

1998 BILL 209

Second Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 209

ACCESS ENFORCEMENT ACT

MS. OLSEN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 209
Ms. Olsen

BILL 209

1998

ACCESS ENFORCEMENT ACT

(Assented to , 1998)

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

Definitions

1 In this Act,

- (a) "child" means a child who is under the age of 16 years;
- (b) "Court" means the Court of Queen's Bench;
- (c) "Director" means the Director of Access Enforcement appointed pursuant to section 3;
- (d) "order" means an order or interim order of a court in Alberta that has a provision respecting the custody of or the access to a child.

Application

2 This Act does not apply in respect of

- (a) a denial of access,
- (b) a failure to exercise a right of access, or
- (c) a failure to return a child, as an order or an agreement requires,

if the event described in clause (a), (b) or (c) occurred prior to the coming into force of this Act.

Director of
Access
Enforcement

3(1) The Minister of Justice and Attorney General shall appoint a person as the Director of Access Enforcement for the purposes of this Act.

(2) The Director may delegate any power, duty or function conferred or imposed on the Director under this Act.

Access
enforcement

4(1) Where a person, in whose favour an order has been made for access to a child at specific times or on specific days, has been wrongfully denied access to the child by the person who has custody, the person entitled to access may

- (a) request the Director to appoint a mediator to attempt to negotiate a settlement between the parties, or
- (b) apply to the Court for relief.

(2) The Director may appoint a mediator if he receives a request under this section.

(3) If 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 Director to apply on the person's behalf, to the Court for relief.

(4) The Director may apply to the Court on behalf of a person entitled to apply for the relief in this Act if he receives a request under this section.

(5) If an application is brought under this section by the Director, the person on whose behalf the application is brought is deemed to be the applicant.

(6) Where the Court is satisfied that access is wrongfully being denied to an applicant, the Court may order any of the following:

- (a) that the respondent 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) that the respondent reimburse the applicant for any reasonable expenses actually incurred as a result of the wrongful denial of access, or

- (c) that the respondent give security for the performance of any obligation imposed by the order.

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

(8) A denial of access is wrongful unless it is justified by a legitimate reason including any of the following:

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

Failure to
exercise
access

5(1) Where the person who under the terms of an order has access to a child at specific times or on specific days, without reasonable notice and excuse, failed to exercise the right to access or has not returned the child as the order requires, the person who has

custody may

- (a) request the Director to appoint a mediator to attempt to negotiate a settlement between the parties, or
- (b) apply to the Court for relief.

(2) The Director may appoint a mediator if he receives a request under this section.

(3) If 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 Director to apply on the person's behalf, to the Court for relief.

(4) The Director may apply to Court on behalf of a person entitled to apply for the relief in this Act if he receives a request under this section.

(5) If an application is brought under this section by the Director, the person on whose behalf the application is brought is deemed to be the applicant.

(6) Where the Court is satisfied that the respondent, without reasonable notice and excuse, failed to exercise the right of access or did not return the child as the order requires, the Court may

- (a) order 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.

Court applications

6(1) An application made under this Act shall be heard within 10 days after it has been served on the respondent.

(2) An application made under this Act shall not be made more than 30 days after the alleged denial of access or failure to exercise access or failure to return the child as an order required.

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

(4) 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.

(5) The hearing of the application may, in the discretion of the Court, be heard in private.

Offence **7** Any person who contravenes an order made under this Act is guilty of an offence and liable to a fine of not more than \$1000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

Regulations **8(1)** The Lieutenant Governor in Council may make regulations

- (a) prescribing rules with respect to the making of applications under this Act and dealing generally with all matters of procedure under this Act;
- (b) governing how the Director carries out his powers and duties under this Act;
- (c) respecting mediation under this Act;
- (d) prescribing forms to be used under this Act and providing for their use.

(2) Where the Lieutenant Governor in Council proposes to make a regulation pursuant to this section, a copy of the proposed regulation shall be forwarded to the Standing Committee on Law and Regulations.

(3) The Standing Committee on Law and Regulations shall examine any 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 the Act, and
- (c) it is reasonable in terms of efficiently achieving the objectives of this Act.

(4) The Standing Committee on Law and Regulations shall advise the Lieutenant Governor in Council when it has completed its review of a proposed regulation and shall indicate any matter referred to in subsection (3) to which, in the opinion of the Standing Committee, the attention of the Lieutenant Governor in Council should be drawn.

Coming into
force

9 This Act comes into force on Proclamation.