

1998 BILL 19

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 19

PROTECTION AGAINST FAMILY VIOLENCE ACT

MRS. BURGNER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 10
Bill 19
Mrs. Burgener

BILL 19

1998

PROTECTION AGAINST FAMILY VIOLENCE ACT

(Assented to _____, 1998)

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

Definitions

1 In this Act,

- (a) "claimant" means a family member for whom a protection order is sought or granted;
- (b) "designated justice of the peace" means a justice of the peace designated by the Lieutenant Governor in Council for the purposes of this Act;
- (c) "emergency protection order" means an order granted under section 2;

- (d) “family members” means
- (i) a man and a woman who are or have been married to one another or who are residing or have resided together in an intimate relationship,
 - (ii) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time,
 - (iii) persons who reside together and are related to one or more persons in the household by blood, marriage or adoption, or
 - (iv) any children in the care and custody of a person referred to in subclauses (i) to (iii);
- (e) “family violence” includes
- (i) any intentional or reckless act or omission that causes injury or property damage, the purpose of which is to intimidate or harm a family member,
 - (ii) any act or threatened act that causes a reasonable fear of injury or property damage, the purpose of which is to intimidate or harm a family member,
 - (iii) forced confinement, and
 - (iv) sexual abuse,
- but is not to be construed so as to limit a parent or a person standing in the place of a parent from using such force as is necessary in the circumstances as a means of correcting a child under the care of the parent or person;
- (f) “judge” means a justice of the Court of Queen’s Bench, a judge of the Provincial Court or a designated justice of the peace;
- (g) “protection order” means an emergency protection order and a Queen’s Bench protection order;
- (h) “Queen’s Bench protection order” means an order granted under section 5;
- (i) “residence” means a place where a claimant normally or temporarily resides, and includes a place that a claimant has vacated due to family violence;

- (j) “respondent” means a family member against whom a protection order is sought or granted;
- (k) “sexual abuse” means sexual contact of any kind that is coerced by force or threat of force;
- (l) “weapon” means a weapon as defined in the *Criminal Code* (Canada).

Emergency
protection
order

2(1) An order under this section may be granted by a provincial court judge or a designated justice of the peace, on application without notice to the respondent, if the judge or justice of the peace determines that the claimant has been the subject of family violence.

(2) In determining whether an order should be granted, the provincial court judge or designated justice of the peace must consider, but is not limited to considering, the following:

- (a) the nature of the family violence;
- (b) the history of family violence by the respondent towards the claimant;
- (c) the existence of any immediate danger to persons or property;
- (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) An order under this section may include any or all of the following:

- (a) 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 or family members;
- (b) a provision restraining the respondent from communicating with or contacting the claimant and other specified persons;
- (c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;

- (d) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time;
- (e) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;
- (f) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;
- (g) any other provision that the provincial court judge or designated justice of the peace considers necessary to provide for the immediate protection of the claimant.

(4) An order under this section may be subject to any terms and conditions that the provincial court judge or designated justice of the peace considers appropriate.

(5) Subject to section 6(1), an order under this section takes effect immediately on the granting of the order.

Confirmation
of emergency
protection
order

3(1) If a provincial court judge or a designated justice of the peace grants an emergency protection order, the judge or justice of the peace must, immediately after granting the order, forward to the Court of Queen's Bench, in accordance with the *Alberta Rules of Court*, a copy of the order and all supporting documentation, including any notes.

(2) A justice of the Court of Queen's Bench must review the order in chambers within 3 working days of the granting of the order or, if a justice of that Court is not available, as soon as possible after one can be made available, and may

- (a) confirm the order where the justice is satisfied that there was evidence before the provincial court judge or the designated justice of the peace to support the granting of the order, or
- (b) direct a rehearing of the matter if the justice is not satisfied that there was evidence before the provincial court judge or 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 justice under subsection (2) is deemed to be an order of the Court of Queen's Bench.

(4) Where a justice of the Court of Queen's Bench directs that a matter be reheard,

(a) the clerk of the Court of Queen's Bench must issue a notice, in the form and manner prescribed in the *Alberta Rules of Court*, requiring the respondent to appear at a rehearing before the Court, and

(b) the claimant must be given notice of the rehearing in the form and manner prescribed in the *Alberta Rules of Court* and is entitled, but not required, to attend and may fully participate in the rehearing personally or by an agent.

(5) The evidence that was before the provincial court judge or designated justice of the peace must be considered as evidence at the rehearing.

(6) At the rehearing, the justice of the Court of Queen's Bench may confirm, terminate or vary the order or any provision of the order, whether or not the claimant or the respondent is in attendance.

Review of
order

4(1) At any time after a respondent has been served with an order, the Court of Queen's Bench, on application by a claimant or respondent named in the order, may

(a) revoke the order,

(b) terminate any provision in an order,

(c) decrease or extend the period for which any provision in an order is to remain in force, or

(d) make changes in, additions to or deletions from the provisions contained in the order.

(2) On an application under subsection (1), the evidence that was before the provincial court judge or designated justice of the peace under this Act must be considered as evidence.

(3) Notwithstanding any other provision of this Act, an emergency protection order continues in effect and is not stayed by a direction for a rehearing under section 3 or an application under subsection (1).

(4) Where one or more provisions of an emergency protection order are varied the order continues in full force and effect with regard to all other provisions.

5(1) An order under this section may be granted by a justice of the Court of Queen's Bench on application if the justice determines that the claimant has been the subject of family violence.

(2) An order under this section may include any or all of the following:

- (a) 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 or family members;
- (b) a provision restraining the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to family violence;
- (c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;
- (d) 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 family violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under this Act;
- (e) a provision granting either party temporary possession of specified personal property, including a vehicle, cheque-book, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects;
- (f) a provision restraining either party from taking, converting, damaging or otherwise dealing with property that the other party may have an interest in;
- (g) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the claimant, including personal, written or telephone contact or contact by any other communication device directly or through the agency of another person, with the claimant and other family members or their employers, employees, co-workers or other specified persons;

- (h) a provision directing a peace officer to remove the respondent from the residence within a specified time;
- (i) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;
- (j) 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;
- (k) a provision requiring the respondent, and any other family member the Court considers appropriate, to receive counselling or therapy;
- (l) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;
- (m) any other provision that the Court considers appropriate.

Notice of order **6(1)** A provision of a protection order is not effective in relation to a person unless the person has actual notice of the provision.

(2) Notice of the provisions

(a) of an emergency protection order must be given in accordance with the regulations, and

(b) of a Queen's Bench protection order must be given in accordance with the *Alberta Rules of Court*.

(3) A copy of an order, or of any variation of an order, must be served,

(a) in the case of an emergency protection order, in accordance with the regulations, and

(b) in the case of a Queen's Bench protection order, in accordance with the *Alberta Rules of Court*.

Application for order **7(1)** An application for a protection order may be made

(a) by a person who claims to have been the subject of family violence by a family member,

- (b) on behalf of a person referred to in clause (a), with that person's consent, by a person or a member of a category of persons designated in the regulations, or
- (c) by any other person on behalf of a person referred to in clause (a), with leave of the judge.

(2) An application for an emergency protection order must be made in accordance with the regulations, and may be made by telecommunication.

(3) Unless this Act otherwise provides, notice of an application under this Act must be given to the respondent or claimant, as the case may be.

(4) An application to the Court of Queen's Bench under this Act must be made by originating notice unless it is further to proceedings that have been commenced.

Duration of order

8(1) Subject to subsection (2), a protection order must be granted for such specified duration as the judge considers appropriate in the circumstances.

(2) A protection order under this Act may not exceed one year unless it is extended by a further order under subsection (3).

(3) The Court of Queen's Bench may, on application, extend the term of a protection order for periods not exceeding one year each.

(4) For the purposes of subsection (2), the term of an emergency protection order must be calculated from the date on which it was confirmed by the Court of Queen's Bench under section 3.

Confidentiality

9(1) The clerks of the Court of Queen's Bench and of the Provincial Court must keep confidential any information relating to the location of a claimant unless the claimant or a person acting on the claimant's behalf consents to the giving of the information.

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

(3) On the request of the claimant or the respondent or on the initiative of the judge, the judge may make an order prohibiting the publication of a report of a hearing or any part of a hearing if the judge believes that the publication of the report would have an adverse effect on or cause undue hardship to the claimant or respondent or any child of the claimant or respondent or any child who is in the care or custody of the claimant or respondent.

Effect of order on property and leasehold interest

10(1) A protection order does not in any manner affect the title to or an ownership interest in any real or personal property held jointly by the parties or held solely by one of the parties.

(2) Where a residence is leased by a respondent under 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 may 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 must 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 the claimant's option, may assume the responsibilities of the respondent under the lease.

Warrant permitting entry

11(1) A judge may issue a warrant, on application by a person designated in the regulations and without notice to the respondent, if the judge is satisfied by information on oath that there are reasonable and probable grounds to believe that

- (a) the person who provided the information on oath has been refused access to a family member, and
- (b) the family member may have been the subject of family violence and will be found at the place to be searched.

(2) A warrant issued by a judge authorizes the person named in the warrant

- (a) to enter the place named in the warrant and any other structure or building used in connection with the place,
- (b) to search for, assist or examine the family member, and
- (c) with the family member's consent, to remove the family member from the premises for the purpose of assisting or examining the family member.

Rights not diminished by Act

12 An application for a protection order is in addition to and does not diminish any existing right of action of a person who has been the subject of family violence by a family member.

Immunity

13 No action lies against a peace officer, a clerk of a court or any other person by reason of anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them in good faith

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

Prohibition **14** No person shall, with malicious intent, make a frivolous or vexatious complaint under this Act.

Regulations **15** 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) respecting the procedures to be followed for applications, hearings and rehearings under this Act;
- (c) designating persons or categories of persons who may apply for protection orders on behalf of persons referred to in section 7(1)(a);
- (d) designating persons or categories of persons who may apply for a warrant under section 11;
- (e) respecting the giving of notices and the service of documents under this Act in respect of emergency protection orders;
- (f) respecting the retention, disposition or sealing of records resulting from court proceedings under this Act;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Amends SA 1985 cM-0.5 **16** 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 Queen's Bench protection order under the *Protection Against Family Violence Act*,

(b) in clause (e) by adding “, a Queen’s Bench protection order under the *Protection Against Family Violence Act*” after “Alberta”.

Coming into
force

17 This Act comes into force on Proclamation.