- (d) designating persons or categories of persons who may make applications for an order on behalf of a victim with the victim's consent;
- (e) designating persons or categories of persons who may apply for a warrant pursuant to section 8;
- (f) prescribing the form and manner of providing any notice or summons required to be provided pursuant to this Act, including prescribing substitutional service and a rebuttable presumption of service;
- (g) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
- (h) respecting any other matter or thing that the Lieutenant

Governor in Council considers necessary to carry out the intent of this Act.

Standing  
Committee

**14(1)** In this section, "Standing Committee" means the Standing Committee of the Legislative Assembly on Law and Regulations.

**(2)** Where the Lieutenant Governor in Council proposes to make a regulation pursuant to section 12, the Lieutenant Governor in Council shall cause to be forwarded to the Standing Committee a copy of the proposed regulation.

**(3)** On receipt by the Standing Committee of a copy of a proposed regulation pursuant to subsection (1), the Standing Committee shall examine the proposed regulation to ensure that

- (a)** it is consistent with the delegated authority provided in this Act,
- (b)** it is necessarily incidental to the purpose of this Act, and
- (c)** it is reasonable in terms of efficiently achieving the objective of this Act.

**(4)** When the proposed regulation has been examined as required under subsection (3), the Standing Committee shall advise the Lieutenant Governor in Council that the proposed regulation has been so examined and shall indicate any matter referred to in subsection 3(1), (b) or (c) to which, in the opinion of the Standing Committee, the attention of the Lieutenant Governor in Council should be drawn.

Coming into  
force

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