

1999 BILL 12

Third Session, 24th Legislature, 48 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 12

DOMESTIC RELATIONS AMENDMENT ACT, 1999

MS GRAHAM

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 12

1999

DOMESTIC RELATIONS AMENDMENT ACT, 1999

(Assented to _____, 1999)

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

Amends RSA
1980 cD-37

1 The *Domestic Relations Act* is amended by this Act.

2 Section 1 is repealed and the following is substituted:

Definitions

1(1) In this Act, except in Part 7, “Court” means the Court
of Queen’s Bench.

(2) In sections 16.1 and 25.01,

(a) “spouse” means

(i) a spouse of a married person, and

(ii) a party to a common law relationship;

(b) “common law relationship” means a relationship
between 2 people of the opposite sex who although
not legally married to each other

(i) continuously cohabited in a marriage-like
relationship for at least 3 years, or

(ii) if there is a child of the relationship by birth or
adoption, cohabited in a relationship of some
permanence.

3 Section 7 is repealed and the following is substituted:

Explanatory Notes

1 Amends chapter D-37 of the Revised Statutes of Alberta 1980.

2 Section 1 presently reads:

1 In this Act, except in Part 7, "Court" means the Court of Queen's Bench.

3 Section 7 presently reads:

7 The Court has jurisdiction to hear an action for judicial separation or restitution of conjugal rights, or an application for alimony, when both the parties to the action

Jurisdiction of Court to hear actions

7 The Court has jurisdiction to hear an action for judicial separation or restitution of conjugal rights, an application for spousal support under section 16.1 or an application for alimony, when both the parties to the action

- (a) are domiciled in Alberta when the action is commenced,
- (b) had a home in Alberta when their cohabitation ceased or when the events occurred on which the claim for separation is based, or
- (c) are resident in Alberta when the action is commenced.

4 The heading to Part 3 is repealed and the following is substituted:

ALIMONY, MAINTENANCE AND SPOUSAL SUPPORT

5 The following is added after section 16:

Spousal support order

16.1(1) The Court may make a spousal support order on application by either or both of the spouses where the spouses are living separate and apart and there is no possibility of reconciliation.

(2) The Court making a spousal support order may direct a spouse to pay periodic sums or a lump sum or both for such period and on such terms as the Court thinks reasonable for the support of the other spouse.

(3) Where an application is made for an order under subsection (1), the Court may, on application by either or both of the spouses, make an interim order requiring a spouse to pay periodic sums or a lump sum or both for such period and on such terms as the Court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

(4) In making an order under subsection (2) or an interim order under subsection (3), the Court must take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited,
- (b) the functions performed by each spouse during the cohabitation, and

- (a) *are domiciled in Alberta at the time of the 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 separation is based, or*
- (c) *are resident in Alberta at the time of the commencement of the action.*

4 The heading to Part 3 presently reads:

ALIMONY AND MAINTENANCE

5 Spousal support order.

(c) any order, agreement or arrangement relating to support of either spouse.

(5) A Court may make a variation order varying, rescinding or suspending, prospectively or retroactively, a spousal support order or any provision of a spousal support order on application by either or both of the spouses or former spouses.

(6) Before the Court makes a variation order, the Court must satisfy itself

(a) that a change in the condition, means, needs or other circumstances of either spouse or former spouse, as the case may be, has occurred since the making of the spousal support order or the last variation order made in respect of that order, or

(b) that evidence of a substantial nature that was not available at the previous hearing has become available,

and, in making the variation order, the Court must take that change of circumstances or evidence into consideration.

6 Section 20 is amended by adding “or for spousal support under section 16.1” after “alimony”.

7 The following is added after section 25:

Spousal
agreements

25.01(1) Spouses may enter into an agreement that, subject to subsection (2), prevails over provisions of section 16.1.

(2) The Court may disregard the agreement as to support, or any provision of the agreement, if any of the following circumstances apply and the Court is of the opinion that the agreement or the provision would be inequitable:

(a) in the case of an agreement entered into before the coming into force of this section, the agreement was

6 Section 20 presently reads:

20 An order or judgment for alimony, whether interim or otherwise, may be registered in any land titles office, and the registration so long as the order or judgment remains in force,

(a) binds the estate and interest of every description that the defendant has in any land, and

(b) operates thereon in the same manner and with the same effect as a registration of a charge by the defendant of a life annuity on the defendant's land.

7 Spousal agreements.

not made in contemplation of the coming into force of this section;

- (b) the spouse who challenges the agreement or provision entered into the agreement without receiving independent legal advice;
- (c) a consideration in making the agreement or provision was the removal by one spouse of barriers that would prevent the other spouse's remarriage within that spouse's faith;
- (d) in the case of an agreement entered into by the spouses while living together in a common law relationship, the spouses married each other;
- (e) there are children of the relationship and the agreement does not provide adequately for the support of the children;
- (f) one of the spouses is on social assistance without support from the other spouse.

8 This Act applies to common law relationships arising before or after this Act comes into force.

8 Application.