

1996 BILL 219

Fourth Session, 23rd Legislature, 45 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 219

FAMILY LAW REFORM ACT

MR. DICKSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 219
Mr. Dickson

BILL 219

1996

FAMILY LAW REFORM ACT

(Assented to , 1996)

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

- | | |
|------------|---|
| Definition | 1 In this Act, except in Part 4, "Court" means the Court of Queen's Bench. |
| Purposes | 2 The purposes of this Act are <ul style="list-style-type: none">(a) to ensure that all children are provided with the highest standard of living that their parents can afford;(b) to ensure that all children are given the opportunity to develop a meaningful relationship with both of their parents as well as with their parents' extended families;(c) to ensure that all parents have the ability to enforce their custody and access rights;(d) to ensure that all parents who wish to be involved with their children are given the opportunity to become guardians of their children. |

PART 1
MAINTENANCE

Definitions

3(1) In this Part,

- (a) "child of the marriage" means a child of two spouses who
 - (i) is under the age of 16 years, or
 - (ii) is 16 years of age or over but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;
- (b) "spouse" means, in relation to another person, a person who is married to that other person.

(2) For the purposes of the definition of "child of marriage" in subsection (1), a child of two spouses includes

- (a) any child for whom they both stand in the place of parents, and
- (b) any child for whom one is the parent and for whom the other stands in the place of a parent.

Jurisdiction

4 The Court has jurisdiction to hear an application for maintenance under this Part when both parties to the action

- (a) are domiciled in Alberta at the time of commencement of the action,
- (b) had a matrimonial home in Alberta when their cohabitation ceased, or when the events occurred on which the claim for maintenance is based, or
- (c) are resident in Alberta at the time of the commencement of the action.

Application for maintenance

5(1) The Court may, on application by either or both spouses, make an order requiring one spouse to pay such lump sum or periodic sums, or both, as the Court thinks reasonable for the maintenance of

- (a) the other spouse,
- (b) any or all children of the marriage, or
- (c) the other spouse and any or all children of the marriage.

(2) The Court may make an order under this Part for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it considers fit and just.

(3) In making an order under this Part, the Court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom maintenance is sought, including

- (a) the length of time the spouses cohabited,
- (b) the functions performed by the spouses during cohabitation, and
- (c) any order, agreement or arrangement relating to maintenance of the spouse or child.

(4) In making an order under this Part, the Court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(5) An order made under this Part that provides for the maintenance of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown,
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (6),
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage, and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

(6) An order made under this Part that provides for the maintenance of a child of the marriage should

- (a) recognize that the spouses have a joint financial obligation to maintain the child, and
- (b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

(7) An applicant for an order under this Part must

- (a) file an affidavit with the clerk of the Court that sets out the material facts relevant to the application, and
- (b) give written notice to the other spouse to appear before the Court at the hearing of the application.

(8) If a spouse has been served with a copy of the written notice under subsection (7) and fails to attend as required by the written notice, an order may be made in the absence of the spouse.

(9) Pending the hearing of an application under this Part, the Court may make an interim order regarding maintenance for a spouse or the children of the marriage, or both.

(10) The Court,

- (a) on application for review, and
- (b) on reasonable notice to the other spouse

may review an order made under this Part and may confirm, vary or discharge the order.

Consent orders

6(1) If the parties to an application under this Part

- (a) are in agreement respecting the matter in question, and
- (b) consent to an order on the terms agreed on,

the Court in its discretion may make the order without holding a hearing.

(2) An order made under subsection (1) has the same force and effect as an order made after a hearing.

Regulations

- 7** The Lieutenant Governor in Council may make regulations
- (a) prescribing rules with respect to the making of applications under this Part and dealing generally with all matters of procedure under this Part;
 - (b) prescribing forms to be used under this Part and providing for their use.

PART 2

CUSTODY AND ACCESS

Definition

- 8** In this Part,
- (a) "Access Program Coordinator" means the Access Program Coordinator appointed under section 9;
 - (b) "child" means a child who is under the age of 16 years;
 - (c) "parent" means, in relation to a child, a father or mother.

Access
Program
Coordinator

9(1) The Minister of Justice and Attorney General shall appoint a person as the Access Program Coordinator for the purposes of this Act.

(2) The Access Program Coordinator may delegate any power, duty or function referred or imposed on the Access Program Coordinator under this Act, including the power to delegate and subdelegate, to any person for any purpose.

Custody and
access orders

- 10(1)** If
- (a) the parents of a child live separate and apart, and
 - (b) the terms respecting custody of or access to the child are agreed to by the parties or there is a dispute respecting

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.

(2) If a child is in the custody of one parent and the other parent is entitled to access under the terms of an order made under this Part, each parent shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other parent and the other parent's extended family, including grandparents.

(3) The application for an order under this Part may be made

(a) by either parent of the child,

(b) by the child, who may apply with or without any person interested on the child's behalf, or

(c) by any other person.

(4) A person, other than a spouse or a child, may not make an application under subsection (1) without leave of the Court.

(5) In making an order under this Part, the Court shall

(a) take into consideration only the best interests of the child as determined by reference to the condition, means, needs and other circumstances of the child;

(b) not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of the child;

(c) give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child and for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

(6) An applicant for an order under this Part must

- (a) file an affidavit with the clerk of the Court that sets out the material facts relevant to the application, and
- (b) give written notice to all interested parties to the application to appear before the Court at the hearing of the application.

(7) If a parent or other interested party

- (a) has been served with a copy of the written notice, and
- (b) fails to attend as required by the written notice,

an order may be made in the absence of that person.

(8) Pending the hearing of an application under this section, the Court may make an interim order regarding the custody of, and right of access to, the child.

(9) The applicant and all persons that the Court thinks proper may be examined on oath touching the matters in issue.

(10) The Court,

- (a) on application for review, and
- (b) on reasonable notice to the interested parties,

may review an order made under this Part and may confirm, vary or discharge the order.

Access
enforcement

11(1) A person in whose favour an order has been made

- (a) for access to a child and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied or frustrated that access, or
- (b) for custody of a child and who claims that a person in whose favour an order has been made for access to a child at specific times on specific dates has, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires

may request the Access Program Coordinator to appoint a mediator to attempt to negotiate a settlement between the parties as to access, or, with leave of the Court, apply for the relief described in section 12.

(2) If a person requests mediation under subsection (1) and the mediation is unsuccessful or either party fails or refuses to participate in the mediation, the person who requested mediation may apply, or request the Access Enforcement Coordinator to apply on the person's behalf, to the Court for the relief described in section 12.

(3) If an application is brought under section 12 by the Access Enforcement Coordinator, the person on whose behalf the application is brought is deemed to be the applicant.

Remedies

12(1) If an application is brought pursuant to section 11(1) or (2) by a person in whose favour an order for access has been made, the Court may by order, if it is satisfied that the respondent wrongfully denied the applicant access to the child,

- (a) require the respondent to give the applicant compensatory access to the child for the period agreed to by the parties, or for the period the Court considers appropriate if the parties do not agree,
- (b) require the respondent to reimburse the applicant for any reasonable expenses actually incurred as a result of the wrongful denial of access, or
- (c) require the respondent to give security for the performance of any obligation imposed by the order.

(2) A period of compensatory access shall not be longer than the period of access that was wrongfully denied.

(3) A denial of access is wrongful unless it is justified by a legitimate reason such as one of the following:

- (a) the respondent believed on reasonable grounds that the child might suffer physical or emotional harm if the right of access were exercised;
- (b) the respondent believed on reasonable grounds that the

respondent might suffer physical harm if the right of access were exercised;

- (c) the respondent believed on reasonable grounds that the applicant was impaired by alcohol or a drug at the time of access;
- (d) the applicant failed to exercise the right of access within one hour of the time specified in the order or the time otherwise agreed on by the parties;
- (e) the respondent believed on reasonable grounds that the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised;
- (f) 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;
- (g) on numerous occasions during the preceding year, the applicant had, without reasonable notice and excuse, failed to exercise the right of access;
- (h) the applicant had informed the respondent that the applicant would not seek to exercise the right of access on the occasion in question.

(4) If an application is brought pursuant to section 11(1) or (2) by a person in whose favour an order for custody has been made, the Court may by order, if it is satisfied that the respondent, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires,

- (a) require the respondent to reimburse the applicant for any reasonable expenses actually incurred as a result of the failure to exercise the right of access or to return the child as the order requires, or
- (b) vary or discharge the order for access.

(5) An application made under subsection (1) or (4) shall be heard within 10 days after it has been served on the respondent.

(6) An application made under subsection (1) or (4) shall not be

made more than 30 days after the alleged denial of access or failure to exercise access.

(7) The application shall be determined on the basis of oral evidence only, unless the Court gives leave to file an affidavit.

(8) 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 failure to exercise the right of access as the order requires, or
- (b) the reasons for the denial or failure.

(9) Subsections (1) and (4) do not apply in respect of orders made under the *Divorce Act* (Canada) or a predecessor of that Act.

(10) Subsections (1) and (4) do not apply in respect of a denial of access or a failure to exercise a right of access or to return a child as the order or agreement requires that takes place before the day this section comes into force.

Private
hearing

13 Any case arising under this Part may, in the discretion of the Court, be heard in private.

Offence

14 Any person who contravenes a provision as to custody or right of access in an order made under this Part is guilty of an offence and liable to a fine of not more than \$1000 or to imprisonment for a term not exceeding 4 months, or to both fine and imprisonment.

Regulations

15 The Lieutenant Governor in Council may make regulations

- (a) prescribing rules with respect to the making of applications under this Part and dealing generally with all matters of procedure under this Part;
- (b) governing how the Access Enforcement Coordinator carries out his powers and duties under this Part;
- (c) respecting mediation under section 11;
- (d) prescribing forms to be used under this Part and providing

for their use.

PART 3

PROTECTION ORDERS

Definition

16(1) In this Part,

- (a) "child" means a child who
 - (i) is under the age of 16 years, or
 - (ii) is 16 years of age or over but unable, by reason of illness, disability or other cause, to withdraw from the charge of his parents or to obtain the necessaries of life;
- (b) "debtor" means a person required under a maintenance order to pay money for maintenance;
- (c) "Director" means the Director of Maintenance Enforcement appointed under the *Maintenance Enforcement Act*;
- (d) "income source" means an individual, a corporation or other entity that owes a debtor periodic payments at regular intervals of
 - (i) wages or salary,
 - (ii) a commission, bonus, piece-work allowance or other amount if the payment is not recoverable by the income source from the debtor should the debtor fail to earn the commission or bonus or fail to meet any production target,
 - (iii) a benefit under an accident, disability or sickness plan,
 - (iv) a disability, retirement or other pension,
 - (v) an annuity, or
 - (vi) other income as described in the regulations;

- (e) "maintenance deduction order" means an order granted under section 19.

Enforcement **17** This Part, except section 19, applies to judgments or orders for the payment of maintenance

- (a) of the Court under the *Divorce Act* (Canada), this Act or any other Act;
- (b) of a provincial judge.

Summons **18(1)** When a person against whom an order has been made for payment of maintenance under this or any other Act has not paid any or all of the money payable under the order, the person to whom the money is payable may apply for the issue of a summons from a clerk of the Provincial Court.

(2) The summons shall

- (a) require the respondent to attend at the time and place mentioned in it, to show cause why the order should not be enforced as hereinafter provided, and
- (b) be returnable on a date which shall be at least 10 days after the service of it.

(3) The applicant shall serve the summons either personally or in a manner that a provincial judge may in writing direct.

(4) The applicant and all witnesses whom the Provincial Court thinks proper may be examined on oath touching the inquiries to be made on the return of the summons.

(5) If the respondent having been duly served does not attend as required by the summons, or does not show sufficient reason for his non-attendance, or does not satisfy the provincial judge that he is unable to pay the money required to be paid by the order for maintenance the judge may enforce the order in any or all of the following ways:

- (a) by any of the means provided by Part XXIV of the *Criminal Code* (Canada) for the enforcement of an order by a justice for the payment of a fine or penalty;

- (b) by fixing the amount of arrears of maintenance for which the respondent is liable;
- (c) by varying either or both of
 - (i) the amount of arrears of maintenance, or
 - (ii) the amount of maintenance payable under an order that is not an order of the Court;
- (d) by making an order under section 24.

(6) The provincial judge may from time to time vary the order on the application of either the husband or the wife on proof that the means of the husband or the wife have altered in amount since the making of the original order or a subsequent order varying it.

(7) When an application is made under this section, the parties shall provide the judge with any financial information and records the judge considers necessary.

Maintenance deduction order

19(1) Where, after December 31, 1996, a Court makes a maintenance order pursuant to Part 1 that provides for the payment of maintenance on a periodic basis at regular intervals, it shall also make a maintenance deduction order for the payment of the maintenance ordered.

(2) Before making a maintenance deduction order, the Court shall make such inquiries as it considers necessary to determine the names and addresses of each income source of the debtor and the amounts paid to the debtor by each income source.

(3) A maintenance deduction order shall be in the form prescribed by the regulations.

(4) A maintenance deduction order binds every income source who is served by the Director's office with a notice of the order whether or not the income source is named in the order.

(5) The Director shall enforce a maintenance deduction order in the manner, if any, that appears practical to the Director and shall pay the amounts collected under the order to the person to whom they are owed.

(6) The Director shall enforce a maintenance deduction order, subject to any suspension order or variation, until the maintenance order to which it relates is terminated and there are no arrears owing and despite the fact that the maintenance order to which it relates has not been filed in or has been withdrawn from the Director's office.

(7) The Director's office may serve a notice of a maintenance deduction order by sending the notice by prepaid ordinary mail addressed to each income source from whom it is seeking payment, and new notices may be served when the amount to be paid under a maintenance order changes or arrears are owing.

(8) The notice shall be deemed to have been served on the individual, corporation or other entity to whom it was mailed on the 5th day following mailing, excluding Saturdays, Sundays and holidays, unless the contrary is shown.

(9) The Director shall send a copy of the notice to the debtor by prepaid ordinary mail at the debtor's last address as shown on the records of the Director's office.

(10) An income source shall begin making payments to the Director's office not later than the day the first payment is to be paid to the debtor that falls at least 14 days after the day on which the income source is served with the notice.

(11) Until an income source begins deducting maintenance payments in respect of a maintenance deduction order or if payments by an income source are interrupted or terminated, the debtor shall pay the amounts owing under the maintenance order to the Director or, if the maintenance order has been withdrawn, to the person entitled to receive maintenance.

(12) The Director may include in the amount required to be deducted and paid to the Director's office any amount in arrears under a maintenance order.

(13) Subject to subsection (15), the total amount deducted in respect of a maintenance order shall not exceed 50% of the net amount owed by the income source to the debtor.

(14) For the purposes of this section, "net amount" means the total amount owed by the income source to the debtor at the time payment is to be made to the Director's office, less the total of the

following deductions:

- (a) income tax,
- (b) Canada Pension Plan,
- (c) Unemployment Insurance,
- (d) union dues, and
- (e) such other deductions as may be prescribed by the regulations.

(15) Subject to subsection (17), the Court when it makes a maintenance deduction order, or on the motion of the Director, may order that one or more income sources pay an amount that is higher than the amount described in subsection (13) and such an income source shall pay to the Director's office the amount set out in the order.

(16) An order shall not be made under subsection (15) unless the debtor receives income from at least two sources (whether or not the sources are "income sources" as defined in section (1).

(17) An income source is not required to pay to the Director's office more than the net amount that the income source owes to the debtor at the time of the payment.

(18) Despite any other provision of this Act, no deduction shall be made under a maintenance deduction order in respect of amounts owing to a debtor as reimbursement for expenses covered by a medical, health, dental or hospital insurance contract or plan.

(19) If an individual, corporation or other entity served with notice is not an income source of the debtor named in the notice, the individual, corporation or other entity shall give written notice in the prescribed form of the fact to the Director's office within 10 days following the service of the notice.

(20) The Director or the income source may, on notice to the other, bring a motion to the Court that made a maintenance deduction order to determine

- (a) whether the income source has failed to comply with the order,

- (b) whether the amount the income source is deducting and paying to the Director's office under the order is correct, or
- (c) whether the individual, corporation or other entity is an income source.

(21) In a motion under subsection (20), the Court shall determine the issue in a summary manner and make such order as it considers appropriate in the circumstances.

(22) A motion shall not be brought by an income source under clause (20)(a) or (b) unless the income source has given written particulars of the proposed motion at least 14 days before serving the Director with a notice of motion.

(23) A motion shall not be brought under subsection (20)(c) by an income source until at least 14 days after the date that notice was given under subsection (19).

(24) Subsection (23) does not apply to the Director.

(25) An income source is liable to pay to the Director's office any amount that it failed, without proper reason, to deduct and pay to the Director's office after receiving notice to deduct and pay and, in a motion under subsection (20), the Court may order the income source to pay the amount that it ought to have deducted and paid to the Director's office.

(26) In addition to any other method available to enforce an order in a civil proceeding, any order made under subsection (21) or (25) may be enforced under this Part in the same manner and with the same remedies as a maintenance order.

Suspend order

20(1) A Court that makes a maintenance deduction order may immediately make an order to suspend its operation or the Court may, on motion, subsequently suspend its operation.

(2) The Court may suspend a maintenance deduction order under subsection (1) only if,

- (a) it finds that it would be unconscionable, having regard to all of the circumstances, to require the debtor to make maintenance payments through a maintenance deduction order, or

- (b) the parties to the maintenance order agree that they do not want maintenance payments collected through a maintenance deduction order and the Court requires the debtor to post such security as it considers adequate in accordance with the regulations.

(3) The following shall not be considered by a Court in determining whether it would be unconscionable to require a debtor to make maintenance payments through a maintenance deduction order:

- (a) the debtor has demonstrated a good payment history in respect of his or her debts, including maintenance obligations;
- (b) the debtor has had no opportunity to demonstrate voluntary compliance in respect of maintenance obligations;
- (c) the parties have agreed to the suspension of the maintenance order;
- (d) there are grounds upon which a Court might find that the amount payable under the maintenance order should be varied.

(4) For the purposes of subsection (2)(b), security shall be in a minimum amount equal to the maintenance payable for 4 months and the security shall be in money or in such other form as may be provided for in the regulations.

(5) The Director must be served with notice of the motion and may be added as a party.

(6) A suspension order shall be completed and signed by the Court at the time it is made and shall be entered in the Court records immediately after it is signed.

(7) The clerk or registrar of the Court that makes a suspension order shall file it with the Director's office promptly after it is made.

(8) A suspension order shall be in the form prescribed by the regulations and takes effect only when it is filed in the Director's office and every income source affected by the order has received notice of the suspension.

(9) A suspension order is automatically terminated if the debtor fails

to post security of the type or within the time period set out in the suspension order or if the debtor fails to comply with the maintenance order.

(10) When a suspension order is terminated under subsection (9), the maintenance deduction order is reinstated and the Director may immediately realize on any security that was posted.

(11) An order suspending the operation of a maintenance deduction order does not affect the debtor's obligations under the maintenance order nor does it affect any other means of enforcing the maintenance order.

Dispute over
amount
deducted

21(1) A debtor, on motion in the Court that made the maintenance deduction order,

- (a) may dispute the amount being deducted by an income source under a maintenance deduction order if the debtor is of the opinion that because of a mistake of fact more is being deducted than is required under this Act;
- (b) may dispute whether the debtor has defaulted in paying maintenance after a suspension order has been made under section 19;
- (c) may seek relief regarding the amount which is being deducted under a maintenance deduction order for arrears under a maintenance order.

(2) On a motion referred to in subsection (1), the debtor shall not dispute the entitlement of a person to maintenance under a maintenance order.

(3) The Director is a necessary party to a motion referred to in subsection (1).

(4) The Court shall determine the issue in a summary manner and make such order as it considers appropriate in the circumstances.

(5) On a motion under subsection (1)(c), the debtor shall be presumed to have the ability to pay the amount being deducted for arrears and the Court may vary the amount being deducted only if it is satisfied that the debtor is unable for valid reasons to pay that amount but this does not affect the accruing of arrears.

Varying
maintenance
deduction order

22(1) Subject to section 20, a Court shall not vary the amount to be paid under a maintenance deduction order unless the maintenance order to which it relates is varied.

(2) When a maintenance order is varied to provide for or to vary periodic payments at regular intervals, a maintenance deduction order shall be made to reflect the variation.

(3) A maintenance deduction order shall not be made in respect of a provisional order that varies a maintenance order.

Agreement to
vary
maintenance
deduction order

23 An agreement by the parties to a maintenance order to vary a maintenance deduction order and any agreement or arrangement to avoid or prevent enforcement of a maintenance deduction order are of no effect.

Order deemed
writ of
enforcement

24(1) A provincial judge may make an order permitting a spouse or former spouse in whose favour an order for maintenance has been made to register the order for maintenance in the Personal Property Registry.

(2) When an order is registered in the Personal Property Registry, the order is deemed to be a writ of enforcement for the amount that the payment ordered is in arrears from time to time.

(3) Notwithstanding any other Act, an order for maintenance registered under this section takes priority over any other writ of enforcement for an amount equal to the total maintenance payable for the latest 3-month period pursuant to the order.

(4) Notwithstanding subsection (3), this section does not affect a claim under sections 113 and 114 of the *Employment Standards Code*.

Attachment of a
debt

25(1) On the application of a person in whose favour an order for maintenance has been made a provincial judge may order that all debts, obligations and liabilities (other than wages or salary) payable or accruing due from a named debtor be paid by the debtor to a clerk of the Provincial Court at a place specified in the order.

- (2) An application may be made under this section *ex parte*.
- (3) An order made under this section shall relate only to the amount of arrears of maintenance for which the respondent is liable.
- (4) Before a judge makes an order under subsection (1) he shall be satisfied
- (a) that the person ordered to pay maintenance to the applicant has not made the payments required to be made under the order,
 - (b) that there is a debtor in Alberta, and
 - (c) that there is a reasonable possibility that the applicant will be unable to collect all or part of his claim or be subjected to unreasonable delay in the collection of his claim unless an order is granted under this section.
- (5) An order made under subsection (1) shall be served on the debtor named in the order and service of the order binds the debt due or accruing due from the debtor or so much of it as is necessary to satisfy the claim of the applicant and any costs fixed in the order by the judge.
- (6) A copy of the order shall be served on the respondent not later than 20 days after payment by the debtor to the clerk of the Provincial Court.
- (7) If the debtor has more than one office and it appears that money alleged to be due to the person ordered to pay maintenance is or may be payable through some other office of the debtor than that at which the order is served, the person in charge of the office at which the order is served shall forthwith notify the person in charge of the office at which money is or may be payable and that money is deemed to be attached and the order is deemed to be served as of the time the notice of the order is actually received at the office through which that money is payable or within 48 hours after the actual service of the order, whichever is the shorter period.
- (8) Debts owing by a partnership carrying on business in Alberta may be attached under this section although one or more members of the partnership are resident out of Alberta, if the order is served in Alberta on any person having the control or management of the partnership or any partner.

(9) An answer disputing liability in the name of the partnership is sufficient to identify the partnership.

(10) Within 10 days after service of the order on the debtor, the debtor shall either

- (a) pay to the clerk of the Provincial Court the lesser of
 - (i) the money due from him to the person ordered to pay maintenance, and
 - (ii) an amount sufficient to satisfy the order and any costs fixed in the order by the judge,
- (b) file an answer in the office of the clerk of the Provincial Court stating that the money is accruing due but is not yet payable and that it is to be payable at a specified future date or on the happening of a specified event,
- (c) file an answer in the office of the clerk of the Provincial Court disputing his liability to the person ordered to pay maintenance, or
- (d) file an answer in the office of the clerk of the Provincial Court that the debt attached belongs or may belong to some 3rd person whose name and address so far as is known to the debtor shall be stated.

(11) When the debtor files an answer under subsection (10)(b) then, on the specified future date or the happening of the specified future event, the debtor shall pay to the clerk of the Provincial Court the money accrued due at the time of service of the order from him to the person ordered to pay maintenance or an amount sufficient to satisfy the order and any costs fixed by the judge, whichever is the lesser sum.

(12) When the debtor files an answer under subsection (10)(c), the debtor shall state the grounds on which the liability is disputed.

(13) When the debtor files an answer under subsection (10)(d) then, unless the judge otherwise orders, the debtor shall pay to the clerk of the Provincial Court, with the answer, the debt attached or as much of the debt as is required to satisfy the order and any costs fixed by the judge, whichever is the lesser sum, and shall state the circumstances and grounds so far as they are within his knowledge.

(14) If a debtor

- (a) does not pay the clerk of the Provincial Court,
- (b) files an answer under subsection (10)(c) or (d), or
- (c) does not pay the clerk of the Provincial Court and does not file an answer under subsection (10)(c) or (d),

the clerk shall forthwith notify the applicant.

(15) When the applicant is notified by the clerk of the Provincial Court under subsection (14), he may apply by notice of motion to the Court of Queen's Bench in the judicial district in which the Provincial Court is located for an order under subsection (18).

(16) The notice of motion shall be served on the clerk of the Provincial Court that issued the original attachment order, the respondent, the debtor and any other person claiming to be interested in the money attached not less than 15 days before the date on which the application is to be heard.

(17) On being served with the notice of motion under subsection (16) the clerk of the Provincial Court shall forthwith forward to the clerk of the Court of Queen's Bench

- (a) the order made under subsection (1),
- (b) the answer, if any,
- (c) all depositions and transcripts of the evidence taken at the hearing, and
- (d) all documents and exhibits filed at the hearing.

(18) On hearing the motion the Court of Queen's Bench may

- (a) summarily determine any question arising in the attachment proceedings,
- (b) direct the trial of an issue to determine any question arising in the attachment proceedings, or
- (c) make any other order that is just.

(19) On payment to the clerk of the Provincial Court by the debtor, the clerk shall forthwith notify the applicant and the respondent of the amount of the payment.

(20) Where payment is made to the clerk of the Court of Queen's Bench pursuant to an order made under subsection (18), the clerk shall forthwith pay the money to the clerk of the Provincial Court that issued the original attachment order.

(21) Payment by the debtor to the clerk of the Provincial Court is a valid discharge to him against the respondent to the extent of the payment.

Crown bound 26 An order made under this Part is binding on the Crown.

Money paid to
a applicant by
order 27 Money paid to a clerk of the Provincial Court pursuant to an order made under this Part may be paid to the person entitled to the money by order of a provincial judge on application made ex parte or on such notice as may be directed.

Money not
attachable 28 Money paid to a clerk of the Provincial Court pursuant to an order made under this Part is not attachable.

Payment on
adjournment of
hearing 29 On an application by a person ordered to pay maintenance to his spouse for an adjournment of a hearing, the provincial judge may, as a condition of granting the adjournment, order that person to pay to his spouse any sum that the provincial judge considers proper, if any, during the period of the adjournment.

Hearing in
private 30(1) In the discretion of the provincial judge cases arising under this Part may be heard in private.

(2) The provincial judge may

- (a) rehear the application at the instance of the person ordered to pay after notice to the other spouse, and
- (b) on the rehearing confirm, rescind or vary an order as the provincial judge considers just.

Registration of
order

31(1) An order for maintenance may be registered in any land titles office and the registration, so long as the order remains in force,

- (a) binds the estate and interest of every description that the person ordered to pay maintenance has in any land in the land registration district where the registration is made, and
- (b) operates on those estates or interests in the same manner and with the same effect as a registration of a charge by the person ordered to pay maintenance of a life annuity on the land of that person.

(2) The person against whose land an order is registered under subsection (1) may apply to the Court for an order directing the Registrar of Land Titles to cancel the registration of the order under subsection (1).

(3) The Court may make an order directing the Registrar of Land Titles to cancel the registration of an order under subsection (1) against part or all of the estates and interests of the person ordered to pay maintenance and under any terms and conditions the Court considers necessary.

Application of
Criminal Code

32(1) Except as is otherwise provided by this or any other Act, and except to the extent that they are contrary to the intent of this Part, Parts XXIII and XXIV of the *Criminal Code* (Canada) apply to proceedings under this Part.

(2) Nothing in this Part shall be construed to prejudice, abridge, curtail, defeat or otherwise affect a civil or other remedy at law of a married person against her or his spouse that she or he would otherwise have but for this Part.

Regulations

33 The Lieutenant Governor in Council may make regulations

- (a) prescribing rules with respect to the making of applications under this Part and dealing generally with all matters of procedure under this Part;
- (b) prescribing forms and providing for their use.

PART 4

GUARDIANSHIP OF MINORS

Definition **34** In this Part, "Court" means the Court of Queen's Bench, or judge of the Surrogate Court sitting in Chambers.

Powers of guardian **35** Except where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, each guardian during the continuance of the guardianship

- (a) may act for and on behalf of the minor,
- (b) may appear in court and prosecute or defend an action or proceedings in the name of the minor,
- (c) after furnishing any security the Court requires under section 40, has the care and management of the estate of the minor, whether real or personal, and may receive any money due and payable to the minor and give a release in respect of it, and
- (d) has custody of the person of the minor and the care of the minor's education.

Guardians **36(1)** Unless a court of competent jurisdiction otherwise orders, the joint guardians of a minor child are

- (a) the mother, and
- (b) the father, if
 - (i) he was married to the mother of the child at the time of birth of the child,
 - (ii) he was married to the mother of the child and the marriage was terminated by
 - (A) a decree of nullity of marriage granted not more than 300 days before the birth of the child, or
 - (B) a judgment of divorce granted not more than 300

days before the birth of the child,

- (iii) he cohabited with the mother of the child for at least one year immediately before the birth of the child,
- (iv) he married the mother of the child after the birth of the child and has acknowledged that he is the father of the child,
- (v) he is registered as the father of the child at the joint request of himself and the mother of the child under the *Vital Statistics Act* or similar legislation in a province other than Alberta,
- (vi) he has been found by a court of competent jurisdiction in Canada to be the father of the child,
- (vii) he has acknowledged that he is the father of the child, wishes to be involved in raising the child and has entered his name on the Paternity Registry maintained by the Department of Family and Social Services.

(2) If, on the application of a person declared to be a parent under Part 5, the Court is satisfied that it is in the best interest of the child and that the application is able and willing to assume the responsibility of a guardian towards the child, the Court may appoint the person as a guardian jointly with any other guardian.

Appointment of
guardian

37(1) A parent of a minor may by deed or will appoint a person to be guardian of the person and estate, or either, of the minor after the death of that parent.

(2) The person appointed guardian of a minor shall act jointly with the other parent or with the guardian appointed by the other parent.

Court may
appoint
guardian

38 The Court may from time to time appoint a guardian of the person and estate, or either, of a minor to act jointly with the father or mother of the minor or with the guardian appointed by the deceased father or mother of the minor.

Application of
minor

39(1) If on the application of a minor, or of anyone on behalf of the minor, it appears

- (a) that the minor has no parent or lawful guardian, or
- (b) that the parent or lawful guardian is not a fit and proper person to have the guardianship of the minor,

the Court may appoint a guardian or guardians of the person and estate, or either, of the minor.

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

Security by guardian

40 Unless otherwise ordered by the Court, each guardian of the estate of a minor except when the guardian is the Public Trustee shall furnish the security, if any, ordered by the Court.

Removal of Guardians

41(1) Testamentary guardians and guardians appointed by order or letters of guardianship are removable by the Court for the same causes for which trustees are removable.

(2) A guardian referred to in subsection (1) by leave of the Court may resign his office on any terms and conditions the Court considers just.

Guardianship in socage

42 Guardianship in socage, by nature and for nurture, is abolished.

PART 5

ESTABLISHING PARENTAGE

Application of Part

43 This Part does not apply

- (a) to an application under section 11.1 of the *Child Welfare Act*, or
- (b) to an application under Part 6 unless an application under that Part is combined under section 49 with an application under this Part.

Presumption of parentage

44(1) For all purposes of the law of Alberta, unless the contrary is proven on a balance of probabilities, there is a legal presumption

that a person is the father of a child in any of the following circumstances:

- (a) the person was married to the mother of the child at the time of the birth of the child;
- (b) the person was married to the mother of the child and the marriage was terminated by
 - (i) a decree of nullity of marriage granted not more than 300 days before the birth of the child, or
 - (ii) a judgment of divorce granted not more than 300 days before the birth of the child;
- (c) the person married the mother of the child after the birth of the child and has acknowledged that he is the father of the child;
- (d) the person cohabited with the mother of the child for at least one year immediately before the birth of the child;
- (e) the person is registered as the father of the child at the joint request of himself and the mother of the child under the *Vital Statistics Act* or under similar legislation in a province other than Alberta.

(2) Where there is a conflict between subsection (1) and any other enactment, the other enactment prevails.

Declaration of
parentage

45(1) A person claiming to be the father, mother or child of another person may apply by originating notice to the Court for a declaration of parentage.

(2) The Court shall grant a declaration of parentage on being satisfied, on a balance of probabilities, that the alleged father or mother is the father or mother of the child.

(3) An application under this section may be brought on behalf of the child or by any person acting on the child's behalf.

(4) The Court has jurisdiction under this section if the child or an alleged parent against whom an application is brought is resident in Alberta.

(5) A declaration of parentage under this section applies for all purposes of the law of Alberta.

Application to
set aside

46(1) A declaration of parentage remains in force until it is set aside under this section.

(2) An application to set aside a declaration of parentage may be made to the Court, with the leave of the Court.

(3) Notice of the application shall be given to persons prescribed by section 47(1) and (2).

(4) The Court hearing the application may confirm the declaration of parentage or set it aside.

(5) The setting aside of a declaration of parentage does not affect rights that vested while the declaration was in force.

Notice of
application

47(1) Unless the Court otherwise directs, notice of an application for a declaration of parentage shall be given to

- (a) the person claimed to be a child, if the person is 12 years of age or older,
- (b) the guardian of, a person with the care and control of, or any person named by law to be served on behalf of, the person claimed to be a child, and
- (c) any other person claiming or alleged to be a parent.

(2) On application or on its own motion, the Court may direct that notice be given to any person who in its opinion should have an opportunity to be heard.

Evidence

48 The Court

- (a) shall have regard to any subsisting presumption of parentage under section 44, and
- (b) shall admit as evidence an order or judgment of any court of competent jurisdiction that expressly or by implication determines the parentage of the child.

Joining
applications

49 The Court may, on its own motion or on application of any of the parties, join an application under this Part with an application under Part 6 in accordance with any directions the Court considers appropriate.

Blood tests,
etc.

50(1) On the request of a party or on its own motion, the Court may make an order granting leave to obtain blood tests or any other tests that the Court considers appropriate from any person named in the order and to submit the results in evidence.

(2) An order under subsection (1) may be made subject to any terms and conditions the Court considers proper.

(3) No test shall be performed on a person without that person's consent.

(4) If a person named in an order under subsection (1) is not capable of giving consent because of age or incapacity, the consent may be given by the guardian of the person.

(5) If a person named in an order under subsection (1) or the person's guardian, as the case may be, refuses to consent to a test referred to in the order, the Court may draw any inference it considers appropriate without prejudice to the child in future proceedings on behalf of the child.

PART 6

PARENTAGE AND MAINTENANCE

Definitions

51 In this Part

- (a)** "agreement" means an agreement under section 56, and includes a variation of the agreement;
- (b)** "child" means a child born of parents who are not married to each other and includes a child born prior to the commencement of this Act notwithstanding any rights of a parent that otherwise have vested in the interim;

- (c) "Department" means the Department of Family and Social Services;
- (d) "Director" means the Director appointed under section 53(1);
- (e) "Director of Maintenance Enforcement" means the Director of Maintenance Enforcement under the *Maintenance Enforcement Act*;
- (f) "father" means
 - (i) the biological father of a child, or
 - (ii) the person who caused the pregnancy of a mother;
- (g) "filed agreement" means an agreement that has been filed with the Director of Maintenance Enforcement;
- (h) "Minister" means the Minister of Family and Social Services;
- (i) "mother" means
 - (i) the biological mother of a child, or
 - (ii) the expectant mother of a child;
- (j) "order" means an order made under this Act, and includes a variation of the order;
- (k) "parent" means a mother or a father.

Application **52** This Act applies to any person, including a parent who is under 18 years of age, but the Court may appoint a person to represent the interests of a minor in an application to the Court under this Act.

Director **53(1)** In accordance with the *Public Service Act* there may be appointed a Director who shall administer this Act under the direction of the Minister.

(2) The Director may in writing delegate to an employee of the

Department or any employee of an Indian or Metis organization any power or duty conferred or imposed on him by this Act or the regulations.

(3) A delegation by the Director under subsection (2) shall be admitted in evidence as proof of the facts stated in the delegation without proof of the signature or authority of the Director.

Request for
assistance

54(1) A request for assistance relating to the maintenance of a child or a mother may be made to the Director by

- (a) a parent,
- (b) a child,
- (c) a person who has the care and control of a child, or
- (d) a person who has undertaken to provide maintenance for a mother or a child.

(2) On receipt of a request under subsection (1), the Director may

- (a) enter into or assist another person in entering into an agreement,
- (b) make or assist another person in making an application to the Court under this Act, and
- (c) take any other action that, in the Director's opinion, is in the best interests of the child or the mother or of both.

Access to
information

55(1) A person who makes a request under section 54 has a right of access to any records maintained by the Director relating to that person's personal history and, on request, the Director shall provide the person with access to the records.

(2) A person referred to in subsection (1) may in writing authorize the Director to provide access to that person's records to any other person named in the authorization, and on receipt of the authorization the Director shall provide the person named in the authorization with access to the records.

Agreement

56(1) A parent may enter into an agreement in the form prescribed in the regulations with

- (a) the Director,
- (b) the other parent, or
- (c) any other person having the care and control of the parent's child,

whereby the parent agrees to pay any or all of the expenses referred to in subsection (2).

(2) An agreement may refer to any or all of the following expenses:

- (a) reasonable expenses for the maintenance of the mother
 - (i) during a period not exceeding 3 months preceding the birth of the child,
 - (ii) at the birth of the child, and
 - (iii) during a period after the birth of the child;
- (b) reasonable expenses for the maintenance of the child before the date of the agreement;
- (c) monthly or periodic payments for the maintenance of the child until the child reaches the age of 18 years;
- (d) expenses of the burial of the child if the child dies before the date of the agreement;
- (e) expenses incurred for the purpose of determining parentage.

(3) An agreement may provide that the liability of a parent for the expenses referred to in subsection (2), other than for the maintenance of a child under subsection (2)(c), shall be satisfied by the payment of an amount specified in the agreement.

(4) An agreement to which a father is a party must contain his acknowledgment that he is or may be the father.

(5) The parties to a filed agreement may vary the agreement at any

time by entering into a new agreement and filing the new agreement with the Director of Maintenance Enforcement.

(6) An agreement that is not entered into in accordance with this section does not prevent a person from making an application under section 57.

Application

57(1) Subject to subsection (5), an application may be made to the Court for an order

- (a) declaring that the respondent is a parent for the purposes of this Act, and
- (b) directing the payment of any or all of the expenses referred to in section 66(2).

(2) An application under subsection (1) may be made by

- (a) a parent,
- (b) a child,
- (c) a person who has the care and control of a child, or
- (d) the Director on behalf of the Government, where the Government has a right of subrogation under section 14 of the *Social Development Act*.

(3) An application must be commenced by filing with the Court an affidavit in the form prescribed in the regulations setting out the facts relevant to the application.

(4) If any one of 2 or more persons might be a parent, each of those persons may be named as a respondent in the application.

(5) No application may be made under this section in respect of a respondent who is deceased.

**Power of the
Director to
intervene**

58 If an applicant becomes the recipient of a social allowance as defined in the *Social Development Act* after an application has been commenced under section 57, the Director may intervene in and make representations at the application.

Summons

59(1) On the filing of an affidavit under section 57(3), the Court or the clerk of the Court shall issue a summons to the respondent requiring the respondent to appear before the Court at the time and place stated in the summons to show cause why an order under section 57 should not be made against the respondent.

(2) The clerk of the Court may in writing delegate to any member of his staff the power to issue a summons under subsection (1).

(3) Unless the Court otherwise directs, the summons shall be served personally on the respondent not less than 2 days before the date stated in the summons for the hearing of the application, and the Court may authorize service outside Alberta.

(4) Instead of issuing a summons under subsection (1), or at any time after the issuance of a summons and before the date stated in the summons for the hearing of the application, the Court may, on evidence satisfactory to it, direct that a warrant in the form prescribed in the regulations be issued for the arrest of the respondent.

(5) When a respondent who has been served with a summons or who has been bound over to appear pursuant to subsection (6) does not appear at the time and place stated in the summons and no reasonable excuse is offered for his non-appearance, the Court may direct that a warrant in the form prescribed in the regulations be issued for the arrest of the respondent.

(6) The Court or a justice of the peace before whom a respondent is brought on a warrant may bind the respondent over to appear at the hearing of the application and may require the respondent to enter into a recognizance

(a) with or without a cash amount to be deposited with the Court or the justice of the peace, or

(b) with or without a surety.

Failure to
appear

60(1) If a respondent

(a) on whom a summons has been served,

(b) who has entered into a recognizance, or

- (c) on whom a summons has been served outside Alberta and who has submitted to the jurisdiction of the Court,

fails to appear at the hearing of the application, the Court, after hearing the evidence presented to it, may make any order that it could have made if the respondent had appeared at the hearing.

(2) If an order is made under subsection (1) against a respondent who fails to appear in accordance with his recognizance, the Court may direct that all or a part of the cash deposit or surety provided under section 59(6) be applied in satisfaction of the order or in any other way that the Court directs.

(3) If an order is made under subsection (1), the respondent may, within 30 days of the date of the order, apply to the Court for a rehearing, and the Court may direct a rehearing and may confirm, vary or reverse the order, but no costs shall be awarded to the applicant.

Exclusion from
hearing

61(1) Subject to subsection (2), if the Court is satisfied that

- (a) the evidence to be presented at the hearing would be prejudicial to a person who is the subject of the hearing, or
- (b) it would promote the proper administration of justice to exclude a person from the hearing,

the Court may exclude any person from all or part of the hearing.

(2) The Court may not exclude from the hearing

- (a) the Director or his delegate,
- (b) the applicant or respondent in the application, or
- (c) a lawyer representing any of the parties to the application.

Presumption of
paternity

62(1) For the purposes of this Act, unless the contrary is proven on a balance of probabilities, there is a presumption that a person is the father of a child in any of the following circumstances:

- (a) the person was married to the mother of the child at the time of the birth of the child;

- (b) the person was married to the mother of the child and the marriage was terminated by
 - (i) a decree of nullity of marriage granted not more than 300 days before the birth of the child, or
 - (ii) a judgment of divorce granted not more than 300 days before the birth of the child;
- (c) the person married the mother of the child after the birth of the child and acknowledged that he was the father of the child;
- (d) the person cohabited with the mother of the child for at least one year immediately before the birth of the child;
- (e) the person is registered as the father of the child at the joint request of himself and the mother of the child under the *Vital Statistics Act* or similar legislation in a province other than Alberta;
- (f) the person has been found by a court of competent jurisdiction in Canada to be the father of the child.

(2) Where circumstances exist that give rise to a presumption under subsection (1) that more than one person might be the father of a child, no presumption as to paternity may be made.

Blood tests,
etc.

63(1) On the request of a party to an application under this Act, the Court may make an order granting leave to obtain blood tests or any other tests that the Court considers appropriate from any person named in the order and to submit the results in evidence.

(2) An order under subsection (1) may be made subject to any terms and conditions the Court considers proper.

(3) No test shall be performed on a person without his consent.

(4) If a person named in an order under subsection (1) is not capable of giving a consent because of age or incapacity, the consent may be given by the guardian of the person.

(5) If a person named in an order under subsection (1) or the person's guardian, as the case may be, refuses to consent to a test

referred to in the order, the Court may draw any inference it considers appropriate.

Evidence

64(1) Notwithstanding any other Act, in an application under this Act a married woman is a competent and compellable witness to testify as to the paternity of her child in respect of whom the application is made.

(2) Notwithstanding any other Act, in an application under this Act a respondent is a competent and compellable witness, and if called as a witness by the applicant the respondent may, without notice or the payment of conduct money, be cross-examined by or on behalf of the applicant, but the applicant is not bound by the respondent's evidence by reason only of having called the respondent as a witness.

(3) Evidence given by a party to an application under this Act that tends to show that the person giving the evidence had sexual intercourse with any person is not admissible in evidence against the person giving the evidence in any matrimonial action to which that person is a party.

(4) In an application under this Act, the Court may

- (a) compel the attendance of any person and require him to give evidence on oath and to produce any documents and things that may be required, and
- (b) exercise the powers of a magistrate under Part XXII of the *Criminal Code* (Canada).

Order declaring
parentage

65(1) If the Court is satisfied that the respondent is a parent, the Court may make an order declaring the respondent to be a parent for the purposes of this Act.

(2) If 2 or more persons are named as respondents in an application and the Court

- (a) is satisfied that any one of the respondents might be a parent, and
- (b) is unable to determine which respondent is a parent,

the Court may make an order declaring each of the respondents who, in the opinion of the Court, might be a parent to be a parent for the purposes of this Act.

(3) No order may be made under this section if, at the date of the application for the order, the child in respect of whom the application is made has reached the age of 18 years.

Order for
payment of
maintenance

66(1) If an order is made under section 65, the Court may, subject to subsection (3), make a further order

- (a) directing the respondent to pay any or all of the expenses referred to in subsection (2), or
- (b) if the order is made under section 65(2), directing the respondents to pay any or all of the expenses referred to in subsection (2) in any proportion the Court considers appropriate.

(2) A direction in an order under this section may refer to any or all of the following expenses:

- (a) reasonable expenses for the maintenance of the mother
 - (i) during a period not exceeding 3 months preceding the birth of the child,
 - (ii) at the birth of the child, and
 - (iii) during a period after the birth of the child that, in the opinion of the Court, is necessary as a consequence of the birth of the child;
- (b) reasonable expenses for the maintenance of the child before the date of the order;
- (c) monthly or periodic payments for the maintenance of the child until the child reaches the age of 18 years;
- (d) expenses of the burial of the child if the child dies before the date of the order;
- (e) costs of any or all Court proceedings taken under this Act.

(3) No order may be made under this section

- (a)** in respect of an expense referred to in subsection (2)(b) or (c) unless the application for the order is commenced before the child in respect of whom the application is made reaches the age of 18 years, or
- (b)** in respect of an expense referred to in subsection (2)(a) or (d) unless the application for the order is commenced within 2 years after the expense was incurred.

(4) In making an order under this section, the Court shall fix an amount to be paid for the maintenance of a child that will enable the child to be maintained at a reasonable standard of living having regard to the financial resources of each of the child's parents.

(5) An order may provide that the liability of a parent for the expenses referred to in subsection (2), other than for the maintenance of a child under subsection (2)(c), shall be satisfied by the payment of an amount specified in the order.

(6) When an order is made under this section, the applicant shall provide certified copies of the order to any person declared to be a parent under section 65.

Change in care
and control

67(1) An order or agreement may provide that a payment for the maintenance of a child shall be made to any person who assumes the care and control of the child, notwithstanding that the person is not a party to the order or agreement.

(2) If a person is not a party to an order or a filed agreement and assumes the care and control of a child after the date of the order or filed agreement, the person shall, within 30 days of assuming the care and control of the child, notify the Director of Maintenance Enforcement by registered mail of the change in care and control.

(3) The Director of Maintenance Enforcement is not responsible for the repayment of any money disbursed by him after a change in the care and control of a child of which he has not been notified under subsection (2).

Application to
vary or
terminate

68(1) An application to vary or terminate an order or a filed agreement may be made to the Court by

- (a) a person required by the order or filed agreement to make a payment,
- (b) a parent of a child who is the subject of the order or filed agreement,
- (c) a person who has the care and control of a child who is the subject of the order or filed agreement,
- (d) a child who is the subject of the order or filed agreement, or
- (e) the Director on behalf of the Government, where the Government has a right of subrogation under section 14 of the *Social Development Act*.

(2) The Court may vary or terminate an order or a filed agreement if it is satisfied that there has been a substantial change in

- (a) the ability of a parent to pay the expenses specified in the order or filed agreement,
- (b) the needs of the child, or
- (c) the care and control of the child.

(3) An order under this section may not vary an amount specified under section 56(3) or 66(5).

Termination of
order

69(1) A provision in an order or agreement that directs the payment of maintenance for a child terminates on the death or adoption of the child.

(2) On the termination of an order or a filed agreement, the person who has the care and control of the child shall, within 30 days of the termination, notify the Director of Maintenance Enforcement by registered mail that the order or filed agreement has been terminated.

(3) The Director of Maintenance Enforcement is not responsible for the repayment of any money disbursed by him after the termination

of an order or a filed agreement of which he has not been notified under subsection (2).

- | | |
|---------------------------|---|
| Security | 70 When an order under section 66 is made or varied, the Court may, after inquiring into the financial resources of the person who is directed by the order to make a payment, require the person to provide security as directed by the Court for the payments to be made under the order. |
| New evidence | 71 Where an order has been made or an application has been dismissed under this Act, the Court may, on the discovery of new evidence or fraud, grant leave to re-open and may re-open and consider a previous decision of the Court. |
| Other remedies | 72 Nothing in this Act takes away any right of action or remedy that without this Act might have been maintained against a person. |
| Disclosure of information | <p>73(1) No person employed or assisting in the administration of this Act shall disclose or communicate to any other person information obtained by him in the performance of his duties that deals with the personal history or records of any person, except</p> <ul style="list-style-type: none">(a) in Court proceedings under this Act,(b) with the written consent of the Minister, or(c) in accordance with section 55. <p>(2) Subsection (1) does not apply to a disclosure that is considered necessary for the proper administration of this Act and that is made to</p> <ul style="list-style-type: none">(a) an employee of the Department or of any other department or agent of the Government,(b) an official of a municipal government or of the Government of Canada or of any province or territory of Canada or an agent of any of those governments, or(c) a person acting as an agent of the Department. |

(3) Unless the Court orders otherwise, no person shall publish in any manner a report or notice of a hearing under this Act that discloses

- (a) the name of a child or a parent of the child, or
- (b) any information that might identify a child or a parent of the child.

(4) Nothing in this section prevents the clerk of the Court from

- (a) publishing a notice of a hearing, or
- (b) releasing information to a party to an application under this Act or his lawyer,

if the publication or release of information is necessary for the proper administration of justice.

(5) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to a term of imprisonment of not more than 6 months.

Regulations

74 The Minister may make regulations

- (a) governing the duties of the Director;
- (b) prescribing rules under which applications under this Part are to be made and dealing generally with all matters of procedure under this Part;
- (c) prescribing forms to be used under this Part and providing for their use.

PART 7

LOSS OF CONSORTIUM THROUGH INJURY

Loss of
consortium
through injury

75(1) When a person has, either intentionally or by neglect of some duty existing independently of contract, inflicted physical harm on a married person and thereby deprived the spouse of that married person of the society and comfort of that married person, the person

who inflicted the physical harm is liable to an action for damages by the married person in respect of the deprivation.

(2) The right of a married person to bring the action referred to in subsection (1) is in addition to, and independent of, any right of action that the spouse has, or any action that the married person in the name of the spouse has, for injury inflicted on that spouse.

PART 8

GENERAL PROVISIONS

Laws apply
equally

76(1) For all purposes of the law of Alberta, including the determination of domicile, a person has a legal personality that is independent, separate and distinct from that of the person's spouse.

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if the person were an unmarried person and, in particular, has the same right of action in tort against the person's spouse as if they were not married.

(3) The purpose of subsections (1) and (2) is to make the same law apply equally to married men and married women and to remove any difference in it resulting from any common law rule or doctrine.

Rules of Court

77(1) The practice and procedure of the Court shall be as provided in this Act and the regulations.

(2) Where this Act and the regulations do not provide for some specific practice or procedure and the practice or procedure is necessary to ensure an expeditious and inexpensive resolution of the matter before the Court, the Court may, in its discretion, apply the Alberta Rules of Court, modified or varied as need be.

Binds the
Crown

78 This Act binds the Crown.

PART 9

TRANSITIONAL, CONSEQUENTIAL AND COMING INTO FORCE

Transitional

79 Proceedings commenced under Part 1, 2, or 3 of the *Domestic Relations Act*, RSA 1980 cD-37, before the coming into force of this Act shall be continued under those Parts as though this Act had not been enacted.

Amends SA
1984 cC-8.1

80 *The Child Welfare Act is amended*

(a) *in section 1 by adding the following after clause (p):*

(p.1) "Paternity Registry" means the registry maintained by the Department of Family and Social Services pursuant to section 56.02;

(b) *by adding the following after section 56.01:*

56.02(1) The Minister of Family and Social Services shall establish a Paternity Registry to be maintained by the Department of Family and Social Services in accordance with the regulations.

(2) An unmarried father of a child born or to be born may register in the Paternity Registry his intention to seek joint or sole guardianship of a child pursuant to section 32 of the *Family Law Reform Act*.

(3) A registration under the Paternity Registry must include the names of the father and mother of a child and any other information as prescribed by regulation.

(4) A person may register an order from a foreign jurisdiction concerning the guardianship, custody or access of a child in the Paternity Registry, but the registration is only for the purpose of giving notice and it does not render the order enforceable in Alberta.

(5) A registration in the Paternity Registry expires 180 days from the date of registration unless before expiry an order for sole or joint guardianship in the father's favour

has been granted by the Court of Queen's Bench.

(c) *by adding the following after section 96(1)(2.3):*

(2.4) respecting the establishment and maintenance of the Paternity Registry;

(2.5) respecting the manner in which any registration may be made in the Paternity Registry;

(2.6) respecting searches of the Paternity Registry and the retention and disposition of registrations made in the Paternity Registry.

(d) *in the following provisions by striking out "7" wherever it occurs and substituting "4":*

(i) *section 1(1)(k);*

(ii) *section 54(1) and (2).*

Repeals RSA
1980 cD-37

81 *The Domestic Relations Act, RSA 1980 cD-37 is repealed.*

Amends RSA
1980 cF-2

82 *The Family Relief Act is amended in section 1(b)(ii)(B) by striking out "Maintenance and Recovery Act" and substituting "Part 6 of the Family Law Reform Act".*

Amends RSA
1980 cI1.7

83 *The Income Support Recovery Act is amended in section 51(2) by striking out "27 to 36 of the Domestic Relations Act" and substituting "18 to 27 of the Family Law Reform Act".*

Amends RSA
1980 cI-9

84 *The Intestate Succession Act is amended in section 14(1)(b) by striking out "Parentage and Maintenance Act" and substituting "Family Law Reform Act".*

Amends SA
1985 cM-0.5

85 *The Maintenance Enforcement Act is amended in section 1(2) by striking out "6 of the Parentage and Maintenance Act" and substituting "section 53 of the Family Law Reform Act".*

Repeals SA
1990 cP-0.7

86 *The Parentage and Maintenance Act, SA 1990 cP-0.7 is repealed.*

Amends RSA
1980 cP-20

87 *The Provincial Court Act is amended*

(a) *in section 29*

(i) *in subsection (1) by*

(A) *striking out "alimony or";*

(B) *striking out "4" and substituting "1";*

(ii) *in subsection (3) by*

(A) *striking out "alimony or";*

(b) *in section 30(1) by striking out "or alimony";*

Amends RSA
1980 cS-16

88 *The Social Development Act is amended in section 5(2)(f) by striking out "Parentage and Maintenance Act" and substituting "Part 6 of the Family Law Reform Act".*

Amends RSA
1980 cV-4

89 *The Vital Statistics Act is amended in section 32(2)(a) by striking out "the Parentage and Maintenance Act" and substituting "the Family Law Reform Act".*

Coming into
force

90 This Act comes into force on Proclamation.