

1997 BILL 209

Fifth Session, 23rd Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 209

DOMESTIC ABUSE ACT

MR. KIRKLAND

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 209
Mr. Kirkland

BILL 209

1997

DOMESTIC ABUSE ACT

(Assented to , 1997)

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, or
 - (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;
- (c) "court" means
 - (i) the Provincial Court, or
 - (ii) the Court of Queen's Bench;
- (d) "claimant" means a cohabitant who claims to have been subjected to domestic abuse by another cohabitant and in respect of whom an application for a protection order has

been made;

- (e) "designated Justice of the Peace" means a Justice of the Peace designated by the Chief Judge of the Provincial Court for the purposes of this Act;
- (f) "domestic abuse" includes
 - (i) any intentional or reckless act or omission that
 - (A) causes injury, or
 - (B) causes damage to property, the purpose of which is to intimidate a cohabitant,
 - (ii) any act or threatened act that causes a reasonable fear of injury or damage to property, the purpose of which is to intimidate a cohabitant,
 - (iii) forced confinement,
 - (iv) sexual abuse,
 - (v) emotional abuse, and
 - (vi) financial abuse;
- (g) "emotional abuse" means a pattern of behaviour of any kind the purpose of which is to deliberately impair the mental or emotional functioning of a cohabitant;
- (h) "financial abuse" means behaviour of any kind the purpose of which is to control, exploit or limit a cohabitant's access to financial resources so as to ensure the financial dependency of the cohabitant;
- (i) "judge" means a judge of the court;
- (j) "protection order" means an order made under section 3;
- (k) "residence" means a place where a claimant normally resides, and includes a residence that a claimant has vacated due to domestic abuse;

- (l) "respondent" means any person against whom an order is sought or made;
- (m) "sexual abuse" means sexual contact of any kind that is coerced by force or threat of force.

Application
for protection
order

- 2(1) An application for a protection order may be made by
 - (a) a person who claims to have been subjected to domestic abuse by a cohabitant,
 - (b) a member of a category of persons designated in the regulations on behalf of a person referred to in clause (a) with that person's consent, or
 - (c) any other person on behalf of a person referred to in clause (a) with leave of the court.
- (2) An application for a protection order is to be in the form and manner prescribed by the regulations and may include an application by telecommunication.

Protection
order

- 3(1) Where, on application, the court determines that domestic abuse has occurred, it may grant such relief necessary to prevent further domestic abuse and in doing so may issue a protection order.
- (2) In determining whether a protection order should be granted, the court shall consider, but is not limited to considering, the following:
 - (a) the nature of the domestic abuse;
 - (b) the dependency or lack of ability of one or both of the parties to unilaterally leave the relationship;
 - (c) the history of domestic abuse by the respondent towards the claimant;
 - (d) the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant.

(3) A protection order may contain any or all of the following provisions:

- (a) a provision restraining the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to domestic abuse;**
- (b) a provision granting the claimant and other family members of the claimant exclusive occupation of the residence for a specified period, 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 claimant or other family members, including the residence, property, business, school or place of employment of the claimant and other family members;**
- (d) a provision restraining the respondent from making any communication, including personal, written or telephone contact or contact by any other communication device, either directly or through the agency of another person, with the claimant and other specified persons including the claimant's family members, employers, employees or co-workers;**
- (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 claimant;**
- (g) a provision requiring the respondent to pay emergency monetary relief to the claimant and any child of the claimant or any child who is in the care and custody of the claimant until such time as the rights of the parties may be determined pursuant to any other Act of the Legislature or the Parliament of Canada;**
- (h) a provision requiring the respondent to pay maintenance**

on an interim basis to the claimant and any child of the claimant or any child who is in the care and custody of the claimant, until such time as an obligation for maintenance and support may be determined pursuant to any other Act of the Legislature or the Parliament of Canada;

- (i) a provision requiring the respondent to reimburse the claimant for monetary losses suffered by the claimant and any child of the claimant or any child who is in the care and custody of the claimant as a direct result of the domestic abuse, 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;
 - (j) 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;
 - (k) a provision restraining the parties from taking, converting, damaging or otherwise dealing with specified property for a specified period of time;
 - (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; and
 - (m) any other provision that the court considers appropriate.
- (4) Where there is no existing order relating to custody and access of a child of the claimant, then, in addition to the relief that the court may grant under subsection (3), the court may include in the protection order
- (a) a provision awarding temporary custody of a child, and in granting such relief the paramount considerations of the court are the best interests and safety of the child and the safety of the claimant;
 - (b) a provision providing for access to a child if the order protects the safety and is in the best interests of the child

and protects the safety of the claimant;

- (c) a provision designating a place of visitation other than the claimant's residence;
- (d) a provision restraining the respondent from contacting the child where the child is at serious risk of harm from the respondent;
- (e) a provision setting out the manner in which access granted under this subsection is to be exercised to ensure that the protection of the claimant is not compromised by the exercise of such access; and
- (f) a provision requiring that the respondent's access be supervised and setting out the manner in which supervised access is to be exercised, where the child is at some risk of harm from the respondent.

(5) Where the court grants relief pursuant to subsection (4)(f), the costs of supervised access shall be borne by the respondent.

Ex parte order 4(1) A protection order may be granted *ex parte* by a designated Justice of the Peace, if the designated Justice of the Peace determines that

- (a) domestic abuse has occurred, and
- (b) by reason of seriousness or urgency, the order should be made without waiting for the next available sitting of a judge of the court in order to ensure the immediate protection of the claimant.

(2) In determining whether an order should be made, the designated Justice of the Peace shall in addition to considering those factors listed in section 3(2), consider the existence of immediate danger to persons or property.

(3) A copy of the *ex parte* order is to be served as soon as practicable on the respondent in accordance with the regulations.

(4) For the purposes of making an order under this section, a reference to a court in section 3 is a reference to a designated Justice of the Peace.

Confirmation
by Judge

5(1) If a designated Justice of the Peace makes a protection order, the designated Justice of the Peace shall, immediately after making the order, forward a copy of the order and all supporting documentation, including any notes, to the Court of Queen's Bench in the prescribed manner.

(2) Within 3 working days of receipt of the protection order and all supporting documentation by the Court of Queen's Bench or, if a judge of that Court is not available within that period, as soon as one can be made available, a judge shall

(a) review the order in chambers, and

(b) confirm the order where the judge is satisfied that there was sufficient evidence before the designated Justice of the Peace to support the granting of the order.

(3) For all purposes, including appeal or variation, an order that is confirmed by a judge pursuant to subsection (2) is deemed to be an order of the Court of Queen's Bench granted on an *ex parte* application.

(4) Where, on reviewing the order, the judge is not satisfied that there was sufficient evidence before the designated Justice of the Peace to support the granting of the order, the judge shall direct a rehearing of the matter.

(5) Where a judge directs that a matter be reheard

(a) the clerk of the Court shall issue a summons, in the form and manner prescribed in the regulations, requiring the respondent to appear at a rehearing before the Court, and

(b) the claimant shall be given notice of the rehearing and is entitled, but not required, to attend and may fully participate in the rehearing personally or by an agent.

(6) The evidence that was before the designated Justice of the Peace shall be considered as evidence at the rehearing.

(7) Where the respondent fails to attend the rehearing, the order may be confirmed in the respondent's absence.

(8) At the rehearing, the judge may confirm, terminate or vary the order or any provision in the order.

Review of
order in
Queen's
Bench

6(1) At any time after a respondent has been served with a protection order granted pursuant to section 4, a judge of the Court of Queen's Bench, on application by a complainant or respondent named in the protection order, shall hold a hearing as soon as practicable and may:

- (a) make changes in, additions to or deletions from the provisions contained in the protection order;**
- (b) decrease or extend the period for which any provision in a protection order is to remain in force;**
- (c) terminate any provision in a protection order; or**
- (d) revoke the protection order.**

(2) On an application pursuant to subsection (1), the evidence before the designated Justice of the Peace shall be considered as evidence before the Court of Queen's Bench.

Review of
order in
Provincial
Court

7 At any time after a respondent has been served with a protection order granted by the Provincial Court, on application by a complainant or respondent named in the protection order that court shall hold a hearing as soon as practicable and may grant any of the remedies in section 6(1)(a) to (d).

Notice of
order

8(1) A protection order is not effective in relation to a person unless the person has notice of the protection order.

(2) Notice of a protection order may be given in accordance with the regulations.

(3) A copy of a protection order, or any variation of the order, and any subsequent proof of service, shall be delivered in accordance with the regulations.

Duration of
order

9(1) A protection order shall be made for such specified duration as may be appropriate in the circumstances, unless otherwise terminated or extended by further order.

(2) Unless otherwise provided for in the order, a protection order has effect for 3 years.

(3) Subject to sections 5 and 6, a protection order may only be varied by a judge of the same court in which the original protection order was granted.

(4) 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.

(5) Any provision in a protection order 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.

(6) Notwithstanding any other provision in this Act, a protection order continues in effect and is not stayed by a direction for a rehearing pursuant to section 5 or an application pursuant to sections 6(1) or 7, unless the court otherwise orders.

Confidential
information,
private
hearings and
publication

10(1) The clerk of the court and the designated Justice of the Peace shall keep the claimant's address confidential, unless the claimant or a person acting on the claimant's behalf consents to the disclosure of the address.

(2) 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 claimant or any child of the claimant or any child who is in the care and custody of the claimant, or

(b) would be likely to identify, have an adverse effect on or cause hardship to the claimant or any child of the claimant or any child who is in the care and custody of the claimant.

Effect of order on property and leasehold interest

11(1) An order under this Act 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 claimant who is not a party to the lease is granted exclusive occupation of that residence, no landlord shall evict the claimant solely on the basis that the claimant is not a party to the lease.

(3) On the request of a claimant mentioned in subsection (2), the landlord shall advise the claimant of the status of the lease and serve the claimant with notice of any claim against the respondent arising from the lease and the claimant, at his or her option, may assume the responsibilities of the respondent pursuant to the lease.

Warrant permitting entry

12(1) A court or a designated justice of the peace may issue a warrant where, on an *ex parte* application by a person designated in the regulations, the court or a designated justice of the peace 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 have been subjected to domestic abuse by a cohabitant will be found at the place to be searched.

(2) A warrant issued by a court or a designated justice of the 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 has been subjected to domestic abuse by a cohabitant.

appeal **13(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 **14** An application for an order pursuant to this Act is in addition to and does not diminish any existing right of action for a person who has been subjected to domestic abuse by a cohabitant.

immunity **15** 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.

offence **16** A person who makes an application for a protection order knowing that it is false or malicious is guilty of an offence and is liable to a fine of not more than \$10 000 or to imprisonment for a term not exceeding one year, or to both fine and imprisonment.

application of Rules of Court **17** A breach of any condition of a protection order made pursuant to this Act is not subject to the civil contempt provisions of the Alberta Rules of Court (Alta. Reg. 390/68).

regulations **18** The Lieutenant Governor in Council may make regulations

- (a) defining 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 person who claims to have been subjected to domestic abuse by a cohabitant with that person's consent;
- (e) designating persons or categories of persons who may apply for a warrant pursuant to section 12;
- (f) respecting the form and manner of providing any notice or summons required to be provided pursuant to this Act, including substitutional service and a rebuttable presumption of service;
- (g) respecting the form and manner in which copies of a notice referred to in section 8(3) are to be delivered and the persons to whom the notice is to be delivered.
- (h) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
- (i) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Standing
Committee

19(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 18, 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 (2), 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(a), (b) or (c) to which, in the opinion of the Standing Committee, the attention of the Lieutenant Governor in Council should be drawn.

Amends S.A.
1985 c.M-0.5

20 *The Maintenance Enforcement Act is amended in section 1(1)*

(a) *in clause (d) by adding the following after subclause (iii):*

(iii.1) *an amount payable under a protection order under the Domestic Abuse Act,*

(b) *in clause (e) by adding ", a protection order under the Domestic Abuse Act" after "Alberta".*

Coming into
force

21 This Act comes into force on Proclamation.